

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
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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

1024 WEDNESDAY 9 AUGUST 2006
DAY 17

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.....  Date09/08/06.....(President)

Signed.....  Date09/08/06.....(Recorder)

Signed.....  Date 09/08/06.....(Transcriber)

Signed.....  Date 09/08/06.....(Transcriber)

WITNESS LIST

Name Of Witness	Page No.
TIMOTHY JOHN SNOW, sworn [1026]	893
EXAMINATION BY COL GRIFFIN	893
EXAMINATION BY LTCOL HOLLES [1052]	903
EXAMINATION BY LTCOL BERKLEY [1111]	910
EXAMINATION BY COL YOUNG [1120]	913
EXAMINATION BY LTCOL HOLLES [1122]	914
EXAMINATION BY COL GRIFFIN [1124]	915
WITNESS WITHDREW [1125]	915
SOLDIER 14, recalled and resworn [1127]	916
EXAMINATION BY COL GRIFFIN	916
EXAMINATION BY LTCOL HOLLES [1159]	928
EXAMINATION BY LTCOL BERKLEY [1406]	946
EXAMINATION BY COL YOUNG [1422]	951
EXAMINATION BY COL GRIFFIN [1425]	952
EXAMINATION BY LTCOL GREEN [1452]	960
EXAMINATION BY COL YOUNG [1455]	961
WITNESS WITHDREW [1459]	963

NTS

5 PRESIDENT: Good morning, Colonel.

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

10 PRESIDENT: Yes, thank you.

LTCOL GREEN: Sir, Soldier 14 is with us today, he's seated beside me, sir. He apologises for not being in uniform; his uniform is locked away, along with all his other personal possessions.

15 PRESIDENT: I understand there's some technical problems there, that's fine.

COL GRIFFIN: Sir, I ask that the standard direction be given when someone's name is mentioned, as it was, please, no publication.

20 PRESIDENT: When we talk about Soldier 14, we won't be mentioning his name, we'll mention him only as Soldier 14. The usual direction is given.

25 <TIMOTHY JOHN SNOW, sworn

[1026]

30 <EXAMINATION BY COL GRIFFIN

COL GRIFFIN: Good morning, Detective Sergeant, my name is Griffin. I'm Counsel Assisting the Inquiry?---Good morning, sir.

35 Detective Sergeant, what's your occupation, please?---Detective Sergeant of Police.

That's with the New South Wales Police?---That's correct, sir.

40 Within which division of the New South Wales Police do you work?
---The Forensics Ballistics Investigation Section.

How long have you been there?---Nine years, sir.

45 Have you been shown a document this morning setting out the rights and

obligations of a witness in Board of Inquiry proceedings, known as Annex F to the Defence Inquiries Manual?---Yes, I have, sir.

5 Are you satisfied you understand your rights and obligations as a witness in these proceedings?---Yes, sir.

10 Would you tell the Board how you came to be involved in the investigation of the death of PTE Jacob Kovco, please?---Could I refer to my statement?

Please. Can I indicate to you that, on the table before you, will be a matrix that shows individuals by name and a corresponding number in the column next to them. Do you see that document there?---Yes, sir.

15 For the purpose of these proceedings, the identity of individuals who are currently serving on operations in the Middle East, their identity is classified and we refer to them by the soldier numbers next to their names. If you have occasion to identify any person, would you please refer to that matrix?---Yes, sir.

20 Thank you?---On Friday, 28 April 2006 I was informed by Detective Acting Superintendent Hoffman that I had been nominated as the Forensics Ballistics case officer in relation to the investigation into the death of PTE Jacob Kovco.

25 I think you're reading from a statement that is already actually in evidence in these proceedings, which is Exhibit 92, which I've asked the Secretary to place before you?---Yes, sir.

30 Would you look at that document and see if you recognise it, please? ---Yes, that's a copy of the statement.

Is that also known as a certificate?---It's a section 177 certificate, yes, issued under the Evidence Act.

35 That document would have been - as it was placed in evidence - redacted, that is, the operational security aspects of it have been blocked out for the purposes of allowing it to be produced for public consideration. So that's the redacted version of your original certificate. Is that your understanding?---Yes, I've seen that.

40 I'm just going to ask you to follow me as I step through that statement. You will be aware that Mr Lucas van der Walt and Detective Inspector Hoffman from your organisation who were involved in the investigation have already given evidence in these proceedings; do you know that?

45

---Yes.

They have spoken to your certificate and it was tendered into evidence through them?---Yes.

5

But I want to take you through it to clarify and confirm the matters contained therein?---That's fine, sir.

You hold a Bachelor of Science degree. Is that correct?---Yes, I do.

10

You're an accredited forensic ballistics investigator?---Yes.

You've completed a variety of courses attaining an armourer's certificate from the Remington Arms Co. Is that the United States of America company?---Yes.

15

Also an armourer's certificate from Hoechler and Koch?---That's correct.

Also an armaments manufacturer?---Yes.

20

And from Glock?---Yes.

You hold armourers' certificates from each of those organisations? ---That's correct.

25

As you've told just the Board, on 28 April this year you were tasked by at that time Acting Superintendent Hoffman as to the nominated Forensic Ballistics case officer for the investigation of the death of PTE Jacob Kovco?---That's correct.

30

At paragraph 4 of your statement on page 2 you then refer to the exhibits that you received. I'm going to ask that you be shown Exhibit 82 in these proceedings. Detective Sergeant, this is the pistol that's already been placed as an exhibit in the proceedings. Mr van der Walt, in the course of giving his evidence, broke the seal and using gloves examined the pistol. We have gloves there. I don't at the moment propose that you open and remove the pistol, but are you able to identify at all through the packaging whether or not it's the same pistol?---Yes, it is.

35

How are you able to tell that? Is there a particular mark that enables you to do that?---There's a number of serial numbers on the weapon.

40

They correspond with the serial number in your statement. Is that right? ---That's correct.

45

For the purposes of certainty, would you just read that serial number, please?---The serial number is 245MY06578.

5 In addition to the pistol, you also received a fired cartridge case. Is that correct?---That's correct.

And an impact-damaged fired bullet?---That's correct.

10 Again for clarity, is a bullet actually separated into various components, one of which is the projectile that is expelled from the weapon after it's fired, the other is the cartridge case that is also expelled from the weapon after it's fired?---The cartridge is actually made up of a number of components. So the cartridge is made up of the bullet, the fired cartridge case, the primer and the propellant.

15 The projectile leaves via the muzzle of the weapon?---That's correct.

And the expended cartridge case is ejected through the ejection port on the side of the weapon?---Correct.

20 You say there at paragraph 5 on page 3 of your statement that a preliminary examination of the pistol revealed no visible biological matter on the external surfaces of the firearm?---That's correct.

25 Would you tell the Board, please, stepping through your statement what you then did in your examination process?---In relation to the pistol?

30 Yes?---I conducted an examination, which is a standard examination in relation to firearms that we conduct. It involves a number of different steps, including an external examination of the firearm.

I'll just show you Exhibit 93 in these proceedings. It should be before you on the desk?---Yes.

35 It's a copy of a document. Do you recognise it?---That's correct. Yes, I do recognise it.

40 Would you tell the Board what you understand it to be?---It's a, what we call, form number 6, which is a blue form where we note down the basic examination of what we do in relation to the firearm. So the steps that we conduct. It's just a standard form that we conduct on every firearm.

45 It has the heading "Firearms Examination Sheet". Is that right?---That's correct, sir.

That document, that's the exhibit in these proceedings, was that prepared by you?---Yes.

5 Would you please again describe what processes you took in your examination of the weapon?---We note down the job number for the case, the examination number of the item, the OIC of the matter and the date that we filled the form in when the examination is conducted.

10 The OIC of the matter, what do you mean by that?---The officer in charge. We also note down the condition of the firearm and what the examination is in relation to. In this case it was in relation to the matter of PTE Kovco. We then note down a description, brief description of the item, whether or not it's in working order, the serial number, country of manufacture. We inspect the ball of the weapon to determine if there's any visible residue in
15 the ball, of whether the firearm is a centre fire or rim fire type firearm, position of extractors, position of ejectors, the weight of the weapon and the general rifling characteristics, being the lands and grooves on the inner surface of the barrel and the direction of twist of those lands and grooves. We then conduct a trigger force test to determine the trigger force of the
20 firearm and describe any safety mechanisms on the firearm and whether or not they're in working order.

Now, on Exhibit 93 the subheading, "Residue", there is some handwriting there?---Yes.
25

What does that handwriting indicate?---That handwriting says:

Very light particles at chamber end of barrel.

30 So there was some visible unburned propellant particles at the chamber end of the barrel, which is the rear of the barrel.

Is that of any significance?---It usually indicates some sort of recent discharge.
35

Please continue through the document?---After describing the different types of safety and whether or not they're in working order, we determine whether the safety can be applied with the weapon in certain positions.

40 In your examination of the safety, what conclusion did you come to about the safety mechanisms on this particular weapon?---That the safeties were functional and the firearm wouldn't discharge with the safety applied.

Please go on?---We also describe the method of feeding the magazine, if
45 you like, chamber size, whether or not the weapon is fitted with a choke or

if there's any particular loading particularities in relation to the weapon. We describe the types of sites that are fitted to the weapon, both front and rear, and whether or not there's a telescopic site fitted. Then we do dimensions of the firearm from barrel and overall length. Then we also
5 give it a quick word picture, a description of the weapon overall, appearance, colour, materials it's constructed of, any inscriptions on the particular weapon, down from manufacturer's markings to proof marks, things like that. I've also taken - another police officer from crime scene
10 also took down eight swabs of the firearm and we also photographed the firearm as well.

The examination that you did of the safety mechanism, was it all part of that particular process where you made an initial examination of the weapon and completed this sheet?---Yes, it's a standard procedure.

15 Was there any other subsequent testing conducted of the weapon?---In relation to safety?

Anything?---Yes, there was - test fired the weapon in order to obtain test-fired bullets and fired cartridge cases for comparison to the exhibit, impact-damaged fired bullet and fired cartridge case.

I'll just step you through those functions then by reference to your certificate, to your statement. If we return to page 4 of your statement, being Exhibit 92?---Yes.

After a description of your attendance at the post-mortem of PTE Jacob Kovco, you then go on to describe receiving a variety of physical exhibits?---Yes.

30 They were three detachable box magazines designed for this type of weapon?---That's correct.

Several hundred 9 mm live rounds for the purposes of firing and testing. Is that correct?---Yes, that's correct.

Your examination of those is described at page 5 of what you did with those materials?---The conclusions drawn from the examination, yes, sir.

