

TRANSCRIPT OF PROCEEDINGS
UNCLASSIFIED

AUSTRALIAN DEFENCE FORCE

AUSTRALIAN ARMY, VICTORIA BARRACKS, NSW

INQUIRY INTO THE DEATH OF
PTE JACOB BRUCE KOVCO

PRESIDING:

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

COL M GRIFFIN, Senior Counsel Assisting
MAJ E JOLLY, Counsel Assisting
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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


1012 WEDNESDAY 2 AUGUST 2006
DAY 15

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.....  Date02.08.06.....(President)

Signed.....  .. Date02.08.06.....(Recorder)

Signed.....  Date02.08.06.....(Transcriber)

Signed.....  Date02.08.06.....(Transcriber)

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NTS

RESUMED

[1012]

5 PRESIDENT: Good morning, Colonel.

COL GRIFFIN: Good morning, Mr President. Good morning, Members. We resume with the witness returned, Soldier 17. Sir, in accordance with your usual practice, would you wish him to be resworn?

10 PRESIDENT: Yes, please.

<SOLDIER 17, recalled and resworn

[1012]

15 COL GRIFFIN: Sir, I understand we resume in open session with the examination by Counsel Representing.

PRESIDENT: Yes, thank you. LTCOL Berkley, had you finished?

20 LTCOL BERKLEY: Yes, sir, I had.

PRESIDENT: Thank you. LTCOL Holles.

25 **<EXAMINATION BY LTCOL HOLLES**

[1012]

30 LTCOL HOLLES: Soldier 17, my name is LTCOL Holles and I represent the parents of PTE Kovco. Do you understand?---Yes, I do.

Just to read you something from the transcript of the record of interview conducted between you and the New South Wales Police on 10 May 2006. Question 407 at page 47:

35 *All right, and you don't want to tell me those people's names, I believe.*

Answer:

40 *No.*

Question:

45 *That's - are they in this unit or you can't even tell me that?*

Answer:

Yes, of course they are.

5

Question 409:

Oh, okay.

10 Answer:

I've never been in any other unit, so it's not hard to figure it out.

Do you remember those questions and answers?

15

LTCOL GREEN: Sir, it's a little unfair - - -

LTCOL HOLLES: In regards to what?

20 LTCOL GREEN: - - - without telling the witness what the subject matter of the questions is.

PRESIDENT: I can see the point the Colonel makes.

25 LTCOL HOLLES: It's a legitimate line of question, sir.

PRESIDENT: Undoubtedly, but we don't know what the context is in the sense that he's declining to give some information and we don't know what that information is all about to start with.

30

LTCOL HOLLES: Certainly, sir. I'll take it from the top then. Question 403:

Help us out here.

35

Answer:

Just fuckin' basically, you know how you see old school westerns where people pull their pistols out of a holster, like quick draw and you spin it around, all that sort of shit.

40

Question:

Spin it around your finger?

45

Answer:

Yeah, around your finger.

5 Question 405:

Yeah.

Answer:

10 *Just said stuff like just, just basically dumb shit.*

Question 406:

Okay.

15

Answer:

Like that.

20 Question 407:

All right, and you don't want to tell me those people's names, I believe.

25 Answer:

No.

30 Question 408:

That's - are they in this unit or can't you even tell me that?

Answer:

35 *Yes, of course they are.*

Question 409:

Oh, okay.

40

Answer:

I've never been in any other unit, so it's not hard to figure out.

45 Do you remember those questions and answers?---Yes, sir, I do.

I put it to you that you when it suits, you will not provide information. That's the situation, isn't it?---No, sir, it's not.

5 You refused to give the police officers names of people engaged in certain sorts of practices in relation to weapons, didn't you?---No, sir, he said if I didn't wish to give it, I didn't have to. He said it wasn't in regards to this Inquiry. It wasn't directly related to Jake. So I didn't have to answer it, he said.

10 The fact is that you didn't provide information about unsafe practices, did you?---No, I didn't.

15 You withheld information that would have been important to those in the chain of command, didn't you?---I don't believe so, sir.

You're a trained infantry soldier, aren't you?---Yes, sir, I am.

