

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

1101 MONDAY 14 AUGUST 2006
DAY

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..... Date14.08.06.....(President)

Signed..... Date 14.08.06.....(Recorder)

Signed..... Date 14.08.06.....(Transcriber)

Signed..... Date14.08.06.....(Transcriber)

RESUMED

[1101]

5 PRESIDENT: Good morning, ladies and gentlemen, Colonel. Good morning, Major.

MAJ HYDE: Sir, if it's convenient, I call Soldier 21. That will be done by VTC.

10 PRESIDENT: I was just going to say I take it he's not with us physically.

MAJ HYDE: No.

15 <SOLDIER 21, sworn

[1102]

<EXAMINATION BY MAJ HYDE

20

MAJ HYDE: Have you prepared a statement for the purposes of giving your evidence in these proceedings and do you have that in front of you? ---Yes, I do.

25

Is that a statement that is signed by you comprising nine pages with your signature on page 9, together with annexures that follow? If you could just take a moment to look at that, please?---Yes.

30

Do you, attached to that statement, have an Annexure A and an Annexure B?---Yes.

Is that the evidence that you propose to give to this Inquiry?---That's correct.

35

I tender the statement of Soldier 21.

PRESIDENT: Is it in a total format or a redacted format?

40

MAJ HYDE: There's a redacted format, Mr President and Members, together with the complete copy.

PRESIDENT: Is everybody comfortable with that?

45

COUNSEL REPRESENTING: Yes, sir.

PRESIDENT: All right, it will be marked as Exhibit 138 in both its classified and redacted format.

5 **#EXHIBIT 138 - CLASSIFIED AND REDACTED VERSIONS OF
SOLDIER 21's STATEMENT**

10 LTCOL BERKLEY: Might I inquire, Mr President, whether the observations of the witness are included in that tender?

MAJ HYDE: Yes, that's Annexure B, yes.

15 LTCOL BERKLEY: I'm grateful to counsel. Thank you, sir.

MAJ HYDE: Soldier 21, could you inform the Board, please, what your current position is?---Section Commander, SECDET <delete>.

20 I would like to just pick up on a couple of matters that arise in your statement. Can I ask you to turn to page 4, paragraph 9, and you'll see that paragraph deals with where you were positioned just prior to when the shot sounded; do you agree with that?---Yes, I do, sir.

25 Could you tell the Board whether you had opened the door to room 8 at the time you heard the shot or were you in the process of doing that? ---The shot sounded just prior to me opening the door, sir.

30 Sorry, Soldier 21, we were just making sure that what you said was being transcribed. Could I ask you to speak up so that your voice can be recorded, Soldier 21. So, as I understand your evidence, you had your hand on the door handle at the time you heard the shot. Is that correct? ---Sir, it was just prior to me opening the door. The shot sounded just prior to me opening the door, sir.

35 Are you talking about a second before you opened the door or more? ---About a second, sir.

40 When you opened the door what did you see?---I saw PTE Kovco laying on the floor. He'd sustained a severe injury. I saw Soldier 17 kneeling at the head of PTE Kovco, and that's about all I saw initially.

45 At some point in time you have a conversation with Soldier 17 and you asked him what had happened. Can you tell the Board what you said and what the reply was?---I approached Soldier 17. I believe you're referring to the incident outside - sorry, the time outside the hospital.

Correct?---I approached Soldier 17 and I basically said, "What happened?" and Soldier 17 replied to me he didn't know, and that was about as far as it went, sir.

5

Thank you. When you say, "That's about as far as it went", do you recall anything else that may have been said by either you or Soldier 17 at that time?---No, sir.

10 Now, do you recall being interviewed at some point for the purposes of a quick assessment being done in relation to this incident?---Yes, I do, sir.

15 I want to ask you whether you've ever heard the term "Allah Akbar". Have you ever heard that term?---I've heard it in training on both the MRE and also training in Kuwait, the US Forces gave us an EAD lecture and I heard the term in that training.

20 What do you understand that term to mean?---I understand that term to mean "praise be to God" or something of that nature.

And in what circumstances do you understand that is sometimes said?---I understand that generally that can be said when insurgents decide they are going to blow themselves up. That's generally what I saw in training.

25 Do you recall being interviewed by MAJ Willits in relation to the quick assessment that was being done in relation to this matter?---Yes, I do, sir.

30 Did you say to him that you are sure that you heard someone call "Allah Akbar" about 10 seconds before the sound of the gunshot?---That's right, sir, I do recall that conversation. However, in subsequent statements I declined that. I'm assuming this is where you're going with this, sir. I'll answer the question now. After the quick assessment it became unclear to me whether actually I had heard it or not. So I decided to withdraw that from further statements because I wasn't a hundred per cent sure that I
35 may have heard it.

Were you certain at the time that you told MAJ Willits that you'd heard it that that had in fact been said?---That's correct, sir.

40 Is it your evidence that subsequent to that you reconsidered whether anything of that nature had in fact been said?---That's correct, sir.

Now on reflection, do you recall the words "Allah Akbar" being said 10 seconds prior to the sound of the gunshot?---No, I don't, sir.

45

Do you recall how many days after the death of PTE Kovco you were interviewed by MAJ Willits as part of his quick assessment?---I'm unsure of the date of that, sir. I believe it was only a matter of days after the incident, but I couldn't give you a specific day.

5

Were you able to hear any other conversation prior to your going to room 8 at about the time you heard the shot?---I don't recall any specific conversation. I just know there was a fair amount of friendly banter coming from that room. It was fairly loud, and the reason I was on my way over there was to ask them to be quiet because there were other members trying to sleep.

10

When you say it was friendly banter, what makes you think it was friendly banter as opposed to general conversation or something else?---Between the conversations I just heard things such as like laughing, you know, raised voices, which generally indicated a bit of friendly banter.

15

How loud was the music; are you able to recall that?---I actually don't recall any music. So I don't know, sir.

20

I'd like to move to a different topic now, Soldier 21, and that is the SOPs. You're familiar of course with SOPs?---That's correct, sir.

At the time that you moved to the embassy has you been provided or briefed on the SOPs or the contents of the SOPs?---We'd been briefed on the content of the SOPs for about location by Soldier 1. We then reiterated that to our subordinates by the use of a walk-around of the positions and also explaining at each position what was to occur there.

25

Soldier 21, I'll try and keep my questions for the moment reasonably general and perhaps if you could keep your answers reasonably general and it may be that we have to go to closed session at some point. But where were you when Soldier 1 provided you with the briefing regarding the SOPs?---I was in an orders group. Once we first arrived there Soldier 1 got all the NCOs in one location and provided us a verbal brief on SOPs. We then conducted a walk-around position.

30

35

How long did that briefing last, that is, the briefing regarding the SOPs?---That lasted approximately half an hour, 45 minutes.

40

Did you have written SOPs that you were having regard to during the course of that briefing or was it simply an oral briefing?---Just a verbal briefing, however, we were of the understanding that, if we needed clarification, there was a copy of SOPs in Soldier 1's room.

