

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

1019 TUESDAY 25 JULY 2006
DAY 10

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.....  Date25.07.06.....(President)

Signed.....  Date25.07.06.....(Recorder)

Signed.....  .. Date25.07.06.....(Transcriber)

Signed.....  Date25.07.06.....(Transcriber)

Signed.....  Date25.07.06.....(Transcriber)

Kovco 25/07/06

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

COL GRIFFIN: Good morning, Mr President, Members. We resume in
open session, Mr President, and I call the first witness for the day,
10 Detective Inspector Hayes.

PRESIDENT: Thank you.

15 <**DETECTIVE INSPECTOR WAYNE GEORGE HAYES, recalled
and resworn** [1020]

<**EXAMINATION BY COL GRIFFIN**

20 COL GRIFFIN: Inspector, I show you a document. I understand that
since you last gave evidence to this Board of Inquiry that you continued
investigations into the matter and your involvement in it?---Yes.

25 The document that I've just shown you, do you agree that it's a series of
photographs and a disc that contains the digital imagery of those
photographs?---And also there is a video presentation.

30 Would you tell the Board what that is, please?---Yes, those photos and
video presentation were taken at the Victorian Institute of Forensic
Medicine on the receipt of the body of Juso Sinanovic and applied to me
by mail as part of my inquiry.

35 That's from the Victorian Police and Coronial Authority. Is that correct?
---Correct.

40 Sir, we have one copy of the photographs that have been provided this
morning by Detective Inspector Hayes which I'll ask your Secretary to
distribute now to be passed among Counsel Representing for
consideration before I offer them in tender.

PRESIDENT: Thank you.

45 MAJ JOLLY: I have a spare copy of those.

COL GRIFFIN: Thank you very much. Inspector, have you personally viewed the disc content?---Yes.

5 Do you confirm that the photographs reflect the contents of the disc?
---Yes.

PRESIDENT: Any opposition to the tender of those photographs and the disc that flows from it?

10 COUNSEL REPRESENTING: No.

PRESIDENT: Particularly from LTCOL Wilkinson.

15 LTCOL WILKINSON: Well, I suppose the only comment I'd make is that these were taken - may I direct some questions towards - in a Victorian morgue.

WITNESS: Correct.

20 LTCOL WILKINSON: In that situation it's probably different to that of a Kuwaiti morgue. You wouldn't know?---I probably wouldn't know that one. I haven't been to a Kuwait morgue, I'm sorry.

25 That's the only comment I would make, sir.

PRESIDENT: Thank you. I take the point you're making.

30 **#EXHIBIT 101 - PHOTOGRAPHS AND DISC**

COL GRIFFIN: Inspector, you'll recall that in evidence in these proceedings, and hopefully on the desk in front of you, is a matrix of names and numbers for the members of the Security Detachment in Baghdad. Next to their name is a number and I'd ask you to make reference to that if you have to identify any person?---Yes.

40 I understand that since you last gave evidence and you've told us you've continued investigations. Some of that is related to further DNA sampling. Is that correct?---Yes.

45 Would you tell the Board what you've done in that regard, please?---DNA testing has been conducted on samples taken from Military Police officers Fenton, Francis and White, all negative in comparison with the firearm. Also taken from matrix Soldier 2; negative with the firearm. I do not have

documentation to support it. It's only verbal advice at this stage.

5 Is it the case that you also have had further dealings with Soldier 2 in respect of his involvement with the weapon besides the DNA but what, if any, actions he had with the weapon in question?---Yes.

Did you prepare a video of those discussions?---Yes.

10 Mr President, I made arrangements for that to be played now and I propose that it be shown. Are you able to say, Inspector Hayes, given that we haven't seen it, if there are any operational security matters that we've discussed with you in the past that are contained in the video or perhaps LTCOL Wilkinson could indicate from his client's involvement if there are any security matters?---Soldier 2 is referred by his real name by me, as
15 are some of the other soldiers.

In that case, Mr President, could I ask that we have a similar direction as there has been in the past that the identities of individuals named in the video not be published.
20

PRESIDENT: Indeed, and they may be referred to by the number, if that's the right way of expressing it, in the matrix.

25 COL GRIFFIN: Thank you. Could that be played, please.

DVD SHOWN

30 COL GRIFFIN: I tender the DVD, sir.

PRESIDENT: Is there any opposition to the tender of that document or the tender of the DVD?

35 COUNSEL REPRESENTING: No, sir.

PRESIDENT: It will be marked then as Exhibit 102.

40 **#EXHIBIT 102 - DVD OF WALK THROUGH ROOM 8, RE-ENACTMENT**

45 COL GRIFFIN: Inspector, just to confirm, the further DNA sampling that

you have had undertaken has excluded the three Military Police officers that you name and Soldier 2 as being the DNA that remains unexplained on the slide, the handgrip and the trigger of the 9 mm pistol?---Yes.

5 You indicated, when you last gave evidence,, the possibility of further testing being done in the theatre of operations of the remaining members who were present on the day of 21 April when PTE Kovco died as a result of that gunshot injury. What steps have been taken there, can you tell the Board, please?---Yes. I've submitted an official request, it's through the
10 chain of command. It has left - it has been approved by State Crime Command, the levels above that, the Commissioner of Police, Minister of Police, and it has been supported for us to go. Indications are at this stage that travel next week should be okay.

15 Have you also produced a disc - and I'll show you the document now - which is an extract of the material contained on the laptop computer recovered from PTE Kovco's possessions?---Yes. It's not a complete disc. There are still some tests being done on the laptop but it contains the bulk of the information, as I understand it. We didn't copy all the items
20 on his computer, only what we believe was relevant to this Inquiry.

Mr President, can I indicate, already in evidence as Exhibit C64 is the Special Investigation Branch of the Military Police extract of that computer hard drive information, which is incomplete. As I understand it,
25 what you've produced, Detective Inspector Hayes, expands upon that but is still not the entirety of what was on the computer?---That's correct. There were some technical difficulties with extracting the rest of the information and there were also some problems, as I understand it, in producing it in a format like this, so it could be played to the Inquiry, the
30 rest of the information, but we're trying to work our way through that.

What is the future in regard to that material then? Is it possible or are further attempts being made to recover the entirety of it?---Yes. And the State Electronic Evidence Branch operator, technician, is available to give
35 evidence of what she found, if you wish, to this Inquiry.

But that continues, is that right?---It does.

40 And you'll be able, at a future time, to give us a final position hopefully on the content of that material?---Yes.

In the meantime, sir, I tender the latest imagery that has been produced by the inspector this morning.

45 PRESIDENT: Is there any opposition to the tender of that document, or at

least that disc?

COUNSEL REPRESENTING: No, sir.

5 PRESIDENT: It will be marked as Exhibit 103.

10 **#EXHIBIT 103 - DISC CONTAINING MATERIAL EXTRACTED
FROM LAPTOP RECOVERED FROM PTE KOVCO'S
POSSESSIONS**

15 COL GRIFFIN: Inspector, in respect of the video that we've just seen with - where Soldier 2 has demonstrated to you the placement of the replica pistol on the floor, could you just clarify, at least for me purposes, where he has moved it close to the wall, whether that was an indication of the actual reality to where he'd moved it, or if that was to be close to the bed?---As I understood it, the wall was the edge of the double bunk.

20 The wall was the edge of the double bunks. Thank you very much. Thank you, Detective Inspector Hayes, I have - - -?---Sorry, one thing, I didn't quite finish my answer about the travelling to the theatre of operations.

25 Yes, please do?---It will depend on the results of Soldiers 17 and 19's DNA testing, whether it is positive or negative.

30 PRESIDENT: We've got a bit of a coordination problem, haven't we?---Potentially.

35 COL GRIFFIN: For the assistance of the Board, sir, the formal request was made pursuant to your request yesterday afternoon and I understand that that has been communicated at the highest levels of command to the theatre and that steps are being taken to arrange the return of Soldiers 17 and 19. I can't be more definitive at the moment as to the actual return dates because of the exigencies of operational service and the movement of aircraft in that theatre of operations.

40 PRESIDENT: What I take it is some arrangement in place to keep Inspector Hayes, to use a military phrase, in the loop and certain things will happen when they arrive back in Australia.

45 COL GRIFFIN: Yes, we propose to do that, sir. There will be a need for the maintenance of that communication, but perhaps Inspector Hayes, you can assist us. If you were to depart before those people return, people

within your staff could assist us with the examination of those individuals for the DNA testing?---Yes, and also I can indicate after communication with our labs that the timetable I gave of one to two weeks could be tightened to up to three, maybe four, days.

5

Thank you very much, Inspector. Thank you, sir, I have no further questions.

PRESIDENT: LTCOL Wilkinson.

10

LTCOL WILKINSON: No questions.

PRESIDENT: LTCOL Holles.

15

LTCOL HOLLES: No, thank you, sir.

PRESIDENT: LTCOL Berkley.

20

LTCOL BERKLEY: Yes.

<EXAMINATION BY LTCOL BERKLEY

[1043]

25

LTCOL BERKLEY: Inspector, did you have a conversation with a MAJ Pemberton of the Special Investigation Branch of the Military Police?---Yes.

30

As you're aware, this Inquiry has heard evidence of the failure to secure, for want of a better word, the crime scene?---Yes.

35

Did MAJ Pemberton indicate to you that the Military Police had very early in the piece asked for the crime scene to be secured or the body of Jake to be kept for forensic analysis?---He indicated he asked for PTE Kovco's body to remain.

40

To remain where, sir?---As I understand it, it would have been at Kuwait at that time or at the hospital. I'm not - I can't actually - too sure which one it was.

45

Did MAJ Pemberton indicate to you when that request was made?---At the first available opportunity.

In relation to the date of death, being 21 April, did he indicate to you when that request was made by Military Police?---No, I'm sorry, I can't

assist you.

5 Did you understand from what he told you that the request was made to any person in authority?---This person's name is not on the matrix, so I assume I can say.

Do you know the person's name?---I've been told a name, yes.

10 Do you know where that person works?---As I understand it, that person was in Baghdad.

In Baghdad at the time?---Yes.

