

TRANSCRIPT OF PROCEEDINGS
UNCLASSIFIED

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


1009 MONDAY 24 JULY 2006
DAY 9


The transcript has been checked and cleared for operational security issues.


TRANSCRIPT VERIFICATION


I hereby certify that the following transcript was made from the sound recording of the above stated case and is true and correct

Signed.....  Date(President)

Signed.....  Date21.07.06.....(Recorder)

Signed.....  Date21.07.06.....(Transcriber)

Signed.....  Date21.07.06.....(Transcriber)

Signed.....  Date21.07.06.....(Transcriber)

Kovco 24/07/06

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5 PRESIDENT: Thank you, ladies and gentlemen, please be seated. Good morning, Colonel.

COL GRIFFIN: Good morning, Mr President, Members. I call the first witness for today, Detective Sergeant Elliott.

10

<DETECTIVE SERGEANT PHILLIP JOSEPH ELLIOTT, sworn
[1010]

15

<EXAMINATION BY COL GRIFFIN

20 COL GRIFFIN: Good morning, Sergeant Elliott. My name is Griffin, I'm the Counsel Assisting the Board of Inquiry. Would you state your full name for the record, please?---My full name is Phillip Joseph Elliott. Elliott spelt E-l-l-i-o-t-t.

25 What is your occupation?---I'm a Detective Sergeant of police attached to Chatswood crime scene section for the New South Wales Police Service.

How long have you been in that position?---I've been in the police service for 20 years and as a crime scene examiner for 15 years.

30 Would you tell the Board, please, your involvement in the investigation of the death of PTE Jacob Kovco?---I was in a position to attend Iraq and make an examination of the Embassy, the Embassy surrounds where Kovco worked during the day of the incident, and we also made the examination of room 8.

35 Did you prepare a statement for your involvement in that investigation? ---Yes, I did.

I'll show you two documents?---Yes.

40 Do you recognise one of those as a copy of your original statement? ---That's correct.

45 The other one has had areas blacked out for security reasons. Do you recognise that?---Yes, I do.

Would you follow with me as I go through your statement, please. I will use the redacted one, that is, the one that has had the security matters blacked out?---Yes.

5 I see from your statement that you've been a crime scene examiner attached to the forensic services group since 1991. That's some 15 years as a forensic crime scene examiner. Is that right?---That's right.

10 As part of your qualifications for that you have a Bachelor of Applied Science in Forensic Investigation?---Yes, I do.

15 Over several pages of the statement you describe your activities in investigating the incident at the Embassy in Baghdad in which you produced a video recording which Inspector Hayes has already placed in evidence before this Board. But that's the case, that you took that video? ---Yes, I did.

20 You've described over the succeeding pages various aspects of the Embassy which are classified relating to positions of particular security facilities?---That's correct.

You then participated in an examination of room 8, being the incident scene. That's at page 10 of your statement?---Yes.

25 Mr President, I would tender at this stage for the Board's assistance the original and the redacted version, the original requiring a C classification of the statement.

30 PRESIDENT: Is there any opposition to the tender of both documents?

COUNSEL REPRESENTING: No, sir.

35 **#EXHIBIT C99 - DETECTIVE SERGEANT ELLIOTT'S STATEMENT - CLASSIFIED VERSION**

40 **#EXHIBIT 99R - DETECTIVE SERGEANT ELLIOTT'S STATEMENT - REDACTED VERSION**

45 COL GRIFFIN: Would you tell the Board the results of your examination of room 8, please, Detective Sergeant Elliott?---Well, I examined room 8. Room 8 had the furniture still in place, except for a bar fridge at one end of the room. All of the personal belongings from the deceased and the

5 other roommates had been removed. So all that was left to examine was some blood staining on the carpet and some blood staining on lower portions of furniture items still in situ. There was a hole in the ceiling which was ballistically examined and some staining on that ceiling around that hole. There was very little evidence to examine.

10 Could Sergeant Elliott be shown Exhibit 75 and Exhibit C80. What I'm going to show you now, Sergeant, is a diagram plan of the room and some photographs that were taken of the area. I understand it was you who prepared these exhibits that have already been put into evidence by Detective Inspector Hayes. Is that correct?---That is correct.

15 From your examination of the scene, in particular of the blood and staining that appears in these photographs which are on their way to you now - I'll just ask you to confirm that those are the photographs that you took and that is the plan that you've produced?---Yes, that's correct.

20 From the staining of the blood pattern on the carpet or on the furniture in the room, were you able to draw any conclusions of a forensic nature?---The blood staining on the carpet was in the position from the information we obtained where the victim was positioned, the head of the victim was positioned. So naturally blood would flow from any of the wounds that were inflicted on the victim at that time. There was very little blood staining as it splashed or spattered blood staining, very low on furniture items in the near vicinity of the larger area of staining. That could be as a result of blood dropping from the wounds and splashing into that blood that was already pooled on the carpet or it could be a result of the head being lifted and dropped down into some pooling on the carpet. So there was very little blood evidence on the carpet or the lower portions of the furniture to indicate any more than that the victim was in position on the floor at that point.

35 I understand from paragraph 26 of your statement on the last page that your summary of your examination - I'd ask you to read that summary, please?---As all of the personal property had been removed from room 8 and the room partially cleaned, the amount of physical evidence left to examine was limited. With that in mind, the blood staining, the placement of the furniture and the small amounts of spatter on the ceiling was consistent with versions given in the two video walk-throughs conducted on 11 May 2006.

45 The Board has seen those video walk-throughs. I understand you were involved in the production of those. Is that right?---Yes, I was the video operator during those videos.

5 Do I understand you to be saying in that summary that what you observed in the room and what you heard from the two witnesses who participated in the walk-through, that is, the two soldiers in the room at the time, that that is consistent with the physical material that you observed, limited though it was?---That's right. The physical evidence in the room being limited was consistent with those versions that I heard during the video walk-through.

10 Thank you, Detective Sergeant Elliott. I have no further questions, sir.

PRESIDENT: Thank you. LTCOL Wilkinson.

LTCOL WILKINSON: No questions.

15 PRESIDENT: LTCOL Holles.

<EXAMINATION BY LTCOL HOLLES

[1020]

20

LTCOL HOLLES: Sergeant Elliott, would you agree that there are internal inconsistencies between the versions given by the two participants in the walk-through as to where people were positioned and other details like that within the room?---I don't think that question can be answered because it doesn't directly relate to a specific question. I can't summarise that in one answer. If something more direct - - -

25 All right, fine. Would you be assisted if you were to look at the two videos that you've taken?---If that's - if you think that would be relevant, yes, most certainly.

30 Sir, I'm wondering if they could be played while the officer looks at it, please.

35 PRESIDENT: Do we have them available?

COL GRIFFIN: That's Exhibits 70 and 71, being the walk-through with Soldiers 17 and 19. That would be correct?---Yes.

40 Sir, as we are in open session, I would ask again that you give the direction that any names identified in these video walk-throughs not be published.

