

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


1010 TUESDAY 1 AUGUST 2006
DAY 14

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.....  Date01.08.06.....(President)

Signed.....  .. Date01.08.06.....(Recorder)

Signed.....  Date01.08.06.....(Transcriber)

Signed.....  Date01.08.06.....(Transcriber)

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NTS

5 PRESIDENT: Good morning, Colonel.

COL GRIFFIN: Good morning, Mr President, Members. We resume in open session and I ask that Detective Inspector Hayes be recalled.

10 PRESIDENT: Thank you.

**<DETECTIVE INSPECTOR WAYNE GEORGE HAYES, recalled
and resworn [1011]**

15

<EXAMINATION BY COL GRIFFIN

20 COL GRIFFIN: Detective Inspector, I've asked that Exhibit 85 be placed before you. Do you have that in front of you?---I do.

You'll recall your earlier evidence that this is the certificate of analysis in respect of DNA testing that was done on various exhibits provided to the New South Wales Police and recovered during your investigation. Is that correct?---Yes.

25 Can I draw your attention specifically to the third page of the document and there the biologist who has conducted the testing refers to swabs - in the second-last paragraph in the first line refers to swabs of the slide of the 9 mm pistol and identifies that the DNA is a mixture?---Yes.

30 And goes on to say:

Which appears to originate from two individuals.

35

?---Yes.

40 Then the next paragraph the specialist refers to DNA being recovered from the swabs of the trigger of the 9 mm pistol and again indicates that it is a mixture which also appears to originate from two individuals?---Yes.

Going on to say that Jacob Kovco has the same DNA profile as the major component of this mixture?---Yes.

45 Then on the first paragraph on the next page the expert refers to the DNA

recovered from the swabs of the grip of the 9 mm pistol and again describes this as a mixture originating from more than one individual?
---Yes.

5 Now, Detective Inspector, on the table in front of you is Exhibit 5, which lists the matrix of personnel who are on operations overseas that have been referred to in this Inquiry. Could you just identify that, please?
---Yes, I have Exhibit Number 5.

10 Is it the case that you have recently been involved in the voluntary provision of samples by Soldiers 17 and 19 who appear on that list?---Yes.

When was that done?---It was done on Saturday, 29 July 2006.

15 Those members participated voluntarily in the provision of those samples upon their return from Iraq?---Yes.

Would you tell the Board the results of those tests, please?---Those soldiers have been excluded as being the contributors of the unidentified DNA. They are not the contributors of the DNA.
20

Would you tell the Board what effect that has on your investigation, please?---I now propose to travel to Baghdad, Iraq, and obtain voluntary samples from PTE Kovco's unit in relation to this Inquiry.
25

Thank you. In due course will you return to provide the test results of the Board?---Yes, I will.

Would you agree with me that I've asked you to also perform DNA sampling tests on the three magazines that were recovered and provided to you from the theatre?---Yes.
30

Will you be able to provide the results of that testing at the same time as the DNA sampling that you undertake from the remainder of the personnel in theatre?---Yes.
35

Thank you. I have no further questions, sir.

PRESIDENT: Thank you. LTCOL Wilkinson.
40

LTCOL WILKINSON: No, sir.

PRESIDENT: LTCOL Green.

LTCOL GREEN: Nothing, sir.
45

PRESIDENT: LTCOL Holles.

LTCOL HOLLES: No, sir, I don't.

5

PRESIDENT: LTCOL Berkley.

LTCOL BERKLEY: No, sir.

10 PRESIDENT: COL Young.

COL YOUNG: No, sir.

15 PRESIDENT: Before we part with the witness, can I ask you, Inspector, that's a very quick turnaround, is it not?---It is.

20 Could I ask you to express to the people who made that happen - it's obvious a lot of people made that happen from the people who took it to the laboratory, the people who actually did the testing and so on. Could you express to them the Board's very real thanks; we're very grateful to them?---It shall be my pleasure, sir.

Thank you.

25 COL GRIFFIN: Sir, I ask that Detective Inspector Hayes be excused.

PRESIDENT: Thank you, Inspector, you may stand down.

30 <WITNESS WITHDREW [1016]

COL GRIFFIN: Sir, I call Soldier 19. And MAJ Hyde will take the chair.

35 PRESIDENT: Thank you.

40 MAJ HYDE: Mr President, just to remind you where we got to with Soldier 19 on the last occasion he was giving his evidence from Baghdad. We tendered his written statement together with a record of interview from the New South Wales Police. I will now take him through his oral evidence.

PRESIDENT: Thank you.

45

<EXAMINATION BY MAJ HYDE

5

MAJ HYDE: Soldier 19, you were one of the roommates of PTE Kovco?
---Yes, sir.

10 I'd like to go straight to 21 April 2006, if I may, and ask you what time
you finished your shift that day?---1500.

When you finished your shift, where did you go?---Back down to the
accommodation.

15

Do you recall roughly what time you arrived back at your
accommodation?---It would have been not long after 1500 - 1505, 1510.

20 Did you go back to your accommodation in company with anyone else or
on your own?---From what I recall, on my own.

When you got back to your accommodation, was there anyone in the
room?---Yes, I believe it was - I believe Soldier 17 was already there.

25 Do you know whether PTE Kovco arrived at about the same time as you
and Soldier 17 or was that at some other time?---Yes, it would have been
around that time, sir.

30 When you first got back to the room, can you tell the Board what you
did?---I believe when we got back to the room, I believe we were talking
outside, me and PTE Kovco, about nothing in particular, general, having a
cigarette, and then proceeded going into the room where we discussed
going to - me and 17 going to do some PT.

35 Was it your normal practice to go with Soldier 17 to the gym after you
finished work each day?---Yes, sir.

Around what time did you plan to go to the gym?---We planned to go
about 1600.

40

Between about 1505 when you got back to the room and 1600, I'd like to
walk you through, as best you can recollect, what it was that you were
doing and PTE Kovco was doing and Soldier 17 was doing. What's your
first recollection after you got back to the room; that is, what were you
doing when you first got back there?---After outside having a cigarette

45

with PTE Kovco, we moved into the room and I remember the discussions we were having in general about old stuff we've done in the years prior in C Company together and - because all three of us were in the same platoon during those years. There was - I remember the music was playing and we were generally talking and I started - we were discussing the PT we were going to do and then things like starting to get changed for PT and the time went past, and instead we delayed it and decided to go at quarter past. The two guys were on the computer using their laptops, then - - -

5

10 Let me just ask you to pause there. Where was PTE Kovco on his laptop? ---Where was he?

15 Yes, where was he using his laptop from?---It was on the - on his - on the top bunk which was his, he usually had it up there and that's - and he was standing up using it generally, and I mean we were having conversations as well.

20 Is it the case that he had the top bunk and you had the bottom bunk in that room?---Yes.

At the stage that he was using his laptop, was Soldier 17 also using his laptop?---Yes.

25 Whereabouts was he positioned?---He was sitting on his bed, legs bent over the edge with the laptop on his lap.

30 Roughly in what position on the bed was he; that is, was he at the top end, the bottom end, the middle or some other position?---I would say the middle.

35 What were you doing at around the time that they were both on their laptops?---I was - as I say, I was getting changed for PT, but I mean it takes a - we were there for an hour or whatever so - - -

40 So would it be fair to say that you weren't in any hurry?---No.

At some stage did you get changed?---I was mid-way through getting - had my - took my boots off and put them over near my locker.

45 Whose music system was being used at the time?---I believe it was Soldier 17's.

Had he put the music on or had you, or had PTE Kovco; are you able to recall?---I can't recall now.

5 So you've decided and made arrangements to go to the gym with Soldier 17 and you've told the Board that Soldier 17 and PTE Kovco were on their laptop. Did you see PTE Kovco move away from his bunk and laptop at any stage?---When we were talking in general throughout that hour, yes, we had, like moved around - we had moved around the room, because I think - I'm pretty sure he was - he was emailing so obviously takes time to send and receive so we were talking and generally moving around, yes.

10 What is it that makes you say that he was emailing as opposed to simply using his laptop computer?---I would say he was emailing because he was talking about things with his wife, about a camera - a box he had sent over.

15 Are you able to recall what discussion, if any, he had with you and Soldier 17 about the camera that you've just referred to?---Yes. He was saying that he'd sent home a box and that his wife had opened it and he thought he'd been ripped off, there was nothing in the box. We were saying how he got ripped off and it was very unfortunate. Then he - then a little while later he said she wasn't looking hard enough, he found it - she found it, it was in the box; he was relieved.

25 It was because of that conversation that you believed he was sending emails to and from his wife?---Yes.

Roughly how long had you been in the room when that conversation took place?---At a guess I would say half hour.

30 Was music still being played in the room during the course of that conversation?---Yes, I believe it was.

35 Are you able to say whether PTE Kovco did anything else other than engage in that particular conversation, the conversation that you've already referred to, and using his laptop?---During the midst of all that I can't actually remember, but he had to have got changed out of his gear because we'd finished in full camps, full geared up, and he was in PT gear.

40 Can you describe whether there was any joking around at any stage going on in that room?---Yes, I would say in reference to our old company and bosses we had and things we'd done.

45 Was that before or after the conversation you've talked about that he had with his wife over the camera?---I can't remember honestly, sir. Maybe

it's in my statement. I can't remember.

5 You've said that there was some joking around. Can you describe in some detail the nature of that joking around?---Yes. We've had a lot of different bosses and that particular one we were talking about we - we're just making jokes amongst ourselves about how interesting he was a person and talking about the distances we'd walked and how out of control it was to anybody else who can understand how heavy some of the gear is. It was a happy, good conversation.

10 You've said that PTE Kovco was using his laptop and talking to you about the camera that he'd sent over back to Australia. Did he say anything else? And I'm leaving aside the conversation that you've just talked about with regards to the old boss. Were there any other conversations that you can recall?---Besides that conversation, with like places we'd been as well on certain exercises. No, apart from that, general conversation.

20 Was music being played from the time that you got back to your room until the incident, or what was the situation there?---I can't remember, sir, if it was actually on when I entered the room. But I definitely remember the band and the music was on for a while, for a - not just five seconds, but it had been playing for a bit of time.

25 The accommodation is fairly tight, there's not a lot of room in there. Would that be a fair comment?---Yes, sir.

30 Can you tell the Board about whether in order to have privacy amongst yourselves you tend to do your own thing on returning to the accommodation or can you just give a little bit of information about the set-up in those rooms and how you cope with very confined spaces?---Generally it's - at the end - because everyone in a room together will generally be on the same shift. So on return it's usually a custom to get out of all your sweaty gear and get into PT gear. So sometimes you'll just - me and - me and PTE Kovco would have been having a cigarette or something whilst 17 was getting changed or stuff like that. It's always a pain three people trying to do the same thing at once. You try and keep your gear in your parts of the area and your parts of the room. But, I mean, you're in a room with guys you get along with. So it doesn't get frustrating and you don't get angry at each other, but - so it's all good with us.

40 How would you describe your relationship with Soldier 17 and PTE Kovco? Were you friends, had you known each other for some time? Can you give some indication of that?---Yes, we were friends. We'd worked together in the same platoon over the previous couple of years.

And even when weren't over the 2005 and stuff you'd still see each other and you'd have a beer at the battalion and stuff like that. I would say got along very, very well.

5 Did you get to decide whether you'd share a room with a particular person or persons or were the rooms allocated?---The rooms are allocated to the Section Commanders to decide. They get - the Section Commander is given so many rooms and then from there generally the guys - you can choose who you'd rather be with and the Section Commanders are pretty
10 open about that.

Now, I want to ask you some questions about what you were doing, if I can use 15 minutes, prior to the incident. So if we go 15 minutes back in time from when PTE Kovco was shot. What were you doing at about
15 minute 15? Are you able to recall that, bearing in mind that you'd now been in the room for probably nearly an hour?---Yes. I would say at one stage I was on my bed looking at photos and then - so 15 minutes we're all in the room together, there was all three of us.

20 You say you were on your bed looking at photos. Was that what you just said?---Yes, at some stage before definitely I was on my bed looking at photos. Then whether it was 15, 10 minutes, I started to get changed.

What's the next thing that you recall in this 15-minute time frame?---I
25 remember taking my boots off and placing them over near my locker; and that's what I remember.

You have a specific recollection of taking your boots off and placing them in your locker. Is your locker near the end of your bunk?---No, the one at
30 the end of the bunk was PTE Kovco's and mine was the far - near the window.

So you would have had to have passed PTE Kovco to get to your locker. Is that a fair comment?---Yes.

35 Do you recall then coming back from your locker?---Yes.

Where did you go when you came back from your locker?---Towards the
40 fridge.

What was Soldier 17 doing at that time when you went towards the
fridge?---Still using his laptop.

45 Did you make any observation of PTE Kovco as you came back towards the fridge?---In my head, no. He was still there. I know he was there.

But nothing was out of the ordinary. He was still doing the same thing.

What was he doing?---Well, stood - as far as I remember, looking at the laptop.

5

At any stage whilst he'd been using the laptop on his bunk, had he moved away from that position?---From standing directly in front of the laptop using it, I would say when we were talking, yes. So he would have - he had to have to got - yes, moved away.

10

Can I ask you - and I know it's some time ago now - but if you have specific recollections, please say. If you don't, similarly, please say. Do you have any recollection of him moving away at any stage from the laptop? Can you picture that in your mind?---Yes.

15

What was he doing when he moved away?---That's when we were - a particular song came on and all three of us were singing it.

20

The three of you were singing it and what was he doing?---Jake was actually making a funny gesture and lifting his shorts up quite high to make as if his voice was reaching high.

25

How long before the shot was that occurring approximately? ---Approximately - approximately, I'm only - five to 10 minutes. But I'm not a hundred per cent sure on exactly how long it was.

30

Did PTE Kovco seem to be happy and in good spirits at that point in time when he was singing along to the song and doing the antics that you've just described?---Yes, definitely.

35

What's the next thing that you recall after that song being played and the three of you singing along to it?---I recall the - nothing out of the ordinary. The song finished and we were still carrying on a conversation, I can't exactly remember what it was. Yes, it was nothing.

40

Where were you when that song finished? Did you go anywhere?---Still in the room, sir.

I understand that but did you go anywhere in particular in the room or do anything in the room?---I would have started maybe get changed, I can't remember.

45

What were you doing in the minute or two prior to hearing the shot?---Taking my boots off.

Once you'd taken your boots off, did you go anywhere in the room?---Yes.

5 That is, were you at your bunk, were you at a fridge, were you at some other place?---When I actually removed them from my feet, I don't know where I was but I remember taking my boots over to my locker.

10 I now want you to go to the time that you heard the shot: where were you at that point in time?---I remember walking towards the fridge. I remember just opening the fridge and then the shot rang out.

15 When you opened the fridge, did you need to crouch down to do that or could you stand up and open the fridge?---No, you would had to have leaned over to open the fridge.