15 That can be passed onto Counsel Assisting later no doubt. But for these purposes you're saying that MAJ Pemberton had requested an office in Baghdad that Jake's body not be repatriated until proper forensic testing could be done?---Yes, and that had been refused.

20 Thank you very much.

PRESIDENT: Anything further, LTCOL Berkley?

LTCOL BERKLEY: No, thank you, sir.

25 PRESIDENT: COL Young?

<EXAMINATION BY COL YOUNG

[1045]

30 COL YOUNG: Inspector Hayes, this might be a matter for your scientific staff. But are you telling us that notwithstanding Soldier 2 handled the weapon after the shooting there's no trace of his DNA on that weapon? ---Yes.

35 Is that something that you'd find unusual?---No. DNA fingerprints are not magic. They don't always get transported or transferred to an item or whatever.

40 Are we talking about fingerprints or DNA as two separate elements? ---Well, I actually refer to both. In this case it was DNA tested and it was not Soldier 2's DNA.

45 Thank you.

PRESIDENT: COL Griffin.

<EXAMINATION BY COL GRIFFIN

[1046]

5

COL GRIFFIN: If you've got that matrix of names before you, Detective Inspector Hayes, are there any vacant entries on the numbers on the one in front of you?---No, PTE Kovco's number should be 9 but his name is inserted instead.

10

But at the end of it are there extra numbers without names?---No.

What's the last number?---38.

15

If you have the name of the individual that was given to you by MAJ Pemberton that you spoke to, could I ask you to just write that on a piece of paper that the Secretary will provide to you. Rather than putting the name into evidence, sir, I propose that it - I will put this into evidence, the name of the individual, and we'll just give the next number on the matrix in the list and perhaps it could be passed to LTCOL Berkley and to Counsel Representing just before the witness completes his evidence to see if anything arises from it, and also shown to me, please?---I'm not sure of this person's rank. It's one of the two ranks I've indicated.

20

25

Thank you. Sir, I won't tender that piece of paper. I'll simply ask that the Secretary in due course amend the matrix of names to reflect that identity. I'll confirm the rank through other sources and it will appear on the matrix of names for the record.

30

PRESIDENT: Is everybody comfortable with that approach?

COUNSEL REPRESENTING: Yes, sir.

35

PRESIDENT: Make it so.

COL GRIFFIN: Do you recall when you had that conversation with MAJ Pemberton, the police officer?---With the conference with Glebe coroner, as I referred to, when we first got put on this Inquiry, which, from memory, was on 28 April.

40

Before you departed?---Yes, most certainly.

Thank you. I have no further questions, sir.

45

PRESIDENT: Does anything arise out of that, gentlemen?

COUNSEL REPRESENTING: No, sir.

5 PRESIDENT: Thank you, Inspector. We're again most grateful to you and thank you. You may stand down.

10 <WITNESS WITHDREW [1049]

COL GRIFFIN: Sir, the next witness will be Soldier 2 and we would be assisted with a short adjournment to enable us to establish certain technical matters to assist the facilitation of his evidence.

15 PRESIDENT: We'll take a very short adjournment.

COL GRIFFIN: Thank you, sir.

20 ADJOURNED [1050]

25 RESUMED [1107]

PRESIDENT: Yes, thank you ladies and gentlemen.

30 COL GRIFFIN: Mr President, Members, we resume in open session and I call Soldier 2.

<SOLDIER 2, Affirmed [1107]

35 <EXAMINATION BY COL GRIFFIN

40 COL GRIFFIN: Soldier 2, my name is LTCOL Griffin, I'm the Counsel Assisting the Board of Inquiry. In front of you is a matrix which lists personnel of the Unit at Security Detachment and other units and next to each name is a corresponding number to identify the individual and I propose to speak about people only by reference to the number next to their name and I ask that you do the same for operational security reasons, do you understand?---Yes, sir.

45

Now, would you look at the list and confirm that in fact your name appears next to the number 2 on the list?---Yes it does, sir.

5 Have you read Annex F to the Inquiry's manual which sets out the rights and obligations of a witness?---Yes, I have.

Do you understand your rights and obligations as a witness in this Inquiry?---Yes, sir.

10

What's your current posting?---I'm currently posted to Operation Catalyst SECDDET.

15 How long have you been with the Battalion of the Royal Australian Regiment?---Since November - sorry, January last year.

How long have you served in the Army?---In August, 12 years.

20 Have you had any previous service with the ... Battalion before you joined on - was it August last year?---January last year.

January last year?---No.

25 Have you had previous service in Infantry Battalion?---Yes I have, sir.

Which Battalion?---The Battalion and I began service in there in 1996.

30 Now, I'm going to show you five documents?---Sorry, '95 I began in , sir.

'95 you joined th Battalion?---Correct.

35 Now, those five documents are these, starting at the bottom, the oldest one describes itself as a statement by a person, that is yourself and it was extracted from an exhibit that went into evidence in this Inquiry yesterday which is the BRIG Cosson Investigation, do you recognise that document?---Yes, sir.

40 And if you turn over to page 2, it has a date and a signature of 2 May 2006?---Correct.

Did you provide that statement?---Yes I did, sir.

45 To the Brigadier?---Correct.

Now, at page 3 of that document there's then a document that is described as Evidence Of and it sets out a series of questions and answers, it runs for some five pages and on the fifth page again 2 May 2006, it bears a signature and it says:

5

Read over by witness and adhered to.

?---Yes, sir.

10 Did you sign that document?---Yes I did.

Are you satisfied that it's an accurate record of the evidence?---Yes, sir.

15 The next page in that particular document is described as Notes From Interview with yourself, have you seen that document before?---I have in the last couple of days and I cannot recall seeing it prior to that.

20 Then the final document is headed Personal Affects of 8229393 PTE J B Kovco and again it bears your signature and 23 April, do you recognise that document?---Yes, sir.

Sir, I'll tender that separately as a document as just described and I believe that would be 104, Mr President.

25 PRESIDENT: I presume it's a list of personal affects, is it?

COL GRIFFIN: No, I'm referring to the entire document that I just described.

30 PRESIDENT: I see, yes.

COL GRIFFIN: Yes, which is bundled together as one document.

PRESIDENT: Sorry, I miss-interpreted it.

35

COL GRIFFIN: I beg your pardon.

PRESIDENT: Is there any opposition to the tender of the entirety.

40 COUNSEL REPRESENTING: No, sir.

PRESIDENT: Marked as Exhibit 104.

45

**#EXHIBIT C104 - DOCUMENT HEADED PERSONAL AFFECTS
OF 8229393 PTE J B KOVCO**

5 COL GRIFFIN: And could it also be given a classified number.

PRESIDENT: Marked as classified.

10 COL GRIFFIN: There is a redacted version being prepared as part of the
redacted Cosson Investigation that was tendered yesterday.

PRESIDENT: Thank you.

15 COL GRIFFIN: The second document in that bundle of five that I've put
before you Soldier 2 is a Service Police statement and you'll see that there
is a second version which is the same document that has been redacted, that
is operational security matters have been blocked out, do you see that?
---Yes, sir.

20 I tender those two documents as the one; one being with a classified
number and the other one being the R redacted version of that,
Mr President.

25 COL YOUNG: Mr President, through you, I wonder if I might ask
Counsel Assisting just to confirm that documents again that are being
tendered?

30 COL GRIFFIN: These are the Service Police statement which appears in
Counsel Representing's bundle of documents as document R006.

COL YOUNG: Thank you, sir.

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

35 COUNSEL REPRESENTING: No, sir.

PRESIDENT: Those statements will be marked then as Exhibit 105 and
there will be a classified and a redacted version.

40

#EXHIBIT C105 - ORIGINAL STATEMENT OF SOLDIER 2

45 **#EXHIBIT R105 - REDACTED STATEMENT OF SOLDIER 2**

COL GRIFFIN: The next two documents remaining of the five, Soldier 2, is a statement prepared by yourself as your evidence to this Board of Inquiry with the assistance of your counsel, is that correct?---Yes, it is, sir.

5

Again, Mr President, one of the two documents is the redacted version of the other. With your leave, Mr President, I propose to read the redacted doc onto the record.

10 PRESIDENT: Is there any opposition to the formal tender of the document or the redacted version?

COUNSEL REPRESENTING: No, sir.

15 PRESIDENT: I take it everybody has seen these.

COL GRIFFIN: The redacted has only just been produced in the last few moments, sir, and it's partly the reason I propose to read the redacted version onto the record.

20

PRESIDENT: If there's no opposition I'll mark it as Exhibit 106, both the classified and redacted version.

25 **#EXHIBIT C106 - ORIGINAL STATEMENT OF SOLDIER 2**

#EXHIBIT R106 - REDACTED STATEMENT OF SOLDIER 2

30

PRESIDENT: Yes, thank you.

COL GRIFFIN:

35

Statement of Soldier 2, , Security Detachment, Baghdad,

I, Soldier 2, make oath and say as follows:

40

I have read Annex F to Chapter 7 of ADP P06.1.4, Administrative Inquiries Manual. I understand my rights and obligations as a witness before a Board of Inquiry.

45

I am a Platoon Sergeant with . I am currently the Security Detachment posted to Baghdad, Iraq.

