

TRANSCRIPT OF PROCEEDINGS
UNCLASSIFIED

AUSTRALIAN DEFENCE FORCE

AUSTRALIAN ARMY, VICTORIA BARRACKS, NSW

INQUIRY INTO THE DEATH OF
PTE JACOB BRUCE KOVCO

PRESIDING:

GPCAPT W COOK, President
COL M CHARLES, Board Member
MR J O'SULLIVAN, Board Member

COL M GRIFFIN, Senior Counsel Assisting
MAJ E JOLLY, Counsel Assisting
MAJ J HYDE, Counsel Assisting
MAJ A BELKIN, Counsel Assisting

LTCOL P WILKINSON, representing Soldier 2
LTCOL B GREEN, representing Soldier 14
LTCOL T BERKLEY, representing Next of Kin
LTCOL F HOLLES, representing PTE Kovco's Parents
COL L YOUNG, representing PTE Kovco

1125 THURSDAY 10 AUGUST 2006
DAY 18

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.....  Date10/08/06.....(President)

Signed.....  Date10/08/06.....(Recorder)

Signed.....  Date 10/08/06.....(Transcriber)

Signed.....  Date 10/08/06.....(Transcriber)

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RESUMED

[1125]

5 PRESIDENT: Good morning, Colonel.

COL GRIFFIN: Good morning, Mr President, Members. We resume in open session by video link transmission to and from headquarters JTF633, and we resume with Soldier 30, who I recall, sir.

10

<SOLDIER 30, recalled and resworn

[1125]

15

<EXAMINATION BY COL GRIFFIN

COL GRIFFIN: Soldier 30, you're essentially the commanding officer of the sub unit of <delete> to which PTE Kovco was posted; is that correct?---Yes, sir. Before I was deployed on OPERATION CATALYST, I was the officer commanding Support Company <delete>.

20

I want to ask you about your involvement in the return of PTE Kovco's remains to Australia. Would you tell us: were you involved in the decision-making process for the repatriation of the deceased?---Only in a minor degree I would say, sir, I didn't have any decision-making or any decisions to make over the timing or the means by which PTE Kovco was repatriated. I was asked if - who I would like to send back with PTE Kovco, both from my current location through to the country in the south, and then further on to Australia. That was about the extent.

25

30

I'm just going to read to you some evidence from Soldier 34 who appears on the matrix that's before you?---Yes, sir.

I refer to page 858 of the transcript at line 9. The witness there was describing her involvement in dealing with the movement of the remains and the use of the civilian contractor that was used. Are you aware that a civilian contractor was used?---Yes, I am, sir. I was made aware by my soldiers when they returned from <delete> and obviously through the media.

35

40

I'll read to you the evidence from line 9. Soldier 34 was asked the following:

45

Were you locked into using Kenyon's -

that is the contractor -

on this occasion?---No, sir.

5 *Would you agree with me that there was considerable haste to repatriate the body both before and after the misidentification? ---Yes, sir, I believe that was the driving force and the highest priority.*

10 *That pressure came from the chain of command?---Yes, sir, that's correct.*

That's the end of the quote from the evidence. Were you made aware of any command decisions or pressure to return PTE Kovco's body at any
15 time?---No, sir. I know that moving PTE Kovco out of the international zone in Baghdad was done at midnight, around about midnight, on the 21st, local. That was not due to any pressure that was placed upon me or anyone else. That was because my understanding is the 10th Combat Surgical Hospital, the US hospital where PTE Kovco passed away, they
20 don't hold bodies in that location. So he was moved that night. But I certainly was under no pressure by anyone in the chain of command to expedite anything that we were doing at this end.

25 Did you actually exercise any executive authority or make any arrangements to move the body yourself?---No, sir. The arrangements to move PTE Kovco from the international zone weren't made by me. I wasn't in a position to make those decisions. But I did make decisions about who was going to escort the body from my location down to Kuwait.

30 You'll recall there's a callsign matrix of names in these proceedings. By reference to that callsign matrix, would you indicate who you chose and what selection process you went through for that?---Yes, sir. I'd have to say that I won't remember everyone who was in the party. There was
35 essentially two decisions to be made. The first one was who was the escort to the body. The decision that I made was that it was going to be Soldier 2. Then the second decision was who would be the bearer party who would go down. I do remember some of the names, some of the soldiers that went on that and I can point them out to you, but I won't be
40 able to remember them all, sir. So the soldiers in the bearer party, to the best of my knowledge, were Soldier 14, Soldier 17, Soldier 19, I think Soldier 26. That's all I can remember, sir.

45 Would you tell the Board, please, how and why you selected Soldier 2 as the escort?---Yes, sir. Obviously we're in a tactical situation where we

are. Due to maintaining what I need to do as part of the mission and part of that tactical task that I have, my choices were limited on who could go. Soldier 2 holds a position within the platoon that you would normally expect would be given this type of task. I had a discussion with
5 Soldier 33 to run by him my thought processes on who should go. It was either going to be Soldier 33 or Soldier 2. By virtue of the fact that Soldier 33 held a position that affected the wider combat team, and in particular during an incident like this I felt that it was important that he remained with me to help me lead the combat team through the grieving
10 process that was going to occur immediately after this, I went with Soldier 2. As I said, in normal circumstances that would be the person who you would expect would escort a body.

Can you tell the Board what instructions were given to Soldier 2 about his
15 role?---Sir, the only thing that I can remember or can recall saying to Soldier 2 was to make sure that he stayed with Jake and that he gave him a fitting return home. That's about all I said to him. There was nothing directly that I tasked him to do. I think that he understood what I understood, and that is, that Jake was at all times - we wanted him at all
20 times to be kept in the most fitting circumstances, something that befitted as a soldier of <delete>, as a paratrooper, and that that was the extent of it, sir. I know that he had discussions with Soldier 33 who had talked to him about the intricacies of how to place the casket on air frames and things like that.

25 Did you personally have any previous experience of the return of a deceased Australian soldier from an offshore operation?---Sir, only on the margins. One of my soldiers died whilst he was on operations in the Solomon Islands about 18 months ago. I wasn't in the Solomon Islands
30 when that occurred, I was in Australia. Soldier 33 and I from the Australian end played a small role in his return. I fought hard to get Soldier 33 to move from Australia to the Solomon Islands to bring that particular person back. However, I might point out that the circumstances were very different than PTE Kovco's.

35 Now, did you have available to you any instructions or doctrine or publications that related to mortuary affairs and how to deal with the return of a deceased soldier?---No, I didn't, sir, and it's not something that has ever been a part of any curriculum on any course that I've done in my
40 19 and a half years of service.

Of those personnel available to you to carry out the role of escort, how many did you consider?---I only considered Soldier 2 and Soldier 33 to be the escort, sir. As I said, due to Soldier 33's position within the combat
45 team, I decided that Soldier 2 would be more appropriate. The other thing

is that Soldier 2 was a member of PTE Kovco's platoon and therefore I felt that it would be more appropriate for someone within his own platoon to take him home.