45 PRESIDENT: I take it there's no problem with that?

COUNSEL REPRESENTING: No, sir.

5 PRESIDENT: The names of the individual soldiers which are mentioned in this particular video are not to be published by the press, and the press, if they publish it, please use the numbers of the matrix that we've come up with.

10 COL GRIFFIN: Detective Sergeant, to assist you, on the desk before you is a matrix of names and associated or corresponding numbers next to the identity of the soldiers. If you have cause to refer to anybody would be you please do so with reference to that matrix by using their numbers rather than names. Do you understand?---I do understand. As I was not in contact with those soldiers for any great length of time at all, except for that small video, could you remind me of the two soldiers at - or numbers by - - -

15 They appear on the list before you as Soldiers 17 and 19?---Thank you.

20 LTCOL HOLLES: Just for your clarity, sir - perhaps if this could be referred to as - this interview involves Soldier 17. That would assist Soldier 1 and Soldier 19.

25 **DVD SHOWN**

LTCOL HOLLES: Thank you. Can I just ask a few questions before the next video is played?

30 PRESIDENT: By all means.

LTCOL HOLLES: Sergeant, you'd agree that in that video Soldier 17 is sitting almost on the edge, that is the foot of the bed?---On the side of the bed, rather than the foot of the bed.

35 Well, sitting on the side of the bed very, very close to the foot of the bed?---Yes, about middle, middle between the head of the bed and the foot of the bed, yes.

40 Could I just ask that that video be played again, please? I'm sorry, but the perception I have is that he's sitting very, very close towards the foot of the bed and I - - -?---Certainly.

45 PRESIDENT: Can we just have that video again please, perhaps from the start, where we see Soldier 17 on the bed?

DVD SHOWN

5

LTCOL HOLLES: Just stop it there.

Detective Sergeant, would you agree that's towards the foot of the bed?---I would.

10

Yes, thank you, that is sufficient.

PRESIDENT: That's all we need of that, thank you.

15

LTCOL HOLLES: Perhaps if the next one could be played now.

PRESIDENT: Could you play the DVD now, please.

20

DVD SHOWN

LTCOL HOLLES: Thank you. Detective Sergeant, you've had a chance to have a look at both of those videos?---Yes.

25

I just want to ask you a number of questions about the consistency between the two versions, understand?---Certainly.

30

Do you agree that in the version involving Soldier 17, Soldier 17 positions himself very close to the foot of the bed?---Yes.

Do you agree that in the version involving Soldier 19, Soldier 19 positions Soldier 17 about the middle of the bed?---Yes.

35

You agree that in the version involving Soldier 19 and Soldier 17, they were both probably about the same in terms of where Soldier 19 was standing at the time that the shot was fired?---Yes.

40

Do you agree that the position of PTE Kovco's body on the ground is different between the version given by Soldier 17 and the version given by Soldier 19?---There are differences, yes.

45

Significantly they are that in Soldier 17's version, the body remains in effect in a twisted position, but pretty well in straight alignment parallel with the double bunk bed. In Soldier 19's version, the body initially has

its legs twisted up underneath it and is then moved onto its back and legs straightened out to enable some treatment to take place?---Yes.

5 Consistent with the staining pattern which you identified on the floor, is there one version of those accounts which is more consistent with the staining than the other?---The blood staining, the concentrated blood staining on the carpet was generally in two - two distinct areas.

10 Yes?---And linking those two stains was an intermittent blood trail.

Right?---The victim at that time had two - two injuries, we'll call it an entry - an entry wound and an exit wound and you'd expect bleeding from both of those wounds.

15 Yes?---The blood staining on the carpet, considering there's two wounds, is not going to give us a lot of information, but if you are talking about versions, it is possible that initially the - the victim was on one side and then he was rolled over and the blood was - was initially pooling let's say on the left-hand side of where the victim was positioned and as due to the
20 rolling over, it may have produced a corresponding blood stain on the other side.

25 So - - -?---But there's not much blood there to really interpret it. It's just two general areas of concentrated blood stains.

Right and that would mean that the version given by Soldier 19 is possibly at least more consistent with the blood staining pattern rather than given by Soldier 17 where he has the body basically in the one spot throughout?
---I'm saying that the turning of the body could be consistent with that -
30 that patterning on the floor - - -

Thank you?---But as a result of two wounds, they were both bleeding and could have produced two - two similar sized blood stains.

35 Is it the case that, given the location of the exit wound, there would tend to be less bleeding than there would be from the entrance wound?---I think that's a matter for a forensic pathologist rather than a crime scene examiner.

40 Was the, to use the neutral term, cleaning of the room carried out before you got there, did that have the effect of removing any real opportunity to establish splatter patterns?---Most certainly, yes.

45 Effectively, because the room had been cleaned you were unable to establish any pattern of splatter which would have led you to make further

conclusions as to the position of the body, standing and when it fell?
---Yes.

5 Did the destruction of the deceased's clothing increase the inability of the police to conduct splatter pattern testing?---Yes.

10 Did the washing of the clothing of the two other soldiers in the room destroy any efforts by the police to establish splatter pattern effect?
---Possibly.

15 Did the removal and washing of the bed linen approximate to where it is stated that PTE Kovco was standing at the time of the fatal shot, did its removal and washing affect the ability of the police to ascertain splatter patterning on that fabric?---Yes, all of those items could have been examined for splatter patterning, but were not available.

20 Would it also have been the case that at least so far as the bed linen was concerned or the covering on PTE Kovco's bunk, that its removal and washing removed the opportunity to test it for gunshot residue?---Yes.

Were you at any stage given a weapon stated to have been at the foot of Soldier 17's bed and said to have been covered in body matter?---No.

25 Would the preservation of that weapon in the circumstances I've just outlined assisted in determining a splatter pattern?---Every item in that room if it was - remained in situ for my examination, blood splatter examination, could have provided evidence in this matter, yes.

30 This question is hypothetical and if you're unable to answer it I fully understand. But if you could take this scenario: Soldier 17's rifle is sitting at the foot of his bed, basically attached, as I understand it, to the frame between the frame and the mattress. Do you understand what I'm talking about?---Yes.

35 Can you visualise what I'm talking about?---Yes.

40 The butt of the weapon is on the outside of the bed. Do you understand what I'm talking about?---I'm not sure what you mean by the outside of the bed.

The butt of the weapon is on the side of the bed which is nearest to the passageway between the bed and the bunks?---Yes.

45 Soldier 17 is sitting close to that weapon, as demonstrated in the video re-enactment in which he positioned himself effectively at the foot of the bed

with his feet on the floor?---Yes.

5 If the weapon had been covered in biological material from the fatal
gunshot wound, would you expect somebody sitting that close to the
weapon also to have received a certain amount of biological material from
the gunshot wound?---If there was biological material on a weapon placed
in the position that you've stated, it is possible that any item, including a
person's clothing sitting in close proximity to that weapon, the blood-
stained weapon, would be spattered, yes.

10

Thank you sir, that concludes the re-examination.

PRESIDENT: Thank you. LTCOL Berkley.