5 *On 5 May 2006, I provided a statement to Sergeant Hession, an investigator in relation to various matters. Annexed hereto and marked with the letter A is a copy of that statement. In that statement I have set out in some detail my service history and the force preparation training that I completed prior to deploying to Iraq.*

10 *The platoon had commenced its deployment in (blank) in the (blank). The section commanders and some other key personnel then went to the (blank) as part of a relief in place process. The protection of the (blank) is achieved by maintaining a number (blank). I did not take part in these briefings myself. Soldier I was briefed by the Platoon Commander of the platoon we were replacing and he in turn briefed me. The told me about the*
15 *makeup of the positions and went into specifics about who would be doing what. For example, he explained the rotation system between sections, details of Embassy staff, their jobs, points of contact for liaison, et cetera. There were standing orders in place relating to the above duties. (blank) and I made the point to Soldier I that my platoon should be made aware of those*
20 *SOPs.*

25 *Soldier I then made them available to the section commanders who were to make sure that the sections understood and followed those orders. I recall the section commanders informing me that their sections had been directed to read and understand the SOPs.*

30 *The following is a description of each of the security positions and the tasks that are undertaken in those positions.*

35 *(blank). The buddy system is to be employed whenever unloading a weapon. It involves another soldier observing the unload process as an additional precaution against negligent or unauthorised discharge. It remains the responsibility of the*
40 *weapon operator to ensure that their weapon is cleared correctly. At the time of the incident the platoon was employing the buddy system appropriately and in accordance with the Officer Commanding's intent. There are certain places known as beaches for unloading weapons.*

45 *(blank). To move from one degree of weapon readiness to another without using these would only be in the face of a threat. In the normal course of duties only these beaches should be used to alter the degree of weapon readiness of weapons.*

Weapons Training

5 *Proficiency in handling the 9 mm self-loading pistol was achieved by the conduct of training on several occasions and in day-to-day use of the pistol. The training included the conduct of tests of elementary training (TOET) and a range practice in (blank). TOET and range practices were also conducted in (blank) during predeployment training and soldiers gained experience in the constant carriage of the weapon during the (blank) exercise.*

10 *TOET and a range practice were also conducted in (blank) as part of (blank). Once in (blank) and issued with the (blank), soldiers are required to (blank) the weapon daily in order to clean it. They are also required to conduct (blank) under the supervision of section commanders or section 2ICs. While the (blank), depending on the (blank), individuals are required to change (blank) as well as (blank) before entering the dining facility for meals. In addition, (blank).*

20 *Furthermore, (blank) individuals attend range practices. I believe that through training, constant use and regular altering (blank), every member of Security Detachment that carries a 9 mm pistol is sufficiently competent in its use.*

Incident Involving the Death of PTE Kovco

25 *On 21 April '06 I was rotating through the (blank) with Soldier 12 in (blank) shifts between (blank). I saw PTE Kovco as I was mounting duty just before (blank), then intermittently throughout out rotations. At the various times that I saw him I do not have a specific recollection of whether or not he was wearing is holster.*

30 *PTE Kovco was usually reasonably chatty, happy, jovial, always neatly presented and well-prepared for anything he was doing. I knew him when we came together in Sydney for predeployment training. However, I only started working with him about a month prior to deployment. PTE Kovco was originally a reserve member for SECDET until he replaced one of my soldiers who was injured during the last three weeks of training.*

40 *The whole Company, including PTE Kovco, did some predeployment training in (blank) within 3RAR for two or three weeks. From (blank) onwards we training in (blank) for about (blank) and later we had a (blank) that lasted (blank).*

45 *On 21 April '06 I was relieved at (blank) and went back to the (blank) to rest. At about 1615 hours I heard a commotion. PTE*

5 Kovco was in room 8 and I was in room 11, about 10 metres
away. The first thing I heard was somebody calling for a medic
and other general yelling. I then went to the source of the
commotion, which was the room occupied by PTE Kovco and
Soldiers 17 and 19. PTE Kovco was lying on the floor with
Soldier 19 kneeling towards the region of his head and Soldier 17
kneeling at his waist area. I saw that PTE Kovco was bleeding
from a head wound with his feet towards the door adjacent to the
double bunk. I saw a laptop on the top bunk, which was open,
10 running and the screen lit up.

15 I saw a pistol lying on the floor close to PTE Kovco's left-hand
side, that is, between him and the bunk. Attempting to preserve
the orientation of the weapon, I moved the pistol with two hands,
one on the slide and the other on the grip, by lifting it just off the
floor and placing it down adjacent to the bunk. I decided to move
the pistol due to its close proximity to PTE Kovco and the
personnel applying first aid, because of the danger of someone
inadvertently causing it to discharge by stepping or kneeling on
it. I noticed that the hammer was slightly rearward, possibly
20 indicating a double feed. I cannot now accurately recall the
exact way that the pistol was lying on the ground or if a magazine
was attached to the weapon.

25 After I saw Soldiers 17 and 19 administering first aid, I yelled for
someone to get a stretcher. I was told that a gator was already
organised. A member arrived with a stretcher within 60 seconds
and had the stretcher assembled within 20 seconds. PTE Kovco
was then moved on to the stretcher. Soldier 4 had arrived and
30 was helping with first aid. The stretcher was moved to the
entrance of the (blank) where the gator had arrived. PTE Kovco
was placed on it. Soldiers 19 and 4 got onto the gator with him
and it moved to the (blank).

35 I returned to room 8 as soon as the gator had left and told
everyone to stay out of the room. This would have been within
three minutes of the incident occurring. I asked Soldier 17 what
had happened and he said, "Jake shot himself in the head" or
words to that effect. I do not specifically recall the exact words
40 that were used. I then spoke with Soldier 26 and asked him what
happened. He said something similar, using words that I cannot
accurately recall. After I'd spoken with Soldiers 17 and 26 I
moved to the guard box and radioed my higher Headquarters to
let them know what had happened.

45

5 I then went back to room 8 to make sure no one was entering the room. I asked Soldier 26 to come into the room with me to take photos on his personal digital camera. These photographs were taken no more than about ten minutes after the incident. I later downloaded them onto my computer and put them on a disc. They were later given to Soldier 30. I deleted the images from Soldier 26's camera. I believe that about eight photos were taken. I allowed Soldiers 17 and 19 to enter the room to collect the equipment required to continue with their work. Either Soldier 17 or 19 turned the laptops off during this but I cannot recall which one it was. This occurred about two and a half to three hours after the incident. I saw the pistol in the same position that I left it, which was about 30 to 40 cms from where I first noticed it.

15 Soldier 19 removed his personal weapons and Soldier 17 removed PTE Kovco's Styer as his own had blood and other matter on it. They both took their body armour. They were accompanied at all times in the room either by me or possibly Soldier 21. I recall that I wanted to ensure that Soldiers 17 and 19 were not left alone. The room was not sealed off when I was there but it was sealed off some time later by the MPs.

25 After Soldiers 17 and 19 had removed their equipment, I went back in to look for PTE Kovco's dog tags, which I found inside his locker and removed them to give to the Combat Support Hospital. They were placed with his ID card and wedding ring into a plastic bag and given to me as his personal effects. These are with the family. I took them back to Australia and handed the items to them. I am not certain who removed them but PTE Kovco's diary and a teddy bear were removed from the room and given to me to take with PTE Kovco's personal effects. When preparing to escort PTE Kovco, the diary was taken from me in case it was needed in any subsequent investigation.

35 *Repatriation of PTE Kovco's Body*
I was told by Soldier 33 that I was to escort PTE Kovco as far as (blank) until confirmation that I was to accompany him to Australia. The first direction I received from Soldier 33 was verbal and I later received a written instruction from the Company Sergeant Major HQ JTF633 (blank). I did not receive any detailed instruction on how the task was to be performed and had not received any training in the role of an escort. It is clear to me that the apparent haste that accompanied this repatriation may have had something to do with the fact that I was not

properly instructed or briefed.

5 *The instruction I received was a document called “Escort of Deceased Persons Duty Statement”. I note that this document does not contain any specific requirement for an escort to ensure that a body is positively identified. There is a requirement that the escort ensures that the casket is consigned correctly. Whilst the identification of the body may be implied as part of a consignment process, as far as I am concerned, an escort does not have the sole responsibility for identifying the body. I do not believe that I was the only person involved in the identification of PTE Kovco.*

15 *My role was to be present when the body was handled or moved and to make sure it was in the right place during the various stages of the repatriation. There were always Defence personnel or other persons present at each stage of the repatriation. That night I travelled with PTE Kovco from the (blank) landing site to (blank). From the (blank) I accompanied PTE Kovco to the US morgue (blank) where I witnessed the (blank) staff record the injuries, medical equipment and personal effects located with the body.*

25 *We also placed him in a second body bag and then had him placed into a fridge. I did not observe any medical bracelets or ID tags, apart from a tag that was on the outside of the second bag. The tag was a thin cardboard tag and was tied to the zipper with string. On 23 April 2006 I went back to the (blank) and witnessed the body being placed in a “transfer case” before being involved in the ceremony to load the case on a C130 to (blank). The transfer case was made of aluminium.*

35 *At the (blank) Soldier 4 on behalf of the bearer party approached me and asked me to ensure that it was the correct body. I identified the body of PTE Kovco as it was placed into the casket to ensure it was him. This is the only time during the remainder of the repatriation that I recall being asked by any person to identify the body. Naturally, I was aware of the concern of the other soldiers of the need to ensure that the correct body was being transported. So I made my best efforts to identify the body at each stage of the repatriation.*

40 *On arrival at (blank) I accompanied the body to another (blank) where I witnessed the staff record the same details as the previous (blank) staff. From there he was placed in a fridge.*

45

Later that night I was also witness to an MP investigation team taking photographic evidence of the body. Once they completed this task I assisted the staff as the body was iced and placed back into the fridge.

5

On 24 April '06 the process of handling the body over to the civilian company, Kenyon, began with Mr Nasser of Kenyon completing the paperwork at the (blank). At this stage the paperwork that I had in my possession consisted of the following documents: (1) certificate of death; (2) hospital report of death; (3) record of identification processing anatomical chart; (4) record of identification processing (effects and physical data); (5) convoy list of remains - 10 CSH to MACPBIAP; (6) convoy list of remains MACPBIAP to ADF escort; (7) convoy list of remains ADF escort to TMEPKIA; (8) convoy list of remains TMEP to civilian ambulance.

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The body was then loaded into an ambulance and taken to a morgue at Al Sabah Hospital. The original death certificate together with the documents numbered 2, 3 and 4 above had been placed inside the transfer case at (blank). To my knowledge, these documents were taken possession of by Mr Nasser, either at the (blank) or at the Al Sabah morgue. On arrival at Al Sabah the body was removed from the transfer case and I witnessed the body being placed in a fridge, but I cannot say which fridge that was with any certainty. With me inside the morgue were Mr Nasser, (blank) and Soldier 34.

30

35

I was informed by Mr Nasser that an embalming process would occur and then the body would be placed in a casket the following day. I believe that on that same day I attended the Embassy with Soldier 34 and (blank). PTE Kovco's passport was cancelled and the original was returned to me. I did not say much to anybody, but I believe that I was introduced as the escort. There was no discussion, to my knowledge, about what my role as the escort entailed. I did not discuss my role with anybody.