45

But those SOPs, as I understand your evidence, were not with Soldier 1 at the time that briefing was given; is that correct?---That's correct, sir.

5 Did that briefing cover the degrees of weapon readiness at each of the positions?---It did, sir.

You've then said that you did a walk-through; was that also with Soldier 1 and the other section commanders?---That's correct, sir.

10 How long did that walk-through take?---It took approximately 20 minutes.

Do you recall what time of day that was conducted?---I can't recall the time of day, sir.

15 At the end of that walk-through, were you satisfied that you knew what the degrees of weapon readiness should be for each position?---Yes, sir.

20 Did you yourself make any notes for the purposes of passing that information on to the members of your section?---I didn't make any written notes, I didn't feel it necessary, I thought I had completely understood.

25 At some point did you arrange to pass that information on to your section? ---I did, sir. I verbally informed my whole section initially of the state of weapon readiness at each position. I then conducted a walk-around of the positions, explaining not only that but also what their tasks and responsibilities were.

30 Did that include the degrees of weapon readiness for each of the positions?---Yes, it did, sir.

Do you have the matrix position in front of you?---I do, sir.

35 Did you inform the members of your section about what the degree of weapon readiness was to be at Delta?---Yes, I did, sir.

Do you have the degrees of weapon readiness matrix before you; do you have that before you as well?---I do, sir.

40 What was, by reference to that matrix, the degree of weapon readiness that was to be applied at Delta?---It was Dee Why.

45 Do you know whether that degree of weapon readiness was altered either prior to 21 April or post 21 April this year?---My understanding is it hasn't been altered at all. The initial verbal brief that I received from

Soldier 1 stated exactly that and it's been that way ever since, sir.

5 I'd like to ask you some questions about the buddy system. What did you understand the buddy system to be?---The buddy system, as I understand it, is the member who is clearing his weapon does so. The buddy system ensures that he's carrying out correct procedures. He's not there specifically to clear the weapon, he's there to observe the person's drills and stop him if he's going to do anything unsafe.

10 Does the buddy system require a member to physically touch another member's weapon or not?---No, it doesn't, sir.

15 At position Delta, was the buddy system to be applied as at 21 April?---The buddy system was to be applied in all cases, however, after we moved to that location and started conducting rotations, a shortfall came up which was that the beach at Delta was in the incorrect location. This came up after only a short time there and the issue was raised with NCOs within the callsign. Steps were in place to ensure that something was done about that because the buddy system at that one particular point couldn't be effectively employed because it meant that you were taking soldiers away from their responsibilities at that position.

20 Is your evidence that, because of the position of the beach at Delta as at 21 April, the buddy system could not be properly utilised on every occasion?---That's correct, sir.

25 Would that be the case in circumstances where a shift, for example, was finishing?---Where there's a case where the shift was finishing, you were able to employ the buddy system purely because there was two members coming off the position and they were able to provide a buddy system for each other.

I have nothing further at this point, Mr President and Members.

35 PRESIDENT: Thank you. LTCOL Wilkinson?

LTCOL WILKINSON: No, sir.

40 PRESIDENT: LTCOL Green, nothing?

LTCOL GREEN: No, sir.

PRESIDENT: LTCOL Berkley?

45 LTCOL BERKLEY: Yes, sir.

5

LTCOL BERKLEY: I'm LTCOL Berkley and I represent Shelley Kovco. I've just got a few questions for you. Just to start where we finished off with MAJ Hyde, the buddy system, is there a primary checking role employed in that such as oncoming members are thought to be responsible for checking the change in weapon status of off-going members; do you know what I mean?---I think I do, sir. Basically, yes, the buddy system will employ the person that's oncoming as a buddy for the person that's off-going on any position.

10

15

That's because off-going, is that people who have been out in, say, some hot conditions for a couple of hours?---That's correct, sir, it's fairly oppressive conditions at the time and persons, especially in that position, could be sitting there for anything up to two hours in the heat. The buddy system wasn't directly because of that, but that's - it's an indicator that the buddy system needs to be employed at that position with people taking extra care.

20

Basically I think we're talking about the position callsign D?---That's correct, sir.

25

I just notice in your affidavit that you gave to MAJ Hyde on 12 June you say this, and I might take this a little bit slowly to make sure I get the right matrixes. But it says:

30

I tell my soldiers that when they go to callsign D that they will be buddies for the off-coming soldiers because the off-coming soldiers have been there for hours in the heat.

35

You've just basically confirmed that. Is that still your evidence?---That's correct, sir.

You say this:

40

Sometimes people might take their primary weapons to weapon state Manly.

Do you have that matrix?---I do, sir, yes.

45

Sometimes people might take their primary weapons to weapon state Manly but forget their pistols.

5 I take it that you'd noticed the secondary weapon that these soldiers aren't normally issued with sometimes their concentration was on the primary weapon, not their secondary weapon. Is that what you mean by that or if you don't, tell us?---What I mean by that comment was that each soldier - sorry, go back at a step. At that location not each soldier carries a secondary weapon. However, those ones that do, because they're not used to carrying that secondary weapon, sometimes, for example, if they approach a position and they are told that position's state of weapon readiness is, for example, Newport, then the soldier might only go to Newport on his primary and he may completely forget about his secondary weapon purely because they're just not used to carrying those weapons. I was just going to add - - -

15 Please go on?---That with my soldiers I've caught a couple of people on a number of occasions who do that, whether it be intentionally or not, and I've pulled them up on it because I consider it sort of an unsafe practice, because if they've got two weapons they need to take both weapons to the same state of weapon readiness because they may forget one. I try to enforce that fairly harshly.

20 Yes, because, as we know, the results can be tragic if we don't know the state of weapon readiness or degree of weapon readiness of our weapon? ---That's correct, sir.

25 Do you have a copy of your affidavit in front of you?---I do, sir.

I want to take you back towards about page 9, and it's at paragraph 28. You say this:

30 *I believe the prescribed degrees of weapon readiness are set out in Standing Orders, but I have not seen them myself.*

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

Now, if you wanted to see the Standing Orders, where would you go to? ---Soldier 1 has a copy in his room at all times for referencing. I didn't feel the need to go and peruse those. I felt that the verbal orders and the brief that we received was sufficient.

40 So you received a briefing from Soldier 1, you made notations in your field messenger notebook and you accordingly instructed your soldiers as to the degrees of weapon readiness for any of the locations that they might have to serve at?---That's correct, sir.

45

A typical Section Commander's briefing?---That's right, fairly thorough.

Now, Jake wasn't in your section, was he?---No, he wasn't.

5 So on 21 April I think you've told us that Jake and some of the other boys, Soldier 17 and 19, were making a bit of a noise and you were going to quieten them down and that just before you put your hand on the door you heard the shot. That's your evidence?---That's correct, sir.

10 I think you told MAJ Hyde in your affidavit:

I could not hear a conversation. It was more like laughing, mucking around, and I could not make out any particular words. I heard a sound and thought someone had punched a steel locker. I opened the door and saw PTE Kovco already on the ground.