20 Well aware of safety?---Yes, sir, I am.

Well aware of the safety of others as well?---Yes, sir.

You didn't think that sort of information was important?---No, sir.

25 Have you got a good memory, Soldier 17?---Pretty good, sir.

30 When did you come to the situation where you understood that PTE Kovco only had a leg holster?---After I was asked by Soldier 30 on behalf of Shelley. She asked does he have a shoulder holster or a leg holster and I thought he had a shoulder holster, but it was actually Soldier 19, sir.

35 Do you agree that all of the evidence you gave at the start of this Inquiry was predicated on the basis that PTE Kovco had a leg holster and a shoulder holster?---At the time, sir, I believed he had a shoulder holster.

You had the shoulder holster hanging on the end of the double bunk, didn't you?---No, sir, it's not my shoulder holster.

40 You had his shoulder holster hanging on the end of the double bunk, didn't you?---I said it was his, yes, sir.

You were wrong, weren't you?---Yes, sir, I was.

45 Why were you wrong?---Because it was a leg holster, sir.

How could you proceed on the basis of giving sworn testimony over two days that what you saw was a shoulder holster when it was in fact a leg holster?---Sir, I gave evidence on what I believed was a shoulder holster.

5 You do know they look significantly different, don't you?---Yes, sir, I do.

In fact you are issued with a leg holster, aren't you?---Yes, sir.

10 Why were you wrong?---Because I haven't got a photographic memory, sir.

You were categorical it was a shoulder holster, weren't you?---Yes, sir, I thought it was a shoulder holster.

15 How long have you been in the Army?---Five and a bit years, sir.

You've probably seen countless pieces of webbing over that period of time, haven't you?---Yes, sir.

20 You've probably worn quite a bit of webbing over that period of time, haven't you?---Yes, sir, I have.

How could you mistake a shoulder holster for a leg holster?---My friend just shot himself, sir, so my memory is not 100 per cent perfect, you know, it was a traumatic time. I believed it was a shoulder holster and that's what I said, sir.

25 You looked at that piece of webbing every day for some weeks, didn't you?---Yes, sir.

30 And you got it wrong?---Yes, I got it wrong, sir.

You're not suggesting you were under stress before this event other than the normal stresses of the place you were in, were you?---No, sir.

35 You said yesterday that there are MPs located, to use your words, "over there." What did you mean by "over there"?---In country, sir.

40 There are MPs living in your lines, aren't there?---They don't live with us, sir.

They live very, very close to you, don't they?---Yes, sir, they do.

In fact, some of them were involved in the immediate aftermath of this particular event, weren't they?---I'm not sure about that, sir.

Don't know?---No, sir.

5

They're in effect co-located with you, aren't they?---They're in the same compound, yes, sir.

10

And they work with you from time to time, don't they?---Sometimes they do, sir.

Yes. You weren't attempting to convey the impression that the MPs were somewhere quite different to where you were, were you?---No, sir.

15

I'm wondering if it's possible to have Exhibit 70 played to the witness, please. What you're about to be shown, Soldier 17, is a walk-through conducted by the New South Wales Police of room 8 in your accommodation lines.

20

MAJ JOLLY: Sir, this is classified.

LTCOL HOLLES: I withdraw that, I'm sorry. Sir, I might have to move to closed session of this particular part, then.

25

PRESIDENT: Yes, very well, then. The Board will now be closed. How long would you anticipate that we'll be in closed session, LTCOL Holles?

LTCOL HOLLES: Ten, 15 minutes, sir.

30

PRESIDENT: Thank you.

LTCOL HOLLES: Sir, on the list I have it's not.

35

COL GRIFFIN: According to our Exhibit List it's not classified, sir. I'm just trying to check to see why it's been registered as a classified exhibit. We'll need to take a moment to verify the document before we put it up.

40

PRESIDENT: Thank you. In my original Exhibit List, I've got it marked as "nil entry."

45

COL GRIFFIN: There's a variety of notes amongst counsel as to what was recorded. It's recorded on the Exhibit List without a classification. My recollection is that the document in the video process identifies individuals by name and that you gave a direction, sir, that the name might not be published. If that accords with LTCOL Holles' recall of the exhibit

that he wants to show, that is the walk-through that was done with the New South Wales Police with the witness, as I understand it.