40

45

On 25 April '06 I returned to the morgue at Al Sabah with Soldier 34 and (blank) to witness the body being sealed into a casket. Mr Nasser and Alistair Adams(?) from the Embassy were also present. The morgue was poorly lit and very dinghy. The body bag was opened. I was not in the mood to have a good look for a number of reasons. I had observed his body several times over the past 36 hours. Furthermore, I was involved in the

aftermath of the incident and dealing with the bearer party who were very emotional. I had had interrupted sleep and I also had concerns for the rest of the platoon and how they were coping.

5 *I was about two or three metres away and looking at the body that had its head towards me. There was nothing about the body that jumped out at me. At this stage, I made several assumptions; I assumed that an embalming process would change the appearance of the remains by having bandages removed, wounds*
10 *cleaned, colour and general appearance changed, et cetera. Furthermore, I assumed that there was only one body in a military body bag and I expected that the staff would have ensured that the correct body was presented for identification.*

15 *As a consequence of these assumptions and the fact that I had viewed the body three or four times previously, the attention that I paid was cursory. I do not recall having anything further to do with the body until after the casket was sealed. I wrote PTE Kovco's details on the top of the casket. The consular official,*
20 *Mr Alistair Adams, Soldier 34 and (blank) were with me during the identification process. I believed that Mr Adams had far more experience than me at this sort of thing and was clearly observing the body at the same time as I was. He had a picture of PTE Kovco that had been photocopied from his passport. He*
25 *appeared to be satisfied that the body was PTE Kovco's. He neither asked me whether or not it was his body, nor did he tell me that it was my responsibility to identify it.*

30 *Both Soldier 34 and (blank) were in a position from where they could have observed the body of PTE Kovco. Furthermore, Mr Nasser had specifically told me that the staff knew what they were doing and I trusted him that he was doing his job. On that same evening, the casket was transferred to KIA in order to begin transport back to Australia. This was to involve a transfer*
35 *between aircraft at Dubai. The handling of the casket was now in control of the airports/airlines and I could not ensure that the body was moved in accordance with Australian customs (positioning of body, flagged draped over casket et cetera).*

40 *On arrival at Melbourne on 27 April '06, I was informed about the incorrect transfer of remains at the Al Sabah morgue. I was devastated and I am still upset by the mix-up.*

45 *There are a number of matters that I consider would improve the role of an escort; there needs to be a proper set of instructions*

5 *that clearly defines what has to be done. If the escort is required to identify the body, that requirement should be clearly spelt out. It therefore follows that the members who may be required to perform the task should receive sufficient training in that task. The escort should be sufficiently removed from the member being repatriated so as to be more objective in the process. There should be far less transfer of the body with the accompanying requirement to identify it at each stage. This was the main problem in my case.*

10 *I was required to look at the body three or four times. As it turned out, I do not believe that I was psychologically suited to the task. I was tired, emotional and under stress. Sworn and affirmed at Sydney on this 25th day of July 2006.*

15 Soldier 2, aside from the OPSEC redaction that are made to that document, are you satisfied that it is a true and correct statement of your evidence to this Board of Inquiry?---Yes, sir.

20 Has your entire Army career been in Infantry?---Yes, sir.

How long have you been a Sergeant?---I was promoted in November 2004, sir.

25 Where were you in you in your first promotion as a Sergeant, what was your service?---I was posted to ARTC Kapooka and spent one year there before I moved to .

30 Were you an instructor at Kapooka?---As a Corporal I was, my role as a Sergeant was instructing on CERT4 for the instructors and to also assess the standard of instruction of the - about the Unit.

35 And how long were you a Corporal?---I can't actually recall when I was promoted to Corporal, but it was four years, I'd say, sir. I spent two years at Kapooka and prior to that I was in as a Corporal for a couple of years as well.

40 Having joined the Army and could you repeat please when that was that you joined the Army?---I enlisted on August 23, 1994.

Was your first regimental posting to the Battalion that you described earlier?---Yes, it was, yes.

45 You said there as a private soldier and then as a Corporal?---Private soldier, a Lance Corporal and then as a Corporal.

In a Rifle Company?---I served in rifle companies and support companies.

5 Is it your experience that Support Company has normally what would be described as the senior soldiers in the Battalion?---Yes, sir.

You were a soldier, then a Lance Corporal and then a Corporal within RAR Infantry Battalion?---Yes, sir.

10 Were you selected to go to Kapooka as an instructor or was that a choice of your own?---It occurred as a normal posting opportunity. My preferences that I had put in previously - my first preference was to go to the School of Infantry as an instructor, second preference Kapooka.

15 You spent two years as an instructor as a Corporal and you were then promoted to Sergeant and you continued to instruct, this time, instructing the instructors, is that right?---Yes, sir.

20 Having spent, was it one year as an Instructor Sergeant you then moved to ---That's correct, sir.

25 Where did you go in on your arrival?---I went to A Company as a Platoon Sergeant, spent that year there and from there moved on to this deployment - or posting to C Company to join this deployment, sir.

So for the purposes of this deployment, you moved from A Company to C Company?---Yes, sir.

30 What experience have you had in your service in those various postings you've described to us with the 9 mm pistol?---My own experience is quite limited. I was actually only qualified in the pistol in Sydney before going on to this deployment as part of the training we did prior to the deployment.

35 Could you tell us from your own experience whether the 9 mm pistol is carried, for example, in RAR when you were serving there in the Rifle Company and Support Company?---It is carried by a limited number of individuals, only when commanders deem it necessary that they have -
40 have a reason to carry that. For instance such as who may be working away from a large force in small units, they may be deemed - it may be deemed needed for them to actually carry it just as a secondary weapon.

45 Could the Sergeant be shown classified Exhibit 8? What I'm going to show you Sergeant is the SOPs for SECDET, we're in open session and I don't want to go into the classified material, but I do want to talk to you

about the buddy system and your understanding of it from your previous training and experience. I would ask you to open up the SOPs to 161.8. It's right at the end, 161.8. Have you identified that?---I've got that, sir, yes.

5

Now, before I ask you about that, can I just confirm that from the statement of yours that you've prepared for these proceedings recently at paragraph 5 on the first page where you talk about the SOPs in place and that you'd made the point to Soldier 1 that the platoon should be made aware of those SOPs, are these the SOPs you're talking about there in the statement?---Yes, sir.

10

161.8 you'll see is concerned with weapon safety. If you just read it to yourself for a moment. Just point 8.1 really, the first paragraph?---Yes, sir.

15

Before you saw that SOP had you had any experience of the buddy system?---Not insomuch as it's called the buddy system in reference to weapons, but the actual application of somebody being present when unloading or changing of DOWA has occurred, I have had experience to that. I can't actually - on my last deployment to ... I cannot actually recall if we were using the buddy system at that time.

20

Just before we move on from that point, Iraq is not your first operational service I take it from what you've just described?---Correct.

25

What's your other operational service?---I went to with in 2000 I believe - 99-2000.

30

Did you have any experience of the 9 mm pistol in that deployment? ---Yes. I wasn't carrying one for the duration, however, I did have a - conduct a range practice and training on it while I was there. I didn't receive any qualification out of it at that time.

35

Would you tell the Board or expand further, please, on your experience of that buddy system that you were describing?---In training the - any instructors or anything during lessons or range practices, clearance of weapons is conducted by the instructor or OIC of range for his safety staff. I remember in when we came back from a patrol, whatever, the section - as I was a Section Commander at the time I would oversee the unloading of weapons when we moved back into a safe area of my section just as an added precaution to make sure that there was no harm caused through negligent discharge to friendly troops.

40

45

So that would be you overseeing that all the weapons were cleared

personally?---For my section, yes.

5 Not a matter of individuals checking with other individuals?---No. As far as I can recall, we didn't practice the buddy system in that way while we were in .

10 So is it correct to say then that this SOP 1.6.8.1 that I've just shown to you is your first exposure to a direction or instruction or order that related to a buddy system for the clearance of weapons?---I would say as a written document, yes. However, we were exposed to these in - we were aware of the OC's intent to use this buddy system throughout our training before we deployed.

15 How were you made aware of that?---Obviously through discussion, et cetera. These - this document was being written at the time, so it wasn't by a written means but through verbal orders from the OC to Platoon Commander and myself to the platoon.

20 Do you actually have a physical memory or an actual memory of hearing discussions about the buddy clearance?---No, I don't, sir, but I have a definite memory of us utilising it on the exercises that we did prior to the deployment. And because it wasn't written, that was how it would have been - - -

25 What was the practice? What was the process that was being done on that pre-deployment training?---The member changing his DOWR specifically when unloading would go to the unload point and have - you would make sure or there would be some - he would make sure that there was somebody with him to observe his practice of changing degrees in weapon
30 readiness and to make sure that he was not going to have a UD.

35 Am I right in saying from what you've just described and from your statement that your understanding is that the weapon operator himself or herself had responsibility for ensuring that someone else cleared the weapon?---No, sir. It is - it remains the responsibility of the individual who operates the weapon to clear their own weapon. The individual who is their buddy is simply there to observe their actions throughout that unload process or whatever.

40 So it's an additional check?---Yes. As far as I'm aware, the OC's intent was to have somebody, as it says there, to be observed by their buddy as they carry out a change of DOWR. So in his instructions and the way that we were - in his instructions the way I understood it the buddy is not
45 responsible for the actual clearing of the weapon. So he was just there to make sure - and the obvious thing is to make sure that there's no magazine

on the weapon when the working parts are released. It's very easy to observe from the general vicinity of that person. However, when we were overseas, because this process is also utilised by the US forces who we work closely with, et cetera, over there - the added precaution, I would say, is - no, the buddy - what has been or was actually clearing the weapon as well in addition to the owner of the weapon. So the way it was being employed was even more stringent than originally intended.

10 These SOPs, this document that's in exhibit, did you personally physically see them at SECDET at any time?---Yes, I have, sir, by electronic means, because these were a - these were written in Australia. When we got overseas the OC tended to have six to eight weeks of actually experiencing what was going over there and then making any necessary changes to these SOPs, which has been done.

