

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

1023 MONDAY 21 AUGUST 2006
DAY 25

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.....  Date21/08/06.....(President)

Signed.....  Date 21/08/06.....(Recorder)

Signed.....  Date 21/08/06.....(Transcriber)

Signed.....  Date 21/08/06.....(Transcriber)

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NTS

5 PRESIDENT: Yes, thank you ladies and gentlemen, please be seated.
Good morning Colonel.

COL GRIFFIN: Good morning Mr President, good morning Members.
We return with Soldier 14 part-heard.

10 PRESIDENT: Perhaps he might be resworn.

COL YOUNG: Mr President, I wonder if I might make an application on
behalf of Martin and Judy Kovco before we proceed this morning.

15 PRESIDENT: Yes, certainly Colonel.

20 COL YOUNG: In short form that application is that Soldier 14 be
available next Monday, 28 August for cross-examination by LTCOL
Holles who appears for Judy and Martin Kovco. In support of that
application, I wish to make the following submissions: last Friday we
stood and observed a minute silence for fallen Vietnam Veterans, you very
thoughtfully included Jake in that respectful time and that's very much
appreciated by Jake's parents. You will have noted that Jake's mother has
25 been here for each of the Board's sitting dates and that's because she
wants to know what happened to her son who died in circumstances
attracting the attention of the New South Wales coroner.

30 Apart from that dreadful loss, she was visited with the further stress of
Jake's body being mixed up when it was to be repatriated to Australia. To
compound things, the investigation into that loss was carelessly left at a
public place by a senior officer and made its way to a journalist. What
have those things got to do with this application, everything in my
submission because Martin and Judy Kovco have the right to know what
happened to their son as best this Board can determine.

35 The evidence last Friday that Soldier 14's DNA was found on the gun that
was discharged and which killed their son is critical and it needs to be
explored in some detail. They believe that can best be done by their own
counsel being given the opportunity of cross-examining Soldier 14. In
40 doing so, they are not necessarily alleging anything sinister in this new
evidence, but it's a question that cries out for detailed examination and it
may require further expert evidence on transference of DNA, or perhaps
the recall of Michelle Franco who gave evidence on Friday.

45 They have confidence in their own counsel because of his extensive trial

5 experience and that's why they wish to give him the opportunity of asking questions. In seeking this consideration of recalling Soldier 14 next Monday there will be no downtime as far as the Board is concerned, the Board can stick to its timetable. Even if there were to be downtime, that would be insignificant compared to the loss that Jake's parents have suffered and their absolute right to leave this Inquiry knowing all avenues have been explored. They are entitled to all answers this Inquiry can give them.

10 Mr President, Members, those are my submissions on behalf of Mr and Mrs Kovco. As far as my position representing Jake's interests are concerned, it would be my preference if the application is granted to ask questions of Soldier 14 following LTCOL Holles's examination. If the Board does not see fit to grant the application, I am prepared to ask
15 questions today. Those are my submissions, Mr President.

PRESIDENT: Yes, thank you. LTCOL Wilkinson, any comment?

20 LTCOL WILKINSON: No, sir.

PRESIDENT: LTCOL Green?

25 LTCOL GREEN: Thank you sir. Sir, I oppose the application. Soldier 14 is very anxious to return to his Unit, sir. There has already been more than one week delay before he's been allowed to return. You will probably appreciate, sir, that the stress on Soldier 14 over the last few days has been enormous. I expressed my concern about these matters to Counsel Assisting on Friday and with Counsel Assisting, arranged to take steps over the weekend to ensure Soldier 14's welfare and benefit. Suffice
30 to say, sir, they were not insignificant steps, they were significant steps.

The time delay is continuing. The more this time delay continues the less of a chance Soldier 14 has to return to his unit before the unit is withdrawn from theatre. Sir, one more week would be intolerable.
35 LTCOL Holles is not here, we accept that. But COL Griffin is here, LTCOL Berkley is here, COL Young is here, all of whom would seem to have similar interests. Sir, I could perceive in your attitude on Friday you were mindful of continuing his cross-examination on Friday to its finality.

40 I, not unnaturally, was mindful of that and in the application that this matter roll over to Monday I did not strenuously oppose it. That was done in fairness to all the other parties. But what the application now is we not only roll over to today, we roll over one further week. With respect, sir, that is intolerable.

45

PRESIDENT: Thank you. LTCOL Berkley.

5 LTCOL BERKLEY: I support the application. I understand the reasons
given by COL Young. However, I'd still seek to complete my cross-
examination of the witness today. In other words, I would seek to cross-
examine the witness today as planned but support the application for the
10 soldier to be available. I have sympathy naturally with the family's point
of view and this is an important matter. Unfortunately, this soldier finds
himself involved in that important matter. That doesn't change the
importance of the matter or the importance or satisfaction of Jake's mum
and dad and indeed his next of kin who I represent obtaining some
satisfaction at all.

15 All avenues have been explored. As we all know, all counsel have their
own style, and styles change according to the individual counsel. I don't
know what LTCOL Holles is going to ask. I filled him in on Friday
evening on a telephone conversation as to where we were at with the
evidence just as a matter of courtesy between counsel. But I would like to
20 pursue my cross-examination today. But other than that, I support the
application that the soldier stay and that LTCOL Holles be here for it.

PRESIDENT: Thank you. Is there any chance that LTCOL Holles could
be with us later this week or at some time earlier than Monday?

25 COL YOUNG: It's my understanding that no, there's no chance. There's
a possibility on Friday, but the indication is that certainly Monday.

PRESIDENT: Is he away on circuit somewhere? We all know what he
does on his day job.

30 COL YOUNG: He is on circuit, yes, in the country.

PRESIDENT: COL Griffin.

35 COL GRIFFIN: Mr President, there are significant competing interests
underlying this application. LTCOL Green's response refers to the stress
and the other aspects relating to Soldier 14 in terms of his operational
deployment and the effects on him of this proceedings and the delay. On
40 the other hand, there is the interests of the family and Mrs Judy Kovco's
interest in the complete examination of this material by her counsel who
unfortunately is not available to the Board at this point in time.

PRESIDENT: And perhaps counsel who brings with him a particular
expertise that might not be available generally.

45

COL GRIFFIN: One of the concerns is that, as you would appreciate, Mr President, perhaps in another forum bound by the rules of evidence and procedural requirements where interests are at stake, for example, in a criminal or civil court proceeding, there may be other imperatives that would require other counsel to be made available and assist. But you may consider that after some months in these proceedings there's little to be gained by attempting to bring in another counsel to assimilate the vast body of evidence that's been received and that LTCOL Holles has been active in a line of questioning in respect of material and matters that touch on this witness's involvement.

In the circumstances, in my view, it's open to you to accept that the competing interests are such that one week of delay taken in the totality of the Board's activities to date is not disproportionate. Support mechanisms are in place to assist Soldier 14. The deployment does not finish for some time yet. In my submission there is nothing of significant weight that would weigh against you supporting or approving this application and that in all the circumstances I do not oppose, indeed I support the application.

PRESIDENT: Thank you. The Board will leave the boardroom shortly to consider our approach and we'll come back in five minutes' time.

ADJOURNED [1034]

RESUMED [1039]

PRESIDENT: The Board proposes to grant the application with a few provisos and a few comments. If this was a criminal trial the application of course would not be entertained whatsoever. But it's not a criminal trial. It's a search for what happened to Jake and the circumstances surrounding that. That colours our considerations. We're mindful of the stress of simply giving evidence at these proceedings. Any witness is stressed; it's a given.

We would have preferred that this matter be dealt with today. That is not simply possible. We regret the absence of LTCOL Holles. We understand why it is so. I would ask that if it be possible if LTCOL Holles does become available say Friday or any other day this week, that Soldier 14 be interposed and his evidence be dealt with as soon as is expeditiously possible.

That decision has been made as a balancing act, balancing what I will call

the search for the truth as opposed to the effects on Soldier 14. So be it. Our proposal is that we proceed with the matters today, in other words, allow LTCOL Berkley to continue, and then we'll proceed from there.

5 LTCOL GREEN: Just before you do that, sir, if I might make a submission on that proposal. Sir, you indicated this was a balancing act. Obviously your concerns are a balance between finding the truth and your concerns with Soldier 14. In my submission in that balancing act it is necessary to consider Soldier 14. The proposal is, as I understand it, that
10 Soldier 14 be cross-examined, and he was on Friday, be cross-examined today, Monday, be cross-examined the following Monday. That, with respect, sir, is unfair.

You'll notice that COL Young made his application before Soldier 14 was
15 resworn. I understand COL Young's application to be that the whole of the cross-examination or further cross-examination be deferred until next Monday. Sir, to allow cross-examination last Friday, today and then again on Monday is inappropriate in my respectful submission. Sir, if there is to be further cross-examination - and you indicated that there is to be further
20 cross-examination - my application is that it be all done on the same day rather than just in piecemeal fashion as a means of the balancing act in fairness to Soldier 14.