The fridge is a mini-bar styled of fridge or a standard fridge?---Mini-bar style fridge.

20 Do you know or are you able to say in what position PTE Kovco was when you kneeled down or bent over to open the door of the fridge? ---Right at that point in time, sir, I couldn't see him.

25 When is the first time that you see him after you've bent down at the fridge?---The shot rings out, sir, and I turn immediately around to my left because it gave me a shock, and I see him going - falling down.

30 When you say you saw him falling down, was he facing in a particular direction when you saw him falling? By that I mean, was he facing his bunk or was he facing toward the back of the room or toward the front of the room?---Just when he was falling directly down, I believed he was facing towards his bunk.

35 You say that he fell; did he crumple or did he fall forward or backward? Can you describe the fall that you saw and how much of the fall you saw? ---When I turned I just simply remember him not moving - falling in any direction besides straight down in a very - like awkward position, the way he went down was straight down. Just arms falling down by - in front of him, just collapsing, basically.

40 When you observed that and when you heard the shot, did you comprehend or understand what had happened? What was the first thing that came to your mind?---Was - the first thing that came to my mind was the noise was, it just gave us a shock, of turning. He hit the ground, he was in a very awkward position and our first reaction was - our first
45 thought was, "Holy shit," and "medic."

Prior to hearing the shot, did you see PTE Kovco holding his 9 mm weapon or not?---No.

5 At any stage from when you returned to the accommodation to when the shot rang out, did you see him handling the 9 mm weapon?---No.

If the witness could be shown Exhibits C32 and C36, which are the large photographs of the room. Looking at - - -

10 PRESIDENT: That's got a C classification, do you want that to be broadcast elsewhere?

15 COL GRIFFIN: I think the C classification can be removed from that photograph, sir. On reflection, the materials contained in it are not classified.

PRESIDENT: Very well; so be it.

20 COL YOUNG: Mr President, I just note there's a name on the bottom of it.

PRESIDENT: The name on the bottom might be a problem.

25 COL GRIFFIN: As you've previously indicated, Mr President, in respect of this particular document I think specifically that the name not be published.

PRESIDENT: Indeed.

30 MAJ HYDE: Soldier 19, looking at that photograph, does that show your accommodation?---Yes.

In that photograph do we see PTE Kovco?---Yes.

35 Is he the person standing by the bunk?---Yes.

Is that roughly the position that you saw him in when he was using his laptop?---Yes.

40 Is that roughly the position of Soldier 17 at the time you saw him using his laptop on the bed or was he at that point in some other position?---It roughly is, sir, he had his - I believe he had his legs folded over facing - folded over the bed though not lying down on it.

45

So he was seated on the bed but not in that position: is that your evidence?---Yes, sir.

Is that what you're saying?---Yes, sir.

5

Looking at that photograph, can you see the holster and a pistol?---Yes, sir.

Is that PTE Kovco's weapon?---I believe it is.

10

Is that secured on some part of the bunk bed?---Yes, sir.

If the witness could be shown Exhibit 86.

15

PRESIDENT: Again, the prohibition about publishing the name.

COL GRIFFIN: Thank you, sir.

20

MAJ HYDE: Looking at Exhibit 86, can you see an arrow pointing to the pistol in a photograph off to the right as you look at the photograph?---Yes, sir.

Can you describe for the Board whether that is a leg holster or a shoulder holster; are you able to say by looking at it?---It's a leg holster, sir.

25

Are you able to say whether PTE Kovco ordinarily used a leg holster or a shoulder holster?---I believe he used a leg holster.

30

Looking at that photograph, does that show the 9 mm pistol in the holster? ---Yes, sir.

Is it properly secured in that photograph; that is, is the holster done up? Are you able to?---Unable to say.

35

Is that - - ?---Actually, sir, yes, I can, there's a Velcro strap, just behind the hammer.

Is that done or undone?---It's done up.

40

Is that the only place that PTE Kovco used to store his 9 mm?---He may have stored it in other places, but generally, yes, that's where it hung.

Your bunk is under where PTE Kovco seems to be standing?---Yes, sir.

45

Now, did you at the time you heard the shot ring out - had you extracted

anything from the fridge? Do you recall whether you did or did not?---I don't believe I did, sir. I can't really recall, but I don't think I did.

I'm now going to show you a photograph of the inside of the room.

5

LTCOL BERKLEY: Could you say that exhibit?

MAJ HYDE: Yes, that is - - -

10 MAJ JOLLY: Exhibit 45.

MAJ HYDE: Looking at that photograph, Soldier 19 - and I'm not sure which is more easily accessible for you to look at, but there is a screen to your left. Is that your thong that can be seen in the room?---Yes, sir.

15

How did it get to that position?---I believe, sir, I possibly could have been wearing it or I placed them under my bed usually. I believe I was probably wearing it.

20 Was that your Coke can or are you unable to say?---I'm unable to say.

Do you know whether that can had been opened or not?---I don't know, sir. I can't recollect that.

25 I've finished with that photograph, thank you. Did you yourself have a 9 mm pistol issued to you?---When I arrived in country, yes, sir.

Did you have that at the Embassy?---No, sir.

30 Could you tell the Board what the usual process for having been issued with a weapon was and then in effect having it handed in or handed over to someone else for their use? Is there a particular procedure for that? ---Yes, sir. When we - sir, am I allowed to say the names of the places?

35 Yes, you can?---Okay. Our first experience in country was at Anzac Cove where everyone is issued a 9 mm as well as their primary weapon where I had one and - - -

40 Can I ask you to pause there for a moment. I'll ask you to confine yourself in your evidence to the actual process, not the numbers of weapons that are issued or not issued. So in other words, just the process for you in terms of the issue of the weapon?---Okay, yes, sir. When I moved from the Cove to the Embassy I handed in my 9 mm to my Platoon Sergeant.

45

Was there any paperwork associated with that process?---Yes, the Platoon Sergeant has that paperwork.

5 When you went to the Embassy is it the case that you no longer had your 9 mm?---That's right, sir.

Are you able to say whether Soldier 17 had a 9 mm at the Embassy?---I believe he did.

10 At some point after the incident you went back into the room?---Yes, sir.

What was the purpose of you going back into the room?---To get my weapon and CBA.

15 Did you retrieve any other items in addition to those two?---Yes, sir, some toiletries.

Anything else?---A set of camps.

20 When you went back into the room do you recall seeing the 9 mm, that is, PTE Kovco's 9 mm, pistol?---I believe I would, yes, sir.

Again I'll ask you if you can recall and you have a specific recollection, say. If you don't, similarly?---Yes, sir.

25 You do recall seeing the 9 mm?---Yes, sir.

Are you able to recall whether the ejection port was face up or face down?---I can't recall, sir.

30 Did you touch anything in the room, that is, anything other than the items that you've just referred to?---No, sir.

35 When you went back into the room were you accompanied or unaccompanied?---I was accompanied.

By reference to the matrix that you have, can you identify who it was that accompanied you?---Soldier 2.

40 Did you observe when you went back into the room any other person touching or moving any other items?---I can't recall who it was exactly, but Soldier 2 was there. But we had to retrieve some items to send back for the family.

45 When you say "we", was Soldier 17 with you when you went back into

the room?---He could have been, sir. I can't remember.

You don't recall that?---It might be in my statement, sir.

5 Now, this question might seem unrelated to anything. But did both you and Soldier 17 have a moustache at the time or at some point when you deployed to Baghdad?---Yes, sir.

10 If the witness could be shown Exhibit 45, and in particular, the photograph of the fridge door. Looking at that photograph are you able to see any part of a fridge?---Yes, sir

Are you able to say whether that door is opened or closed by reference to that photograph?---It's open, sir.

15 Looking at that photograph, are you also able to identify two thongs?
---Yes, sir.

Are they your thongs or someone else's?---No, they're mine, sir.

20 Did you open that fridge door?---Yes, sir.

Were you wearing your thongs when you opened that door?---I can't recall that, sir, exactly.

25 In terms of the wearing of dog tags, was it your usual practice to keep those on at the end of the day or was that an item that was ordinarily removed?---We were meant to keep them on, sir, but in actual fact you would take them off to have things like showers or you may have taken them off.

30 If the witness could be shown the still photograph of the ballistics report; that is, the 3D depiction of the room. Soldier 19, this particular 3D diagram indicates the trajectory of the round that passed through PTE Kovco's head. It identifies the position that he would have been standing in at the time the round was fired. Is that the position that you saw him in when you first looked up as he was falling to the ground?---No, sir.

40 Perhaps if we could have a slightly more overhead view. We can approach this from different angles so it may appear different, depending on what angle is adopted, are you able to say whether that was roughly the position that he was in when you looked up?---When I turned around, sir, from where the fridge was, no, I wouldn't say his back was towards me.

45 Where would you say his back was or in which direction would you say

he was facing when you looked up?---The way the person is standing now, I would have said turn more to the right, about 30 degrees.

So slightly more angled towards the bunk bed?---Yes, sir.

5

When you heard the shot and looked around, is it the case that he was already in the process of falling; that is, would it be fair to say you didn't see the entirety of the fall from when the shot sounded?---That's right, sir.

10 What percentage of the fall to the ground do you think you in fact saw? ---Fifty per cent.

I have nothing further at this point, sir.

15 PRESIDENT: Thank you. COL Wilkinson?

LTCOL WILKINSON: No questions, sir.

PRESIDENT: LTCOL Green?

20

LTCOL GREEN: Thank you, sir. Sir, can we go to closed session with Soldier 19? My questions to Soldier 19 are purely directed towards degrees of weapon readiness, manning points and SOPs.

25 PRESIDENT: Which are, in the main, classified.

LTCOL GREEN: Yes. There is an OPSEC matrix but it's horribly confusing to speak in the OPSEC matrix, particularly when you're crossing two or three borders.

30

PRESIDENT: Or would you be comfortable to reserve your right to cross-examine at a later time after we've closed the Board?

35 LTCOL GREEN: Sir, I'm happy to wait another time if there's going to be general closed session.

PRESIDENT: Everybody comfortable with that, to deal with it later?

COUNSEL REPRESENTING: Yes, sir.

40

LTCOL HOLLES: Sir, I would be grateful for a brief adjournment, there's a couple of issues I wish to raise with my clients. I'm happy to wait the cross-examination of my learned friend LTCOL Berkley rather than inconvenience the Board, but there are a number of issues I just wish to confirm.

45

PRESIDENT: LTCOL Berkley, would you like to proceed now or would you also like a short adjournment?

5 LTCOL BERKLEY: I'll proceed, thank you, sir, if you don't mind.

PRESIDENT: Yes, thank you. Does that suit you?

10 LTCOL HOLLES: Yes, it does, no problem.

<EXAMINATION BY LTCOL BERKLEY

[1101]

15 LTCOL BERKLEY: Soldier 19, I'm LTCOL Berkley and I represent Shelley Kovco on my right. I believe you know Shelley?---Yes, sir.

20 Shelley is particularly interested - and isn't the only person who's particularly interested in how Jake died; do you understand that?---Yes, sir.

25 That photo that was blown up, it's over there on your right-hand side, do you recall when you took that photo?---I recall we hadn't been there very long, sir.

Would that have been, say, weeks before?---No, sir, I'd say a day or two we'd been actually at the Embassy.

30 So prior to Jake's death that was some weeks before?---Yes, days and days before.

When you were at the Embassy you all moved into that particular room - that's you, Soldier 17 and Jake?---Yes, sir.

35 So that was your room during the entire time you were there at least while Jake was alive?---Yes, sir.

40 What you've told us is that there was some music playing; we've heard a great deal about that in the Inquiry so far. Do you recall the name of the song at all?---Yes, sir.

What was the name of that song?---Dreams.

45 Was it a song that Jake particularly like or disliked; how would you put it?---We all thought it was an okay - it was all right song.

It was all right?---We all knew the chorus.

5 Does it have any falsetto, very high pitched singing in it?---Yes, sir.

Is that when Jake was pulling up his pants?---Yes, sir.

10 So we've got a situation - how would you describe Jake's mood whilst at least the song was on?---Happy, joyous.

Had Jake had any noticeable change in personality whilst you were at the Embassy?---No, sir.

15 Had he had any noticeable change of personality since your days in C Company?---No, sir, he's still the same guy.

I think at the beginning of each year you do suicide awareness courses? ---Yes, sir.

20 How many would you say you've done?---Five, sir.

Was there anything that you knew about your comrade Jake Kovco that would have given you any concern that he may have committed suicide? ---There is no way, sir, that that man I knew was anywhere near committing suicide; there is just no way.

25 Thank you. I suppose then the shot ringing out would have been a great surprise to you?---Yes, sir.

30 How long prior to the shot did the music finish?---I believe the iPod which the music was playing on was actually still going. But that song you mean, sir?

Yes?---It could have been a minute or two, a couple of minutes, sir. I'm not sure.

35 So that particular song "Dreams" had ended. Had Soldier 17 shifted position from his bed and using his laptop in say the last maybe 10 minutes before the shot rang out?---I don't believe he did, sir.

40 When you were engaging both Soldier 17 and Jake in conversation, was the conversation offhand in that you weren't particularly looking at each other or was it direct conversation where you were actually looking and addressing the person who you were talking to?---During the conversation, sir, I'm sure we looked at each other in general. But then

45

again it's so small that not at all times was I having eye contact. But we were talking and you can very much hear each other.

5 I suppose the next thing is this: we've had a look at the room. Was the room always kept in roughly the state depicted in the photo?---Yes, sir.

10 Where was your gear? Obviously you've got a double bunk. You've got your combat equipment and you've got your rifle. Where did you keep yours?---Me and Jake both kept our rifles by the side of our bunks. My boots and camps up on my locker at the rear. CBA, my webbing and CBA detached from each other. I would always keep at least my webbing in the room, sometimes put the CBA outside. The webbing would be either up near my locker or under my bed.

15 Where did Jake keep his?---Same sort of deal, at the end of the bunks is where I'm sure his CBA was attached to the webbing. But at the end of the bunk with a helmet.

20 We've seen some photos taken on 21 May and when you look at say the bottom bunk there is gear lined up at the floor along the bottom bunk. Is that your memory of what the gear would have been at that time or at others?---Yes, we had our bags stored under that bed and then I think some of Jake's gear was there at the bottom of the bunks roughly. I think, like, reference to the photo, the helmet there, I think that's - in other photos you might be able to see it more clearly, but I think that's CBAs hanging on top.

You're talking about the end of the double bunk?---Yes, sir.

30 In relation to Jake's pistol, does that photo depict where it was normally stored?---Normally stored, yes, sir.

35 We've heard about a shoulder holster. Do you recall Jake using a shoulder holster at all?---I don't recall him wearing a shoulder holster. He could have though, sir. I don't know.

40 Do you recall whether just to your knowledge if any of the other soldiers may have preferred a shoulder holster or used a shoulder holster?---In the past, yes, sir.