15

Do you recall saying that in your affidavit?---Yes, sir. Yes, I do, sir.

20 It's become obvious to you, has it, that after - I suppose on your reflection of the incident that sound of punching the locker was really a gunshot? ---That's correct, sir.

25 You say that you saw Soldier 17 kneeling and at first you thought they were playing a joke?---That was just the first thing that I thought at the time immediately after I heard the noise and opened the door. I thought they might have been playing a joke. That only lasted a split second before I realised exactly what had happened.

30 Because of the smell of gunshot?---Yes, in the enclosed space the cordite was fairly thick in the air.

You didn't go into that room but you ran back to your room and grabbed your field dressing?---That's correct, sir.

35 So you knew you were at a critical incident at that stage?---That's correct, sir.

40 Now, you saw Soldier 17, 19 and 26 actually in the room?---Once I'd run off to my room to get the field dressing and I came back, that's when I noticed those three members.

45 What was Soldier 19 doing when you opened the door? Do you recall seeing him?---No, I don't recall seeing Soldier 19 at all. I think I wrote in my statement that I had a bit of tunnel vision. I basically assessed the immediate scene on the floor and decided that I'd react on that. I didn't

bother to look around. I saw nothing of the weapon involved and I saw nothing of Soldier 19.

I think to be fair to you in paragraph 11 of your affidavit you say:

5

I did not even remember seeing Soldier 19 or hearing him when I first entered the room but I'm pretty sure he was there. It was as though I had tunnel vision.

10

That's what you were just explaining to us then?---That's correct, sir.

Just explain that tunnel vision to us for the benefit of us here?---What I mean by the comment is basically I was fixated on the immediate scene on the floor immediately in front of me involving PTE Kovco and Soldier 17. That's basically what I fixated on for probably the 10 seconds that I was standing there.

15

Was it as long as that, 10 seconds?---It probably wasn't as long as that, sir.

20

It's not something that you put the stopwatch on, is it?---No, that's right, sir.

Just a few more questions that I need to ask you. You knew Jake as a happy individual?---Yes, he was a happy individual, sir.

25

You also knew that, when it came to work, he was a serious and competent soldier?---That's correct, sir.

30

I think you say as much as that in your affidavit, don't you?---I do, sir.

I've got to ask you this: when you became aware of, your senses detected that there had been a gun shot, you would have logically connected Jake's prone position with the gun shout, wouldn't you?---That's correct, sir.

35

Did you have any suspicion, did your mind tell you as to what sort of weapon had been used to fire that gun shot?---I honestly didn't think about it at the time. On later reflection I just assumed it was a short barrel, being a 9 mm.

40

You said in your affidavit of course that you did not see the weapon at that time, the pistol?---That's correct, sir.

45

Did you at any later time visit the room and see the pistol?---On my return to that room I still didn't see the pistol. I believe it may have been tucked around to my right out of view. I never actually entered the room, I

simply stood outside the room and passed in field dressings. I never entered the room.

Thank you, I have nothing further.

5

PRESIDENT: Thank you. COL Young?

COL YOUNG: Yes, thank you.

10

<EXAMINATION BY COL YOUNG

[1137]

15 COL YOUNG: Soldier 21, my name is COL Young; I appear to represent the interests of PTE Kovco and I have a few questions for you as well. Can you confirm for me that Soldier 1 is your platoon commander?---Yes, he is, sir.

20 You've told us this morning that you never received a full copy of the SOPs; is that correct?---That's correct, sir.

25 So if I told you that Soldier 1 has told this Inquiry that he gave copies of the SOPs to each of his section commanders, what would you say to that? Do you think he might be mistaken?---What I would say to that is that we'd been here for a significant amount of time. If he did at the start of the deployment, I don't recall it. I do, however, remember getting a set of SOPs in the mission rehearsal exercise that we conducted prior to our deployment.

30 LTCOL Berkley has asked you some questions about when you heard the noise and came to the door, that you looked in and saw Soldier 17 kneeling down near Jake?---That's correct, sir.

35 Do you not have a recollection at all of seeing Soldier 19; is that what you're telling us?

PRESIDENT: We've lost the link, I think.

40 WITNESS: We're still here, sir.

COL YOUNG: You're still there?---Yes, sir.

45 We can hear you but can't see you. We'll just wait for a moment to see if we can get vision back, just stand by.

(Testing video link)

COL YOUNG: Soldier 21, it's COL Young back with you. You can see me, can you?---Yes, I can, sir.

5

And you can obviously hear me. I'll just go back to the last question I was asking you. You told us that when you first came to the door of the room you saw Soldier 17 kneeling down next to Jake; is that right?---Yes, at Jake's head, sir.

10

Do you have a recollection of seeing anyone kneeling near Jake's legs at all, at his feet?---No, sir. On the initial time that I opened the door, I only ever recall seeing Soldier 17 and Jake in the room, sir.

15

You went away to get some field dressings. How long do you estimate you would have been away getting those dressings?---Probably 10 seconds, maximum, sir, I was back straight away.

20

When you returned, you've said in your statement that you saw, in addition to Soldier 17, Soldier 19 and Soldier 26; is that right?---That's correct, sir.

25

Do you have a recollection of what they were doing, what their position might have been?---I recall, when I got back to the room with the field dressings, that Soldier 26 was at Jake's feet which prevented me from entering the room, and Soldier 19 was kneeling on the right-hand side of Jake as I walked in.

30

I think you've also said, prior to going to the room, you didn't hear music but you heard noise?---That's correct, sir.

I'd just like to take you to the observations that you prepared, which is Annex B to your statement; do you have that in front of you?---I do, sir.

35

If you would go to paragraph 11. I just want to talk to you about what you've had to say in that paragraph in relation to the key to the room where it was placed and who had access to it. From what I read there, the key was placed in the Platoon Commander's room. Is that the case? ---That's correct, sir.

40

Did you have access to that key?---I had access to that key for the purposes of having to hand that over when the investigating team arrived due to Soldier 2 having to depart the location on task.

5 If you needed to get hold of that key, how would you do that? Would you simply go into the room, into the Platoon Commander's room?---That's correct, sir. It was placed in the Platoon Commander's room in such a way that somebody who just stumbled in there wouldn't find it. I knew where it was exactly so that I could hand it over. However, anybody that went in there looking for it probably wouldn't find it.

10 I take it from what you say it was in the room but it was not secured, not locked?---It was in the Platoon Commander's room, yes, sir.

It was hidden rather than secured?---That's right, sir, yes.

Did anyone else have access to that key, do you know?---No, sir.

15 What about Soldier 12, did he have access to the key?---I'm not sure if Soldier 12 was aware of where that key was, however, he was able to gain access to the room that the key was placed in.

20 So we'll be able to ask him if he knew where the key was. To your knowledge, your understanding is you were the only person that knew where the key was hidden?---From my understanding, that's correct, sir.

25 I just want to talk about PTE Kovco for a few moments. Paragraph 6 of your statement, the affidavit statement that you made, on the bottom of page 2?---Yes, sir.