5 Would I be right in saying that there would be a desire on the part of the
battalion to have one of its own take a deceased member back to
Australia?---Absolutely, sir. There is - I would certainly - I would stand
by the decision I made with who should have taken Jake home. That's in
spite of what eventuated. Here on the ground I had limited choices. The
10 man that I chose was from his platoon, from his company, from his
battalion. He served with him, he served beside him and I think that there
wouldn't be an infantryman on the face of the earth that would disagree
with me that that was an appropriate choice. We like to look after our
own.

15 Did you have any discussions with anyone in the chain of command about
the repatriation process in terms of who was to travel with PTE Kovco?
---Sir, I think - I can't recall is the answer, but I would find it unusual that
I didn't - that I wouldn't have had a conversation probably with the
20 Commander of the Joint Task Force about who I had chosen. I certainly -
I would have - I'm sure I would have had a conversation where I informed
him who it was but I can't recall.

25 Do you recall if you had a discussion with anyone in the chain of
command in which it was indicated to you that the body had to be
returned by a particular date?---No, sir.

30 Do you recall any discussions with anyone in the chain of command to
you about any requirements of the next of kin in respect of the return of
the body?---No, sir.

I want to ask you now about the room in which the incident took place and
your dealings with the securing and then return of the room. Would you
please tell the Board what, if any, involvement you had in the securing of
35 the room after the incident?---Yes, sir. When I arrived at the Australian
Embassy shortly after the incident occurred, I was making my way around
the corner to the 10th Combat Surgical Hospital and Soldier 2 was making
his way back to the Embassy; we crossed paths, had a brief conversation
with him about - I think I asked him where some key people were, quickly
40 what was going on and I think I asked him to ensure that the Embassy
security was still intact, that in fact my understanding was that's
particularly what he was going back to make sure was still happening. At
that point in time I said to him, "Make sure that the room is secured." So I
played a part there. I can't recall exactly, sir, but up until the point where
45 the SIB arrived, which was some days after the incident occurred, I asked

5 that wafer seals be put on the bedroom door to make sure that we knew
that it hadn't been opened again. I was made aware after the fact that,
before we put the wafer seals on, I think Soldier 2 had allowed Soldiers 17
and 19 to enter the room to get their combat gear out, which I think was
10 appropriate at the time although I knew that it was going to be a scene that
needed to be viewed by the investigators. Those two soldiers needed their
protective equipment and their equipment so that they could maintain their
duties. He told me or I was made aware that that happened afterwards. I
think that's about the extent of my involvement in the securing of the
15 room, sir.

Are you aware of the fact that there were several Military Police persons
stationed at the Embassy at the date of the incident and also at <delete>
with your headquarters?---Yes, sir.

15 Did you have any discussions with the senior member of that group of
Military Policemen or, indeed, with any other policemen about the
preservation of the scene?---Sir, I think I did, I think I had a conversation
with - he's not on the callsign matrix, sir, but I had a conversation with the
20 Military Police team leader that I have under my command about those
issues but it was some time after the incident had occurred that I
eventually got back to his location in order to have that conversation with
him.

25 Are you able to say how long after the incident that may have been?---No,
sir, I can't recall now.

At any time did anyone from the Military Police, other than that particular
individual that you spoke to, from outside the theatre make contact with
30 you about the preservation or securing of the area or of evidence?---No,
sir.

Do you recall when it was that you had the wafer seals placed on the
door?---No, I can't, sir, I can't recall.

35 Would you tell the Board, please, how and in what circumstances the
room was returned to you after it had been secured?---Yes, sir, I believe it
was the SIB lead investigator informed me at the conclusion - when they
had finished with the room that we were then able to enter the room and to
40 clean it up. I can't recall exactly what day that was, it was - I think they
had it for several days and then he came to me, he had made the
appropriate phone calls to either this headquarters or back to Australia.
He then came to me and said, "Sir, we've finished with the room, you can
now have it back and clean it up."

45

Was that officer the senior officer of a Military Police Special Investigation Branch team that had come to the scene from Australia for this purpose?---Yes, sir, that's correct.

5 What did you then do after he had indicated to you as you've just described?---Sir, we then cleaned the room.

I take it you had a need for the room?---Yes, sir, I think that - our pressing requirement was Soldier 17 and Soldier 19 still had a lot of gear and personal items in the room. So my number one requirement was to get that - to make sure that it was appropriately cleaned for those soldiers before they got it, and then obviously to clean the room - to clean it up so that it wasn't - I mean, that room is right in the middle of where all of the other soldiers are accommodated. It was becoming an issue for morale and I was - as soon as I was handed the room back, I was keen to expedite the cleaning of it so that we could return to some sense of normalcy whilst we were conducting this operation.

20 Just to attempt to sum up what you've told us about that, I want to put a paraphrase and ask you if I'm correct in that. As I understand your evidence, shortly after the incident, but you can't recall when, you instructed Soldier 2 to secure the room?---Yes, sir, I instructed him to secure the room on the afternoon of the incident when I was - it would have been not too long after the incident had occurred, sir.

25 Then later you became aware after the event that he had allowed 17 and 19 to return to the room to recover personal equipment. You approved of that and then instructed that seals be placed on the door?---Yes, sir. I can't remember exactly the time delay between me being made aware that the room had been entered again and when I instructed that seals be placed on the door. But that's the flow of how things occurred.

35 You then or around that time you had a conversation with the senior Military Police person present in your area about the incident scene. Is that correct?---Sir, I may have had that discussion before I placed or ordered for the wafer seals to be placed on the door, but I can't recall. But yes, I did have a discussion with him about the security of the room.

40 Are you able to recall the detail of that conversation?---Not the detail of it, sir. The gist of it was that I guess he confirmed my gut feel that the room needed to be preserved for when the investigators eventually arrived. There was no great bolt of lightning from the discussion that I had with him. He just confirmed the requirement to secure the room.

45 Is it your understanding that the room then remained secure until the

arrival of the special investigation branch team?---From that point on I believe it did, sir, from the time that the wafer seals were put on the door.

5 At some point in time the head of the investigation branch team handed the room back to you having completed their activities, and your understanding was that you could now resume it, have it cleaned and utilise it?---That's correct, sir. He was quite explicit that he'd finished with the room. I queried him on that, that it was okay to go in and to actually clean it and he said that it was. Bearing in mind that at this time
10 neither of us had - the MP captain and myself had no indication that any civilian police investigation was going to occur. As far as I'm aware, that decision hadn't been made. So he handed the room back to me and we cleaned it.

15 Your understanding at that point in time was that all police inquiries and investigations relating to the room were over?---That's correct, sir. It wasn't until we had cleaned the room that we found out that civilian police were being dispatched to Baghdad to conduct further inquiries.

20 I'm now going to talk to you about your standard operating procedures. When you last gave evidence on 19 June we had some technical difficulties and the line dropped out at one stage. But do you recall me raising the SOPs with you?---Yes, I do, sir.

25 Mr President, for the assistance of the Board and Counsel Representing, I'm referring to page 33 of the transcript. At that point in time, Soldier 30, I had just asked you to read aloud SOP 161.8.1, which deals with the buddy system. Do you recall doing that?---Yes, I do, sir.

30 Following you reading aloud that entry, I asked you some questions which are not recorded in the transcript. At line 12 of the transcript it reads - and this was from me questioning you:

Are you aware, Soldier 30, of any Defence Instruction (General)?