PRESIDENT: COL Young, any comment that you want to make?
25

COL YOUNG: I have no comment on that, sir.

PRESIDENT: LTCOL Wilkinson.

30 LTCOL WILKINSON: No, sir.

PRESIDENT: LTCOL Berkley.

LTCOL BERKLEY: Yes, sir. I won't be available next Monday on the
35 same situation as LTCOL Holles; it's a matter that won't go away. My client has known about it. I've mentioned it informally to Counsel Assisting, my client gives me permission on the original plan. Next week was going to be basically three days of SLP shooting and some returns of summonses. I know that there is Soldier 39 coming back. In fact I've
40 even spoken to LTCOL Holles. What he says will really depend on what happens on Wednesday with another soldier who will be called to give evidence more senior than Soldier 39.

I don't see the basis of my friend's repost to the Board's decision. It
45 seems to me that I have some simple questions to ask the witness. I'm

5 here, he's here and that's what befalls him now. The Board's balancing act, as I understood it, was on the basis that he will unfortunately have to be delayed on the balance of both convenience and fairness. Nothing, I would have thought, that I could say to him today would affect what LTCOL Holles might say to him this Monday. I'd like this opportunity on behalf of Shelley and I'm here to take it.

10 I would have thought that I'd be given that opportunity and I thought it was clearly in the Board's mind that that's what would happen when the Board took that decision. He's a witness after all. There's nothing more onerous on him than being asked further questions by the interested party today. He's here, he's in the witness box ready to go. I seek that leave to be able to continue. I won't get that opportunity.

15 PRESIDENT: Thank you. COL Griffin .

20 COL GRIFFIN: Sir, in my submission the witness will have a week between any further re-examination today and the further re-examination next week. He's here. You have the time now to hear that evidence. Its further delay as we would need to have other witnesses brought forward in the circumstances, although we do have some today, but in my submission it's appropriate for the further re-examination by LTCOL Berkley and COL Young, if COL Young wishes to today, but at least LTCOL Berkley to proceed with his examination.

25 PRESIDENT: Thank you. Effectively to grant LTCOL Green's application will be to disadvantage Shelley. We're not about to do that. The matter will proceed forthwith. The witness might be sworn.

30 COL GRIFFIN: Thank you, sir.

<SOLDIER 14, recalled and resworn [1045]

35

<EXAMINATION LTCOL BERKLEY

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

We've spoken once before and as a result of further evidence you're back here to answer questions. You understand that, don't you?---Yes, sir.

45 Now, I just want to take you back to the immediate aftermath of the

shooting; that's the first place I want to take you. You were in an adjoining room?---That's correct, sir.

5 You banged on the wall to tell the guys in Jake's room, Soldier 17, Soldier 19 and Jake, to keep the noise down?---I didn't bang on the door, sir, I just yelled out to them.

10 I thought you might have banged - you didn't bang on the wall?---No, I wasn't near the wall, sir.

But at the time I think another soldier in your room had asked you to go and tell them to shut up and you decided, "Well, why should I get up, I'll just yell at them"?---That's right, sir.

15 When the shot rang out you immediately went to that room, to Jake's room?---Yes, sir.

20 When you got to Jake's room you would have had to walk how many feet from your doorway to his, feet or metres, however you describe it?---It was approximately three metres, sir.

Was there someone already standing at the door outside the door when you got there?---I'm unsure of that, sir.

25 When you got there did you notice other people either approaching the room or being in the proximity of the room?---I thought that I was the first person in the room, sir, and I knew that there were others around me. However, I wasn't really focussing on anyone around me, sir, just inside the room, sir.

30 You didn't see a soldier at the doorway who had just opened the door?---The door was already opened when I went there, sir.

The door was open. Did you enter the room?---No, sir.

35 You made your observations of what happened inside the room from a position outside the door?---Yes, sir.

40 Did you enter the room at any time after the shot was fired?---To the best of my knowledge, sir, no, I've never been in that room after that shot was fired.

Did you see Jake's 9 mm pistol on the floor of that room?---No, sir.

45 You had no opportunity to touch that weapon after the shot was fired?

---That's correct, sir.

That's your evidence, that is what you swear to be your evidence?---Yes, sir.

5

I just want to work backwards from there. At callsign D you spent about an hour on duty with Jake?---Yes, sir.

10 That was the last of your duties on that particular day, 21 April 2006?
---Yes, sir.

You were at that position, callsign D before Jake arrived to take up duty there?---Yes, that's right, sir.

15 Had you been on duty and in the same room or proximity to Jake at any time at any other place that day prior to being at callsign D?---Yes, sir. Earlier on in the day approximately - can I just have a look at my statement, sir?

20 Yes?---About 1000 hours that - in the morning of that day, sir, we were on callsign I together, sir.

25 All right?---That wasn't obviously for the whole duration of my time there, sir, it was for most of it. I'm unsure how long, but it wasn't the whole - we didn't do the shift together, sir.

At callsign I, did you observe Jake manipulate his weapon to go to any degree of weapons readiness?---I can't remember seeing him do it, sir.

30 Would you accept that the degree of readiness at callsign I is degree of weapon readiness N?---That's correct, sir.

35 You didn't see him manipulate any of his weapons to achieve that degree of weapons readiness?---No, sir.

You gave in your sworn evidence on Friday that you have never touched Jake's pistol or his magazines, is that true?---That's correct, sir.

40 That's your evidence?---To the best of my knowledge, yes, sir.

LTCOL GREEN: I object to the question, sir.

PRESIDENT: On what basis?

45 LTCOL GREEN: On the basis that it was as summary and there was one

qualification that the witness gave in respect to that summary which my friend hasn't properly put to him.

PRESIDENT: Well, he's given the qualification, hasn't he?

5

LTCOL GREEN: No, sir, he hasn't given the qualification. I just told my friend of it.

LTCOL BERKLEY: Yes, I'm grateful to my friend.

10

When you were issued with a pistol, you were also issued with a number of magazines, aren't you?---That's correct, sir.

Those magazines are what's called part of the completed equipment schedule for the weapon, aren't they?---Yes, that's correct, sir.

15

They travel - it's obviously after the person who the weapon is issued to, that those magazines travel with the weapon generally, don't they?---It depends on the weapon carrier, sir.

20

Yes, of course, as I just said, but it would be logical if you're going to be called upon to use the weapon, you're going to have some magazines readily available?---Yes. Yes, sir and those holsters come with a magazine pouch on the holster.

25

When was the last time you were at a range prior to 21 April?---I couldn't answer that question, sir.

Could it have been more than a week, more than two weeks, more than three weeks?---Sir, I have no idea.

30

You mentioned in evidence, in sworn evidence on Friday that you may have filled magazines at the range and you may have filled pistol magazines, do you recall that?---Yes, I remember saying that, sir.

35

But you can't tell us how long before or which magazines that range practise in filling occurred?---I was just speaking in general that's what we do sometimes at range practices, sir.

I accept that, I think everyone's had their job of filling various magazines at ranges, but you don't know how long before?---I've no idea when we went to the range before that time, sir.

40

Was it was prior to your deployment to the embassy?---Sir, I have no recollection of before that time. I can't remember when we went to the

45

range.

How long had you been at the embassy as at 21 April?---Beg your pardon, sir.

5

How long had you been at the embassy at 21 April 2006?---Around about between five and seven days, sir.

How long had Jake been there?---The same time, sir.

10

Came together?---Yes, sir.

There was no range practise in that period, was there?---I cannot be certain of that, but I'm pretty sure it was no, sir.

15

Prior to arriving at the embassy, you can't be certain when you had a range practise involving the 9 mm self-loading pistol?---That's right, sir.

It could've been a month or more?---I - I just can't remember, sir.

20

Certainly not so recent that you would remember it, is that a fair way of saying it?---Yes, that's correct, sir.

You say that on one of the days in that very short time that on one of the days you were at - as I understood your evidence you were at position D, callsign D and you said that you saw that Jake was trying to silently cock his weapon?---Sir, I said that he did cock - silently cock his weapon, sir.

25

I think your evidence was he didn't appear to force the weapon over any obstruction, that it all went smoothly?---Yes, sir.

30

Now, we've had a demonstration here from supposed experts on the weapon that deny that the weapon can be silently cocked, what do you say about that?---Can you - sorry - - -

35

LTCOL GREEN: I object to that question, sir.

PRESIDENT: On what basis?

LTCOL GREEN: I don't think that's right.

40

PRESIDENT: I'm sorry?

LTCOL GREEN: I don't think the question is right. We've had the demonstration, I was present and I saw the demonstration.

45

COL GRIFFIN: I beg your pardon, I didn't hear that last comment.