But what about at the Embassy?---Sir, I'm unsure. I would say at the Embassy because of the work you do and shift work, no, because of the CBA, every time you - - -

45 Exactly. So what you're talking about I think here for us all is that your

combat equipment, particularly your body armour, is bulky and makes a shoulder holder impracticable, doesn't it?---Yes, sir.

5 So on 21 April, to your recollection, Jake's pistol was at the end of the double bunks and hanging over one of the I suppose post or legs at the very end there as described there?---On the actual day, sir, I can't physically say I saw it hanging there. But yes, I would generally say that's where it was.

10 That's generally where it was?---Yes.

But we don't know it was there on the day?---No, sir.

15 I think MAJ Hyde has already asked you to do this. If you can remember, tell us, if you can't remember - - -?---I can't recall, sir.

That obviously leaves open the implication that it could have been somewhere else such as on the bunk itself. Would that be something that Jake might do?---I can't - I don't - I can't say, sir.

20 Had you ever seen him store the pistol say on the bunk?---No, sir.

25 It's always the way that when you see things daily you don't take all that much attention of them and later on an incident occurs and you're going to be asked do you remember; we appreciate that. Do you remember whether that photo depicting Jake - and that's the photo up there - whether that also depicts where Jake would have been on 21 April 2006 just before the shot rang out?---Yes, sir.

30 Now, when we had a look at Exhibit 45 we had a look at - that has a number of photos in it and one of them of course has the fridge door that you were asked to identify. Do you see that?---Yes, sir.

35 If that fridge door was opened and you were at that fridge looking in you'd have to have been very close to Jake. In other words, in physical dimensions you would have to have been very close to Jake if he was where you remember him to be when the shot rang out. Do you understand that?---Yes, sir.

40 Are you a person that is situationally aware of what's around you, particularly if someone is close up behind you? Are you that sort of person?---Yes, sir.

45 So when you walked past Jake to get to the fridge, how do you put it? Did you think when you were bending over was he still very close to you?

---When the actual shot rang out itself, sir, I knew he wasn't standing where he is in that picture. Because of the way I had to turn and see him full on he's further back from the bunk.

5 When you say "further back from the bunk", is that towards the opposite wall or towards the window?---Towards the opposite wall. If you took where he is there and take a step back, just because if I turned and seen him where he was standing in that picture; that's a lot closer.

10 Is your memory of what you saw affected at all by the 3-D presentation of the trajectory that you've just seen?---That's definitely - that's slightly different, that 3-D image. But no, it doesn't change what I saw.

15 Now, you just prior to the shot being heard you'd moved to your locker, which is the second locker along from the end of the double bunks. Is that correct?---Yes, sir.

You've placed your boots in or about the locker?---Yes, sir.

20 You've walked to the fridge. Is that correct?---Yes, sir.

Would you have had to have altered your body position to get around the seated Soldier 17?---No, sir.

25 You could have walked upright and without deviation past 17 and past Jake to get to the fridge?---Yes, sir, maybe slightly changing direction to get around Jake.

30 It's not like getting onto a crowded bus or train where you have to move to the side?---Yes, no.

But you will admit you were in close confines there in this room?---Yes, sir.

35 When you went past Jake where was he?---Similar to that position in the picture.

40 Just for the purposes of the record, that's Exhibit 86 that we're looking at. Were you moving particularly slowly or particularly quickly to the fridge, or at an amble; how would you describe your speed of movement?---I would describe it as, maybe because of the limited room, just quite normally, definitely not in a hurry, and I wasn't crawling.

45 On your pacing, just your normal pace - and I also concede that that might change if you're in a smaller environment, your pace might be a bit

shorter, but how many paces long was that double bunk, on your pacing?---The length of the double bunk?

Yes?---Three or four.

5

Three or four paces. Just say Jake's pistol was at the end of the bed at the time, after you passed Jake's pistol, one and a half, two paces to get to Jake and pass him?---Yes, sir.

10 How many then to the fridge?---Same again - two, three.

You were moving continuously, you didn't stop at all?---No.

It was your intention to go to the fridge at that time?---Yes, sir.

15

When you got to the fridge, do you recall whether you opened the door and knelt, or knelt and opened the door? Do you know what I'm talking about there?---Leant to open the door.

20 Did you actually take a knee, to use that expression?---I don't believe I did, sir, no.

From the time that you passed Jake at the bed to the time that you got to the fridge, what are we talking about, what sort of time estimate is there?
25 ---Passing Jake to getting to the fridge, three to four seconds.

Is that to the shot rings out after passing him or to the time you open the fridge door?---Open the fridge door.

30 Have you got a watch on you?--- Yes.

Does it have a second hand?---Yes.

35 Just think; pick a moment on your watch and think of you just walking at that pace and you're passing Jake and then you've gone passed him, two steps, open the fridge door. What does your watch say in seconds?
---Four seconds.

40 How long are you at the fridge when the shot rings out?---Not very long, sir, seconds.

You turn to your left, I think you said?---Yes, sir.

45 Are you still in a crouched position?---Me?

Yes?---Yes, sir.

How loud was the music at the time?---Loud for the small set of speakers that it was on.

5

You are familiar with the sound of the slide of the 9 mm going back and cocking the weapon?---Yes, sir.

Did you hear that sound?---No, sir.

10

Would you have heard that sound?---I believe I would have, sir, yes.

Are you familiar with what's been called silent cocking?---Yes, sir.

15

Have you ever seen Jake do that?---No, sir.

Have you seen Jake mishandle weapons?---No, sir.

20

If someone said that Jake had been cautioned by one of his superiors on a previous occasion about the use of the pistol, would you have recalled that?---No, sir, I've only, due to the media, heard that since.

You haven't seen it?---No, sir.

25

So Jake is at the bunk when you pass him and within seconds, literally seconds, a shot rings out and you turn to see Jake falling?---Yes, sir.

30

The 3D representation with the trajectory of the bullet, the suggested trajectory, is that clear to you that Jake would have actually been, say, at least up that end of the bed as depicted in that trajectory?---As far as the length of the bed is concerned, yes, around that - down that far end of the bed, yes.

35

I'm grateful to MAJ Jolly for flashing that up, perhaps we could have a little bit of a look at that. You see on that representation he's towards the foot of Soldier 17's bed and also the foot of the double bunks away from the door; would you agree with that?---Yes, sir.

40

You notice there that there's what appears to be a cupboard at the end of Soldier 17's single bunk?---Yes, sir.

45

We've seen some photographs of what appears to be blood spray in the bottom of that cupboard as it gets to the foot of Soldier 17's bed. Have you seen that? Do you know what sort of area I'm talking about?---Yes, sir.

5 Where did Jake's head fall? When you first saw him, where did his head fall?---The way he fell, sir, the thing I - I can only remember where his head fell, his face side wasn't facing me. Towards the foot of the bed and that cupboard at the foot of the bed, directly in there.

When Jake fell, do you remember the position of his feet?---Feet?

10 Feet?---No, sir.

If we go back to the fridge door photograph again, Exhibit 45, there's just something I want to point out there?---Yes.

15 See where you've got the fridge door there?---Yes, sir.

Just that wider view again, MAJ Jolly; thank you very much. You see what looks to be Soldier 17's rifle at the foot of his bed?---Yes, sir.

20 Do you see what appears to be his laptop on the bed?---Yes, sir.

Do you see some extensive bloodstaining looking at that photo to the left of the foot of Soldier 17's bed?---Yes, sir.

25 There is another photo in which there is more extensive bloodstaining, probably in the area below the site?---Yes, sir.

30 Having regard to when you first saw Jake when he had fallen, I'm not talking about the way down, when he's actually on the ground, where was his head?---Below the site.

Below the Styre. Would that be below, say, the site of the Styre or something further on?---The site.

35 Below the site of the Styre. Now, I understand that both you and 17 quickly moved to Jake?---Yes, sir.

You're a combat first aider?---Yes, sir.

40 You'd look for things like pulse, clear airway, stem the obvious wound?---Yes, sir.

Is that part of your training?---Yes, sir.

45 When you went to Jake, what did you first do?---The first thing was his face was facing away from me and we - the first thing - Soldier 17 was at

the head and I said we had to straighten out.

5 So when you're saying his head was facing away from you, there's another representation. Do you see that second - looking at that - - -?
---Yes, sir.

It's that pool of blood with the spray pattern at the end of the - - -?---Yes, sir.

10 Is that Jake's initial head position somewhere around there?---Yes, sir.

Is he facing towards that wardrobe or away from it?---His face was facing towards the wardrobe.

15 You couldn't get at his airways or his neck to feel for a carotid pulse at that stage I take it?---That's right, sir.

Where was Soldier 17 at that stage; do you recall?---Yes, sir. He was at the head.

20 When you said he's got to be straightened out, what was the reason you wanted to straighten him out?---To get to his airways.

25 How did you do that?---Supporting the head and the wound. Soldier 17 had the control of the head and I've - we straightened out his legs and moved the body so it was easier to gain access to his airway.

In which direction did you move the legs?---Towards the door.

30 You see, we have looking at that photo the large pool of blood on the right; see that?---Yes, sir.

Is that where Soldier 17 was holding Jake's head?---Yes, sir.

35 Did you remain at Jake's feet until help arrived or did you move; what did you do?---Initially, sir, when he was brought out into that other position, I can't remember who opened the door. The door was open. First aid dressings were being passed in but we swapped positions. So I took control of the head.

40 Do you recall - and use the matrix if you do recall, but use the matrix anyway. Can you remember who was first in the door?---No, I don't remember who was first at the door. There was people at the door. I believe that there was - Soldier 21 was at the door but soon to enter the room was Soldier 4.

45

Just looking at that photo that's depicted there right now, you see that area of staining down around the fridge door?---Yes, sir.

5 Do you know what that staining is from?---No, sir.

What I'm looking at is if that fridge door is open would you have had it open more widely? Did it open more widely? Is that the extent of what it opened? I'm trying to put your position, your body position, in that photo.
10 Do you understand what I'm trying to do?---Yes, sir.

Tell me about that fridge door. Could it swing wide open?---Whether it opens all the way around to touch its outer door - outer edge - I'm not sure, but it's open pretty wide there. Generally I'd have to open it, be
15 standing - to be looking in leaning over, but, like on the left - as it is there on the left-hand side of the open door.

Do you see where your thongs are?---Yes.

20 You see that they're in their standard left-right position. Does that assist you at all as to the position you were in when you heard the shot?---No, sir. I probably would - I can't actually remember, sir. I would have been around probably more to the left looking in.

25 Now, in relation to that trajectory, is it something that you could accept just from your memory of the incident that that was the actual bullet's trajectory?---Is that the trajectory?

30 What I'm asking you is you've seen a representation of the trajectory of the bullet. It's on that line?---Yes, sir.

That's made by people who examine those sorts of things. Anyway, that's a representation. No-one is saying that it is definitely what happened, but it's their best representation of that?---Yes, sir.
35

Do you accept - and I heard what you said about when you saw Jake falling about halfway through the fall or estimate - when you saw 50 per cent of the fall - you would have put him 30 degrees more to the right as far as head position and body position?---Yes, sir.
40

Would you accept from what you saw that that trajectory fits with what you saw?---Well, yes, sir, if it's possible that that is the trajectory, I'm sure that's correct. It's possible that he turned when I'm looking at him; yes.
45

You didn't shoot Jake, did you?---Sorry, sir?

You didn't shoot Jake?---No, sir.

5 Soldier 17 didn't shoot Jake?---No, he didn't, sir.

You didn't see the shot?---No, sir.

10 I'm glad that's out of the way. I'm going to ask you this in relation to Soldier 17: we saw a depiction of his laptop. He tells us that the laptop was on his knees as he's sitting on the bed; okay?---Yes, sir.

15 He describes moving the laptop to the left and placing it down. Just on that basis, that would put him quite near the foot of the bed?---Right, sir.

Does that accord with your memory?---I'm unsure where he moved the laptop, sir. I wasn't looking at him, but yes, that would - sounds generally to me.

20 What we want to move onto now is the immediate aftermath?---Yes, sir.

Did you travel with Jake on the gator?---Yes, sir.

25 When you got to the American hospital, were you allowed to remain there?---Once they'd moved him in the ER, no, sir.

You of course at some stage came back to your accommodation room? ---Yes, sir.

30 Were you allowed access to that room when you came back?---Initially first time I can remember going in there was with Soldier 2, because I had to go into Soldier 12's room to get some gear of his to wear.

35 So Soldier 2 says you've got to get something or did you ask to get something? What was the circumstance; do you remember?---Initially, sir, by the time we had to move back to the hospital again I had my weapon. So yes, I - I think I - to go back up to the hospital you always go up there with weapons. So yes, we've come down and Soldier 2 was there when we went - I remember I - he was there when I had to get my
40 weapon.

Jake was a good mate of yours?---Yes.

45 I suppose I could imagine but I'll ask, like I'm about to ask some other questions. What were you feeling at the time when you went back into the

room?---I didn't really want to look at the floor, sir. I was more thinking I wanted to get back up to the hospital.

There is blood on the floor?---Yes, sir.

5

There is shell dressing that you've applied in your attempts to aid Jake. Were you conscious of them when you entered the room? I mean, were you conscious of touching anything?---No, sir, I wasn't.

10 When you saw the pistol, was that when you came back into the room?
---Yes, sir.

So during the initial attempts to save Jake, did you see the pistol then?
---No, sir.

15

But it was in close proximity to you, you'd agree?---From the photos, yes, sir.

You just didn't see it?---No, sir.

20

When you saw it on the second occasion I think MAJ Hyde asked you did you know whether the ejection port was up or down and you said you just don't recall. But do you recall whether it was out on its own, I mean, whether it was touching anything else other than the floor such as any other gear?---The thing I recall about it, sir, is that the silver barrel was sticking at the end. That's how I remember and it was pointing, the direction it was pointing, because I remember thinking that if - I said, you know, I don't want it to go off again or go off. And Soldier 2 just said it can't because the barrel is sticking out, it had stoppage.

25

30

He said that to you in the room?---Sorry, sir?

Did Soldier 2 say that to you in the room?---Yes, sir.

35 When you got your gear, were you concerned that there would be any blood or other material on your gear?---Yes, sir, eventually.

What happened there? Did you look for it? Did you clean it? Did you do anything to your gear?---My gear, the main thing was that when I grabbed my stuff there wasn't - I'm not sure what - if anything was on my thongs and stuff. But my gear was - my gear was clean.

40

Was your gear stored further towards the refrigerator?---My weapon, yes, and I can't exactly remember where my CBA was, but yes, it wasn't over the other side of the room.

45

When you first went back to the room you were with Soldier 2 when you entered?---Yes, sir.

5 Did you observe anyone else go in or out of the room?---No.

You didn't observe any photos being taken in the room?---To tell you the truth, at that time I had different things on my mind.

10 Soldier 17, was he around when you went into the room?---I can't recall, sir.

About how long after the shooting did you return to that room?---Half an hour, sir, 20 - half an hour.

