

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

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**AUSTRALIAN DEFENCE FORCE**

**AUSTRALIAN ARMY, VICTORIA BARRACKS, NSW**

**INQUIRY INTO THE DEATH OF**  
**PTE JACOB BRUCE KOVCO**

**PRESIDING:**

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

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

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

**0947 TUESDAY 29 AUGUST 2006**  
**DAY 31**


The transcript has been checked and cleared for operational security issues.

**TRANSCRIPT VERIFICATION**

I hereby certify that the following transcript was made from the sound recording of the above stated case and is true and correct

Signed.....  ..... Date .....29/08/06.....(President)

Signed.....  ..... Date ..... 29/08/06.....(Recorder)

Signed.....  ..... Date ..... 29/08/06.....(Transcriber)

Signed.....  .....Date ..... 29/08/06.....(Transcriber)

## **WITNESS LIST**

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## **EXHIBIT LIST**

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5 PRESIDENT: Yes, good morning Colonel.

COL GRIFFIN: Good morning Mr President, Members. We resume this morning for the further examination of Soldier 14 as requested. Sir, I call Soldier 14.

10 PRESIDENT: Thank you.

<**SOLDIER 14, recalled and resworn**

**[0947]**

15

<**EXAMINATION BY COL YOUNG**

20 COL GRIFFIN: Sir, as I understand it, the request is that COL Young go first with his questions, followed by LTCOL Holles and then I'll re-examine as appropriate, sir. But it may be that after the further DNA evidence that was heard, other Counsel may have questions.

25 PRESIDENT: Do you wish to ask any question initially of your client?

LTCOL GREEN: Not at this stage, sir, no.

PRESIDENT: Very well. Colonel, yes.

30 COL YOUNG: Thank you, Mr President.

35 Soldier 14, you know I'm Colonel Young and I look after Jake's interests and this week I'm also looking after Shelley's interests. You recall that when you last gave evidence you told the Board that you never went into Jake's room on 24 April this year?---That's correct, sir.

LTCOL Berkley asked you some questions Monday of last week and I'm talking about transcript page 1246 and I'll just read this briefly to you:

40 *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.*

45 Does that mean that you're saying that you didn't go into Jake's room on the 19th or the 20th that you can recollect?---I can't be sure, sir. However, in the five to seven days that we'd been in that location I think I may have

only been in their room probably once at the start when we were sorting out the rooms.

5 But you were pretty good friends with Jake, were you not?---That's right, sir.

You actually said in one of your statements:

10 *I consider our friendship to be really good friends.*

?---That's right, sir.

15 So it wouldn't be unusual, given that you were in room 9 and Jake was in room 8, that you might've gone into his room from time to time during the time that you were at the embassy, would you agree with that?---I'm pretty sure, sir, that like I said, we just - we hadn't been there very long at all, so we were kind of still getting into a routine. Sleep was - I guess we just kind of worked and did a couple of hours of - on the computers and then just slept, sir.

20 I think everyone acknowledges that you've been - you and other soldiers have been through a pretty tough time as well, so I'm trying to jog your memory and that's why I'm asking you the likelihood of you going into Jake's room prior to the 21st. You've agreed that you possibly went in there once at least when you were sorting things out?---I'm - I'm sure I would've gone in there - I know I did go in there at the start when we were sorting out rooms. Obviously every soldier wants to get the best room possible and yes, they had a pretty good room, sir, so everyone was fighting over the rooms. But other than that, we - once the shift was over  
25 everyone kind of just went back to their own room, sir.

30 So we can agree that you have been into Jake's room?---Yes, I have been, yes, sir.

35 Have you got the matrix for members there in front of you, yes. Soldier 3, can you identify him?---Yes, sir.

40 He's told the Board that as a Section Commander that he thinks it's a good thing that soldiers are inquisitive and curious about the 9 mm pistol, becoming familiar with it in fact. Would you agree that it's a good thing for a soldier to be familiar and inquisitive about the 9 mm pistol, the secondary weapon?---Yes, sir, familiar and competent.