40 Would you describe what you did and where you did it and what the purposes were in the various tests that you undertook?---The examination was conducted in the Forensic Ballistic Section's laboratory in Surry Hills in Sydney at the Sydney Police Centre. And the purposes of that, as I've outlined in Exhibit 93, was to determine the general condition of the
45 firearm, a description, examination of the safeties and so forth. As a result

5 of those examinations, I determined and classified the firearm as a pistol under the Firearms Act and determined that the exhibit-fired cartridge case when compared - when comparatively compared microscopically to the test-fired fired cartridge cases were found to be discharged from the same firearm, being that firearm.

10 I'll come to that in a moment. If we could go to page 5 of Exhibit 92. At the first paragraph under the subparagraph (a) on that page you describe a test firing of the exhibit pistol?---Yes.

In that you say in the second sentence that the pistol was test fired and is in working order?---That's correct.

15 What do you mean by "in working order"? Could you expand on that, please?---It was able to discharge a live cartridge through applying force to the front face of the trigger.

I see further down in that paragraph you describe it as being reasonably capable of being raised and fired by one hand?---That's correct.

20 In the context of these tests, these involve you actually physically firing the weapon. Is that correct?---That's correct, yes.

25 Did you do a variety of other physical actions with the weapon?---At that time I test fired the weapon into the water recovery tank in order to obtain the test-fired bullets and retain the test-fired cartridge cases.

You describe there a force of approximately 43.8N?---Newtons.

30 I take it that's Newtons?---That's correct, sir.

Is required to function the trigger mechanism?---Yes.

35 That was for that particular weapon?---Yes.

Is that a standard or within a spectrum of standard pressures of your experience?---It's quite heavy and it's acceptable for that type of weapon for use in the military, yes.

40 When you say "quite heavy", do you mean relative to other types of pistols or that particular type of pistol?---Relative to other types of pistols.

45 Is it reasonable to draw from that that it requires a significant pressure to fire the weapon in your experience?---Yes.

You go on in the second-last sentence in subparagraph (a) to say:

The firearm is fitted with an efficient safety mechanism.

5 ?---That's correct, sir.

Were there other tests rather than just the preliminary one you did with the examination sheet that led you to draw that conclusion?---Yes, I conducted the standard customs firearm safety test to see if the firearm
10 would accidentally discharge, and it didn't.

We've received the customs regulations into evidence as an exhibit in these proceedings. Those various tests have been described to us by Detective Inspector Hoffman, so I won't trouble you, other than to ask
15 you are you familiar with those regulations?---Yes, because I actually conducted the tests.

You conducted those tests?---That's correct.

20 As a consequence of that, it is your opinion that the safety mechanism was and remains, at least at the time you tested it, efficient?---Yes.

If we could move on now to subparagraph (b) on page 5 of your certificate. There you've described a comparative microscopic examination between the exhibit-fired cartridge case?---Yes.
25

By which I understand to be the cartridge case recovered from the scene? ---I understand it was recovered at the scene, yes, not having been to the scene at the time.
30

And the test-fired cartridge case which is the one that you test fired; is that right?---Yes, that's correct.

The results of that, according to your statement or your certificate, is that they revealed they had been discharged in the same firearm?---That's correct.
35

For the laymen amongst us, does that mean that that weapon fired. the test one that you fired and fired the one that you understand was recovered from the scene?---That's correct.
40

Mr van der Walt gave some evidence, and Inspector Hoffman confirmed it, that the characteristics imparted to cartridges and rounds by weapons are somewhat similar to the characteristics to human fingerprints, that is that they are unique to the weapon?---That's correct.
45

You share that view?---Yes.

5 As a consequence of these tests, it could be stated that no other weapon could have fired that round except that exhibit before you?---That's correct, sir.

You agree with that evidence?---It's the basis of our science, yes.

10 That's the conclusion drawn in subparagraph (c) in your statement there on page 5?---Subparagraph (c) refers to the fired bullet, the exhibit, as well.

The fired; and the same applies?---Yes.

15

So both to the cartridge case and to the fired bullet?---Yes.

That the characteristics are the same and it could only have been that weapon that fired both?---That's correct.

20

At page 6 you set out your opinion, having conducted a series of proximity tests?---Yes.

You summarise that opinion at the bottom of the page where you say:

25

I am of the opinion that the exhibit pistol was in near contact but not greater than 5 cm away from the skin at the time of discharge.

?---That's correct.

30

You adhere to that opinion?---Yes.

Would you turn to page 7 of your certificate, please, paragraph 10, and this you describe conducting a series of firearm cycling tests?---Yes.

35

Using the exhibit pistol?---That's correct.

40 Would you please describe to the Board the context in which those tests were conducted, how and where again, please?---These firearm cycling tests were conducted on the ballistics section range, which is downstairs at the Sydney Police Centre at Surry Hills. The purpose of the tests were an attempt to replicate the condition in which the exhibit pistol was apparently found by the investigating Military Police at the scene. We were told that the weapon was recovered with a fired cartridge case partly ejected from the ejection port in what we call a stovepipe, and I was

45

attempting to replicate that using what we call a slack hand grip, being not holding the firearm as firmly as a shooter would, which would result in the weapon cycling correctly, that being extracting and ejecting the fired cartridge case and loading subsequent cartridges into the chamber ready for firing.

5
10 Why did you do that? What does that indicate to you in your field of work?---It's usually a pretty good indicator that the firer of the firearm at the time was either - or very shortly after discharge of the firearm is either dead or unconscious.

15 Were you able to achieve any significant result in the testing?---Yes, using a very light grip I was able to discharge the firearm, which also resulted in the firearm falling to the floor during the firing process, and that resulted in the fired cartridge case remaining within the chamber of the firearm and not extracting or ejecting at all. Using a slightly firmer grip, I was able to replicate the stovepipe condition that the firearm was apparently recovered in, that being the fired cartridge case being extracted from the chamber and partly ejected from the ejection port of the weapon.

20 Does the test relate to the grip solely or does it include the amount of follow-through on the trigger pressure?---Usually related to the firmness of the grip. Part of the cycling process of a self-loading pistol is holding the weapon with a firm grip in order to keep the frame of the weapon relatively stationary to the slide as the slide moves to the rear, unlocks and moves to the rear, extracting and ejecting the fired cartridge case and allowing the slide to travel forward under spring tension, stripping the first cartridge out of the magazine and rechambering that cartridge. If the weapon is not held with a firm enough grip, the frame moves to the rear along with the slide, to some degree, which prevents full extraction and ejection of the fired cartridge case from the weapon. If some ammunition is not loaded correctly with sufficient repellent powder, it may also cause stovepiping as well.

35 I notice you wear on your lapel a Returned Serviceman's badge?---Yes.

40 Do you have a military connection?---The Returned Serviceman's badge is actually in relation to the Australian Federal Police where I served in Timor for six months in 2001, but I also have a military connection, yes, sir.

45 Would you tell the Board what that is, please?---I'm a currently serving officer of the Royal Australian Armoured Corps based at 1 GL Group, 1 Ground Liaison Group, as a ground liaison officer.

In that capacity, how long have you served in the Defence Reserve?---Fourteen years, sir.

5 Have you experience of this particular type of pistol in that military service?---I am qualified, yes, sir.

You are qualified?---Yes.

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

PRESIDENT: Thank you. LTCOL Wilkinson?

LTCOL WILKINSON: No, sir.

15 PRESIDENT: LTCOL Green?

LTCOL GREEN: No, sir.

20 PRESIDENT: LTCOL Holles?

LTCOL HOLLES: Thank you, sir.

25 <EXAMINATION BY LTCOL HOLLES [1052]

LTCOL HOLLES: Detective Sergeant Snow, I'm LTCOL Holles, I appear for PTE Kovco's parents; understand?---Yes, sir.

30 If you don't understand a question I'm asking, would you please let me know and we'll come at it another way?---Yes, sir.

35 Were you aware that there was a second firearm in the room in which this event occurred?---No, sir. No, I didn't attend the scene.

Would you as a matter of course, if you had been aware of the presence of a second firearm, tested that weapon as well?---Yes.

40 When I say second firearm, I mean a second 9 mm pistol for particularity? ---Yes, sir.

You would have required that to be preserved?---Yes.

45 And tested as well?---Submitted for examination, as with this exhibit pistol, sir.

5 The fact that was not done is no reflection on the New South Wales Police in general or you in particular, but the fact that you were not notified and you didn't have the second pistol submitted for testing, basically is a matter which reflects adversely upon those who were supposed to provide you with the appropriate material to conduct your examinations?

10 COL GRIFFIN: I object to the proposition being put that, in the absence of any other evidence, this witness is able to comment on what was done by other people.

LTCOL HOLLES: I'll come at it another way, sir.

15 PRESIDENT: Thank you.

LTCOL HOLLES: To do a thorough job, you require that second pistol, don't you?---Had I attended the scene initially, if that was possible, then I would have examined that pistol, sir, yes.

20 You would have conducted the same tests on it as you conducted on the subject 9 mm that you were given?---Yes.

Are you aware of a technique called silent cocking of a 9 mm pistol?
---No, sir.

25 Have you ever heard of it?---No.

30 I'd like to create a scenario for you: the pistol is stripped, a full round is inserted into the barrel, the pistol is reassembled. Does that, on your understanding of the particular weapon which you tested and of the Mk III in general that the pistol can be discharged without any further intervention by the firer?---It would require the hammer to be cocked, sir, yes.

35 It does, does it not?---Yes.

The hammer to be cocked?---Yes.

40 But of itself it doesn't mean the pistol can be discharged?---It means the pistol is then in a loaded condition but not at instant, sir.

You're aware, aren't you, that with this particular pistol the pistol can be taken to a loaded condition and then the hammer allowed to go forward under pressure, which in effect renders the pistol safe?---Yes.

45

Is it your understanding that the safety catch can be applied at that stage?
---No, sir.

5 It's your understanding the safety catch can't be applied in that condition?
---That's correct.

Did you check that particular thing on the pistol in question?---Yes, sir.

10 It's certainly an effective way of keeping the pistol safe in normal
circumstances, is it not?---Yes, sir.

Is it a technique you've ever been taught?---No.

15 It's a technique of which you're aware?---Yes.

And have been aware, I'd suggest, throughout most of your military
service?---Yes, sir.

20 How easy is it to change the slides on a 9 mm pistol?---Relatively easy,
sir.

25 Is it the case that with the cartridge case which you examined on this
particular weapon, that is, the stovepipe round, all of the characteristic
markings which enable you to say it was fired from that particular weapon
have in fact been placed on there by the slide?---By the slide and the
chamber, sir, yes.