5 LTCOL GREEN: I was present and I saw the demonstration and my friend LTCOL Berkley may have had a different impression than I have, but I don't think that's right.

LTCOL BERKLEY: I can go around it another way.

10 You've never seen silent cocking of a pistol before, had you?---No, I've never seen anyone do it before then, sir.

15 So what do you say that you noticed Jake actually doing with the weapon?---He stripped the weapon, sir. He - once the weapon was stripped, he inserted the round into the - the barrel and put the weapon back together, sir.

Are you familiar with the weapon?---Yes, sir. I'm qualified.

20 Yes, if you place the slide back onto the weapon wouldn't the movement of the slide backwards pick up the round and push it against the ejector and it would come out of the ejector port just in the motion of locking the slide in?---I'm not sure, sir. I've never done that with the weapon, sir.

25 So why did you use the term "silent cocking"?---Because that's what it was, sir.

30 Did Jake say I am silently cocking my weapon?---No, sir. The silent - the term "silent cocking" is used to describe - to say to put a round in the chamber without actually making the noise of cocking the weapon, sir. Therefore it is silently cocking the weapon, sir.

35 Would you agree that just putting the slide back on the weapon and moving the slide backwards so that it catches into its normal - it seats itself into its normal location there has to be sound made?---Yes, sir, but it's not as loud as actually cocking your weapon, sir.

You heard the sound that Jake's weapon made?---Yes, sir.

40 Did you see him force the slide - the movement of the slide at all?---No, he didn't look like he forced it at all, sir. Like I said, it looked pretty smooth.

45 If you were going to load a 9 mm self-loading pistol, you would hold it in your last hand by the grip?---Yes, that's correct, sir.

You would remove a magazine, holding the magazine body, place it in the - inside the - - -?---The magazine housing, sir.

5 - - - magazine housing and then you would strike the bottom of the magazine base plate so that that magazine was seated home?---Yes, sir.

Then to load the weapon you would use your non-master hand, manipulate the slide backwards and let it go forward?---That's right, sir.

10 Would you expect that DNA might be found on the grip of the pistol and that DNA would belong to the person who's actually loading the pistol? Would you expect that person who loaded the pistol for at least some time their DNA might be found on that pistol grip?

15 LTCOL GREEN: I object to that question, sir.

PRESIDENT: On the basis?

20 LTCOL GREEN: My friend's put it on the basis from what you've heard. I don't think this witness has heard much about DNA at all.

LTCOL BERKLEY: I'll withdraw it. Would you expect that your DNA would be found on the pistol grip?

25 LTCOL GREEN: I object to the question, sir.

LTCOL BERKLEY: I press it.

30 PRESIDENT: You've got to set out the circumstances. Is this when he's silently cocking the weapon or loading the weapon?

LTCOL BERKLEY: All right. If you were loading a pistol that was issued to you?---Sorry, sir?

35 If you had a pistol issued to you and you went to load it, let's just work on that basis.

LTCOL GREEN: I object to the question, sir.

40 PRESIDENT: On the basis?

LTCOL GREEN: This witness has no capacity to answer that.

45 LTCOL BERKLEY: I press it. My friend is just being overprotective.

He knows what I'm getting to.

PRESIDENT: I'm going to allow it.

5 LTCOL BERKLEY: Thank you, sir. You'd expect your DNA to be on the pistol grip, wouldn't you?---Yes, I would. I'd also expect fingerprints, sir.

10 Would you expect the DNA?---Yes, sir.

If you withdrew a magazine from the pouch would you expect that your DNA might be found on the body of the magazine?---Of course I expect there to be DNA wherever you touched it, sir.

15 If you placed that magazine into the magazine housing and pushed the magazine home, would you expect your DNA to be on the base of the magazine?---Of course, sir.

20 If you then using your non-master hand manipulated the slide by pulling it back and letting it go forward, would you expect your DNA to be on that slide, that weapon's slide?---Of course, sir.

25 When the weapon is inside its holster the slide fits tightly against the body of the holster, doesn't it?---Depending on what holster you're using, sir.

Let's just say the leg holster. Let's just say the leg holster of the pattern that Jake had, you would expect that the slide would sit firmly against the material on that holster; that's what you would expect?---Yes, sir, it's reasonably firm.

30 Yes, it is reasonably firm. It's fair to say that the weapon isn't held loosely and therefore its chances of coming out are lessened?---I don't think there's a chance for it coming out, sir.

35 Even without the straps on, it is a two-handed movement generally to withdraw the weapon, isn't it?---No, sir.

40 Therefore, it must depend on how firmly the holster is anchored?---No, sir, it should be a one-handed movement to draw the weapon.

But on the basis that the holster is anchored, otherwise it would come with the weapon, wouldn't it?---I'm unsure of what you're saying, sir.

45 In any event, the slide is generally against the fabric of the thigh holster, isn't it, when that weapon is in the holster?---Yes, sir.

5 When of course you're in close proximity to Jake there's very little chance of you touching his weapon unless it's withdrawn, or touching the slide or coming into contact with the slide unless it's withdrawn from its holster; you'd agree with that?---Yes, sir.

10 Now, you told us as a theory that there's a possible secondary transfer. You mentioned this as a theory as to how your DNA may have got onto Jake's weapon was that you both used a megaphone on 21 April. Do you recall telling us that?---Yes, sir, that is one of the many possibilities.

Well, did you use the megaphone that morning?---Yes, sir.

15 Did you log its use? Did you have to log its use?---No, sir, you didn't log its use.

20 You just get on the megaphone every now and then?---Whenever - yes, whenever you need to get a vehicle to move away or personnel to move away.

25 Say you were getting people to move away, what would you say?--- Depending on the vehicle, you'd sound the siren, not always, generally you would. "You in the white vehicle, please move your vehicle away from this location." There was no set wording, sir, it was just depending on what you said.

Do you have any memory of Jake using the megaphone on 21 April? ---Yes, I do, sir.

30 How many times did he use it?---I can't answer that, sir.

35 Do you have any memory of whether he used it with his right hand or left hand?---I can't - it's not something I really took notice of at the time, sir, but I'd say he used his right hand.

I'm just trying to exclude some things for us?---Yes.

Now, you say he would have used it or he did use?---No, he did use it, sir.

40 That was during that one hour that you were at callsign D together? ---That's right, sir.

45 During that one hour did he have cause or did he at all - I'll make the question - withdraw his pistol from his holster?---No, sir, he didn't get his pistol out at all, sir.

Would you agree with this: if that is your DNA on the pistol grip, if that is, would that indicate to you that you'd actually touched Jake's weapon?

5 LTCOL GREEN: I object to that, sir. This witness can't answer those questions.

PRESIDENT: LTCOL Berkley.

10 LTCOL BERKLEY: Yes, the witness can; it's a simple proposition. Would it indicate to him, firstly, him, not to anyone else but him, would that indicate to him that he's touched Jake's weapon if it's his DNA.

PRESIDENT: I'm going to allow it.

15 LTCOL BERKLEY: Thank you?---Sir, like I stated, I know that I've never touched his weapon, to the best of my knowledge. So no, it doesn't indicate that, sir.

20 If it was your DNA on the magazine, it might also indicate to you that you had had one of those magazines, you'd touched one of those magazines or come into contact with one of those magazines. Would you agree with that?---Not necessarily, sir.

25 If it was your DNA on the base plate, would it indicate to you that you had touched the base plate?---Sir, I'm not obviously a DNA expert. But from what I picked up the other day it was the words "secondary transfers" was used. So therefore, it wouldn't indicate to me that I'd touched his magazine, sir.

30 What about the slide, the slide hidden against the fabric of the holster, would it indicate to you that you touched the slide?---My answer is the same for that, sir.

35 What do you understand by "secondary transfer"?---That if I touch an object, Jake may have touched the same object and then manipulated his weapon after that some time, therefore, put my DNA and his on the weapon, sir.

40 About how long before the end of shift do you think Jake used that megaphone?---I can't be exact with that, sir, but we were using it the whole time that day, just not constantly on the megaphone, sir. But we were using it throughout the whole duration.

45 You never saw Jake's hand go to his pistol grip at all, did you?---No, sir.

You didn't see Jake's hand on the slide of his weapon?---I don't recall seeing him do that, sir.

5 Because to put his hand on the slide of the weapon it would have to be withdrawn from the holster. Do you agree with that?---That's right, sir.

And he just didn't do that?---No, I didn't observe him, sir.

10 Did you hear the evidence of Ms Franco on Friday?---Yes, I did, sir.

You sat through that evidence?---Yes, sir.

15 What do you say to the proposition that secondary transfer must happen reasonably quickly if it's going to be successful?

LTCOL GREEN: I object to that, sir. It's a ridiculous question.