You say there:

30 *He had a solid military base which I believed helped him to make the transition. I believe that many other soldiers would have found it difficult.*

35 I'd just like you to expand on that a bit as to what you thought of Jake in comparison to other soldiers where you say others may not have been able to make the transition?---The way that Jake operated professionally was quite deliberate. He took his time getting to know his jobs. I know this because I spent time with Jake in Direct Fire Support Weapons Platoon back in the unit. The way that Jake operated, yes, he could be a bit of a larrikin at times, but when it came to the crunch Jake knuckled down and he didn't do a job - he didn't half do a job. He was the type of bloke that basically threw himself into a professional tasking 110 per cent.

40 So I take it from that he was a soldier that you were happy to have work with you?---Without a doubt, sir.

45

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

PRESIDENT: Yes, thank you. MAJ Hyde.

5 MAJ HYDE: Nothing further, sir. I ask that the witness be released.

PRESIDENT: Thank you, Soldier 21. That completes the exercise from this end and you're now formally released and you may now go. Thank you.

10

<WITNESS WITHDREW [1149]

15 PRESIDENT: Next witness?

MAJ HYDE: Mr President, the next witness is Soldier 12.

PRESIDENT: Thank you.

20

MAJ HYDE: I call Soldier 12.

<SOLDIER 12, sworn [1151]

25

<EXAMINATION BY MAJ HYDE

30 MAJ HYDE: Soldier 12, could you tell the Board your current position, please?---I'm the Section Commander for I31 at B.

Do you have a statement before you that you've prepared for use in these proceedings?---No, I don't, sir.

35

If Soldier 12 could be provided with a copy of his statement. You now have that in front of you, do you?---I do now, sir.

40 Is that a statement of eight pages with your signature appearing on each of the pages and on the eighth page?---That is correct, sir.

Is there one annexure, Annexure A, attached to that statement, that is, the Service Police statement?---Yes.

45 Does that contain the evidence that you'd propose giving to this Inquiry?

---It does, sir.

I tender the statement of Soldier 12.

5 PRESIDENT: Is everybody content with that procedure?

COUNSEL REPRESENTING: Yes, sir.

10 **#EXHIBIT 139 - REDACTED AND CLASSIFIED VERSIONS OF
SOLDIER 12's STATEMENT**

15 MAJ HYDE: Soldier 12, PTE Kovco was part of your section, was he
not, at the time of his death?---He was, sir.

How long had he been part of your section?---He'd been a part of my
section for a couple of days, sir. Once we moved to the Australian
Embassy from the Cove he was placed into my section.

20

Had you had much contact with him in those days that he was assigned to
your section?---We weren't on duty. I was speaking to him one on one, a
personal nature. Before we'd start duty I would have a chat with him, a
couple topics.

25

Did you know him prior to him coming to your section?---I knew him
when he was in 31A and before SECDET <delete>. We weren't
extremely close, however, we were work colleagues and he'd (inaudible).

30 Now, do you recall what date it was that you moved from the Cove to the
Embassy?---No, I don't, sir, I don't actually recall the exact day.

But your recollection is it was approximately four or five days prior to
PTE Kovco's death; does that sound about right?---That sounds right, sir.

35

Could you tell the Board what time of day it was when you, in particular
but your section, made the move to the Embassy on rotation?---We split
my section into two groups. I was on an armed escort which came back at
midnight. Half of my section that weren't involved in the armed escort
moved the advanced party to the Embassy. On arriving at the Embassy at
40 midnight, that's when our whole callsign, our whole section, was together.

40

Soldier 12, could I ask you just to sit forward slightly just to assist us
hearing you a little more clearly. Thank you. I'm sorry, I couldn't quite
hear what time you yourself arrived?---Shortly after midnight, sir.

45

5 After you arrived, what did you do?---On arriving at the Embassy, sir, I woke the rest of my callsign, the rest of my section. We went through all the positions, we went through the rotation. I described the degrees of weapon readiness at each location. The rotation system - the way we wanted - the procedure of their rotation. We went through and explained how the control room works, and from there we went on to QRF and we started work at 0700 next morning.

10 How long did the briefing that you've just described take?---No more than one hour, sir.

15 You've told the Board that you described the degrees of weapon readiness for each of the positions. Could you tell the Board whether Soldier 1 had briefed you in relation to the SOPs and when that took place? That is, you provided the information to your section; were you yourself briefed at any stage?---I was, sir. When I came through to the Embassy a couple of days before the rotation for a recce, we went through and were given the degree of weapon readiness for each position from Soldier 1 and from the two
20 commanders from the other callsign.

How long did that process take? How long did that brief take?---The brief itself, sir, about an hour. We were at the Embassy for a couple of hours.

25 I think your evidence is that Soldier 1 provided that brief, is that correct, or was it someone else?---Soldier 1, sir.

30 For the purpose of that brief, were you provided with SOPs?---No, sir, I was given a verbal handover, told what the degrees of weapon readiness were for those positions. We had received SOPs back in Australia, they were given to us in two volumes. Any changes to these Standing Operating Procedures or any kind of amendments were given to us in orders by Soldier 1.

35 At any stage were amendments made to the SOPs prior to 21 April? Is that something you can recall?---I'm not aware of - I don't recall exactly any amendments made prior. After that incident, sir, there were a couple of amendments, a couple of amendments to our TTPs, as such, sir.

40 Were you satisfied that you had enough information to properly brief your section?---The information I was given, sir, there was enough information. From there I was basically given the mission or the command's intent, and it was my job then to ensure that went ahead. We followed the command's intent. We made sure that each member knew the degree of
45 weapon readiness and knew the rotation.

5 Were you satisfied that that information was conveyed to your section on the evening that you've described when you woke them at about midnight?---At the time, sir, I believe - I spent as much time as I could. Due to the timing and the circumstances, had no choice to take them through then as were going to start early next morning. Each member - I questioned each member at the end, a Q&A, and they all seemed to understand the degree of weapon readiness and the rotation we were about to start the next morning, sir.

10 Do you have the matrix for each of the positions in front of you?---Yes, I do, sir.

15 Do you also have the matrix for the degrees of weapon readiness in front of you?---Yes, I do, sir.

20 At position Delta, could you tell the Board what the degree of weapon readiness was by reference to the second matrix that you have? ---*(Inaudible)* sir, it was at Dee Why.

25 I want to ask you some questions about the buddy system. Could you tell the Board your understanding of the buddy system?---My understanding of the buddy system, sir, is to observe the member going through the complete unload, taking the magazine off the weapon, taking the barrel off the weapon, inspecting the weapon, and then going through - really going through the complete unload, sir. My understanding is it's so that to reduce the likelihood of a negligent discharge, sir.

