

**TRANSCRIPT OF PROCEEDINGS**  
**UNCLASSIFIED**

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**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**

**1102 FRIDAY 11 AUGUST 2006**  
**DAY 19**

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.....  ..... Date .....11/08/06.....(President)

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

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

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

**RESUMED**

**[1102]**

5 PRESIDENT: Good morning, MAJ Jolly.

MAJ JOLLY: Good morning, Mr President. In accordance with the usual custom, I'll ask Soldier 1 be resworn.

10 PRESIDENT: Yes, please.

**<SOLDIER 1, recalled and resworn**

**[1103]**

15 **<EXAMINATION BY MAJ JOLLY**

20 MAJ JOLLY: Soldier 1, yesterday we had got to the point where we were dealing with your affidavit and the attachments to it and mention was made of the map that comprised the first attachment to your SIB statement. Soldier 1, if I could get you to turn to your statement, please, the affidavit?---Yes, sir.

25 I think it's somewhere on the third page, at paragraph 9, you refer to that map at the bottom of the page that's no longer in your possession?---Is it the affidavit taken by MAJ Hyde?

MAJ Hyde, yes?---Paragraph 9?

30 It's not there, is it?---No, sir.

Sorry, Soldier 1, someone - - -?---My paragraph 9 makes no mention of the map, it talks about a different subject.

35 If you could just quickly turn through your affidavit, at the bottom of the page, you make reference to the plan no longer being in your possession. It's the last sentence on the bottom of one of the pages. Someone has taken my copy of it?---Yes, sir, paragraph 19.

40 19; I knew there was a nine in there somewhere. Can you recall when the plan left your control and who you gave it to?---Yes, sir, when I conducted my statement with the SIB sergeant - I don't believe he has a soldier number.

45 That was SGT Hession?---Yes, SGT Hession, sir.

5 Mr President, yesterday you will recall that Soldier 1 identified that he didn't have the plan and COL Young also identified that in his version he didn't have the hand-drawn plan as well. We've identified that that was a document error. All Counsel Representing have all of the attachments to Soldier 1's affidavit and SIB statement now, so therefore I propose the tender of yesterday include the hand-drawn plan by Soldier 1.

10 PRESIDENT: Is everybody comfortable with that approach?

COUNSEL REPRESENTING: Yes, sir.

PRESIDENT: So be it.

15

**#EXHIBIT 137 - REDACTED AND CLASSIFIED VERSIONS OF SOLDIER 1'S AFFIDAVIT, INCLUDING HAND-DRAWN PLAN**

20 MAJ JOLLY: Soldier 1, I have a couple of questions in relation to SOPs. Do you have a copy of Exhibit C8 in front of you, which are the SECDET SOPs?---No, I don't, sir.

25 Perhaps whilst we're asking questions, you can arrange for a copy to be placed in front of you. Soldier 1, just generally speaking to start with, could you tell the Inquiry how SOPs are promulgated throughout SECDET <delete>---Yes, sir. SOPs, to start at the beginning, it was established with my command team early on in the piece during our pre-deployment training that we would construct a set of SOPs, the reason being that in previous SECDETs we'd identified there is a number of key documents that we had the intent of compiling them as SOPs as, for example, per a Battalion set of SOPs. The way we went about that was we conducted individual and group training and development of our SOPs and our techniques, tactics and procedures, the way we were going to conduct business whilst deployed with SECDET <delete>. From our training and the way we do business with reference to, for example, with our CAV troop and the infantry combined, we developed a set of techniques, tactics and procedures that were then recorded from the individual to the section to the combat team level. They were put into SOPs and a rough copy or a first copy was drafted during the mission rehearsal exercise in Brisbane. The way they were promulgated, sir, is they reflect the training and the way we were conducting business. They, hence, became a reference point for the future of the way we conduct individual activities or tactics.

45

As part of that process, Soldier 1, did you have reference to the SOPs from SECDDET <delete>?---I believe we did, sir, yes.

5 In terms of that drafting process that you've just described, did you have a  
role in writing parts of SECDDET <delete> SOPs?---Yes, sir. Under  
guidance from our combat team headquarters individual commanders  
were assigned an SOP or a number of SOPs that were relevant to their role  
and their job. For example, during the conduct of one of our tasks, the  
nature of which would be armed escort, I was - in my first rotation once in  
10 country it would have become my responsible to supervise and manage  
that. As such, I was responsible for constructing the SOPs for armed  
escort as sort of the subject matter expert, for lack of other words.  
Appropriately so, the CAV troop wrote the CAV chapters with reference  
to SOPs. They were then compiled and promulgated across the combat  
15 team. They were edited. The first draft was submitted. It was then at an  
orders session in Brisbane issued as SOP version 1.

Can you explain the role of the OC's conferences in the creation and  
drafting of the SOPs?---Yes, sir. The vision or the end state, the  
20 commander's intent for SOPs was established fairly early on during our  
time in Brisbane in that we would construct a set of SOPs that was known  
amongst the combat team, especially or more so amongst the command  
element. Orders that we hold each night and still do, every single night  
the OC would deliver orders, and it was through that process that an  
25 example or a template for our SOPS, a blank piece of paper correctly  
formatted examples of how it would be laid out and the contents chapters  
which was constructed with a preface by the command team was issued.  
We were given direction and given an opportunity to ask questions about  
how it would fit in. A date was set, which I can't recall now, but that was  
30 when we were to have our first initial draft in, sir.

In terms of a private soldier within your organisation, how is a private  
soldier made aware of the SOPs once that process that you've described is  
completed?---Okay, sir. The SOPs that I was alluding to earlier are a  
35 written example of what they've been trained in. So the way that they've  
been conducting their training and rehearsals was reflected into the SOPs.  
We were very cognisant that there's no point writing an SOP but actually  
doing something different. It would be counterproductive to do it that  
way, to write what we think we were going to do, establish a training  
40 regime, edit it and then come back and rewrite them before submitting.  
The more obvious elements of SOPs could be filled out with the detail as  
to how an SOP was to be carried out came from the way they were  
training to do their job. Once they were drafted, sir, the initial draft was  
made known amongst the combat team. I, for example, printed a copy of  
45 SOPs, four copies, and handed those to each of my section commanders

and a copy was left at PHQ as a reference for everyone to use like a touchstone, sir, in the same way as a battalion SOP. So when you have questions or doubts or need to clarify points, that was the first reference that could be drawn upon. But an individual soldier had the opportunity, if he needed to, he could always go through his chain of command to his 2IC to the section commander to clarify points, or his peers. But, as I said, sir, the SOPs reflected what they'd been trained to do and the way they developed their doctrine, for example.

When you issued a copy of the SOPs to your section commanders, did you give them any direction as to what they were to do with them?--Yes, sir. To the section commanders - and bear in mind this is while we were at Brisbane and has been carried out throughout. But whilst we were in Brisbane it was understood that the intent is here a copy of SOPs for you to read so that not only are you cognisant of what we will do and how it's been reflected in there. For example, the chapter on armed escort they would have been fairly familiar with. The intent for me to issue them to the section commanders was so that they were able to form their knowledge of how everyone else was conducting their jobs as well. It may not be immediately relevant to an infantry section commander the procedures for - let me think of an example, sir. For example, it may not be relevant to an infantry section commander the way that Irani element may conduct its documenting or its administrative process in due course of their business. But it's worth knowing, and hence, that was the intent for them to be issued. It's also to confirm that they were aware of the other units that they would most definitely be - not the other units, but the other callsigns that they were definitely working with to confirm that the training reflected what was in SOPs, sir.

Are the SOPs are static document or a dynamic document?---They're issued as the "here is version 1." There was then a deadline set for amendment 1 to be - that was after we'd arrived in country. The intent from - the commander's intent from earlier was, "Here is our draft version as best as we can establish it before being in country and seeing how business is done." Once we arrived in theatre and had had time to settle in, for lack of other words, it was established that no later than X date we will go through our amendments as appropriate, having seen the intricacies of the job. The amendments would be made and amendment 1 would be issued, sir.

How do you communicate to your soldiers any changes to SOPs?---If there is a change to SOPs specifically or the way we were going to conduct business, once - Combat team orders are held every night. I also hold orders every night with a minimum of my section commanders and my platoon sergeant, as a minimum. I then issue and distribute orders

through that process so a change to SOPs - for example, how we will now go about fuelling the vehicles or at what time - will be distributed to the section commanders. Once I've completed my orders, then the normal flow of chain of command follows, sir, and each of the section commanders would hold his own section orders.

How do you as a platoon commander ensure that the SOPs have in fact been communicated to the soldiers under your command?---Through some of the more obvious means, sir. As a platoon commander, it's my job to ensure that all duties and the nature of duties for individuals are carried out in due course. As such, either by questioning members and, you know, quizzing them on whether or not they've received the information to ensure that it's being flowed. Corrective - so if I identify something is incorrect, then I can change it. Feedback through the section commanders that, "Yes, we've passed on to the blokes, did it no problem, sir." The supervisory role as the platoon commander, it's my responsibility to ensure that it's carried out. I do that through a number of different ways but those are the more obvious examples I can give you.

