

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

1102 TUESDAY 15 AUGUST 2006
DAY 21

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..... Date15.08.06.....(President)

Signed..... Date 15.08.06.....(Recorder)

Signed..... Date 15.08.06.....(Transcriber)

Signed..... Date15.08.06.....(Transcriber)

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- 5 PRESIDENT: Good morning, MAJ Jolly.
- MAJ JOLLY: Good morning, sir. Sir, we have Soldier 3 first up this morning.
- 10 PRESIDENT: Thank you. Good morning, Soldier 3, it's GPCAPT Cook, the President, speaking. We understand there's some difficulties in your part of the world of very recent times and perhaps some of your colleagues may have been injured. Are you feeling okay with going on this morning or would you prefer that we perhaps do this another day?
- 15 SOLDIER 3: I'm fine to go on this morning, sir.
- PRESIDENT: All right. In many ways, it's your call this morning.
- MAJ JOLLY: Sir, it would appear we've just lost Soldier 3.
- 20 PRESIDENT: Something for me to be said to adopt a non-talking role.
- SOLDIER 3: I'm fine to go on this morning, sir.
- 25 MAJ JOLLY: Soldier 3, it's MAJ Jolly. We don't have you on visual but we appear to have you on audio; if you could just wait out.
- SOLDIER 3: Yes, sir.
- 30 MAJ JOLLY: Soldier 3, it's MAJ Jolly. Apparently the visual issue will resolve itself once you commence giving your evidence. Before we start, however, I would just like to check and see what documentation you have in front of you just to make sure that we've got everything. Firstly, do you have the callsign matrix in front of you?
- 35 SOLDIER 3: Yes, sir.
- MAJ JOLLY: Do you also have the matrix for the guard duty rotation?
- 40 SOLDIER 3: Yes, sir.
- MAJ JOLLY: As well as for the matrix for the DOWR?
- 45 SOLDIER 3: Yes, sir.

MAJ JOLLY: Do you have a copy of SECDET IX's SOPs?

SOLDIER 3: Yes, sir.

5 MAJ JOLLY: And do you have a copy of your service police statement?

SOLDIER 3: Yes, sir.

10 MAJ JOLLY: Soldier 3, before we ask you to take the oath or the affirmation, could you look at the callsign matrix, identify your name on that matrix, and just confirm that you are in fact Soldier 3.

SOLDIER 3: Yes, I am, sir.

15 MAJ JOLLY: Thank you.

<**SOLDIER 3, sworn** [1106]

20

<**EXAMINATION BY MAJ JOLLY**

25 MAJ JOLLY: Soldier 3, returning to your service police statement, that was a statement that you gave to SGT Hession in early May of this year?
---Yes, sir.

And your signature appears at the end of that statement?---Yes, sir.

30 Thank you, Soldier 3.
- - - at the end of that statement?---Yes, sir.

Thank you, Soldier 3. Sir, I tender a full copy of Soldier 3's statement, along with a redacted copy of the statement.

35

PRESIDENT: Yes, thank you. Is everybody comfortable with that procedure?

COUNSEL REPRESENTING: Yes, sir.

40

#EXHIBIT 140 - CLASSIFIED AND REDACTED VERSION OF SOLDIER 3'S STATEMENT

45

PRESIDENT: Thank you, MAJ Jolly.

5 MAJ JOLLY: Thank you, sir. Soldier 3, I'd just like to ask you a number
of questions now arising from your statement and indeed from the
evidence that the Board has heard in the last number of days on two
specific topics; firstly, the SOPs, and secondly, the buddy system.
10 Soldier 3, could you please explain to the Board how you as a Section
Commander communicate the SOPs to the soldiers under your
command?---Yes, sir. I communicate the SOPs to my soldiers either
through orders, but when we first arrived I actually sat them down and we
went through the SOPs.

15 Did you have a role in the drafting of the SOPs or indeed the creation of
the SOPs?---Yes, I did, sir, not particularly at the Embassy but mainly for
the Cove because that's where we started our first role when we deployed
to Baghdad.

20 What relevance did your pre-deployment training have to the creation of
the SOPs, if any?---A lot of it, sir - we generally based our SOPs on our
pre-deployment training and what we expected to encounter here in
Baghdad.

25 In terms of your role as a Section Commander, how do you then follow up
and check that the soldiers under your command are in fact applying the
SOPs?---Through day-to-day tasks, sir, I always monitor my soldiers
when they're obviously in my visual range. And I do quiz them every
now and then on particulars of the SOPs such as DOWR.

30 Soldier 3, during the course of the Board's evidence it's heard evidence
from some soldiers in relation to the SOPs. I'd like to raise them with you
and just get your observations on them. A number of soldiers have said
that SECDDET <delete> had no SOPs and that the ones that you were
operating on were a work in progress. Do you have any observations to
35 make on that?---Yes, sir. As I stated before, that our SOPs were pretty
much written up in Brisbane before we deployed to Baghdad expecting -
working on what we would expect to encounter here in Baghdad as there
were no set SOPs that were passed down from the previous SECDDETs.

40 That was going to be my next - sorry, go on?---Sorry, sir. They were
finalised before we left Brisbane and since arriving in Baghdad they have
been altered to suit the situation here.

45 Were you aware of SECDDET <delete> SOPs at all?---Not to a great
extent, no, sir.

5 What avenue did you have as a Section Commander in terms of having SOPs amended as you observed as an operational requirement that they weren't working?---I would obviously pass it up to my Platoon Commander and my Platoon Commander would then raise it with his high up and ultimately the Officer Commanding SECDDET would have the overall say in whether those SOPs got changed or not for the better.

10 Just focusing on operational issues, as a Section Commander did you have authority to amend SOPs when you saw a situation arise?---If it was a tactical situation, sir, and I was the Commander on the ground I would make the best call on the ground to suit my soldiers in their safety.

0
15 Specific to DOWR, can you recall any time before the death of PTE Kovco of having to amend SOPs?---DOWR exiting, entering the red zone, et cetera, in the back of armoured vehicles, we generally couldn't carry out the buddy system due to the tactical situation. However, DOWRs for the compounds themselves generally remained the same throughout. However, they have been changed, they were changed fairly early in the piece I believe, sir.