5 LTCOL HOLLES: That's correct, sir, yes.

PRESIDENT: The names were certainly used.

10 COL GRIFFIN: Then I think it could be played in open, sir, subject to your direction that the names not be published.

PRESIDENT: Yes. We'll play it in open session with a direction that the names of the individual soldiers not be published.

15 MAJ JOLLY: Sir, I've just looked at it on the laptop. It would appear that it still retains an R classified registration but the exhibit classification is the correct one, so it should be able - it's not classified.

PRESIDENT: Thank you.

20

DVD PLAYED

25 LTCOL HOLLES: Thank you. Is there anything you wish to change about the way in which you indicated various positions of you and other people on the DVD?---No, sir.

30 So that's a hundred per cent correct, is it, as far as you're concerned?---As far as I remember, sir, yes.

Do you agree with me that you were sitting very, very close to the end of your bed?---Yes, sir.

35 Do you agree that you indicated that when PTE Kovco fell he basically fell to your immediate right?---Yes, sir.

Is that correct?---Yes, sir.

40 Did you move him at all with Soldier 19?---Yes, sir, we did.

Where did you move him to?---We rolled him onto his back, sir, so we could continue first aid to check his airways and breathing.

45 Did you move his head during that process?---Yes, sir.

Are you confident that the way you've described the treatment of him in that DVD accurately reflects what happened on the particular afternoon?
---Yes, sir, to the best of my memory.

5 You agree too that you were sitting very close to the end of the bed?
---Yes, sir.

You say that you were typing on a laptop at that stage, were you?---Yes, sir.

10

Were you also singing along to the song?---In between, sir, yes, we were.

The song was playing very loudly, wasn't it?---Yes, sir.

15 Remember anybody banging on a door telling you to shut up or anything like that?---Yes, I think people next door banging on the wall, sir.

By reference to the matrix you have in front of you as to the names of those individuals, are you able to indicate who occupied the room next door? Who do you understand was banging on the door?---Yes, sir, Soldier 14 and Soldier 20 live next door, sir.

20

I'm wondering if Exhibit 74 could now be played, please, which is the 3D CD of room 8. Soldier 17, you have no problem with your hearing, do you?---No, sir.

25

3D IMAGE SHOWN

30

You didn't have earphones or earplugs on this particular day, did you?
---No, sir, I didn't.

Do you agree with that view of the vertical view, or helicopter view as my friend LTCOL Berkley calls it, depicts the room that you occupied?---Yes, sir.

35

The obvious omission being the bar fridge located near the door adjacent to the double bunk. Is that correct?---Yes, sir.

40

Do you agree that you've been shown this CD before?---Yes, sir, I have.

You understand that what it does is it shows the trajectory of the fatal round?---Yes, sir.

45

- You understand that. How tall are you?---About 175 centimetres, sir.
- How tall is PTE Kovco?---I think 190-something, sir.
- 5 If you've said he's 185 centimetres, would you accept that?---Yes, sir.
- About 10 centimetres taller than you?---Yes, sir.
- How tall is Soldier 19?---175, about the same as me, sir.
- 10 Do you agree that, given the trajectory, PTE Kovco could have been no more than about 30, 40 centimetres from where you were?---Yes, sir, from that picture; yes.
- 15 You had no sense of his being near you?---No, sir, I didn't.
- In effect, somebody standing about 185 centimetres weighing, what, 85 kilos, 90 kilos?---Yes, about 90, sir.
- 20 Is standing directly over you and you, trained infantryman in a war zone, have no sense of his presence. Is that your evidence?---Yes, sir, it is.
- Do you have any way of explaining that?---Yes, sir, it's not a war zone in my bedroom. I switch off as soon as I go in my room.
- 25 Part of normal Army life is living very close to other people, isn't it? ---Yes, sir, it is.
- I'd suggest to you that you are always very aware of other people around you, whether you are in your bedroom, the back of a vehicle, on a patrol, in an OP, anywhere at all. It's just a fact of life that you know where other people are. That's the case, isn't it?---Sometimes you are, sir, sometimes you're not.
- 30
- 35 I suggest to you, Soldier 17, that you were well aware of where he was? ---No, I wasn't, sir.
- No earphones?---Sorry, sir?
- 40 You weren't wearing earphones?---No, sir.
- You were singing along to some music?---Yes, sir.
- 45 You say you were typing on the computer at the same time that you were singing the music?---Yes, sir, in between, yes.