Soldier 1, the Board has heard evidence from a number of soldiers from SECDDET <delete> in relation to the SOPs and I would like to put some of them to you just to get your comment and views on it. The Board has heard evidence that the SOPs were a work in progress and that they were not yet in existence when you arrived in country?---That may be a perception from individuals, sir, however, I can put my hand on my heart and happily say that we constructed draft 1, that was issued. I have a copy of those in my platoon office - I had a copy of those in my platoon office until amendment 1 was issued. They were issued and said, "Here is SOPs 1." Where I think they may have the perception of being a work in progress, it was expressed to them that this isn't the be all and end all, that as changes are appropriate, we will make them, but that will be issued through the normal chain of command, sir, and expressed to them so that they're not doing one thing and the SOPs that they should be complying with are different. That would be again counterproductive.

The other evidence that the Board has heard, Soldier 1, is that when you arrived in country you were using SECDDET <delete> SOPs. Would you care to comment on that?---That's incorrect, sir, in my view. To the point that SECDDET <delete> had a number of key differences which we maintained our own SOP whilst we were there. For example, during the handover there were simple differences in the way we conducted business. An example may be dress and force protection level which were different. We still employed our SOP or our force protection levels which may or may not have been different to SECDDET <delete>. I think that's an example of where we did not employ their SOPs. Where that may have

come from I believe is when were doing our handover takeover. Obviously SECDDET <delete> had passed on to us their knowledge, they were the current subject matter experts given they had been in theatre for a period of time. So we wanted to know how they did business and drew it from them. Once we took command, we incorporated that knowledge with our SOPs. As discussed earlier or as I said earlier, sir, issued through the chain of command what those changes or potential changes to SOP would have been and we did business our way, sir.

10 Did you have an opportunity to read SECDDET <delete> SOPs as part of that process you've just described?--Yes, sir, I did. We used those in essence in developing our training and the way we conducted our development of our doctrine or of our SOPs. We used that like a reference to draw from because he was the most experienced at the time.

15 Can you recall whether SECDDET <delete> SOPs dealt with the buddy system, for example?--I can't recall, sir, seeing it in there. It may have been but I can't recall now whether or not it was in SECDDET <delete> SOPs.

20 Soldier 1, in your role as a platoon commander, do you have the authority to verbally amend SOPs?--Sir, if I identified a change in SOPs it would depend on - if it was an SOP it would - to me that indicates that there's a period of time where it's not critical or a tactical decision. I've got the commander's intent and the ability in a tactical scenario to make changes as appropriate, however, given time, before I impose any changes, I would put it as a recommendation and seek guidance from my headquarters before implementing any changes, sir.

30 If it was specifically in the operational context, by that I mean if an operational issue arose and you didn't have time to consult with your chain of command - I understand from what you've just told us that you have the authority to verbally amend the SOPs; is that correct?--Sir, could I ask you to repeat the question for me so I can get it clear in my head what it is, sir.

<delete>

40 Can you recall - and I ask you to consider the period prior to PTE Kovco's death - whether you amended any <delete>?--I can't recall making any amendments to it, sir, given they were talking about a difference of a - of less than a week, a few days, when we'd arrived at that location and had conducted a relief in place with my peer platoon. In essence, we had inherited the SOP - not the SOPs, but the same routine in degrees of weapon readiness that applies to their platoon applies to ours. It is the

tactical scenario that's, you know - and military appreciation process had been conducted for the defence of that location. That's where our degrees of weapon readiness come from, sir.

5 Soldier 1, do you now have a copy of the SECDET <delete> SOPs in front of you?---Not at this stage, sir, no, I do not.

That's okay, we can press on, but if you could - do you have someone there, a court orderly who's able to assist you?---Yes, sir, someone's  
10 dispatched to go and try and chase that down.

We'll go onto another topic whilst we're waiting for that. Soldier 1, I want to take you to the period when 7 Platoon deployed to the Australian Embassy. If I could just remind you that we're in open session and that if  
15 you need to refer to any personnel you've got the callsign matrix there?  
---Understood, sir.

I'm going to ask you the question in such a way that it's not location specific. But if you need to expand upon it, let us know and at some point we can go to closed session in order for you to be able to give a fuller  
20 description, if it were. As I said, Soldier 1, I want to take you to the period when 7 Platoon redeployed to the Australian Embassy and the briefing that you gave at approximately 0100 in the morning. Can you recall that occasion?---The briefing I gave at 0100 in the morning?

Yes, when 7 Platoon arrived at the Embassy?---I can't recall the specific  
25 instance, sir, that you're making reference to.

That's okay. When you arrive in a new location, what steps do you take to ensure that your personnel are apprised of the DOWR?---Sir, I expand upon prior to the conduct of our relief in place with my brother platoon. I took my command element with me and we conducted a reconnaissance,  
30 for lack of other words, in accordance with the relief in place process before orders are issued for the change. I took them with me on a day no more than three days before but no less than one day we conducted our relief in place. I took them through the current team that was out at that location gave us a brief on the surrounds to familiarise us. We then went  
35 to each of the points where people were currently in place. <delete>. I believe that my third at the time was occupied on a task and I took his 2IC in his place I believe, but I would need to confirm that. We went and conducted that relief in place reconnaissance, then returned to my location at the time. I issued through nightly orders the orders for the relief in  
40 place that was to occur on the day before we did so and the steps and procedures and who would adopt which tasks at which times, et cetera, sir.

Am I right in saying that from what you've told us previously that it would then be your command team, your section command, that would then go on and brief the individual soldiers?---Yes, sir, they wouldn't deliver a brief, they'd give orders for each location and their groupings and tasks specifically as to who was going to do what. Once we arrived at that location there was still - there's a handover period. So the other platoon would be maintaining a security while that section commander was able to take his men to each point and give each member a current familiarisation with the grounds and the layout and the locations of each individual point, deliver to them "This is what - remember in orders, as an example, "remember in orders when I discussed this point. Here it is, now you can see it. This is what I mean by the arcs and tasks. The degree of weapon readiness here is this." I would imagine that would be the type of thing they would say. I know that the section commanders were afforded the opportunity to take each member around before they were required to mount duty at that location. I was able to ensure that was done, as mentioned again, sir, through quizzing the individuals at random before and during their adoption of that position, what is the degree of weapon readiness up there, et cetera, so that I could maintain - you know, I could feel comfortable to know that they had understood the SOPs or the orders for our conduct of defence at that location.

This is probably obvious, Soldier 1, but I take it this process is entirely verbal?---Yes, sir, verbal. An individual soldier probably wouldn't have been issued a handwritten set of orders or anything along those lines. It would have been a verbal set of orders, maximum use of maps, pictures, diagrams, et cetera, as appropriate, and then by physically being on the ground and being able to walk it makes a large difference. Hence, the reason we adopted that as a step before they were required to mount duties.

If you identify a need as part of these briefing processes that the SOPs need to be changed, what is the procedure for you to do that?---I would seek an opportunity to discuss with my section commanders or platoon staff, my 2ICs, as appropriate, given that a number of decisions would be key and specific to the way I make conduct business with relation to DFAT, for example. I believe in the nature that you're describing so - for example, a change in the degrees of weapon readiness. If I had a thought I would sort of reinforce or confirm that I was on the right track by speaking to the members within my platoon so that we were able to maintain "Yes, I understand, I believe, I confirm that" - I believe that there's a requirement to change it. We would war-game it, conduct an appreciation and find out what changes needed to be applied. At the end ultimately the decision would lie with myself. Then finally I would take that up to IOC to get it confirmed and put in place.

Is that by way of an oral briefing with the OC?---Yes, sir. I'm afforded the opportunity through our nightly prayers the opportunity to speak to them at least once every 24 hours, if not beforehand in the course of our duties.

5 Is that the forum in which you would raise a concern or an issue with any of the SOPs that you had with the OC?---Yes, sir, that would be an ideal location and time, given that there is a representative for each other force element comprising SECDET <delete> that will be present, if it was appropriate.

10 I asked that because can you recall any separate occasion other than the OC's conferences where you approached the OC with a request to alter the SOPs in relation to DOWR?---Specifically at the Embassy location, sir?

15 Yes?---I can think of - to my recollection, sir, at this stage, I can think of an occasion where we discussed our current SOPs and some potential changes that we looked at and war-gamed and then implemented. Those occurred after 21 April, sir, specifically with reference to the location of beaches. That's an example. I cannot recall at this time other occasions where I gone out of my way to go to headquarters to discuss it with him specifically, or anyone else for that matter. There is a possibility though  
20 that I had, I just can't recall. There is also the opportunity that during the course of his duties if my OC was out at the Embassy they would generally provide an opportunity to discuss with him the way business was being run. I can't recall ever having done that though, sir.