20
25 Soldier 3, you've mentioned the buddy system. Could I ask you to tell the Board how you expected your soldiers to carry out the buddy system, if you could describe the mechanics of what you expected them to do? ---Yes, sir. Every time a soldier changed DOWR their buddy, another soldier, would stand there and physically watch them carry out their change in DOWR, ensuring that they carry out the correct drills and to ensure that the drills are actually carried out correctly.

30 What role did you have in supervising the buddy system in terms of ensuring that it was continually used by the soldiers under your command?---From my position where I was, sir, throughout my time at the Cove or the Embassy we - every time I saw them Manly. I ensured that they had a buddy with them. However, there were times where I could only assume that they were carrying out the buddy system together as I didn't have visual and I had full trust in my soldiers they were doing that.

40 Were you aware of any occasion where any of your soldiers had not been able to comply with the buddy system for any reason?---Yes, sir. When the tactical situation arose and they had to either unload or change their degrees of weapon readiness according to the situation.

45 What would you expect them to do in that situation or indeed what did you observe them to do?---I expected - sorry, sir.

Sorry, go on?---I expected them to carry out the drills as they've been taught and as they should because it's their personal weapon and they ultimately are responsible for their own degrees of weapon readiness.

5 Soldier 3, could I take you to your Service Police statement now and ask you to turn to page 3. Do you have that?---Yes, sir.

10 Paragraph 14, you describe an occasion where you observed PTE Kovco playing with his pistol. Are you able to elaborate on the description you've given there as to what you actually saw?---Yes, sir. I saw him playing with the pistol as if it was a toy, not losing the sight of the locality of the weapon, and just pointing the barrel in directions and doing things with it that you shouldn't really do with a pistol inside a confined quarters area.

15 Were you able to observe what condition the SLP was in?---No, sir, I was not able to observe.

20 Can you tell the Board what you said to PTE Kovco after you had observed this behaviour?---I cannot quote exactly what I said, sir, but it was along the lines of, "You know you shouldn't be doing that, it is a dangerous weapon and accidents do happen, people can get hurt when you play with weapons in such a manner." It was something along those lines, sir.

25 You say in paragraph 14 that it was on several occasions. Are you able to recall exactly how many times you observed this behaviour?---I observed it once or twice, sir, and I know my second-in-command, Soldier 4, he noticed it once as well, sir.

30 Did Soldier 4 report that to you?---He did, sir, but at a later stage. He initially took action himself and then referred it to me at a later stage.

35 Did you do any follow-up upon hearing Soldier 4's report?---No, I didn't, sir. He's quite capable and I had full trust in him that he did everything according with what I would have done.

Thank you, Soldier 3. Thank you, Mr President.

40 PRESIDENT: Thank you. LTCOL Wilkinson?

LTCOL WILKINSON: No questions.

45 PRESIDENT: LTCOL Green?

LTCOL GREEN: No, sir.

PRESIDENT: LTCOL Berkley?

5 LTCOL BERKLEY: Yes, thank you, sir.

<EXAMINATION BY LTCOL BERKLEY

[1116]

10

LTCOL BERKLEY: Soldier 3, I'm LTCOL Berkley and I represent Shelley Kovco. Can you see me?---Yes, sir.

15

Probably not your luck. I just want to talk about Jake a little bit. He was a proficient weapons handler?---Yes, he was, sir, very proficient.

I think when he first came to your section it was in January of this year? ---Yes, it was, sir.

20

Jake was able to fit in very well with your section?---Yes, sir, he fitted in very well. He was - his character allowed him to do so quite well.

25

I think you've told us in an affidavit that you swore - and has just been given in evidence - on an unknown date in June 2006 that he was very easy to get along with, very outgoing, opinionated and said what he thought. You adhere to that?---Yes, I do, sir.

30

When he deployed, he was deployed with many mates; that would be fair to say, wouldn't it?---Yes, it would be, sir.

So as a soldier you had no concerns about Jake?---None at all, sir, no.

35

So when you pulled him up for his handling of the weapon, that was to ensure that if you saw something that you didn't like, something that may be dangerous, you would put a stop to it just then and there; is that the case?---Yes, that's correct, sir. If I saw something dangerous, I'd put a stop to it there and then.

40

In fact, it's incumbent upon all soldiers to do that, isn't it?---Sorry, sir?

It's incumbent upon - it's the duty of all soldiers to correct, say, a breach of safety when they detect it?---Yes, it is, sir.

45

Similarly, the 9 mm pistol is not the standard issue for a private soldier in the Royal Australian Infantry, is it?---No, it is not, sir. The only times I

have carried a 9 mm pistol have been on operations or on very selective exercises, but not all the time as my infantry soldiers, no, sir.

5 That's right. It's the tendency of soldiers to get to know the weapon by playing with it; would you agree with that?---There is a tendency for soldiers to be very inquisitive because they have not handled the weapon as much as what they would with their normal Styre.

10 Was Jake the only one that might have pulled it out from time to time when not required?---Sir, he is the only one that I had noticed that pulled it out from time to time.

15 Go on?---However, some soldiers, we do train with the weapons and they will pull them out but that's in a controlled environment.

20 There was nothing to suggest that he should be charged with any disciplinary offence, otherwise - - -?---No, no, nothing at all, sir, it was a breach of safety but it wasn't a massively substantial breach of safety at that point in time, I believe, sir.

25 It was behaviour correction to avoid the possibility of any dangerous situation arising?---That is correct, sir, yes.

30 I've only got a few more questions. In relation to the incident on 21 April when Jake died, you were obviously at your duties and you heard a call for a medic through your headset?---Yes, that's correct, sir.

35 You were using a bone mike headset?---I was using one of the PRR-issued headsets, sir.

40 You went to room 8; who was there when you got there? If you would use the callsign matrix, please?---Yes, I will, sir. I was on the way to the toilet, actually, when I heard the call and then I heard the call coming from the rooms. I ran into the room and in the room all I saw was obviously PTE Kovco on the floor. I noticed Soldier 3 was also in the doorway with me - correction, Soldier 4 was in the doorway. He proceeded in to move in and carry out first aid, and I did notice a soldier around Jake lying on the floor. I believe, but I cannot be 100 per cent certain, it was Soldier 19 who was attempting to apply first aid at that point in time. As I said, sir, I cannot be 100 per cent sure about that because I got fixated on the actual incident itself.