45 How would you describe your knowledge of the 9 mm pistol?---Pretty much as I stated before, sir. Up until this deployment, my experience with the pistol would've been mainly from TOETs obviously conducted a fair bit back at the Battalion. But as far as firing, it was just mainly firing -

range practise, sir.

So you were qualified and proficient, but you wouldn't describe yourself an expert?---Yes, sir. Yes, definitely not an expert, sir.

5

I'll just refer you to some other transcript. This was on 9 August, page 962 of the transcript I was asking you some questions and it went like this:

10

*When you saw PTE Kovco, the term used is "silently cock the weapon", is it possible that he simply could have been familiarising himself with what that weapon can do given that it was his secondary weapon?---That's possible.*

15

*Soldiers in places like Iraq might find themselves in situations where they've got to use their initiative, they could be in a dangerous situation, would you agree with that?---Yes, sir.*

20

*So it's possible that PTE Kovco simply could have been familiarising himself with his secondary weapon in the event that in some urgency he might have to use it and he would then know what it could and couldn't do, would you agree with that proposition?---I'd agree with that, that's a possibility, sir.*

25

You were in much the same situation in Iraq, did you want to perhaps take the opportunity of further familiarising yourself with the 9 mm and perhaps ask Jake to show it to you one day so that you could handle it yourself, do you recall ever having done that?---Sir, on - sorry, can you just say that one more time please?

30

What I'm asking you is you agreed with me that Jake, like all soldiers there, were in a situation where it was dangerous and they might have to defend themselves at one time. So I'm asking you if you, given that you're not an expert in the 9 mm, and I appreciate you didn't have a 9 mm as a secondary weapon, but did you want to take the opportunity of just saying to Jake well could you let me hold your pistol, I'd like to sort of have a look at it myself and just - so that I can maintain some familiarity with the pistol, do you recall ever having done that?---No, sir. I'm actually - well, I'm the more senior soldier to Jake. So obviously I have a lot more experience than him, so therefore I would not - I wouldn't do that, sir.

40

Did you have a chance of seeing the photographs that were tendered yesterday of the megaphone and the radio and so on?---Yes, sir.

45

I think you've told us that both you and Jake would have been using those items on the day, on 21 April?---That's right, sir.

Would you agree that, with all of those items, you would only need one

hand to operate them or to hold them?---The MBITR radio and the telephone, sir, yes. Depending on what you were doing with the megaphone would depend on one hand or two hands, sir. Obviously, like I said before, it has the pistol grip on top. If you can imagine at the back is a  
5 little switch which has a siren. The first thing - I'm not sure if I made this clear last time - when trying to get the attention of a vehicle, the first thing you do, you turn the siren on, you know, a couple of seconds and then turn it off and then use the pistol grip. So in that case you would use two hands. However, if there was a pedestrian that you wanted to get away  
10 that was outside of a vehicle, I guess in that situation there would be no need for the siren as the loudspeaker would be fine, sir.

But the switch on the megaphone you referred to, you would probably only need to use one or two fingers to flick that switch rather than your  
15 hand?---Yes, that's correct, sir.

Probably testing your memory here, but after using the megaphone and radio and the like and prior to going back to your room, do you recall if you and Jake might have stopped off to go to the toilet and could have  
20 washed your hands at all, whether he could have or you could have?---I'm pretty sure no, sir.

You've obviously thought long and hard about how your DNA profile has come to be on the pistol and you've given some explanations as to possibilities. You still can't come up with a recollection of where you've  
25 touched the pistol yourself?---That's right, sir.

If Jake was alive today and he was here, do you think he would be able to tell us how your DNA profile was on the pistol?---I think - I wish that he was still here today, sir, obviously, so he was still here, and to - so maybe he could explain really exactly what happened, sir.  
30

No further questions, sir.