25 In terms of your role as Platoon Commander, do you have a formal approach to reviewing the SOPs or is it something that as you see things occurring that requires an adjustment to the SOPS, that you act upon it then?---Yes, sir. As the Platoon Commander, ultimately one of my responsibilities would be to ensure that what we are - you know, the steps that we are putting in place were appropriate to the threat situation, the  
30 changing nature of, for example, structures, the way that business had been done by coalition partners who we're fairly close and work alongside with at that location, at the Embassy, for an example. I would review and identify as appropriate - I would listen and seek guidance from - well, not guidance, but seek prompts from my section commanders if they believe  
35 there was a change that needed to be made. I would go off what they were saying to look into it and see if what they were talking about was justified and required and then go through that procedure as discussed earlier. There is also opportunity as a command team we maintain cognisant of the fact that we need to ensure that what we do is relevant, it is the latest,  
40 it is relevant reference to the way we are conducting business and specifically the threat situation, which changes and evolves. That would be prompted possibly, as an example, through the nightly orders. My OC

would suggest, "Gentlemen, I want you to take your SOPs, go through and do a review." I can think - I believe, I'm fairly confident, sir, that had occurred on at least one occasion. We've got a - the tempo where we are, sir, works in sort of peaks and troughs. If there's an opportunity where we were not as busy as we could be at other times we would use that opportunity to review the way we were conducting business. That would possibly include a review of our SOPs.

Soldier 1, speaking of those SOPs, do you have a copy of them yet?---Not yet, sir.

Mr President, I'm virtually at the end of the questions I have of Soldier 1, but unfortunately I need to take him to those SOPs. I'm happy to return to it or indeed perhaps a small break to allow Soldier 1 to see if he can go and chase them down. That might be the preferred option.

PRESIDENT: That might be the better option.

MAJ JOLLY: Indeed. Soldier 1, could I ask you to go off and see if you can locate the SOPs, please, and then return to us?---I'll do my best to go and track them down as fast as possible, sir.

Thank you, Soldier 1.

PRESIDENT: In the meantime the Board will adjourn until Soldier 1 returns to us.

MAJ JOLLY: Thank you, sir.

**ADJOURNED** [1138]

**RESUMED** [1206]

PRESIDENT: Thank you, MAJ Jolly. I see that Soldier 1 has returned to us.

MAJ JOLLY: He has, sir. Soldier 1, just confirming that you have a copy of SECDET IX's SOPs in front of you?---Yes, sir, I do have the majority of what you're after. As I discussed, I'm just waiting on Annex A to SOP 161 to be faxed through secure.

Thank you, Soldier 1. Following on from the questions I was asking you before the adjournment, can I get you to turn to paragraph 112.4?---Yes,

sir.

5 Delete>. When I had arrived at the Embassy location, degrees of weapon readiness had already been changed and amended. I'd adopted the same degrees of weapon readiness SOP as per our handover brief with my brother platoon, which are, in some instances, different to the ones that represented on this SOP, as I said, given that these were written in Brisbane at least eight weeks prior to.

10 Can I get you now to turn to paragraph 161.8?---Yes, sir.

You'll see that deals with the buddy system?---Yes, sir.

15 Could I get you to tell the Board, please, what instructions you gave to your command team as to how the buddy system was to be implemented? ---Yes, sir, for sure, happy to elaborate on that. During our training before we had even arrived in country, the buddy system was discussed and practised at length. It was confirmed time and again to prevent any confusion in what the roles and responsibilities are. They were continually reinforced whilst in country on deployment. The buddy system to be used whereby any time you change or go to unload, load, enter a building, et cetera, as in accordance with the SOP, you're to have a buddy, meaning another member, present when you clear your weapon, for example, to confirm that you've carried out the correct procedure.

25 How did you as a platoon commander ensure that that system was continuing to be used during your time?---Through a supervisory role, sir, predominantly. Obviously I'm not present at every time when my soldiers are changing their degrees of weapon readiness, however, through quizzing them, through observing them, for example, on their entrance to the Embassy grounds. When we return from a task within, when we return from a task, I'll ensure by monitoring to make sure that everyone was conducting their clearances in accordance with their SOP. I would rely on my command chain at my level and down to - pass up to me if instances were not occurring. It was an SOP that was in place, that was understood, any time there was confusion. I recall on one instance, for example, a soldier approached me to confirm, he just wanted to make sure, because he, over the period of time where we changed locations, had observed coalition forces, for example, practising a different drill whereby they were not able or were not allowed - these are not my men but other coalition soldiers - to change their degree of weapon readiness or clear or unload unless they had their supervisor present. He approached me, for example, to clarify that. So through instances like that I was able to reconfirm and ensure that everyone remained cognisant of what the SOP and the procedure was with the buddy system.

Soldier 1, you have the callsign matrix in front of you, and if you could just confirm that you know who Soldier 2 is?---Yes, sir.

5 In relation to the repatriation of PTE Kovco's body to Australia, did you issue Soldier 2 any instructions in relation to his duties as escort for PTE Kovco?---Sir, in relation to that, given the events of that day and that evening, I was aware that there was going to be a requirement for Jake's body to be returned home. It was one of my prime concerns - not my  
10 concern but one of my prime goals was to do it as quickly and as efficiently as we could. Through a communication from my headquarters where I spoke with my OC, I received word that it was confirmed - as we discussed it at some degree that the body would be escorted, I'd imagine, and I assumed it to start with, he went and clarified, I believe. You would probably need to speak with him, sir, to confirm that, but I'm fairly certain  
15 he confirmed the escort was possible and available. I got a communication that indicated yes, it was to occur. He highlighted to me that, if I agreed, I thought the best person - he thought that the best person for it would be Soldier 2; I agreed. From that I received a short message indicating an estimated duration of task, the extent of task, the  
20 commander's intent, and what coordinating we had at the time specifically timings for his movement, his point of contact to who to speak to at the other end, I believe. I took that, I went and found Soldier 2 and I issued him a verbal set and said to him, "Mate, what's going on is we are going to send Jake home. Part of that will provide an escort." At the time I did not have what I'm now aware of, there's a number of DI(G)s, for example, that explains the processes, I believe. At the time I didn't have any of those and hence didn't provide him with any specific detail. He didn't  
25 have access to those where we were and time was short. I provided him essentially a commander's intent and as much of a set of orders as I could at the time and gave him as much as information as possible, sir. He then immediately started a handover with an identified NCO who would relieve him while he was away and commenced packing his equipment. Whilst he was packing I distinctly recall being in the same room and we  
30 discussed certain things with reference to what he'd been tasked with, sir.

What were those things that you discussed?---It just essentially confirmed specifics of the duration, how long he could expect to be away. At no time I believe - I understand the intent of this question, sir. I didn't issue  
40 him any responsibilities, for example for identification. I offer that as I believe that's where you're going. I didn't issue him any specifics in that regard. We basically spoke about what would occur at home, given that a few hours ago one of our soldiers had died. I explained what I would do. He went through what he would do, we advised each other, that sort of  
45 thing, sir.

5 Finally, and in relation to the aftermath of PTE Kovco's death, did you have any communication with any outside agency - and by that I mean outside your chain of command back up to your headquarters - about the details of how PTE Kovco died?---So, sir, as in did I speak with any external agencies outside of an Australian force about how he had died?

10 Yes?---Other than the medical staff at 10 CSH, sir, who I knew and had spoken with in detail throughout that afternoon and - or throughout that evening - members within my platoon. Obviously I established - I needed to gain as much information as I can from the outset through to the end. I wanted to gain as much as I could so I could understand what occurred.

15 You were involved in the - sorry, go on?---At no stage did I communicate with the next step higher of command. That was my OC who liaised above and beyond - I'm in what you describe as the aftermath I was looking after my platoon, sir. I didn't liaise with anyone beyond the staff at 10 CSH. A few names spring to mind, but I can't list everyone in detail as to who I spoke with about that, sir.

20 You were involved in the quick assessment process?---Yes, sir.

25 What did that involvement entail?---Once I was - it was fairly obvious to me through experience and training that a quick assessment would be a next logical step in this instance. I was fairly convinced early on that an investigation of a high nature would occur, was my gut feel. However, the process is for a quick assessment to occur. I understood that a member from headquarters - as I recall, I believe two members came out, but there was one officer in particular who came out. He conducted the quick assessment. My involvement with it was as an interviewee. He interviewed me as to what had occurred, asked me specific questions, et cetera, that were taken as a statement by him I believe.

35 Did you check what he had recorded in the quick assessment once he had completed that process?---I was aware of what I had stated I believe. As I recall, the notes that he'd taken were in a notebook. He then at the end of our interview went through his notes and specific - for example, I believe I drew a quick stick figure diagram of a few things. There were some handwritten notes that I countersigned with him. I'm aware of that that he took. That's to the best of my recollection, sir. I'm fairly certain that occurred. I believe that I had the opportunity to read the quick assessment and its recommendations from headquarters once it had been finalised and sent through the proper chain. I'm fairly certain I read that quick assessment, sir.

45

Thank you, Soldier 1. Thank you, Mr President.

PRESIDENT: Thank you. LTCOL Wilkinson.

5 LTCOL WILKINSON: No, sir. Counsel Assisting has stolen my thunder again.

PRESIDENT: LTCOL Green.