45 What about Soldier 17: did you see him?---No, I did not, sir. As I said, I became totally fixated on the incident itself.

All right. You've told us in your affidavit that you were concentrating more on the wound, but you didn't notice any laptop on any of the beds? ---No, I did not, sir. As I said, I pretty much became totally fixated on what had occurred.

5

Did you see Soldier 12 there?---No, I did not, not straight away, sir. I can't really recall actually getting to the room. I remember looking into the room and that's pretty much all I recall, sir, from that incident.

10

What about Soldier 21?---No, I can't 100 per cent say that he was there, sir. There was quite a large crowd there, sir, and I did not pick out certain individuals, I was more concentrated on getting to the doorway.

15

Do you recall talking to other members at the Embassy at the time about what might have happened?---I did, sir, but it was just sort of only in passing. We weren't - no one was actually sure what had happened and at that point in time it was very shocking to us as it was an unexpected tragic incident, and everyone was just trying to work out what went on.

20

Only some of the soldiers are issued pistols?---That is correct, sir. While we're at the Cove, every soldier that was there carried a pistol, however, at the Embassy due to the lack of numbers in the 9 mm, only select soldiers carried that weapon.

25

Would it have been preferable for all soldiers to have the 9 mm pistol? ---Yes, it would have been, sir.

Just not enough in country?---To my knowledge, no, sir.

30

You just say that there was no real method of deciding which of the soldiers would retain their pistols?---Yes, that's correct, sir. With my section I had confidence in all my soldiers to carry a pistol. So the ones that handed theirs in were the first four or five that I saw the day - or at the time that I found out we had to hand them in. So they handed their pistols in.

35

Do you recall being asked any questions other than by the SIB about what happened on 21 April 2006?---No, not particularly, sir, only by what our soldiers that were just going, "What happened?" and everyone trying to work out for themselves what they thought went on, which is only common when an incident or something like this goes wrong. People want to find out what went wrong, sir.

40

We can accept that. Do you recall whether any information or speculation was say reported through family lines back to Australia by you or any

45

5 other soldiers in the platoon speculating on what may have happened to Jake?---For myself, sir, I did not have - I have not speculated what has happened. However, I cannot speak for every soldier. I can only speak for myself. But I have all faith in my soldiers that they would not have speculated back to Australia what happened.

Thank you very much, I've got no further questions?---Thank you, sir.

10 PRESIDENT: Soldier 3, we'll just change places yet again; if you just bear with us, please.

<EXAMINATION BY COL YOUNG

[1128]

15 COL YOUNG: Soldier 3, my name is COL Young. I appear to represent the interests of PTE Kovco?---Good morning, sir.

20 You might be flattered to hear that you've been described in some of the papers here in Australia as a senior officer. What do you think of that?---Quite interesting, sir.

25 Would you describe yourself as a senior officer?---I would describe myself as a junior NCO, sir.

Well done. What about Soldier 4, he's been described as a senior officer as well. What would you describe him as?---I would also describe him as a junior NCO, sir.

30 PRESIDENT: Diplomacy is alive and well in Baghdad.

35 COL YOUNG: As far as the 9 mm pistol is concerned, you describe soldiers as being inquisitive as regards to the pistol. That's not a bad thing, is it, being inquisitive and curious about a weapon that you're responsible for?---No, it is not, sir, no.

40 Because you fellows can find yourself in a difficult situation over there where people shoot at you and there's a risk of being killed. Is that the case?---That is the case, sir.

As an NCO you'd like to think that your soldiers would be prepared for any situation they might encounter where there's danger to their lives. Is that right?---That is correct, sir.

45 In your affidavit I'm looking at paragraph 21, just the bottom part of

paragraph 21, you say:

The 9 mm pistol I had on pre-deployment training was modified to stage 3.

5

But when you got in country the weapon you were given was not. Did that surprise you?---That is correct. No, it didn't, sir, just due to the fact that I know the age of some of these weapons and the fact that some of them have been modified and some of them have not at this point in time - sorry, at that point in time.

10

When a pistol is modified from one stage to another, do you need to any additional training to make yourself familiar with that weapon as modified?---You do a small bit of additional training, sir, and it's just the - you just learn the difference between the stage 2 and the stage 3.

15

Can that be confusing or does it come fairly naturally? I'm talking about yourself at the moment?---It comes fairly naturally, sir.

20

Would you describe yourself as proficient with a 9 mm or would you describe yourself as an expert?---I would call myself proficient, sir.

What about other soldiers, how do you think they would be described, given what we've heard today?---I can't comment on other soldiers, sir, but I can say that all the soldiers that I've observed are quite proficient with the weapon, sir.

25

Working fairly closely with them as you do, would you describe any of them as experts?---I wouldn't say experts, no, sir.

30

If you were placed in a situation and given the choice of a Styre or a 9 mm pistol, what would your choice be?---The Styre first choice, sir.

<delete>

35

COL YOUNG: Soldier 3, just turning over the page to page 3?---Yes, sir.

You express an opinion, I take it, about PTE Kovco, that his role was important and responsible role, just at the top of page 3, end of paragraph 8?---Yes, sir, that's a role for any person that heads out as a shooter, sir.

40

So would you describe PTE Kovco as a trusted and responsible soldier?---Yes, I would, sir.

45

Thank you, Soldier 3. I've no further questions, Mr President.

PRESIDENT: Thank you. MAJ Jolly.

5 <EXAMINATION BY MAJ JOLLY

[1134]

MAJ JOLLY: Soldier 3, it's MAJ Jolly again. Can I get you to go to
10 paragraph 23 of your affidavit, please?---23, sir?

Yes, last page?---Yes, sir.

Can I just ask you to take time to read through that?---Yes, sir.

15 You'll recall I've already asked you a number of questions on that topic.
Could I ask you this: do you confirm the evidence that you've given in
paragraph 23?---Yes, I do, sir.

Thank you, Soldier 3. Thank you, sir, nothing further.