35 And then the link dropped out. I asked you whether you were aware of any Defence Instructions, any manual of land warfare, any land warfare publication or any other authoritative instruction or document that set out doctrine relating to the buddy system. Do you recall me asking you that?
40 ---Yes, I do, sir.

Is it the case that you replied that you were not aware of any formal doctrine or instruction setting out the specifics of the buddy system?
---That's correct, sir.

45

For the assistance of the Board and Counsel Representing, can I just indicate, Mr President, that in the closed session later that day - and I refer specifically to page 49 of the transcript - in examination by Counsel Representing at the time at line 37 Soldier 30 repeated that in the following words:

Sir, I'm unaware of any specific direction regarding anything known as the buddy system or anything that is similar to it.

Is that still your evidence, Soldier 30?---Yes, sir.

Nevertheless, it's something you incorporated in your Standing Operating Procedures which are now in evidence as Exhibit C8. Do you happen to have a copy of them with you?---Yes, I do, sir.

In your evidence in that closed session in describing the effect of the buddy system you said at page 50 of the transcript, I quote from line 15:

It is the spirit of the buddy system that every soldier is responsible for the condition of their own weapon.

You went on to say at line 28:

Soldiers are, we are responsible for our - the condition of our weapon. Therefore, it is incumbent upon us to ensure the buddy system occurs before we release the working parts on our weapon. It's not the buddy's responsibility.

Is that still your evidence?---Yes, sir, it is.

Would you just expand on that, please, what you see the buddy system doing and how you intended it to operate?---Yes, sir. Every soldier from basic training right through to where I've got them now, some more senior soldiers, are fully aware that our weapon and condition of our weapon or weapons that we're carrying is our responsibility. It's common sense that it can't be anyone else's responsibility. However, my understanding of the history of the buddy system is that during Timor in 1999 there were a number of unauthorised and negligent discharges on weapons. So it's a system that was introduced at that point in time and my understanding is that on that particular operation once it was introduced it significantly decreased the unauthorised and the negligent discharges. Based on that, it's something that since that point in time that I've instigated amongst my soldiers. When we were formed as SECDET IX to be deployed on OPERATION CATALYST I wrote a set of Standing Operating Procedures and I included in that set of Standing Operating Procedures the

buddy system. The basis of the buddy system is that it doesn't remove the obligation that I have for my own weapons. What it does is it's a double-check that before I release the working parts of my weapon, that the magazine has been removed from the weapon. So my buddy checks that the magazine is removed from my weapon before I release the working parts and operate the trigger, and therefore it reduces the incidents of unauthorised and negligent discharge when you're changing your degree of weapon readiness. I incorporated it in the Standing Operating Procedure because I felt that I had a duty of care as the officer commanding SECDet IX and I felt - and still feel - that it is a good procedure that ensures the safety of my soldiers.

How did you promulgate those SOPs?---The SOPs were written in a consultative fashion. The basis of them - a very small basis - was the SECDet before us had some SOPs but not a great deal. We identified the gap there and identified what SOPs needed to be completely written from scratch and others that needed to be updated. Wrote those out and I allocated the task to my junior officers to write SOPs. I wrote some myself and my XO wrote some. I made sure that, as I got the drafts in, that it included such things as the buddy system because that's what I wanted in there. So from the very start, my junior officers and my senior non-commissioned officers were involved in the writing of the SOPs and therefore were intimately aware of what was in them. With things like the buddy system, weapons safety, it was spoken about on numerous occasions at my OCs conferences which I run every evening since we concentrated in the middle of January. Regularly raised - regularly brought to the attention of my junior commanders. From there, it's promulgated down through the communication process within the combat team. The actual document is available in soft copy in our - or was available in Australia in soft copy for everyone to look at on our G drive, and it's been available to look at on our G drive in Baghdad since we've been here. It can also - it's restricted, it's not secret, it can be printed out and carried around. From a basic soldier point of view, it's not something that I would expect them to carry in their pocket but it certainly is something that I would expect my senior NCOs and junior officers to be fully cognisant of and to incorporate into the way that they conduct their operations and training.

You mentioned the previous detachment's SOPs; that would be SECDet VIII. Is that correct?---Yes, sir.

Did those SOPs contain anything concerning the buddy system?---Not that I can recall, sir, no. To the best of my knowledge, I've incorporated those into the SOPs.

45

5 The actual SOPs printed out in hard copy that I have in my hand as Exhibit C8 appear to run to several hundred pages. They're not paginated so I don't actually know and I haven't counted them but it's quite a thick document. Would you tell us how a document of that substance is communicated to the ordinary soldier who has to know how to deal, for example, with 161.8.1, which is concerned with the buddy system?---Yes, sir, that's communicated verbally via a number of channels. As I said before, OCs conferences, the issue of weapons safety has been mentioned regularly, not due to any particular incident but because it's something that we touch on from time to time. It's something that - it's communicated, for example, the way that we've set up the SOPs is that it's set up along functional lines so if you're conducting operations at the Australian Embassy, then there is an SOP that guides you on how to do that particular operation. Therefore, the orders that flow down to conduct that particular operation are based on the Standing Operating Procedures that we wrote.

20 How do you as a commander ensure that those aspects of the SOPs that the soldiers need to know are in fact communicated to them?---Sir, we used these SOPs in our mission rehearsal exercise so observer trainers from Combat Training Centre had a copy of these SOPs and they were observing our soldiers conforming to them or not conforming to them. I guess it's also via supervision from NCOs and officers that we know whether they're being complied with or not. Having said that, we rely on the soldiers to comply with, we can't have an officer or an NCO standing beside every single soldier when they carry out their tasks here. Some of these Standing Operating Procedures are an embuggerance. There's easier ways to conduct business. So I think it can be expected - it's human nature - that from time to time soldiers may take a shortcut. The way to get around that is that we try and supervise as much as we can.

35 The Board has actually received evidence from a soldier that his belief was that the SOPs were, "a work in progress," and that the previous SOPs from SECDet VIII were in fact the ones being used at the time of the incident. What do you say about that?---I think it's an interesting comment, sir. I don't know how he could possibly have come to that conclusion. The SOPs were widely discussed during our training because we were writing them at the time. With respect to his comment that they're a work in progress, if they're a work in progress I guess he's also - he's admitting that they were there and they were in place and they were being worked on. I draw your attention to the second page of the SOPs, the preface, paragraph 5, it says:

45 *SOPs must be constantly and critically reviewed and amended.*

I've continually said to the soldiers when I've spoken to them and to my junior commanders that this document is a work in progress. Our operational conditions don't stay static and therefore our SOPs can't, and so possibly, sir, that's what he was referring to is those comments.

5

Did you take any steps to check on the promulgation of your Standing Operating Procedures to the members of your command?---Sir, I didn't go out specifically to inspect whether SOPs were being adhered to but by virtue of the fact that I'm here and the job that I do, I see them in action every day. In relation to things like the buddy system, every time, every day that I clear my weapons going in and out of the places that I go, I have a soldier that conducts the buddy system with me. The people who move around with me also do the same thing. So by virtue of the fact that I'm here, that I'm part of the operation, that I move around, that I'm doing a lot of the things that the soldiers do, I have a feel for whether they're being adhered to. I guess I don't have - you know, I'm the Officer Commanding. Soldiers will always be more than likely on their best behaviour when I'm around. But I have on numerous occasions queried the chain of command about whether the SOPs are being adhered to, particularly with respect to Force protection.