In between. What do you mean by "in between"?---You sing to a bit, you know, sir, and then you write a bit, sing some more. So that's what I mean by "in between", sir.

5 Stop typing basically while you're singing. Is that right?---Yes, sir.

Do you say that PTE Kovco was still doing his little dance and so forth at that stage or not?---No, sir, last time I saw him he was typing on his computer.

10 Was he singing at that stage?---I'm unsure, sir. We were all just singing in between.

15 If you just leave it up to the time being. PTE Kovco is right-handed, is he not?---Yes, he is, sir.

If he moved back from his computer and moved to draw the pistol from the holster on the end of the bunk, you would have seen his arm movement, wouldn't you?---Not necessarily, sir.

20 You would have been conscious of his arm movement, would you not? ---No, sir. Like I've stated before, when we go to our room we don't pay attention to what each other is doing. You just do your own thing.

25 You do pay attention to what other people are doing, don't you, you're singing, dancing, carrying on, interacting with each other?---Yes, you could say that, sir.

30 You don't walk in and take a vow of silence, do you?---No, it depends on the day, sir.

So what do you say you first saw when you heard what you describe as the firecracker?---The first thing I saw, sir, was, when I looked up, Jake wasn't there and he was lying on the ground.

35 So the first thing you saw was him on the ground, is that right?---Yes, sir.

40 Didn't you think the firecracker going off was a bit unusual?---Yes, sir, that's why I looked up.

Given that noise travels fairly fast and that you would have been no more than a metre from where the round discharged, how long did it take you to look up?---I don't know, sir.

45

I suggest to you that you would have looked up much before PTE Kovco was on the ground?---No, I didn't, sir. When I looked up, he was on the ground.

5 So you delayed looking to see what was happening for a couple of moments, did you?---I don't know how quick it took him to fall, sir, so last thing - I saw he was standing; the next time I looked up he was on the ground.

10 You say the noise sounded like a firecracker?---Yes, sir.

A supersonic 9 mm round discharging in a closed room sounded like a firecracker?---Yes, sir, that's what I said.

15 It didn't sound like a weapon discharging?---No, sir.

You've heard rounds discharged inside buildings before, have you not?
---Yes, sir.

20 Didn't sound like that?---No, sir.

Even with a 9 mm, you'll still get a crack and thump, won't you?---If the round goes over your head you get the thump, sir.

25 You certainly get the crack as it's discharged, don't you?---Yes, sir.

That's because it comes out above the speed of sound; that's correct, isn't it?---Yes, sir.

30 But you described it as a firecracker?---Yes, sir, I did.

What you say you did when you first heard the round go off?---What did I say?

35 What do you say you did when you first heard the round go off?---Looked up, saw Jake was on the ground, threw my laptop down and started doing first aid.

40 Just going through that sequence, where did you move to immediately?
---To his head, sir, it was the closest part to me.

Did you say anything?---I think I said, "Medic," or something, sir.

45 Are you sure?---I'm not entirely sure, sir.

Did you hear somebody say something like, "What have you done"?---No, sir.

5 Could you have said that?---I'm not sure, sir, I don't think I did.

Did Soldier 19 say something like that?---Not to my knowledge, sir.

So the first thing you notice is PTE Kovco on the ground?---Yes, sir.

10 What happened next?---Like I just said, I threw the laptop down and started doing first aid, sir.

How long before anybody turned up?---I don't know the exact time, sir, it couldn't have been too long.

15 With reference to the matrix in front of you, who are the first people in the room?---To the best of my knowledge, sir, the first person that I think I saw at the door was Soldier 26. That's who I thought I saw there first, sir.

20 After that?---Soldier 14, and then I don't know who was there after that, sir.

From the time that you got into that room that afternoon, did anybody else come to the room?---I can't remember, sir.