15

<EXAMINATION BY LTCOL BERKLEY

[1047]

20 LTCOL BERKLEY: Sergeant, I read from your statement at least that
you assisted Mr van der Walt in various aspects of his examination as
well?---Yes, I did.

25 At some stage of course you've seen the bullet entry hole into the
ceiling?---Yes.

You also physically observed what appeared to be the exit hole through
the roofing material?---Yes.

30 Were you part of Mr van der Walt's establishing the trajectory of the
bullet?---Whilst he was the major contributor to the trajectory, the ballistic
evidence in that examination, I did assist him, yes.

35 As a crime scene examiner you wanted to inform yourself of the trajectory
of the bullet?---Yes.

Soldier 17 was near the foot of his assigned bunk at the time the shot rang
out?---Yes.

40 Was it your understanding in relation to Soldier 19 that in mere seconds
before the shot rang out he had passed Jake on 19's way to the fridge and
that Jake was standing at that time at the double bunk?---Yes.

45 Did it excite you or surprise you that the likely trajectory of the fatal bullet
would have had Jake standing almost on top of Soldier 17 facing towards
the back wall?---No.

Did it excite you at all or cause you any concern that that piece of physical evidence didn't match the oral evidence of either 17 or 19?---What piece of physical evidence are you relating to, the trajectory?

5

The trajectory?---Both Soldier 17 on the bed did not see the shot fired and Soldier 19 also didn't see the shot fired. So I cannot see how we can say that it surprised me or there was any sort of differences if they didn't actually see the trajectory or the likely trajectory of that bullet.

10

Did you understand that when last seen moments before the shot Jake was at his double bunk?---Yes.

Do you understand from the reconstruction, the forensic reconstruction, having regard to the trajectory, that that reconstruction puts Jake towards the foot of Soldier 17's bed and for the bullet to enter from the right - exit at roughly a 45 degree angle through the skull on the left-hand side - that, according to that trajectory, Jake would have actually been facing the back wall?---Yes, he would have been facing the back wall.

20

Does that seem to you that there is therefore an inconsistency in the last known position of Jake and where he was when the shot was fired?---Inconsistencies in - I'm sure it would be very difficult to exactly position somebody. You'd do it to the best of your ability considering all of the circumstances, the horrific circumstances that occurred in that room. But the positioning from Soldier 17 to Soldier 19 was certainly within limits of general geographic area in that room. How you say that it was highly inconsistent or not very inconsistent at all, it's - I cannot - cannot say but they did their best to interpret where he was at the time.

25

LTCOL BERKLEY: Sir, I don't mean to insult you or cast doubt on what you're saying. I'm just putting to you some propositions. If Jake was facing the laptop before the shot was fired - - -?---Yes.

30

- - - in those moments he must have been able to draw a pistol, if it is a case of self-infliction - has been able to draw a pistol and move towards Soldier 17 and be facing the back wall of the accommodation before the shot was fired. Would you agree with that?---I would agree with that.

35

What have you got there? That's your diagram, is it?---Just with - the plan of the room with the trajectory line placed upon it.

COL GRIFFIN: LTCOL Berkley, would it assist to have Exhibit 76 with the stylised figure on the trajectory line to show the witness?

40

45

LTCOL BERKLEY: Yes, it would. Thank you very much.

I understand now that you're looking at Exhibit 76?---Yes.

5 And knowing the dimensions of the room and the height of Jake, he would have been within a step, a short step one might think, of Soldier 17?---Yes.

10 As a crime scene examiner, having regard to your examination of the trajectory, does that diagram in Exhibit 76, in your view, indicate the most likely position of Jake when the bullet entered his head?---I guess there's a trajectory line, and looking at the plan marked "Elevation of Southern Wall", it is possible for the Private to have been anywhere along that trajectory line.

15 Certainly. And the further towards the double bunks, the lower his head would have had to have been for that observed injury to have been sustained. You would agree with that?---Yes. As best we can create with the trajectory line, yes.

20 Sure, all right. If a shot such as the one that killed Jake was fired, you would expect that Jake would have crumbled directly to the ground?---I would - I could imagine that that would occur. How a person falls after that has been - that has occurred, I really couldn't say if there's any known way that a person would fall in regards to those circumstances.

25 You've attended crime scenes in which you've had the body in situ, the deceased in situ?---Many times, yes.

30 Is there consistency or inconsistency in the Soldier 17 and 19's version of where Jake's feet were when he fell to the ground, having regard to that trajectory?---I don't think I'm able to offer any expert evidence in regards to his position on the floor and in regards to the trajectory line. The - Jake has suffered a wound and he's collapsed to the floor, and how he collapses I guess is based on 17 and 19's memory - memory of that. But I can't provide any physical evidence except for that it was acceptable that his position on the floor - yes, I don't - I cannot offer any evidence as to how a person would fall and what their body would do after a wound like that was inflicted. I think that's a matter for a forensic pathologist, if movement's possible. He was - he was definitely positioned in the vicinity of where the incident did occur.

40 At least his head was?---His head was - it was close to where that trajectory line was, yes.

45

We've had evidence and there's also other evidence when other soldiers entered the room, that he was certainly being worked on, and first aid's being administered?---Yes.

5 And there was also evidence from one of the soldiers, and we've just seen it on the video, that the legs were straightened. Where would - sorry. You've answered the question, you don't know where his feet would have been, if he collapsed directly to the floor?---No, I can't tell you if a person is able to take a step in any direction and then collapse, or if you automatically just collapse in a sort of a vertical sort of motion, or you go to one angle or another. I can't offer any sort of forensic evidence in regards to that. And as I've said, I think it's a matter for the forensic pathologist about what a person could do.

10
15 Did you swab any of the bed frame or mattress of Soldier 17's bed?---No. I could see no reason to swab any areas that didn't provide any obvious physical evidence, and I certainly - I had an opportunity to DNA swab areas where there's - where there may be trace evidence, but I didn't think that anything on that bed was relevant to DNA trace swabs.

20 Why didn't you think it was relevant?---In a situation like this, I don't know what surface would be deemed more relevant and less relevant in the position of the furniture. I couldn't see how any part of any bed stood out more so for trace evidence targeting than any other item in the room. It's just I didn't think it was relevant at the time.

25 All right. And these are questions that we must ask. If as a result of your forensic examination, and we call it a crime scene for those purposes, you will have a trajectory that puts Jake very close to the end of Soldier 17's bed again. Can you understand that? That's what physical evidence shows?---Yes.

30 Given that he would have fallen straight down and that he's, on any of the accounts of the two witnesses, that Kovco's head was very close to the end of 17's bed - - -?---Yes.

35 - - - wouldn't you have thought that there may have been some contact between Jake's head and that bed as he fell?---Not necessarily. It was certainly near - it was in the vicinity of it.

40 It was in the vicinity of it?---But there wasn't obvious to - it was all photographed and examined. There was - considering the nature of the wounds and the bloodshed that you would expect and - there was nothing I saw that I - on those - on the bed frames that I thought was relevant to swab.