10 LTCOL GREEN: Thank you, sir, yes.

PRESIDENT: We just have to change chairs a little bit, Soldier 1, so that you can see the questioner.

15

**<EXAMINATION BY LTCOL GREEN**

**[1219]**

20 LTCOL GREEN: Soldier 1, my name is LTCOL Green. I represent Soldier 14. Are you aware who Soldier 14 is from the matrix?---Yes, I am, sir.

Soldier 1, as I understand it, you have a copy of the SOPs or parts of the SOPs before you?---Yes.

25

Can I just take you to, for instance, paragraph 116.8.2 ?---Yes, sir.

For instance, paragraph 161.8.2 doesn't apply at all times in all circumstances, does it?---Can you elaborate on your question, sir?

30

Well, you wouldn't suggest if there was an imminent threat being faced by members of your SECDET that they would go through the procedure as set out in paragraph 161.8.2?---I would agree insofar as that in response to a threat, sir, then that is correct. At all other times, unless there is an imminent threat requiring a member to change degree of weapon readiness in defence of himself, others or in accordance with our rules of engagement, then the unload bay is to be used.

35

Is it fair to say that the SOPs are always to be applied with an amount of commonsense and appropriate to the circumstances?---I would say - I would agree with you in most part there, sir, yes. A commonsense approach given the threat scenario - however, these SOPs set the default setting as to what it is to be applied at all times unless there is an imminent requirement for a difference or for a change, sir. For example, I cannot think of any other opportunity where you would need to change

45

your degree of weapon readiness at another location other than an unload bay unless a member was under threat and needed to respond appropriately.

5 You've never been in ASLAV and had to change your degree of weapon readiness?---Yes, sir.

Well, is that not another example of not complying with 161.8.2?---No, sir, because the change in degree of weapon readiness in that situation is  
10 in response to the threat from outside the vehicle and inside. The way I perceive it is that I'm not likely to engage anyone in the inside of an ASLAV and hence the threat to me is less. So I can change my degree of weapon readiness at another location other than an unload bay, sir.

15 So are you saying that you can reduce your degree of weapon readiness beyond a beach point, away from a beach point?---In the instance - in the specific or in the examples which I've provided, sir, to that degree, yes.

Thank you, sir.

20

PRESIDENT: Thank you. LTCOL Berkley.

LTCOL BERKLEY: Yes, thank you, sir. I'll bring my papers.

25

**<EXAMINATION BY LTCOL BERKLEY**

**[1222]**

30

LTCOL BERKLEY: Soldier 1, can you see me?---Yes, I can, sir.

I'm LTCOL Berkley and I represent Shelley Kovco. Do you understand that?---Yes, I do, sir.

35

Now, I too have some questions for you. I think I want to start off just where LTCOL Green left off?---Okay, sir, yes.

40

I've read your interview notes from the interview provided to the quick assessment officer. Do you recall ever seeing a copy of those interview notes?---Not beyond the actual interview itself, sir. I haven't got a copy of them on me. The notes that were taken, I'm not sure where they are. I didn't retain a copy of those at the time, sir.

45

I just want to check on a security issue. In the quick assessment the quick assessment officer compiled some interview notes from an interview with you and "Information Provided" is a subheading and at point 3 it says:

*The three guys were no problems at all, highly trustworthy and good mates.*

5 Do you recall giving that information to the quick assessment officer?  
---Yes, sir, I believe those to be my words.

The three guys we're talking about Soldier 17, Soldier 19 and Jake?  
---Yes, sir, that's correct.

10

Do you adhere to that view?---Yes, I do, sir. I'm aware that they were good mates. Hence, one of the reasons why they were in the room together in the first place. They'd arranged for that to a degree. Up at that stage, sir, I'd had no major concerns with those members. They were all trustworthy and capable, sir.

15

The next point you've introduced yourself. You would expect that if there were problems with any of those three soldiers or in fact any of your soldiers under your command, that your subordinate commanders and junior leaders would bring that to your attention?---Yes, sir. If there was something going on that I wasn't aware of or whatever reason that they observed, I trust in my junior commanders that they would make the decision and inform me appropriately of any concerns that they raise, sir.

20

25 I take it from time to time that you have in fact been informed of allegations of misbehaviour by various members of your sub unit?  
---Sorry, sir, can you say that again?

I'm not suggesting that you've been informed of any misbehaviour at any particular time. I'm just asking you to agree with my assumption that from time to time you have been informed of the misbehaviour of some of your troops?---Yes, sir, I'd agree with that in most part in that, you know, if one of my soldiers had misbehaved - and it's my interpretation of that and I'm not sure what that covers exactly. But yes, if my soldiers - if one of my soldiers had misbehaved, then - an example has occurred that I can think of where yes, I've been made aware of that, sir.

30

35

In other words, you're confident that the system of reporting to you by your junior leaders and subordinate commanders was effective?---Yes, sir.

40

You hadn't received any reports in relation to Jake or Soldier 17 or 19?  
---Saying up to the event with reference to misbehaviour?

45 Yes, well, any breach of discipline however described, the things that one would inform the person in your position of?---Yes, sir. Up until the

incident I think I would say yes - up until that time I was not made aware of any of those sort of circumstances.

5 You say at point 4 that Jake is an animated and jovial individual?---Yes, sir.

10 A person that generally is considered good for morale?---Yes, sir. By that, if I can elaborate, Jake has an active sense of humour, which is a common trait amongst Australian soldiers and he was quite skilled in the application of it, sir.

That's a lovely epitaph; thank you. You say this at point 5:

15 *I believe it was an accident. I trust him, Jacob. He doesn't need to be supervised.*

20 That's the interview note by the quick investigation officer. Do you still adhere to that?---Yes, sir. Where I say that I imply that - or I meant that I've got no concerns with the conduct of tasks. I could issue Jake a task or give him a job to do and know that he will go and do it to the best of his ability and without problems.

At point 7 you say this:

25 *There have been no indications of the potential for self-harm.*

?---Yes, sir.

30 What I want to know is this: within your sub unit, are your people attendees at suicide awareness and/or prevention training? That's the first question; are they?---Yes, sir. Mandatory training indicates or requires that all members of the ADF, or at least as far as I'm aware with regards to my unit, conduct suicide awareness training generally at the beginning of each year.

35 In that system of reporting employed within your sub unit would you expect that if anyone gave any indicia that was worrisome in regards to self-harm, that you would have been informed about it?---Yes, sir, definitely. In that instance if I ever thought there was cause for self-harm or the circumstances indicating a potential for self-harm of if any of my subordinates identified it, then I'd be a main point of contact for them to come straightaway and speak to and I would fully expect any of them to come and see me with those concerns.

45 When you observed Jake you observed the animated and jovial individual

that you told the quick assessment officer about?---Yes, I'd agree that yes, in that statement it was true that he is a jovial and animated person.

Then you say at point 8 this:

5

*That a buddy system is in place for checking weapons' clearances, but it is very difficult to employ at callsign D.*

?---Yes, sir, I would have made that statement.

10

You go on to say in the next sentence that:

*The facilities at that point are now being modified to better facilitate buddy checks.*

15

Do you recall saying that to the quick assessment officer?---Yes, sir. I believe I made these words without prejudice after the event. I obviously I did a review to see what we could do to improve and prevent it from occurring again, and we went about that.

20

When you say "to prevent it from occurring again", are you talking about Jake's fatal injuries?---Yes, sir, or at that time in order to prevent it - I believe I'd assumed, I dare say at the time, in trying to explain what had happened to myself that the beach was a concern that there was a possibility that it hadn't been used, which had led to the incident.

25

Now, I want to take you to your Military Police statement which you made on 30 April this year with SGT Hession. Do you have a copy of that statement with you?---Yes, I do, sir.

30

Attached to that statement I have a sketch from memory of PTE Kovco's room that is signed - it appears to have been signed by you. Do you recall making that sketch?---Yes, sir, I do.

35

I take it that the sketch is not purporting to be drawn to scale?---No, sir. From memory, I believe I probably - I may have used a ruler or a straight edge and a pen and pencil. But it was as best as I can remember it and in proportion as close as I could make it.

40

You've located on that sketch a pistol, you have the words "half-cocked" underneath it. If the entrance door was to the south, the pistol is pointing roughly in a south-east direction?---Yes, sir.

45

So that's on an angle of about 45 degrees to the double bunk?---Yes, sir.

That's as you saw it?---Yes, sir. The sketch that I drew was from occasion where I had seen the room and from what I could recollect of its contents.

5 Do you have that sketch in front of you?---No, I don't, sir. As I was implying earlier on or as I stated to I think it was MAJ Jolly, I don't have those copies as part of my statement provided to me.

I'm sorry, I accept that.

10 MAJ JOLLY: LTCOL Berkley, we can put it on the document viewer.

LTCOL BERKLEY: I appreciate that assistance, thank you.

15 COL GRIFFIN: Mr President, it does contain identities and I would ask that the standard direction in respect of non-publication of identities be made.

20 PRESIDENT: Yes, thank you. The document we're about to display does include soldiers' names. When the press report that, I would be grateful as always if they report the matrix rather than by name.