15 The general mood of the accommodation lines, what was that like? ---Mood?

20 Yes, the general mood at that time?---Shock, and the blokes wanted to get up there.

25 Was that the only time you went back to that room?---I'm sure, sir, that time - I don't think it was the same time we grabbed some gear to send home. I don't think it was. Soldier 2 would know. It could have been, like, later when there was more - we'll get some gear to send home.

30 That's what I want to ask you about because we've spoken to Soldier 2 of course. There was a little bit of an inquiry going on. Well, not inquiry, a search for a letter or something like that of Jake's to Shelley. Do you recall something along those lines?---Not actually a letter. The thing I was looking for, sir, was he was writing a story. That's what I - that's - - -

35 Did he tell you what was in those stories as he was - - -?---He read out a story. He read out some of it. It was totally fiction, like, it was a story he made up. He said he was trying to - he was going to write a book.

Did you know that he kept a journal?---No, not a diary, sir, no.

40 But he had at least read you parts of a story he was writing?---Yes, sir.

45 As a fellow, did you find Jake was one who commonly sat down with a pen in hand or did you observe that? I don't want you to guess, just from what you observed?---During the nights that he read he was into his books and that. He loved hearing stuff about special forces and so forth. So as far as intellectually, yes, I think he - and he likes reading and writing

stories, he was going to write that book. So yes, I do think he liked sitting down and writing.

Talk about his family much?---Yes, all the time.

5

Did he talk about his family in pleasant terms or other than pleasant terms?---Always, always happy, always talking about something Tyrie has done and how Shelley was he going. He was happy about having another baby. He was just always positive, never negative.

10

There's just a couple of issues we've got to go through now and that's the repatriation. You got to say farewell to Jake at the hospital?---Yes, sir.

After they turned the life support off you remained with Jake, you and the other boys?---Yes, sir.

15

When Jake passed away, you then filed out of the hospital?---Yes, sir.

I do appreciate this is an emotive time but what I'm mostly interested in is when were you told that you were to take any part of the repatriation? ---That day, later on we got told there was a Blackhawk coming to pick him up and I think I was asked - yes, asked if I would like to be one of the blokes to put him on the chopper, and of course, yes, we went. Then, I think it was either later that evening that they had started to talk about how we were going to get him home and it sort of wasn't even asked, it was known that we were going to take him the next day, or there started to be organisation about how - who was going to take him.

20

25

Was someone clearly in command of the repatriation, to your knowledge? ---When we were still at the Embassy, when all the names were being taken, that went through the - - -

30

Soldier 2?---Soldier 2 and Soldier 33, sorting out what was going on there, and then further in to the repatriation was - Soldier 2 was looking after us as he's a more senior rank, and then above him was more people in Kuwait who would have been giving him orders and he passed them on to us.

35

I want to get to when you got to Kuwait and the morgue, the civilian facility. I believe the repatriation party, escort, honour party, whatever you want to call it, you were driving around in a minibus?---Yes, sir.

40

You were in civilian clothing?---Yes, sir.

Were you allowed into the morgue itself?---No, sir.

45

5 Was anyone allowed into the morgue?---We were get back from the rear of the ambulance and even, from what I remember, the female captain that was there, I can't remember who she was, and Soldier 2 were at the rear of the - it reversed up to the door, the rear of the ambulance, and we weren't allowed in.

10 What I'm asking is: when you weren't allowed in, was that as a result of military direction or as a result of civilian direction?---We were told to stay back by our seniors and I'm sure they were told that we could not come in by the civilians.

15 Did they convey that to you that they had been told you couldn't get in? ---No, we're told not to do something and that's - - -

All right. I think when the casket, the misidentified body, was put on the plane, you escorted it to the airport?---Yes, sir.

20 But you weren't allowed to put it on the plane itself?---No, sir.

Do you recall who the casket was handed to?---When - - -

25 Not so much names but any organisation, to actually load it on to the aircraft?---No, sir, we followed the ambulance to the airport and from there they said, "Not allowed to go into the airport," and so Jake went in and we didn't, we had to drive down the road a fair distance so I didn't see who they handed it. It was the civilian contractors.

30 When you heard how there had been a bungle with the identification of the body, what was your feeling then?---We were raged and really, really, really, really disappointed.

35 I just want to take you back to the room for a second in the aftermath of the shooting. Do you recall whether you turned Jake's laptop off?---No, I don't recall doing that, sir.

40 Do you recall seeing Soldier 17 in your room at some stage in the next 24 hours after the shooting?---In our room - unless he was in there with me and Soldier 2, no, I don't.

It's just that you don't have any recollection?---No, sir.

Were you kept apart? Were you and Soldier 17 kept apart?---No, sir.

45 So it's just the way it worked out?---Yes, sir, we - from there we stayed in

different rooms due to the manning and bed spaces and all that stuff but we weren't kept apart, physically told no, not to speak to each other.

5 Were you asked for a formal account of what happened by an officer doing what's called a quick assessment?---Yes, sir.

Is that officer on the matrix there that you've got? I don't think he is.

10 COL GRIFFIN: I don't believe he is because that's - - -

LTCOL BERKLEY: No, I didn't think so either?---No, sir.

15 But do you recall how long after the event you were asked questions by that officer?---I can't recall exactly, sir, he was the first one to ask us.

Days, weeks?---Days.

20 Obviously after the shooting, I would imagine - and correct me if I'm right or wrong - that he was asking you what happened?---I had - directly at the hospital Soldier 4 asked me, straight after, and then from there - no, blokes didn't come up says, "What happened, what happened?" because they knew that - they knew there was more, blokes were broken. No, they didn't come up and ask, "What happened, what happened."

25 They were broken?---Yes, they were very.

Would you describe that for us?---They were missing their mate.

30 Thank you for that, I've got no further questions.

PRESIDENT: I wonder whether, before we go to LTCOL Holles, this might be an appropriate time to take that adjournment?

35 LTCOL HOLLES: Yes, sir.

PRESIDENT: Yes, we'll take the adjournment.

40 **ADJOURNED** [1149]

RESUMED [1213]

45

PRESIDENT: Thank you, ladies and gentlemen. Thank you, LTCOL Holles.

5 LTCOL HOLLES: Thank you, sir. Soldier 19, my name is LTCOL Holles and I appear for PTE Kovco's parents. As at the afternoon of 21 April when you came off duty, could you just tell us again, please, the sequence of people who came back to the room within your accommodation lines?---The sequence of people I believe - I believe
10 Soldier 17 was already there. I believe PTE Kovco was already there. I can't picture myself entering, but us three were in the room together and nobody else was there.

15 So your belief is that the sequence in which you arrived in the room was Soldier 17, PTE Kovco and then you. Is that correct?---Yes, sir.

Did you arrive at the same time as PTE Kovco?---No, I don't believe I did, sir.

20 Had they removed their CBA or their webbing by the time you got into the room?---I believe CBA, but I can't remember, sir.

25 Did they have their boots off or anything like that by the time you got into the room?---When I first got in the room I don't know, sir. Is that information, sir, that could be in my statement?

I'm asking your recollection today?---Okay. I don't remember, sir.

30 Did anybody else come into that room at any stage that afternoon between the time when you got into the room, the other two already being there, and the time at which the shot was fired?---No, sir.

So you were in the room on your own in that period of time. Is that correct?---Yes, sir.

35 Was the door closed or open? That is, the door to the outside of the accommodation closed or open?---Closed, sir.

40 In the photographs you can see what looks like a curtain or a screen over the door. Was that there all the time or was that simply on that occasion? ---The curtain, sir?

No, it's not in that photograph?---The door?

45 Yes?---No, sir, that wasn't there.

So it's been put there after the incident. Is that correct?---Yes, sir.

5 Just going to the statement making process by the Military Police, can you indicate what or how that statement came into existence? If you don't understand the question, please tell me?---I don't understand the question, sir.

10 The Military Police asked you to come into a room. Is that correct?---Yes, sir.

Did they have a laptop or some other recording device in the room?---A recording device with the MP Sergeant who interviewed me?

15 No, it won't be on the list. It's SGT Hession?---Yes, sir, I don't believe it was recorded.

20 So what was the process? Did the MP ask you questions and you gave answers and then he typed a statement? Is that the way it worked?---Yes, sir.

25 Were there any parts of that statement which basically he typed without you having to make much of a contribution towards it?---A lot of the initial introduction part he said to me just my name is, he read out my name. "I am part of this unit." That was already in there.

So that was already there, was it?---I believe it was, sir, yes.

30 What about the details of courses you'd attended and so forth; was that there?---I'm not sure, sir.

Do you recall him specifically asking you questions about that sort of detail?---Yes, sir.

35 Were there other bits of it that in fact weren't your own words but something that he'd typed for you?---I would say it's not quoted word for word the way I speak compared to - but everything that is in there yes, was what I was saying.

40 But the words are not always your words. Is that what you're saying?---I don't speak like that, sir, so yes, that's what I'm saying.

45 I think the expression sometimes is used that it was "formalled up" for your signature?---The information in it were questions asked and I answered.

Go specifically to paragraph 25 of your statement of 1 May. I just want to read something to you:

5 *An American padre was also present and he led us in the Lord's Prayer.*

Do you remember that line being in that statement?---Yes.

10 Were they your words?---No, sir.

How did they come to be there; do you know?---I believe it would have been along the questioning of, was - how many people do you think were in the room. I said there was also us and them - and an American padre who said prayer.

15 Do you know what the Lord's Prayer is?---Yes, sir.

But you don't remember saying it was the Lord's Prayer?---No, I would have said the Our Father.

20 What do you understand by the term "alternative cocking"?---Yes, sir.

What do you understand by that term?---Alternative cocking is putting a round into the weapon individually instead of loading the magazine on it and cocking the working parts.

25 Is it also called "silent cocking"?---Yes, sir.

30 Where did you first hear about that?---When did I first hear about silent cocking?

Yes?---When I joined the Army, sir.

35 It's something that's talked about quite a lot among soldiers?---Yes, sir.

A frequent topic of discussion in fact, especially in relation to a 9 mm? ---No, sir, the only thing I was really aware it could be done really was the Styre.

40 With the Styre?---Yes.

You weren't aware it could be done with a 9 mm?---No, I've never seen it done, sir.

45 Have you ever seen somebody load the weapon and - sir, does the witness

have provision to the degrees of weapon readiness matrix or not?

COL GRIFFIN: Not before him at the moment, but it can be put before him, if you wish.

5

LTCOL HOLLES: That would be helpful, sir. Do you have before you the degrees of weapon readiness, the nick-named matrix?---Yes, sir.

10 Have you ever seen anybody go to Newport and then simply allow the hammer to go forward under control?---Yes, sir.

That happens, what, frequently?---No, not frequently, sir.

15 But it certainly can be done?---It can be done, yes, sir.

And you've seen it done?---Yes, sir.

20 You gave evidence earlier today that you believed that at the time that the shot was fired PTE Kovco was facing towards his bunk?---Sir.

Can you explain, please, what's the basis of that belief?---To when I turn and see him falling to the ground.

25 So at the time you passed him where was he standing?---At the bunks facing towards the laptop.

30 At the time you turned back after hearing the shot where was he standing, or collapsing, I should say?---Directly back from the bunk, probably one and a half, two paces.

Where was he facing?---When I turned around and saw him?

Yes?---Falling to the ground facing towards the bunk.

35 You said that the noise gave you a shock?---Yes, sir.

You described it in your statement as being like a cap gun?---Yes, sir.

40 Can I suggest to you that in a closed confined room a 9 mm round discharged would have made a noise slightly larger than a cap gun?---A cap gun in a confined space would have made probably that similar sound.

Have you ever fired a blank round in a closed room?---Yes, sir.

45 Louder than that?---Yes, sir, Styre, yes.

Pardon?---556, sir, yes.

5 The round that you heard that afternoon was quieter than a Styre blank round. Is that what you're saying?---Yes, sir.

About the same noise as a cap gun. Is that correct?---Yes, sir, cap gun in a small area like that; yes.

10 At this stage the music is still playing?---Yes, sir.

Loudly?---Yes, sir.

15 And the noise over the top of the music was like a cap gun?---Yes, sir.

Might the witness be shown Exhibit C45, which is the photographs. Just go through to the one of the bloodstains, please. Can we just hold it there, please. You see that bloodstain at the foot of Soldier 17's bed?---Yes, sir.

20 Was that where PTE Kovco's head first landed?---I don't believe so, sir, no.

Do you recall his head being in that position at any stage?---Yes, sir.

25 When was that?---When we were treating him, I believe his head would have been around that area.

30 Can you perhaps just move to the next photograph showing the area; thank you. You'll see in that picture another bloodstain?---Yes, sir.

That's located approximately centrally to the foot of the bed, Soldier 17's bed?---Yes, sir.

35 Is that where his head landed when he first fell?---I believe so, sir, yes.

There's a line of blood between the two and that's where you've moved; is that the way it's worked?---Sir.

40 Would you agree with me that, if that's where his head has landed when he's first fallen, he must have been much further over towards where Soldier 17 was sitting on his bed than in the centre of the room?---Sorry, sir, do you mean rather than the centre of the room?

45 Yes?---Closer towards Soldier 17's bed?

Yes?---Which is about one and a half to two paces back from the bunk, yes.

5 We're not talking three or four paces between the bunk bed and Soldier 17's bed, are we?---No, sir.

There's not that much distance in the room?---There's not that much space.

10 No. Two decent paces would cover it, would it not?---Two decent paces, yes, sir.

So at the time you saw him falling to the ground, he's located basically almost at the end of Soldier 17's bed; is that correct?---Yes, sir.

15 Where was Soldier 17 at the instant you saw PTE Kovco falling to the ground?---On his bed, sir.

How far away from PTE Kovco was he?---About a metre.

20 Could he have been closer than that?---A metre, roughly, sir. Could he have been closer; yes. He could have been further away too, I don't know.

25 He could have been almost at the end of his bed, could he not?---He wasn't - not right at the end, I don't think so, sir.

When you say you don't think so, could you just explain what you mean by that, please?---I believe he was three-quarters of the way down the bed, just sitting on the bed generally. I don't know exactly how far away from him he is.

30 Could I suggest to you that he was sitting almost at the end of the bed? ---You could suggest that, sir, yes.

35 Would you say that's impossible?---Nothing is impossible - no, I don't believe it's impossible, sir.

Do you think it's likely?---I don't know, sir.

40 You don't know. So is it fair to say that your evidence is that he was somewhere on the bed towards the foot of the bed but you're unsure of his precise location?---Yes, sir.

45 It's certainly possible he was sitting quite close towards the end of the

bed?---It's possible, sir, yes.

And therefore he must have been very close to where PTE Kovco was as he fell?---Yes, sir, if he's that close to the end of the bed.

5

It's your belief, is it, that as the shot rang out, to use your expression, Soldier 17 was still sitting at the foot of his bed?---Still sitting on the bed, sir, yes.