25 Was there anybody else in the room other than you, Soldier 19 and PTE Kovco during the course of that afternoon from the time you got back off duty?---I don't think so, sir, I think it was just us three.

30 When you say you don't think so, are you sure or you're unsure, or what? ---I'm unsure, sir, I don't know if other people come in. To the best of my knowledge, there was just us three in there, sir. At the time there was us three and I'm not sure if people come in before, sir.

35 What happened to you after PTE Kovco was taken to the hospital?---I got told to wash myself, sir.

Who by, by reference to the matrix?---I think Soldier 2.

40 What about your clothing?---Yes, when Soldier 2 was in the room with Soldier 26 taking pictures, he told me to come in and get fresh CAMS and other gear out, and then I took them off and they said, "We'll look after them."

So you gave the CAMS you had on to Soldier 2, is that the case?---I just chucked them on a table, sir, and they said they'll look after them.

5 Did you ever see them again?---Yes, I've got them still, sir.

What, somebody washed them for you?---Yes, sir.

Where did you go after that?---Straight to the hospital, sir.

10 How long between the time that you retrieved your clothing in the room to the time that you got to the hospital?---Unsure, sir.

Between the time that PTE Kovco was carried out and the time you went to the hospital, how long?---Bit less than 25 minutes, sir.

15 Were you alone in the room at any stage during that period of time?---No, sir.

Never?---Never, sir.

20 Who was with you?---Soldier 2 was always there and when Soldier 26 walked out the door, that's when I went in to get my stuff.

25 Are you certain Soldier 2 wasn't at the hospital at that stage?---Yes, sir, I'm certain.

How long were you at the hospital?---I didn't leave the hospital until they returned the machines off and then we got ordered to go back to <deleted>.

30 Do you recall making a statement to the Military Police?---Yes, sir.

Do you accept that statement was made on 30 April 2006?---Yes, sir.

35 Did you speak to anybody else officially about what happened between the time you gave your statement and the incident itself?---Yes, sir, they sent someone out from headquarters and they wanted to get an idea of what happened before the investigators - - -

40 A quick assessment: is that what it's called?---Yes, sir.

Did you provide that person with a formal statement?---I don't think so, sir.

So the first time that you in effect put pen to paper is when the Military Police speak to you on 30 April?---Yes, sir.

5 Had you been in country for all of that time?---Yes, sir - we went to - obviously we went to <deleted> in between that.

Yes. Before 30 April, how long were you back in country?---Three or four days, sir.

10 So from, what, about the - - -?---26th.

26th, the day after Anzac Day?---I think so, sir.

15 Was that the first time you spoke to the Military Police?---Yes, sir.

Did you and Soldier 19 discuss what happened in the room?---We've talked about it, sir, yes.

20 Specifically, between the time the event happened and the time that you spoke with the Military Police, did you discuss what happened in the room?---No, sir.

25 Why?---Because no one was talking about anything, sir, everyone was pretty depressed.

So you and Soldier 19 did not talk at all about what had occurred?---We were worrying what happened, sir, but we didn't talk about incidents and stuff, we talked about first aid and the hospital, and stuff like that.

30 Did you and Soldier 19 talk about what might have happened?---Yes, sir.

When did you do that?---When we were with Soldier 30.

35 When was that?---I can't recall the date, sir.

It's certainly before you make the statement to the Military Police?---Yes, probably, sir.

40 Can I suggest to you that you've given to the Military Police on 30 April an account of what you believe might have happened?---Yes, sir.

45 Can I suggest to you it's fairly similar to what Soldier 19 told the Military Police as to what might have happened?---I haven't read his statement, sir. So if yes - if that's what you say.

5 So you must have talked about the circumstances prior to making your statements to the Military Police?---All we said, sir, was - <deleted> said what was our - correction, Soldier 30 said what we thought happened. I told him what I thought happened. Soldier 19 told him what he thought happened and he told us what he thought would have happened.

10 So you came to this opinion as to what might have happened independently of each other. Is that what you're telling the Court?---Yes, sir, that's just my opinion what I thought might have happened.

Which just happens to coincide with what Soldier 19 said?---If that's what it says, sir, yes.