WITNESS: Sorry, sir, could I ask that the diagram be turned 180 degrees, if possible. Thank you.

25 LTCOL BERKLEY: Counsel Assisting has got a pen on that document now pointing to the location of where you put the pistol. Are you able to see that with any clarity?---Yes, sir, I can see that.

30 You see where the entrance door is, that's where I'm saying is the southern side, the opposite end is the northern side, so the top of the diagram would be the eastern side and the bottom would be the western side. Do you understand that?---Yes, sir, so the barrel is pointing in the direction of southeast.

35 You've gone to the trouble of indicating baggage, two lots of baggage, protruding slightly from underneath the double bunk. I don't know if you can see that?---Yes, I can, sir.

40 There is no baggage around the pistol?---Yes, sir. To the best of my recollection, where I've drawn that baggage I've done so not necessarily as it protruding but to demonstrate that I could see that - I knew that there was baggage under the bed. As far as I'm aware it was - you imagine the horizontal lip of the bunk bed. I believe I was trying to indicate that there was baggage underneath it, not that it was protruding from under the bed.

45

The most important question is: what was the date that you observed the room in this condition?---21 April.

5 You were able to produce this diagram on 29 April, some eight days later, from your memory?---Yes, sir.

You should be in recon, shouldn't you?---I couldn't convince my commanding officer of that.

10 I just want to clear this up, this diagram, because of course it's important to us to know exactly what you're showing here. The baggage is just indicative, it doesn't relate to the actual position of any particular bag or piece of kit. Is that your evidence?---Yes, sir.

15 The holster that's shown: do you recall what sort of holster it was?---Yes, sir, it's the DPDU pattern issued holster. I recall seeing it on that particular bedpost.

20 Did you recognise the part of the body that that holster is to be worn?---Yes, sir, that's a thigh holster. Sir, could I make a comment?

25 Yes, by all means?---The issued equipment is - I don't believe this is in breach of any OPSEC or anything, but the issued equipment which Australian soldiers were issued for here is what we call a molly system, so the holster is able to be and is generally employed as a thigh holster for ease of access for transportation. But it can also be attached to the combat body armour, or the CBA, through the molly system as well. But I do know specifically that that was set up for a thigh holster, it was hanging on a belt loop.

30 You were at a briefing on 21 April and you got word that there was a priority 1 NODUFF casualty?---Yes, sir.

35 Rather than go through statement in any detail, you went straight to the Embassy?---Yes, sir, I'd estimate, to my recollection, that within two minutes of gaining the information, I'd located my driver, my escort, and my equipment and was in the car and moving towards the Embassy.

40 What I want to talk about is the passage of information from this point on. The first person you see, according to your MP statement, is Soldier 3? ---Yes, sir, to my recollection that's the member.

You asked him what happened, and he said:

45 *People had heard a shot ring out, it looked like Kov shot himself.*

*The round had gone in the bottom side of his face and come out the top, he is hurt pretty bad.*

?---Yes, sir.

5

That's the first information you got as to what - - -?---As I was - at the time, sir, certainly from what had happened.

You asked:

10

*How the fuck did he do that?*

Then you asked another question in relation to security, and the reply apparently from Soldier 3 was:

15

*I don't know, he had the pistol in his hand, he fired it, there's blood everywhere, he's hurt pretty bad.*

Do you see that? Are you looking at your statement - paragraph 20?---Sir, I am looking it. I've identified it, sorry. Yes, at the time that was what I recalled Soldier 3 had passed on to me on my way to the 10 CSH.

20

Then you ran to that hospital and, as you went to the front door, you saw Soldier 4 and Soldier 19?---Yes, sir.

25

That's obviously at paragraph 21 of your statement?---Yes, sir.

You didn't appear to ask them at that stage what had happened but you were inquiring about Jake's condition?---Yes, sir.

30

I think Soldier 4 said that he was coming back from piquet and noticed a huge commotion. He told you:

35

*I heard someone say Kov's been shot and someone yelling for a medic.*

He then told you that he ran into the room and he saw

40

*Kov laying on the floor and Soldiers 17 and 19 were in the room and Soldier 26 was in the doorway and they were ripping open shell dressings.*

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

45

Just at this stage, have you recorded accurately and in a chronological and

serial order the information that you have received? In other words, does that statement represent all the information that you had up until that time?---At the time of providing the statement, sir, that was the information that I could recall from a conversation I held with two very  
5 pumped, for lack of another word, soldiers. I myself was in a similar state having understood what had occurred. From what I could remember at the time of providing the statement and probably recall similar to date, it was words to that effect. It may not necessarily be in the chronological order that it occurred in, like specific sentences or what was said, but that,  
10 sir, is the gist and things that I remembered had been said during a conversation I had with Soldier 4.

You've talked to the medical staff. Then Soldier 19 tells you that the OC and the CSM had arrived and that they in fact then entered the door and  
15 came over to where you were sitting; paragraph 23?---Thank you, sir. Yes, sir. At that stage I believe Soldier 19 was waiting towards the doorway and he observed the OC and CSM arrive, because I was inside talking with Soldier 4. He'd come and mentioned to me that they had arrived. They were within eyesight of where I was almost immediately, as  
20 I recall.

You then say that Soldier 2 arrived and gave you some information and that that information was this: that obviously the security points had been  
25 looked after. You say this: that the pistol is still there and that he, Soldier 2, had locked the room; see that, paragraph 24?---Yes, sir.

You then go on to say this: that he told you that another soldier, Soldier 26 - that he'd used Soldier 26's camera to take some photos. I just  
30 want to test your recollection there. Is it your memory that Soldier 2 was saying that he took the photos using Soldier 26's camera or that Soldier 26 took the photos under Soldier 2's direction?---I think, as I recall, the two members described were involved in taking photos. I don't recall now whether Soldier 2 had indicated he had taken them or if 26 had taken  
35 them. But I'm aware that both were involved in the process of taking photos.

Then you have a conversation with Soldier 4 after the other personnel had departed.

40 *Soldier 4 said to me, "Boss, you are going to have to make decisions for him. His eyes are bulging and he's bleeding bad."*

That's in paragraph 25?---Yes, sir.

45 I think later on you were talking about whether the life support system that

Jake was on then was to continue or to be turned off. Is that what you're indicating there?---Sir, what I'm indicating there is that Soldier 4 had by this stage - that we'd had a bit of time to think and reflect, for lack of another word. Being medically trained himself as a combat first aider and having spoken with the nurses at 10 CSH, I'm aware that they had said to him, "You need a" - I'm now aware that they'd said to him, "You need to get one of your supervisors," I believe, or words to that effect, "down here to make decisions for him." So the nurses were looking for a commander of Jake. I think that Soldier 4 had interpreted that they wanted the commander there to make decisions. He had automatically assumed that with Jake's condition, as he was aware of it - and hence, he described the sentence "his eyes are bulging and he's bleeding pretty bad". I think that Soldier 4 was trying to, if anything, help me and prepare me for what he thought I was there to do. I believe that that's what he was doing, sir.

You asked Soldier 4 how this could have happened, obviously Jake's wound, and he said to you, "I don't know. Soldier 19 and 17 were in the room. I thought that someone was shooting at us." That's what Soldier 4 told you?---Yes, sir.

Did you question Soldier 4 as to the possibility that anyone could have been shooting at any of your troops just as part of the process of inquiry? Did you ever question him about that?---I can't recall, sir, whether I had or not. The intent of the statement that I've provided there is that when he heard of the commotion and obviously a bullet wound, or notes to that effect, he immediately thought given the environment that we live in that we may have been being engaged.

You didn't pursue it?---Not that I can recall, sir, no.

I just wanted an explanation for that, that's all. I need to explain things here as well?---I appreciate that, sir.

A short time later you say that the OC returns and he's got with him the Defence Attaché and the CSM?---Yes, sir.

Do you recall being asked by the medical staff anything as to whether the life support system should remain on or be turned off?---Not at the time when those members had returned, sir. To my recollection and as far as I'm still confident, it was discussed with reference to the life support and so on. But that topic of discussion hadn't arisen until after - until the time when COL Smith had approached, which was a fair degree later. That, to my recollection, was the first time that life support in those terms, sir, was discussed, at least with myself.

Had you been in Jake's room at that time? As at that time had you got to Jake's room as at the time of that discussion or did you go there later?  
---No, sir, I went there later. I'd gone from one location directly to the Embassy out of the car and moved straight to the emergency room, the  
5 emergency ward, the waiting area. There I remained until - as I describe later, that I returned to the Embassy.

You do say that on that day, 21 April, at about 2230 hours Soldier 2 told you that Soldiers 19 and 17 were going back to the room supervised by  
10 Soldier 12 to retrieve their respective personal belongings. Is that a decision that was made by Soldier 2 or was he seeking permission or your direction? How was that put to you; paragraph 36, if it assists?---Yes, sir, I'm just trying to recall. At the time I believe it was double-edged. Soldier 2 was trying to indicate to me I believe that the other soldiers -  
15 Soldiers 17 and 19 needed to get their combat equipment. It was also implied that with my approval it was sort of - he was double checking with me to ensure that I agreed that that was appropriate. I believe now that that was the way it was posed. However, this question was put to me at a difficult time and I can't really recall exactly what was said or how it  
20 was said, sir.