45

Thank you, nothing further.

PRESIDENT: MAJ Young?

5

<EXAMINATION BY COL YOUNG

[1106]

10 COL YOUNG: Sergeant Elliott, COL Young is my name. Could I ask you to turn to paragraph 25 of your statement?---Sorry, the page number?

Paragraph 25 on page 17, sorry?---Yes. Yes.

15 You mention there that you arranged for a forensic courier to convey a number of exhibits to forensic biology for examination. There are ten exhibits mentioned following in that paragraph?---Yes.

Some of those exhibits I think you took at the scene?---Yes.

20

And others, items 4, 5 and 6, relate to swabs from a Browning pistol. Did you have any dealings with taking those swabs from the pistol?---No, it was someone else.

25 It wasn't you. Did you ever see the Browning pistol at all?---No, I've only seen photographs of it.

Thank you. I've got nothing further, thanks, sir.

30

<EXAMINATION BY COL GRIFFIN

[1103]

35 COL GRIFFIN: Detective Sergeant Elliott, do you have photographs 1 to 50 still in front of you?---Yes.

Do any of those photographs depict the blood staining patterns around the foot of the bed and the wardrobe?---Yes.

40 Are they numbered before you the photographs?---Yes, photograph 38 is probably the best photograph of that blood staining on the carpet.

45 Do you have that available to you, Mr President, in your copies, photograph 38? I'll have it passed to you for you to see. If you could just indicate that to the secretary, please, Sergeant Elliott, and she'll pass the

5 photograph to the Board Members. Now, if you just refer to Exhibit 76,
the plan with the stylised figure on it. You have before you a laser
pointer. I just ask that the plan be brought into the frame so that it can be
displayed on the screen. Detective Sergeant, would you indicate to the
Board where on that trajectory the blood staining pattern that you've
10 identified on photograph number 38 appears, please?---Well, rather than
on the trajectory because the trajectory is just a line, as we could all
picture, the blood staining is at the foot of the single bed in between the
wardrobe and the single bed. So in this area where the two arrows
15 basically meet. That is best shown on other plans of that room.

Is that precisely where you would anticipate it to be were the trajectory to
be as indicated on that plan?---Yes, that's what the measurements showed
to us.

15 For the body to have fallen into that area it matches the trajectory that you
have?---I think "matches" may not be the right word, but it's certainly an
acceptable position on the floor in regards to the trajectory line, yes.

20 I take it, Detective Sergeant, that in a circumstance such as this where a
person is severely and seriously injured and removed to another medical
facility for treatment, that it's not the typical scene that one sees on
television where there is a drawing around the figure on the floor for that
precise type of forensic examination. Is that correct?---That's correct. In
25 my 15 years I've never seen a chalk outline of a victim or a deceased done
prior to my arrival.

You would anticipate as part of the medical treatment that it's not unlikely
that the body or the person as part of the medical treatment - that medical
30 process interferes with the forensic trail of gunshot residue on the body as
medical treatment is given to the person?---Yes, I think that's an
acceptable interference as to what needs to be done to any person who's a
victim of an incident such as this.

35 Do I take it from that that you are not critical of the processes undertaken
by the Military Police as part of their investigation as these matters had
already been done before the investigation started?---I haven't been given
access to their brief of evidence. So I haven't got a hundred per cent clear
40 picture as to what that brief of evidence does say. But I'm certainly not
critical of anybody in these circumstances and the loss of physical
evidence that can result as a normal sort of response to this sort of
incident.

45 Is it the case that when a person who's died as a result of an injury in New
South Wales that it is practice and required to bag the hands of the person

for subsequent forensic examination at the hospital or at the mortuary afterwards?---Yes, that's something that I would do to a deceased in situ with ballistic evidence coming with that matter. But certainly they're only the matters when the person is in situ. Any other matter where a person
5 needs to be hospitalised urgently you wouldn't expect that to be done by any other general duties police.

Would you normally request that the clothing be preserved?---Yes.

10 Is there anything else about this particular incident site and its treatment after the event that you consider important for preservation of future matters involving Defence?---Look, I think that any matter that I attend in my chosen field gives me more knowledge of the job I've chosen to do, which is to investigate crime and to examine crime scenes. You'll learn
15 from every incident you go to and you put things in place in later jobs that you thought went well or you don't do things that you don't think went well. I think everybody involved in this matter should analyse their involvement, every individual's involvement, and how they responded. In hindsight, the gift of hindsight, how things can be done on a physical
20 evidence level to preserve more evidence. But it is a learning process.

Was the washing of the ceiling a significant factor from your perspective?---I cannot comment on what happened before I got there. I can only comment on what I did when I was there. Certainly the washing
25 of the ceiling, like the removal of any other items from that room, is something that I wouldn't expect in my organisation. But what things were done prior to my involvement a number of weeks down the track and what happened prior to that I really can't comment on. But yes, I would rather
30 the whole room to be preserved so a full forensic examination can be done.

Thank you, Detective Sergeant. I have nothing further, sir.

35 PRESIDENT: Thank you.

LTCOL HOLLES: There are a couple of questions I'd like to ask, if I may.

40 PRESIDENT: By all means.

<EXAMINATION BY LTCOL HOLLES

[1111]

45

LTCOL HOLLES: Detective Sergeant Elliott, the reality is that the crime scene you were confronted with in Iraq had been effectively destroyed in terms of a proper and thorough forensic examination. Is that not the case?---Yes, that is the case.

5

That was done whilst the room was either under the control of the Military Police or after they'd handed back control to the organisation responsible for the room?---Without commenting on specific parts of the processes that led to my involvement, that's my understanding, yes.

10

Thank you. Nothing further, sir.

PRESIDENT: Anything arising? COL Griffin?

15

COL GRIFFIN: No, sir, thank you.

PRESIDENT: Thank you, Sergeant. The Board is grateful to you. You might stand down.

20

<WITNESS WITHDREW

[1112]

25

COL GRIFFIN: Sir, I should note for the record that Soldier 2 is present before you this morning.

30

PRESIDENT: Thank you. During the evidence of the Detective Sergeant Soldier 17's surname got dropped a couple of times. I'd ask that there be care taken and it's important not to record his surname but only the matrix 17.

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COL GRIFFIN: Thank you, Mr President. We have a series of videos and images to play to you now that were foreshadowed last week that we didn't get to. That material is classified and I propose to play it this morning in closed session with your leave, sir. To facilitate that, it would be of assistance for a short adjournment to set the technology in place.

40

PRESIDENT: All right. So that some people external to us can program themselves, how long is the playing of that likely to take?

COL GRIFFIN: It will take the rest of the day, sir.

PRESIDENT: So we're going to be in closed session - - -

45

COL GRIFFIN: For the remainder of the day.

PRESIDENT: Very well. The Board is now closed and we'll take a short adjournment to allow it to be so.