20 PRESIDENT: I don't know about it being ridiculous, but I don't remember the words "reasonably quickly".

LTCOL BERKLEY: Do you say that Jake had been in contact with any object on that day, on 21 April, that you had touched which would allow a secondary transfer onto his pistol?---Yes, sir, there was a lot of objects.

25 When would Jake have had to draw his pistol on that day for any purpose? Take us through it?---Obviously when he was unloading his weapon, sir.

30 Callsign D you'll agree was the last place you were at duty together; you agree with that?---That's correct, sir.

You touched a megaphone jointly there and you've proffered that as a possible factor for secondary transfer of your DNA?---Yes, that was one that come to mind at the time, sir.

35 Any others come to mind since then? You've had the weekend to think about it?---Yes, actually, sir. There's a phone inside that we used to maintain communications between different security points. There's also a military radio that is used to transfer obviously more secure - transfer communications along more secure means, ie calling in bomb reps, mortar reps.

40 They would be logged in, would they, bomb reps, mortar reps?---Yes, they should be logged in, sir. Obviously that is an occurring thing over there, sir.

45

How many on 21 April, do you recall if there were any?---No, I don't, sir.

5 If they were, that would be logged in though?---That's right, sir. Obviously you'll hear some may go off. It doesn't necessarily mean that you called them in. If you're unsure of a location of an explosion it probably does more harm than good to give a false location. So not all the time, sir.

10 Where were you before callsign D with Jake? On 21 April what other locations were you at on duty?---Is that where I was before that location by myself or the last time I was with Jake, sir?

15 The last time you were with Jake was at D; you'd agree with that?---Yes. You spent an hour on duty together at D?---Yes.

20 Where were you at any other location on 21 April with Jake? What other callsigns?---Callsign I, sir.

How long were you there with him for?---I beg your pardon, sir?

25 How long were you there with him for?---I'm uncertain of that, sir. He was there for quite a lot of the time I was there. I was there for - I'm not sure if I can say that. He was there for approximately between 30 - 45 minutes.

30 Had you been there longer than him?---That was - that was my shift, sir. He was coming out just to help me out and chat, sir.

So he popped over for a chat for 30 to 45 minutes?---Yes, sir.

35 He wasn't on duty then? It wasn't his specified location?---No. No, he - he at the time was on callsign E which in effect is also callsign F, therefore he was - instead of being on callsign F, he come out to spend obviously that time with me, helping me out and just chatting, sir.

40 He had no reason to touch anything at callsign I that you might have touched?---Once again, sir, there's plenty of things that he could've touched that I did, there's ropes or sorry, gates where you grab it in the same place every time to manoeuvre it. Lots of things, sir.

45 Did you see him manipulate his weapon after touching - firstly, I'll take it slowly. Did you actually see him touch anything around callsign D that you would have touched, something that you would have operated, be it

machinery?---Callsign D, sir?

I'm sorry, callsign I?---I'm sure I did, sir, but I can't really - that's something you don't really pay attention to at the time.

5

Did you see him at callsign I manipulate his pistol, do the changes of degree of weapon readiness or otherwise touch his pistol?---To the best of my knowledge no, sir.

10

You see you can understand can't you that if it is your DNA - put it this way, if it is your DNA on the body of the magazine, if it is your DNA on the base of the magazine, if it is your DNA on the slide and equipment magazine it would indicate more than just you coming into contact with the pistol, wouldn't it?

15

LTCOL GREEN: I object to that question, sir.

PRESIDENT: I think it's a legitimate question.

20

LTCOL GREEN: This witness can't answer that.

LTCOL BERKLEY: Yes he can. I press it, sir, anyway.

PRESIDENT: I'm going to give him the opportunity of trying.

25

WITNESS: Can you state the question please?

LTCOL BERKLEY: It's not as if you've had some dandruff and it's fallen on to the butt of the pistol, you know what I'm talking about?

30

---Yes, sir.

I'm talking about contact with the body of a magazine that sits inside - the magazine, it sits inside the grip, not exposed to the outside, if you know what I mean. Do you understand that?---Sir, obviously to understand that it is a very small area and - well obviously you're always grabbing things and - you know, shaking hands, whatever, doing that, sir. So there's plenty of times that we've - that I've directly touched him. I mean I - like I said, I've never seen - I didn't see him touch his weapon that day, so I really don't know how it got on his weapon, sir, I can't answer that.

40

You were joking around just before you left the OP?---That's right, sir.

So when did the joking start. I'm sorry, I've said something incorrect there as to the location. You were joking around before you left callsign D? You'll need to give a direction on that, sir. You were joking around

45

before you left callsign D, right?---That's right, sir.

About how long before you left callsign D were you joking around?---I think it was like just - just before we started to leave, sir.

5

What about this proposition; could you have asked him to have a look at his pistol and just gone through a load and unload procedure and given it back to him, would that have happened?---No, sir.

10 You couldn't have loaded on him as a joke?---No, sir.

It was always on his person?---That's right, sir. He didn't get it out at all, sir, that day.

15 It wasn't out and you didn't touch it at all, you didn't physically put your hands on it, is that your evidence?---That's - yes, sir, that's right.

If it was your DNA, if it was your DNA on that pistol, say on the magazine, you can't explain how it got there?---That's right, sir.

20

If it was your DNA on the pistol grip, you can't explain how it got there? ---That's right, sir.

If it was your DNA on the slide, you can't explain how it got there? ---That's right, sir.

25

Would you accept that the evidence on Friday causes, despite Shelley's interest as what may have happened to that weapon prior to it getting back into Jake's room, you'd accept that?---Definitely, sir, of course.

30

You've had the weekend to think about it, haven't you?---I knew that before the weekend, sir.

You see wouldn't it have been a simple and easy explanation to say I said to Jake show us your pistol?

35

LTCOL GREEN: I object to that, sir.

LTCOL BERKLEY: I press it.

40

PRESIDENT: On what basis?

LTCOL GREEN: I think LTCOL Berkley was trying to ask the witness to say that he would have been better off saying another thing.

45

LTCOL BERKLEY: It works both ways.

PRESIDENT: I'm going to allow it.

5 LTCOL BERKLEY: Wouldn't it have been a nice simple explanation to say Jake's asked me or I've asked Jake how's your pistol going or he's showing you the pistol. I mean it's not the first time soldiers have ever done that whilst on duty together, is it?---Sir, may I state there firmly that I did not touch his pistol that day.

10 You won't be changed - you won't be shaken on that evidence?---No, sir.

On the day before or the day before that, the 20th or the 19th, did you touch Jake's pistol?---Sir, those days obviously nothing happened on them days, so they're pretty irrelevant. I have no memory at all of those days. I'd say no.

15 So you didn't touch it on the 21st and you have cause to remember the 21st because of the terrible outcome of that day, that's why you remember the 21st?---That's right, sir.

You didn't touch his pistol, you remember that specifically, but you simply have - if it is your DNA you simply have no explanation. No explanation as to how it could have got onto the places in which some people say it was detected or in which a witness has said it's been detected?---That's right, sir.

25 Now, I know you've spoke to Shelley on the last occasion we were here? ---That's right, sir.

30 That was the first opportunity you've had to speak to her face to face? ---That's right, sir.

You hadn't spoken to her prior to arriving at this Board of Inquiry? ---That's right, sir.

35 Did you want to speak to her prior to arriving at the Board of Inquiry? ---Of course I wanted to speak to her. I wanted to say all that - you know you'd want to say, but also I - I was under the impression that - the false impression a the time that - you know people were telling me obviously I was out, people were out after me, they thought I was responsible and I thought she's one of those people. So the last thing that I wanted to do was have to listen to someone accuse me and say things like that to me when I knew that I hadn't done anything wrong, sir.

45

Well do you have something to hide? Are you hiding anything?---No, sir.

You maintain you didn't touch the pistol?---That's right, sir.

5 When you left call sign D, Jake actually left that moment before you that position?---That's right, sir.

I think you've seen CCTV footage in which you come out - where you're seen on the CCTV footage with Jake first out the door, someone else and then you. Is that your recollection of the CCTV footage, because we've got it here and we can show it to you if you need to see it again?---I think maybe I'm in the middle, sir.

15 You are in the middle?---I think so, maybe.

Do you recall actually that view that's shown on that CCTV footage from the embassy? Do you recall walking out of the front doors of the embassy with Jake?---Sir, obviously I've seen the footage. So it's - I mean, it would be easy for me to automatically assume that is part of my memory, but I have no - I still don't remember that happening.

20 When you went outside and went back towards your lines, did you go back as a group?---Like I said, from my memory, sir, I don't really remember any of that. From the footage from what I've seen it looked as if we walked the three of us together. Then I think I went past into the accommodation first and it looked like they hung around for a bit. I'm not sure what they were doing.