But as at 2230 hours on 21 April had you been to the room yourself?---It was at the time that those two members had entered the room to get their equipment that I observed the room.  
25

So you went with them?---Yes, sir. I didn't go in with them. I was in my room, which is a few doors up. I believe you may have a sketch to indicate that. After it was obvious - after it was apparent that they'd entered the room I moved down, because I do recall the door being held  
30 ajar and shut with a member in the doorway while the other two soldiers were collecting their equipment under supervision, specifically their weapons, their combat equipment and some toiletries, et cetera.

You saw Soldier 12 there with Soldier 17 and 19 while they were collecting their gear?---In my statement, sir, it was a lot closer to the event and I believe that to be correct. I can't specifically recall now. I know I went and spoken with Soldier 2 with reference to a few items.  
35

You told us that Soldier 2 specifically - that Jake had a journal and that you thought it would be appropriate if it accompanied him home to Australia?---At the time, sir, given what had occurred, I was aware that the intent was for Jake to be repatriated back home, for his body to come home. I was also aware of the - or I'd thought to myself, I'd reflected that this - sir, it was obviously a very difficult thing for any family member to  
40 deal with. I thought it would be nice, I thought it would be appropriate, I  
45

thought it may be of some comfort if the family was able to have something to hold on to that may have meant something to them. I specifically recall that Jake kept a journal and at the time it seemed a good idea, sir, that a few things like that go home.

5

I'm not questioning your motive there. I'm just saying how were you aware that Jake had a journal?---I'd spoken to Jake on a number of occasions. At the time he was a smoker, I was a smoker. Later of an evening I would go outside for a duhrie, for example, and observe him sitting on his own writing his journal. We'd had conversations about it prior to the incident. For example, whenever I make reference in this statement, or in another at least, he'd gone to the extent of showing me what the journal looked like because he turned the inside cover to demonstrate a few of his feelings with reference to - and he'd just spoken about it before and what his intent with it was for at another date, that, you know, he wanted for it to be like a memory for his kids, especially given that they were fairly young now and that later in their life they'd be able to read it and see what dad got up to.

10

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20

I think you actually watched Soldier 2 collect that journal, a small black telephone box, a small red in colour teddy bear with the words "world's greatest dad" written on the chest, a key ring with a photograph of one of Jake's children inside, and a small blue approximately A5 size photograph album and a set of dog tags. You watched him collect those?---Yes, sir. I'm not confident - I can't recall if it was him that physically picked up those items or through the members in the room he identified one or two or someone else saw something that belonged to Jake and collected it.

25

30

I'm interested - I'm sorry, I cut you off. Please continue?---The small black telephone box, I've just identified a spelling error. That's actually a small black telephone book, not box.

35

Thank you. Now, I'm keen to know this: was that the time when those items were collected, was that at the same time as Soldiers 17 and 19 had removed some of their combat gear or was it at a later time?---Yes, sir.

40

Your answer was "Yes," was it?---As I recall now, sir, yes, I'm fairly certain it was at the same time. That was my intention and the reason why I was present at the room.

45

Did you take any note or enter on any register or journal the removal of those items from the room?---No, sir, I didn't. I didn't register them or write them down at the time. I knew what had been packaged and prepared because I believe I may have had a conversation with Soldier 2 saying, "Here's something the kids can hold on to and something Shell

can read,” and so on, key rings, et cetera. I was aware of what the items were and their potential comfort to the family, that’s why those items were selected. I don’t recall writing down what they were, sir, I may have.

5 They were given to Soldier 2 to put in his backpack to take back to Australia and I believe that repatriation process was going to start at roughly midnight that night; correct?---Yes, sir. Soldier 2 was going to escort Jake via the first step. There were a number of legs, if that makes sense, from one place to another.

10 Yes, it makes sense to us; we’ve heard about that. But you say in your statement, this is paragraph 38, that your boss, the OC, informed you that the items were not to go, “As the investigators would need to see them,” and that you were “to store those items in your room.” Do you see where you say that?---Yes, sir, I see where it’s been said. The way that comes across maybe a little more strongly than what the boss said. I’d expressed to the OC what we’d done to fill him in and provide him the information so we knew what we were trying to do. It was sort of an aside point. At the time he thought about it and said - it was along the lines of, “Mate, I understand where you’re going with this but there’s likely to be an investigation to follow and it’s probably not a good idea to take stuff out, the investigators will want to see that stuff.” As I’m aware now, I believe my OC has had some formal education in regards to legal proceedings, I believe. He may - the basis of his ranking, he may have more experience in it, that had formed his advice to me.

25 But what was he talking about, what investigators - are you assuming that investigators had been appointed or did he inform you that investigators had been appointed, or did he inform you of his assumption that investigators would be appointed? Can you help us?---I think it was an assumption, sir. With an incident like this, in the job that we do, every time something occurs, there’s an investigation into it to ensure due process. I think it was at the time an assumption.

35 It seemed logical to you that investigators would want to see the room in as pristine a state as possible to perform their functions in relation to Jake’s death?---Yes, sir. Whether that occurred to me before that time, I can’t recall or really comment on. At the time I was focussed on Jake, the repatriation and my platoon. It may have been that discussion that I had with the OC that started me thinking along the lines of, well, he’s right, an investigation will occur, and I’d always known one would, but it would probably include that room and what was in there, et cetera, as best as I can say.

45 It doesn’t take a great deal of abstract thought to realise that if a person

dies in those circumstances, there will be an investigation. That's true, isn't it?---Yes, sir, exactly.

5 Was it Soldier 2 or you that ordered the room be secured, or was it someone else?---I believe Soldier 2 had taken the initiative and secured by some means whilst I was at 10 CSH. Then after, it was assumed the room would remain secured, it was understood that no one was to go in there, or too many people would.

10 That evening, were you part of the release of any signals to a higher headquarters or to any other person, or party to the release of any information by any other means, concerning Jake's death?---No, sir. The formal reporting process was cared for by the XO and the OC back at my headquarters. I didn't report out to anyone. The only incidents or reporting out - it wasn't reporting, it was, once given the go ahead, for a welfare phone call to occur. That was about it, so that blokes could talk to their families. That was about it, sir. I wasn't involved in the chain.

20 You appreciate, of course, that when information is released, people are often less than careful with information and misinformation is actually passed. You're aware of that, aren't you, in many cases?---Yes, sir.

25 We've got a situation - I want you to appreciate it - that the families heard a number of things that this Inquiry hasn't heard, including the Minister for Defence, Dr Nelson, at one stage - this is as it was reported in the press - saying that it could have been a cleaning accident. I'm just wondering do you know how he could have got that information from your end? Was there any talk about it's a cleaning accident?---Sir, to my recollection and as far as I can comment, there was no communication to that effect with anybody. I don't know how that occurred. I obviously heard the news reports and was as frustrated by it as the family, I'd believe, because it was, as you said, misinformation.

35 Yes, I want to ask you about that. You get the press over there, the Australian press?---Yes, sir.

40 This, I'll state publicly, is not a criticism of the press but it's the reporting of information. Do you get information as to what happens during the sittings of this Board?---There is a passage of information which occurs, we're remained updated as far as we can be with a Board of Inquiry through our chain of command. The news obviously reports as it does, but generally I rely - at the time it was sort of after that event where I realised it was frustrating me. I did not rely on the news, I didn't read it for a number of days, I relied on my boss and the information he passed me.

Given that people are reporting things that are said, I'm just trying to find out on behalf of the family - and that's the whole reason for this Inquiry - how some statements are made and reported. I'm not saying that the press make them up, I'm just saying they're reported. How people get to make those statements which of course lead the family to all sorts of different emotional states. Is that, in short, your evidence: you can't assist there? ---Sir, I'm not aware of any occasion where any of my men or any of the men and women of SECDET <delete> have released information to the media or to anyone to pass on. I was cognisant - and it was passed on and discussed between myself and my OC the requirement for people to remain cognisant of their families at home and what they said to their families at home, because although we are under obligation because we are serving members, to take into consideration a number of aspects; hence we wear the uniform. Members aren't obliged in the same manner. That was expressed to them on a number of occasions.

Told them not to gossip because it all gets back?---Yes, sir, exactly.

That's what you told them: don't gossip? Please use the words you used? ---That I said don't gossip - not to gossip, it's not helpful, fact is what is required, and consider what you're saying with your families.

When were you first aware that SIB investigators were going to attend at the Embassy to investigate Jake's death? Do you recall a date?---I can't recall a specific date, sir, when I was made aware of that.

Was it within the hours or days after Jake's death?---I think - as I recall, it probably would have been within a day or two. I think it was fairly swift. I understood that - it may have been longer than that, sir. A quick assessment is conducted and from that recommendations are made. So it would have been probably a couple of days, I imagine.

On the callsign matrix that's in front of you, does your XO have a soldier number?---Yes, sir, Soldier 31.