30 Did you expect the buddy system to be used at each of the positions referred to on the callsign matrix?---I briefed my section that we were to enforce or were to conduct the buddy system. However, due to some delay at some of the unload bays, this may not have been - at this stage it wasn't a hundred per cent, except I dare say that it could be used. If at all possible, they were to use the buddy system. At most, at those locations, 35 the only - at those locations they could use the buddy system, however, they had to - sir, basically what I'm saying is that we enforced - I told them basically to use - they were to use the buddy system. They all understood what the buddy system was about. Some of those locations, some of the advanced, well, it wasn't - they couldn't - - -

40 Is what you're trying to say that some of the unload bays were in impractical positions?---They were, sir, and that was - some of that was brought up and it was something that was being managed at the time and something that was - did come about after the incident, sir.

45

Was one of those impractical positioning of the unload bays at Delta?
---That is correct, sir.

5 Was that unload bay subsequently moved after 21 April?---It was, sir.

Was that unload bay as it was at 21 April appropriately positioned for two members leaving that particular position, that is, if it was not a staggered rotation?---If it wasn't a staggered rotation, sir, it was, you know, it was appropriate for two members to go through the buddy system.

10 Is it the case - sorry, I'm cutting you off. Go ahead, please?---So if it was at the end of the shift it was - where it was located the two members could go through the buddy system, sir.

15 Now, at the time of the round being fired on 21 April, is it the case that you were lying down in what is known as room 10?---That is correct, sir. I finished my shift and I was having a rest after the shift, sir.

20 How far from room 8 is room 10?---Well, we've got just one room in between, sir, no more than five metres.

25 Could you hear conversation in room 8 when you were in your room? What could you hear?---Sir, I couldn't - I know the music was up loud. Just beforehand I was trying to sleep. I basically was rolling over in bed. Where the bits I did hear did - I did hear after the commotion that - from - heard Soldier 17's voice going, "What have you done?"

30 Do you recall those words specifically or were they words to that effect? ---Words to that effect, sir.

How loud were those words said?---Well, they were loud enough, sir, to get my attention. So I went straight over to room 8.

35 Can you describe were they said in a distressed tone of voice or how would you describe it? How would you describe what you just - - -?---In a distressed tone of voice, sir.

40 Would it be fair to say that it must have been yelled reasonably loudly in order for you to hear from room 10?---It would have been, sir. Again it is in a distressed tone. At that stage the music was off. It was loud enough to gain my attention, sir.

Did you hear the sound of a round being discharged?---No, I didn't, sir.

45 What was it that caused you to go to room 8 if you didn't hear the round?

---It was the - it was basically from Soldier 17 saying, "What have you done"? and the commotion outside the door, people moving towards room 8, sir.

5 When he, that is, Soldier 17, said, "What have you done?" did he say that more than once? Did he say it repeatedly? Are you able to recall?---What I recall, sir, he did say that a couple of times.

10 Did you at some point have a conversation with Soldier 17 about what had happened?---I did, sir.

15 When was that?---That was after Jake left on the gator. I then took Soldier 17 back to my room and tried to make some sense out of what happened. I asked him, you know, what happened and he basically just told me - we went through the sequence of events or what actually happened no more than 10 minutes beforehand.

20 What did he say to you as best you can recollect?---What he said, sir, that they were - the three of them were listening to music. They were about to go to the gym. So he was shutting down his laptop. Soldier 19 was getting some milk or getting something out of the fridge and he says he heard a popping sound and looked over and there was Jake on the ground, sir.

25 He told you all that, did he, at the time you had this conversation with him?---He did, sir.

30 In your statement to the Service Police you've been asked about the term "Allah Akbar". Do you recall being asked that?---Yes, I do, sir.

35 What do you understand that phrase to mean?---Sir, if God wills it. That was my interpretation. It was used before an insurgent was about to basically commit suicide and blow himself up, sir. That's my interpretation of what it meant and when it was used, sir.

40 Did you hear that said on 21 April by anyone?---No, I didn't, sir.

Nothing further for this witness.

45 PRESIDENT: Thank you. LTCOL Wilkinson.

LTCOL WILKINSON: No questions, sir.

PRESIDENT: LTCOL Green.

LTCOL GREEN: Yes, please, sir.

PRESIDENT: If you bear with us, Soldier 12, we need to change places.

5 LTCOL GREEN: Sir, I'll try and go through as far as I can in open session, but it may be necessary to go to closed session. But I'll see how I go.

10 PRESIDENT: Thank you.

<EXAMINATION BY LTCOL GREEN

[1214]

15 LTCOL GREEN: Soldier 12, my name is LTCOL Green. I represent Soldier 14. Do you know who Soldier 14 is? Can you identify him from your matrix?---Yes, I do, sir.

20 Thank you, Soldier 12. <delete>

Sir, it might be better if we went to closed - - -

25 PRESIDENT: I'm just wondering whether we need to go into closed session. Perhaps we ought to go there now.

COL GRIFFIN: I think we should, sir.

30 PRESIDENT: I would ask the press when reporting this matter not to talk about the Dee Why, the Manly and the various degrees of weapon readiness that was discussed in the last few minutes.

LTCOL GREEN: Soldier 12, just wait out for a moment.

35 (Continued in closed session)

(Open session)

LTCOL BERKLEY: Soldier 12, I'm LTCOL Berkley and I represent Shelley Kovco. Can you see me?---Yes, I can, sir.

5

Can you hear me, Soldier 12?---I can, sir.

I'm LTCOL Berkley and I represent Shelley Kovco and I've just got a few questions for you, okay?---No worries, sir.

10

I think as at 21 April 2006 Jake had only been in your section for a couple of days?---That's correct, sir.

15

In that time you had the chance to observe his weapons handling skills from inside callsign G, position callsign G?---That's correct, sir.

20

I think in paragraph 29 of your affidavit given to MAJ Hyde you said that, even though you were on a 45 degree angle, he did change his degree of weapon readiness to the required degree of weapon readiness with a person inspecting him?---That's right, sir, I did see that, but I did also say that, again, I couldn't confirm if that happened that day. As I said, I rotated through two points and I observed different people going through the same practices, sir, so I couldn't confirm that I actually saw PTE Kovco going through that action or that degree of weapon readiness that day.

25

So we don't know if it was 21 April or 20 April, 19 April, but you had only had him for a couple of days and at least, whilst he was under your command, you saw him go through this buddy-checking system?---I did, sir, and from what I saw he did the proper procedure and there was no safety breaches or anything wrong with the procedure as such. It looked like going through the complete buddy system.

30

Was it his primary weapon or his secondary weapon, do you recall, or both?---We went through both, sir. PTE Kovco had both his primary and secondary weapon.

35

You tell us that you heard the words, "What have you done?" immediately prior to attending at room 8?---That's right, sir.

40

You said they were said by Soldier 17?---Yes, sir.

Do you know who he was talking to?---I assumed at the time Soldier 17 was saying that to PTE Kovco as he went straight to PTE Kovco who was on the ground at that stage.

45

5 When you looked into the room, do you recall seeing a pistol that was, as you describe it, half cocked?---That's right, sir. When I first got there, I stuck my head in. At first I only saw - to go through the whole - what I saw, I saw half his body. I thought he had fallen off his top bunk. Once I stuck my head in, I then saw the injury and I also saw the weapon, sir. The weapon itself was actually - the way it was lying, I could see half the barrel so the slide was half rearward and I could see the magazine on the weapon. I couldn't see the ejection port itself, I think it was facing down on the ground, sir.