25 That's when you went back to your room?---Yes, from the footage it looks like I just kind of - from the ring around just kind of ducked straight in.

30 Did that jog your memory at all?---No, sir.

35 But you do recall being in your room for some time prior to the shot ringing out?---Yes, that's right, sir.

40 In that time in the room did you hear the music playing loudly or the singing from virtually when - from shortly after your arrival back in the room or was it at some other time?---Sir, I think my only - from what I remember, it all kind of - in my memory it all sort of starts from when I was sitting on the computer and when Soldier 20 asked me to tell them to quieten down. At that point the music wasn't actually annoying me at all. So therefore, it's something that was - it's irrelevant in my memory. Obviously it was just another day after work, the music wasn't annoying me at all. So whatever happened before that I can't remember when the

music started.

It was only Soldier 20 that was annoyed with the music?---Yes, sir, he was the only other person in the room.

5

You were working on your computer at the time?---That's right, sir.

Sending emails, doing that sort of thing?---I think I might have been putting a movie together, sir, something like that.

10

Do you remember that specifically?---I don't remember specifically what I was doing but I'd say that would be the best guess, sir.

Of course when this incident happened and Jake was fatally wounded I accept that there might be a period of shock and wondering straight after that. Did you examine your memory after this incident? Did you actually say, "Well, what can I remember of that day"?---Probably not, sir, no.

15

When the SIB asked you to make a statement, did you examine your memory then?---I think I just answered questions obviously to the best of my knowledge at that time, sir.

20

When you made an affidavit in June of this year, did you examine your memory then?---Sorry, what was the affidavit, sorry, sir?

25

That's a document that's C19. I ask that it be produced to the witness? ---That's the amended statement, sir. Is that right?

Yes?---Yes, sir.

30

For want of a better term, yes. Had you examined your memory at that stage as to what you can remember Jake doing on 21 April?---No, sir, that wasn't really to do with that at all. What it was was just trying to clear up what I was saying about the statement, just trying to make things a bit more clear.

35

As at June you knew that certain parts of your SIB statement didn't appear to be what you wanted to say?---Just quite incorrect in some areas, sir.

40

But you knew that from your memory?---No, I looked at the statement, sir, and obviously it was pointed out to me and I looked at it and went, "You know, you're right, that's wrong." So I cleared it up, sir.

45

Do you recall what part of your statement - and I don't want to talk about the buddy system - but is there any other part of your statement other than

the buddy system that you say through your memory is wrong? This is your SIB statement I'm talking about?---I'm not too sure exactly what you're asking, sir.

5 Have you got your SIB statement with you?---Yes, I do, sir.

Can you go to a paragraph in that statement and tell me what's wrong?
---For example, the last time I was questioned it was talking about how I stated that Jake didn't have the time to unload, because that's what it said
10 in my proper statement. However, I was asked a question here about it they didn't actually look at what I'd said in the second statement. If I may read that out, sir.

15 Are you referring to the SIB statement or to your affidavit?---The affidavit, sir.

What paragraph number in the affidavit are you referring to?---11, sir.

20 I'll just find that. Other than changing it to position D - - -?---Sorry, 12, sir.

I suppose to edit it for current purposes from the first line you've got position D there. Is that the line that commences:

25 *On leaving position D with Jake I did not buddy his weapon clearance, nor did I see him clear his weapons at the unload bay.*

Is that that paragraph?---I was actually talking about the end of - the sentence that starts at the end of line 5, sir.

30 Read that one to me?---

35 *There is a possibility that Jake could have unloaded his weapons from the other side of the door which was out of my view.*

40 See, that's what I was trying to clear up, but I didn't say that he didn't do it. I was trying to say that I didn't see it. I don't think that he had the time to do it, but there's the possibility that he did do it because he was out of my view. However, I was getting asked questions saying that I didn't do it and saying - sorry, saying that - going off the first statement - and what I was trying to do was trying to clear things up for everyone here. But obviously no-one was paying attention to the second - the affidavit, sir.

45 So what you're saying is that you don't know what Jake did on the other side of the door because it was out of your view?---Yes, that's correct.

In your SIB statement I think you're referring to about paragraph 14 on page 4 of 7. It says:

5 *I did not see PTE Kovco clear his weapons at the clearance point and I am sure that he could not have done as he entered a location as I walked around the corner and began to clear mine.*

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

10

Is that the one you wanted to clear up?---Yes, sir, just - that's why I've made the second statement, just to clear little things up like that that don't exactly reflect my exact - my words, sir.

15

Anything else other than the buddy system?---From my memory, no, sir. I mean, I'd have to go through the - I'd have to read it all over.

Now, you've lost a friend in Jake, haven't you?---Yes, that's right, sir.

20

You used to drink together on the way home from work because he'd drag you in I think?---Yes, sir.

And have a beer with him. Then you end up on deployment together? ---That's right, sir.

25

If he would have given you his weapon, say he would have said, "Have a look at this, see what you think of this," or something like that and handed you his pistol, would you have remembered that?

30

LTCOL GREEN: I object to that question, sir. The tenor of the question seems to be would have had a beer together and during the course of that beer if he'd handed you a pistol.

35

LTCOL BERKLEY: That was a couple of questions earlier on. I'll make it clearer.

PRESIDENT: I don't get that context at all.

40

LTCOL GREEN: Well, I do, sir.

PRESIDENT: The question is allowed.

45

LTCOL BERKLEY: Thank you. I'll just say it and I'll make it more clear for you if I can. Just say you were at position D and Jake handed you the weapon and said, "Have a look at this for me." Would you have

remembered that?---Of course, sir, because I remember that I didn't touch his weapon at all. So I would remember if I did.

5 And you would have remembered if you'd asked to see his weapon. Do you remember that now?---That's not something that I would ask him, sir.

You didn't see Jake manipulate that weapon at all from position D until you left him on the way back to the lines?---That's right, sir.

10 What do you know about Soldier 17 and Soldier 19? Are they mates of yours as well?---Yes, sir.

15 Prior to Jake ending his shift, was he on shift with any of those that day; can you recall?---If we were not to finish where we did that day and I was to leave and go to another location and - if you understand what I'm trying to say, sir. The next person to come up to callsign D would have been Soldier 17.

20 Did you see him on the changeover?---I don't remember seeing him, sir.

You just can't recall it?---Yes, that's right. I was actually unsure who was behind us on that day. The only thing that's cleared that up to me is the actual footage that I've seen from callsign C.

25 Who was that person?---That was Soldier 17.

So that person was leaving at the same time as you and Jake?---Yes, from what the footage shows.

30 Did you swap any combat equipment with Jake at any stage?---Not sure, sir. I'd say no.

Thank you. I've got nothing further. Thank you, Mr President.

35 PRESIDENT: Thank you. Colonel.

COL YOUNG: Mr President, I'll reserve my right to follow LTCOL Holles.

40 PRESIDENT: Very well. COL Griffin, your attitude to continuing or at a later time?

45 COL GRIFFIN: In the circumstances, sir, I'd propose that the witness be stood down until LTCOL Holles returns for the examination.

PRESIDENT: I take it if LTCOL Holles becomes available Soldier 14 is reasonably quickly contactable and available.

COL GRIFFIN: As I understand it, sir, yes.

5

PRESIDENT: Thank you, Soldier 14, you may now stand down.

<WITNESS WITHDREW [1141]

10

COL GRIFFIN: Sir, if we might take a 10-minute adjournment to allow us to establish the link with Baghdad and then return with Soldier 17.

15 PRESIDENT: Yes, certainly. Thank you.

ADJOURNED [1142]

20

RESUMED [1201]

MAJ HYDE: Thank you, sir. I call Soldier 17.

25

PRESIDENT: Thank you.

<SOLDIER 17, recalled and resworn [1203]

30

<EXAMINATION BY MAJ HYDE

35 MAJ HYDE: Soldier 17, MAJ Hyde here. I have a few further matters to raise with you, the first one of which is some showing of CCTV footage, and perhaps if that could be played now. Could you let me know whether you can see this footage, Soldier 17, once it commences?---Yes, I can see it, sir.

40

Thank you. Soldier 17, are you able to say by reference to the matrix before you who it was that appeared in that footage?---I can't tell from here, sir. Am I able to move closer to the TV so I could have a better look, sir?

45

Certainly. Did that assist you in identifying those three persons?---No, sir, I couldn't tell who they are, sir.

5 Are you able to say whether you appear in that footage at all?---I can't tell, sir.

10 If I could move to a different topic now. You gave a record of interview to the New South Wales Police when they first attended in Baghdad and during the course of that interview you indicated to them that you had been provided with a theory from the Military Police and that theory related to the circumstances in which PTE Kovco was shot. Do you recall talking about that matter in a record of interview with the New South Wales Police?---I can't recall it, sir, but yes, I think they did.