Did you speak to Soldier 31 about the release of any information to a higher headquarters at any time, even socially or as part of your official duties?---As part of my duties, I believe I had a conversation with either the CSM or the OC with reference to - the Army refers to it as NOTICAS - notification of casualty. I was made aware by someone else that it was Soldier 31 who had compiled on behalf of and followed through that administrative chain. I think I - was about that.

I want to talk to you about the hand back of the room from the SIB back to

your sub unit. Did SGT Hession hand the room back to you or to your OC?---SGT Hession indicated to me that, as far as his official duties were concerned, that was it, he was completed. However, he said, you know, “If you could not touch it for now, I’ll pass it back once it’s been cleared and is good to go.” As best as I recall, I believe he went and spoke with his - the SIB team leader, also a captain. I don’t believe he has a number or if he requires one.

Don’t mention it anyway, I’m not sure myself.

MAJ JOLLY: It’s Soldier 47, sir.

LTCOL BERKLEY: I’m up to 45; I’m behind the times. We’ll call him 47?---I believe that he went and spoke with him - Soldier 47 spoke with Soldier 30 and then Soldier 30 gave me the go ahead, I believe. The OC is the one who told him.

That’s to the best of your recollection?---As I recall it, sir, yes.

Was cleaning the room mentioned?---Yes, sir. I’d expressed to my OC. It was a strong issue for myself and as I assessed for the platoon with reference to the room. The psychological impact of the room remaining in state - I was anxious, I suppose you could say, to have it completed so that I could (a) remove Jake’s equipment and personal belongings and have them sent home shortly after himself, get Soldier 17’s and 19’s equipment and then the room itself, sort of remove anything that needed to be removed.

Did you take the hand back of the room from SGT Hession, did you take that to mean that the room was then able to sterilised, cleaned, reoccupied? Is that what you took it or did you take some other message from it; tell us?---Once the SIB team, through my OC, had passed down that the room was handed back, that was - that’s all that needs to be done with the room and we’re right now to go ahead and clean it, as you said, sterile it, sir, is the way I took it.

Thank you very much. Mr President, I have no further questions.

PRESIDENT: Thank you.

**<EXAMINATION BY COL YOUNG**

**[1315]**

COL YOUNG: Soldier 1, my name is COL Young, I appear to represent

the interests of PTE Kovco?---Sir.

5 I'll cover a few areas. A lot of material we've covered already, but there are some issues I'd like to take up with you. Your SOPs - and you have that in front of you, although I understand it may not be a complete copy? ---That copy has been completed now, sir.

10 You'll agree with me that the SOPs are not page numbered, not paginated?---Yes, sir, that's correct.

Would you accept from me that I've counted the pages and there are 145 pages of the SOP? I'm not asking you to count it, but would you accept that's the case?---I'd take your word on it, sir.

15 Is it your evidence that the 145 pages of the SOP, a copy was given to each of your section commanders, a full copy?---Yes, sir, I would take it that the draft copy - and if that was indeed 145 pages, that was provided to the section commanders, sir, yes.

20 When you say you take it, do you have a recollection that it was given to them by you or someone else or are you guessing?---No, it was definitely given to them. All I'm saying is I take it the quantity of pages. I can't recall how many.

25 Would it surprise you to know that the buddy system was not always used by your soldiers?---Sir, it would surprise me a great deal. It's an SOP. SOPs reflects the way we conduct our business and that was how they were written. It was spoken about, it was training that was conducted. If it wasn't done so, then it wasn't in accordance with our SOPs, sir.

30 Were there occasions where soldiers would leave a post on their own and not necessarily with somebody else? Would there be occasions where that could happen?---In the instance and in the environment at the Embassy I take it you're confined to, sir.

35 Yes?---At the time the - and still - the - excuse me. The purposes for relief from your post would mean that someone else has arrived at that location. So, as I understand it, there are - at any time when a degree of weapon readiness had to change there was always two people present as a result of the rotation plan.

40 If I tell you that we've heard evidence from a number of soldiers that were occasions when they left their post on their own, would you accept that could have happened?---I'd accept that could have happened, sir. I can possibly think of an example where that may have occurred and hence the

45

reason I amended the location of some beaches, if that helps.

5 LTCOL Berkley asked you about the quick assessment and you indicated - or the notes indicate that you said there were some problems at location callsign D. Do you recall that?---Yes, sir, I do.

Following Jake's death there were some changes made to that location. Is that the case?---Yes, sir.

10 Does that indicate that there were real difficulties at that callsign prior to Jake's death?---Sir, I would consider no. One of the compounding factors or one of the reasons why the beach was removed and relocated, because it was easier to achieve than the step that was in place with reference to a relieving soldier moving to point D, moving back to where the beach was  
15 with his buddy and moving back to the point D to below rate. The beach has now been moved a lot closer so that the member isn't required to go and collect a buddy to come back. There's less opportunity there for it to be avoided or for someone to become - or for someone to not have a buddy present, sir.

20 Does that not mean that those changes made it easier for the buddy system to be used?---Yes, sir, it made it easier for it to be used.

25 We heard evidence yesterday from Soldier 30 that following Jake's death the SOPs were not amended as far as reference to the buddy system. Would you accept that?---Sorry, sir, could you say that again?

30 I'll say that again, yes. In the SOPs there's reference to how the buddy system is to work. You're familiar with that?---Yes, sir, 161.8.1.

Precisely. Following Jake's death there was no change made to that paragraph. Do you accept that?---As I understand it, sir, yes, that - what its physical location is, but that SOP is still current, sir, yes.

35 Do you think there could have been some changes made to that particular paragraph to ensure the buddy system worked properly?---I believe so, sir. It is plausible. To be honest, I don't have the latest copy and it may have changed. There is an amendment one I believe. I don't have that though to compare it, so I can't really say. But if what you're asking, sir, is could  
40 this paragraph be changed to potentially make it easier to understand or anything along those lines, is that what you're asking, sir?

45 That's exactly what I'm asking, yes. In your opinion, do you think it could be improved to better facilitate the buddy system being used?---Sir, I think that the statement or the paragraph in the SOPs is sufficient for all

members of SECDET <delete> to understand the intent or the spirit of. The only way it could potentially be improved - bearing in mind I've said I believe it to be sufficient as it is, the only way I think it could be improved would be to list in order the specific actions as to what you are  
5 to conduct in chronological order at that location, which would probably make it a longer list, like a (indistinct).

Would it be fair to say that following Jake's death there was greater  
10 vigilance in enforcing the buddy system and checking that it was being used and done properly?---I'd agree with that, sir. As a commander it was probably something resting on my mind a fair bit more as a result of what had occurred and as a result of what I believe had led to that occurring. Can I also add that for my own part, although I was aware of it, I don't  
15 think we overreacted in any way. I think the high vigilance was applied and emphasised across the combat team.

Could I just take you to your service police statement paragraph 36?  
---Yes, sir.

20 LTCOL Berkley has raised this with you. But it refers to Soldier 2 stated that nothing will be touched and that it will be strictly supervised, that is, for the other occupants of the room to retrieve some gear?---Yes, sir, the intent - as I say, when I say nothing will be touched is that nothing unnecessarily.

25 I think you've said that was something that you and Soldier 2 agreed to in conjunction with one another rather than you directing him or him asking you, it was a joint effort?---Mutual agreement, sir.

30 You had confidence that Soldier 2 can do that task efficiently?  
---Absolutely, sir.

What's your description of Soldier 2? How would you describe him as a  
35 soldier under your command?---Soldier 2 in support to me is someone I would consider an extreme professional. By military nature is fairly regimented, takes his job quite seriously and is in all aspects with reference to how I'd appraised his performance is a very high performer and very capable of the position which he fulfilled.

40 I think you told us earlier that you had confidence in him as being the escort officer for Jake?---Insofar as I knew what he was to do, sir, and being - escort Jake home and be with the other soldier when Jake arrives to speak with the family, yes. At the time I wasn't aware of all the other things that obviously - - -

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Putting those things aside, given the description you've just given of him, you had confidence in him being given a task?---Yes, sir, absolutely. If I can emphasise a point, sir, without dragging it out. Every single one of the soldiers under my command were to an extent selected and identified for service operations for SECDDET <delete> Based on their performance and their abilities, there was opportunity during our lead-up training or through the MRE, for example, where if anyone was found not wanting, then they would be changed. So ipso facto everyone who is present in SECDDET <delete>, sir, I deemed in my platoon to be highly suitable and capable, sir.

Thank you. That just leads me to my concluding couple of questions. I'm looking at page 2 of your affidavit. I just want to read to you some extracts from that. In the top paragraph there you say:

*PTE Kovco was a reserve, but he was one of the soldiers I would have wanted to come.*

In paragraph 6 - and I'd like to read this paragraph and ask you some questions:

*He was very easy going, mature and well thought out. He picked his time and place to have a joke and would then snap to be professional when required. He could laugh at misfortune and get the group motivated and pick them up when given a crap task. He was dedicated to his family. I saw him prepare things for his family and he would often speak of them in general conversation. Whilst happy to be over here, he missed his kids. He generally got on well with people and could fill the void, which is to say he could walk into a section and fit in very easily. He was a facilitator and keen to get the job done.*

Apart from that description of Jake, could I say that, given you were his platoon commander, would you regard him as a mate?---Sir, given the nature of my employment and his, a professional distance is required. The way I would describe it is if I was a private soldier alongside PTE Kovco or Jake, or if he was platoon commander, other way around, he's someone I would easily be a mate with, in my own opinion.