5 COL GRIFFIN: Thank you, sir.

ADJOURNED

[1113]

(Continued in closed session)

NTS

(Open session)

5 LTCOL BERKLEY: Thank you, sir. The application is for the return as soon as possible to Australia to this Board Soldiers 17 and 19. The application is grounded as follows: firstly, that there is a difference between the expert evidence of trajectory and the accounts of Soldier 17 of his recall of the last moment before the fatal shot was fired. Secondly, there's a difference between the accounts of Soldiers 17 and 19 as to the position of Jake's body when he fell. There is no necessary correlation between their evidence and the evidence of Dr Duflou as to the likely position of Jake's body when he fell. You'll recall the good doctor had him crumpling straight down.

15 These are issues which at least my client, and no doubt LTCOL Holles' clients, are very concerned; their concern is natural. The evidence when we first spoke to Soldier 17, for instance, wasn't available to us; it now is. Earlier in these proceedings an application was brought to bring back a number of soldiers. That application wasn't granted and I am still conscious of the reasons for that. In respect of two soldiers, Soldier 17 and 19, I say as follows: video-link interrogation does not allow the soldiers to even see their questioner.

25 As I understand the system is that they simply see the Board. They cannot see their questioner, they can only hear the questioner's voice. Questioning would be ineffective by any measure if a contrary proposition of fact is to be put to a witness. There is, as you are well aware, a great deal of judicial comment on the value of face-to-face questioning and of course we went through, and Counsel Assisting properly went through, the whys and wherefores of video-links, that sometimes there's a statutory necessity and other times it's a question for the prerogative of the judicial tribunal.

35 However, that method of examination suits the ADF but it does not suit my client in these circumstances. My client, Shelley, rejects any suggestion that there is an operation imperative to prevent the return of those two soldiers. She is concerned that if the evidence of those soldiers to this Board on these important issues is given in less than optimum conditions, then any chance of finding out in her mind how Jake died will be lost to the perceived interests of the ADF.

40 In this case it is put that in relation to these two soldiers who were in the room just before the shot, it is imperative that they be examined on her instructions and in person. In saying these things, Shelley does not and still does not support any delay in proceedings and she cannot see why these soldiers cannot be returned during the scheduled sittings. That's my

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application, sir.

PRESIDENT: Yes, thank you. LTCOL Holles.

5 LTCOL HOLLES: Thank you, sir. Sir, without engaging in hyperbole,
last week consisted largely of evidence by a number of police officers as
to the destruction of physical evidence available in the room on the night
in question by the ADF. Without going through it in minute detail, the
clothing of those other individuals in the room was allowed to be washed.
10 The room itself was stripped bare and cleaned. PTE Kovco's clothing was
not preserved but destroyed. There was no attempt made to conduct any
gunpowder residue testing on the other residents in the room.

15 The SIB proceeded in the blind assumption that there were no other
pistols in the room. There are a number of I would suggest significant, if
not fatal, flaws in the way in which the SIB conducted the earlier part of
this investigation. It was not until such time as the New South Wales
Police arrived that the proper procedures were undertaken. However, they
did so after vital evidence had been removed or destroyed. There is the
20 issue of the DNA on the pistol, not simply on the frame, but also on the
trigger.

In my respectful submission, the interests of justice are best served in this
25 Inquiry if the two individuals in the room, that is, Soldier 17 and 19, give
their evidence in person, so much as Soldier 17's evidence remains and
effectively the totality of Soldier 19's evidence. That is the only way in
my respectful submission in which this Board has some opportunity to see
what explanations they can give for what is now a conflict between the
evidence which has been provided to various investigating authorities by
30 them and the physical evidence established before the Board both this
week and this morning.

True it is that there is a long history of the use of CCTV in Court
proceedings. Mr President, you'd be as familiar as I with the way in
35 which that happens. But the process used in New South Wales is that the
person being questioned can see the questioner, can see the judicial officer
presiding. It is relatively easy for the person being questioned to have
their attention drawn to physical exhibits in tender or to other material
upon which questions might be needed to be asked.

40 I accept that the video-link, although untested remotely, is certainly better
quality now than it was some weeks ago. The fact remains that the best
evidence is obtained by face-to-face questioning. It cannot in my
respectful submission be submitted that the integrity of the mission is
45 compromised by withdrawing those two soldiers. The interests of justice

are best served because at the end of the day, given the destruction for whatever reason of so much physical evidence in the room, what the parties represented are left with, indeed what the Board is left with, what Counsel Assisting are left with, is a clear conflict, I would suggest,
5 between the technical evidence gathered by the New South Wales Police and the statements or other evidence provided by the two witnesses. The proper way, the best way, to resolve that is by requiring physical attendance in Court of those two witnesses.

10 Sir, I support my friend's application. I'd ask that you give a directive that those two witnesses be returned forthwith so that they might be properly questioned about the evidence as it has unfolded to date and the actual events in the room. They're my submissions.

15 PRESIDENT: Yes, thank you. COL Green, do you wish to make a contribution?

LTCOL GREEN: No, thank you, sir.

20 PRESIDENT: COL Young.

COL YOUNG: Yes, thank you, sir. Sir, there's no operational imperative for these two witnesses not to return. If they were ill they would be returned to Australia because that's important. Is it not equally important
25 to consider the interest, reputation and memory of PTE Kovco? Is that really the reason we're here? I submit that it is. The best evidence clearly is having witnesses in the room where they can be eyeballed, where they can feel the emotion as we felt today; that's very important for a witness in giving evidence to feel that. I suspect that these two soldiers, these two
30 friends of PTE Kovco, would like to be here in this room, would like to play out their part and assist the Board in finding out what happened to Jake.

So it may be that you're doing them a favour, apart from doing yourselves
35 a favour, in hearing the best evidence you possibly can. It's much more conducive to finding out what happened to hear witnesses face to face and I support the application, sir.

40 PRESIDENT: Thank you. Counsel Assisting.

COL GRIFFIN: Thank you, sir. Sir, this application is in some part a reiteration of a previous application made to you in respect of videoconference hearings with witnesses from Baghdad. At that time of
45 that previous application being made there are two significant factors relating to your current decision. The first of those is the number of

5 people involved in the first application. You will recall that Counsel were seeking essentially for six members of SECDET, plus the Platoon Sergeant, plus the Platoon Commander, plus the Officer Commanding, plus the J14 Headquarters 633, plus the Chief of Staff 633; amounting to some 13 personnel to be returned to Australia.

10 You'll recall that you heard evidence from the Lieutenant Colonel Desk Officer at Joint Operations Command of the operational impact that would have. Parallel with that was a state of affairs understood at the time in respect of the forensic evidence; namely that DNA other than that of PTE Jacob Kovco was present on the weapon on the slide and the handgrip. Since then you will recall the evidence of Inspector Hayes and his staff late last week which indicated that only recently further DNA had been detected not just on the slide and the handgrip but, significantly perhaps, on the trigger.