10 Did he have anything in his hands?---A laptop.

Did you see where the laptop went?---No, sir.

Do you know where Soldier 17 had his 9 mm pistol?---No, sir.

15

Was it visible?---No, sir.

Did he ever store it in a condition where it was, to use the expression, on display or out - -?---No, sir, actually I - originally I - when someone asked me, I didn't even think he had one but then, later on, he had one, I know he had one but I don't know where he kept it.

20

You don't know where he kept it?---No, sir.

25 Do you know what happened to that pistol after that night?---No, sir.

Could 74, please, be put up, which is the 3D of room 8. Perhaps if it could be tilted so we've got a bird's eye view of it. You agree with me, don't you, that what's missing from that diagrammatic representation in 3D is the location of the bar fridge?---Yes, sir.

30

That would protrude, in terms of the bunk, what, about a fifth, a quarter of the way up along the length of the bunk?---Yes, sir.

35 It's located approximately, in terms of the space between the bunk and the door, about a third of the way towards the edge of the door?---Yes, sir.

You agree with those?---Yes, sir.

40 If you accept that Soldier 17 is sitting towards the end of the bed and you're approximately a quarter of a way down the double bunk - do you agree with that - at the time you're leaning in to the fridge?---Yes, sir. Just exactly where he's sitting, Soldier 17?

45 Yes?---I would say between halfway and the end of the bunk itself - the

end of his bed itself.

Did you pay any particular attention to him?---No, sir.

5 You agree, don't you, that with a trajectory as it's shown there, PTE Kovco is facing basically with his back to you?---Yes, sir.

And that he is close to the end of Soldier 17's bed?---Yes, sir.

10 How tall are you?---175 centimetres.

PTE Kovco is, what, about 10 centimetres taller than you?---Yes, sir.

15 How tall is Soldier 17, roughly?---About 175.

So PTE Kovco is significantly taller than both of you, about 10 centimetres taller than both of you?---Yes, sir.

20 When you passed him to move to the fridge, was he standing upright, much as he is in that picture behind you?---Yes, sir.

You say that you saw him for about 50 per cent of the time that he was falling?---Yes, sir.

25 Did it appear to you - and if you can't answer the question, please don't speculate - he was falling from his normal height?---Yes, sir.

30 So he was standing?---It appeared to me he was falling from his normal height although he wasn't standing at his normal height when I actually saw him.

Obviously, but it wasn't as though he was halfway towards the ground when the shot rang out?---No, sir.

35 He was standing upright as the shot rang out, as best as you could make out, because he'd crumpled somewhat but not entirely by the time you were able to see him.

40 Sir, I note the time, I've got somewhat of a way to go. I'm just wondering if - - -

PRESIDENT: If this is a convenient time for you, we'll take the adjournment.

45 LTCOL HOLLES: It might be, sir, I'm about to move on to another topic.

You don't believe he had one?---He wasn't using it at the Embassy.

You did of course see the leg holster quite frequently?---Yes, sir.

5 Indeed, if you look at the picture behind you, the picture you took, you'll see a holster on the edge of the bed in the position you've described, that is, the top left-hand side of the foot of the double bunk as you look at it? ---Yes, sir.

10 There's a pistol in that holster in the picture you've taken?---Yes, sir.

That's a leg holster?---Yes, sir.

15 Do you know where PTE Kovco kept the magazines for the pistol?---No, sir.

Are you issued with a couple of magazine pouches, or one pouch containing two magazines?---Yes, sir, I'm issued one in country; yes, there are spots to put magazines.

20 Is that on the leg holster or on a separate pouch that's issued?---I believe it's on the leg holster, on the black one we're issued in country.

25 Can you see on that holster there where the issue magazines would go?---I can't see it on that picture, sir, no.

I think you're evidence - sorry, I'm just being shown a slightly close-up version of that. Can you see on that where it would have gone?---No, sir, I can't see it.

30 Do you agree with me that your evidence earlier today was that PTE Kovco generally put his holster in that location on the bed?---Yes, sir.

35 I just want to read you a statement, paragraphs 4 and 5 to be precise, of a statement made by you on 4 May 2006 to SGT Hession, where you say this - para 4:

40 *I can recall that PTE Kovco always placed his 9 mm pistol within his holster on the frame of the double bunk at the foot of his top bunk directly adjacent to the foot end of Soldier 17's bed. A holster and pistol were always placed in this position when PTE Kovco was not wearing it.*

45 Para 5:

I can further recall that on 21 April 2006 that after we -

5 PTE Kovco, Soldier 17 and you completed your piquets at 1500 you believe that PTE Kovco placed his holster containing his 9 mm pistol in the same position on the bunk bed frame.

10 *I did not specifically see or notice the pistol belonging to PTE Kovco had a magazine on the weapon within the room, and if I was aware I would have immediately spoken to PTE Kovco and informed him to make the weapon safe.*

?---Yes, sir.

15 Do you recall making that statement?---Yes, sir.

Do you agree that as at 4 May 2006 your recollection of the particular day was much fresher in your mind than it might be today when you're giving evidence?---Yes, sir.

20 Did you have a look at that statement before you gave evidence today? ---Did I have a look at it today? No, sir.

25 So is it your position that what you've written in that statement on 4 May is a more accurate statement or assertion than what you've said today in Court?---Yes, sir.

It's relatively easy with the 9 mm pistol to see if there's a magazine on it, isn't there?---Yes, sir.

30 It's something that would catch in your eye as a person trained to use the 9 mm pistol if it had a magazine on it?---Yes, sir.

35 You say in your statement at about 1555 hours Soldier 17 started to play music from his iPod and you believe the band was The Cranberries and all three of you were singing along with the song being played?---Yes, sir.

You were still on your bed at that stage?---Yes, sir.

40 When did you move off your bed?---After I'd finished looking at some photos. Yes, that's all I can remember, sir.

45 Where did you go between the time you moved off your bed and the time you went to the fridge to get the drink out?---To take my boots off. I can't remember if I took my boots off I was sitting on my bed or if I took them off standing up, but I took my boots off in between.

5 So the sequence is that the music comes on, you at that stage were lying on the lower bunk. Is PTE Kovco at that stage standing towards the end of that bunk on the laptop?---Yes, sir.

10 So he's basically quite close to where you are on the bed. Is that correct? ---Yes, sir.

15 You've swung your legs out and gone and got your boots off?---Yes, sir.

20 Did you still have your DPMS, that's your disruptive pattern material, trousers on at that stage?---Yes, sir.

25 Did you change out of those before you went to the fridge to get a drink? ---No, sir.

30 So you've got your DPMS on and your socks on. Is that correct?---I've taken my socks off as well.

35 Where did you take your boots off physically in location to the end of the double bunk?---I don't know, sir, I can't remember.

40 Did you have a stool or something like that in the room to do it on?---No, sir.

45 Was there any chairs at all in the room apart from - - -?---No, sir.

50 So there's no chair for the little desk at the end of Soldier 17's bed?---No, sir.

55 So you've taken your boots off. Is the singing going on at this stage?---I can't recall, sir. I don't know. Probably would have been seeing as this is - I believe that song on the album is within the first couple of songs, if not the first one; so, yes.

60 Was "Dreams" the only song that you sang along to?---That we sang along to? Yes, sir, that's all - yes, what I remember, yes, sir.

65 Neither Soldier 17 or PTE Kovco was singing to any other songs?---Not singing - if they were I can't remember, but not in the way that we were singing that one.

70 You've indicated that PTE Kovco was pulling his shorts up and singing in a falsetto voice?---Yes, sir.

Where was he when he was doing that?---I would say if - moving over towards Soldier 17's bed towards - still towards like the base of it, but more towards the middle of the room.

5 So he's in the middle of the room at that stage?---Yes, as I said, we were moving, you know, moving around from side - from time to time. I can't exactly remember who moved what where. But yes, he was - he wasn't standing where he's standing in that picture, he's standing back.

10 At that stage you're standing up with him?---Yes.

Is this before or after your boots come off?---I think it's before, sir.

What about Soldier 17, where is he?---He's still using his laptop, sir.

15 Was he singing along?---Yes, sir.

So both you and PTE Kovco in this relatively small space between the double bunk and the locker and the other - - -?---Bed.

20 - - - bed. Is that correct?---Yes, sir.

You've indicated that he was doing what might be characterised as a bit of a jig. Were you doing the same?---No, sir, I wasn't pulling my shorts up like that.

Was he moving around as he's doing this?---He's standing up just doing it in gesture. No, he wasn't jumping up and down, not moving around dramatically, but he physically had to be moving.

30 Did Soldier 17 ever look up or did you ever move close to Soldier 17?---I remember he was there, sir, but I can't remember. We were all singing.

Did you ever see PTE Kovco move closer to where Soldier 17 was?---From where he is in that picture, yes, all three of us would have been closer to Soldier 17, yes - two of us would have been closer.

Soldier 17 just kept his head down on the laptop?---Whether he looked up or down, sir, I don't know.

40 You weren't paying any attention?---No.

But he was singing along with the song, was he not?---Yes, sir.

45 So you'd presume that he was not able to sing and type at the same time.

So chances are he's looking up. Would that be reasonable?---Yes, could be, sir.

5 Now, right up to the time that you hear the discharge of the firearm the music continues to play, doesn't it?---Yes, sir.

There's no attempt made to turn down the volume?---No, sir.

10 Was it loud to the stage where it was painful on your ears?---No, sir.

Loud at the stage where you expected somebody to bang from the room next door and tell you to cease and desist or words to that effect? ---Apparently it was, sir.

15 Did you hear anybody do that?---No, sir.

Were you talking loudly?---Talking loudly, not as loudly as we were singing.

20 Talking above the music?---Yes, sir.

Making quite a bit of noise?---Yes, sir, not outrageously where - I don't think they'd be able to hear us talking. I knew they'd probably be able to hear us singing and we didn't really care.

25 Just as a matter of interest, do you normally wear gloves when you're working where this happened?---No, sir.

30 Do you have gloves on issue to you?---What kind of gloves, sir, like surgical gloves or - -

Kevlar gloves or surgical gloves or - - -?---No, sir, I don't.

35 Nomex gloves?---No, I used to have them. I haven't been wearing them over there at all.

40 Other people have them?---I think people have them issued and have them, yes, but physically your hands get probably too sweaty and, no, I don't wear them. Many people I know don't.

Certainly you have access to them in the room if you needed them? ---Nomex gloves?

45 Any sort of gloves?---I don't. Yes, there would be. If Soldier 17 or Jake had any, there would have been. I don't know if they did.

Did you at any stage hear somebody say words to the effect, "What have you done"?---No, sir. After the incident someone asked me what happened, yes.

5

No, immediately after the shot rings out, did you hear somebody call out, "What have you done"?---No, sir.

10

Didn't hear that at all?---I may have said what's - what's happened, but no one said to me, "What have you done?" no.

You didn't hear anybody else say, "What have you done"?---No, sir.

15

You gave evidence earlier that you would have heard the click of a hammer moving back?---The weapon being cocked by the slide.

Yes?---Yes, sir.

20

Or the hammer being moved back to a position in which it could be discharged?---The audible click of the hammer, I think I would have heard it, yes.

LTCOL Berkley asked you the question, "Did you shoot Jake?" You responded, "No." The situation is, is it not, that you didn't see Jake shoot himself, did you?---Did I see?

25

You didn't see Jake shoot himself, did you?---No, sir.

30

It follows, as a matter of logic, does it not, that you can't say that Soldier 17 didn't shoot him either, can you?---I can say that, sir, yes.

Why?---Because I know he didn't shoot him.

35

But that's intuitive rather than anything you've actually seen or heard, isn't it?---No, sir, I would definitely say no, he didn't shoot him. It's impossible.

Why?---Because he was sitting on his bed.

40

But you couldn't see anything that was going on, could you?---I couldn't see when I'm facing the fridge, sir, is that what you're saying?

Yes?---Yes, okay - no.

45

I'm not suggesting for one second that Soldier 17 shot him; I'm simply

trying to establish the fact that you could not see what happened; do you understand?---Yes - no, sir. Yes, I understand.

5 All right, fine. Did you see Soldier 17 move the laptop to his left as he got off the bed?---No, sir.

I'd like to ask you now a series of questions about access to the room. As you've indicated to the Court, you're a trained combat first aider?---Yes, sir.

10 I think the situation is that Soldier 17 initially had PTE Kovco in his lap, for want of a better word, his head in his lap?---Yes, sir.

Then you moved to that end where PTE Kovco was lying?---Yes, sir.

15 Did you move PTE Kovco then or later?---We moved him at the earlier, earlier then.

How long after he'd fallen did you move him?---Five to 10 seconds, sir, pretty quickly.

You moved him from the position where the first bloodstain is in that photograph over to a position closer to the end of the bed; is that right? ---Yes, sir.

25 The edge of the bed, I should say, not to confuse you?---Yes, sir.

Were you part of the group of soldiers who moved him on to the gator? ---Yes, sir.

30 Did you carry the stretcher or did you continue some other work on him as you were going out?---I think I was holding his head, sir, so I - I can't recall, sir. I was definitely there with him. I think - I'm pretty sure I was holding his head on to the gator.

35 By reference to your matrix, are you able to say where Soldier 4 was at that stage? Just have a look at the matrix and see if you can establish where Soldier 4 is?---He was definitely with us, sir. I can't remember who was actually carrying the stretcher. He was there with us.

40 Who was the first person in the room after the incident happened, by reference to the matrix, please?---I remember seeing Soldier 26 either just entering - he was definitely passing us in first aid dressings.

45 Is he a trained combat first aider as well?---Soldier 26, I don't believe he

is.

Didn't you have first field dressings in your kit?---Yes, sir, in the shirt - - -

5 Ran out of them or didn't have them, or what? Couldn't get to them?
---The first thing was I think to physically, with hands, he had his hand -
Soldier 17 was trying to stop - - -

10 The bleeding?---With his - just his hands. Our first reaction was - the
doors opened, I don't know who opened the door, but just yelling for
"Field dressings, field dressings," while we actually were with him on the
ground.

15 So you didn't have a chance to get to the field dressings; is that what
you're saying?---Yes, sir.

PTE Kovco was moved fairly quickly from where he was laying there out
on to the gator; is that right?---Yes, sir.

20 How long would it have taken, do you believe?---To get the stretcher in
there from when it actually happened?

Yes?---A minute, sir.

25 How long was it from the time that you've heard the shot to the time when
Soldier 26 puts his head around the door?---Twenty, 30 seconds, sir.

30 Just to re-emphasise the point, he was the first person into the room; is
that correct?---To actually enter the room - I know Soldier 21 was
standing outside as well when it happened. Which one of them entered, I
don't know. Sir, I just - the thing I remember was field dressings coming
in.

35 Did either of those people actually come into the room?---I believe 26
may have entered the room to pass us the actual field dressings.