35 PRESIDENT: Yes, thank you. LTCOL Holles.

LTCOL HOLLES: Thank you, sir. There's one issue I wish to raise in closed session, sir.

40 PRESIDENT: Would it be convenient to close now?

LTCOL HOLLES: It would be, sir, I'd rather do it now.

PRESIDENT: Could I ask the technicians to make it happen.  
45

(Continued in closed session)

(Open session)

PRESIDENT: Thank you, LTCOL Holles.

5 LTCOL HOLLES: Thank you, sir. Soldier 14, you're aware of the requirement to tell the truth during an Inquiry such as this, are you not?  
---That's correct, sir.

10 You're also aware that at the conclusion of this Inquiry there will more than likely be a coronial inquiry conducted by the New South Wales Coroner?---I'm aware that further proceedings will take place.

15 You're aware that you will be required to attend - if such an inquiry is conducted, you will be required to attend that inquiry?---Yes, sir.

And you're aware that, like this Inquiry, you will be required to answer questions you can't claim the right to silence, the privilege against self-incrimination?---Can you say - - -

20 LTCOL GREEN: I'm not sure that's right with respect to coronial inquests, sir, as you would be well aware.

PRESIDENT: Yes.

25 LTCOL HOLLES: You're meant to - you will be obliged to answer questions at that inquiry, do you understand that?---Yes, I understand that, sir.

30 You find the concept amusing, do you?---No, sir.

How many occasions other than your current deployment did you carry the 9 mm pistol?---I couldn't answer that question, sir.

35 I don't want you to answer in relation to the current deployment, but on prior occasions you've carried it, was it loaded or unloaded?---Sir, as I said before, this will be the first time that I've extensively carried the pistol. Before that was just mainly range practices, sir.

40 You've never carried one in training?---I have a few times, sir. I couldn't be certain of how many times.

45 You are not therefore familiar with the difference in weight between a loaded and an unloaded weapon?---You can tell the difference. I don't know the statistical, the data, on the difference in weight there but when it's in your hand, you can tell, sir.

But if you haven't carried it very often, how would you know that?

---Because I've just carried it for the last five months, sir.

But it's always been carried loaded during that period, has it not?---Beg your pardon, sir?

5

It's always been carried loaded during that period, has it not?---No, sir, not always loaded.

You haven't carried it consistently or continuously during that five-month period, have you?---That's correct, sir.

10

In fact, carried it for relatively short periods of that time, have you not?---For the periods of six weeks at a time, sir.

Going to the day that you say you saw PTE Kovco, as you call it, silent cocking, just describe again exactly what he was doing?---He stripped the weapon, sir. Once the weapon was stripped - - -

15

Standing or sitting?---We were sitting inside the, it's impossible to stand. He - - -

20

How did he lay the weapon parts out in front of him?---I guess he had them on his leg, sir. I wasn't - you don't exactly watch someone, where they're putting the parts of their weapon, sir.

25

But there's a sequence, is there not, as to how they're laid out; that's the case, isn't it?---That is how it's taught in weapons training, sir.

That's the way it's taught with every weapon, isn't it?---Sorry, sir, I didn't hear that.

30

That's the way it's taught with every weapon, is it not?---Yes, sir.

There's a reason for that, isn't there?---I would assume so, sir, yes.

35

You assume so. You're a more senior soldier than PTE Kovco. There's a reason for it; what's the reason?---Firstly, I would say ease of training, sir. Secondly, the assembly and disassembly of the weapon, sir. Everything is done, everything is taught - - -

40

The reason is, is it not, Soldier 14, so that if it has to be reassembled in a hurry, you know exactly where each part is?---That would be a factor, sir, yes.

That's the reason, is it not?---I couldn't say for sure if that's - - -

45

But you're a senior - - -?--- The main reason, sir.

LTCOL GREEN: I object to that, sir, he's cutting the witness off before he's allowed to finish his question.

5 LTCOL HOLLES: I do apologise. You are a senior soldier, aren't you, so you know these sort of things?---Well, sir, that's - you would say yes, sir.