20

PRESIDENT: Anything arising out of that, gentlemen?

LTCOL GREEN: No, sir.

25 COL YOUNG: I have a question arising out of that.

PRESIDENT: Yes, we'll just go back to COL Young for a moment.

30 COL YOUNG: Soldier 3, you've just been asked to confirm the content
of paragraph 23. I might get you to confirm again that you were asked by
LTCOL Berkley whether PTE Kovco - you didn't charge him with any
offence in relation to use of his weapon, did you?---No, I didn't, sir, no.

Thank you. That's all, Mr President.

35

LTCOL BERKLEY: As I said, it's a matter for addresses, sir, in any
event.

PRESIDENT: Anything further?

40

MAJ JOLLY: No, thank you, sir.

45 PRESIDENT: Thank you, Soldier 3, you're now released from giving
evidence. You may stand down and you may leave us, and thank you?
---Thank you, sir.

<WITNESS WITHDREW

[1136]

5

MAJ JOLLY: Sir, Soldier 46 is the next witness and COL Griffin will be leading him.

PRESIDENT: Thank you. Is he available to us shortly?

10

MAJ JOLLY: I believe so, sir.

COL GRIFFIN: Call Soldier 46, please. Mr President, Soldier 46 is before the Board.

15

PRESIDENT: Good morning, Soldier 46, it's GPCAPT Cook, the President, speaking. We're aware in Australia, of course, that there's been some incidents in your part of the world in very recent times and some of your colleagues have been injured. Are you perfectly comfortable with the proceedings this morning?

20

SOLDIER 46: Yes, sir, I am.

PRESIDENT: Because if you were the slightest bit apprehensive, we could put this matter over for a little while.

25

SOLDIER 46: No, that's fine, sir, I would like to continue.

PRESIDENT: Thank you. We'll continue on then, thank you, Colonel.

30

COL GRIFFIN: Thank you, Mr President. Good morning, Soldier 46, I'm COL Griffin, Counsel Assisting the Inquiry.

35

<SOLDIER 46, sworn

[1137]

<EXAMINATION BY COL GRIFFIN

40

COL GRIFFIN: Do you have in front of you a number of documents which are known as matrixes - they are Exhibits 5, 12 and 13 in these proceedings - that set out, in Exhibit 5, a series of names with numbers next to the identities. Do you see that document?---Yes, sir, I do.

45

Would you confirm that it's your name that appears next to serial 46?
---Yes, sir, that's my name.

5 If, during the course of your evidence, you have reason to identify anyone by name, would you do so by reference to that document where their name appears; that is, for anyone in theatre?---Yes, sir, I will.

10 Do you have before you a copy of a sworn statement that you made on the 13th day of July this year?---Yes, sir, I do.

Would you confirm that it comprises of some pages and 14 numbered paragraphs?---Yes, sir, that's right.

15 Mr President, I tender the affidavit in its classified and, the second document, in its redacted form.

PRESIDENT: Any opposition to that course?

20 COUNSEL REPRESENTING: No, sir.

PRESIDENT: In its redacted and restricted form, it will be marked as Exhibit 141.

25 **#EXHIBIT 141 - CLASSIFIED AND REDACTED VERSIONS OF SOLDIER 46's STATEMENT**

30 COL GRIFFIN: Soldier 46, I'm going to work through that statement with you to expand in some areas of it. Even though the redacted version has reduced your rank, it's plain to see on the screen that you wear rank and that you're a Captain in the Military Police; is that right?---That's right, sir, yes.

35 Your position is that you're the Officer-in-Charge of the Close Personal Protection Team?---Yes, sir, that's right.

40 Is it the case that your role is one of the roles that military policemen have; military policemen are not just investigators or performing normal civilian-type police functions, but your role is to supervise and command the personal protection of particular individuals and in certain circumstances. Is that right?---Yes, sir, that's correct. My primary role as a member of SECDET is to provide close personal protection to Australian Embassy staff.

45

Is that a similar type of function that is sometimes performed in civilian environments by members of the Federal Police, for example, for very important persons?---Yes, sir, that's correct.

5 Is it the case that that is your primary and principle focus as a member of the Military Police in your mission in theatre?---Yes, sir. I see my role in providing close personal protection as my only role over here as a member of the Combined Arms Team.

10 We were all reminded yesterday of the difficult circumstances in which SECDDET operates and the unfortunate injury to your colleagues, and that reinforces the close-knit setting in which you all work together. Is that right, you're very close in the environment and in the way you work together?---Yes, sir, across all the different elements from the different
15 corps represented here as part of SECDDET, it's very important that we work closely together and we have a close-knit team environment as part of SECDDET.

20 Is it as a consequence of that that the other type of policing role, that is, disciplinary or criminal investigative tasks, is not one that you and your small team perform?---Yes, sir, that's a correct assessment. As part of the Combined Arms Team, as I said, we're here to do close personal protection. If we start delving into those other roles, I do personally believe that has the potential to affect our ability to operate as part of a
25 Combined Arms Team and that's why I perceive that our only role here is to do close personal protection.

30 As I understand it from paragraph 3 of your statement, you have done some investigative training but that is not your principal focus of experience and training either; is that the case?---That's correct, sir. As part of our Regimental Officer Basic course as Military Police, we do do a broadbrush overview of investigative techniques. I personally believe that prepares us more to deal with initial incident scenes rather than to commence any sort of investigation.

35 As I understand it from your statement, it was because of that training that you turned your mind very shortly after you became aware of the incident involving PTE Jacob Kovco to the need to secure the scene; is that right?
40 ---That's correct, sir. I started to think along the lines of the fact that an investigation would need to be commenced. My focus was on trying to set the area up and set the scene up for when an investigating team did come into the AO so that they would have what they needed. That is why I requested Direct Liaison Authority back to 1MP battalion so that I could get some advice from whoever the investigator coming over would be.

45

Now, I see in paragraph 3 of your statement in the fourth line from the bottom you said:

5 *I mentioned that we would need to close off the scene and deny access. Soldier 31 agreed and we continued to wait for more information.*

10 Was any action taken at that point in time in respect of securing the scene, to your knowledge?---Sir, from what I can recall, the incident scene had been locked, that the door of the room had been locked, photos had been taken and that room had been locked. Some of the guys had gone in and grabbed some of their operational required equipment and then the door had been shut after some photographs had been taken.