15 Perhaps if I refresh your memory. Do you recall this question:

20 *The theory is that in imitating the music, making actions to the music, he, PTE Kovco, may have put his firearm to his head and squeezed the trigger not realising that it was loaded in a loaded position. Is that a reasonable resume of it?*

You've answered "yeah". Question:

25 *Can you explain how you came up with that theory, please?*

Then you've gone on to say that is a matter that was told to you by the Military Police. Do you recall giving that answer in the record of interview?---Yes, sir.

30 Can you shed any light on the circumstances in which that theory was given to you or indeed whether that was your theory?---Sir, that's just a theory, like you just said, sir. There was nothing to say that happened, because during the interview they asked, "Do you have a theory?" and I said, "Yes, that's my theory and I've got nothing to prove it."

35 Was that your theory or was that - in other words, was that a theory that you came up with or did somebody else?---Yes, sir, that was my theory. I'm not sure of the Military Police, if that was theirs as well.

40 But that is a theory that you came up with at some point in time?---Yes, sir.

45 I now want to ask you some questions about a conversation you had with Soldier 14 after the death of PTE Kovco, and in particular the conversation that you had with him about his observations of PTE Kovco

silently cocking the 9 mm pistol. Do you recall that conversation?---Yes, sir.

5 When did that conversation take place relative to 21 April when PTE Kovco was killed?---I think it was when we were escorting him back to Kuwait, sir. But I can't be sure of the exact date.

10 Is it possible that it could have been the day after PTE Kovco was killed? ---Again, sir, I'm not sure.

I'd like you to tell the Board whether Soldier 14 admitted to you that it was in fact him that silent cocked the weapon on 21 April. Is that something he said to you?---No, sir.

15 What was it that he did say to you, as best you can recall? And I'll ask you to say in the I said, he said fashion?---Yes, sir. He just told me that he'd seen him basically strip his weapon, put a round in the chamber, put it back together, release the weapon parts and then Soldier 14 said to him, "It's pretty uncool," and he said - he didn't really say anything, to my
20 knowledge. He just cocked it, took the round out and that was it, sir. That's to the best of my knowledge.

25 Was anything else said during the course of that conversation?---Not that I can recall, sir.

Moving to a different topic, do you recall whether you've conducted range shoots between the time that you arrived in Baghdad and 21 April?---Yes, sir, I believe we have.

30 Do you recall how many of those you participated in in that time frame? ---Two or three, sir.

35 Do you recall whether those range shoots involved the 9 mm pistol as well as the F88 Styre?---I'm unsure, sir. I think one did.

One did involve the 9 mm or one did involve the F88?---One did involve the 9 mm, sir.

40 Did you yourself participate in that shoot on that day?---Yes, sir.

Do you recall whether Soldier 14 participated in that or is that something that you can't comment on?---I'm unsure if he was there, sir.

45 Do you recall when you were participating in that range shoot whether you used magazines that you had been issued with for the 9 mm or were

they put into a bulk container from which people extracted magazines? Do you understand the distinction?---Yes, I understand the question, sir. I'm pretty sure I just used my own, sir.

5 How certain are you that you only used your own on that day?---That's just a guess, sir. I just thought I used my own because that's what we usually do. I'm not a hundred per cent, sir.

10 But your recollection is that the usual practice is to use your own magazines at those shoots?---In Baghdad, sir, but in Kuwait we just had magazines filled for us and we'd walk up to the range, use the magazines and then refill them for the next people.

15 I have nothing further, Mr President.

PRESIDENT: Thank you. LTCOL Wilkinson.

LTCOL WILKINSON: No, sir.

20 PRESIDENT: LTCOL Green.

LTCOL GREEN: Yes, please, sir.

25 <EXAMINATION BY LTCOL GREEN [1214]

PRESIDENT: Again we'll need to change places, Soldier 17. So if you can just bear with us for a moment, please.

30 LTCOL GREEN: Soldier 17, LTCOL Green here. Soldier 17, I'd just like to take you back to the afternoon of 21 April 2006. As I understand it, you say you returned to your room, room 8, at about 1500 hours in the accommodation block?---Yes, sir.

35 Do you recall when you arrived at your room 8 whether you were first there or there were other people in your room?---I've previously said, sir, I can't recall if I was first there or not.

40 Did all three of you, that is Jake, yourself and Soldier 19 arrive at roughly the same time, according to your memory?---I think so, sir.

In other words there wasn't a noticeable period of time when there was only one or two of you just alone in the room according to your memory?
45 ---To the best of my memory, sir, no.

When all three of you were in the room together, what did you start or what did you commence to do?---Getting unchanged, sir and turning on the computer.

5 All three of you loosely got out of your cams and into PT gear?---Yes, sir.

Do you recall by approximately what time that had occurred?---I have no idea, sir.

10 Was it within the first 10 minutes of arrival back to your accommodation block or the first half hour or in the final half hour before Jake was killed?---I think it was an hour. It happened at five past four, sir, that would make it an hour and 5 minutes.

15 Yes. Over that hour that you were in your room, what I'm asking you is do you recall approximately when you got out of your cam gear into your PT gear?---No idea, sir.

20 It wasn't the first or second thing you did when you returned to your room?---I - I said I was in the process, sir of where - when the incident happened, I still had cam pants on and an undershirt, so I wasn't fully changed yet, sir.

25 You still had your boots on?---No, sir.

You'd taken your boots off?---Yes, sir.

30 And you were sitting on your bunk with your laptop on your lap?---Yes, sir.

What were you doing with your laptop?---Typing, sir.

35 Were you typing an email to home or were you typing a letter, were you doing something else?---Just typing an email, sir.

40 How long had you been on your laptop prior to you hearing a shot ring out?---I'm unsure, sir. I know I turned it on basically as soon as I got back to the room, sir.

45 Had you spent that entire period of time sitting on your bed, or were you doing other things?---I think most of the time was spent on the bed, sir.

Sitting on your bed looking down at your laptop?---Yes, sir.

What about PTE Kovco, what did he spend his time doing?---He got changed, sir, and then he was on his laptop as well, sir.

5 So he got out of his PT gear relatively early in the piece?---Yes, sir.

He got out of his cam gear into his PT gear relatively early in the piece. You said that he spent his time on his laptop, where was he spending that time on his laptop?---At the top of his bed, sir.

10 So had he spent that time standing beside his bunk, looking over his bunk with his laptop on the bunk?---Yes, sir.

15 Were there periods of time when he climbed up and got onto the top bunk and continued to operate or use the laptop from lying or seated on the top bunk?---To my knowledge no, sir.

20 So is it your memory that PTE Kovco had spent probably 30 to 40, may be longer, minutes standing in front of his bunk looking across his bunk onto the laptop?---Yes, sir.

Do you recall any particular conversation during that period of time? ---Yes, sir, as I've previously said, we were talking about our old platoons, our old bosses and just things like that, sir.

25 I gather the music wasn't playing at that stage?---Yes, sir, it was playing the whole time.

30 Was it playing not so loud as you could still have a conversation or was it playing so loud that you couldn't have a conversation?---We could still have a conversation, sir.

But you had to speak up I gather?---Yes, sir.

35 When PTE Kovco was on his laptop, was he turning around and looking at you at various times or was his - - -?---Yes, sir.

So he would divert his attention away from the laptop, turn around and look at you?---Yes, he'd look at both of us, sir.

40 Would you look back or did you continue to look down at your laptop during these conversations?---Depends what I was doing, sir. Sometimes I'd look up, sometimes I didn't.

45 Are you able to say whether or not you looked at him over that period of time when he was using his laptop a lot or very little?---I'm unsure, sir.

Could he have been doing other things whilst he was using his laptop?---I suppose so, sir.

5 For instance, did he continue to get changed out of his cam gear into his PT gear, or you didn't notice?---I'm unsure, sir.

Did you notice him taking his holstered pistol and hanging it on the bedside prior to that incident on the day?---No I didn't, sir.

10 So during that 40, may be 50 minutes when you were on the computer and PTE Kovco was on the computer, you didn't observe his pistol or his holster?---No, sir.

15 He could have had his pistol and holster on the bed for instance?---He could've, sir.

It could have been on the bed in the vicinity of his computer?---Yes, it could've been, sir.

20 At the same time as perhaps using his computer he might have been using or touching the pistol?---I can only guess, sir.

Because you weren't looking at him?---Yes, sir.

25 Now, the music was reasonably loud within that room you said, but you could still hold a conversation?---Yes, sir.

But I gather the voices had to be raised?---Definitely.

30 And if a bit of metal was coming in contact with a bit of metal, you wouldn't have heard that, would you?---I'm unsure, sir. I didn't hear him cock it if that's what you're asking, sir.

35 Yes, but he could've cocked it, but you wouldn't have heard it?---He could have, sir.

At the later stages on that afternoon, I gather when the music was being played by the Cranberries, you noticed PTE Kovco doing something, is that right?---He was just still on his computer, sir.