15 How do you know that was the OC's intent?---He let us know that. The Platoon Commander - he had a conversation with him and the Platoon Commander let me know that prior to deployment.

20 How were the soldiers to know the content of the SOPs?---In - during pre-deployment training myself and the Platoon Commander made them available to the Section Commanders and instructed the Section Commanders to ensure that they were either read out to the soldiers or that the soldiers actually read them themselves.

25 It's a pretty substantial document, would you agree?---Yes, it is, sir. They had several weeks to have that done.

30 Are you aware of any amendments being made as you described the OC's intent while you were there to the SOPs?---I'm not aware of the exact as they - as they were being done, but I know the OC had called for them to be done, changes to be run by him prior to a certain date which I'm not too sure of what it exactly was. I am aware that changes were being made and even from, you know, from when this incident occurred and now, the way the operation is over there, certain locations and things like that have changed. So they do need to be a dynamic document, so to speak.

40 I don't want you to go into the detail of the amendments because that's something that we'll have to do in closed session because of the operational security aspects of them, but prior to the incident do you recall any changes being made to the SOPs that were promulgated either in written form or by orders or briefings to the way things were done?---Yes, sir.

45 Don't go into it now. I'll get you to do that in closed session, but I'd just

ask you to keep that in your mind?---Yes.

So you do recall positively prior to the incident some amendments to SOPs being made and promulgated?---Yes, sir.

5

How were they promulgated?---Verbally, through the chain of command.

Is verbal orders a standard process for a deployed operational unit?---Yes, it is, sir.

10

How often, for example, would a Section Commander give an orders group, a verbal orders group, say, for example, at SECDET at facility?---As a minimum?

15

Yes?---Nightly.

There is some evidence before the Board, specifically a two-page weapons issue sheet which is Classified Exhibit No. 10. May that be shown to Soldier 2, please, Madam Secretary? It records - you'll see there, issues to Soldiers 17 and 19 and PTE Kovco, or entries for their names and various entries for weapons being issued to them?---Yes, sir.

20

And there is evidence that one had a weapon issued, that is between 17 and 19, one had a 9 mm pistol issued and the other one did not have. However, there is oral evidence that the one who didn't have one issued in fact had one in the room with him at the time, and the one who has an entry for one issued did not have one with him?---Yes - - -

25

Do you understand the evidence I'm putting to you?---Yes, I do, sir. I believe - and when the Board first became - through the VT seen earlier, and the Board first became aware of this discrepancy, myself and the other Platoon Sergeant went back through our documents to find further evidence to state - to show that that member actually did have a pistol, and I don't know if it's been provided to the Board or not, but there was a document with his signature next to a pistol number, sir.

30

35

No, it has not been provided to the Board and I've been awaiting the provision of that from the unit. So, are you able to assist - - -?---I note the fact that - - -

40

- - - with the document itself?---I don't have it with me, sir, no. but I know for a fact that it is - still exists over there because we made sure that we kept it and, you know, as soon as I get that - or we can chase it up to get that brought forward.

45

And would you just clarify what it indicates then, please?---It does indicate that Soldier - I think this is what you're getting at - Soldier 17 did have a pistol issued to him.

5 Did have a pistol issued to him. And what about the other soldier who, according to that sheet, had had one issued to him before, but on his evidence didn't have one with him in the room on the day in question?---I'm not too sure about that. However, because of the amount of pistols we have over there and the priority of people carrying pistols
10 remains that infantry members at the ... have pistols, there is a process of the - when we leave - or when a platoon leaves the ... a number of (blank) pistols are handed over to the other platoon. And on that - that's on that sign-out sheet is where the - that evidence for that pistol is. And I'm not too sure about Soldier 19. However, that will be on that sheet as well.

15 Sir, inadvertently Soldier 2 has mentioned a number in respect of the type of weapon. I ask that there be a direction that that number not be published.

20 PRESIDENT: The number of pistols that was just mentioned is classified and I ask the press not to print it.

COL GRIFFIN: Thank you, sir.

25 I appreciate the difficulty of watching - Soldier 2, the issues such as number is probably best kept for the closed session. But thank you for clarifying that point. And, as I understand it, you will be able to assist Counsel Assisting with the location of the document that you've referred to - - -?---Yes, sir.

30 - - - in the future?---Yes.

35 There has been some evidence given to the Board about certain types of activities or weapon handling by members that could be characterised as risk taking in the way members have used the weapon within SECDET. Are you familiar with what I'm talking about?---Yes, I am, sir.

40 Are you able to say, from your knowledge - first of all, have there been, with the 9 mm pistol, any - other than this particular incident, any other notifiable incidents that you're aware of in SECDET on the deployment?---No, sir.

Any unauthorised discharge?---No, sir.

45 Any safety breaches?---No, sir.

Are you aware of any instances of people indulging in risk taking behaviour with the 9 mm pistol, or indeed with any other pistol?---No, I'm not, sir, and if I was aware I would definitely make the Platoon Commander aware and we would have a serious discussion about whether that member involved in that behaviour should be remaining on the deployment.

Are there activities in close quarter combat that involve manoeuvring with the hands or arms in an attempt to stop somebody from drawing a pistol that soldiers may practice properly or lawfully?---Not that I'm aware of, sir.

Any manoeuvre that you're aware of that involves an attempt to place the hand over the assailant's hand or arm to stop the hammer coming forward?---Not that I'm aware of, sir.

Have you observed any activity of that nature at SECDET?---No.

Would you describe, please, the role of the Section Commanders and the Platoon Commander and yourself in the day-to-day activities in SECDET or at the Embassy, starting with the Platoon Commander, please?---The Platoon Commander's responsibility is to ensure that - the safe running and tactical soundness of the Platoon's operation. He's to obviously be aware of the OC's intent, pass on orders, whenever he receives them. And at that time on the - that is, on 21 April when the - and a period leading up to it, he was also, as was I, performing the duties of Section Commander or 2IC actually participating in their rotation through the duties at the Embassy as well. In addition to that, the Platoon Commander obviously has a liaison capacity with Embassy staff and - that would sum up his duties, I would say, sir.

And your position as the Platoon Sergeant?---Similar to that of Platoon Commander. I understudy him and guide him as much as I - if he - as he needs assistance. I also look after the administration of the Platoon, ensuring that they have as far as - as much as possible everything that they require in order to do their jobs, and I also conduct liaison with Embassy staff.

Now, in relation to that point about making sure that they have everything they need to do the job, the Board has received some evidence critical of the nature of equipment, the age of weapons and other material provided to the soldiers. In your capacity as Platoon Sergeant, do you have anything to say about those matters in relation to the quality and serviceability of the equipment?---I believe that the quality and

serviceability of the equipment that we have is as good as you can possibly expect being deployed overseas, and it is of a good standard. The only - and I'm aware of where the criticism comes from - the only small - the only criticism we originally had was throughout training we didn't
5 have the equipment - throughout the majority of training, sorry, we didn't have the equipment that we would be utilising overseas. However, we did receive the majority of it before we did go over, so in - in that fact no training with the equipment is beneficial. Training with the equipment that you're going to be deployed with is beneficial for training obviously.
10 So there was some people upset about the fact that that didn't occur. But we did get the majority of it before we deployed and did have a small opportunity to train with it. Having said that, we didn't - there were some small things such as ammunition pouches that fit to the CBA and stuff like that which we were aware of in the system which we didn't receive.
15 However, individuals overcame that when we got into the first country that we moved to by purchasing stuff that was available there. So basically any shortfalls in equipment were overcome and the standard of the equipment is good, sir.

20 Did any of those matters you've just described, do you feel prejudiced your capacity to undertake and complete the mission?---For the simple fact that we got around not having those pouches and stuff like that, no.

You've described your role and the Platoon Commander's role. Would
25 you tell the Board about the role of the Section Commanders, please?---The Section Commanders obviously have a section in their command and they are responsible for ensuring that the Platoon Commander's intent is employed by all members of their section and themselves. They are responsible for tactical employment of that section in line with that intent.
30 They are basically - they are - especially on this deployment, they have a very large responsibility because they have an input into the planning process which usually they don't have such an input into. So there's added pressures on them in that respect. They also in a way in - they're also responsible for the training and general wellbeing of their section.

35 The principal tools of a soldier on operations are his - is or are his weapons. Would you agree with that?---Yes, sir.

40 Whose responsibility is it to ensure the correct maintenance and security of those weapons?---It is the individual's responsibility who owns those weapons. However, it's supervised by the Section 2IC or Section Commander, and in addition, myself.

45 How is that normally done, say, for example, at the Embassy and at the Security Detachment base at - - -?---The maintenance of the weapon, sir?

Both?---Is done - maintenance of the weapon is done daily and 2IC should oversee that. I personally whenever I am - as I try to do daily, get around to see the blokes to see how they're doing, make sure their welfare is okay. Whenever I enter their rooms have a quick look at their weapons to ensure that they're correctly maintained. So if something does happen they're not going to have excess stoppages, et cetera.

Are there inspections done?---Not formal inspections, no, sir.

Where does a soldier keep his weapon when he's not on duty?---It varies between the Embassy and the At the - - -

Is this an operational matter?---Yes, probably is, sir, actually.

When the soldiers have their weapons with them we understand - the Board has heard evidence of weapons being in the room with soldiers. Is that correct?---Yes, sir.

In terms of the regular maintenance to ensure that the weapon is being looked after, was it the 2ICs that you said conducted that?---Yes, sir.

Is there any pattern of regularity to that?---No, sir, insofar as the fact that the 2ICs are responsible for if there's any maintenance issues, say broken parts of weapons, et cetera, they are responsible for reporting it to me. So they are to be - and they are aware that they need to know exactly the state of their section members' weapons. But there's no formal time line or guideline for that, sir.

You said that you qualified on the 9 mm before you deployed on this operation?---Yes, sir.

Are you able to say if others qualified on it?---Yes, they did.

Was there formal training?---Yes, there was, sir.

In your previous history as an instructor and as an NCO on a battalion, had you had occasion to train anybody on the 9 mm?---As I was not qualified, no, sir. Only qualified person can train non-qualified people on the weapon.