10 The barrel of the weapon: was it pointing at Jake?---When I saw it, sir, it was pointing - it was in that direction when I saw it. From my memory, sir, it was actually - it was pointing in that direction.

15 I just read from your statement that you gave to SGT Hession of the SIB on 2 May 2006. Do you have that statement in front of you?---Yes, I do, sir.

20 I'm particularly interested in paragraph 18, in the last four lines prior to the end of the page. You say this, you:

25 *Noticed a 9 mm pistol lying on the floor. I can recall that the pistol was half cocked, indicating a double feed, and that the barrel was pointing at PTE Kovco (to the western side wall). I can also recall that the weapon had a magazine still in it.*

Do you recall saying that in your SIB statement?---Yes, I do, sir.

30 You adhere to that memory?---I do, sir. Due to the time, it's - I can still picture the weapon on the ground. The exact - at this stage, the exact direction it was pointing, I know it was pointing towards the western wall. Jake was on the left-hand side of that weapon, sir.

35 You say this - the next sentence is:

I believe that in the commotion the pistol was moved so that the barrel faced away from PTE Kovco.

40 Do you see that sentence there?---Yes, I do, sir.

45 When did you see it - -?---When I got there - I saw the weapon - when I just stuck my head in, that's when Soldier 17 and Soldier 19 was just about to - just heading straight over to PTE Kovco on the ground. In fact, I believe Soldier 19 was actually - had started administering first aid to

PTE Kovco and that's when Soldier 17 moved, in the commotion, knocked the pistol out of the way, heading towards PTE Kovco.

5 Did the SIB tell you that the pistol barrel was moved so that it faced away from PTE Kovco?---I can't recall that, sir.

I just wonder why you would have in your statement this line:

10 *I believe that in the commotion the pistol was moved so that the barrel faced away from PTE Kovco.*

15 That indicates at some stage it's come to your knowledge, either through your own observation or being told by someone, that the barrel had changed position. Would you agree with that?---That makes sense, sir. All I can remember, sir, was that - that is my statement, but what I recall was the weapon itself, when I first saw it, was pointing towards the west, to the wall. The fact that it was - it was found later that it was pointing away. I can't actually recall that, sir.

20 You went back to that room two to three times after the shooting?---I did, sir. Soldier 17 and Soldier 19 needed to grab some of their equipment out of the room so I witnessed them going in, trying to avoid any of the scene, and just took note for Soldier 2, basically anything that was taken out of the room - that was taken out it was mission essential items, sir, so they
25 can continue with their task or their mission as such.

30 Where did you get the key from to get back in the room?---The key itself - when they first went in there the room was - correction. The key itself we had from - Soldier 2 had it in his room. He told myself and - well, I can remember myself being - I was told that where he would put it and that I could take that key any time to witness my members, being Soldier 17 and Soldier 19, to go in and to pick up any mission essential items and to take note what they were and to inform him.

35 I'm not suggesting any impropriety in that. I just want to know this: were you assured that you would obtain the key from Soldier 2?---The key was - Soldier 2, he told me where the key was. He placed it on his shelf because it wasn't in the obvious - it was kind of - it was hidden out of
40 view, the key, and I had access to that key, sir. Every time I was to use it I informed him of the case.

45 Just so that we clear up any possible misunderstanding, where was that shelf? In what room was that shelf that you're talking about?---Off memory, sir, I believe it's room 5. That's where Soldier 1 and Soldier 2 were staying. The shelf itself is in the rear left-hand corner of the room.

Did that operate as the platoon office as well?---It did, sir.

5 Thank you. So you went back to the room a number of times, as you have described for us. Did you see the pistol on the ground or on the floor of the room on any of those other occasions?---I would have, sir, again but I didn't take - I can't really recall if there's been a change in direction of the pistol or anything like that. All I was really worried about was ensuring that they didn't disturb the scene, they just grabbed their equipment and
10 moved out of the room as quickly as possible.

They grabbed their individual combat equipment. Did they grab toiletries?---The first time they went in there, sir, they grabbed their ECBA and they grabbed the rifle. From then - the second time they went
15 in that's when they grabbed some extra clothing and toiletries, sir.

Was that on the same day, 21 April, that they first returned to the room to get their combat equipment?---Yes, it was, sir.

20 What about the second occasion, was that on 21 April or at some other stage?---That was all on the same day, sir.

Was there any other occasions that you can specifically remember when you, either by yourself or in the company of any other personnel, returned
25 to room 8?---Apart from those times, sir, apart from basically just witnessing Soldier 17 and Soldier 19 going into the room, there was no reason for myself to enter that room. So I never did, sir.

When you first went to the room 8 and you saw Jake on the ground you
30 also noticed a point in the ceiling where you believe that a bullet had entered the ceiling?---That is correct, sir. When I went in there first said - first off I just saw half his body and I thought that he'd fallen off the bed. It wasn't till I stuck my head right into the doorway - there was a couple of people in front. So I had to push my way through and that's when I
35 saw the full scene, sir, (indistinct) full scene.

Did you see Soldier 21 there at the scene when you arrived?---I don't recall seeing Soldier 21, sir. I saw - it is very sketchy, but I remember seeing a few members from my section. They were in the doorway itself.
40 I was starting to head through past them and then - I just vaguely remember seeing like key members which I mentioned in my statement. Everyone else, they - I didn't really take much notice of. Everything was happening really fairly quickly, sir, and everyone seemed to be doing different things.

45

Obviously shell dressings are being handed into the room. Did you see that?---I did, sir. I saw the old CFA kits being handed in, extra bandages. I then saw Soldier 4 come running in. Once that happened I knew there was two CFAs in the room.

5

Who was the other one?---The other one being Soldier 19.

You actually observed him physically working on Jake?---I did, sir. Once I had stuck my head into the room, that's when I saw Soldier 19 starting - that he was starting first aid and Soldier 17 jumping off the bed heading towards Jake.

10

Now, there must have been a lot of talking straight after the incident. I mean, when Jake is on the gator everyone would want to know what had happened, wouldn't they?---Everyone was in shock, sir. That is why I grabbed Soldier 17 first off, to get his - find out exact details of what actually happened. I then spoke to Soldier 19 afterwards when he came back from the hospital. I got his information as well, I got his story was well, sir.

15

20

Tell me was there anything said by either a person in the junior leadership level such as yours or any higher that discouraged any conversation or speculation about what had happened? Was anything said to the soldiers along those lines?---Not that I can recall, sir.

25

At that time soldiers had individual communications with their loved ones back home on a daily basis if they liked?---They do, sir. What we - after the incident our phones were, say, cut. We didn't have communications back home. The only thing we had was a mobile phone. I believe that night we were given a couple of minutes each just to say - I believe it was that night, sir, that it wasn't us - just say - the information was sent back to Australia no names and we just let our families know we were okay. But the warfare Net and the phones weren't working, sir.