20

Am I right in saying that you have layers of command underneath you upon which you rely for the conduct of your duties?---Yes, sir, absolutely. There's effectively two layers of command underneath me. The way that I operate is in a mission command style. So what that means is that my subordinates, I provide them my intent and I let them conduct the tasks that I've given them in the method that they deem necessary to conduct them, as long as my intent is met. In a complex environment with well over a hundred soldiers under my command and the operational tempo, it's really the only way that I can exercise my command effectively.

25

30

Thank you, Soldier 30. That completes my questions in the open session, sir. It may be that Counsel Representing may have questions in the open session.

35

PRESIDENT: LTCOL Wilkinson, do you want to now or later?

LTCOL WILKINSON: No, sir, Counsel Assisting has covered the matters I intended to cover completely, totally.

40

PRESIDENT: LTCOL Green.

LTCOL GREEN: Sir, I have a few questions which I think can be dealt with in the open session.

45

PRESIDENT: Please.

LTCOL GREEN: Do we need to change seats?

5 MAJ JOLLY: We do, sir.

COL GRIFFIN: There's a fixed position, as I understand it, where COL Young presently is positioned.

10 PRESIDENT: We've got to do some changing of seats here, Soldier 30. So just bear with us for a moment.

<EXAMINATION BY LTCOL GREEN

[1213]

15

LTCOL GREEN: Soldier 30, my name is LTCOL Bruce Green. I represent the interests of Soldier 14. Could you just identify who Soldier 14 is on your callsign matrix?---Yes, sir, I've identified who that is.

20

Soldier 30, would you define the word "receipt" for me?---What's the context, sir, that you want me to define it?

25 First of all, your definition of that word; if you can give me your definition of that word?---It could be the act of receiving something, sir, or it could be the noun, which is a piece of paper that documents the receiving of something.

30 Could you define "effective" for me?---Complete, accurate. It's difficult without a context, sir.

"Operational" or "in force" would be alternate words?---Operational?

35 "Operational" or "in force"?---Sir, I'm finding it difficult to answer the questions without a context.

40 If a document is effective from the time of receipt, when do you understand that document to be effective from?---From the time that it is communicated to the person that is receiving it, sir.

45 Is it the communication of the document which makes it effective or is it the presentation or the handing over of the document which makes it effective?---I gather, sir, that you're talking about these SOPs. In that regard, I would say that it is the communication of the SOPs and the

training on them that makes them effective, not the receipt, because they are clearly not designed to be receipted by everyone who abides by them, sir. Just in a similar way that the DFDA is not receipted by every soldier in the ADF, it still is communicated to them about what's right and wrong and therefore they abide it.

5
10 Earlier you invited the Board's attention to what I think you describe as page 2 of the SOPs. Could I invite your attention back to that page? ---Yes, sir.

You specifically took the Board to paragraph 5?---Yes, sir.

Can I now take you to paragraph 4?---Yes, sir.

15 You say there that the SOPs are effective from the time of receipt?---Yes, sir.

When do you say these SOPs became effective?---They became effective just prior to our mission rehearsal exercise in February 2006, sir.

20 Is your mission rehearsal exercise in February 2006 receipt?---I believe that the - yes, sir, I think that is probably a good explanation of when it is receipt.

25 What was the thing about your mission rehearsal exercise in February 2005 which operated as a receipt or a form of receipt?---It was 2006, sir.

30 My apologies, 2006?---It was the fact that that was the first time that as a combat team we exercised these Standing Operating Procedures and that they were enforced in an operational setting.

You've told us earlier that by virtue of paragraph 5 that these SOPs are, to use your words, a work in progress?---Yes, sir.

35 You've been in theatre now for some months?---Yes, sir.

Just turn over two pages to the amendment certificate. What serial or amendment list are we up to now?---One, sir.

40 You have amendment or serial one?---No, sir, I have the ones that you're operating on.

45 So there have been, according to your amendment certificate, no amendments to the SOPs?---Not of the copy that I have in front of me, sir. The copy I have sitting on my desk is amendment one.

Are you able to say what SOPs were amended via amendment one?
---There were numerous that were amended, sir. In particular, SOPs
relating to force protection in respect of our dress here and the way that
5 we operate in vehicles due to changes in the enemy's tactics, techniques
and procedures that we've had to enforce, which I don't think I can speak
about in an open hearing. We've also - - -

10 Can I just invite your attention to SOP 112.4?---Yes, sir.

Was SOP 112.4 amended in your amended list one?---Yes, sir, it has been.

15 What was the effective date of that amendment listed one?---I don't have
it with me, sir, but it was after - it was amended in writing after the
incident with Jake. I say that because I gather that's what you're driving
at.

20 Yes. Did anyone other than yourself have the authority to amend verbally
the SOPs on a permanent basis?---Yes, sir. The platoon commanders
could verbally amend the SOPs for operational reasons. In those
circumstances they would make me aware of it and we would include it in
the things that need to be - red pen our current copy for the amended
written copy.

25 Did you authorise or receive notification from one of your platoon
commanders that SOP 112.4 had been changed or altered before the death
of PTE Kovco?---Sir, I believe that I did. I can't recall the conversation,
but I do believe that he did tell me that he had amended that particular
SOP and that the gist of it was that in some of the positions within the
30 Embassy he had argued for a lowering of the degree of weapon readiness.

The "he" that you're referring to was Soldier 1?---Yes, sir.

35 Are you able to say whether or not that did or did not occur before the
death of PTE Kovco?---Sir, I believe that that happened before the death
of PTE Kovco. Something to remember is that these SOPs were written
when we were in Australia and we hadn't even got into country. So they
were written on the basis of my reconnaissance and the SOPs written by
SECDet VIII which were, at best, scant. Once we'd got on the ground, it
40 was the duty of the platoon commanders to review these and I believe that
he did that. He communicated it to me and he communicated it to his
soldiers. I just can't recall the particular conversation that he had with me.

45 Thank you, sir, I have no further questions.

PRESIDENT: Thank you. LTCOL Berkley?

LTCOL BERKLEY: Yes, thank you, sir.

5 LTCOL GREEN: Thanks, Soldier 30.

<EXAMINATION BY LTCOL BERKLEY

[1222]

10

LTCOL BERKLEY: Soldier 30, I'm LTCOL Berkley and I represent Shelley; do you understand that?---Yes, I do, sir.

15 Just going back to the decision as to who was the escort for Jake, did you at any time expect that Jake's body would leave military custody?---No, sir.

20 Were you ever consulted on the proposition that it would leave military custody?---No, I wasn't, sir. If I had have known that it was going to leave our custody, then I would have made my feelings known.

25 There's been a lot in the press over here about the Inquiry and particularly about what had happened - things that were said prior to even this Inquiry commencing. I don't know what access you have to the press over there but at least we've got some statements from the Minister for Defence that's inconsistent in the accounts he's given as to what happened to Jake. I don't know whether you're aware of that or not?---Sir, I'm aware that there was almost immediately after Jake's accident, there was speculation about how it happened.