Given your experience, are you satisfied that you had sufficient training on the 9 mm as part of that qualification process to be able to safely handle the weapon?---Yes, sir.

45

5 Mr President, I propose now to lead Soldier 2 through evidence relating to operational security matters, which necessarily will involved closed session. It may be therefore appropriate that cross-examination by Counsel be dealt with immediately following my examination in closed session so that allows the Board to return in open session with the remainder of the non-classified matters of evidence and Counsel can then question on that and, if necessary, flowing from that, return to closed session. I appreciate that's a somewhat complicated process, but I don't see any other way of dealing with this evidence.

10

PRESIDENT: Is everybody comfortable with that approach?

COUNSEL REPRESENTING: Yes.

15

PRESIDENT: Make it so.

COL GRIFFIN: Thank you, sir, if we now go into closed session.

20

PRESIDENT: The Board is now closed. Members of the public and the press, if they are with us, please leave.

(Continued in closed session)

NTS

(Open session)

5 COL GRIFFIN: Now, Soldier 2, you mention in your statement what happened on the afternoon of the 21st where you say at paragraph 19 in your statement:

At about 1615 hours I heard a commotion.

10 What in fact did you hear?---Simply a lot of yelling, sir.

Did you hear a shot fired?---No, I did not.

15 Before you heard the yelling, did you hear any other noises that attracted your attention?---No, sir.

How far in metres was the place you were at that time from the place where you know PTE Kovco was?---No further than 10 metres, sir.

20 Was there any noise in your vicinity that would have prevented you from hearing any other significant noise?---Not that I recall, sir. I don't think I had any music playing or anything like that, no.

25 Were you in a closed room?---Yes I was. Perhaps the air conditioner noise, but that's about it.

There was air conditioner noise in your small room?---Yes, sir.

Am I right in saying it's a small room?---Yes it is.

30 What, if anything, do you recall from the noise that you heard?---The first thing that I can actually remember is somebody yelling for a medic, but I don't know where I was when I can actually remember that being said, sir.

35 What did you do then?---As soon as I did the commotion, I moved outside of my room and to the location of the commotion which was the room occupied by PTE Kovco. There was a few people gathered around there at that time and I moved to the doorway of that room and looking inside the room I could obviously see - you know, the scene as it was - as I've described in the statement.

40 Now, that room is elevated from where you were when you looked at the door, is that right?---Yes, sir.

45 A couple of steps?---It is a - a step up from the ground, yes.

And as you looked in what did you see?---I saw PTE Kovco laying on the - on the ground and from memory - excuse me, Soldier 19 was located at his head region and Soldier 17 was located around his waist.

5 Was anyone else in the room?---Not at that - not as - not at the time when I first got there, sir, no. They were later joined by Soldier 4.

10 Was anyone hovering or standing at the entrance way as you came to the room?---Yes there was. I don't know who they were, there was a number of people standing around there at the time, sir.

Do you know whether or not they had in fact entered the room before you got there?---I don't know, sir.

15 What actions did you take after you saw this scene before you?---I caused a stretcher to be brought to the location by simply yelling at those lingering around to get a stretcher. There was no - I didn't specifically tell any one - any one person to organise it. I entered the room about the same time Soldier 4 had arrived and as I've stated, because of the location of the
20 pistol, I moved the pistol. By the time I had done that we had - I don't - I can't remember if I assisted or not, but PTE Kovco was moved onto the stretcher. I assisted carrying the stretcher down to the entrance of the accommodation. By that stage - sorry, when I had arrived, I gathered just by people - by people in conversation that a medical - the gator from the
25 medical facility had already been arranged. We took the stretcher out to the end of the soldiers' accommodation and the gator had arrived just as we were getting the stretcher there, placed the stretcher on the gator. Soldier 4 and Soldier 19 got onto the gator with PTE Kovco and the gator then left the Embassy grounds for the hospital.

30 A gator is a small utility vehicle. Is that right?---Small 4-wheel all-terrain motorcycle.

35 With a slight tray on the back?---With a small tray. I believe it's got a small trailer attached to it.

When you observed PTE Kovco, can you recall if his legs were straight or not?---I can't recall, sir.

40 Is it the case that you caused some photographs to be taken in the room after the event?---That's correct.

45 I'm going to have some photographs shown to you now. Could the exhibit be shown, please. According to this exhibit, there are seven photographs contained on it. Are you able to say if they are the

photographs you caused to be taken?---Yes, they are, sir.

Was it Soldier 26 that you instructed to take those photographs?---That's correct.

5

Was anything moved before you took the photographs other than what you've described to us about the movement of the pistol?---I don't think so, sir, no.

10 If you could just sequence again through the photographs, please. Did you happen to observe that Coca Cola soft drink can?---I didn't pay any particular attention to it, no, sir. So I don't remember.

15 Do you know if there was any Coca Cola stains in those stains that are on the floor?---I think some of the stains are Coca Cola stains, yes, sir.

Why do you say that?---I don't know. I just think that not all of the stains on the carpet are that of Jake's blood, and that's the only other liquid being around.

20

What action did you take to secure the scene?---I instructed those people around that no-one was to enter the room and I closed the door. I had to leave the general vicinity periodically to go and speak to my higher headquarters on the radio to inform them of what had happened, et cetera. I'm pretty sure I had instructed one of the Corporals - I can't remember exactly who - to ensure that nobody did enter the room, sir, in my absence.

25

I'd like to ask you now about your involvement in the repatriation process. You indicated in your statement that you were originally tasked orally with the role of escort and that subsequently you received a document about the duties of an escort?---Yes, sir.

30

Would you step us, please, through the sequence of the timings involved, where you went with the body of PTE Jacob Kovco from the evening when he was pronounced dead?---From that evening I boarded a helicopter with his body. We moved from the location - the ... located in close vicinity of the Embassy grounds. Left from there and went to Baghdad International Airport, BIA. I was met there by CSM JDF HQ and we moved from the actual airport to a TMEP located at BIA.

35

40

By yourself?---Myself and the CSM JDF and there was a driver of the vehicle who I don't remember who exactly was as well. Actually, I think the padre might have been with us as well.

45

What time was that, do you recall?---It was late at night, sir. I don't know

the exact time.

5 On the night of the 21st?---Yes, sir. At the TMEP paperwork was exchanged. The staff at the TMEP viewed the body, took down details and Jake was placed inside - I think it was there - inside a second body bag and then placed inside a transfer case, which is basically an aluminium casket. He was then placed inside a fridge which was locked. From there I moved to the headquarters and was accommodated there until the following day, I believe. That night - correction, or the next day
10 we were met - the bearer party came down to that location. We went back to the TMEP in order to move Jake onto a C130 to take him to Kuwait.

15 Were you present for any conversations as to the decision to move PTE Jacob Kovco's body from the place where he had died and the mortuary facilities attached?---No, sir.

20 You were simply tasked to go with him on that movement?---Yes, sir. From BIA we had a - there was some time there, like, throughout the day that we had - we conducted rehearsals with the bearer party, et cetera, under direction from CSM JDF. He's the one that provided me with the written instruction at that time. We then conducted a ceremony to take him onto the aircraft. There was an honour guard of Australian forces that were located in that area as well as an American guard as well. We loaded him on. There was a small service conducted by the padre. We then
25 remained on the aircraft and we went to Kuwait. On arrival at Kuwait we took Jake to another TMEP US-run where paperwork was exchanged between myself and them. They went through and recorded details as well.

30 Do you recall when on the next day this was?---No, I don't, sir.

35 Was it the next day, the 22nd?---I'm not sure of the time. The time when all this happened is not clear in my mind, sir. At that TMEP once again Jake was put into a refrigeration unit which was locked. I left that location to - sorry, I was met at Kuwait by Soldier 34 and one of the people that she was working with as well. We went from there back to the firm base at Kuwait. I later had to come back in on - it was the same night that we had taken Jake to Kuwait to be present when the SIB MPs took photographs of Jake. I was there present for that. Once they had taken
40 their photographs I assisted the TMEP staff in placing ice inside the casket with Jake and he was then placed back inside the refrigeration unit which was locked. Once again, I believe it was the following day, we all came out - sorry, the bearer party and myself went out to the - and Soldier 34 went out to the TMEP and I believe the representative from Kenyon was
45 there also. He signed papers with the TMEP staff and we loaded - the

bearer party and I loaded the - loaded Jake onto an ambulance and he was taken to Al Sabah morgue - the morgue at Al Sabah Hospital. The representative from Kenyon was there with us as well. From there, once again, that representative filled out paperwork with that- with that
5 mortuary and Jake was placed into a refrigeration unit. Once again, I'm not sure of the exact day or the duration between when I left there and went back there, but I did attend and it was the - it was the 25th because - I'm aware of that because of Anzac Day. I went - I had - I went in there in the morning and - with Soldier 34 and that other person that she works
10 with and we met the Embassy official there as well as the Kenyon representative in order to have Jake's body put in - sealed inside the casket.

Had you already been to the Embassy at that point in time?--I had been to
15 the Embassy. I'm not sure of exactly which day I had - did attend there. Soldier 34, myself and that other workmate of hers which doesn't appear on this list, had a meeting with Embassy staff there. I don't know if I can say their names.

20 Yes, you can and if you can recall what the meeting was about, please tell us?--One of the - one of the main Embassy staff member that we met name was Summer, I don't know what her role is or anything and we did have a cup of coffee with Alistair Adams.

25 And did you understand Mr Adams to be the consul, Alistair Adams?--I was probably told what his role was, but I wasn't paying that much attention, sir. The purpose of the meeting was to hand in - or get Jake's passport cancelled which was done at that time and - yes, I don't recall anything that was actually discussed. That was - I believe that was the
30 purpose of our meeting and also Summer was sort of acting in - in a - as a liaison between Kenyon and Soldier 34. As I said, I don't recall which day we attended the Embassy. From there, that same evening, after what I believed to have been Jake's body was sealed into the casket. The - I had to move straight to the - straight to the airport to get through customs et cetera and the - the bearer party remained with the body as far as they
35 could go out onto the international airport. I don't think they could escort it very far. Obviously I was a little concerned being separated from the casket at the time and was trying to ensure that - you know, I could at least view the casket being loaded onto the aircraft. I had to do this through -
40 from the terminal inside where everyone was waiting to - to board the aircraft. But I actually did get to view the casket going onto the aircraft. I boarded the aircraft. There was a stopover in Dubai which I could not arrange to view the casket being transferred between planes and obviously I made this known to the staff and that I wanted to see it, they couldn't
45 arrange that. However, when I had boarded already I was still asking to

5 make sure that had been done. I was told by an airline employee that it -
that the casket had been loaded onto the plane. From there, flew to
Australia. On arrival in Melbourne I was met by the PERS Officer from
..., who informed me of the wrong body being brought back, and from
there I stayed in Melbourne overnight and then left the next day back to
Australia - sorry, back to Iraq.