15 Since then Inspector Hayes has taken steps to exclude, if possible, other persons who are present in Australia involved in the handling of that weapon. I refer particularly to three members of the Special Investigation Branch and Soldier 2, who has since returned to Australia. Inspector Hayes has informed me this morning that the results of that testing excludes all of those persons from the other DNA being present on the weapon. Given that that factual scenario has changed in respect of the forensic evidence, and also in the number of people required at the request of counsel to return to Australia being reduced from thirteen to two private soldiers, you may consider that to be a substantial change in the balancing exercise that you must undertake. It has been put to you that there is conflict and inconsistency between the version of these two soldiers' accounts of events and the physical evidence.

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30 In my submission, that puts the matter too high and overstates the situation. As you heard from Detective Sergeant Elliott this morning, he saw no surprise or excitement because he makes the point that they referred to what they last saw. They are not positively putting a different version of events. On their evidence they relate what they last saw and then the shot rang out.

35
40 Weighing all those factors, the operational impact, you should also, in my submission, take into consideration the of course that Soldier 2 is now present before you. He has been returned, not at your request or at my request. The system has been able to return him so that he can have the benefit of legal advice in this proceedings before he gives his evidence.

45 It is apparent that Soldiers 17 and 19, I'm advised this afternoon, can be, should you decide to request their return, and I use the term "request"

advisedly, sir, given that they are offshore and subject to operational command, your jurisdiction to order their return is problematic. But were you minded to request their return, if that was put in train today, they could be placed on the sustainment flight that leaves - and be back here to give their evidence at the end of the week or early next week, with some time for preparation and recuperation.

It also provides them the opportunity to have their DNA tested much more quickly than would otherwise be the case, awaiting the return of the New South Wales Police to the theatre and, depending on the results of those tests, to have ready access to further resources that may be required for your purposes or for their purposes in short order. Weighing all those things, Mr President, I do not oppose this application.

PRESIDENT: The situation has changed somewhat - and I'll put it as neutrally as that - since we last spoke on this topic. The Board asks that these soldiers be returned to Australia so that they can ultimately give evidence before this Tribunal and that those arrangements be made as quickly as is practicable. If it can be done that they leave this week, so be it.

I will also ask that they be asked to volunteer for DNA testing and subject to the good graces of the New South Wales Police and its facilities that that DNA testing be facilitated as quickly as is possible and the laboratory work that goes behind that be done as quickly as is possible; in other words, as quickly as we can possibly make it.

We have had an interesting argument about the legalities of it, as far as orders from her to Baghdad. I don't think we need to go there. But if it becomes necessary to issue a summons, that summons will issue.

Any other comment required on the topic?

COL GRIFFIN: Not from me, sir.

COUNSEL REPRESENTING: No, sir.

COL GRIFFIN: Thank you, sir. If we may return to closed session to complete the playing of the imagery - - -

PRESIDENT: Yes.

COL GRIFFIN: - - - some of which, I should indicate is of quite a distressing nature.

PRESIDENT: Very well. The Board is again closed.

(Continued in closed session)

NTS

(Continues in closed session)

PRESIDENT: It goes without saying, LTCOL Holles and LTCOL Berkley, if your clients feel - if there's the need to go, please just go. Don't - no ceremony required.

LTCOL BERKLEY: Thank you, sir.

MAJ JOLLY: LTCOL Berkley, did you want to go back to the beginning of this footage?

LTCOL BERKLEY: I'm buoyed by what Counsel Assisting has told me this morning that they'll go through that with Soldier 2 tomorrow to explain - to orient basically what we're seeing, to the map, and also the clearance checkpoints where they were supposed to be. So don't require it now.

MAJ JOLLY: Thank you, sir. We'll continue where we left off.

COL GRIFFIN: In short compass, what LTCOL Berkley is referring to there, Mr President and Members, is that during Soldier 2's evidence we proposed for him to - with the benefit of the diagram set out for you with stickers on the diagram, the various stations and the degrees of weapon readiness at each one. He speaks from the authority as the Platoon Sergeant rather than us substituting our imperfect knowledge of that, so he'll do that tomorrow.

PRESIDENT: Thank you.

DVD SHOWN

COL GRIFFIN: This seems to be a repeat of what we saw before lunch, MAJ Jolly.

MAJ JOLLY: It does, sir, although it continues on after the - - -

PRESIDENT: If they go to the safety of the CCTV room whilst in relation to this issue?

COL GRIFFIN: It wasn't my understanding that they did and nor did they dowhere we just saw him depart from. It seems to me to be the same footage

MAJ JOLLY: It does, although it continues on after coming, so I don't know whether this is a - - -

COL GRIFFIN: In any event, stay with it if it's on the same document that we need to see.

DVD SHOWN

COL GRIFFIN: Perhaps you might fast forward if you're capable of doing so, up to the OP.

MAJ JOLLY: Without the remote, sir, it's not letting me do it.

DVD SHOWN

MAJ JOLLY: Sir, the next footage is Exhibit 46. It comprises of two different sets of footage. The second set the Board's already seen the first week of hearing. That is the SIB footage of room 8, the breaking of the seals and the entering into the room by the SIB. The first bit of footage is of PTE Kovco's body. The images are quite distressing. I say that not only for LTCOL Berkley and LTCOL Holles' benefit but for any other people in the room that is not used to seeing images such as these in a Court.

COL GRIFFIN: Just before you play that, MAJ Jolly, Mr President, Members, Counsel, can I indicate that from my observation of that footage that we just saw one of theis not apparent on that.

DVD SHOWN

MAJ JOLLY: Sir, this is the footage that you've already seen in the first week. I don't know whether either the Board or Counsel Representing wish to see this again.

LTCOL GREEN: For my part, no, sir.

LTCOL BERKLEY: This I take it, MAJ Jolly, is where SGT Hession did his walk-through and picked up the pistol.

MAJ JOLLY: That's correct, sir.

LTCOL BERKLEY: We would like to see just up until there.

PRESIDENT: The picking up of the pistol?

LTCOL BERKLEY: Yes.

DVD SHOWN

PRESIDENT: MAJ Jolly, could I ask you to stop the tape just at the moment before the Sergeant picks the pistol up.

MAJ JOLLY: Yes, sir.

PRESIDENT: I'm trying to figure out where he is.

DVD SHOWN

MAJ JOLLY: Sir, I don't have all that fine control over this.

PRESIDENT: I understand.

MAJ JOLLY: I think that's the shadow of the hand about to come in to pick it up, from memory. Do you want me to continue, sir?

PRESIDENT: Are you comfortable to continue, LTCOL Holles and LTCOL Berkley?

LTCOL HOLLES: I am, sir.

LTCOL BERKLEY: Yes, sir.

DVD SHOWN

MAJ JOLLY: Sir, did you want me to go on?

PRESIDENT: LTCOL Holles, are you comfortable?

LTCOL HOLLES: I am, sir, yes.

LTCOL GREEN: We might just continue a bit more, if we would, sir.

PRESIDENT: Certainly. A little more, please.

MAJ JOLLY: Yes, sir.

DVD SHOWN

MAJ JOLLY: Sir, the next footage is of the autopsy. These images are quite explicit.