30

Yes?---And that that speculation was in the media.

35 I don't know, I didn't see the Minister, I wasn't in the room when he actually said it but I've seen it reported in the press that at one stage it was a cleaning accident gone wrong, but it was an accident. I don't know whether you ever saw that report?---Sir, I don't know whether I particularly read what the Minister said but I did hear in the - I do know that in the media there was speculation that it was an accident caused through Jake cleaning his weapon.

40

45 Yes, that was one of the versions. What the family, and of course Shelley, is interested in is that - and as you can imagine, Shelley and Jake's mum and dad - they hear these things and they start to wonder where that information comes from, and that's what I want to talk to you about now, okay?---Yes, sir.

5 What was your role in briefing higher headquarters? Were you required to
give that higher headquarters any factual account of what happened?---Sir,
we are bound or obligated to report obviously when something like this
happens. I recall having a conversation with the commander of the Joint
Task Force from the hospital only minutes after Jake passed away. I can't
recall exactly what we spoke about. I was upset at the time, I remember
that, but I can tell you that I was never asked at that point in time what I
thought had happened. I think that I offered up that I didn't know how it
10 happened.

You see, I read your - - -?---I certainly - - -

15 I'm sorry, I cut you off then, please continue?---Sorry, sir. There was
certainly no report that came from me or my headquarters that offered an
explanation of how it happened.

20 I read your statement to the Special Investigation Branch of the Military
Police and I think you say in that that when questioning Soldiers 17 and
19, that they were distressed because they had seen Jake at the computer
virtually when last seen, a shot rings out, they were so close, within a
metre, and didn't see what happened. Do you recall saying that in your
SIB statement?---Yes, sir, I recall that conversation and I recall where it
was.

25 You're, of course, the officer commanding the detachment at the Embassy
and all information must flow from somewhere. Do you understand that?
---Yes, sir.

30 So from there being no eye witness to the actual event, somehow
information has passed through the system right up to the Minister,
information that could only be, as you said, speculation if no one saw it.
Can you help us there; how that may have occurred?---No, I can't, sir. I
can categorically tell you that at no time did I make any speculation about
35 how the accident occurred. I, like everyone else, I guess, have my own
thoughts on what might have happened and they're probably based on
what I like to think happened in the room.

40 Of course, we've got - - -?---That conversation - sorry, sir. The
conversation I had with Soldier 17 and Soldier 19 was - it turned to how
did it happen. The conversation started as a part of me doing my job in
consoling two soldiers who were, you know, very, very distressed about
what had happened. We'd all lost a mate, we were hurt and, in particular,
those two were hurt. I guess what I was doing was taking some time with
45 them to talk to them and the conversation quickly turned from their

comments to, you know, "How could this have happened?" That's what they were wondering, how could this have happened? I told them I was wondering the same thing.

5 I don't think any sane person could deny the commander the right to inquire as to what happened to one of his soldiers. The point is this: you're not aware of any formal communication leaving the SECDET or your own headquarters that contained any speculation, perhaps?
10 ---Absolutely, sir. I'm positive that no document or situation report left my headquarters with speculation about how it occurred and that's because we still don't know how it occurred.

That's right, and we've got a Board here to determine that. But as to your particular headquarters role, did any documents leave your headquarters?
15 ---There was an incident report, I believe, sir, that was compiled by my executive officer whilst I was on the scene and effecting my command and leadership with my soldiers. That document didn't contain any speculation about how the incident occurred.

20 Now, of course a quick assessment of the incident was done by an officer from the higher headquarters, the JTF. Is that correct?---Yes, sir, that's correct.

25 Were you asked to comment or to provide any input into that quick assessment?---Sir, I can't even remember whether I was interviewed for that quick assessment. It was done at a time when I'd had virtually no sleep and I'd be speculating if I even told you that I remember being interviewed for that.

30 The Board has a copy of it. I'm not going to ask you for detail that you can't remember. But do you recall this then: were there any other persons under your command, in either Baghdad or in your unit generally at the other location, had any role in speaking to someone outside your unit about Jake's death?---Not that I'm aware of, sir. I obviously had
35 discussions with Shelley. Apart from that - and I think she kept in contact with some of the soldiers under my command, which I encouraged. Apart from that, I know of no-one that had any contact with anyone outside of the chain of command other than I guess their own families.

40 Would it be true to say that you would be responsible for the security of any person visiting say from Australia such as the investigating MPs visiting the Embassy?---Yes, sir.

45 I think it would just be fair that if you're going to be responsible for their security you'd know that they were coming, wouldn't you?---Generally

speaking, sir, I'd be given warning of people arriving that I need to provide security to.

5 Are you just saying that generally in that doesn't happen all the time, people just rock up, or what; what are you telling us there? Are you responsible and do you know?---Sir, I guess what I'm saying is that this is - it's not Sydney, people don't necessarily have appointment books. At times we get very short notice task to provide security to people. But as a general rule, we get a warning order of task to provide security to people.

10 Just so you don't get overly defensive, what I'm going to inquire about is the handing back of the room by the MPs back to your unit. That's the general area of inquiry. We've heard evidence in the Board that the room was handed back because there was no knowledge in the MP handing it back that any further investigative agencies would be involved in the investigation of Jake's death. You understand that?---Yes, sir.

20 Would you have been informed of the arrival of members of the New South Wales Police Force at the Embassy, and if you were informed, how long prior to their arrival were you informed?---Yes, sir, I was informed that they were coming. I was informed days in advance. I would think probably five days in advance because they needed to come into theatre. From my recollection, they did some training in <delete> and then moved forward to where I was. It would have been, well, at least three days warning.

25 You would have been warned of the arrival of the Special Investigation Branch team from the Military Police prior to their arrival at the Embassy?---Yes, I was.

30 Do you recall whether you had days' notice, hours' notice or mere moments' notice?---My recollection, sir, was that it took about four days or so from the time the incident occurred for the Special Investigation Branch to be brought into country because of the nature of where they were coming and the training, force protection measures and things that needed to be put in place for them to get into where we are. So yes, there were - I can't recall exactly, but there were a number of days that where I knew they were coming before they actually arrived.

35 40 Is there a record kept in your headquarters of notifications of visits or attendances for duty? Is there anything like that kept in your headquarters or is it at the higher headquarters?---It's at the higher headquarters I would believe, sir, it's not at my headquarters.

45 But at least you'd known that they'd be coming some time before they got

there. When the room was handed back by the MPs to your authority, in other words, handed back to you and your staff, were you aware then of any impending visit by another agency?---No, sir. I believe we found out within 24 hours after it had been handed back to us that the New South Wales Police had been appointed and were coming out.

5 Do you recall how many days after you found out that they arrived that they did arrive?---Sir, I think it was three to five days, something like that.

10 I appreciate your position as an officer commanding. But there's this policy that we seem to use called "reach back". Do you understand what I'm talking about there, reach back?---I guess I think what you're getting at is my ability to contact back to Australia. Is that what you're getting at, sir?