10 Have you had the opportunity to have any counselling or support to you
over these events?---Yes, sir.

I'm just going to ask you about your relationship with PTE Jacob Kovco
now. He was a member of your Platoon?---Yes, sir.

15 How long had he been a member of your Platoon?---He'd been a member
for the duration of the deployment plus I'd say the last three weeks of pre-
deployment training. I was aware of him for the entire pre-deployment
training but he was not a member of my Platoon at that time.

20 Was any information given to you at any time before you met the aircraft
to actually leave to return to Australia as to which airline or carrier would
be involved in the return of Jacob Kovco?---No, sir.

25 What were you told about how the body would be taken back to
Australia?---His - sorry. As my role as the escort?

30 No, just simply how the return journey would be undertaken, that is, with
an Australian Military aircraft or a civilian aircraft or some other type of
aircraft?---I was aware - when I was travelling back with the remains that
it was going with civilian air, sir.

35 When in that period?---I believe on my arrival or during my time that I
spent in Kuwait, because they - located in Kuwait is the movements
people that organise basically everything in the MEAO and so they - they
made me aware.

Did anyone say to you at any time, "It's your job to identify the body as
PTE Jacob Kovco"?---No, sir.

40 Did anybody ask you at any time, "Is this PTE Jacob Kovco"?---No, sir.
The only time anybody asked me to identify the body was the members of
the bearer party when we were located at Baghdad International Airport
when they had first - when it was their first visit to the TMEP and just
prior to moving him onto the aircraft. They asked me to make sure that it
was him, which I did, and then asking me that, made me aware that they
45 had concerns about making sure that it was him. So from then on I tried

my best to make sure that, you know, their concerns were - were eased, and identified the body each time we took it to a TMEP, et cetera.

5 Did you have difficulty recognising the identify of PTE Jacob Kovco on the occasions that you were asked to do so?---It looked nothing like him, sir, so yes, although I was aware that - of what he looked like after the incident, obviously, because I had been exposed to that so, yes. Yes, it was difficult to identify him as Jake, sir.

10 Were you experiencing any personal distress or upset because of your relationship with him at that time?---I was experiencing stress for a number of reasons at - that being one of them. But also I had the - the considerations of the bearer party that were present as well. They were quite emotional, the consideration - me considering my other 20-odd
15 people back in - back at the Embassy and how they were coping. There were a lot of things that I was thinking about at the time, yes.

20 When you attended at the civilian mortuary and the consul, Mr Adams, that you'd met at the Embassy, was present, what did you think his role was? Why was he there, in my mind?---To ensure that - you know, that the correct body was loaded in - was sealed inside the coffin and he had to seal the coffin as well. In addition to that he was filling out paperwork with the civilian contractors as well, so that was part of his role too.

25 You observed him dealing with paperwork, did you?---Yes. From memory, yes, sir.

30 Did you and Mr Adams discuss the handling of PTE Jacob Kovco's body for the purposes of removal from the civilian morgue and transit home?---No, sir.

Do you recall if you had any conversations with Mr Adams, the Australian consul at all?---No, nothing - no really conversation, sir, no.

35 You've mentioned Soldier 34 and another one of her colleagues who were present. What did you understand their role to be?---They - as far as I'm aware, and I don't really know, but from the way that they were handling the entire thing the entire time we were in Kuwait, they were overseeing the transport between each place, et cetera. They - they organised any
40 transport for myself and the bearer party to get to certain places and stuff like that, sir.

45 The Board received some evidence from members of the bearer party that they were required to purchase civilian clothing for their activities. Do you have any knowledge of that?---Yes, sir. It is not a practice of

Australian Military personnel to go to Kuwait International Airport in uniform. That is why civilians were - had to be purchased.

Did you have to do the same thing?---Yes, sir.

5

Were you reimbursed for the cost of your purchases of civilian clothing?---I could have been but I didn't ask to be reimbursed, sir.

10 You've made some observations in the statement that you've prepared for today's hearing at paragraph 43, which you've offered for improvements to the role of an escort. Did you feel - you mention in there you were tired, emotional and under stress. Could you expand a bit on the stress? What was the stress? Did you feel under time and space pressures, for example?---I don't think - I think personally, yes, there were some time and space pressures but nothing too inadvertent in - but, yes, there were stresses in that respect, plus travelling and added to that, you know, from where we were accommodated to the civilian morgue and the airport and stuff like that is - you know, there's time periods that has to be accounted for, et cetera, so there were - there stresses in that respect. But the most stress that I was having was, you know, being exposed to Jake so many times. Obviously my role as an escort was very important, not only to, you know, myself, the bearer party, but to the family and the political connotations with, you know, what has happened as well. So, yes - yes, I was under stress, sir, yes.

25

And you were required to view Jake's body several times?---Yes, sir. I wouldn't say that I was required to but because of the concerns that the bearer party had, I made sure that I - I basically exposed myself to the - to ensure that the correct body was being transported between place to place.

30

Did you feel that there was a difference for you between the time that Jacob's body and yourself were still within the military structure, that is the Australian Military at BIAP, then with the US Military at the Kuwait facility, as opposed to then the position when you went into the Kuwaiti civilian environment? Was that a significant change?---Definitely, sir. I'd just like to point out that the - at BIAP it's a US facility as well, not an Australian facility. However, the aircraft that was used from there was - I believe was Australian, et cetera. But between - from between military and into civilian contractor, yes, there was definitely a difference, especially in the cleanliness, tidiness, general hygienic state of the facilities that he was kept in. Also the - although there were some language barriers between myself and the US forces, it was easily overcome as opposed to the civilian contract - contract people and - you know. But while - while moving between military establishments, I was signing for the - for the body and then signing it into the TMEP, et cetera,

45

whereas when we left the last TMEP it was the civilian contractor who had signed for Jake's remains and took it from there, sir. There was definitely a difference and it was - it was more difficult using the civilian contract and the civilian morgue than it was with the military system, sir.

5

Thank you, Soldier 2, I have no further questions at this stage in the proceedings, sir, for Soldier 2.

PRESIDENT: LTCOL Green?

10

LTCOL GREEN: No, thank you, sir.

PRESIDENT: LTCOL Holles?

15

<EXAMINATION BY LTCOL HOLLES

[1547]

LTCOL HOLLES: Soldier 2, you gave evidence about moving the pistol at some stage to facilitate the treatment of PTE Kovco in the room on the afternoon of 21 April. Given that the approximate area between the wardrobe, the double bunk and the single bed, which is the area where PTE Kovco was lying is somewhere around the 1.2 to 1.5 metres, are you able to say how far towards the centre of the room that the pistol was when you first walked in?---It's difficult to say, sir. It would have been about central. However, my concern was because it was laying in such proximity - such close proximity to where Jake was lying, that was my concern, that people moving around him applying first aid would inadvertently step on it.

20

25

Certainly. And how far back towards the bunk did you move it?---I moved it as close to level with the bunk as possible.

In a direct line back from where it had been - - -?---To the side, sir.

30

To the side?---Yes.

Left or right?---As I entered the room - as I entered the room, I had - the pistol would have been lying approximately central to the room. I moved it to the right.

35

That's to your right as you face the wall with the double bunk on it?---No, sir. If I was standing at the wall with the door on it, facing the rear of the wall with the window - the rear wall with the window on it - - -

40

Yes?--- - - - I moved the pistol to the right.

I'm sorry, I'm being obtuse but - okay. If you're back is towards where the bar fridge was just inside the door?---Yes.

5

Are you then moving it to your right?---That's correct, sir.

Okay, fine, thank you. Do you have any idea as to how far you moved it in?---30 or 40 cms, I think, sir.

10

And how far back off the central line that it was one?---I don't think that I moved it back or forward from that - from that line - - -

You said you moved it - - -?--- - - - but simply moved it towards the bunk.

15

Towards the bunk on the same centre line, if I can use the expression, as it was?---Yes, sir.

Mr President, with your permission, there's something I wish to say to the witness on behalf of Mr and Mrs Kovco whom I represent. If I might be permitted to say that.

20

PRESIDENT: By all means.

LTCOL HOLLES: Soldier 2, I'm asked to say this by Mrs Judy Kovco and Mr Martin Kovco: that they do not blame you for what occurred in relation to the repatriation, that they thank you for your expression of regret over what occurred. They understand the position in which you were placed and they'd wish for a private moment with you, perhaps at the conclusion of these proceedings today, to convey those sentiments to you personally. Thank you, sir. Sir, I have no further questions.

30

PRESIDENT: Thank you. LTCOL Berkley.

LTCOL BERKLEY: Yes, sir, thank you.

35

<EXAMINATION BY LTCOL BERKLEY

[1550]

40

LTCOL BERKLEY: Once again, Soldier 2, I'm LTCOL Berkley, and I represent Shelley Kovco. How many times did you enter Jake's room?--- Three or four times, sir. The first time at the time of the incident when I moved the pistol. The second time to have those photos taken. The third time to have the two soldiers remove their equipment. That could have

45

been one or two times, whether they - I think they did it one at a time. So that could have been the fourth and fifth time. The last time was to get PTE Kovco's dog tags out of his cupboard.

5 Did you know that the headquarters of the Joint Task Force had an officer that bore the title of Mortuary Affairs Officer? I don't know whether it had other titles. It obviously had other titles, but it also had the title of Mortuary Affairs Officer. Did you know that?---No, sir.