15 You've described a number of incidents there. When did you become aware of the information that you just told us, whilst you were still at the Cove or after you moved forward to the Embassy?---Sir, that would have been later on after I had been down to the Embassy. The information hadn't come back at that stage, sir.

20 Can you recall when it was that you moved to the Embassy?---Yes, sir, it was approximately - it was about an hour after the incident occurred I moved down to the Embassy.

25 You described in paragraph 5 of your statement that you'd gone down there after speaking to another member of your team at the Embassy. Is that right? His number doesn't appear on the list?---That's right, sir. No, sir, he doesn't. But he had telephoned me via mobile phone and that was shortly before I went down. I was on the way down at that stage.

30 When you arrived at the Embassy, what was it that you became aware of in terms of securing the scene?---I became aware that the room had been closed after photographs had been taken.

35 Did you actually visit the room itself in any way?---No, sir.

Did you observe whether or not any seals had been placed on the door?---No, sir, I didn't.

40 You mention in paragraph 6 that you informed Soldier 30 of the need to secure the incident scene and that it had been cordoned off at that stage; you observed that, did you?---Yes, sir, that's right.

45 What do you mean by "it had been cordoned off"?---Well, the door had been locked, sir. It hadn't been cordoned in terms of any sort of tape or

anything like that around it; the door had been locked.

5 Now, at paragraph 8 you describe returning to the Cove and a discussion
about Direct Liaison Authority, which has an abbreviation known to most
service people DIRLAUTH or D-I-R-L-A-U-T-H. What do you
understand Direct Liaison Authority to mean?---Sir, here at SECDET we
have a SECDET chain of command. 1MP battalion is outside the
SECDET chain of command. Therefore, I wasn't going to go and speak
to 1MP battalion without having authority to do that. That's why I
10 requested the DIRLAUTH.

To whom did you make that request for DIRLAUTH?---Sir, I can't recall
100 per cent, but I believe it was actually through Soldier 30 and then I
was informed that I had the DIRLAUTH approved.

15 Did that happen straightaway or was there a delay for a period between
your request and the approval for the DIRLAUTH?---Sir, obviously there
was a period between my request and when I was granted the approval.
However, from what I recall, it wasn't that long a period, it wasn't that
20 long before I was able to speak to headquarters 1MP battalion to the duty
officer there.

At that point in time when you received the DIRLAUTH had PTE Kovco
passed away?---Yes, sir, he had.

25 Are you able to say how long after the incident you received the
authorisation to speak direct with 1MP battalion?---No, sir, I can't recall
how long it was.

30 Same night?---Yes, sir, definitely.

Before midnight your time?---Yes, sir.

35 Would you tell the Board what you then did in terms of communicating
with your - and I'm going to use the phrase "technical chain of
command". Do you understand what I mean by that, that is, that it relates
to your Military Police side of the house rather than your operational or
tactical chain?---Yes, sir, I understand. Essentially what I did was I called
up the phone number for the 1MP battalion duty officer and basically gave
40 them a heads-up on what had occurred so that they could start to stand up
an investigative team at their end. From there I was - I essentially
requested to speak to the actual investigator that was going to be coming
over. Then 1MP battalion then put into place measures for that
investigator once notified to give me a call over at SECDET.

45

Did that happen?---Yes, sir, I spoke to the investigator approximately, if I recall correctly, two hours after that initial call was made.

Do you have a Soldier 47 on the list before you?---Yes, sir, I do.

5

Is that the investigator you spoke to?---Yes, sir.

Was that the same night again, before midnight, that you had that discussion?---Sir, I can't recall the exact time, but I believe it was before midnight when I spoke to Soldier 47.

10

In paragraph 8 at about the middle of the paragraph you say that - well, a little earlier than that you say:

15

I got Direct Liaison Authority and spoke with the IMP battalion duty officer. I asked if we needed to do anything.

It then reads:

20

It had been requested that the body not leave Baghdad as the SIB wanted to see it.

Who had made that request?---Sir, from what I recall, that request came back through from 1MP battalion. I believe it was actually from - there's no record there on the matrix, however, it came through from OC of the SIB company through the 1MP battalion duty officer. I was actually contacted later on that night. I was woken up at about 2 or 3 am Baghdad time with that message that was passed to me.

25

Sorry to stop you there. "With that message", what message?---The message that the SIB requested the body to remain in Baghdad.

30

Thank you. Please continue. So you received that message at about 0300 you say?---Yes, sir, I did. I then relayed that message through to SECDET Headquarters and basically passed on that if there was any questions that needed to be asked or answered in relation to that, the person to speak to was the OC of the SIB and that's when I - that's where I left that situation, sir.

35

When you received that message at about 0300, from whom did you receive the message?---The 1MP battalion duty officer, sir.

40

How was that conveyed to you?---That was conveyed to me via phone. I was woken up to go and speak to the 1MP battalion duty officer on the phone in the SECDET CP.

45

5 Did you receive anything by way of written communication to that effect, that is, that the SIB did not want the body moved from Baghdad?---Sir, if you just bear with me while I check a note here that I've got. I don't believe that I received any written form of communication to that means. I may have received an email, however, I don't have a copy of that.

10 Now, just to clarify the person that you understand was the initiator of the request, you've mentioned the OC of the SIB unit. You can name the individual because identities are only being protected for people who are in theatre. So who was it that had initiated the request as you received it from 1MP battalion?---Sir, the message that was relayed to me was from MAJ Pemberton and I believe that was after discussions between MAJ Pemberton, the OC of the SIB, and Soldier 47 that they had requested for the body to remain in Baghdad so they could examine the body here. That message was then passed through to me by the 1MP battalion duty officer.

20 So the chain of command was the technical chain that was being exercised here, that is, the Military Police chain was being used to inform you of that request rather than the tactical or operational command chain?---Yes, sir, that's right.

25 Having arrived to you verbally from the duty officer of 1MP battalion, you then passed that on to Soldier 30 Is that how it worked?---Yes, sir.