15 No, it's the ability to reach back for assets that we don't deploy with? ---Okay, sir. Yes, sir.

20 Now, clearly if you would have had an SIB team, at least one that was properly trained, the issue of cleaning of the room prior to the examination by the New South Wales Police wouldn't have arisen. You'd accept that?---No, sir, I don't accept that. Neither myself or the MPs, the SIB team, we didn't know that there were New South Wales Police coming. So as far as they were concerned, they were the only people conducting an investigation. They had completed that investigation with respect to the room and they handed it back to us. Neither of us knew that the police were coming.

30 If you had an SIB team in country, so to speak, and you didn't have to wait three, four, five days for it, do you think the matter would have been differently handled? I'm not asking you to speculate on the basis of the outcome, but on the basis of access to the room, the movement of gear, the testing of soldiers forensically and their equipment, that sort of thing? Do you think the matter, just as you as a commander, would have been differently handled?---Yes, I do, I do think it would have been differently handled, sir. I think that the room would have been less contaminated. I think that we probably wouldn't have - we would have separated the clothing that Soldier 17 and 19 were wearing, those sorts of things. We were concerned about their welfare and we got them cleaned up and washed up without realising it would become an issue. So with expert advice on hand by way of an investigator it would have been helpful. Whilst I had MPs at my disposal, they're not investigators, they're close personal protection operatives, they're bodyguards. So they're not trained in investigation.

45

I understand that role and I also understand from their statements that they are reticent to move out into an MP role because that would obviously lose them some sympathy or respect from other soldiers at times, some soldiers. Would you agree with that?---That's true, sir. They're a part -
5 yes, sir. The MPs that are under my command are not tasked or do not have a role to investigate their fellow members of the combat team. Once again, if that was a role that they had, then it would hit at the heart of the cohesion within the combat team, which would be a bad thing whilst we're on operations in a hostile environment.

10 Indeed. So you've got some people there employed in other tasks. You had no access - is that what you're saying - to Military Police advice in the days after the shooting?---I had no access to SIB specialist advice, sir.

15 We'll leave it at that then. Thank you very much for your time?---Okay, thanks, sir.

PRESIDENT: Thank you. COL Young.

20 COL YOUNG: Mr President, I have a few areas to cover which I'm happy to proceed, but if you want to take a short adjournment, it might be appropriate.

25 PRESIDENT: Soldier 30, are you happy to continue?---Sir, if we could just take a two-minute break, that would be helpful.

How about we take five? We'll take five minutes.

30 **ADJOURNED** [1242]

RESUMED [1258]

35 PRESIDENT: Thank you, Soldier 30. Thank you, COL Young.

40 **<EXAMINATION BY COL YOUNG** [1258]

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

45 I'm going to cover a few areas and perhaps jump around a little bit, but

I'm sure you'll be able to stay with me. Could we start with the area of repatriation of Jake's body. He was one of your soldiers and you've expressed some sentiments about your feelings for Jake. It's fair to say that you were keen and interested to see that he was properly repatriated?
5 ---Absolutely, sir.

You've told us that you were not part of the decision-making as far as repatriation was concerned. Is that correct?---Sir, when you say "repatriation", I wasn't a part of the decision-making once Jake had left Baghdad.
10

Did you as his Officer Commanding keep a watching brief on how that repatriation process was to proceed?---Yes, sir.

15 How did you do that? Did you ask for feedback from Soldier 2, for example?---No, sir. Because of our location and the communications was virtually impossible for me to keep in contact with the soldiers that I'd sent to <delete>, I did it through the headquarters.

20 Is it fair to say that you had confidence in the system and in others that Jake would be properly repatriated?---Yes, sir.

Given what's happened, do you now think that confidence was misplaced?---Yes, sir, absolutely it was misplaced.
25

You've told COL Griffin, counsel assisting the Board, that you had no documents in front of you relating to mortuary affairs. Do you recall giving that evidence?---Yes, sir.

30 You went on to say that in various courses you've done there was nothing in the curriculum that covered things such as mortuary affairs. That's right?---That's correct, sir, yes.

35 Again with hindsight, do you now feel that in the briefing you received before you took up your command that it would have been useful to have been briefed on documents, publications that might cover mortuary affairs?---Yes, sir, I think that there's scope for us to be properly, formally trained in how it works. I think probably the best place to do that is for soldiers and for NCOs on their subject courses and for officers on either
40 their staff courses or prior to - their pre-command and pre-subunit command courses.

I hear what you say. But would you agree with me that having done a course maybe five years ago and then suddenly you're in an area of operations you may not remember much about the content of that course?
45

---Yes, that's true, sir. I think that there is certainly scope for it to be a part of the Operational Instruction or the Operation Order that a Commander such as myself entering an area of operations receives.

5 When you went to the posting you're now in you were aware that it was going to be dangerous, that people get killed over there. Is that a fair comment?---Yes, sir.

10 There was always a possibility that one of your soldiers could have been killed?---That's correct, sir.

If I tell you that there is a Land Warfare Procedures (General), and for completeness it's numbered LWP/G1-1-8, and that generally covers mortuary affairs, but it says in part of the preamble:

15

Associated publications. This publication should be read in conjunction with other publications and documents, in particular

-

20 then it lists some 24 directives, publications, Defence Force Regulations and so on. If you were to be briefed before taking up the posting you're now in, would you think that being given a Land Warfare Procedures publication with 24 other publications would be helpful or next to useless?---I suspect that it would be somewhere in between helpful and
25 next to useless, sir. I think that it's probably the job of someone in a higher headquarters to distil the relevant information for this area of operations and to issue it in either the OP ORD or the OP INST.

30 Would you agree that for someone such as yourself it would be an imposition on you to provide you with a land warfare publication and then virtually direct you to 24 other publications? Is that workable?---Probably not, sir, not in the time that we're given to conduct our lead-up training. This is, you know - in our particular instance it's not a formed body of
35 troops before we deploy that we have to train from scratch. That would just be another thing in the five weeks that I had that would be difficult to achieve I would suggest.

I can guess that that five weeks was fairly concentrated?---It was, sir. It was extremely hectic.

40

I'll just move to another area. Your SOPs, SECDET IX SOPs, you indicated that you looked at - well, I'll just ask you. Did you look at SECDET VIII's SOPs before you started drafting your own?---Yes, sir.

45 It's your recollection there was nothing in there on the buddy system?

---That's my recollection, sir, yes.

5 You may be wrong on that? Are you absolutely sure or you just can't recall?---Sir, I'm not 100 per cent sure because I don't have them in front of me, but my recollection is that they did not in writing stipulate that the buddy system had to be applied.

10 I think you've told us that it was an initiative that you thought was important to have a buddy system and have it in your orders?---Yes, sir.

In the preface to your SOPs which you've drawn our attention to in subpara (5) it reads:

15 *SOP must be constantly and critically reviewed and amended.*

Are you aware of that?---Yes, sir.

20 The paragraph on weapon safety covering the buddy system, 161.8, can you tell us if that 161.8 has been amended since the incident with Jake Kovco?---No, sir, it hasn't.

So you feel that the wording is sufficient to assist in not having unauthorised discharge and negligent discharge?---That's correct, sir.

25 You don't see it as an absolute fail-safe, do you?---No, it's not an absolute fail-safe, sir, because the environment that we're working in is fluid and it's changing. It's also we're dealing with human beings. So no, the document itself is not fail-safe, but I think that under the circumstances it was the best that I could do with regards to implementing something along these lines.