10 Did you get contacted by anyone from the higher headquarters to explain to you your duties?---The only person that explained my duties to me from the headquarters was my CSM initially tasking me to take on the escort duty, and secondly, I was provided with that duty statement by CSM JDF, which is the headquarters.

15 Were you ever referred to quite a thick document which is the ADF policy on mortuary affairs?---No, sir. I'm not - I know the document that I was provided. The duty statement for an escort is from another document. I don't know which document that is from.

20 You were told that you were to be an escort, not an identifier?---Correct, sir.

25 I'm going to ask the question obviously that would be expected to be asked. When you were in the morgue and the consul was identified or misidentified - Jake's body - did he actually ask you to do anything?---The only time I was asked to do anything was after the coffin was sealed, and that was to write Jake's details on top of the coffin.

30 Did you observe the consul going through this misidentification procedure?---I was there at the time, yes.

35 How long did that person take to do that?---Seconds, sir. The body bag was opened - the body bag was zipped open to about the waist. There was seconds before the mortuary staff lifted the body bag into the casket and then started putting Detol, mothballs, et cetera, in there with the body.

Seconds?---Yes, sir.

40 Was the consul armed with any documentation that could assist in the identification of the body as being that of Jake?---I'm not exactly sure, but I know that he did have a photocopy of Jake's passport which had been cancelled the previous day or two beforehand. I'm not exactly sure whether he had that with him at the time or not.

45

Did he have a little folder or something?---I don't know. I know he was - he did complete paperwork with the mortuary staff. I don't know what the paperwork that consists of.

5 How many soldiers came back to Australia from Iraq with Jake this time, not the other unfortunate man, but with Jake?---One I believe, sir. I'm not exactly sure, but I'm pretty sure it was only one.

10 How long was the bearer party engaged on their duties?---Once I had left they remained in Kuwait for that night, I believe, and then moved back through the process of getting back to Iraq from there. So they were located in Kuwait for their duties from the time that we moved Jake from the Baghdad International Airport to TMEP till we - till that plane left - sorry, the plane from Kuwait left back to Australia.

15 Had you ever been given any instruction in mortuary affairs?---No, sir.

In your pre-deployment training was the phrase "mortuary affairs" ever mentioned to you?---No, sir.

20 Did any person at any time tell you that you would be responsible for the identification of Jake's body?---No, sir.

25 This is a question as Platoon Sergeant. Were you satisfied with the critical incident debriefing for members of your platoon?---That was one of my concerns while I was away, sir. I am not aware of the initial debriefing that they received. Prior to me leaving the Embassy that night I had - or myself and the Platoon Commander had ensured that the sections had sat down and discussed with each other what had happened, you know, and obviously voice feelings, et cetera, what they were going through as a quick way to try and prevent or try and identify anybody that was having dramas. But obviously I left straight after that and I don't know exactly what they received as debriefing from that point. I do know that a padre and the psych officers were made available to them.

35 What I want to talk about is the mental preparation. Just an outline of the mental preparation for the deployment with members of the SECDET. Was there any specific counselling afforded to members of SECDET pre-deployment for any purpose; can you recall?---No, sir, I don't think so.

40 Have you ever done a suicide prevention course?---I've done a suicide awareness - - -

45 Sorry, awareness course?---Yes, sir.

How many times have you done that training?---I've done the two or - I think it was two or three day course to attend. I've done that once and I've obviously done - it's mentioned throughout the training - not the training, but the retraining that we do yearly.

5

Do you know when you did the three or four day course?---It was in either 2004 or 2003, sir, while I was at ARTC.

That's the Army Logistics Training Centre?---Army Recruit Training Centre.

10

Do you think you understood the content of the suicide awareness training?---Yes, sir.

In your daily contact with Jake did he give you any cause for concern he might be a risk of suicide?---Absolutely none, sir.

15

Thank you very much. I have no further questions, sir.

PRESIDENT: Thank you.

20

<EXAMINATION BY COL YOUNG

[1600]

25

COL YOUNG: Soldier 2, my name is COL Young. I appear to represent the interests of PTE Kovco. I'm going to put a proposition to you and then I'll ask you a question on that. PTE Kovco, indeed any Australian soldier deployed overseas, would have an expectation if they were killed that they'd be properly repatriated back to their family in Australia. Would you agree with that proposition?---Yes, sir.

30

Again PTE Kovco had an expectation that the Australian Government who sent him overseas and its officials would ensure that if he was killed his body would be properly repatriated to Australia. Would you agree with that?---Yes, sir.

35

PTE Kovco would have an expectation that the Army chain of command - and I'm talking about the Chief of the Defence Force, Chief of the Army, right down to the private soldier level - would have in place a system and would ensure that if he was killed overseas his body would be properly repatriated. Would you agree with that?---Yes, sir.

40

Did you regard yourself as part of the chain of command, of PTE Kovco's chain of command?---Yes, sir.

45

Your responsibility was that of an escort officer?---Yes, sir.

5 I just want to ask you one question about the buddy system in your edited or redacted statement, which is Exhibit C106, paragraph 13. Do you have that in front of you?---Yes, sir.

The last sentence you say:

10 *At the time of the incident the platoon was employing the buddy system appropriately and in accordance with the OC's intent.*

15 Was the buddy system policed at all by you or anybody else?---Not specifically, sir. From my observations, there was no need to because my observations were that it was being employed correctly. However, if I had observed it not being employed correctly, yes, I would have policed it and made sure that it was.

20 Was there any spot checks done to see if the buddy system was being employed properly?---No, sir. From inside the guard box the unload point at the ECP can be viewed unless, you know, you're busy doing something else. Apart from that, no, sir.

25 What about on the roof?---No, sir. That was up to the individuals up there to ensure that was being done.

30 So you can't really say the buddy system was appropriately employed in accordance with the OC's intent, can you?---From my observations of working around the Embassy, that - obviously that statement is made from my observation, sir, and that's what I had observed.

35 You've told the Board that a number of soldiers expressed concern to you to identify Jake's body properly and make sure it was returned home? ---Yes, sir.

40 And that the American morgue - and I'm referring to Exhibit 104. Exhibit 104 consists of a statement made by you of two pages and then a series of questions and answers. On the third page of those questions and answers - it's not numbered unfortunately, but page 2, number page 2 in fact?---I believe I've got it in front of me, sir.

45 About the middle of the page there's a heading "Produce A Certificate". Can you see that?---Yes, sir.

Then down about four lines it reads:

Then it went into the fridge at TMEP.

5 That was the question. Answer:

Yes, on the 23rd I went back and saw it placed back into transfer casket. I opened it and made sure it was him.

10 When you opened it and made sure it was him, you were identifying Jake's body. Is that right?---Yes, sir.

Was that because of the concerns the soldiers had expressed to you?
---Yes, sir.

15 You've given an explanation as to the circumstances of the civilian morgue. But I want to put to you if the soldiers had some concerns and you in fact made an effort to identify the Board at the American morgue, why didn't you do that at the civilian morgue?---As it states in my
20 statement, I did make a, as the word is used, "cursory" identification of the body at that stage. As I've explained the circumstances, it didn't lead me to want to view it in specific detail, sir.

25 You've referred to Soldier 34. Do you understand that person was an officer?---Yes, sir.

Were they what's commonly regarded as a mover, a member of the Royal Australian Corp of Transport?---Yes.

30 What's your understanding of their expertise, a mover's expertise?
---Organising transport between places, et cetera, as I had explained.

That officer was present at the Al Sabah morgue?---Correct.

35 Did that officer approach you and offer any advice as to what you might or might not do and what you needed to do?---No, sir.

40 I think you've already told us that Mr Adams, the consular official, didn't offer you any advice at all?---That's correct, sir.

In your statement at paragraph 37 on page 7 you indicated there that you were very emotional, interrupted sleep. Did you feel any need to seek advice from either Soldier 34 or the consular official about what your role was or what you needed to do?---No, sir. At the time I was trying to keep
45 myself in a composed state and I thought that I was doing that. So I didn't

feel honestly - obviously I was incorrect. But I didn't feel the need to ask for any further directions.

5 To be fair to you, I think it's clear that you were confused as to what your role actually was. Is that a fair comment?---I think from my duty statement, sir, that I carried out the task on my duty statement, yes.

10 You're a Sergeant, then I assume you would accept that you have initiative as a Sergeant?---Yes, sir.

You didn't feel the need to do any more than you did?---Obviously in retrospect there is more that could have been done and my vigilance that I displayed at the Al Sabah mortuary was lacking and I take responsibility for that lack of vigilance, sir.

15 I have no further questions.

PRESIDENT: Thank you. LTCOL Wilkinson.

20 LTCOL WILKINSON: Sir, there isn't much left, but just a couple of matters.

25 COL GRIFFIN: Sir, I note the time and there is an exhibit that I've been waiting on advice for its availability. It occurs to me that it's a matter that should, if it's available, be observed by the witness before his Counsel concludes his questioning and indeed before I conclude my questioning. But I'm still waiting for the availability of that. Because it takes some time, could I ask that we adjourn now to resume tomorrow to conclude this witness's evidence and hopefully to have that exhibit available.

30 Are you comfortable with that, Colonel?

COL YOUNG: Yes, sir.

35 PRESIDENT: We'll take the adjournment now. Is there available to us ultimately a copy of this duty statement?

COL GRIFFIN: Yes, sir.

40 LTCOL WILKINSON: Sir, the only comment I'd make is that I'd be interested to know what arrangements were made for Soldier 2's flights and whether they are in hand and he can be finished off and placed on his plane.

45 PRESIDENT: Is it envisaged he's leaving tomorrow?

LTCOL WILKINSON: Yes, it is, I believe.

5 PRESIDENT: Any idea what time, Colonel? Or does he have any idea
what time?---Yes, I do, sir. 1845 is my flight. I need to be at the airport
two hours prior.

I think we'll get you there.

10 COL GRIFFIN: Perhaps if we resume therefore at not before 0930.

PRESIDENT: Everybody comfortable with 0930? Very well. We'll take
the adjournment.

15

<WITNESS WITHDREW

[1610]

20 **MATTER ADJOURNED AT 1610 UNTIL
WEDNESDAY 26 JULY 2006 AT 0930**

NTS