40 How did you get him on to the stretcher, how did that happen?---Securing
his head - I had his head, guys had - one guy had the torso and someone
else had the legs, I can't remember who.

You mustn't have had very much room to move in?---No, there's not
much room.

45 So how did you get the stretcher into the room?---No, no, the stretcher
was outside, we had to physically pick him up.

You carried him out of the room?---Yes.

5 On to the stretcher outside the room?---Yes, sir. Yes, I'm sure that's how
- picked up, yes.

What, three of you carried him out and put him on the stretcher?---Yes,
sir, I believe so.

10 So it would have been you, Soldier 17 and somebody else?---Yes, sir.

Do you remember who the third person was?---No, sir, I can't remember.

When you got back to the room after going to the hospital - - -?---Yes, sir.

15 - - - what was the room like?---It was in - just there was - - -

I'll go back another way, it's possibly an unfair question. Had anything
been touched in the room, as best as you could see?---Not as - no, sir, I
20 didn't even think about it.

I'm sorry, but is your answer not that you could see or that you didn't
have enough recollection of what the state of the room was in when you
left to say whether anything had been touched?---Yes, I wouldn't - that's
25 right, sir, I wouldn't have known.

You wouldn't have known if something had been touched?---No, sir, I
wouldn't have known.

30 Did you notice if anything was missing from your kit or anything like
that?---No, sir.

How long after you carried PTE Kovco on to the gator were you back in
the room?---It could have been anywhere between 20 minutes and 40
35 minutes. We were up at the hospital for a while, then I got sent back
down.

Who sent you back down, if necessary, by reference to the matrix?---Yes,
40 the US medical persons there said we needed someone of - one of our
bosses. There was only two of us up there at the time when we took him
on the gator, which is me and Soldier 4. Then I ran back down to the
lines.

The gator was driven by US personnel?---US personnel.

45

So there's only you and Soldier 4 up there. Is that the situation?---Yes, sir.

Do Soldier 3 and 4 remain in your chain of command?---Do they, sir?

5 Yes?---Yes.

10 You came back down and what happened then? Did other people go up or did you speak to one of the people in your chain of command and they directed people to go up, or how did it work?---I went down looking for either for Soldier 2 or Soldier 1, told Soldier 2 that he needed to go up there to the hospital. I believe I went down and into Soldier - my Section Commander's - I had to get changed. Soldier 12, sir.

15 You told Soldier 12 something had happened?---They knew something had happened.

20 At that stage did everybody go back up to the hospital? When I say "everybody", did a group of 10 or 12 of you go back up to the hospital? ---Eventually - initially I can't remember when Soldier 1 got to the Embassy itself. But the next report I got was from Soldier 1 telling me what was going to happen and that we should walk up - go up to the hospital as a group.

25 How long after you'd come back from the hospital did that happen?---I don't know, sir.

How long after the shot had been fired did that happen?---20 minutes, sir. I'm only guessing.

30 That's fine, it's all right. So the sequence is the event happened, you go to the hospital. About 20 minutes or so later you come back and then at a later point in time you go back up to the hospital?---Yes, sir.

35 When you came back to your room, was it sealed, locked, secured in any way?---I'm unsure, sir. I know that - no, sir, I'm not sure about what it was.

Did you have any difficulty with getting into your room?---No, sir.

40 There wasn't an armed guard on the door or something like that?---When I had to go back in there Soldier 2 had to come with me.

45 Is that when you come back from the hospital 20 minutes later?---Yes, it's before - yes, and before I go back as a group because I had my weapon then.

Was Soldier 17 still in the room at that stage?---No, sir, I don't believe where - I don't believe he was in the room and I don't know where he was because - - -

5 He didn't go up to the hospital with you, did he?---Initially, no.

Is it the situation that when you got PTE Kovco out onto the gator there was only two of you who went up to the hospital with him?---Yes, sir.

10 Have you seen Soldier 2 between the time that you put PTE Kovco onto the stretcher and the time you got him on the gator?---Yes, sir.

Where was he at that stage?---I think he was - I don't know if you call it controlling or - we were moving from the stretcher to the gator; he was there.

15 He managed that move, for want of a better word?---Yes.

Was he back at your room when you came back from the hospital?---I can't recall, sir. I don't know if he was standing outside, but he was definitely at - - -

20 Did he give you any instructions about going into the room or touching anything or anything like that?---No, I can't remember that, sir.

25 What's the next time you go back to the room?---After I got my weapon?

Yes?---Think Jake had passed away and then we went back down and - if it was that night we put him on the helicopter. Whether it was before or after we put him on the helicopter, we had to get - there was - they said grab personal items and he was there, people were there then. We didn't just waltz in and waltz out. People were watching. I'm sure Soldier 2 was there.

30 When you say people waltzing in and waltzing out, there was somebody there to stop people going into the room. Is that the case?---Yes, I believe Soldier 2 wouldn't let people just walk in.

35 Was the door locked or anything like that?---At that stage no lock, no.

Was it sealed in some way?---The only thing I noticed was there were stickers put on the door eventually. I don't know when though, sir.

40 You don't know if they were on there that night?---No, I don't know, sir.

45

You've described a curtain we've seen in pictures. Was that on the door at that stage or did that go on later?---No, sir, I think that went on later.

5 Your evidence was that you didn't see the pistol originally when you were treating PTE Kovco on the floor?---Yes, sir.

10 What's your first recollection of seeing the pistol?---It was when I was in there with Soldier 2 and I remember the way it was pointing, saying - I remember thinking it was unsafe and he said, "We can't touch it."

At what point is that?---I believe it's when we were getting some personal items for Jake.

15 Do you have any recollection of Soldier 2 moving the pistol while you're working on PTE Kovco?---No, sir.

When you say no, you have no recollection?---I have no recollection.

20 Could it have happened?---Could have happened, sir. I don't know.

You don't recollect it?---No, sir.

Just excuse me a moment, please.

25 PRESIDENT: Certainly.

30 LTCOL HOLLES: My friend, LTCOL Berkley, asked you a number of questions about the quick assessment officer speaking to you. Do you remember those questions?---Yes, sir.

Do you remember the quick assessment officer talking to you about what happened?---Yes, sir.

35 Do you recall how long after the event did the quick assessment officer talk to you?---No, sir. I just remember he was the first one, sir.

40 Somebody from the hierarchy who had a discussion with you. Is that your recollection of it?---Yes, sir.

Did anybody ask you at any stage to write down what had happened very, very close to the time?---No, I don't remember anyone asking me in a particular, sir.

45 So nobody said to you within 24 hours, "Look, please write down

everything you can remember about what happened"?---I can't remember, sir.

5 When you spoke to the quick assessment officer did you sign a document with him?---Sir, I can't remember. Is that - I don't know if that document is there.

I'm just asking you as a general question. Remember signing anything with him or not?---No, sir, I can't remember.

10 At the time you made the statement to the service police did you have access to any material or anything you'd written or anything like that? ---Access to material, anything I'd written, no, sir.

15 I'll be specific. Were you shown any photographs or any documentation before or during making your statement?---No, sir, I can't remember.

Do you remember being interviewed by New South Wales Police?---Yes, sir.

20 In all the time that you knew PTE Kovco he was a particularly skilled and careful individual when it came to the use of weapons, wasn't he?---Yes, sir.

25 Did anybody at any stage tell you not to discuss what you'd seen with another person?---At the stages of being interviewed yes, I think - yes, I got told a couple of times, like, not to discuss - - -

30 Your evidence, but that's after the interview with the Military Police or interview with the state police, New South Wales State Police?---I think both, sir.

You did of course discuss what had happened with Soldier 17 on a number of occasions, didn't you?---We described - we talked about it with each other, yes.

40 How many times did that occur, would you think? Can I say it's not a criticism, it's just a reality?---Yes. We both had - we both sat down and - sitting in Kuwait when we were taking him home and tried to just - tried to - - -

Piece it together?---Piece it - basically, and we knew from media reports that things were being said that were incorrect or - and things - so we, you know - and we both sat there and said, you know, we knew that Jake didn't commit suicide. We just had to tell - we just had to say to each

45

other, you know, we know that. That's what we were discussing, you know, we know.

5 Did you discuss details of what had happened in the room before?
---Details of?

Where you were sitting, where he was standing?---No, sir.

10 Not at all?---No, sir, it didn't matter. We didn't discuss it because it really didn't matter. We didn't think that it was relevant. We were more concerned about the family and taking him home, getting the right person home and things like that, not discussing the particulars in the room.

15 Sir, I committed an indiscretion that I called a particular individual by name. I ask that be altered on the record.

PRESIDENT: Indeed, to be referred to by matrix name.

20 LTCOL HOLLES: Thank you, sir. I have nothing further.

PRESIDENT: COL Young, do you wish to cross-examine now or do - - -

COL YOUNG: I'm happy to proceed now, Mr President.

25 PRESIDENT: Thank you.

<EXAMINATION BY COL YOUNG

[1423]

30 COL YOUNG: Soldier 19, my name is COL Young. I appear to represent the interests of PTE Kovco?---Yes, sir.

35 During LTCOL Holles' examination he read a paragraph to you, or two paragraphs I think, out of your Military Police statement. I just want to go back to that. That's the Military Police statement of 4 May. The final sentence of paragraph 5 there reads as follows:

40 *I did not specifically see or notice that the pistol belonging to PTE Kovco had a magazine on the weapon within the room, and if I was aware I would have immediately spoken to PTE Kovco and informed him to make the weapon safe.*

45 Do you remember saying that?---Yes, sir.

5 Knowing Jake as you did, what do you expect he would have done if you'd seen the magazine and drawn it to his attention? What do you think he would have done?---Exactly what would have happened is I would said, "Jake, you've got a mag on your weapon, mate," and he would have said, "Shit, I didn't know," taken it out and he would have - he would have taken the magazine off the weapon, cocked the weapon and ensured it was clear.

10 He would have done it there and then?---Yes, he would have.

He wouldn't have bothered going to an unload bay?---No, because we were there and he knew what he was doing.

15 Your situation, you only had the one weapon?---Yes, sir.

You knew what you were supposed to do when you came off duty before you got into your accommodation block. You went through a certain procedure to make the weapon safe?---Yes, sir, depending on where I finished that day.

20 Yes, indeed. As we know, Jake had not only his Styre but also a pistol?---Yes, sir.

25 Is it your recollection that he wore that on his thigh?---Yes, sir.

Given your experience of being there and knowing Jake, are you able to give us - what do you think happened? How do you think his pistol in a loaded state was in his room?---In a loaded state within the room?

30 Yes?---It's a question of - I believe that Jake would have known, if he picked it up - if he cocked the weapon in the room, I think he would have known so I think he's had it on him when he's come in the room, and because it hasn't been unloaded at some stage, he hasn't remembered when we got in the room that it had a mag on it and the round was in the chamber. That's how I think - because if you cock that weapon - Jake, Jake in the room, Jake would have known. You can tell by the slide moving forward.

40 All right. The buddy system: you're familiar with that?---Yes, sir.

Is that important, do you think?---Do I think?

45 Do you think, yes, your personal view?---I think that it has to be incorporated some times.

5 What do you think is the purpose of having a buddy system?---I think at
certain points, if you are coming out of the back of a lav where you've
been out doing a task or you're on edge, your blood is pumping and you
come back into a facility, you need to unload. The buddy system can be
10 incorporated by someone standing there just noticing that the mag is off,
weapon has been cocked, round has ejected, the weapon is clear. When
you come off a position where you're at load or you're at unload and you
need to have a buddy there watching you, I don't - I don't think you need
a buddy. That is me, and I'm a private. It can create overkill on your
15 weapon status.

20 Do you think one of the benefits might be that if a soldier simply forgot he
was carrying a pistol, he might unload his Styre but forget to unload his
pistol because the buddy system might pick up that and say, "Hey, mate,
15 you forgot your pistol"?---It could, sir, yes. Can I say something about
that, sir, with the buddy/buddy system?

20 Yes?---If I'm coming into this building and I unload my weapon but the
rules are that the buddy/buddy system has to be done before I walk outside
from here, at unload, and I walk into the building just next door there, and
the rules are that every time you enter a building you have to clear your
25 weapon, by rights the buddy/buddy system is - my buddy has cleared me
here, I simply walk out that door to walk next door and, by the rules, I
have to find another buddy, bring him over and unload me again. That's
how it is perceived it would work, and that's what I mean by overkill.

You can see the benefits of it?---I can see the benefits, sir, yes.

30 You think there might be some practical problem implementing?---Yes.

If we just move to the repatriation of Jake's body. In your affidavit that
was taken on 14 June 2006, paragraph 16, you said:

35 *I went out to a US morgue. Soldier 4 said to Soldier 2 at the US
morgue to check that it was actually Jake because stranger things
have happened.*

Do you recall that?---Yes, sir.

40 Can you recall who raised the concern that, "We better check it's Jake"?
---Soldier 4.

45 Had that occurred to you that there could be a mix-up?---Not until he said
it and then I agreed with it.

Once he said it, what was it about what was happening that you agreed with him that there could be a mix-up?---As Soldier 4 said, "Stranger things have happened," just for the purpose of - yes, it's a good point, and Soldier 2 said, "Yes, okay, I agree," and we thought yes, a valid point.

5

I'm just wondering if there was something in what you saw and the process that was occurring after it had been said to you there could be a problem that you said, "I can see why there could be a mix-up." Was there anything in your mind, anything come to you there as to what was happening that could cause the problem?---Not at the US facility, no, sir.

10

Not at the US facility?---No.

Paragraph 23 of your affidavit of 14 June '06, you say this:

15

If this contractor is meant to be the best, they should not use such a shitty place like the civilian morgue. It was not military. I would not be happy if it were me. I would rather be in the hands of the US military as their setup is better. I cannot understand why we used a contractor but it must be because it's cheaper.

20

You told LTCOL Berkley that you were disappointed about the mix-up? ---Yes, sir.

25

Could I suggest your emotions were probably more disappointed?---By far, sir, yes.

You were being polite here in this room saying you're disappointed? ---Yes, sir.

30

Feel free to use any stronger language if you want?---The emotions when they are - sorry, just a second. Emotions when Soldier 33 told us what had happened were, you know, very angry and just disgusted, and we felt, you know, watching the plane take off and watching our mate go home and it wasn't him, you know, we were angry and then we were angry thinking what's going to happen when the family is there and they tell them. Then, of course, as time went by we got more - we had time to think about it and got more thinking of why we had to use that facility in Kuwait. Initially when we were there, we thought this is ordinary, but especially after what happened, you know, people said - different people said, "Jake might have thought - rolled his eyes, and gone, 'Oh, god, typical, ha ha ha,'" and I said, "No, he wouldn't be," I said, because I know he'd be angry. If it was me and he was looking after me, he would be angry at the Army, you know, not bashing the Army but that really, that hurt the family and it hurt the blokes there. We were meant to make

45

sure he got home and we watched someone else take off. The more we think about it, we should have just held on to the coffin at the US morgue and just literally not let go of it.