When you refer to him being a facilitator did you see him as having some leadership qualities?---Yes, sir. He was a very mature individual. His leadership qualities in that as a what we would call a senior soldier. He had a few years of experience behind him and a natural knack, if anything, for sort of picking up his peers and leading the group.

So would it follow on from that that you'd see him as having some potential for promotion?---Yes, sir.

Thanks very much. Thank you, Mr President.

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PRESIDENT: Thank you. MAJ Jolly.

MAJ JOLLY: Just two questions, if I could, sir.

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<EXAMINATION BY MAJ JOLLY

[1329]

MAJ JOLLY: Soldier 1, you've been asked a number of questions by  
15 Counsel Representing in relation to the buddy system. I suppose this is a  
question more of the mechanics of how it works. But could you tell the  
Board what did you physically expect your men to do in complying with  
the buddy system? What process were they meant to go through?---As a  
20 minimum, sir, the situation where a buddy was available and right next to  
a member, the minimum requirement for the buddy - as a member through  
his drills and as per trained, carries out a Manly procedure. He would go  
through the machinations of clearing his weapon. The buddy - correction.  
The buddy will then be required to observe the other member carrying out  
25 the Manly, at the minimum observing that there was no longer a magazine  
on the weapon containing rounds - no longer a magazine on the weapon,  
ensuring that the individual had checked the bore of the barrel, the  
chamber area, the rear face of the bolt, was carrying out the proper  
procedures as is taught. If he identified somewhere where he wasn't  
30 doing what he was meant to do his buddy standing next to the bloke can  
just go, "Stop. Have you checked this?" at a minimum at that level.  
Where time and what have you is available, sir, to go to the point of  
double checking and clearing it himself as an option as well. But the  
minimum, sir, and all that is required is for someone to be present to  
35 witness him remove the magazine and conducting the Manly drill as  
taught and as trained through to the new weapon state.

Soldier 1, is that in relation to both the F88 and the SLP?---Yes, sir, the  
individual drills change with the weapon as fairly obvious. But, yes, sir,  
40 with any weapon that changes degree of weapon readiness the buddy  
system is to be employed.

Specifically to the SLP, could you go through the mechanics of how a  
buddy would check that the SLP was cleared?---Generally as a minimum  
he would be present again to witness the member removing the magazine  
45 as trained, pulling the slide of the weapon rearward and engaging the slide

lock, tilting the weapon to inspect the barrel, the rear face of the bolt and through the hand grip to observe that there is not a magazine present, witnessing and then going through the firing of the action to return the weapon to the Manly state. At a minimum he's there to observe and ensure that he's conducted his drills as taught, sir.

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10  
Finally, Soldier 1, is there anything beyond what you've been asked today that you would like to tell the Board about?---Sir, I understand - is that the completion of questioning today?

It is?---Yes, sir. Thank you, sir. I actually do have a statement I would appreciate the opportunity to read, if possible, addressed to members of or people who are present for the Inquiry and to the Australian public in general, if I may.

15  
PRESIDENT: Certainly.

MAJ JOLLY: Please go ahead, Soldier 1?---Thank you, sir. I will read it out so that I don't get lost at all. President of the Board, ladies and gentlemen, I make this statement of my own volition under oath in an open forum to the members and the people present at the Board of Inquiry and to the Australian public. I would like to take this opportunity to say a few things about the SECDET <delete> combat team, some of the people I work with, and express some of my feelings to Jake's family who I know are present.

I understand that the popular media may be presenting an image of my team as people performing to a poor standard, which I firmly believe to be unjust and incorrect. Prior to and when I first deployed to the Middle Eastern AO, the area of operations, I was exceedingly satisfied with the quality of the men under my direct command and all the men and women comprising the SECDET <delete> combat team.

I wish to express that I still am, if not more, than satisfied with the professionalism and excellence demonstrated to me constantly. I can honestly say that I am extremely proud of all efforts of all whom I work with. The opinions of some individuals aside, I firmly believe this team to be the most professional unit I have had the opportunity to serve with. Whilst deployed with SECDET <delete> I'm reminded daily of the reason I joined the Army, and that was to serve alongside hardworking, courageous men and women who are willing to sacrifice the comforts of home so that others may enjoy them. Through the conduct of duty with my team, I see daily examples of keen soldiers performing to their utmost, committed to the highest possible level of performance in all areas of duty, often above and beyond set tasks. I'm constant witness to the self-

sacrifice, loyalty, courage, dedication, honour, professionalism and compassion of the Australian soldier. I consider myself blessed that I've been given the opportunity to serve alongside these men and women and, given the chance, would happily serve with each and individual of them again, given the chance. I consider it an honour to have been selected to lead these men and women that are comprising of SECDDET <delete>.

I also wish to express my deepest thanks to members of the ADF who have supported my platoon and SECDDET on a whole, in particular, a team of psychologists and the <delete> padre for their support and guidance. They're advice has proven to be outstanding and has lent weight to the maintenance of a fighting force capable of maintaining mission focus and the high performance.

I wish to thank my offsider, Soldier 2, who has been there to support the team and, in particular, myself in times of difficulty and distress. He has faced great challenges and is showing great courage to me in the face of adversity.

Most importantly to me, I wish to thank my officer commanding, Soldier 30, for his strength, for his courage and his leadership. I truly thank him for his companionship and leadership in difficult times. During my service in the Army, I've had the opportunity to be commanded by a number of different men. I honestly believe that this man is the most dedicated to his profession, the most loyal, passionate, devoted and steadfast man I've had the benefit of working with. He has been my mentor and he has been the rock upon which SECDDET <delete> has been based. I'm truly honoured to have worked with him throughout this deployment.

Importantly, I would like to speak to Jake's parents, to Judy and Martin. I cannot expect to understand how devastated you must be at having lost a son. I'm not a parent and so cannot come close to comprehending the pain and the stress you must be feeling. I can offer you, however, that Jake's passage was the most devastating blow I've experienced in my life and I shall never forget the pain and suffering his loss caused both myself and his mates. I offer you my deepest condolences and sympathies, but I offer you also my thanks. I thank you for raising Jake to be the man he was, for the man he grew to be and for supporting him in his dream to heed the call to arms. I thank you for sharing your son's life with my men and myself as his mateship has touched us all in a way that we shall never forget.

To Shelley, Tyrie and Alana, lastly but most importantly. I cannot find the words to describe to you how sorry I am for your loss. I can only

5 compare it to the utter devastation I experienced on 21 April when the senior medical member who was treating Jake came to me, looked me in the eye and said, "I'm so sorry, son." I want you to know that if there was anything I could do to save Jake's life, God himself would not have been able to stand in the way of me and my men. I offer you my deepest sympathies.

10 I want you to know that I'm extremely proud and honoured to have served with Jake, especially in this of all places. I consider myself lucky to have spent time with him and have heard his stories about you all. Jake had nothing but love for you all and was an extremely proud husband and father. Jake was one of the most professional, dedicated and loyal soldiers I have had the honour of commanding. He was a typical example of an Australian soldier: professional, hard working, focussed and armed with a  
15 keen sense of humour. I thank you for the time I have shared with him and the pride I have in his mates who have strived to serve to their utmost in order to honour Jake's memory.

20 I remember Jake as he truly was: a professional soldier, a loving husband and father, and a warrior to the end. These are the memories of Jake I will carry forever.

25 At the end, I made an oath to Jake that I would do absolutely anything I could to help out his family, specifically his wife and his kids, and I intend to hold fast to my word. If there is anything that I can do at any time, I ask that you just ask me.

30 I look forward to catching up with you on the tarmac on my return home and giving the three of you the hug that you've been pestering us about, and I would like to introduce Tyrie and Alana to all the 109 of their new uncles. I look forward to the opportunity to catch up with you.

That's all I have to say. Thank you very much, ladies and gentlemen.

35 PRESIDENT: Thank you, Soldier 1. I think it's had an affect on everybody. You may now stand down?---Thank you, sir.

40 <WITNESS WITHDREW [1440]

MAJ JOLLY: Mr President, Soldier 1 is our only witness for today; we have no other witnesses scheduled for the remainder of the day.

45 PRESIDENT: Very well, thank you. What time for the resumption on

Monday?

COL GRIFFIN: Sir, depending on a number of matters, but we would ask not before 10.30.

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PRESIDENT: Is everybody comfortable with not before 10.30?

COUNSEL REPRESENTING: Yes, sir.

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PRESIDENT: 10.30.

**MATTER ADJOURNED AT 1441 UNTIL  
MONDAY, 14 AUGUST 2006 AT 1030**

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