30 The chamber, for practical purposes, is part of the slide?---The chamber is
actually the rear portion of the barrel.

Yes, okay, contained within the slide?---Yes, sir.

35 The one part of the weapon which you would normally expect to place a
marking on the ejecting cartridge is the extractor - the ejector, I should
say?---That's correct, sir, the ejector.

But of course, when a round stovepipes, it doesn't get as far back as the
ejector so there is no marking on the ejector?---Correct, sir.

40 You were given I think some 451 rounds of ammunition; is that correct?
---Yes, sir.

45 Was there any way of identifying what that ammunition came or allegedly
came from the weapon itself?---You mean the ones that were loaded in the
magazine at the time?

I'll come in another way - yes?---Some of the cartridges were loose in bags. One of those bags contained 12 cartridges, which I assumed were the remaining 12 from the magazine that was in the weapon at the time.

5 Was it ever marked or tagged in a way which would indicate that's where it came from?---No, sir.

10 Which presumption you made because one round having been fired, there would be 12 rounds left in the magazine?---That's correct, sir.

But certainly there was no attempt to isolate what was said to be the remaining 12 rounds in the magazine?---No.

15 Did that impact upon your ability to conduct tests on the weapon with any certainty?---The exhibit-fired cartridge case had a certain head stamp with the year of manufacture, and the other cartridges that we used to determine muzzle velocity and proximity tests and other cycling tests were other cartridges that had that same year of manufacture.

20 You were in fact given mixed cartridges, weren't you, from two different manufacturing sources?---That's correct, sir. And a number of years of different manufactures in those manufacturers.

25 There was no attempt made to isolate what was said to be the rounds from the weapon in question?---No, sir.

Were they of a uniform batch type?---Yes, sir they were all manufactured by CBC Magtech in 2004.

30 So they were basically from the one batch as best you can tell - - -?---Yes, sir.

- - - from the markings on the rim of the cartridge?---On the head stamp, yes.

35 On the head stamp, yes. During the time you were preparing your statement, did you have access to SIB statements taken from officers who attended the scene earlier than the New South Wales Police got there? ---No, sir.

40 During the time that you were preparing your statement, were you given any information at all as to the condition of the weapon in terms of whether there was a magazine on it, whether that magazine was loaded at the time you conducted your testing?---Just what was on the exhibit tags

45

that the military SIB placed on the weapons.

5 Are you able to say what they said?---One of the magazines is marked, in part, "Located within the 9 mm Browning pistol on the floor of a room in the accommodation block."

10 Are you aware of any other information other than that tag?---The 12 9 mm cartridges that I referred to earlier, the tag is marked, "Located with magazine of 9 mm pistol located on the floor of the certain room in the accommodation."

Does that say "with" or "within" the weapon?---"Located with the magazine."

15 What about the magazine?---The magazine just says, "Located within the 9 mm Browning pistol," it doesn't actually refer to whether the cartridge - - -

20 How many magazines are there?---There was three.

Are you aware of what the normal number of magazines located in the 9 mm is?---I was only issued one, sir. Times are hard.

25 You accept that there are normally two magazines issued with a 9 mm? ---On operations, sir, I'm not aware.

You would accept that two is a reasonable number to issue?---Yes.

30 COL GRIFFIN: The witness has indicated he doesn't know what the - - -

PRESIDENT: I think we've heard about it elsewhere.

35 LTCOL HOLLES: Thank you. Was there any explanation provided to you for the provision of a third magazine?---No, sir.

Was there any attempt made to isolate which particular magazine came from the pistol, or stated it had come from the pistol?---Apart from the markings on the tag, no, sir.

40 Is it not the case there are three magazines in that same plastic container? ---There were three magazines submitted and one of them was - one of those magazines was tagged, "Located within the pistol," so I'm assuming that was the magazine that was located within the weapon by the investigating Military Police at the time.

45

Any explanation for the other two magazines?---No, sir.

Is there any explanation where the 451 rounds of ammunition came from?
---They were submitted for testing, sir, from the military.

5

Was it suggested they were from the room or from anywhere in particular?---I'm assuming some of them were from the personal gear of PTE Kovco, his personal issued ammunition, and the others were put together by the Military for purposes of testing.

10

There was no attempt to separate those which might have come from PTE Kovco's personal stock and those which might have come from the Military providing you with testing ammunition?---Again, apart from the numbers that they were packaged in in plastic bags, the 12 were marked - located with the magazine with the self-loading pistol. There was another 15 39 which I assume was three magazines worth and a number of cartridges were submitted in the factory boxes. So I assume they weren't loaded into the magazines or any magazine.

20

So the 39 rounds that you were given separately?---Were loose.

Were loose?---Yes.

There's nothing to indicate where they came from?---No, sir.

25

This is not a criticism, Detective Sergeant. Was there any test made on the 12 rounds submitted to see if they matched any of the magazines that were submitted also?---In relation to the magazine feed lip marks?

30

Yes?---No, sir.

You ran a chronograph test on the ammunition?---Yes, sir.

35

What was its muzzle velocity, or average muzzle velocity, I should say?
---Average muzzle velocity was found to be 1227 feet per second.

That's well above the speed of sound, is it not?---Yes, sir.

40

That will produce a crack, a distinctive sound as the projectile comes from the end of the muzzle?---It would be loud, sir, yes.

Have you fired a 9 mm pistol in a small room?---Yes, sir.

45

Without ear protection?---No, sir.

With the ear protection on, are you still able to hear the crack of the round as it fires?---Yes, sir.

5 It doesn't sound like a firecracker, does it?---It depends on the firecracker, sir.

10 Well, at the risk of showing my age, it would go off like a threepenny bungler, not like a Roman candle, or something like that?---It would be quite loud, sir.

If this question transcends into the area of forensic pathology, please indicate and I shan't pursue it. But you've given evidence about in effect replicating a slack grip to produce stovepipe round on ejection?---Yes.

15 A slack grip is equally consistent with somebody who is holding the weapon loosely?---Yes, sir.

20 Accepting that you require a certain amount of pressure to activate the trigger, that doesn't necessarily mean the grip itself is firm enough not to prevent slack grip ejection problem. Do you understand what I'm saying?---Not at all, sir.

You were able to fire the trigger and still have a slack grip?---Yes.

25 It's equally consistent that is caused not by instantaneous death or instantaneous brain damage but simply because of the fact the pistol is not gripped tightly?---Yes.

30 So of itself it doesn't indicate that the slack grip was a result of some damage to the brain, it simply indicates that it was a little grip on the weapon?---That's correct, some inexperienced shooters during training and induction often experience stovepipes because they're not holding firearms firmly enough.

35 Somebody who wasn't, if I can put it this way, serious about holding the weapon might have the same problem?---May do, sir, yes.

40 Certainly it was a condition you were able to replicate that without too much difficulty?---It was difficult to replicate.

That's because you're so experienced at firing a pistol, isn't it?---Maybe, sir.

45 It's true to say, isn't it, that an injury such as PTE Kovco suffered doesn't necessarily produce an instantaneous reaction, it might take a couple of

moments for the body to start shutting down?---That's probably getting into forensic pathology.

Thank you, sir, no further questions.

5

PRESIDENT: Thank you. LTCOL Berkley.

<EXAMINATION BY LTCOL BERKLEY

[1111]

10

LTCOL BERKLEY: Detective Sergeant Snow, I'm LTCOL Berkley and I represent Shelley on my right?---Good morning, sir.

15

You'll be pleased to know that after LTCOL Holles I have a few questions left. So we'll get onto those. Just in paragraph 5 of the statement that you adopted this morning you say there was no visible biological matter present on the pistol when you observed it?---Yes, sir.

20

Has it been your experience that there is visible biological matter on pistols that have discharged in close proximity, no more than five centimetres from a human being?---Yes.

But this one had no biological material?---No.

25

Did you apply any test other than the calibrated eyeball?---No, sir.

I just want to move on now to the safety catch. You mentioned that in paragraph 8 of your statement. I think I outlined to you before you gave evidence the sort of inquiries that I'd be making of you in the witness box?---Yes.

30

Of course you as a scientific officer would understand that reconstructions are of limited value unless we know exactly the methodology used to withdraw the pistol from the holster, if indeed it was withdrawn from the holster. Would you agree with that?---It's very difficult to replicate an exact situation unless we're provided with the specific scenario; so yes.

35

I understand if you looked at the pistol the base of the butt would be a southerly direction, the slide would be the north, the hammer is in the east and the muzzle is in the west. Just on those dimensions, how would you put the position of the ambidextrous safety catch when it's on safe?---To the north.

40

Is it pointing north or north-west?---It's pointing north-west.

45

When it's at the instant condition, in other words, able to fire, it is pointing south-west?---It would be pointing probably west, sir.

5 So if the pistol was muzzled down inside a holster, withdrawing the pistol from a holster or at least withdrawing it to the westerly position, say, if that safety catch came into contact with any other object of sufficient force it would naturally push the safety catch down to the westerly position, in other words, the firing position?---Depending on the design of the holster,
10 sir, and not having conducted any tests it's difficult to say. But the safety catch does require physical force applied to either side to disengage.

It doesn't of course mean just the holster itself, it could be any object or material or body part near the holster or during the time of its withdrawal.
15 It could be really anything that it comes into contact with?---An object needs to come in contact with the safety to disengage it, yes.

Of course I'm not discounting the possibility that it was also a thumb, a movement of the thumb of the firearm?---Yes, sir.

20 When we went to the - LTCOL Holles just took you through the slack hand grip. Your evidence in relation to that I think that's in paragraph 10 of your statement. I was wondering what information you'd received, just verbally or in written statement form, as to what actually happened to Jake in the room that day?---The information that led me to believe that the
25 weapon had stovepiped was the information provided on the identification label that was with the exhibit fired cartridge case, mentioned that the fired cartridge case was recovered from the ejection port of the pistol. I then asked Detective Inspector Wayne Hayes to make inquiries with the
30 investigating Military Police if the weapon was recovered in a stovepipe condition and that was confirmed.

Not so much that, but did someone discuss with you an outline of the events that happened in Jake's room on 21 April 2006? Did anyone tell you what this case is about?---Apart from being told that there was a
35 shooting and obviously a deceased, we were provided with little information.

Did you get any information that say the shooter was Jake?---No, sir.
40 From what I understand, the pistol was recovered from the floor and not from the deceased's hands.

Did any police or Military Police or anyone you came into contact with instil in your mind that this might be an own goal, so to speak?---An own
45 goal?

In other words - - -?---A self-inflicted injury?

5 Self-inflicted injury?---I don't recall any specific conversations, but that seemed to be the general feeling at the time.