You say in the fourth line from the bottom of paragraph 8 that you made that known at SECDET, that is, you told Soldier 30. Then it reads:

30 *But was informed that the body was not going to kept -*

there's a "be" missing there I take -

35 *was not going to be kept at Baghdad awaiting the SIB.*

Who told you that?---Sir, if I recall correctly, that message was passed back through from Soldier 30 and I believe that he had had guidance from Headquarters JTF that that was going to be the case.

40 When did you receive that advice from Soldier 30?---Sir, I can't recall exactly when I received that, whether it was that night after I passed the message on or whether it was first thing the next morning at around 7 or 8 am when I had gotten up again.

45 The statement goes on to say immediately after the quote I just read:

The emphasis was on emotion rather than the technical aspects of doing an investigation. I passed this back up to IMP battalion.

5 Would you just expand for the Board there on what you're saying in terms
of the emphasis on emotion rather than the technical aspects of an
investigation?---Yes, sir. I believe that the emphasis was on returning the
body of PTE Kovco back to Australia and going through the formalities
10 out of respect for the soldier and the soldier's family rather than
preserving the scene and the evidence for any sort of investigation.

Your statement on page 3 at paragraph 11 goes on to describe under a
heading "Post Incident":

15 *I said that nothing in the room should be touched and everything
should be left where it was.*

Soldier 30 assured you that this had been done. Then the next sentence is:

20 *It was an incident scene, not a crime scene.*

What do you mean by that?---Sir, that is my personal assessment. Given
the circumstances surrounding the incident, I didn't believe that it needed
25 to be referred to as a crime scene, considering that we didn't know what
had occurred down there, and from the information that I had that had
been passed back through was that it didn't look like it was a crime, it
looked more like that it was an incident.

30 At paragraph 13 of your statement you describe that Soldier 47 arrived -
and I note that the redacted statement at paragraph 13 still has Soldier 14's
name, sir, and I ask that the standard direction be given that it not be
published.

35 PRESIDENT: Yes. The name of Soldier 47 is not to be published and to
be referred to simply as Soldier 47.

COL GRIFFIN: Thank you, sir. Soldier 46, just returning to the point I
was to make, in paragraph 13 you say there that:

40 *Soldier 47 arrived a minimum of about 72 hours after the
incident. In my view this is not quickly enough to do the job
effectively.*

45 Why is that?---Well, sir, essentially the faster an investigator can arrive on
an incident scene, the more chance there's going to be of preserving the

evidence and doing what needs to be done in terms of the technical aspects of an investigation.

In paragraph 14 of your statement:

5

Direct liaison authority was withdrawn at around the time IMP battalion requested that the body be held in Baghdad. This was a message relayed to me.

10

Who relayed that to you?---Sir, that message was relayed to me by Soldier 30 and my assessment is that that message was a message that he had relayed to me. I believe the decision for the Direct Liaison Authority to be turned off and the body to be moved out of Baghdad was made here at Headquarters JTF633.

15

Were both of those facts conveyed to you in the one discussion; that is, the body was going to be returned and that direct liaison between yourself and your technical chain was withdrawn?---I can't recall if it was in the exact - in the one conversation, sir, however, both of those points were relayed to me in a relatively short timeframe of each other.

20

Were you involved in the subsequent activities of the Special Investigation Branch team that arrived, that is, in the investigative processes they undertook?---No, sir, I wasn't. I provided a service police statement, however, I did not personally become involved in the investigation itself.

25

I have no further questions at this point in time for Soldier 46, sir.

30

PRESIDENT: Is that service police statement available to us? Is it proposed to be tendered?

COL GRIFFIN: I don't propose to tender it, sir, no. It's certainly available and has been distributed to counsel for some time.

35

PRESIDENT: Very well. If they wish to act on it, I'm sure I'll hear from them.

40

COL GRIFFIN: Sir, it does in fact appear as part of the total Military Police brief that was tendered, I think Exhibit 36, and many of those statements have been extracted to deal with the individuals, but it certainly is there for you, sir, if you require it.

PRESIDENT: Very well, thank you. LTCOL Berkley.

45

5 LTCOL BERKLEY: Soldier 46, I'm LTCOL Berkley and I represent Shelley Kovco, and I've got a few questions for you. In your service police statement, right at the end - this is a statement made on 1 May 2006 - do you have it, by the way?---Yes, sir, I've got that here with me.

10 Paragraph 12, you say:

15 *Also that day, direction had been given to locate a letter believed to be in Kovco's room addressed to his wife in case of his death. I strongly advised Soldier 30 not to enter the room until investigators arrived, to which he agreed.*

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

20 Yet, it became apparent to you, the room was entered contrary to your strong advice?---Yes, sir.

25 That's what I want to talk about. I know that you're in a chain of command and I know that you're part of a team, but your opinion is still important to us and other people have given us opinions so I'm going to ask you for yours as well. In your affidavit sworn on 13 July 2006, at paragraph 14, the last two sentences read:

The SECDET listened to the advice we gave them.

30 Is "we" you or advice from the flyaway team, including Soldier 47? Who is "we"?---"We," sir, in there, I would be referring to the Military Police present at SECDET.

Then you said:

35

They -

I take it you mean SECDET -

40 *acknowledged that an investigation would have to occur and asked what they should do.*

45 Is that really what happened?---Sir, what I mean there is that SECDET were interested in knowing what steps needed to be taken and listening to the advice.

5 Is your summation of the dealings immediately after the shooting that you gave advice and that SECDET would follow that advice, save anything to do with the repatriation of Jake Kovco? Is that what you're saying?---Sir, what I'm saying is that SECDET listened to the advice, however, as I've said and I've already been questioned on, the emphasis, I believe, was on the formalities of getting the body back to Australia for the sake of the soldier and of the family.

10 Thank you, and I'll ask you more questions on that. Is it the case that you advised SECDET that the body was not to be moved from Baghdad; that's the case, isn't it?---I advised them, sir, in accordance with direction that I was provided with from my technical chain of command.

15 Yes, I understand that?---I passed that message on.

All right, so the answer is yes?---Yes.