COL GRIFFIN: I don't know that you necessarily have to observe this evidence, sir. You have the evidence from Dr Duflou as to the autopsy report that he undertook. Whether or not you wish to subject yourself - - -

PRESIDENT: And we have the pictures.

COL GRIFFIN: And you have the pictures. Whether you wish to subject yourself - - -

PRESIDENT: Does anybody particularly wish to see it?

LTCOL GREEN: We've seen the pictures ourselves.

LTCOL BERKLEY: Yes, sir, I've seen the photographs.

PRESIDENT: The Board is content.

COL GRIFFIN: LTCOL Holles hasn't expressed a view.

LTCOL HOLLES: Sir, I don't want to distress anybody, but there's a part of the autopsy I wouldn't mind seeing for my own identification. Perhaps to that extent it could be played. I'm specifically interested in the cranial cavity.

PRESIDENT: Can we isolate the cranial cavity rather than having the whole thing?

LTCOL HOLLES: I would imagine that if it's been done in the normal sequence the cranial cavity would have been done first.

PRESIDENT: We might, for want of a better phrase, have a look at the cranial cavity first.

COL GRIFFIN: I'm very concerned to subject the rest of the people in the room at the moment for something that - - -

LTCOL HOLLES: Can I ask this then: can I be permitted to look at the image at a later stage. I don't require it to be shown in open court, but there is a part of it I would like to satisfy myself about. If it is an issue which needs to attract the attention of the Board I'm happy to raise it later.

PRESIDENT: So be it.

LTCOL HOLLES: Thank you, sir.

MAJ JOLLY: Sir, the next exhibit is Exhibit 30. These are the still images taken by the SIB. They cover a range of subjects including the details of the Embassy ground, of the There's also pictures of PTE Kovco's body in country and various other shots as well.

LTCOL HOLLES: Mr President, I might just ask this question through you to Counsel Assisting. The images about two DVDs ago of PTE Kovco's body were taken in country. Is that correct?

COL GRIFFIN: I understand they were taken in the US morgue in Kuwait.

LTCOL HOLLES: By an Australian personnel.

COL GRIFFIN: By the Australian SIB.

PRESIDENT: That's the pictures we've just seen.

COL GRIFFIN: Yes, showing the full-length view of the body with the hospital paraphernalia still attached is taken in the US mortuary facility at the Kuwait International Airport. As the SIB were coming into theatre they arranged for that imagery to be taken there. So it was after he had been removed from Baghdad, before he went into the civilian mortuary facility in Kuwait.

LTCOL HOLLES: Thank you, sir, I appreciate that.

DVD SHOWN

MAJ JOLLY: Sir, you might have noticed I can turn these in to a significant detail. So if any Counsel want me to do that, just let me know.

DVD SHOWN

MAJ JOLLY: Sir, that concludes Exhibit 30.

PRESIDENT: Thank you.

MAJ JOLLY: We also have Exhibit 45 which are the photographs taken by Soldier 2 but I note that LTCOL Wilkinson isn't here. I don't know whether you want me to play those now? They are the images that Soldier 2 took of room 8.

COL GRIFFIN: We'll put those into evidence through the Sergeant tomorrow, sir.

PRESIDENT: Indeed.

MAJ JOLLY: Sir, save for the images and the footage that deal with the repatriation issues, there is only one more exhibit to deal with and that is the image taken of PTE Kovco's laptop. That's Exhibit C64. On that DVD there is a significant amount of still imagery and moving imagery that would take some time to go through. COL Griffin and I have been through it. We could probably do a sampling of some of the moving imagery. We're proposing to get photocopies or hard copies done of the emails and the still images. Obviously we can't do that with the moving footages. I don't know whether Counsel Representing want to be heard on that.

PRESIDENT: Have they had the opportunity of seeing it?

MAJ JOLLY: They've seen only a very small portion of it. The difficulty of it is that there is such a vast amount of material on there. We're in the process of trying to get hard copies of the emails and the still imagery, but the only way that we can see the moving imagery is obviously in this - - -

PRESIDENT: Can I ask you to categorise the moving imagery. What is it of, do you know?

MAJ JOLLY: A significant series of footage which appears to be taken from PTE Kovco's helmet cam when he is out on patrol, particularly in

the ASLAV. There is also some range shoots but certainly a significant amount of moving footage of when PTE Kovco's been on patrol when in Baghdad. There also appears to be - if I could describe them as professional moving images that appears to be American in nature and then there is a few Australian promotional shots as well. I'd refer to them as arousal videos with all sorts of tanks and planes and doing all the things they need to do.

COL YOUNG: Sir, can I make a suggestion? Some of what we've just heard it seems to me doesn't go to the issues before the Board. I would like if hard copies are to be done we should see those, Counsel Representing that is and if there's anything we think is relevant we'll raise it, and if Counsel Assisting thinks anything is relevant they can raise at a later time.

PRESIDENT: Do you have any comment, Counsel Assisting?

COL GRIFFIN: Sir, as near as we can work out, most of this footage is taken in predeployment, in the phase whilst the deceased was at the other location in Baghdad where the security detachment proper operates rather than at the Embassy, up to 31 March. Then there are some activities where he participated in patrols in early April, and it's all substantially before the commencement of duty at the Embassy, so that the direct relevance is limited.

However, some of the footage goes to the environment in which he was operating and the circumstances in which he found himself. Much of the material relating to within the vehicles on patrol is literally within the vehicle. It doesn't show externally because of the nature of the vehicles. So, for those reasons, we have not put it before you - we don't propose to play it, just to make known that it's there and, as MAJ Young says, if counsel after examining it are of the view that it's relevant, they can raise it, and I don't propose to raise it to you, with one proviso, and that is we haven't gotten to the bottom of it yet. There is still a lot there to be considered.

PRESIDENT: I take it you haven't seen it all?

COL GRIFFIN: No, sir.

MAJ JOLLY: It's recorded onto a DVD disk. There is some 5 gigabytes of moving and still imagery on it, sir, and it is indeed vast.

PRESIDENT: Does anybody want a movie marathon?

LTCOL HOLLES: Sir, I've got two problems. First of all, it is largely unseen; and secondly, it comes to a question of relevance. I appreciate that somewhere or other somebody will have to make the decision but I would object to it being tendered either in whole or in part at this stage.

PRESIDENT: I confess a lack of enthusiasm to see it at the moment because I think from little I know about it at the moment, I can't see that it's going to help us at all - answer the questions posed by the Terms of Reference. One gets the feeling that if he's taken video of his patrol and his military activities it would suggest that perhaps he's a very keen soldier. I don't think anybody would have argued that in any event. What I'm going to do is not to have a look at it at this point of time, invite Counsel Assisting to continue to vet it, for want of a better word, and if Counsel Representing want to look at it, they obviously will be allowed to do so. If they want to look at it all and raise any particular films or photographs or features of it, so be it in the fullness of time.

COL GRIFFIN: One of the practical problems that it presents for us, Mr President, as no doubt you'll appreciate, given what we've just described is on there, it is of a highly sensitive nature in terms of operational security.