That was the general feeling?---Yes.

10 That's all I wanted. I'm not asking you for specifics. You know of course the Military term is situating the appreciation, don't you?---Yes.

15 Of course it's a natural thing that you would hear the background, some sort of background of the case so that you understand it, at least in what you're looking for. Would that be true?---Yes.

20 Of course the slack hand grip is very much a theory, isn't it? It's a theory. We don't know in relation to self-inflicted injuries. We theorise that's one of the causes of a stovepiping in a self-inflicted injury, don't we? ---Having been to a number of fatal shootings, self-inflicted fatal shootings, some of the firearms recovered were actually in a stovepipe condition and it's a well-known phenomenon within the ballistics field that it does happen.

25 There's no empirical evidence or - - - ?---It doesn't happen a hundred per cent of the time.

30 What I'm saying to you is that there is nothing in the field of forensic ballistics that says that the slack hand grip is anything more than a theory?---There's a number of publications that mention it.

As a theory?---It's an indicator of theory of self-inflicted injuries.

35 There's no empirical evidence that you know of or studies that have been done?---That say it's a hundred per cent certain, no.

Of course stovepiping can be caused by let's go through some others; partial ignition of the propellant or a failure of the propellant to fully ignite?---Or an insufficient propellant load.

40 They're all things that we also know will cause stovepiping?---Yes.

45 We also know that of course any blockage or obstruction of the ejection port may in fact cause stovepiping?---That's correct, sir, or any fouling of the slide of the weapon during the cycling process.

So if the weapon isn't fired so that the slide can cycle fully and freely, you may get stovepiping if those matters that we've talked about come in play?---Yes.

5 So if the pistol is say laying on a bed and fired - and I'm not suggesting this is the case, but just to make it clear for the purposes of this transcript - and the cartridge case can't eject, you'd expect some sort of stovepiping? ---Yes, it's possible, sir.

10 As well as the replicated slack hand grip or partial ignition or insufficient propellant, all these other things?---Yes.

That is the last of my questions. Thank you?---You're welcome, sir.

15 PRESIDENT: COL Young.

<EXAMINATION BY COL YOUNG

[1120]

20

COL YOUNG: Sergeant Snow, my name is COL Young. I appear to represent the interests of PTE Kovco?---Good morning, sir.

25 I've just got one area I want to explore. If I could show you a document, please. I just ask if you're able to identify that document just from looking at the front page?---Yes, these are notes I took during the post-mortem operation, sir.

30 Is that your handwriting?---Yes, it is.

35 Could you turn to the second page and look at the last two lines on that page. Is that also your handwriting?---The lower two lines are my handwriting, however, the names were written by the respective people. I passed the form around for people to write their names and their ranks.

40 It's the lower two lines I'm interested in. Would you just read that aloud, please?---Info from Sergeant - correction.

45 I don't think you'll find him on that matrix because he's not in country. So you can use his name?---Info from SGT Francis. Weapon has been extensively handled prior to delivery to police.

Do you have a recollection of having a conversation with SGT Francis about that entry you made?---Yes, that's probably why I would have taken those notes, sir.

5 Can you expand on how it came about that you've recorded that? He obviously said something to you presumably?---Just during general conversation at the time made inquiries about how many people had handled the weapon and information from him was that it had been handled by a number of people.

10 So what you've recorded, is that your recollection of what you were told by him?---Yes, sir.

Nothing further, thank you, sir.

PRESIDENT: Yes, thank you.

15 LTCOL HOLLES: Sir, there's one supplementary question if I could ask, please.

20 <EXAMINATION BY LTCOL HOLLES

[1122]

25 LTCOL HOLLES: Detective Sergeant Snow, were you at any stage briefed or informed as to how it was that the weapon was sent back to Australia mounted on a piece of cardboard in a disused computer paper box?---I saw the packaging, yes, sir.

30 Was any explanation proffered to you as to why the pistol didn't come back in a plastic bag seal?---Not having packaged the weapon, sir, I don't have any explanation.

No, I'm not asking if you have an explanation, I'm asking you if anybody explained to you why it was sent back that way rather than preserved inside a plastic or a paper bag?---I believe that's the best that they had at the time in that situation.

35 Were you aware that at the site in Baghdad in which the weapon was located it was initially placed into a plastic bag?---No, I was not aware of that, sir.

40 The positioning of the pistol mounting it in effect in that manner would have done little to preserve the integrity of it as an exhibit I presume?---In the manner that it was received?

45 Yes?---It was a novel method of packaging, sir.

Thank you very much, Detective Sergeant Snow.

PRESIDENT: Yes.

5

<EXAMINATION BY COL GRIFFIN

[1124]

10 COL GRIFFIN: Detective Sergeant Snow, you were asked some questions about the slack hand grip by Counsel Representing?---Yes, sir.

I just want to reconfirm some issues with you. You're an accredited forensic ballistics investigator. How long have you been a forensic ballistics investigator?---Nine years, sir.

15

Does that involve attending the scenes of incidents as well as conducting these type of tests that you've just described?---Yes, sir.

20 In either the Military - and you've told us you have extensive Military history - or in your police activities, have you actually seen the stovepipe effect?---Yes, sir.

Are you able to say how many times you've seen that by reference say to five, less than five?---I'd say more than five, sir.

25

By reference to 10?---Probably between five and 10.

Are they stovepiping effects in a pistol, a self-loading pistol?---Self-loading pistol and self-loading rifles.

30

Are you able to say - and you've mentioned that several scenes you attended stovepipe effects from self-inflicted wounds. Are you able to say how many of those between five and 10 you've seen that to your knowledge were self-inflicted?---The majority of them.

35

Thank you. Nothing further, sir.

40 PRESIDENT: Thank you, Sergeant, you may now stand down. Thank you very much. The Board is very grateful to you for your time.

<WITNESS WITHDREW

[1125]

45 COL GRIFFIN: Sir, the next witness is Soldier 14. I call Soldier 14.

PRESIDENT: Thank you.

5 <SOLDIER 14, recalled and resworn [1127]

<EXAMINATION BY COL GRIFFIN

10 COL GRIFFIN: Could Soldier 14 be shown Exhibit 19 and 20, both the
redacted and classified versions, please. Soldier 14, as you know, I'm
COL Griffin, Counsel assisting the Inquiry. You previously gave
15 evidence to the Board by video-link on 21 June. You will recall that those
documents that are now before you as exhibits are statements made by you
that were tendered at the last proceedings. Is that correct?---Yes, sir.

20 You'll recall that in your evidence when those documents were presented
to you - and I refer, sir, to page 178 of the transcript - that the SIB
statement was subject to the qualifications that you've made in the
subsequent statement that was prepared for you with the assistance of your
then legal representatives. So you accepted those two statements
25 comprised your evidence subject to the qualifications in the second
statement. Is that correct?---Yes, sir.

30 Sir, I understand the witness is available for cross-examination now, has
indeed returned to Australia for that purpose at the request of Counsel
Representing.

PRESIDENT: Thank you. Do you want to take it first, LTCOL Green?

LTCOL GREEN: Yes, thank you, sir. Sir, it might be necessary to close
the Court for the purposes of my cross-examination. It will be matters
35 dealing with degrees of weapon readiness, training, deployment,
command points, administrators.

PRESIDENT: Anybody got any comment to make?

40 COUNSEL REPRESENTING: No, sir.

PRESIDENT: Very well. The Board will be closed and we'll await the
magical signal that it is in closed before we continue.

(Continued in closed session)

(Continued in open session)

PRESIDENT: Thank you, LTCOL Holles.

5 LTCOL HOLLES: Thank you, sir. Soldier 14, I'm LTCOL Holles, I represent PTE Kovco's parents; do you understand?---Yes, sir.

Should there be any question you don't understand which I ask you, please indicate and I'll try and clarify for you; understand?---Yes, sir.

10 You made two statements to the Inquiry: one to the Military Police and one to your then Counsel Assisting; is that correct?---Yes, sir.

I should say Counsel Representing; is that correct?---Yes, sir.

15 There are inconsistencies between those two statements, are there not?---Yes, sir.

20 Going first to the Military Police statement, are you able to say globally how it was that those inconsistencies arose?---When I first gave my statement to the SIB sergeant, the statement was very dialogued and he simply filled in my details and certain things I had to say in certain areas, which just - when I went back over it and read it, sir, just a few things were incorrect so I wanted to make them correct, sir.

25 When you say, "dialogued," basically is this the way it happened - if I'm overstating or exaggerating, please stop me: you were given a - well, there was a document on a computer screen or on some other means of reproduction which had the majority of the detail filled in; is that correct. So in effect a matrix had been prepared - - -?---Yes, sir.

30 - - - for the statement; is that correct?---Yes, sir.

35 You simply filled in the dots?---I was asked questions and the SIB sergeant filled them in, sir.

Were the words in that statement - and for particularity I refer to the SIB statement dated 30 April 2006 - your statement?---Is that my second statement, sir?

40 No, it's the first statement?---Can you state that question again, please, sir?

45 Yes, certainly. Are all the words in that statement your own words?---No, sir.

5 So is it the case that you had a conversation with the sergeant who prepared the document and he in effect composed the statement from what you told him and from material which he had already prepared?--- Yes, sir.

Some of that material you now find objectionable because it doesn't reflect accurately what your state of mind or what you actually told the officer?---Yes, sir, and also other matters to do with the deployment.

10 Did you at any stage attempt, when speaking to the SIB sergeant at the time you signed the document, to correct the errors?---I did not pick up on it at the time, sir.

How long were you given to read the statement through before being asked to sign it?---I had enough time to read the statement through, sir.

15 How did you feel at that stage?---At that stage I was fine with it as I hadn't - I didn't pick up on the statement, sir.

20 Had you had enough sleep?---I'm sure I did, sir.

How do you account, then, for the fact that the statement contains material which is not of your own choosing?---When I read over it, sir, it all seemed to be accurate. When I read over it I picked up that some things weren't accurate, sir,

25 So without wishing to be flippant about it, was it the benefit of hindsight that led you to the view that the statement was not accurate?---Can you say that again, please, sir?

30 Is it the benefit of hindsight that led you to the view the statement wasn't accurate?---Yes, sir.

You see, you've also made a statement to your then legal adviser; is that correct?---Yes, sir.

35 Some time in June 2006?---Yes, sir.

You've included in that paragraph 3 a statement to the effect the Military Police statement was unsigned. That was simply the copy next to your later statement to your adviser; it's not suggested that you didn't sign the original police statement, is it?---That's correct, sir.