5 So do you believe Jake would have had an expectation the system would have looked after him properly?---Yes.

Would you have that same expectation if something happens to you when you go back there?---Yes.

10

What do you think is the best way of making sure it doesn't happen again - just keep that body in sight all the time?---Yes. Just the standard of facilities that - I know it's not always feasible to have the same standards as the US morgue because of the number of people that they have, but they have a professional, clean, open area and set aside time for us to go and dress him in the ANF, say goodbye and tell him he'll be right. That was the standard that should have been all the way.

15

That standard getting the body home safely, that's important not only to a deceased soldier and his mates but particularly to his family?---Yes, sir.

20

No further questions, thanks.

PRESIDENT: MAJ Hyde, do you want to finish off this segment and then perhaps segregate the other one?

25

MAJ HYDE: Yes, I will, thanks. I just have three very quick questions, if I may.

30

PRESIDENT: Yes.

<EXAMINATION BY MAJ HYDE

[1435]

35

MAJ HYDE: Soldier 19, did you yourself own a shoulder holster?---Yes, sir.

40

Did you own a leg holster as well or did you just have the shoulder holster?---I had been issued a leg holster but it ended up it was a right-handed leg holster so I just - I bought my own shoulder holster.

That's my next question: are you left or right handed?---Left handed.

45

Finally, have you received what you would consider to be appropriate

support and psychological counselling given that this has been a very traumatic incident for you as well?---Yes, sir.

You've had the appropriate support in your own mind?---Yes, sir.

5

Where has that come from? What sort of support have you been given?
---The psyches in the AO have - I don't know if I'm allowed to say his name, been good, keep in contact. They're always - we always ask questions about his family and stuff and he's pretty good and trying to tell us as much as he knows. Basically, it's not just us, it's the blokes on the ground over there and they all miss him, and they look forward to coming home and then they move on because the job is not finished.

10

Thank you. Nothing further, sir.

15

PRESIDENT: Thank you, we might now move into closed session to accommodate LTCOL Green. LTCOL Green, how long would you anticipate being with this gentleman so that those who are in another place have got some concept?

20

LTCOL GREEN: Only about 10, 15 minutes, sir, it won't take long.

PRESIDENT: I've heard that promise before.

25

LTCOL GREEN: I keep my promise.

COL GRIFFIN: It may be that other counsel have any matters that they want to cover in closed session?

30

LTCOL HOLLES: There's not, but I reserve the position that if LTCOL Green asks a matter which - - -

PRESIDENT: I will inquire of everybody before we come back into open session.

35

(Continued in closed session)

RESUMED IN OPEN SESSION

[1505]

5 PRESIDENT: Please call Soldier 17.

<**SOLDIER 17, sworn**

[1505]

10 <**EXAMINATION BY MAJ HYDE**

MAJ HYDE: Soldier 17, were you issued with a 9 mm pistol?---Yes, sir,
I was.

15 Was that in Baghdad?---Yes, sir.

Did you have a 9 mm at the Embassy?---Yes, sir.

20 Did you store that in your room?---Yes, sir, I did.

Whereabouts did you store that ordinarily?---In my webbing, sir.

25 Where did you place your webbing?---In the room just at the top of my
bed.

Did you have a shoulder holster or a leg holster?---Neither, sir, I just - my
webbing has a place to put my pistol on the chest.

30 Do you know whether PTE Kovco had a shoulder holster or a leg holster?
---Leg holster, sir.

35 Looking at the photograph that is on the board next to you, which I
believe is Exhibit 72, can you see a 9 mm pistol slung on the end of the
bed?---Yes, sir.

40 Looking at the photograph are you able to say whether that's a leg or a
shoulder holster? Is that something you can comment on?---It's a leg
holster, sir.

Do you say that is PTE Kovco's?---Yes, sir.

Thank you, Soldier 17. Nothing further, sir.

45 PRESIDENT: Thank you. LTCOL Wilkinson.

LTCOL WILKINSON: No questions, sir.

PRESIDENT: LTCOL Green.

5

LTCOL GREEN: Sir, again all my questions are like Soldier 19's.

PRESIDENT: We'll allot the same procedure if everybody is comfortable with that.

10

LTCOL GREEN: Thank you, sir.

PRESIDENT: LTCOL Holles.

15

LTCOL HOLLES: Sir, by arrangement and subject to the Board's direction - - -

PRESIDENT: We'll stick to a well-worn track. Thank you, LTCOL Berkley.

20

<EXAMINATION BY LTCOL BERKLEY

[1507]

25

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

I believe you know Shelley?---Yes, sir, I do.

30

And you were good mates with Jake?---Yes, sir.

Since you last gave evidence we've heard evidence in the Board of the likely trajectory of the bullet path's through Jake. That trajectory - and I'll show it to you in a sec if MAJ Jolly is able to scratch it up, thank you - it's just about to be shown to you. I just want you to have a look at it. Now, you recognise that as a 3D representation of your room in Baghdad? ---Yes, sir.

35

Have you seen this before with Counsel Assisting?---No, I haven't, sir.

40

If we can have sort of more of a helicopter view on that slide. You see that that trajectory, if it is correct, places Jake roughly in the position shown by that figure there; okay?---Yes, sir.

45

When you've spoken to us on another occasion you've indicated that you

were down towards the foot of the bed with your computer, your laptop, on your lap; you understand that?---Yes, I do.

You don't resilie from that or want to change that?---No, sir.

5

Now, if we could have say a side-on view of that, if that could be rotated. That figure there is supposed to represent Jake's height. We're all aware of the dimensions of the room. He would have been an imposing figure in the room at around roughly 6 foot 2. You'd agree with that?---Yes, sir.

10

When you were on your computer I think on the last occasion you gave evidence that the last time you saw - actually remember getting a side picture of Jake it was over towards - sorry, it was over around the centre of the double bunks playing with the computer on the top one of the double bunks?---Yes, sir.

15

Does that imagery there change your mind?---No, sir.

20

Would you accept that puts Jake quite close to you at the time the shot's gone, if that is correct?---Yes, sir.

You've got an infantryman's situation awareness, you know generally where people are around you, don't you?---Say again, sir.

25

You'd have an infantryman's situational awareness in that you know where people are around you?---Yes, generally, sir, yes.

30

Particularly whilst you're on operations you'd be aware of when people are getting close to you?---Yes, sometimes, sir.

Does your peripheral vision, have you ever found it to be inadequate?---Not to my knowledge, sir.

35

I suppose the question is, are you saying that you didn't notice Jake, if indeed he was there?---Yes, sir, I didn't.

40

When the shot rang out, can you recall what you were looking at?---I was just on the computer, sir, just looking at my emails. After I heard the shot I looked up and there was Jake on the floor.

That is your best and only memory?---Yes, sir.

Did you hear anything said before the shot rang out?---No, sir.

45

On the last occasion I spoke to you you were actually in Baghdad. I

believe on that occasion you couldn't see who was asking you questions?
---That's correct, sir.

5 It's very important of course for Shelley - not only Shelley, but other people, mum and dad - that they have the best evidence of how Jake died. You understand that?---Yes, I understand, sir.

10 I know that you're here to give your evidence. Is there anything that you're not telling us?---No, sir, there's not.

15 Can you estimate for us - and if you can, you can, and you can't, you can't - the time since you last saw Jake and the time that - I withdraw that. Can you estimate the time between which you last were consciously aware of where Jake was and the shot being fired?---It would be a guess, sir, about five to 10 seconds; that's just a guess, sir.

Did you recall Soldier 19 walking in front of you just prior, within say five or six seconds of the shot being fired?---I can't recall, sir.

20 You'd agree that the room is one of a reasonably small confine?---Yes, sir, it is.

25 With three full grown men in there there's not a lot of spare room, is there?---No, there's not, sir.

Jake was the largest of the three of you?---Yes, sir, he was.

30 Soldier 19 tells us that in the moments prior to the shot being fired he'd taken off his boots, he'd walked past obviously you at the bed and Jake, or Jake on his right and you on his left, and put his boots in or about his locker and that he then walked back and he walked directly to the fridge. That's what he's told us?---Yes.

35 Did you notice him on that journey back to the fridge?---I can't recall, sir.

40 He then tells us that within seconds after passing Jake on his way to the fridge he arrives at the fridge, opens the door and he hears a shot. He turns around to his left and observes Jake about halfway through falling to the ground; that's what he tells us, okay? You didn't notice him as he walked passed?---No, sir.

When Jake fell, did you observe any part of that falling?---No, sir.

45 Did you have any body matter from Jake, did any of it strike you, to your knowledge?---Yes, sir, there was some on me and some on my bed as

well.

What about your weapon that was at the end of the bed?---Yes.

5 What about when Jake first hit the ground, what about where his head was? Do you recall where it was?---Yes, sir, it was towards - obviously you know the bed from that picture.

10 Yes?---It's probably about 20 centimetres, between the edge of the cupboard and the bed, as across. It's in the corner but it's not really a corner because, 20 centimetres, your head is about 15 centimetres wide or whatever it is. So he was in the corner but it can't really be called a corner because there's not much room there, sir.

15 Sure. But what you're talking about is where that little cupboard that was at the foot of your bed comes up and it almost abuts the foot of your bed? ---Yes, sir.

20 That space there. You see, looking at that vision in front of you, you've got what appears to be a computer cable and on the left-hand side what appears to be the foot of that cupboard there is a great deal of what appears to be blood there on that left-hand side. Is that the area that you're talking about where Jake's head first fell?---Yes, sir.

25 Can you just hold on to that one. I believe your evidence was that you put your computer down to your left?---Yes, sir.

30 You had a computer cord: was that across your legs, under your legs? Do you recall how it was?---I can't recall, sir.

35 If you're looking at that photo which was taken a short time after the shot was fired, can you estimate where you were sitting at that time?---Roughly where the computer is, sir, because when I said I turned to my left and put it on my left, when you stand up, turn, I just chucked it down and then turned around to Jake to do my first aid.

40 So looking at that picture, would you say that you were sitting - just using the computer as a guide, were you sitting where the computer was, a little bit closer to the door or considerably closer to the door? I understand that on the scale of that you were actually just sitting down and you probably take most of the photo?---Yes.

45 What do you estimate?---I reckon I was roughly where the computer is, sir.

Was there any reason for you to adopt that position to sit that close on your bed?---No, sir.

5 I notice on the exhibit that's up in front of us, I think it's 86, an earlier shot, obviously of happier days, and that you're laying up against the head of the bed on that one?---Yes.

10 So the position, how do you say, it was just chosen at random by you? ---Yes, sir, it's not like you just go there and you're going to be in the same spot every day.

Sure?---Sit wherever you're sitting at the time.

15 In relation to that computer cord that was on the ground there, it looked like a power cord that appears to have been plugged in somewhere down near the fridge?---At the fridge, sir, because there was only one power board in the room so we just loaded it up with about 20 adapters.

20 What about if you were, say, at the other end of the bed, are we looking at the limit to the power cord's extension?---If you go right to the - where those pink pillows are, sir, it's stretching pretty much to its extent.

Are they your pink pillows?---Yes, they are, sir. Army issued.

25 So it would go all the way to there?---Yes, sir.

That's probably a better shot to indicate, I suppose - you see that mirror on the wall?---Yes, sir.

30 Would you have been slightly, say, towards the foot of the bed from the mirror?---I think that was more towards the cupboard on the left, so I was basically pretty much in line with that, where the computer was, sir.

35 Would you agree with this, then, I think you're about 175 centimetres? ---Roughly, sir.

So Jake would have fallen about an arm's length from you; would that be fair?---Yes, pretty close, sir.

40 I want you to revisit this again, I'm going to ask you again: are you sure you didn't see him doing anything?---Yes, sir, I'm positive.

You're not just protecting anyone?---No, sir, I'm not.

45 Nor his memory?---No, sir.

That appears to be Jake's computer, and for the record we're looking at Exhibit 45, I think.

5 MAJ JOLLY: It's Exhibit 30, sir.

LTCOL BERKLEY: 30, is it. That appears to be Jake's computer up there; you see that?---Yes, sir, I can.

10 As I understand it - and I just put this through Counsel Assisting, sir, that these are the photos taken shortly after the scene by Soldier 2 and another soldier.

MAJ HYDE: Correct.

15

MAJ JOLLY: The one on the laptop you just saw was Exhibit 30, which is an SIB photo. This one here, it is - I can't read the top.

LTCOL BERKLEY: It should be 26.

20

COL GRIFFIN: Exhibit 45 is a series of photographs of 7 and I think it's important to just indicate that the witness has identified a position on the bed by reference to a laptop sitting on the bed and that the record should reflect which one of those photographs that is for future reference if anyone wishes to examine.

25

LTCOL BERKLEY: I agree.

30 COL GRIFFIN: MAJ Jolly has been leafing through a series of photographs; if you could just stop with Exhibit 45 at the moment and indicate which of those photographs it is that the witness has given reference to his seated position by the computer, we identify that for the record, and then if LTCOL Berkley wishes to examine on the other exhibit that you've just put up, that you identify, please, for that before you start putting them up and before he questions on it.

35

MAJ JOLLY: The difficulty, sir, is that I don't have visibility on the screen in front of me.

40 COL GRIFFIN: I understand you put that up; I don't know that LTCOL Berkley called for it.

MAJ JOLLY: No, and in fact I don't know why that one was in that sequence.

45

COL GRIFFIN: If we could go to 45 and return to the position of the laptop on the bed, by which the witness has given reference, so that we can identify which of the seven photographs that is, please.

5 MAJ JOLLY: That is the only picture up at the moment that is from Exhibit 45.

COL GRIFFIN: Could you identify for us, then, where you've got the one that the witness was asked to position himself and he said, "Where the
10 laptop is"?

MAJ JOLLY: Yes, sir, I just need to take that off the screen again.

COL GRIFFIN: Because at the moment, as I understand it, the record
15 does not reflect which exhibit and where in the exhibit the witness has identified himself as being positioned.

LTCOL BERKLEY: There's actually two photos: one has the mirror -
20 now, that's the first one there. If we could just find out - - -

MAJ JOLLY: That's Exhibit 45.

COL GRIFFIN: And in the sequence of photographs are we able to say
25 which one it is? That is, does it bear an individual reference number?

MAJ JOLLY: It does, sir. I don't have the actual exhibit loaded on to this
30 computer - the actual exhibit, I should say, this is an image that this computer has on it so I need to go back to - I need to get Exhibit 45 in front of me and I can tell you that.

LTCOL BERKLEY: Or could we just describe at this stage Exhibit 45,
"Laptop on the bed photo". I think it's the only one of that particular
angle.

35 MAJ JOLLY: It is.

LTCOL BERKLEY: I'd be happy with that if you would be, just at this
stage, and we could later on correct the record.

40 COL GRIFFIN: I think that's an appropriate way to proceed. Thank you,
LTCOL Berkley.

PRESIDENT: I'm comfortable with that.