30 Certainly I'm intending no criticism of what you've done. I think it was an initiative and one that should be applauded. The situation is though that, as you've just told us, it's fluid over there. We've heard evidence that soldiers coming off duty will not always be with someone, they'll be on their own. That's something within your consciousness presumably. That's likely to happen from time to time?---Yes, sir.

40 Is there anything you can do about trying to cover that or do you rely on the professionalism of your troops?---Sir, I guess that what I will rely on is a little bit of initiative and professionalism. If you don't have a buddy at that particular point in time, then move to an area where buddy - sorry, sir, move to an area where you can get a buddy and conduct the change in degree of weapon readiness there. Nowhere have I written or said that it has to occur immediately or at specific points in time, it needs to occur as

soon as practicable after you leave where you are or you need to conduct your change.

5 COL Griffin asked you how you promulgated your SOPs and you've given some evidence on that, and you referred to having an OCs conference every evening and on a regular basis raising the issue of the buddy system amongst other things; is that fair?---Yes, sir.

10 I think you said you expected your junior leaders would promulgate information in the SOPs to their soldiers?---That's correct, sir. There's ample evidence that that has occurred also.

15 Can you just expand on what that ample evidence is?---Well, in walking around, sir, and viewing my soldiers at work, you can see them applying the Standing Operating Procedures, everything from dress to carrying out the buddy system.

20 You think they might carry out the Standing Operating Procedures because the OC happens to be walking past?---That's a distinct possibility, sir.

Did you satisfy yourself through feedback from your junior commanders that the buddy system was being implemented?---Yes, sir.

25 How did you do that?---By speaking with them, sir, and asking them what they are seeing amongst their troops and confirming whether they had passed on the information. I know that in some instances parts of the SOPs were passed on verbally, other parts were passed on in hard copy.

30 I know you can't be paternalistic all the time, but were there any spot checks done to see if soldiers were complying with the buddy system intent?---Sir, it's a difficult thing to spot check because you have to be there when they're doing it. As you just said, it would be fair to say that when the OC is around that they generally do what they're supposed to do. I think that's human nature, that's not a comment on my soldiers at all. But whenever I've been around, I've not seen anyone not do the buddy system, and I'm around quite a lot. That would indicate to me that they know that they're supposed to do it.

40 Would you accept, though, that if a soldier comes off duty on his own, assuming he clears his own weapon, soldiers being soldiers and coming off duty want to jump in the shower and have a relax, you may not find a buddy, you might rely on your own professionalism to get you through? ---It's a possibility, sir.

45

5 I just want to move to a different area. LTCOL Berkley, who asked you some questions, talked about whether if the SIB had been on the ground, that might have been a positive and might have assisted in preserving a scene, and I understand you agreed with him on that. Is that the case?---I think it would have assisted me, sir, yes.

10 I just want to read to you a paragraph from a statement made by Soldier 33; it's paragraph 5 of his statement. I'll just leave out his title but he talks about being in a position senior to PTE Kovco:

15 *A decision had been made always to have a CSM from the Royal Australian Corps of Military Police over here. The powers that be had been pushing for an infantry CSM. Even though I had done the training in Brisbane, being infantry there was a chance I would not be deployed.*

20 He goes on to say that he was employed. Do you know anything on that topic of a CSM being from the Corps of Military Police?---Yes, sir. The manning for SECDET did not have, up until very recently, a CSM's position. There was, however, a Warrant Officer Class 2 posted or positioned within the Military Police Close Personal Protection Team. Over previous SECDETs and also with mine, it had been identified that the Company Sergeant Major's position was a fairly important position so what myself and my predecessors had done was take that Warrant Officer and pull him into the headquarters as the Company Sergeant Major, that's 25 the MP Warrant Officer. Whilst we were deployed, the manning was changed and an infantry CSM was appointed, that being Soldier 33.

30 Are you able to make any comment on why there was a change from a Military Police CSM to an infantry CSM?---Because it makes sense, sir, to - in effect, what we were doing, we were double tasking the MP Warrant Officer. He was a part of the <delete> team, but he was also the Company Sergeant Major. The decision was eventually made that that's not a good thing to do, particularly on operations, so an infantry CSM's 35 position was created and the Military Police Warrant Officer went back into the <delete> on a full-time basis.

40 Are you able to tell me whether there was a Military Police Warrant Officer in Baghdad at the time of the incident with Jake?---Yes, sir, there was, there was a Military Police Warrant Officer Class 2 who had previously been my Company Sergeant Major but, on appointment of Soldier 33, the MP Warrant Officer went back full-time into the <delete>. But I'll be quick to point out, sir, that that MP Warrant Officer is not an 45 investigator, he's not trained in SIB matters.

Do you know that for a fact or are you assuming that?---I know it for a fact, sir, he's one of my soldiers.

5 Notwithstanding that he's not trained, did you seek his advice as to what one might do with the scene?---No, sir. I sought the advice of his superior MP, the MP Captain who is a team leader.

10 If we could move to that advice you sought from him. In the statement from that person, he says in paragraph 11 - we're talking about the possibility of a letter that Jake might have left and I think you gave evidence on the first occasion we spoke with you?---Yes.

He says in his statement:

15 *Soldier 30 wanted to get that letter so it could go to Shelley. He and the commander had decided that Soldier 30 would go into the room to find the letter. I advised that this should not be done and I said words to the effect, "This should be the case even if a high ranking officer, such as the Chief of the Defence Force, had said that the letter should be found."*

20

Do you recall being given that advice?---Not specifically that advice, sir. I don't doubt the veracity of his statement. I'm sure that we spoke about it but I don't recall I mentioned the Chief of the Defence Force in any

25 conversation that I had with the Captain.

Assuming that you were given that advice, you made a command decision and went into the room anyway. Is that right?---No, sir, I didn't enter the

30 room.

I apologise, you personally didn't. Did someone go into the room to look for a letter?---No, sir, it was - at that point in time we hadn't gone into the room to look for a letter. The letter - it was decided that we would wait for the SIB team to arrive. The SIB team did arrive. They were instructed

35 that we were still looking for this particular letter and they undertook to be as quick as they could in trying to find that. They made it a priority and it was in fact SGT Hession of the SIB who found what looks to be the letter we were looking for written into Jake's diary.

40 That's interesting. I'll just read the next paragraph of this statement, paragraph 12:

45 *On the morning of 22 April Soldier 30 told me that Soldier 1 had gone into PTE Kovco's room on the night of 21 April on his own initiative and had taken a diary and teddy bear to return with the*

body.

5 How does that sit with your understanding that SGT Hession found the
diary?---No, that statement by the Captain there, sir, is correct. Soldier 1
unbeknownst to me had entered the room. He had removed the diary and
a teddy bear and I think some photos, placed them in a plastic bag because
he had wanted them to go back with Jake's body for Shelley to receive.
When I found out that he had done that I told him that he shouldn't have
10 entered the room but what was done was done. It was well intended. He
asked me whether he should put that stuff back into the room. I said, "No,
don't enter the room again. Hold it, wait for the Military Police to arrive.
Explain to them what happened and why you did it and hand the stuff
over." Soldier 1 wasn't looking for a letter at that point in time. We
15 didn't know the letter was in the diary. So it was when Soldier 1 handed
over to SGT Hession the bag containing the diary and the other effects
that SGT Hession went through the diary and found what we believe to be
the letter.