40 You talk about the buddy system. It's the case that the buddy system is well known throughout the military, isn't it?---Yes, sir.

45

5 It's the case that you've used the buddy system basically since your enlistment; is that not so?---That I've used it in regards to all areas in the military; yes, since enlistment, sir.

10 It's the case that you are supposed to use the buddy system on this particular operation you're on at the present time?---Can you just that again, please, sir?

15 It's the case that you are supposed to use the buddy system on the present operation in which you are involved?---No, sir.

When you say, "No," why did you give that answer?---Because it was it's simply there if it's achievable at the time, sir.

20 So, what, it's a nice thing to be able to do but it's not mandatory, is that what you're saying?---Yes, sir.

You understand that SOPs have the force of law?---On thinking about it now, yes, sir, I - yes.

25 And you're aware that there's an SOP that says you're supposed to use the buddy system?---I was not aware of the SOPs at the time, sir.

You've been in other operations?---Yes, sir.

30 Have you ever been on an operation without SOPs?---Beg your pardon, sir?

Have you ever been on an operation without SOPs?---Yes, I've been on operations where I haven't signed SOPs or read SOPs, sir.

35 That's not my questions. I go back one. SOPs are a fact of life in the military, aren't they?---Yes, sir.

40 Every place you're posted, every unit you belong to will have SOPs?---Yes, sir.

Every operation you do, every training exercise you do, will either have SOPs written for them or will adopt SOPs from some other entity; that's correct, isn't it?---Yes, sir.

45 They're basically the guide by which you do business in the military, are they not?---Yes, sir.

I suggest that you were aware that there were SOPs in existence with this particular operation?---I was not aware of the SOPs, sir, at the time.

5 Ever think to ask if there were any in existence or what you were supposed to do in certain circumstances?---Can you say that again, please, sir?

10 Yes, certainly. Did you ever think to ask somebody in the chain of command whether they existed?---We were under the impression that they were working on it at the time, sir.

You're not seriously suggesting that it was just free play, or something, are you?---It's not free play, sir, you were - - -

15 You were working to SOPs, weren't you?---There were no SOPs at the time, sir.

20 Well, I suggest that it might be your belief there were no SOPs at the time but there were in fact SOPs in existence; that's the case, isn't it?---From the previous SECDETs, yes, sir.

Have you since made any inquiries about the existence of SOPs?---Yes, I have, sir.

25 What's your present position on that?---That the SOPs were - I'm not actually sure if they've been completed yet or not, sir, for the <deleted>, but as I understand it, they were still working on them and there are no SOPs for the Embassy as of when I left, sir.

30 That's your understanding, is it?---Yes, sir.

Do you accept that you might be wrong?---Of course, sir.

35 Despite a statement to the Military Police and a statement to your legal adviser which addresses the question of SOPs, you have not made an independent inquiry to see whether they exist and if they affect you? ---Can you rephrase that, please, sir?

40 Despite the fact that you've made a statement to the SIB in which you talk about the SOPs, despite the fact that you made a statement to your then military legal adviser in which you mention SOPs, you have not checked in the intervening period to see whether they are in existence and if they apply to you?---I at one stage after the incident asked my <deleted>, callsign Soldier 12, and he told me that they were still working on them,
45 sir.

So your position is, is it, as far as you're aware they didn't exist?---Not that they didn't exist, sir, but they were working on them.

5 So when in the second paragraph of para 9 of your statement you say:

I believe those degrees of weapon readiness have been promulgated as standard operating procedures.

10 You were saying something which you either knew to be false or didn't believe to be true. Is that correct?---Can you please say that again, sir?

Yes, certainly. If you go to the second line of paragraph 9, notice paragraph 9 of your SIB statement?---Yes, sir.

15

Bottom of the page, going over the next page, you say this:

I believe that those degrees of weapon readiness have been promulgated through standard operating procedures.

20

That's what's written there?---That's what's written there, sir.

You agree that you had time to read the statement?---Yes, sir.

25 Do you agree that the first paragraph of the statement reads in the third line down:

This statement is true to the best of my knowledge and belief, and I acknowledge that if I have stated in it anything that I know to be false or do not believe to be true, as a Defence Force member or Defence Force civilian, I will be liable to prosecution.

30

?---I see that, sir.

35 I'll ask you again. When you signed the statement saying, "I believe those degrees of weapon readiness have been promulgated through standard operating procedures," SOPs, you must have known that was false?---I didn't pick up on that, sir.

40 Soldier 14, it is a fairly significant, is it not?---The fact that I signed the document, sir? Is that what - - -

No, the fact that you have written that there and you now say you didn't pick up on it?---They were - at the time they were not my words, sir.

45

They were not your words?---No.

Is it not the case that immediately underneath those words your signature appears?---Not on my copy, sir.

5

Can the witness be provided with a signed copy?---Yes, sir.

Bottom of page 2 of 7, running into the top of page 3?---Yes, I've seen my signature, sir.

10

Do you agree that you've given evidence earlier that you were not tired, you had time to read the document, you did read the document?---Yes, sir.

You've agreed that the first paragraph of the document says that the statement is true to the best of my knowledge and belief?---Yes, sir.

15

You acknowledge that you're liable to prosecution if there's anything in it you know to be false and not believe to be true?---Yes, sir.

20

And you missed it?---Yes, sir.

Do you have difficulty with attention to detail, Soldier 14?---No, sir.

You would agree that's not the only thing you missed on this statement. Is that not the case?---Say again, please, sir.

25

You agree that was not the only thing you missed in this statement. Is that not the case?---Yes, sir.

In fact para 11 contains another omission, according to para 7 of your statement to your legal adviser. In fact at the bottom of para 11 you say this:

30

At all times when weapon clearance is conducted all weapons held by the soldier are to be cleared, which includes side arms (pistols). The buddy system has been employed since the start of OP CATALYST, including the pre-deployment training, and at every other operation that I've been on.

35

That's what you wrote there, isn't it?---That's - once again, sir, that is the words that were already on the computer.

40

Again it's your signature at the bottom of that page?---Yes, sir.

You agree with me again that you had enough time to read the document?

45

---I believe that's why I made the statement in my amended statement here, sir, saying - correcting that, sir.

5 Thank you for the assertion. I'll ask my question again. Do you agree with me that you had enough time to sign this document to read the statement?---Yes, I had enough time to read it, sir.

10 You were not pressured by the SIB to sign the statement, were you?---No, sir.

Did you point out to the SIB Sergeant that those were not your words, nor was it your understanding?---No, sir.

15 Go to para 24 of your statement, first line reads:

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

20 Were they the words that you used in the statement?---I believe they were not my words that I used to - - -

25 That's something else the SIB has provided, was it?---Yes, sir, probably from most of our statements how we said that he was there. He would have come to - - -

Have you looked at other people's statements?---No, sir.

30 They too were not your words. Is that what you say?---No, they're not my words, sir.

You say that a few days before this incident you saw PTE Kovco trying to silently cock his pistol. Is that correct?---That's correct, sir.

35 Is that still your evidence?---Yes, sir.

You were taught silent cocking on the Styre, aren't you?---I was shown through basic training, sir.

40 You can't silent cock a pistol, can you?---I've never done it, sir, and I've never seen it, apart from that time.

You don't actually know what he was doing, do you?---He was silently cocking a weapon, sir.

45 You can't do it, can you?---I've never done it, sir.

So you don't know if you can do it or not, do you?---I'm sure you can do it, sir.

5 Could you have a look at the matrix, please, for the degrees of weapon readiness?---Yes, sir.

You achieve the same result much quicker by going to <deleted> than letting the hammer go forward under control, don't you?---Yes, sir.

10 So there's no point to what you suggested PTE Kovco was doing, is there?---There is no point to it, sir.

I'd just like to ask you some questions about the day that this occurred.
15 You say in your statement that you followed PTE Kovco through the door and he held it closed for you or closed on you. Is that correct?---Sorry, sir?

You were coming off duty, you were following PTE Kovco through the
20 unload point. You say he closed the door and he basically held it as a practical joke so you couldn't get in. Is that correct?---Yes, that's right, sir.

Is the door such that you can lock it and leave your hands free, or do you
25 have to physically hold something on the other side to prevent the person entering?---He would have to have been holding the door, sir.

Are you sure about that?---Yes, sir.

30 How far behind him were you?---Around 10 metres, sir.

I suggest you can go to condition <deleted> very quickly, if you need to,
can't you?---Yes, sir.

35 On the SLP you can go to condition <deleted> very quickly, can't you?
---Yes, sir.

Especially if you're only at condition <deleted>?---Yes, sir.

40 That's the condition you were supposed to be at for the SLP where you'd been. Is that not the case? Or where PTE Kovco had been?---Supposed to be?

No, I'm saying that's the condition he was in in accordance with the SOPs
45 in that particular location?---I was unsure of - I did not know what weapon

state his pistol was in. But the supposed weapon state is <deleted>.

It's a matter of a second or less to go from <deleted> to <deleted>, is it not?

5 ---That depends if you carry out the proper <deleted> or not, sir.

It doesn't take forever, in fact it takes a second or so to go from <deleted> to <deleted>, doesn't it?---I'd say it takes longer than that, sir.

10 How long would you say?---At least five seconds, sir.

Starting now, you say it takes that long to go from <deleted> to <deleted>, do you?---I beg your pardon, sir?

15 I'll time it five seconds starting now. It takes you that long, does it? ---Probably about seven seconds actually, sir.

You're not making this up as you go along, are you, Soldier 14?---No, I'm not, sir.

20 My point is that simply you can go from <deleted> to <deleted> very, very quickly, can't you?---Approximately five seconds, sir.

25 The situation is you really don't know whether or not PTE Kovco cleared his pistol, do you?---No, I do not know if he did it or not, sir.

You didn't have a stopwatch on?---I always wear my watch, sir.

30 My question is, you didn't have a stopwatch on the time it took for you to get through the door?---No, I did not, sir.

You said you were 10 metres behind. Is that not the case?---Yes, sir.

35 It would have taken you five to 10 seconds to catch up with him?---I'm not sure. As best my knowledge, sir, is that I did not catch up to him.

He certainly had adequate time to render his pistol at condition <deleted>, did he not?---If he was holding the door shut the whole time I'd say no. But - - -

40 I didn't mean to interrupt you.

LTCOL GREEN: Sir, he's been interrupted. He was about to go on and say something else.

45

PRESIDENT: I'm going to allow him to finish the sentence.

LTCOL HOLLES: Thank you, sir.

5 LTCOL GREEN: The words were, "I'm sure if he held the door shut the whole time, no, but". That's where he got interrupted?---If he held the door the whole time that I was unloading, which I assumed at the time, he would not have had the time to unload his weapons with one hand, as I said. However, I do not know if he cleared his weapons or not.