40 There has been some suggestion that he had turned around and had his shorts pulled up so that his testicles were hanging out, did you see that? ---Yes, sir, I did.

45

Approximately how long before PTE Kovco was shot did you see him do that?---10 minutes, sir, may be, I'm unsure of the exact time.

5 If you did see him with his shorts pulled up and his testicles hanging out about 10 minutes before the shot, what is your next memory of seeing him or looking at him?---Just typing on his computer, sir.

10 So do I gather that the incident where there might have been some high camp play whereas he had his shorts pulled up was about 10 minutes before the shot rang out?---Roughly, sir, yes.

But you didn't see him do anything between that period and the shot ringing out?---No, sir.

15 You've said in your statement to the Military Police that you guess that he might have been doing something to indicate "this song is so gay I'd rather be dead"?---Yes, sir.

20 Now, I think you say in your statement that that's just a theory of yours? ---Yes, sir.

25 Your experience with people is that if someone was trying to indicate "this song is so gay I'd rather be dead", before they went through the action or the theatre of taking out a gun and putting it to their head and pulling the trigger, they would be looking for some eye contact from their audience, wouldn't they?---That's probably, sir.

30 In other words, you wouldn't go through the charade or the theatre of putting a gun to your head if nobody was watching?---Most probably, sir.

Now, at the time that the shot rang out you had no eye contact with PTE Kovco, did you?---No, sir.

35 You weren't his audience and he wasn't camping it up for you?---No, sir.

The same token, Soldier 19 had his back practically to PTE Kovco's back?---Yes, sir.

40 So Soldier 19, couldn't have been the audience that PTE Kovco might've been playing up to?---Yes, sir.

45 So it would seem, would it not, that the proposition that PTE Kovco was just high-jinxing around to the effect of "this song is so gay I'd rather be dead" is not a realistic proposition, is it?---No, sir. Like I said, that's just my theory.

I understand that. Sir, if he was acting up some theatre or was hoping to get a few laughs out of it he had no audience, did he?---No, sir.

5 The time between him with his shorts high around his waist with his testicles hanging out and the shot ultimately ringing out you say was a period of about 10 minutes?---Yes, roughly, sir, that's just my guess.

Thank you, sir. Thank you, Soldier 17.

10

PRESIDENT: Thank you. LTCOL Berkley.

LTCOL BERKLEY: Nothing from me, sir. Thank you, sir.

15

<EXAMINATION BY COL YOUNG

[1225]

20 COL YOUNG: Soldier 17, my name is COL Young. As you'll recall, I act in Jake's interests at this Inquiry. I'm just going to ask you a couple of questions. You'll probably have no idea why I'm asking you the questions, but if you can assist, that would be good. Can you tell me where the shower block or wash rooms are in relation to room 8?---Yes, sir. There's two separate ones closest to us. If you walk out the door and head left I think it's two doors down. There's two male showers and one female shower. If you head right there's - I think it's the third door on your right, there's one shower. Then next door to that is another two showers, sir.

30 When you gave evidence when you were here previously you described the conditions there and you described the temperatures as getting pretty hot from day to day. I think you mentioned 52 degrees. Do you recall that?---Yes, sir.

35 During the course of a day do you get an opportunity to shower or was that only in the morning or the afternoon? Could you just tell me what you do as far as showering is concerned?---Whenever you aren't working, sir, you can have a shower whenever you like.

40 So that could be presumably more than once during a day then?---If you wish, sir, yes.

45 What sort of breaks do you get between your shifts which would allow you to have a shower, what time frame?---Is this open or closed, sir, because if I tell you times it will be an OP SEC breach?

I can understand. Thank you. You've probably answered the question. For yourself, for example, can you recall occasions where you've had a shower more than once during a day whilst you've been at the embassy?
5 ---No, sir, I usually just have one when I finish work.

Do you know if other soldiers have more than one shower during a day?
---I'm unsure, sir.

10 I take it you go to the toilet during a day and urinate?---Yes, sir.

Do you have wash rooms where you can wash after doing that?---Yes, sir, there's sinks and you just wash your hands.

15 That's good. I guess because of the heat you're grateful for the chance of having some water. I mean, do you splash water on your face, for example, when you get a chance?---Yes, sir.

20 When you got back to the room on the 21st you've given some evidence that you're not sure who was there. But in one of your statements you said:

I finished my shift at a certain time, returned to my room where Jake and Soldier 19 were also present.

25 Does that sound right, that Jake and Soldier 19 were already there?---Yes, sir. Like I said, I think they were there. I'm not sure who got there first.

I'll leave it there. Thank you, Mr President. Nothing further.

30 PRESIDENT: Thank you. MAJ Hyde.

MAJ HYDE: Just one topic, if I may, sir.

35 <EXAMINATION BY MAJ HYDE [1229]

40 MAJ HYDE: Soldier 17, by reference to the callsign matrix at position D, is it the case that you have a megaphone at that position?---Yes, sir.

What's that used for?---To move vehicles that park in front of the embassy away, sir.

45 Are you able to say during the course of one shift how many times you

might use a megaphone for that purpose?---Depends on the day, sir. You only usually use it during the daytime because obviously it's the busiest. At night time they've got curfews. So sometimes up to 10 times. It just depends, sir. It depends if people stop there.

5

Have you used it up to 10 times in one sitting, that is, one shift at that position? Have you ever used it that many times?---No, sir. I was talking about throughout the whole day. I've only used it probably three times at the most.

10

In one shift or in total?---In just one sitting, sir.

Nothing further. Thank you, Mr President, Members. Thank you, Soldier 17.

15

PRESIDENT: The theory of pointing the pistol to the head as a bit of a theatrical gesture, have you ever seen Jake doing anything similar to that before?---No, sir, I haven't.

20

Anything arising out of that, gentlemen?

COUNSEL REPRESENTING: No, sir.

MAJ HYDE: No, sir.

25

PRESIDENT: Thank you, Soldier 17. You may now stand down and you may stand down with our thanks.

30

<WITNESS WITHDREW

[1231]

COL GRIFFIN: Sir, I call Soldier 19.

35

PRESIDENT: Thank you.

<SOLDIER 19, recalled and resworn

[1233]

40

<EXAMINATION BY COL GRIFFIN

45

COL GRIFFIN: Mr President, Soldier 19 has been made available at the request of LTCOL Green.

PRESIDENT: LTCOL Green.

5 <EXAMINATION BY LTCOL GREEN [1234]

LTCOL GREEN: Soldier 19, as you're probably aware, I'm LTCOL Green?---Yes, sir.

10

Soldier 19, I'm going to take you back to 21 April 2006 back to room 8 at the embassy within your accommodation lines. Do I understand your evidence to be that you returned to room 8 at about 1500 hours?---Just a little bit after that, sir, yes.

15

There are no tricks to this question. Do you recall whether or not you were first there or other people were there before you got there?---I can't recall exactly, sir, no.

20

Within a short period of time of your arrival was yourself, Soldier 17 and PTE Kovco all together and present in room 8?---Yes, sir.

25 So there were no significant periods of time when there was only one person there or two people there?---No, sir.

30 When you arrived and when Soldier 17 was there and PTE Kovco was there, what did you do and what did you start to do?---Actually, sir, the thing I can remember is we were going to do PT at 1600.

35

Did you start to change out of your cams into your PT gear?---Yes, sir.

40 Did PTE Kovco do the same? Did Soldier 17 do the same?---I believe 17 would have been in the midst of getting changed as well, but PTE Kovco wasn't coming to do PT with us, but I think he was in PT gear.

45

Soldier 17 was seated on his bunk looking at his laptop for the large part of the time before PTE Kovco was shot?---Yes, sir.

40 You were on your bed, as I understand it?---In that hour, yes, sir.

Did you spend most of your hour laying on your bed or in your bed? ---Most of the time I wouldn't - I'd say up and down. I remember I was on the bed looking at photos at one stage, sir, yes.

45

Were they photos on your laptop?---Yes, sir.

When you looked across you saw Soldier 17 also seated looking at his laptop?---Yes, sir.

5

Throughout that hour before PTE Kovco was shot was your attention wholly or mostly diverted to looking at your laptop looking at photos? ---Can you say again, sir?

10 In that hour prior to PTE Kovco being shot was your attention wholly or mostly diverted to your laptop looking at photos?---I don't have a laptop, sir. I was looking at a small photo album of mine.

15 My apologies. So you were on your bed looking at the small photo album for the large part of that hour?---Not a large part, sir, about 10 minutes maybe. I can't exactly remember.

Where within that hour did that 10 minutes take place?---I can't recall, sir.

20 What were you doing when you weren't looking at your photo album for about that 10 minutes?---I would say getting changed, talking.