Where was this weapon that you say is being silent cocked placed as it was being stripped?---I'm pretty sure he was doing it in his lap, sir.

10

You're pretty sure he was doing it in his lap. Now, this is something that you said was quite an unusual event, didn't you?---Yes, it was out of place, sir.

15

But you're only pretty sure he was doing it into his lap?---He was doing it in his lap.

So the answer is not, "I'm pretty sure he was doing it in his lap," "I am sure he was doing it into his lap?---I am sure he was doing it in his lap, sir.

20

Fine. Why did you qualify it a few moments ago?---I beg your pardon, sir?

Why did you say "pretty sure" a few moments ago?---I'll be more careful with my words from now on, sir.

25

Thank you. So you saw him stripping the pistol into his lap; is that correct?---That is correct, sir.

30

Did he strip the magazine?---As in disassemble the actual magazine, sir?

Yes, that's the term you use, isn't it?---No, sir.

He didn't. So he has the pistol stripped into his lap; is that correct?---That's correct.

35

What did he then do?---Once the weapon was disassembled, he inserted the round into the barrel of the weapon.

40

Did he disassemble the barrel from the slide?---Yes, the weapon was disassembled.

Completely?---Yes, that I remember, yes, sir.

45

And he was doing all this into his lap?---Yes, sir.

He was sitting with his legs together, obviously?---I can't be sure. I can't

be sure of that, sir.

He was doing that without interference from the body armour he was wearing?---The body armour is quite bulky, sir, but you can get around it.

5

Indeed, when you're sitting down, doesn't that place some sort of pressure or strain on your thighs?---That would depend on where you obviously had your pouches mounted on your body armour, sir.

10 Some of those pouches are at the front, aren't they?---Most people do have them there, sir.

PTE Kovco had his at the front, didn't he?---Yes, he did, sir.

15 So he's disassembling the weapon on to his lap so he must be sitting with his legs fairly tightly together; is that the case?---I'm not sure.

Well, you were watching; you're not sure?---I can't be sure, sir.

20 The weapon is reasonably heavy, is it not?---I'd say it's fairly light, sir.

Would you agree with the figure of 1.07 kilograms loaded?---Yes, it's around that figure, sir.

25 The slide is a significant proportion of that load, is it not?---Yes, that would be the heaviest part of the weapon, sir.

But of course, that's been disassembled so the spring, the barrel, the slide are all out?---Yes, sir.

30

The frame is separate from the slide?---The what, sorry, sir?

The frame is separate from the slide? Do you know what I mean by the term "frame"?---No, I don't know, don't know what you're talking about, sir.

35

Try pistol grip, figure housing, et cetera, the part of the weapon which is not the slide, the barrel or the magazine?---Yes, sir, okay.

40 The magazine is out as well?---I'm not actually sure about the magazine, sir.

So, what, he stripped the weapon but left the magazine in the frame. Is that what you're telling the Board?---Well, the - to strip the weapon, he would have - the weapon would have been at unload, sir.

45

That's right?---So he would have - - -

LTCOL GREEN: I object. LTCOL Holles is cutting across him.

5 LTCOL HOLLES: Well, I would be very grateful if my friend would let the interchange continue.

LTCOL GREEN: I would be very grateful if you didn't cut across the answer.

10 PRESIDENT: I think we've got to let him answer the question.

LTCOL HOLLES: Yes, go on, please?---Can you say the question again, please, sir.

15 Yes. To unload the weapon, the magazine would have been removed, wouldn't it?---Yes, sir.

20 So what does that do to your memory as to where the magazine was? ---I'm not sure where he had the magazine at the time. As I know that when he placed a round in - in the chamber, that's - he had a round in his hand, that's all I know.

Well you said he was sitting down, did you not?---Yes.

25 You said he had the weapon stripped on his lap, did you not?---Yes, sir.

You said the magazine was out of the weapon as that process was continuing, did you not?---The magazine, sir, did you say?