30

Were or weren't working?---Weren't working at that time, sir.

35

I want to talk about the particular weapon, the 9 mm Browning. It's an FN manufactured to Mod 3. Is that what you understand that pistol was? ---It was, sir. When we first picked those up they were some were Mod 1, Mod 2 and some were Mod 3. Before we went through the embassy all weapons we had were Mod 3, sir.

40

You make some interesting comments in paragraph 21 of your affidavit where you talk in general terms about the 9 mm pistol and its issue to members of your battalion for the purposes of this operation. Now, the

45

9 mm is of course a secondary weapon to an infantryman, isn't it?---It is, sir, our primary weapon being the Styre.

5 That's right. I know that over the years as you reach leadership positions just by the effluxion of time you would have done a number of courses on the 9 mm, but that's not so for Private soldiers, is it?---We've all got the same qualifications, sir. We've done the basic qualifications on the weapon. Again it comes down to probably more exposure to the weapon. However, it has been the case for a while, sir, that there wasn't - apart from doing your qualifying shoot and going to a range occasionally wasn't
10 much focus on the 9 mm self-loading pistol, sir.

I know it's a generalisation, but it would be fair to say that Private soldiers are far more confident on their primary weapon than they would be on the
15 pistol?---It would be, sir. But what I've noticed part of our pre-deployment training and at the ranges in Kuwait was that the confidence was - the soldiers' confidence in their 9 mm, in the handling of their 9 mm had really improved, and despite daily maintenance of that weapon, they also - their handling improved as well, sir. They had a lot of confidence in
20 their ability, sir.

To clean the weapon they've got to strip and reassemble it?---That is correct, sir. Going through the tests after assembly and also by going through the complete unload at the - correction, going through any of the
25 drills at the unload bays also improved their confidence in their handling, sir.

You've pulled a few of your soldiers up from time to time in relation to the weapons handling and I think you say that they were not safety
30 breaches at the time but could have developed into one?---When we first - this is right from the start from our pre-deployment training. Again I said once the guys got more confident and got over the fact that they were playing a - not a new weapon, sir, but playing with a new - you know, playing - got over the fact that they were now - they now had two
35 weapons was that there didn't seem to be much - I didn't really notice or it didn't come to my attention any real dramas with their handling.

I think you say in your statement that you did not have to pull Jake Kovco up on his weapons handling. You said:

40

I never saw him play around with his weapon -

whilst at that location that you mentioned in your statement. You said:

45

When he was in my section I saw him clean his weapon once and

I did not see any safety breaches.

5 It just doesn't indicate in your statement where you saw him cleaning the weapon?---I actually saw him clean the weapon in his room. At that stage we didn't have an area to - designated for cleaning the weapons; we do now. So I saw him - had the weapon stripped, he was giving it a bit of a pull-through. He was doing his primary weapon at the same time, sir, doing both weapons.

10 This is important. I want you to, if you can, give me an answer on this. As at 21 April were soldiers expected to do their weapons maintenance, particularly in cleaning, in their individual rooms?---There was a cleaning table. That was up near the rear guard box, however, that was - they had the option of going over there to clean their weapons. Most people took -
15 cleaned their weapons in their rooms or just outside their rooms, just to the front or near their doors.

20 People in your section, you'd want to know (a) where they're living, and (b) what they're doing as much as possible; is that right ?---That's correct, sir. We try to look after their welfare, sort of thing, have a bit of a round-up, have a bit of a chat, with the members of my section, see that they're actually going through - they are treating they're weapons daily or actually maintaining their equipment.

25 As Jake was in your section, you would want to know, the same as the other soldiers in your section, that weapons maintenance was being carried out to your satisfaction; is that true?---At that stage, that's right, sir, there was no difference between how I treated PTE Kovco to how I treated anyone else in my section.

30 In your SIB statement you say this:

I can further state that at all times when PTE Kovco was handling any of the weapons that we use, he also handled them in a proficient manner. I can further recall that I have never seen PTE Kovco fool around with this weapon and, when carrying his weapons, he always acted in a professional manner.

35

40 Do you recall saying that in your SIB statement ?---Yes, I do, sir.

I'm trying to get a picture from you as a leader. You've got people that you're confident in as to their proficiency and safety on any of the weapons that are issued to them; is that the case?---Yes, sir, I believe that everyone in my section is competent and that, if not, they wouldn't be here. They would be qualified and they were completely qualified to be -

45

I'm confident that they're going through their - their qualifying shoots and procedures.

5 The weapons cleaning bay as it existed as at 21 April, let me guess, was that out in the sun or was it in a cupboard location?---It was out in the open, it was up against the wall next to the rear guard box.

10 We've got a fair idea of where it was. You had an option of doing it in an air conditioned bedroom or out there in relation to you cleaning?---That's right, sir.

Which one did you choose?

15 PRESIDENT: I think we know the answer, Colonel.

LTCOL BERKLEY: Mr President, that's the end of my questioning.

PRESIDENT: Thank you, we'll try to get him back.

20 COL GRIFFIN: Perhaps we might take an adjournment, sir.

PRESIDENT: Yes, very well, we might take five minutes.

25 **ADJOURNED** [1306]

RESUMED [1321]

30 PRESIDENT: Thank you, ladies and gentlemen.

MAJ HYDE: Mr President, Members, we have the link back up.

35 PRESIDENT: Good, thank you. Yes, thank you, Soldier 12, we now have a new Counsel Representing who wishes to speak to you. Thank you, COL Young.

40 **<EXAMINATION BY COL YOUNG** [1323]

45 COL YOUNG: Soldier 12, my name is COL Young. I represent the interests of PTE Kovco. You can hear and see me okay?---Yes, I can, sir.

I just need to revisit some of the areas we've already touched on. The first of those is the SOPs. What do you do as far as soldiers are concerned in relation to SOPs? Do you require them to be given access to the SOPs and read them?---Sir, back in Brisbane where we did our pre-deployment training the soldiers had access to the two manuals we used. They went through it and read the SOPs in their own time. Any amendments from then on I would give in orders every night if there's any changes. If I receive them in my prayers they were then passed onto my section.

10 If you accept from me that the SOPs number some 145 pages, how many copies of those would have been available for soldiers to read through?---I had one set and each Section Commander had a set. Sir, what I did I - while we were doing our training the members had access to go through it and scan through it, read it in their own time. I went through - when we did a certain phase I went through it and wrote down the parts of the SOPs, reviewed it and from there basically, sir, that any amendments, as I said, came through our orders.

20 What I'm really asking you is, did you require your soldiers to read the SOPs from start to finish and after they'd done that sign to say that they'd read them?---Sir, I can't remember. I understand that when we - I know you're meant to sign saying that you've read and understood the SOPs. I can't recall that actually being done. I assume it would have been. But I can't recall if we - I know if we did do it, it would have been back in Brisbane, sir.

25 I'm not suggesting it's something that should be done. In fact it might be impractical. But I'm just asking if - and you've answered the question, you can't recall whether that was done or not?---No, I can't, sir.