PRESIDENT: I got the feeling you didn't want it on the Channel 9 news tonight.

COL GRIFFIN: Indeed, sir. That limits the capacity for both myself and Counsel Assisting and Counsel Representing to view it. So it can usefully be used, for want of a better description, as material that we can view when we are unavoidably delayed with the unavailability of witnesses or other evidence. We will get to the bottom of it eventually, but we've got time - - -

PRESIDENT: I would like to finish before the exercise is over Counsel Assisting and Counsel Representing have seen it all.

COL GRIFFIN: I propose that, sir, yes.

MAJ JOLLY: I was just going to say - I don't mean to throw a spanner in the works - but we only have two copies. It's already before the Board as an exhibit. We only have two copies. For some unknown reason the ADF is unable to copy the material provided by the New South Wales Police. So that also limits our ability to distribute it to Counsel Representing.

PRESIDENT: The copy that is formally tendered and now part of the Board record can be made available.

COL GRIFFIN: Yes, sir.

PRESIDENT: And it can be made so on application to Madam Secretary. So that will at least free up one copy.

LTCOL BERKLEY: Are you saying, MAJ Jolly, they just can't burn other copies?

MAJ JOLLY: What I understand, sir, is that we've had HQJOC trying to burn multiple copies of it so that we can provide to Counsel Representing. They are unable to do it. Apparently the New South Wales Police have their own proprietary software which they use to burn DVDs and CDs. Inspector Hayes has very kindly given us an additional copy. I don't know how easy it is for him to continue doing it, but I'll certainly make inquiries.

PRESIDENT: I was going to say how about we prevail about his good officers yet again.

COL GRIFFIN: Given its operational sensitivity, sir, I'm happy that we keep just two copies of it; one in the safe confines of the Secretary and the other one with Counsel Assisting. That can be provided to Counsel Representing to view as they like.

PRESIDENT: We certainly don't want multiple copies.

COL GRIFFIN: Indeed. The fewer copies the better.

PRESIDENT: Is everybody comfortable with the approach we're taking?

COUNSEL REPRESENTING: Yes.

PRESIDENT: Any opposition to it?

COUNSEL REPRESENTING: No, sir.

PRESIDENT: Make it so.

COL GRIFFIN: Thank you, sir. The other document that I wish to deal with this afternoon, Mr President, if we can, you'll recall that a summons under your authority was issued for the evidence gathered by BRIG Cosson in her investigation into the circumstances surrounding the failure to correctly repatriate the body of PTE Jacob Kovco. That summons has been returned. The report in its totality has been presented

to the Board and it was presented on the basis of an embargo at the time in that the report that has been provided, I understand, to the families had privacy deletions made to that document.

The report and the material that you summoned, sir, which is the evidence upon which BRIG Cosson had come to her conclusions is inextricable; that is, the report and the material must be read together to be made sense of. Consequently, I propose that the entire document go in as an exhibit. At the moment I'm seeking to have a redacted version for security purposes as well as the privacy deletions that have been made. So I propose to tender at this point in time the original document as received by the Board under the summons and to provide a redacted copy as the public document in due course.

So at this moment I simply tender the original copy provided to the Board pursuant to the summons.

PRESIDENT: Will ultimately a full copy, if that's the right word, be made available to Counsel Representing?

COL GRIFFIN: Yes. LTCOL Wilkinson whose client is particularly interested in this matter has had a full copy for some time now, and that's why he's been absent from the proceedings taking instructions in respect of that document. The full copy will be made available to Counsel Representing now as soon as you receive it into evidence for them to have the opportunity to consider it this afternoon and tomorrow morning before Soldier 2 gives his evidence, because much of it relates to his activities. They may not be sufficiently across the material before he gives his evidence, but that can be remedied by an adjournment after he gives his evidence-in-chief to allow them to pursue the matter further if that is required.

You'll appreciate that his evidence will go considerably beyond this in terms of what we foreshadowed about describing the Embassy area, the security checkpoints, degrees of weapon readiness, et cetera. So a large component of his evidence tomorrow will be dealing with procedural and other issues and not related to the Cosson report matters which will be dealt with still with his evidence over the course of tomorrow and possibly Wednesday. But hopefully that will provide enough time to Counsel Representing to have considered the Cosson report.

PRESIDENT: Is everybody comfortable with that approach?

COL YOUNG: In relation to the report, I don't anticipate I would object to it being tendered, but I'm unable to say whether I do or I don't

obviously. It's like any document being presented as an exhibit. Whether it could be marked for identification perhaps at this stage.

PRESIDENT: We can go down that road, but it has a disadvantage of the Board being behind the game, for want of a better phrase. If there be some legalistic problems with it later I'm sure we can deal with them.

LTCOL HOLLES: I suppose it remains a possibility that the Board withdraw the tender if there is material then which is found to be objectionable.

PRESIDENT: I think I can deal with any problems of that nature. I understand what COL Young is saying and certainly what I will call the traditional adversarial proceedings - I don't think we'd even make the suggestion that he'd consent to the tender before he sees the document. But this hopefully is not an adversarial proceeding. It's an inquiry to find out what happened. That colours the Board's thinking considerably.

COL YOUNG: Sir, as I say, I anticipate it will be of assistance to the Board and with the embargo you've just suggested I'm happy on that basis for it to go in.

PRESIDENT: I'm certainly happy to a later time if there's something in there that you say the Board should not consider, the Board should not give this weight to or that weight to, et cetera, to go down that particular track. So is everybody comfortable with that approach?

COUNSEL REPRESENTING: Yes, sir.

PRESIDENT: LTCOL Wilkinson, perhaps your client in many ways is more - - -

LTCOL WILKINSON: No, sir. Having had the advantage of the report, I've got no objection to it being tendered.

PRESIDENT: LTCOL Green?

LTCOL GREEN: No problem, sir.

PRESIDENT: LTCOL Holles, any further comment?

LTCOL HOLLES: No, sir.

PRESIDENT: Are you happy for the Board to consider it?

LTCOL HOLLES: I acknowledge the practical realities of the situation, sir, yes.

PRESIDENT: Thank you.

LTCOL HOLLES: "Happy" is probably putting it too high.

PRESIDENT: LTCOL Berkley.

LTCOL BERKLEY: Sir, I don't object.

PRESIDENT: Thank you.

#EXHIBIT C100 - THE ORIGINAL BRIG COSSON REPORT

COL GRIFFIN: Could it have a classified marking at this point, sir, and we'll come up with a redacted one in due course.

PRESIDENT: Very well.

COL GRIFFIN: That's the entirety of the evidence that we have this afternoon, sir.

PRESIDENT: Very well. I think everybody has got to do some reading.

COL GRIFFIN: Indeed.

PRESIDENT: 10 o'clock tomorrow?

COL GRIFFIN: Not before 10 o'clock, thank you, sir.

**MATTER ADJOURNED AT 1543 UNTIL
TUESDAY 25 JULY 2006 AT 1000**