30 You said the magazine was out of the weapon as that process continued, that's what you said, was it not?---Yes, sir.

All of those items are on his lap?---From what I remember, sir, they were on his lap. He may have had certain things elsewhere.

35 Where elsewhere?---Unsure, sir.

Was there a table in there with you?---I can't remember if there was one in there at the time when I was there.

40 Soldier 14, you've given a very precise account of watching a particular procedure happen. Do you have any recollection of what exactly occurred?---Yes, sir.

45 You do. So PTE Kovco has stripped the weapon?---That's right, sir.

You have the magazine, frame, the barrel, the barrel spring, the slide. Five

separate components, is that correct?---Yes. Yes, sir.

And they're on his lap, is that what you tell the Inquiry?---From - from what I remember, sir, yes.

5

With his legs presumably clenched tightly together, he picks up the barrel, is that correct?---I - I can't remember what he picked up first, sir.

At some stage or other he picks up the barrel, doesn't he?---At some stage he would've of, sir, yes.

10

How did he obtain the ball round for the magazine?---I really - I don't - I don't know, sir.

But you're paying close attention to this, aren't you?---I wouldn't say I was playing close attention, sir.

15

You're concerned enough to say "What the fuck are you doing" or something like that, aren't you?---Yes, that was later on, sir.

20

So you must have been alarmed at what PTE Kovco was doing in front of you?---Obviously once he'd actually put the round into the barrel and manoeuvred the working parts, that's when I said something to him, sir.

But weren't you curious to know what was happening beforehand?---I guess that - I can't really say for certain. At the time I probably thought he was stripping his weapon or something, sir.

25

An unusual thing to do when you're in an...., isn't it?---Yes. Yes, sir.

30

And you as the senior soldier would've been concerned that the junior soldier was doing something which was not in accordance with SOPs? ---Sir, I wouldn't - I wouldn't call him a junior soldier. I was just saying that I was more senior than him.

35

Right. I'll rephrase the question. You as the more senior soldier would have been concerned that the less senior soldier was doing something which was potentially hazardous, wouldn't you?---I wouldn't say that stripping his weapon would be hazardous, sir.

40

Well, in a particular location where you were there to watch what was happening, rather than fool around with your personal weapons, potentially very hazardous, isn't it?---We also have rifles up there, sir.

Why do they have two there, so one can play around and one can watch or so you can both watch?---To have two people there, sir.

45

Yes and with one person doing something with their weapon which is not required for the task at hand, it diminishes the capability by 50 per cent, doesn't it?---You could say that, sir, but in an instant that can be dropped and you'd go for the primary weapon in - in that location, sir.

5

Leaving one of your weapon systems unusable because somebody was fooling around?---I'm pretty sure it's been cleared with - covered before, sir. The actual range from that location to an area where you would have to engage is probably outside the distance of the effective range of a pistol.

10

Isn't it the responsibility of an Infantryman to keep all his weapon systems operable at all times?--- You could say that, sir, yes.

15

Well would you like to argue the proposition with somebody?---What - what proposition, sir?

An Infantryman is required to keep his weapons in a usable state at all times?---No, you - you could say that, sir.

20

So when you saw one of the three available weapon systems being basically played around with, you would have been very concerned about that right from the start, would you not?---No. At the start I was not, sir.

25

So what was the sequence of putting the round into the barrel?---I just observed him putting the round into the barrel, sir.

Well how did that happen?---He placed it straight in there, sir.

30

Well what did he pick up?---Well he had a round in his hand.

Where did he get that from?---No idea, sir.

35

Well did you see him take it from the magazine?---No I didn't seem him take it from the magazine.

Did you see him take it from his pocket?---No, sir.

Pouch?---No, sir. My memory I just remember seeing him put a - - -

40

Produce it from the air?---No, I - from my memory I'd assumed that he would've had that already in his hand, sir.

45

So it just appeared in his hand, you have no idea where it came from?---I - I didn't observe him remove it from the magazine, a pouch, anything like that, sir. So I - I would say that he already had that in his hand.