20 Do you know if Soldier 1 went into the room before or after you'd put
seals on the door?---It was before, sir.

Just to finish the questions I have for you, I'm going to read you some of
your evidence from the first occasion you gave evidence to us on 19 June.
This is on page 55 of the transcript:

25
*Jake himself was one of these professional soldiers. He was a
staunch and loyal mate. He was a loveable larrikin and a
dedicated husband and father. Jake and I had what I would
30 consider to be a special relationship. As the OC, he was a private
soldier, but there wouldn't be a time that we would walk past
each other without stopping, having a chat, having a laugh. I had
the privilege of spending some time in an observation post with
Jake only a week or so before his death. I spent about two and a
35 half hours with him there and we shared our own thoughts and
that's a time that I will cherish.*

I probably don't need to ask you this, but do you - you're still of that view
I understand, I would imagine?---Yes, sir, very much so.

40 Thank you, Mr President, I don't have any further questions.

PRESIDENT: Thank you.

45 <EXAMINATION BY COL GRIFFIN

[1325]

5 COL GRIFFIN: Just to confirm a couple of matters, Soldier 30, in open session. It's your evidence that there is no official requirement for a buddy system to be in place?---Sir, my understanding still is that there is no Army or ADF requirement upon me to have a buddy system in place. It's something that I put in place.

10 That was an extra safety precaution that you introduced on your own initiative. Is that right?---Yes, sir.

You mentioned earlier that it was designed to prevent unauthorised discharges or negligent discharges of weapons?---Yes, sir.

15 Other than this particular incident and operational engagements, have there been any unauthorised discharges or negligent discharges of weapons in your SECDet IX?---Sir, there was one with a blank round during our training. That's the only unauthorised discharge that occurred. It has occurred to date and that occurred with an F88 Styre, not a pistol.

20 Sir, the remainder of my questions are matters that touch on operational security which would require, with your leave, the matter be dealt with in closed session.

25 PRESIDENT: Very well. The Board will now be closed for that purpose and we'll wait the now traditional signal.

COL GRIFFIN: Thank you, sir. Please stand by, Soldier 30.

30 (Continued in closed session)

(Open session)

<SOLDIER 1, sworn

[1402]

5

<EXAMINATION BY MAJ JOLLY

10 MAJ JOLLY: Soldier 1, in front of you there should be a callsign matrix for SECDDET personnel. Do you have that document in front of you?
---Yes, sir.

15 Are you able to identify your name on that matrix?---Yes, sir.

15

You are identified as Soldier 1?---Yes, sir, I am.

20 Soldier 1, when you are giving your evidence if you could refer to members of the SECDDET personnel by their matrix number?---Will do, sir.

25 Soldier 1, what I propose to do is identify the various statements that you have given in the course of preparing for this Inquiry and, given the constraints on the video-link, then adjourn until tomorrow for you to continue your evidence. Soldier 1, do you recall, firstly, giving a statement to the SIB in relation to the death of PTE Kovco?---Yes, I do, sir.

30 As part of that statement did you prepare a diagram of room 8?---Yes, sir, I did.

And also was another statement annexed to your SIB statement?---Yes, it was. That was a statement that I wrote.

35 Was that in conjunction with the quick assessment that was done?---As I recall, sir, I wrote that statement I believe before the quick assessment. I wrote it for my own records knowing that writing a statement is generally the done thing following an incident like this or any other incident of my own writing.

40

I was going to ask you did anyone direct you to do that, but I think what you're telling us is that you did that on your own initiative?---Yes, sir, I did.

45 Soldier 1, do you recall giving an affidavit to MAJ Hyde some time in

June of this year?---Yes, sir, I do.

Soldier 1, do you have that affidavit in front of you now?---Yes, sir, I have a copy of it.

5

Do you also have a copy of your SIB statement with its two annexures?
---Sir, I have a copy of my SIB statement with my - with a copy of the statement I provided but not the diagram which I drew.

10 I see. Mr President, I tender a copy of Soldier 1's affidavit which has, for the purposes of the tender in Australia, attached to it a copy of Soldier 1's SIB statement and, forming part of Soldier 1's SIB statement, are two annexures that he's just referred to, namely, a plan diagram of room 8 and a statement that Soldier 1 prepared, as he said, on his own initiative. I
15 tender, firstly, a full copy of those documents and, as a second tender, a copy of a redacted version.

PRESIDENT: Everybody comfortable with that approach?

20 COUNSEL REPRESENTING: Yes, sir.

COL YOUNG: Mr President, I don't appear to have a copy of a diagram as an annexure and I think the witness has just said he doesn't have a copy of a diagram in his papers.

25

PRESIDENT: He doesn't seem to have it there but I take it there's no debate the diagram that Counsel Assisting has is the diagram prepared by Soldier 1?

30 MAJ JOLLY: Sir, I'm happy to amend the tender to exclude that until we determine why COL Young doesn't have a copy.

PRESIDENT: We'll exclude the diagram from the tender at this point of time.

35

MAJ JOLLY: Thank you, sir.

LTCOL BERKLEY: Just for clarity, sir, the statement that I have got, the SIB statement, has two diagrams: one of the room, which was mentioned
40 specifically; but also as an Embassy helicopter view diagram with it.

MAJ JOLLY: That's correct, sir, yes.

LTCOL BERKLEY: That's how I - - -
45

PRESIDENT: So it's a two-page document.

5 MAJ JOLLY: I'll just clarify that. Soldier 1, the hand-drawn diagram of room 8, was that one that you had prepared yourself?---Sir, I did that under direction from the investigator for that SIB statement that I provided. He asked me to provide, from memory, a diagram of room 8. I provided that during the course of my interview.

10 Soldier 1, the voice you heard in the background was that of LTCOL Berkley who's acting for Mrs Shelley Kovco. He was referring to a planned diagram of the Embassy buildings and grounds. Is that a diagram that you had prepared or one that was available generically within SECDET?---Again, sir, that was a generic diagram which I provided detail to, it was provided as a blank copy and I was asked to label and identify a number of key areas. The paragraph in my service police statement, paragraph 13, which then highlights a list of numbers, is I believe in reference to that diagram, sir.

20 Soldier 1, what we propose to do now is adjourn until tomorrow for you to continue your evidence?---Understood, sir.

PRESIDENT: Very well, the documents will be formally marked, with the exceptions of the diagram, as Exhibit 137, both in its redacted and classified form.

25
#EXHIBIT 137 - REDACTED AND CLASSIFIED VERSIONS OF SOLDIER 1'S AFFIDAVIT

30 PRESIDENT: What time would you suggest tomorrow, Major?

MAJ JOLLY: Not before 10.30, sir, thank you.

35 PRESIDENT: Not before 10.30; all right, then. We'll take the adjournment until not before 10.30 tomorrow.

40 <WITNESS WITHDREW [1408]

MATTER ADJOURNED AT 1408 UNTIL FRIDAY 11 AUGUST 2006 AT 1030