30 If I draw your attention to paragraph 161.8 of the SOPs which covers weapon safety - and I expect you won't have these in front of you, but that paragraph covers the buddy system and stresses why it's important. Would you have drawn that particular paragraph to the attention of your soldiers, given its importance?---I would have, sir. When we're doing our - the basis in itself everyone knows the system. However, it's something that really hasn't been used much in Australia. What we have - sorry, I had to explain or really just confirm in everyone's mind what the procedures were for the buddy system. I would have read through it and say - because we started practising that during our MRE, it was enforced during the MRE. They needed to understand why you did it, why we were going through the buddy system so it's clear in their minds.

40 Do you know if a similar paragraph such as 161.8 covering weapons safety was contained in SECDET VIII SOPs?---I don't really know, sir, to

be honest. I assumed they would have had that in their SOPs, because I know that our SOPs arrived from SECDET VIII's. However, I believe that each SECDET had their own - contributed their own amendments to those SOPs.

5

Thank you for that. I'll just move on now to a new area. I want to talk about when you hear the words "what have you done?" yelled out, you hear some commotion and you make your way from your room to room 8. Do you recall giving that evidence?---Yes, I do, sir.

10

Do you recall when you got to room 8 if Soldier 21 was already there? Do you have a recollection of seeing him?---On my own, sir, I can't recall exactly everyone who was in that location, only certain members are clear in my mind. But I can't recall seeing Soldier 21 being in that location.

15

I know we're testing your memory and people have different recollections, especially after an event such as this. But I just want to cover with you some of your evidence where you said:

20

I saw Soldiers 17 and 19 heading over to PTE Kovco.

That suggests that you saw them moving from a place in the room to PTE Kovco. Do you have a recollection of seeing them actually moving? ---All I saw, sir, was when I put my head in I saw Soldier 19 starting first aid on PTE Kovco. Soldier 17 was moving straight towards him to jump - he was off the bed, moving towards him. That's what I saw when I first stuck my head inside the door, sir.

25

If you accept from me Soldier 17 was within a metre of where Jake had fallen, it would have taken you a few seconds I assume to get from your room to room 8?---I will say, sir, when I got there I saw Soldier 17, he was heading towards Jake. He went around over Jake and basically started - he was cradling Jake's head and was putting field bandages onto his wounds at that stage. He was moving towards and start - when I was there I was watching him starting putting field dressings on.

30

35

I'm just trying to test your memory on this because we've had different versions, and that's not unusual for people to have different recollections. But given the time it would have taken you to move from your room, it just seems somewhat surprising that they were still moving towards Jake, if you like. But that's your recollection, that Soldier 17 was moving towards him?---Yes, he was moving towards, moved around and was working on - placing more field dressings, saying - on PTE Jake's head.

40

45

Just moving to another area now. You gave evidence where you said the

key to room 8 was in room 5 and it was on a shelf. Do you recall that?
---Yes, I do, sir.

5 In your affidavit in paragraph 27 - I'll just let you get access to that?
---Yes, sir.

About the middle of that paragraph it reads:

10 *The room was locked and the keys were held by the Platoon
Sergeant. He had shown me where it was. He said I could take it
at any time but had to monitor what was going on. I went in two
or three times.*

15 Do you recall if you were the only NCO who had been given access or
permission to get that key?---I don't believe I was the only one, sir. I
can't remember who else was in that room. All I can remember is seeing -
was speaking to Soldier 2 and him showing me where the key was to be
located and giving me directions on what to do with that key, sir.

20 What I'm trying to determine is how many people had access to the room
through the key. Now, presumably there is Soldier 2, Soldier 1 who
occupied the room with him, yourself and maybe others. But you don't
know how many?---As I said, sir, I just can't remember exactly if the
25 other Section Commanders were in the room. I assume one was still on
duty. So all I can recall, sir, was Soldier 2, speaking to Soldier 2.

30 Were you asked to make a note or sign for the key if you had occasion to
use it?---I wasn't required to sign for the key. All we had to simply do
was basically take note of any items we were taking out of the room and
let Soldier 2 be aware of what items were actually taken out, being
mission essential items and followed by personal items such as some extra
clothing and toiletries.

35 Were you aware that PTE Kovco's Styre was removed from the room?---I
was, sir. Soldier 17's rifle had a lot of debris and stuff on that weapon.
We were leaving it as such so it be still part of the scene, still part of - for
the investigation. So Soldier 17 took PTE Kovco's weapon. So he had
still had a - a weapon system to carry out his mission, sir.

40 Just finally, if I could take you to first page of your statement, your
affidavit, paragraph 6. You talk there about Jake being a reserve for the
deployment?---Yes, sir.

45 You say, about the third line from the bottom:

5 been enforced since our pre-deployment training. However, due to the nature, due to locations of the unload bay and the rotation system at that stage, it could not be completely enforced. But we kind of accepted it at the time. We were trying to make amendments to the location of that unload bay so we could reinforce that procedure, buddy system.

10 Do you draw a distinction between the staggered changeover and the finalisation of a member's shift, that is, when the two members come off shift from position D in terms of enforcing the buddy system?---It is easier once two people are coming off, sir, but again they would also determine if they were both leaving at the same time. In a perfect world it would be that they would both leave at the same time and would be able to go through the buddy system, which was policy. Yet, I wasn't at the - I did not witness him being relieved and I couldn't - honestly, I couldn't say
15 that they actually went through that buddy system.

Your expectation would be that the buddy system would be enforced for two members finishing a shift at position D. Do you agree with that?---I do. If at all possible, I do agree that they should have went through the
20 buddy - they should have went through - the unload - the buddy system, sir.

That is something that you would have directed members of your section to do as part of the briefing process when you first instructed them on what they were to do at each position?---That is correct, sir.
25

Thank you. One last topic, if I may, Soldier 12. Did you along with Soldier 33 collect and itemise PTE Kovco's possessions after the incident?---No, I didn't, sir. I believe I was on duty when that was being
30 done by - I believe at the time it was being done by Soldier 1, sir, Soldier 1 and one other, sir.

Do you recall who the other person was that carried out that inventory process?---I can't recall, sir.
35

Nothing further, thank you, sir.

PRESIDENT: Thank you. Anything arising, gentlemen?

40 COUNSEL REPRESENTING: No, sir.

PRESIDENT: Thank you, Soldier 12. That completes your examination and the exercise. You may now stand down.

45

<WITNESS WITHDREW

[1343]

5 PRESIDENT: Are there any other witnesses for today, MAJ Hyde?

MAJ HYDE: No, that was the evidence for today, sir.

PRESIDENT: Thank you. A time for the resumption tomorrow?

10 COL GRIFFIN: Not before 1030, sir.

PRESIDENT: Is everybody comfortable with that?

15 COUNSEL REPRESENTING: Yes, sir.

PRESIDENT: We'll take the adjournment then.

20 **MATTER ADJOURNED AT 1344 UNTIL
TUESDAY 15 AUGUST 2006**

NTS