10 LTCOL HOLLES: So on what basis do you make the assumption that he didn't clear his weapons if you just don't know?---Because I was asked if I had thought he had the time or not and I answered.

15 Did you put that qualification in, that is, you just don't know?---Into my statement, no, sir.

What you've written is this:

20 *I did not see PTE Kovco clear his weapons at the clearance point and I am sure that he could not have done as he entered the doorway. As I walked around the corner I began to clear my weapons.*

25 You were sure when you made this statement. Is it your position now you're not sure?---That was my statement at the time, sir, and I'm sure of that.

30 I'm sorry, I didn't hear that answer?---I said I was sure of my statement at the time, sir.

You're not sure now?---It's been a long time, sir.

35 Soldier 14, are you now sure or are you not now sure?---I don't think that he had enough time to unload his weapons.

But you don't know, do you?---No, I do not know, sir.

40 You've made a presumption in your statement and you continue that presumption today?---I was asked questions, sir - sorry, sir.

That's the case, isn't it?---It wasn't an assumption, sir. I was asked the question and I answered that question, sir.

45 Was that another example of the Military Police shaping the statement for

you?---The Military Police it was a very shaped statement all over, sir.

Thank you for the assertion. Specifically, was that statement another
example - when I say "statement", I mean those particular words I just
5 referred to - of the Military Police shaping the statement that you signed?
---No, I'm pretty sure they're my words, sir.

Independent of anything the Military Police suggested to you?---That was
what I told him - that was my statement and that's put into a sentence as
10 he typed it out, sir.

Can I suggest to you the situation is that you just really don't know, do
you?---No, that's not true, sir. I was asked a question whether I think that
he had enough time to unload it, whether I think, sir, that he had enough
15 time to unload his weapons. And I said no, because, and I gave my
reasons, sir.

Isn't your evidence that you've given over the last five or 10 minutes that
you don't know whether he had the time or not?---I said, sir, that when I
20 was asked if I think he had the time and I replied no, because, and I gave
my reasons. That's what I'm saying, sir.

Is that what you're saying now or is that what you said back then or is that
a view you've reached in the meantime?---That's what I said then, sir, and
25 it's what I'm saying now.

Despite your evidence in the last 10 minutes to the effect that you really
just didn't know what he did or didn't do?---Of course I don't know, sir,
30 he was on the other side of a door.

You have no idea whether it was being held or not held?---When I went to
open the door it was being held and in the period that I was unloading my
weapon I could not say, sir, because I was not holding the door.

So despite the fact you can't see what's going on, you're acting on the
presumption that he was doing nothing while you were clearing your
weapon and you're acting on the presumption that he was holding the
door and not clearing his pistol. Is that what you say?---Yes, I was asked
35 whether he had enough time. Considering I had one weapon, he had two,
40 sir, no, I don't think he had enough time.

Which is quite a different proposition from saying, "I am sure he could
not have done" is it not?---Well, I am sure, sir, that that is what I think.

45 Sir, I'm about to move onto another topic.

PRESIDENT: That might be an appropriate time.

LTCOL HOLLES: Yes.

5

PRESIDENT: We'll resume at 20 to 2.

10 **LUNCHEON ADJOURNMENT** [1237]

RESUMED [1346]

15 PRESIDENT: Thank you, LTCOL Holles. I presume we can continue in open session?

LTCOL HOLLES: Yes, sir.

20 Do you accept that you, with Soldier 17 and PTE Kovco, got back to your accommodation about the same time?---Yes, sir, I accept that.

PRESIDENT: We will of course use the matrix number for that surname.

25 LTCOL HOLLES: I'm sorry, I do apologise for that, sir.

Soldier 17 and you went back to the accommodation at the same time as PTE Kovco?---Yes, sir.

30 When you got back to your room, was that room occupied?---I cannot recall, sir.

You were in the room next to PTE Kovco's room, weren't you?---Yes, sir.

35 You shared it with Soldier 20?---Yes, sir.

And who else?---That's all, sir.

So you were only two out in the room, were you?---Yes, sir.

40

Do you recall whether Soldier 20 was there when you got back?---I cannot recall, sir.

45 Do you recall Soldier 20 arriving at some stage during the course of the afternoon?---I have no recollection at all, sir.

No recollection at all?---No, sir.

5 You gave evidence earlier today that there was some noise coming from the room in which PTE Kovco was with Soldier 17 and Soldier 19?---Yes, sir.

How long after you got back did that noise start?---I'm not sure, sir.

10 But you could hear music being played?---Yes.

Do you recall which group or who was singing or anything like that?---I know what song was playing but at the time I did not know who it was, sir.

15 Was the song played over and over again or was it a variety of different songs played?---I'm not sure of exactly what songs were being played as the noise come through it was very - quite muffled, sir.

20 Could you hear conversation?---I could hear conversation taking place over the music but I have no idea what was being said, sir.

25 Could you hear any horseplay or any games being played, anything like that?---I can't say they were playing any games, but they seemed to be in high spirits, sir.

How long before you heard the round go off was that situation pertaining?---It was constant since it started, sir.

30 Right up to the time the round went off?---There was a pause of probably - before that, Soldier 20 actually was trying to sleep and he asked me to tell them to be quiet. So I yelled out to them to be quiet. Whether I can use those exact words or not, I'm not sure.

35 PRESIDENT: I think if we haven't heard it before it will be a new experience for us. Use whatever words you used?---Okay. I told them to shut the fuck up and about I'd say around two seconds later I heard the round go off, sir.

40 LTCOL HOLLES: So the noise and the frivolity, the singing rather, the song going on was constant right up to the time that you heard the round? ---Yes, sir.

45 It would be wrong to suggest that there was some five to 10 minutes of silence before the round went off?---The music was played right up to the

round going off, sir.

What about the conversation and the noise?---As soon as I said it, it seemed to stop for a second. Then I heard the round go off, sir.

5

So the conversation and the general noise is carrying on a second or so before you heard the round go off. Is that right?---Yes, sir.

Because that was the time when you banged your fist on the wall and said, "Don't say any more," or words to that effect?---Yes, sir.

10

You mentioned that Soldier 20 was trying to sleep. When did he get into the room?---I'm not sure, sir. I'm tipping it would have been between five and 10 minutes after the hours of 1500, sir.

15

So I ask you again. Was he there when you got there or not?---I can't recall, sir.

But he certainly arrived at some stage during the course of the next hour or so?---Yes, sir.

20

You don't recall him coming back?---No, I can't remember, sir.

Was he part of the brick or the section that you were working in?---Yes, sir.

25

So the noise is continuing, that is, the music and the conversation and the hilarity, if I can use it that way, up to about the time that you belt on the adjoining wall with room 8 and then a second or so later you hear the round going off. Is that right?---Yes, to the best of my knowledge, sir.

30

How did you know it was a round going off?---It's just distinct sound, sir. I knew it was a 9 mm round, sir.

You heard the crack of a supersonic round being discharged. Is that correct?---Yes, sir.

35

It didn't sound like a firecracker or a cap gun or something like that? ---No, sir, I definitely knew that it was a 9 mm round.

40

Are you aware if there's any insulation between the room that you were in and room 8?---I'm not aware, sir.

Now, the time you get to the room at approximately 1510 to the time you hear the round go off at about 1610, where were you?---I was seated at a

45

desk on my - using my laptop computer, sir.

Did you leave the room at any stage?---To the best of my knowledge, during that hour since I got back, no, sir.

5

Did you at any stage go into the room next door, that is, room 8?---No, sir.

What did you do immediately you heard the round go off?---I got up and went next door, sir.

10

Who was in the room when you got there?---Soldier 17, 19 and PTE Kovco, sir.

Did you go inside the room?---No, I stayed at the door, sir.

15

How long did you stay at the door?---I'm unsure, sir.

Did you hear anybody say anything as you were standing at the door? ---Yes, sir. I heard - Soldier 17 was sort of holding PTE Kovco and he said - he was saying, "Stay with me, Jake, stay with me, Jake."

20

Did you hear anybody say words to the effect, "What have you done? What have you done"?---No, sir.

25

How long were you at the door?---I'm unsure, sir, I can't say.

Who were the next people there?---I'm not a hundred per cent sure, but I'm pretty - I think Soldier 20 was there as well next to me. As for the others, I wasn't aware of what was going on, sir, I was pretty shocked at what had happened.

30

Do you have much of a recollection of that day at all?---I don't have - for the hour prior to the incident I don't really have much recollection, sir, just because obviously it was just another day. I wasn't - nothing had happened yet. So I'm not really sure that last hour. After that, I have a fairly good memory, sir.

35

How long was it before you went to the hospital?---I'd say probably two hours, sir, an hour and a half, two hours.

40

You're not sure. What did you do between the time that you heard the shot, went to the room door and then went to the hospital?---We - from the moment I went to the door, sir?

45

Yes?---As I said, the guys were yelling for first aid kits. I was screaming

out for one as well and one of the guys went and grabbed one. Then I knew Soldier 20 had run off towards the actual hospital and had run to get the gator. I ran towards the callsign I and yelled at the Americans to get the gator, to get the gator, because they called for it on their radio. I then
5 ran - I was - I'm not sure why, but I ran towards the - probably about a hundred metres towards the hospital, but I heard the gator start up. So I ran back. By the time I got back within callsign M the gator was kind of coming past me and I was just pointing it where to go, sir. They loaded Jake up. I took him around to the hospital. I think I went back to my
10 room for a bit. It's obviously something I wasn't really - you know, that's something that you didn't expect to happen. Everyone was in a bit of shock. I went and sort of dealt with it in my own way in my room and I was pretty upset about the whole thing. After a while, I'm uncertain how long, a few guys said, "Come on, let's get out of here." So we went and -
15 we tried to have some dinner. I think no-one was really eating, we were just kind of going through the motion, sir. Then someone ran over to the mess and told us to hurry up and come back to the hospital because it was fairly important for us to be there.

20 How long after the gator arrived did you go up to the hospital?---To the hospital or the mess, sir?

The hospital?---I'm unsure, but I'd say an hour and a half, two hours, sir.

25 How long after that did you see PTE Kovco for the last time?---I'm unsure, sir. It all went for a while.

You gave evidence a little while ago that you have a fairly clear memory of what happened from the time the event - the pistol round was heard.
30 Can I suggest to you that you're not sure at all about what happened, time frame, sequences?---I know what happened, sir. I'm unsure of time frames.

The situation is this, is it not, Soldier 14: the one event which you claim
35 you have a very clear recollection of that day is the event at the unload point?---Can you rephrase that, please, sir?