20 Isn't it the case that you told SECDET that the room was to be secured? Is the answer to that yes?---Yes, sir.

25 Is it the case that the room was secured except for when people wanted to go in there, either to retrieve combat equipment or personal effects of Jake? What's the answer to that one?---Sir, the room was secured, as it says in my affidavit. The room was entered before any MPs were down on the ground at the incident scene because they were out on a job providing close personal protection to Australian Embassy staff, which is their primary role here, so they moved in and took out some combat body armour and other effects that they needed to continue providing their operational role here. Then again, as it says in my affidavit, Soldier 1 had returned into that room later that evening in order to retrieve a bear and a diary to return to Australia with the body.

35 That return, though, would have been seen from an investigator's point of view as unnecessary, wouldn't it?---Sir, it could have been and once it was discovered that those effects had been removed, I was informed that that was the case and those effects were then put aside for when the investigators arrived.

40 As I said, I appreciate your part of a team there; I simply want your report on the factual issues. Do you understand that?---Yes, sir, I understand that.

45 Did you understand Soldier 47 to be part of the flyaway team?---Yes, sir, I did.

Of course, it took them 72 hours to get there after the incident?---Yes, sir.

5 You knew of their arrival because you knew how long it took them to get there; is that the case?---I knew they were on their way, sir, yes.

10 After the room had been entered, contrary to investigators' advice, SECDDET then asked you what they should do in relation to an investigation; is that right?---Sir, they were listening to our advice on what we were providing them with.

15 Yes, I accept that they were listening to it. The question is: did you then advise them what to do in a further investigation?---No, sir, I advised of steps that we needed to take in terms of making sure that the investigators would gather the information that they needed. I certainly didn't commence any sort of investigation.

20 I'm not suggesting you did for one moment. Did SECDDET ask you, "Should we mount, say, a quick assessment?" or "Should we list all the items we've taken from the room?" The statement that you had said, and it's your statement, apparently:

They acknowledged that an investigation would have to occur and asked what they should do.

25 What did they ask?---Sir, I can't recall exactly what they asked, it was a series of several conversations that I had with the key players within SECDDET where we discussed measures that needed to be taken.

30 What were those measures?---I can't recall, sir.

35 You're an investigator, or you've been trained as an investigator even though you're not employed as an investigator. This is an important matter. They asked you what we should do and you can't remember; is that what you're telling us?---Sir, I'd like to take a step back. As I said at the start when I was questioned before, I'm not a trained investigator. I've done some basic investigative training as part of my Regimental Officer Basic course.

40 Right. But you can't remember an important incident what you discussed with SECDDET as to what they should do. Is that your evidence?---Sir, I can recall some pieces or what I had discussed with SECDDET in terms of providing them with advice, in terms of securing the incident scene and that nothing should be removed, and that's what I advised them.

45

That was the extent of your advice that you were passing on from the technical side of the house?---Yes, sir.

5 Did you speak to Soldier 47 when Soldier 47 arrived in country?---Yes, sir, I did.

10 It's just that you say you put in place things - sorry, I'll go back. I'm looking at paragraph 13 of your affidavit. You say that you spoke to Soldier 47 within three to four hours of the incident. You see that?---Yes, sir.

You say you put in place things that Soldier 47 was happy with; do you see that?---Yes, sir, that's right.

15 You say this:

It could have been handled better technically. The infantry guys are not aware of how technical an investigation can get.

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

25 But you were certainly aware of how technical - I suppose that's a term, I think I understand it - the collection of evidence can be. I think you understand that?---That's right, sir, I understand fully how technical an investigation can be and what I mean by saying that it could have been handled better technically is if there was an SIB member there a lot quicker to be able to put those technical aspects into place.

30 Of course I think this is your one opportunity to say it, that if investigators were actually in country - the proper term is investigators in country - so that you wouldn't have to be double-hatted, that would have been the preferable situation, wouldn't it?---Yes, sir.

35 So what's your view? This is a clash of sensitivities? I mean, afterwards we've got the sensitivities that you've already told us about of trying to get Jake back to Australia and there's you with espousing the technical line, even though it's not your job. Was that what happened, a clash of sensitivities?---Essentially, yes, sir.

40 You frame it in your own words, don't let me put the words in your mouth?---Sir, I just said yes, it is, that is one way of describing it.

45 Is that the way you'd describe it?---Sir, the way I would describe it is that I was in a situation where I was trying to put steps into place so that the investigators could do their job in order to find out exactly what happened.

However, I believed that I wasn't required to do that. My primary role here is to run a close person protection team, and that is my primary role, and I would not have done things any differently if I had the choice again.

5 Thank you very much. I have nothing further, thanks, Mr President.

PRESIDENT: Yes, thank you. Soldier 46, we just have a change of Counsel and again if you wait out for a moment, please?---No worries, sir.

10

<EXAMINATION BY COL YOUNG

[1218]

15 COL YOUNG: Soldier 46, my name is COL Young. I represent the interests of PTE Kovco. I want to put to you that you're in a unique situation given the experience that you've gone through and you might be able to assist the Board in some recommendations that they might consider making. So having said that, I'll just ask you some questions. LTCOL Berkley put to you that if there had been an SIB presence in the country, that would have been of great assistance. Would you agree with that?---Yes, sir, I would.

20 Given that you were there, not as a Military Policeman, and everybody accepts that, but if I can suggest you did the appropriate thing as an officer by proffering some advice. What I want to put to you is what SIB presence do you believe could be appropriately put in place in a situation that you are in that would have been effective? So I'm asking you to comment on rank and numbers of personnel?---Sir, firstly, it needs to be a structure where the investigators can get to an area such as SECDET within a relatively short time frame. Secondly, I believe that you would need a team capable of operating independently. So perhaps headed up by a Captain from the SIB or a WO1 or even Warrant Officer Class 2. My recommendation would be a Captain. It requires at least two members to do an investigation. I would recommend a minimum of three just so that there's some redundancy and some extra man there to be able to accomplish all tasks correctly.

25 Let's run with that three personnel for a moment. Would you see them as being in country as the best position to be?---Well, sir, I would certainly see them as being in country as a priority. As we've seen with this incident, by the time a fly-away team can actually arrive into country you are looking at a minimum period of 48 to 72 hours.