15 Remarkable coincidence, don't you think, Soldier 17?---I don't think so, sir.

Do you recall making a statement on 14 June to <deleted> about this matter?---I think so, sir.

20 One of the subjects you cover in that statement is the 9 mm pistol. Do you recall talking to <deleted> about the 9 mm pistol?---I think so, sir.

25 Do you recall that in that statement you talk about taking the pistol to a certain degree of weapon readiness and then releasing the hammer forward and applying the safety catch?---Yes, sir.

Is that a common practice?---I believe so, sir.

30 Is it a practice you've been taught?---I'm not sure if I've been taught, sir, but I've been showed by instructors.

You've been formally shown by weapon instructors that that's a way of making the weapon safe at a certain condition?---Yes, sir.

35 Which means pushing the hammer forward or allowing the hammer forward under pressure and then applying the safety catch?---Yes, sir.

Had you ever seen PTE Kovco do that?---No, sir.

40 You say further down in that statement, that paragraph, people are banging their thigh holster all the time and it's easy to bump the safety catch?---Yes, sir.

45 You agree with me if you've bumped off the safety catch and the hammer had been caught on the webbing, either withdrawing the pistol through

some other manoeuvre, the weapon would be capable of discharging without any further thing than pressure on the trigger?---Yes, I think so, sir.

5 Well, logically it must, mustn't it?---Yes.

Safety is off, hammer is back; that's all it takes, doesn't it?---Yes.

10 Finally, Soldier 17, there's a couple of questions I wish to ask you about the statement you made to the Military Police, not so much as the content as the way it occurred. Can you describe, please, the process which led to the statement being produced? If you don't understand the question, ask and I'll explain further?---I think I understand, sir. We just went into like a little room. They said we were just going to give a statement to find out
15 what happened. Then they started asking us questions and we told them what happened.

Were there any parts of the statement pre-prepared?---I don't think so, sir.

20 Are all the words in the statement your own?---I think so, sir. I haven't read it since I gave it, sir.

How did you feel at the time you made it?---I was pretty upset, sir.

25 Did you read it thoroughly or did you skim it? I'm not making criticism of you, I'm just asking you?---No, I read it, sir. It was my statement.

Thoroughly?---Not thoroughly, sir.

30 Did you understand it?---Yes.

All of it?---I think so, sir.

35 Paragraph 26 starts with the words:

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

40 Are they your words?---Yes, sir.

That's what you said, was it?---Words to those effect, sir.

45 I'll ask you again: are they your words or are they something somebody has typed down and you've adopted?---I'm unsure, sir. I think they're my words.

When you say you're unsure, you mean you don't know whether you said them or not but you believe you might. Is that the situation?---Yes, sir.

5 Thank you, sir, that concludes cross-examination.

PRESIDENT: Thank you. COL Young.

10 <EXAMINATION BY COL YOUNG [1058]

COL YOUNG: Thank you, Mr President. Soldier 17, my name is COL Young. I appear for Jake and represent his interests?---Yes, sir.

15 Could you give us some idea without talking about operational matters the physical conditions in Iraq where you are? Can you give us some idea of what that's like, temperature, things like that?---At the moment, sir, it's about 54 degrees. It's hot. It stinks, living in small rooms. The food is pretty shocking. What else do you want to know, sir? People shoot at you every day.

20 Without going into weights or what you carry, you're carrying equipment and the like. Is that sort of physically exhausting in combination with the heat?---Yes, sir. By the end of the day you're pretty shattered.

25 You've touched on the psychological side about the possibility of being shot at somewhat. Can you tell us something about what sort of stresses you might feel under when you're there?---Sir, it's just - you try not to think about it, but obviously there's a constant threat of indirect fire when you go out to certain places on jobs, the chance of dying. So you're constantly thinking about it. But I don't know, I don't know really what you mean, sir.

30 You've answered what I was after; thanks very much. In one of the statements you made to the Military Police and in your record of interview with the New South Wales Police when they spoke to you, you were asked whether you noticed whether Jake's pistol had a magazine on it in the room prior to this incident. You answered that you didn't notice it? 35 ---Yes, sir.

40 What would you have done had you noticed a magazine being on his pistol?---Just told him to unload it, sir.

What would you expect he would have done when you told him that?
---Taken the mag off, cocked it, released the working parts and fired the action.