Yes, certainly. For the vast majority of 21 April 2006 your memory is faulty. Is that not the case?---Of course, sir, it's been a few months.
40

Your answers usually have the words "I'm unsure", "I'm not certain" or phrases like that in them, do they not?---Yes, sir.

The one exception to that appears to be what happened at the unload point.
45 Is that not the case?---Yes, that's true, sir.

Are you able to explain why it is you have a very clear recollection of what happened there but a very unclear recollection of what happened elsewhere?---Because, sir, from the beginning I was asked those questions
5 from the start and that's been my whole involvement this whole time and it's concerned me the whole time, sir. Therefore, I've obviously had to deal with them many a times and talk about them a lot over this period where the others that you've just asked me have simply - I haven't talked about or have not come into any discussions I've had, sir.

10 You made a seven-page statement to the Military Police, did you not?
---Six, sir.

15 Sorry, it says six of seven pages. Yes, okay, there's a coversheet as well, I understand. You agree, don't you, that well over - basically from paragraph 14, which is at the bottom of page 3, you give a description of the events of 21 April?---Yes, sir.

20 You say that you've had some months since this event occurred and your memory is not as good as it was; is that correct?---Yes, sir.

Apart from the incident at the unload point; is that correct?---Yes, sir.

25 Do you agree that your evidence was initially that you were uncertain as to what happened there?---My evidence - can you say that again, sorry, sir.

30 Yes, certainly. Your sworn evidence to this Inquiry earlier today was that you were uncertain as to what precisely happened at the unload point?
---I thought I was pretty certain, sir.

35 Can I suggest that you later changed that evidence and said that you were certain or pretty certain about what happened?---I thought I was certain the whole time, sir.

Yes, thank you, sir, I've got nothing further.

PRESIDENT: Thank you. LTCOL Berkley.

40 LTCOL BERKLEY: Just a few, thank you.

<EXAMINATION BY LTCOL BERKLEY

[1406]

45

LTCOL BERKLEY: Soldier 14, as you know, I'm LTCOL Berkley and I represent Shelley?---Yes, sir.

I know that you know Shelley personally?---Yes, sir.

5

There's just a few things that I need cleared up; LTCOL Holles has covered a lot of ground that I would add but that's not necessary any more. The Board has in evidence, at Exhibit 119, I understand, a statement of Soldier 20 and in that statement Soldier 20 says that he was
10 doing the yelling, "Shut the fuck up, shut the fuck up," and doesn't mention a role for you. Does that affect your recollection of the events of just prior to the shot?---No, sir.

All right. The next thing I want to ask you about is this - I know LTCOL
15 Holles has put a proposition to you but this is worth asking you again: silent cocking of a 9 mm pistol, I think your evidence was that you've never done it?---That's correct, sir.

Are you sure that it actually physically can be done?---Yes, sir.

20

Is that certainty, that knowledge, based on what you've been told or what you've seen?---Obviously I've done it with the Styre, sir.

Yes, I'm just talking about the 9 mm, not the Styre. I can imagine how
25 the Styre it could be done but the 9 mm, we've had some experts demonstrate the operations of the 9 mm here before us and it seems to me that unless the slide forced forward over the bullet, and even then that can be very difficult, it would be about the only way you could actually have that round in the chamber of the 9 mm, because when you put the slide
30 back on you've got to move it back, hence hitting the ejection port and the whole thing is a waste of time. Do you understand what I mean?---I understand what you mean, sir. I'm certain that it can be done because I've seen it.

As far as handling pistols go - you know the preferred issue for officers
35 but soldiers seem to get them every now and then as secondary weapons - would you describe your experience with a pistol as extensive?---Sir, the only time before this operation that I have used pistols was at the range doing actual pistol shoots. This is the first time that I've actually carried
40 one extensively.

So other than the basic qualifications on the pistol, this is the first time
45 you've actually had to carry one for any length of time?---Yes, that's correct, sir.

I just want to move on now to the repatriation of Jake. I understand you were part of the honour party?---Yes, sir.

5 That you got Jake down to <deleted> to the theatre mortuary evacuation point?---Yes, sir.

And that from there you were required to take Jake to another morgue in <deleted>?---Yes, sir.

10 Tell me this: when you arrived at that morgue, what did you see?---I could not see much as far as the actual inside the morgue, but the surrounding areas, it was in a dodgy back alley and the whole area was pretty disgusting, sir.

15 When you say, “disgusting,” please verbalise what you saw, smelt or heard?---The area was dirty, it was in a dodgy back alley, it was dark. It was just a - not a good place, sir.

20 Did you see inside that facility at all?---No, I didn't not see inside, sir.

Do you recall whether you were prevented seeing inside the facility? ---Yes.

25 Who did that, who prevented you? If it's a soldier on the callsign matrix, please use that callsign matrix?---I believe Soldier 27 went to walk inside, however, was stopped with some swift words from Soldier 2, and he then came back to us and obviously we all heard him - that he was told so we knew that we couldn't go inside.

30 Do you remember the presence at all of a Soldier 34?---Yes, sir.

Being <deleted>?---Yes, sir.

35 Soldier 34, <deleted> was there. Do you remember another person perhaps from the Royal Australian Air Force being there?---Yes, sir.

Do you recall whether that person gave you any directions?---No, not directly to us, sir.

40 So you got Jake to that place in <deleted>; how did you know it was Jake that you got there? What did you see at the theatre mortuary evacuation point?---In my presence I - the last time I saw Jake was in the hospital in country.

45 When you took Jake's casket into the TMEP, the theatre mortuary

evacuation point, that was run by the United States of America, were you allowed to take that casket inside the facility?---Sir, I'm actually unsure which morgue you're actually talking about. Is it the one at the airport or the - - -

5

Yes?---The one at the airport?

Yes?---In - - -

10

<deleted>. We unloaded the casket and took it inside.

Did you speak to any American personnel in there?---Myself not personally.

15

Were there American personnel there?---Yes, there were, sir.

What condition was that facility in?---It was very clean, sir.

20

Were you allowed to stay with Jake?---When we were there, sir, we - after they had done what they needed to do, we were all given our own private time inside by ourselves with Jake, and we individually said what we had to say and then we went to take him to the other morgue.

25

Was Jake out of your sight before he went to the other morgue at all? That's out of the sight of your or any other member of your group?---To the best of my knowledge I believe we went back to one of the bases and stayed the night.

30

When you and the bearer party went with Mr Sinanovic's body from that other morgue to the airport, did you yourself notice any change in either the casket that contained the body that you brought down - what did you notice; tell us that?---Just to be sure, sir, that was from the <deleted> morgue to the airport for him to fly home

35

Yes?---The actual - he'd been placed into a - from the aluminium casket he'd been put into a wooden, they called it a more permanent coffin. It was wooden, it was - it wasn't - it was no longer rectangular in shape, it was the - I'm not sure how to describe it, like Dracula's sort of - - -

40

Like a coffin?---Yes, sir. It had, I remember a rubber - a red, like rubber wax, wax stamp, like a hot wax and stamp into it, like a seal, and it had a piece of paper on it stating Jake's name and details.

45

I told you yesterday when I spoke to you I want the Board to hear this evidence and it's important to us, that when you went to the - you took

that coffin to the airport at <deleted> for the civil air flight to Australia, you weren't allowed to accompany the body passed, I suppose, the cargo area; is that true?---Yes, sir, we were made to stand pretty much in the middle of nowhere and watch our mate fly off from nowhere near him.

5

Could you recall about what time of the day this was?---To the best of my knowledge I remember we had to pick him up, we had to be at the morgue at 2000 hours and if I had to have a guess, sir, it was approximately one hour after that.

10

When did you find out that the wrong body had been repatriated to Australia?---On returning to Iraq, sir.

15

Was that the next day, the day after or the day after that?---I believe it was two days later, sir.

That's when you found out?---Two days later that we left, sir, and as soon as we arrived, we were told.

20

Is the person that told you on that callsign matrix?---Yes, sir.

Soldier number?---Thirty three.

25

What was the mood in the Embassy when that news broke?---I wasn't in the Embassy when they would have heard that news, sir.

30

What was the mood amongst the honour party when that news broke? ---Some of us were immediately angry, the other half - be myself included - I was in disbelief that it could happen.

35

Were you given any formal instruction as to your duties as a member of the honour party?---We were pretty much just told, sir, to see our mate go.

Who told you that? Use the callsign matrix if the soldier is there? ---Soldier 1 sort of pulled us all aside and told us that, you know, all the boys had got together and said we were the people that, you know, everyone wanted to take Jake back and just gave us a little spiel on, you know, looking after our mate.

40

How were you to do that?---Sorry, sir?

45

What were you told, what detail? Did he said, "Never leave his side, only leave his side in certain conditions"? I mean, what were you told, if you can recall?---We were told, yes, I guess to escort him everywhere, everywhere he was to go. We weren't told as such, you know, as an

order, it was in general. We were all talking about it, sir, just saying, yes, we'll take him everywhere and we'll make sure that we look after him and we'll carry him every chance that we get.

5 Thank you. I think everything else has been covered. Thank you very much.

PRESIDENT: Thank you. COL Young?

10 COL YOUNG: Yes, thank you, sir.

<EXAMINATION BY COL YOUNG

[1422]

15

COL YOUNG: Soldier 14, my name is COL Young. I appear to represent Jake's interests?---Yes, sir.

20 I'm just going to read to you a small extract from SECDET IX Standing Operating Procedures. It's paragraph 161.8, under the heading, "Weapons Safety":

25 *The buddy system is to be applied by all SECDET IX personnel. When changing degrees of weapon readiness, the buddy system requires personnel to be observed by their buddy as they carry out a change of degree of weapon readiness to ensure that the correct drill is conducted in order to avoid unauthorised discharge for negligent discharge.*

30 That's the quote. Has that ever been drawn to your attention?---I've never seen the SOP, sir.

35 Never seen the SOP. Has your <deleted> or <deleted> ever said to you something like, "Make sure you read the SOPs"?---As far as I was concerned, they hadn't been written yet, sir.

You mentioned in your evidence earlier that they were working off SECDET VIII SOPs. Had you ever seen SECDET VIII SOPs?---No, sir.

40 Would you agree with me the intention of the buddy system is to avoid unauthorised discharge or negligent discharge?---That is what it's for, sir.

45 Would you agree that's a good thing to avoid unauthorised discharge? ---Yes, sir.

When you came off duty on 21 April from location callsign <deleted>, and Jake had gone through the door, did it occur to you that he may have forgotten to unload his pistol or his Styre?---No, sir.