But you would've been watching him as you were in the...., you are very,

very close together, are you not?---Yes, it's - you're very close in there, sir.

And a 9 mm round in your hand is something that's not that easy to hide, is it?---Well if - if he had his hand closed, sir, I wouldn't have known.

5

But if he his hand closed, he couldn't have stripped the weapon, could he? You require both hands to do that?---I mean I'm just making suggesting here, sir, but he could've - as people do, hold it in one part of their hand and use the other part to do things, sir.

10

Soldier 14 you were there, you saw what happened. You were concerned enough about it to make a statement to the Military Police 10 or 12 days later?---Yes.

15

What did you see?---I seen him - he stripped the weapon, sir.

Right, one handed or two handed?

20

LTCOL GREEN: I object. I think the witness was going on to continue.

LTCOL HOLLES: He wasn't, he'd finished.

25

PRESIDENT: Do you wish to say anything further?---Yes, sir, I think - can you just say that again please, sir. I'm pretty sure I'm telling what I have to say.

LTCOL HOLLES: He stripped the weapon, didn't he?---Yes, sir.

30

Using both hands, didn't he?---I assume that he did, sir, yes.

Have you ever seen anybody strip a 9 mm one handed, Soldier 14?---No, sir.

35

Impossible, isn't it?---Yes, I think so, sir, yes.

It is impossible, isn't it?---I would think so, sir, yes.

40

You would think so. Do you understand with that answer you mean yes? ---Without doing anything stupid, no you couldn't do it with - with only one hand, sir.

45

Well, how can you remove the slide retaining catch and move the slide at the same time one handed?---In reference to Jake, sir, no, he wouldn't have been able to do it with - with only one hand.

So where did the 9 mm round you say was in his hand come from?---I didn't see him remove it from the magazine, sir, so I'm assuming that he

had that in his hand.

While he is stripping the weapon?---May be, may be not, sir, I can't be sure.

5

So after the weapon is stripped, you say he puts a round into the barrel, is that correct?---That's correct, sir.

But you're not able to say where the round came from?---Yes, sir.

10

What's the next thing he does?---He manoeuvred the working parts forward, sir.

Manoeuvred the working parts forward of what?---Of the slide, sir, by releasing the slide forward, sir.

15

Where was the frame at this stage?---Sir, could I ask you to refer to the frame as a pistol grip, it's just confusing me, sir, sorry.

20

Certainly. Where was the pistol grip at this stage?---At what stage, when he inserted the round?

Yes?---I'm pretty sure the barrel was inside the - was inside the pistol grip, sir - sorry, inside the slide. I'm actually not sure, sir.

25

You are not sure, so what condition in terms of assembly or disassembly is the pistol at this stage?---In terms of - - -

Assembly or disassembly, what condition is the pistol in at the stage you say the working parts went forward?---It was assembled, sir.

30

Right. Now, what happened between the time at which the disassembled barrel had a round placed in it and the time that the working parts went forward?---I'm sorry, sir, can you say that again, please?

35

Yes. What happened in the time between which you say PTE Kovco put a live round, a 9 mm round, ball round into the barrel and the time you say the working parts went forward on the slide, what else did he do?---I'm unsure what you mean by "what else did he do", sir.

40

Well did he sing a song, do a dance, put the weapon back together, what did he do?---He just continued on with what he was doing, sir.

Soldier 14, do you understand the term "assemble a weapon"?---Yes, sir, I do.

45

Do you understand the term "disassemble a weapon"?---Yes, that's right,

sir.

5 Okay. What stage was the weapon in when the working parts went forward? What state of assembly or disassembly was the weapon in when the working parts went forward?---Assemble, sir.

How did it get from that stage to the stage where it had been on PTE Kovco's lap disassembled?

10 LTCOL GREEN: Did you mean how to get to that stage not from that stage.

WITNESS: Yes, sir, that's right. He obviously had it - he disassembled it and then assembled it, sir.