5 Given that you were living with him for a while and you've described some of the conditions, have you got any explanation as to how his pistol could have been loaded in his room?---He probably just forgot, sir, to be honest.

10 Can you recall any other situation, either in <deleted> or elsewhere, where someone has forgotten to unload a weapon?---Yes, sir, people just forget because you've got your main weapon, which is your Styre, and you don't use your pistol all the time. So you just forget to unload it sometimes and someone will come along and go, "Oi, dude, you didn't
15 unload your pistol," and that's all they'd say to you. It wasn't considered a big deal.

Can you recall a specific incident where someone you're aware of that someone has forgotten to unload a weapon?---I've done it myself going to
20 the mess, just unloaded my Styre at our compound, went to the mess where the Americans run it and unloaded my Styre again. Went to unload my pistol and there was a magazine on it. It's just a simple mistake.

Human error?---Yes, sir.
25

If we just talk about the repatriation of Jake's body. In an affidavit dated 14 June '06, paragraph 18, as I understand this paragraph, you talk about being at the civilian facility?---I assume so, sir, because I haven't read any of that stuff since I've been back.
30

We left Jake there. Then the next day they brought the coffin out. We asked Soldier 2 to make sure it was the right person. We were not allowed past the doors of the morgue.

35 Did you ask Soldier 2 or did somebody else?---We used Soldier 4 as our - basically to guide us because we're all Privates and he's not. So he asked and we were all standing there.

40 Do you have a recollection of whether that was at the civilian facility or could it have been at the American morgue?---I believe it was both, sir.

Both, you think?---Yes, sir.

45 Paragraph 19, in that same affidavit of yours, I'm just going to read that to you:

5 *Jake's repatriation was handled well here in Baghdad and at the
US Military morgue in <deleted> . They were good. However,
I'm absolutely disgusted about what happened in <deleted> with
10 us having to hand Jake over to locals to take care of him and then
having to put him on a civilian flight. If any dignitary died,
Kenyon and a civilian aircraft would not be used. Jake was
serving his country and I blame the Army for being cheap. The
Americans were fantastic to us. They even provided their own
15 honour guard for him. You serve your country, but for what?
Why would any mother want her son to join the Army?*

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

15 Do you still agree with that statement?---Yes, sir.

That's still your feeling about what happened?---Yes, sir.

Thank you, Mr President.

20 PRESIDENT: Yes, thank you.

LTCOL HOLLES: Sir, there's one question I'd like to ask. It's probably
best covered, for caution, in closed session. I'll be very brief, but it's
25 something that ought to be asked in closed session.

PRESIDENT: Would it be appropriate to close the hearing now?

30 COL GRIFFIN: Sir, there is one matter if I might just do in open session.

PRESIDENT: We'll come back to you in a moment, Colonel.

LTCOL HOLLES: Thanks, sir.

35 COL GRIFFIN: I understand there are further questions in closed session
from LTCOL Green. So we'll go into closed session for that, but I might,
if I may, just cover this one topic in open session.

40 PRESIDENT: Certainly.

<EXAMINATION BY COL GRIFFIN

[1105]

COL GRIFFIN: Soldier 17, you just saw the video of the walk-through that you did with the New South Wales Police. Is it the case that you sported a moustache at that time?---Yes, sir, I did.

5 The Board has heard evidence from Soldier 19 that he also had a moustache at that time. Is that correct?---Yes, sir.

Had you grown it recently at that time?---I think we started close to the start of the trip, sir.

10

Had any of your colleagues in the rest of the unit adopted moustaches during that period?---Yes, sir.

15 When you attended the <deleted> mortuary facility escorting Jake, did you still have the moustache?---I think so, sir, yes.

Did Soldier 17 still have the moustache?---I am 17, sir, but yes - - -

20 I beg your pardon, 19?---Yes, we both did, sir, I think.

Do you recall if any of the others who were members of the escort group had moustaches?---I don't think they did, sir.

25 Thank you, sir.

PRESIDENT: Thank you. We'll now go into closed session and ask the technical people to close the link.

30 (Continued in closed session)