5 Nothing further, thanks.

PRESIDENT: Thank you. Anything further, Counsel Assisting?

10 COL GRIFFIN: Thank you, sir.

<EXAMINATION BY COL GRIFFIN

[1425]

15 COL GRIFFIN: Soldier 14, I understand your evidence to be that you had not been briefed on the content of the Standing Orders for SECDET IX. Is that right?---That's correct, sir.

20 Did you receive any briefings or orders groups from either you <deleted> or anyone else during the period of your deployment?---On the first - when I arrived at the Embassy at 1 am in the morning we were given a quick rundown on all the points that we were to man and just a quick verbal - just actions on and et cetera, degrees of weapon readiness, things like that, sir.

25 During the period of your deployment did you receive orders groups and briefings from people in your chain of command on a variety of things? ---Yes, sir.

30 As an infantry soldier, would it be something that would happen to you on operations or on exercises in the field that say, for example, during the night stopping at a particular place you would go on piquet and your <deleted> would give you an oral briefing at the piquet? For example, they would say to you, "Your left of arc of responsibility is that particular
35 feature. Your right of arc is that particular feature." They would give you information about the position of other friendly groups. They would advise you about passwords and other pieces of information in the course of your life as an infantry soldier?---Some of them things, yes, sir. Obviously within the battalions when you're out field there's certain
40 things that people pick up and become something that you don't need to be told every time for the likes of left of arc, right of arc, things like that. But definitely likely enemy positions, approaches, things like that, sir.

45 You often have information relayed to you verbally by people in command about your tactical situation?---Yes, sir.

5 Noting that we are in open session I'd ask you to think about your answers to my questions that I'm going to put to you that relate to process and procedures and to make reference to the documents that are there to assist us in that regard?---Yes, sir.

10 In your normal processes as part of SECDET IX in Baghdad, was it a frequent occurrence for you to <deleted> and <deleted> your weapon depending on the nature of your task and your duty?---Yes, sir.

For example, when you were at <deleted> and you went somewhere else on an operation, would it be normal for you to have your weapon loaded or even in another condition?---Yes, usually <deleted>, sir.

15 When you returned from that duty, if you were in the company of others, and you rendered your weapon safe, would you do so by the buddy system?---Yes, the buddy system was being in place, sir, because you were all there, you were standing around. Whether someone was actually observing you or not, that was another thing, but you pretty much - you
20 unloaded your own weapon and the other guys would stand around and watch you.

Would you make sure somebody checked your weapon at that time?
---Would I make sure someone checked mine?

25 Yes?---No, sir.

Would you check the person in front of you at the unload bay?---You were pretty much watching them, sir.

30 Would you in your normal practice at the unload bay show the person waiting behind you the condition of your weapon once you had completed the clearance?---You mean - no, sir.

35 You would not?---No, sir.

So it is your evidence that each time you as a part of a group waiting to use the unload bay you deliberately chose not to show the person next to you or behind you the condition of your weapon?---Do you mean show
40 them the chamber and the barrel, sir? Is that what you mean?

Yes?---No, sir, because the understanding we had was just make sure - watch and observe, make sure the magazine was removed and the correct drills were being followed. So there was no need to do that, sir.

45

5 So if you'd come from a vehicle as part of an operational task with your mates and you've returned to a safe base and there's a weapon clearance bay, do I understand you to be saying that as you queued to use that clearance bay after you had cleared the weapon, removed the barrel from your F88 and checked it yourself and checked the chamber, you did not show that to the person standing next to you or waiting behind you? ---Majority of the time, no, sir.

10 When you were standing there waiting for the person in front of you to use that bay, did you look to see if that person had cleared, that is, the face of the chamber and the barrel?---Majority of the time, no, sir.

15 You said that you believe the SOPs were a work in progress. Is that right?---Yes, sir.

20 Does that mean that you were of the belief that there were no Standing Orders?---I can't really say that there were no Standing Orders, sir. We knew what we had to do, sir, you know. If your weapon had to be at <deleted> you'd make sure it was. Commonsense, sir.

25 Does that mean that you knew there were certain places where your weapon had to be at the <deleted> condition or at some other condition? ---Yes, sir.

30 How did you know that?---I guess we just were either told or heard it, sir; just knew, sir.

You knew?---Yes, sir.

35 Does that mean you have no doubt about the degrees of weapon readiness at the various places you worked in in Baghdad?---Yes, sir.

40 You said in reference to some questions about silent cocking of the pistol that you knew it could be done because you had seen it done. Is that right?---Yes, sir.

45 Again bearing in mind the operational security aspects and the information, I'm going to ask you to tell the Board where you had seen it done, by whom you had seen it done and when you had seen it done? ---I've seen it take place callsign D by PTE Kovco and it was a few days before the - three or four days before the incident, sir.

For certainty, would you describe what he did, please?---The process of pulling the pistol apart - sorry, putting it back together, he placed a round into the chamber, the weapon, and put the weapon back together just like

that. That's it, sir.

5 When you say "put it back together", you observed the fact - is this right - that when he put it back together there was a round chambered, a live round chambered in the weapon?---Yes, there was a round in the chamber, sir.

10 Sir, I now propose to ask some questions that of necessity go to operational security matters, and I'll need to do those in closed session.

PRESIDENT: Very well.

COL GRIFFIN: But it may be that perhaps there are questions - - -

15 PRESIDENT: Are there questions that will need be asked in open session before we descend into closed session?

COUNSEL REPRESENTING: Not at this stage.

20 PRESIDENT: Very well. The Board will be closed and we'll make the necessary arrangements.

COL GRIFFIN: Thank you, Mr President.

25 (Continued in closed session)

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10 [BY ORDER OF THE PRESIDENT, THIS
PORTION RETROSPECTIVELY DECLARED AS
AN 'OPEN SESSION'; AND CLEARED FOR
PUBLIC RELEASE]

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40 PRESIDENT: Have you any other witnesses today, Colonel?

COL GRIFFIN: Sir, we don't. We have arrangements in place, subject of
course to the vagaries of technology, for video hearings tomorrow from
theatre. But I understand there may be some matters that Counsel wish to
45 raise with you before we rise.

PRESIDENT: Before we do that, the video from theatre, is it going to be in this room or down at the - - -

5 COL GRIFFIN: It will be here, sir, I understand with a feed as we've been doing from here to the other building for interested observers. But I anticipate that much of tomorrow's evidence will be closed, given that it's Soldier 30 for examination. But as I'm advised that this facility allows us to undertake the video from here.

10 PRESIDENT: Thank you for that. Gentlemen, is there some application you wish to make?

15 LTCOL HOLLES: There is, sir. Are we still without the benefit of the former state or are they - - -

COL GRIFFIN: I believe we're in closed session at the moment.

20 LTCOL HOLLES: I don't think we should open. Sir, I'm in a situation where I have other commitments which preclude to some extent my attendance for the next two and a half weeks. I understand that Mr and Mrs Kovco have no difficulty with COL Young representing their interests during that period of time and understand that LTCOL Berkley's client is of the same view. I have discussed the matter with Counsel
25 Assisting. It is not my intention to return the brief, but rather I have gone as far as I can in relation to the witnesses in which my clients have a specific interest. I'd ask that I be permitted to remain absent from the Board for another two and a half weeks to permit me to fulfil other commitments which I have. I might indicate that I don't intend any
30 discourtesy whatsoever by this course of action. It was something which I've been trying to balance as best as I could for the last couple of weeks, but it's at a point in time where I have no alternative but to honour professional obligations that I'd incurred before I started this brief.

35 PRESIDENT: All right then. I take it, COL Young, you want to take that responsibility?

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45 COL YOUNG: ...[COL Young agrees]... If something arises we'll have to deal with it and my brief and the interests of my brief would come first. At that point I might have to simply say I can no longer watch

LTCOL Holles' brief and something else will need to be done. So subject to that proviso, I'm happy to continue.

PRESIDENT: LTCOL Berkley.

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LTCOL BERKLEY: Sir, I've no objection to it. As I understand it, LTCOL Holles maintains his appearance. He just won't be here for the whole period. I've been part of the discussions between Counsel. I confirm that my client doesn't have a problem with it and I'm quite confident that COL Young understands the import of it all, that there shouldn't be, particularly in this next phase at least, a conflict arising. I'm comfortable with it, sir.

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PRESIDENT: Any other comment to record?

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LTCOL HOLLES: No, sir.

PRESIDENT: I've got complete confidence in COL Young if there be a problem identifying it and acting accordingly. I am, I confess, LTCOL Holles very tempted to say to the District Court Judge no, he cannot have you given my previous occupation, but I'll resist the temptation.

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LTCOL HOLLES: The District Court Judge involved is actually a former colleague of yours, sir.

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PRESIDENT: That seems to make it even more tempting. Very well then. We'll see you when you can rejoin us.

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LTCOL HOLLES: Thank you, sir. I'm grateful for the Court's indulgence. It's not a situation - not an application to make lightly. It's the consequence of the orders that originally appeared to be evolving, having evolved in somewhat a longer period of time.

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PRESIDENT: I understand the problem. These things do have a life of their own.

LTCOL HOLLES: Yes, sir.

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PRESIDENT: Very well.

COL GRIFFIN: Sir, if I might make some observations for the record. I'm conscious of the requirements of Defence Inquiry regulation 33, particularly subsections (1), (2) and (3) on this point. I note particularly the position of the families in this matter. As I understand it, what has

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been put to you on the record is that both Mrs Shelley Kovco and Mrs Judy Kovco acquiesce in the proposal that's put to you. It's on that basis that I make no further remarks on the issue other than to identify that that has been done formally.

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PRESIDENT: I certainly presumed that. What time for the resumption tomorrow?

10 COL GRIFFIN: Sir, there are a number of matters to deal with administratively and through operational reasons we only have the window between 1100 and 1430. So we cannot resume and it would be impractical to bring in other witnesses to try and fill either side of those time lines. We need to test the link at 1030. So I ask, sir, not before 1030 but in all likelihood an 1100 resumption for formal hearing.

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PRESIDENT: And we're going to sit straight through without any lunch.

20 COL GRIFFIN: Can I ask that we consider that possibility depending on the nature of the evidence as it flows. Perhaps if a witness is there for a long time, then perhaps a 20 minute adjournment to allow that person to refresh themselves after two or more hours.

PRESIDENT: I think we need to keep reasonably flexible on the topic.

25 COL GRIFFIN: Thank you, sir.

PRESIDENT: All right then, 1030 tomorrow.

30 **MATTER ADJOURNED AT 1506 UNTIL
THURSDAY 10 AUGUST 2006 A 1030**

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