45 LTCOL BERKLEY: All right. We saw another photo of what appeared

to be Jake's laptop.

MAJ JOLLY: That's Exhibit 30.

5 LTCOL BERKLEY: Exhibit 30, thank you, MAJ Jolly.

In relation to Jake's laptop, did you touch it at all after coming back to the room?---Not to my knowledge, sir.

10 Do you recall whether anyone turned it off?---I'm not sure, sir. We only came back in the room obviously with Soldier 2 to get our body armour and stuff, and I'm not sure if it was shut at that time, sir.

15 You came back into the - sorry, I'll stop there. I know that I've asked you a number of questions on the last occasion and I don't, except for flow, intend to go through those again. I want to go to though, immediately after the shot's rung out, you see Jake, he's on the ground. Was it you or Soldier 19 who suggested that the body be straightened out?---I'm not sure, sir. When I leant down, I was closest to the top of his body so - I'd
20 seen blood so I put my hand on his head because that's where I assumed it was coming from.

You would have had to have reached into the right, into that corner where he was?---Yes, sir.

25 Was that a suitable position to give him any sort of first aid?---No, sir, there wasn't enough room.

I understand from your evidence that he was actually - that you moved
30 Jake's body to where that second pool of blood is on the outside of the bedpost?---Yes, sir.

35 At the foot of the bed, all right. There, how are you positioned? Are you kneeling? Are you stooping? How were you positioned?---I was kneeling, sir, because I've had my hand on his head and obviously we straightened him out and then we had first aid dressings, we were trying to stop the blood. And then I swapped - once the door opened and someone was there, I can't remember who it is, told me he'd chuck us more first aid dressings.

40 Did someone throw in some?---Yes, sir.

45 And they're just shell dressings?---Yes, sir. And I had one on Jake's head and then I swapped positions with Soldier 19 and he put another two on. Then I proceeded to clear his airways because I wasn't sure if he was

breathing or not. His airway was clear and he had a faint pulse, and then that's when Soldier 4 came in and we picked Jake up and took him - put him on a stretcher and took him to the gator that was waiting.

5 Where was the stretcher?---It was about two metres outside the door, sir.

Why wasn't it - do you know why it wasn't inside the door?---There was no room, sir.

10 You say you established that he had an airway, was that from the rise and fall of the chest?---Just basically I pulled his mouth open, sir, because it was shut.

15 Was it hard to pull open?---Yes, sir. His mouth was black. I got told later it was just from shock. And I pulled open and just scooped his airway out to see if there was anything in there, and it was clear, and he had a pulse.

20 In relation - did you then swap positions with Soldier 19?---I swapped before I did that, sir. Soldier 19 - after I had the first one on, someone threw more in. I said to him, "Take the head and I'll do the airways" or whatever, because he's a CFA.

25 Yes?---So he took the head and put a couple more on and then I did the airways and circulation and then that's when Soldier 4 came in at that time. He said, "Let's go. We've got to get him out of here".

Do you have the matrix in front of you?---Yes, sir, I do.

30 You recognised Soldier 4 outside the room. Did you recognise Soldier 26 outside the room?---Yes, sir. I think he's the one who threw the first aid dressings in.

35 Were you aware of how many people were outside the room?---I have no idea, sir.

To lift Jake out of the room and onto the stretcher, there was how many people?---Three of us, sir.

40 That's you and Soldiers 19 and 4?---Yes, sir.

You originally I think got on the gator?---Yes, sir.

And I think it was Soldier 2 who told you to get off?---Yes, sir.

45 That's because Soldier 4 was a CFA?---Yes, sir.

And Soldier 19 was?---Yes, sir.

5 And there was also with the gator two American medics?---Yes, sir, there was.

When you got off the gator what did you do then?---I just stood around, sir, and watched them drive off.

10 Did you return to the room at all?---No, not straight away. When I did go back that's when Soldier 2 and 26 were taking pictures, and then I can't recommend when I went back, sir.

15 I didn't quite get that in my head. Would you have gone there - did you go to the hospital and then back to the room or straight back to the room, what?---I went back to the room but they wouldn't let us in, sir.

Who is "they"?---Soldier 2.

20 He said you're not going to go in?---Yes.

About how many people are outside the room at that stage?---Just about the whole platoon, sir.

25 There's a scene inside the room. Did you see Soldier 2 and 26 enter the room?---Yes, sir.

30 What did you see them do, if anything?---Soldier 26 was taking pictures and Soldier 2 was standing at the door.

Did you see Soldiers 2 or 26 move any item in the room?---No, sir.

35 At some stage after that - sorry, I withdraw that. About that time were you allowed to enter into the room at all?---Yes, I think so, sir, to get our gear out.

When you speak about "our", are you speaking about just yours or Soldier 19's as well?---Just mine, sir.

40 Where was your combat equipment stored?---Usually kept at the top - obviously reference my rifle's at the bottom - near the window. I usually keep it in between the bed and the desk.

45 I think Exhibit 86 is up there on the board and you can probably point that out, next to your reclining figure?---Yes, sir, just - I'm leaning my elbow

on my helmet. That's usually where I keep my gear, sir.

Your rifle is kept at the foot of your bed?---Yes, sir.

5 And in that gear is your pistol?---Yes, sir.

Is that the gear that you removed?---Yes, sir.

10 Did you remove it from roughly that location?---Yes, sir.

Did you get anything else out of the room?---Boots, one set of DPDU, shave gear, and that's all I think, sir.

15 And you were accompanied the whole time by Soldier 2?---Yes, sir.

There's obviously a lot of blood and other material on the floor at that stage, right?---Yes, sir.

20 Were you conscious of it when you moved through that part of the room to get to your gear?---Yes, sir, I was.

25 Do you recall touching anything like your rifle?---No, sir, I was - I went to pick it up and I realised it had stuff on it so I left it, and I asked Soldier 2 what do I do and he said, "Grab Jake's rifle".

Where was Jake's rifle?---On the other side of the room, sir.

30 If you have a look at - on the other side of the room of course is the double bunk and the top bunk was Jake's?---Yes, sir, it was.

And he kept his rifle at the foot of that double bunk, furthest away from the door?---Yes, sir.

35 Was there any of Jake's blood or other body material on that rifle?---No, sir, there wasn't.

So you took that?---Yes, sir.

40 Was it set up the same as yours?---Yes, sir - no, it was a standard F88. Mine's a GLA.

So yours has the M203 on it, does it?---Yes, sir.

45 Anyway, you've taken Jake's rifle?---Yes, sir.

And you walked out of the room at that stage?---Yes, sir.

Was that the last thing you did, pick up Jake's rifle?---Yes, sir.

5 Were you conscious of not disturbing, is probably the best word, any of the physical matter on the ground?---Yes, sir.

I suppose it would have been unpleasant to do so anyway, wouldn't it?
---Yes, sir, it was.

10 When you left that room, where did you go?---I went to the hospital. I tried to go before, I went back and they said, "No, you've got to wait." Then I went up there, and I can't remember who I went with, sir.

15 At some stage you got to the hospital and you got to say farewell to Jake?
---Yes, sir.

I suppose one of the things that causes questions in people's mind is we've got three young men in high spirits just before a shot rings out and one of them is then dead. You can understand of course that people would have a very - I suppose not only a natural interest as to what's happened, but they think that - what if someone said to you, "Could there have been any horseplay between you that resulted in the discharge of the weapon"?
---No, sir, there wasn't.

25 You were just sitting on the bed?---Yes, sir.

You weren't aware of Jake's presence near you?---No, sir.

30 When you think back at what you've seen, particularly Jake's initial position on the floor, and you have a look at that 3D image - we might actually throw it back up, if we can, MAJ Jolly.

PRESIDENT: The image is part of exhibit?

35 LTCOL BERKLEY: 74, sir.

PRESIDENT: Thank you.

40 LTCOL BERKLEY: When you have a look at that - if we can get more of a helicopter view I'd be grateful. When you're looking at that, is there anything that surprises you about that or that you think just doesn't fit with what you saw?---Yes, with that, sir, where he is is not where I saw him last.

45

What about in respect of his body position when he first hits the ground?
---Where the - I can't tell if it's a blue cross or not. Above - yes, the blue
cross, where that is is basically where his head was and his body was
twisted around. So his chest and that were facing the grey cupboard
5 closest to the blue - - -

So just to explain what we're viewing. That blue cross is about or what
they say is the point of entry of the bullet into the ceiling after it passed
through Jake's skull. But you're saying if you're looking at that, that's as
10 good an indicator as any as where his head was when Jake first fell?
---Yes, sir, it's pretty close.

What about his feet, which direction were they?---I recall them being
facing back towards the door, sir.
15

But his body, was it straight or twisted?---Sort of twisted, sir. It's like sort
of half on his side, half on his back. I don't know how to best describe
that.

20 Do you recall when you first saw him which way his chest was pointing?
---About a 45-degree angle towards the cupboard, sir.

You said his legs were down towards the door. Was he twisted at the
hips; can you recall?---I think he was round the knee area, sir, he was
25 twisted and they bent backwards towards his bed.

So if Jake was shot in that location where he's shown on that
representation, is there anything unusual between that and what you saw
as to his resting place when he hit the ground?---I don't know what you
30 mean, sir.

When you first saw him on the ground, could he have fallen into that
position from there?---Yes, sir.

35 He could have?---He would have had to - from the left side, where the
cursor is, his body would have had to twist back that way.

So you're talking about twisting in a clockwise direction?---Yes, sir.

40 Given that 12 o'clock is towards the door?---Yes, sir.

Do you remember discussing Jake's laptop with any person in the days
after the shooting?---No, sir.

45 Do you recall whether any person, to your knowledge, cleaned say your

rifle?---I'm not sure about that, sir, because that night I left obviously after they turned the machines off. Myself, Soldier 2 and 19 left for headquarters. I can't tell you what it's called.

5 We know what you're talking about?---And we didn't see anything after that, sir. To my knowledge, everything was kept shut and Soldier 2 locked the door when we left and I think he gave the key to Soldier 1.

10 There's obviously a lot more in that room than simply your weapons and your body armour?---Yes, sir.

15 When did you finally get a chance to retrieve your personal items from the room?---They were taken out for us, sir. Everything was taken out and put into bags for us. When we got back from Kuwait they said, "Here's all your stuff." They washed the sleeping bags, the sheets, the sling. I don't know what happened with the weapon. I got my weapon back when the REO come from Australia. So I don't know what they did with that, sir.

20 For the purpose of the transcript, that's the reinforcement who came? ---Yes, sir.

Who washed it, do you know?---No idea, sir.

25 Did you ask for any of the washing to be done?---No, sir.

So we're talking about three or four days later - three days later you returned from Kuwait?---Yes, sir, I think it was - we returned on the 26th.

30 That's five days later. You returned from Kuwait and it had been washed?---Yes, sir.

So your sleeping bag had been washed, the sling on your Styre had been washed?---Yes, sir.

35 Were you given back your Styre with its configuration?---No, sir.

That weapon remained away from you?---Yes, sir.

40 What about your normal disruptive pattern uniform?---We took one set with us. Obviously the ones we had on us, they had blood. They washed them as well, sir. They just said, "Get changed," because they wouldn't let us go to the hospital - take the ones off and go over there.

45 So before you got to the hospital on the night of the 21st you had to

change?---Yes, sir.

That would indicate to me that you hadn't changed out of your disruptive pattern uniform?---I had pants on, sir.

5

You were wearing the SECDET IX T-shirt?---Yes, sir.

Are you sure it was that T-shirt?---Yes.

10 It was the only one you were allowed to wear, wasn't it?---Outside, yes.

So you had that on. You didn't have your boots on?---No, sir, I don't think so.

15 And you still your pants on. They've got blood on them of course, so did your T-shirt, didn't it?---No, T-shirt didn't, sir.

T-shirt didn't?---No, sir.

20 But in any event, they were washed for you?---Yes, sir.

Were you aware of the presence of any Military Police in or about the SECDET IX area after?---There is MPs over there, sir, but I'm not sure if they came in and do whatever they do.

25

Did any person recommend to you that you wash your body or any part of it prior to, say, going to the hospital?---Yes, sir, they told us to wash my hands and arms, and that.

30 Who told you that; do you recall?---No, sir.

Was there any blood on your hands - obviously there was blood on your hands?---Yes, sir, there was.

35 So you were basically told to clean up?---Yes, sir.

Do you recall who told you?---No idea, sir.

40 But that instruction was given to you to allow you to go to the hospital?---Yes, sir.

When you got to the hospital, did you see Jake or did you wait around?---I went straight in to see him, sir.

45 How many people were with you?---I think Soldier 30 had come over

5 from our other place - I don't know if you've got a name for it. He came over from the other place we work at and he was up there; I went up with him. I didn't know where Soldier 19 and 4 were so I just went in by myself to see him and there was a neurosurgeon there and he explained to me what was going on.

10 I've asked you about the repatriation on another occasion; I won't go there. But I want to take you back just to when you finished your shift that afternoon on the 21st. When you finished your shift, did you loiter around the Embassy or go straight back to your accommodation; what did you do?---I think I went straight back to the room, sir.

15 Was anyone with you when you finished your shift?---Not that I'm aware of, sir, I can't remember, to be honest, sir.

When you got back there, was there anyone else there?---I have no idea, sir.

20 You can't recall whether Jake was already there or came in later?---No, sir.

What time did you finish your shift on that day?---Three, sir.

25 About the same time as 19 and Jake?---Yes, the whole section finishes at a certain time, sir.

So you just came back from different parts of the Embassy?---Yes, sir.

30 Thank you very much, I've got no further questions.

PRESIDENT: LTCOL Holles?

35 LTCOL HOLLES: Sir, I note the hour. I've got somewhat more than 15 minutes' worth of questions. I'm wondering if it would be appropriate to start at 10 o'clock tomorrow morning?

PRESIDENT: How long do you expect to be with this gentleman?

40 LTCOL HOLLES: Probably up to an hour and a half, sir.

PRESIDENT: All right. LTCOL Green, you're going to be?

LTCOL GREEN: Fifteen minutes.

45 PRESIDENT: I do note that you keep a promise.

LTCOL GREEN: Thank you, sir.

5 PRESIDENT: Is it convenient to you, then - - -

COL GRIFFIN: Yes, and COL Young may be some time so that would
- - -

10 PRESIDENT: We know COL Young is always brief.

COL GRIFFIN: It would be, if you're happy, sir, an appropriate time.
We have the day set aside to deal with the conclusion of the witnesses
who have come from the theatre tomorrow and I note that they have also
15 been travelling and it's been a long day for either those who have been
giving evidence or those waiting, so if it suits you, sir, it will suit us as
well.

20 PRESIDENT: I'm comfortable. Yes, 10 o'clock tomorrow, ladies and
gentlemen.

**MATTER ADJOURNED AT 1549 UNTIL
WEDNESDAY 2 AUGUST 2006 AT 1000**

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