25 What was PTE Kovco doing during that hour?---During the hour he was talking to us in general as well as looking at his laptop, sending emails. He obviously got changed and I can't recall exactly when.

So he was on the top bunk, you were on the bottom bunk?---Yes, sir.

30 Whilst you were on the bottom bunk you couldn't see what he was doing on the top bunk?---I'm not saying that he was actually sitting on his - in bed.

35 I understand that. He was standing beside you so that you were looking at his waist and midriff down from your bottom bunk, but the top half of him was obscured by the top bunk?---Yes, sir.

But you understand him to have been using his laptop during that period of time for most of that time?---Yes, sir.

40 But he could have been doing other things as well whilst he was standing beside the bunk which you couldn't see from your bottom bunk, couldn't he?---He could have been, sir.

45 He could have, for instance, have taken his pistol and looked at it and played with it?---He could have done anything, sir.

There was music taking place?---Music, sir, yes.

And the music was loud?---Yes, sir.

5 Loud enough to warrant a comment from next door to say, "Shut the fuck up"?---I didn't hear them, sir, say that.

But loud enough to raise the ire of your next-door neighbours?---Yes, sir.

10 Obviously that loud music would have muffled or could have muffled sounds?---Yes, sir.

At one point PTE Kovco was high-jinxing around with his shorts pulled up to his waist with his testicles hanging out?---Yes, sir.

15 When he was doing that were you on your bed still lying on your bed? ---No, sir, I was standing up.

20 What were you doing then?---I believe I had either just taken my boots off or I was going to take them off, because I remember standing up laughing at - - -

Am I correct in thinking there might have been a small chair at the end of your bed and were you sitting on the chair taking off your boots then?---I don't recall if there was a chair. If I did, I've turned - just sitting on my bottom bunk taking them off.

25 Suffice to say, you thought that was funny, he thought that was funny? ---Yes, sir.

30 You would have been looking at each other and engaging each other's eyes?---Generally I would have been looking at him, yes, sir.

35 At some point that finished?---Yes, sir.

What did you then do?---I can't recall, sir. I didn't leave the room, I know that.

40 What did PTE Kovco do? Did he go back to his computer, did he start to get further changed?---Step by step, sir, he didn't leave the room, but I can't exactly remember what he did after he did that.

I'm not suggesting he left the room. I'm just asking after that finished do you recall what he did? Did he go back to his computer?---I assume he

45

went back to his computer, yes, sir.

5 You said you took off your boots. What did you do next?---I took my boots when we were still talking and then the next thing I remember I was going to get the drink out of the fridge.

That's when you went to the end of the room, knelt down and in effect looked into the fridge?---Yes, sir.

10 Now, at the time that occurred obviously you were facing towards the rear of the room looking into the fridge, PTE Kovco was still standing?---Yes, sir.

15 And in effect his back was to you at that stage, was it not?---Yes, sir, the last thing I remember, yes, was him facing towards his computer.

Your back was towards him and his back was loosely speaking, towards you?---Yes, sir.

20 And you didn't see the period of time leading up to him obviously taking the weapon out of his holster and discharging the weapon?---No, sir.

25 You didn't engage eye contact in any way, shape or form during that period of time?---No, sir.

So if PTE Kovco was acting out of theatre or high-jinxing, he wasn't doing it for your benefit, was he?---No, sir.

30 You were not his audience?---After what, sir, the shorts pulling up or the computer at that time?

That's all right, I withdraw it. Excuse me, sir. Thank you, sir, I have no further questions.

35 PRESIDENT: Yes, thank you. LTCOL Berkley? There'll just be a short pause while we get some seats changed.

40 <EXAMINATION BY LTCOL BERKLEY [1242]

LTCOL BERKLEY: Hello Soldier 19, I'm LTCOL Berkley again, how are you?---Good thanks, sir.

5 I know we've been through this before, but there's been a reason - there's a reason why we're going over this topic again. I know anything can happen, particularly when you're not looking at it, but would you have noticed Jake if he drew the weapon in the room in the period up to the shot ringing out?---Yes, I believe I would've noticed.

You didn't notice?---No, sir.

10 Up to the time you crossed behind him to kneel down to the fridge, you hadn't noticed him drawing the weapon?---No, sir.

I ask you this, it's only simply come to mind, I think Jake always had his holster hanging at the foot of his bed or in that location, towards the centre of the room over the bedpost?---Yes, sir.

15 You didn't notice it being moved from there?---No, sir.

Was it still hanging there after he was shot?---The holster?

20 Yes, the holster?---I can't say I seen it, sir, actually.

Thank you. Nothing further.

25 PRESIDENT: Yes, thank you. COL Young?

COL YOUNG: Just briefly.

30 <EXAMINATION BY COL YOUNG [1244]

COL YOUNG: Soldier 19, it's COL Young speaking. As you will recall I appear and represent Jake's interests?---Yes, sir.

35 You've performed duty at callsign Delta, I take it?---Yes, sir.

It's fairly warm at that location?---Yes, sir.

40 Do you have access to water whilst you're there?---Yes, sir, you take it up.

Do you tend to drink a fair bit of water?---Yes, sir.

When you come off duty from that location, if you've consumed a fair bit of water, do you normally go to the toilet or have a wash at all?---Usually,

sir, I go straight back to the room because there's air conditioning, getting out of the cams.

5 You shared a room with Jake for some time at the embassy. Was Jake - sorry, I'll just let you answer that?---Well yes, sir, for as long as we were there.

10 Did you observe whether Jake was a person who showered on a regular basis, in other words, I'm not saying once a day only, but more than once a day?---I couldn't tell you, sir. I know that he showered at least once a day.

You just didn't notice?---No, sir.

15 What about yourself, how many showers did you have a day?---One, sir.

One, all right. But there are opportunities to have more than one shower at day if you wished?---Yes.

20 Nothing further, thank you, sir.

PRESIDENT: Yes, thank you. COL Griffin?

25 <EXAMINATION BY COL GRIFFIN [1246]

COL GRIFFIN: Soldier 19, it's COL Griffin, Counsel Assisting here. Am I right in saying that you're left-handed?---Yes, sir, that's correct.

30 Did you ever serve at callsign D with PTE Kovco?---No, sir.

Did you ever have occasion to use a megaphone at callsign D?---Yes, sir.

35 Did you use your left-hand or right-hand or do you not recall when you used that megaphone?---I don't recall exactly, sir.

40 Is the pistol grip on that megaphone such that it affected your use because you're left-handed?---No, sir.

In the course of being a buddy for anybody else who had a pistol at any time, have you ever had occasion to handle the pistol when that person was clearing the pistol and you were the buddy?---Touch, yes, sir.

Which part of the weapon would you touch?---I would say the chamber up at - where it opens for the ejecting port and possibly the magazine housing.

5 The housing itself, do you mean you'd put your finger inside the housing at the base of the grip?---Yes, especially in order, sir, to make sure there's no magazine in it.

10 Other than in the magazine opening and in the ejection opening would you touch any other part of the weapon?---As the buddy, no, sir.

At any time in the time that you've been either at or the embassy, have you participated in any range shoots with the 9 mm pistol?
---Yes, sir.

15 Are you able to recall if you used your own magazines in those shoots?
---Magazines, no, sir, they're usually stockpiled. It was ready loaded, ready to go, so you'd swap around.

20 Are you able to recall if that was done during the time that you were at the embassy?---I can't recall, sir.

When you were at, did you share accommodation with PTE Kovco?---No, sir.

25 Was his accommodation near yours at?---Yes, sir.

Did you have occasion to visit each other's accommodation at?
---Yes, sir.

30 Are you able to say whether or not the pistol that was issued to PTE Kovco on 1 March was at any time withdrawn and issued to anyone else or if it was the same pistol all the time in his possession?---I'm only guessing because I wasn't in his section, but I would say it's the same
35 pistol that he had issued. The only time other people may have used it is at the range if they didn't have a pistol.

Thank you Soldier 19. I have no further questions, sir.

40 PRESIDENT: Yes, thank you.

You don't own a laptop?---It's not in country here, sir, no, it's back in Australia.

45 So in your room there's two laptops?---Yes, sir, in the room, yes.

Thank you. Anything further, gentlemen?

5 LTCOL BERKLEY: No, sir.

PRESIDENT: Anything further, Colonel?

COL GRIFFIN: Nothing, sir, thank you.

10 PRESIDENT: Yes, thank you. Soldier 19, you may now stand down, thank you.

15 <WITNESS WITHDREW [1250]

COL GRIFFIN: Sir, that completes the evidence for today.

20 PRESIDENT: 10 am tomorrow, or not before?

COL GRIFFIN: Not before, thank you, sir.

25 **MATTER ADJOURNED AT 1251 UNTIL
TUESDAY 22 AUGUST 2006 AT 1000**

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