30 Assuming there are three personnel in country, there might be some down time where there's not much for them to do. Would you accept that as

being just a necessary part of supporting the unit that's there?---Certainly, sir, yes.

5 Do you think that there could be some other duties to find them whilst they were there and not doing SIB work?---Sir, I certainly think that they could be utilised in other roles such as watch keeping, duty type systems. However, obviously their priority would need to be able to do - at the drop of a hat if an incident occurs, respond expediently towards that incident.

10 You've told us that it was your view that it was an incident scene, not a crime scene. Did you base that on any knowledge you had of what soldiers might have seen or not seen or was it just a personal view?---Sir, that was just a personal view. Given the nature of the combined arms team and the fact that it was a close-knit team, I really didn't think that it
15 needed to be referred to as a crime scene without knowing all of the facts. That was my side of looking at the sensitivities involved with the combat arms team.

20 So you reached that opinion without having any knowledge of what soldiers might have seen or not seen?---Yes, sir.

I appreciate you're not a trained investigator, but you've done some basic training in incident security. I just want to ask you, given that background, what your view is if I tell you that the key to room 8 was kept
25 in a room not secured and at least two NCOs were told where the key was and they could access it if they wished to. What would your opinion be about that as securing an incident scene?---Well, sir, obviously the incident scene would not be secured if there was access to the keys. That's why I instructed one of my Sergeants to acquire those keys and
30 hold onto them in order to hand over to the investigators.

I've no further questions, Mr President.

35 PRESIDENT: Thank you.

<EXAMINATION BY COL GRIFFIN

[1223]

40 COL GRIFFIN: Soldier 46, do you recall when you instructed your Sergeant to secure the keys?---It would have been late on the night of the incident, sir. I can't recall exactly when, but it was via phone. I told my Sergeant to acquire the keys and hold onto them until the investigators arrived and took possession of them.
45

5 You were asked your opinion about an optimum investigative capacity in theatre of ideally three Special Investigation Branch investigators or more headed by a rank preferable. What is the capacity now in theatre?---Sir, from what I'm aware of, there is currently a Captain here. There is also a Warrant Officer 2 and it is either one or two Sergeants.

10 So is it the case therefore that the situation now in terms of technical expertise and availability meets that requirement that you've indicated earlier?---It's certainly a lot better than it was, sir. But some of those investigators are dispersed to different areas throughout the area of operations. However, I assessed that their ability to respond to any sort of incident within a short time frame is now much better than it was during the time of the incident involving PTE Kovco.

15 Are you able to say how long that has been the case, the increased capacity?---I can't say exactly how long, sir, because I'm not aware. I believe that the current Captain has been here for approximately seven or eight weeks.

20 You were asked a number of questions about what you did. I just want to go over that. As I understand your evidence, as soon as you heard about the incident you advised Soldier 31 the need to close off the scene and deny access?---Yes, sir.

25 And Soldier 31 is a member of the Command Group for SECDET?---Yes, sir, that's right.

30 You then visited the scene and advised Soldier 30, another member of the Command Group, to secure the incident scene?---Yes, sir, I had discussions with him reference to what needed to be done and he informed me that had been done, that photographs had been taken and that the door had been locked.

35 You then returned to your headquarters base and on your own initiative sought direct liaison with your technical chain of command?---Yes, sir, that's correct.

40 Having been granted that, you then spoke directly to your technical chain of command and they advised you of the requirement for the body to stay in Baghdad?---Yes, sir.

You passed that on to your SECDET Command Group?---Yes, sir, I did.

45 You were subsequently told that despite that request the body was going to be moved as quickly as possible and that your Direct Liaison Authority

was withdrawn?---Yes, sir. As I said earlier on, I can't recall whether that was in the same conversation. However, I was advised of both of those points, yes.

5 Is there anything else that you wish to inform the Board of, Soldier 46?---There's just one more, sir. With some of the soldiers involved that were present during the incident, those soldiers were involved with escorting the body down to Kuwait. I didn't believe that was a good thing to be done because I believe that those soldiers needed to be present when
10 the SIB arrived in Baghdad. That advice that I had provided was considered but was not acted upon and those soldiers headed south in order to escort the body down there.

15 Did you provide that advice through your technical chain of command or through your operational chain of command?---Through the operational chain of command, sir.

20 Did you receive a response to that advice?---Yes, sir, I was essentially informed that it wasn't going to occur, that the arrangements had been made and those soldiers would escort the body down to Kuwait.

25 Other than being advised that Direct Liaison Authority was removed or withdrawn, did you have any discussions with anybody about why it was withdrawn?---No, sir.

Thank you. No further questions, sir.

30 PRESIDENT: Thank you. Going back to the time you told Soldier 31 to secure the area, are you able to put a time and place and date on that?---Sir, that firstly, when I - I had the first conversation when I attended the Embassy when I first headed down there. It was approximately about one to two hours after - one hour after the incident approximately.

35 What would your advice had been if the proposition had been put to you that soldiers from within the room need their uniforms, need their weapons and need their body armour?---Well, sir, they can't perform their job without that equipment. So I would have allowed that equipment to be removed.

40 You would have seen that as not being the best investigative method but perhaps essential in the situation?---Yes, sir.

45 Anything arising out of that, gentlemen?

COUNSEL REPRESENTING: No, sir.

PRESIDENT: Thank you, Soldier 46. The examination is concluded and you're now formally discharged and you may now leave us.

5

<WITNESS WITHDREW

[1231]

10 PRESIDENT: Yes, thank you, Colonel.

COL GRIFFIN: Sir, that completes the evidence we have for you today. There are matters that we're working together with 633 after yesterday's events and also with the New South Wales Police for further evidence from them. I seek an adjournment at this point in time to return not before 15 10 o'clock tomorrow.

PRESIDENT: Do we need the video-link again or have we exhausted that
- - -

20

COL GRIFFIN: We may use it again after tomorrow, sir, but not tomorrow.

PRESIDENT: Very well. 10 o'clock tomorrow.

25

COL GRIFFIN: Thank you.

30 **MATTER ADJOURNED AT 1232 UNTIL
WEDNESDAY 16 AUGUST 2006**