15 LTCOL HOLLES: How did he put it back together?---Barrel has the slide, put the spring in, sir. Pretty sure that's when he put the round into the chamber, sir, and put the slide on to the pistol grip and manoeuvre the slide forward. That's how he did it, sir.

20 So he's put the barrel back in the slide and the retaining spring back on the slide and the barrel before he chambers the round; is that what you're saying?---Yes, I'm pretty sure that's what he did, sir.

25 You're pretty sure that's what he did; through the ejection port. Was that where the round went in?---I'm not sure if he put the round in through the ejection port if - you know what I mean.

30 You may take it I do?---Sorry, sir?

35 You may take it I do?---Yes, or he actually put it in before he actually put the slide back on to the pistol grip. My memory, sir, is I'm pretty - quite certain that he put it into the barrel before he put it back on to the pistol grip.

Which means that the claw on the ejector would have had to be written over the rim of the round in the breach; isn't that the case?---From what I've heard from before, sir, yes.

40 There is a much simpler way to achieve the same result, isn't there?---Yes, sir, there is.

45 Yes. Which doesn't involve any potential damage to the ejector claw; isn't that the case?---Going off what I've heard from the demonstration that you were shown, that's correct, sir.

You see, you didn't see PTE Kovco silent cocking at all, did you?---No, I

did, sir.

You've made all that up, haven't you?---No, sir.

5 Your recollection of it is like a shifting sand, isn't it?---Sir, obviously at the time when it happened it occurred quite fast, so for me to break it down in my mind, a memory, it is quite hard for me to at certain stages say exactly what he was doing.

10 You've had four months to think about this, haven't you?---Not really, sir. I didn't really know of my involvement in this until a little while after the incident.

You provided a statement to the Military Police within, what, 10, 12 days?  
15 ---I'm unsure of the actual date, sir.

You provided a statement to the Military Police very early May, did you not - late April, early May?---I'll - - -

20 Didn't you?---I'll go with that, sir.

Yes. In that you said you saw him silent cocking, didn't you?---Yes, I did, sir.

25 You didn't at that stage reconstruct in your own mind what exactly had happened?---No, sir.

You didn't think the details would be relevant?---I mostly knew by saying that - actually, I didn't actually want to say it, sir, I wanted to actually not say that to the MPs because I knew that it would probably end up looking -  
30 making Jake look bad somehow. So I did actually discuss that with - not directly, we were just talking about it and we just - we all decided that it was just best in this whole case just to tell the truth so I did mention it to the Military Police, sir.

35 Who did you talk to about it?---I'm pretty sure it was a group of people, sir.

Who was in the group?---I'm quite sure Soldier 19 was there.

40 Soldier 17?---Yes.

Who else - Soldier 3, Soldier 4?---No, I'm not sure of the others, sir.

45 Well, you said, "group," how many more were there?---We were all sitting around a table I think at the time, sir.

Fine. Soldier 14, this process is going to finish a lot quicker for both of us if you answer my questions rather than give a statement. How many other people were there?---I'm unsure, sir,

5 You said you were sitting at a table. How many chairs at the table?---No, chairs, sir, just - - -

Benches?---No, just concrete - I'm pretty sure it was concrete blast walls that ran for a long way down so I'm uncertain, sir.

10 You're at a table, is that correct?---Beg pardon, sir?

You're at a table, are you?---Yes, sir.

15 How big is the table?---One and a half metres long by a metre wide, sir.

How many people are around the table?---I'm unsure, sir.

20 Well, you've mentioned you and two others; how many more?---I don't know, sir.

When you say you "don't know," were there another two or three or four or five; how many?---If I could have a guess, sir, I would say - - -

25 Let's go another way: what's your best estimate of the number of people at the table?---Estimate, sir, yes, probably around six people at the table.

30 Six people at the table. They're all people from within your accommodation block?---Yes, sir. May I just add, this was not actually at the location at the Embassy.

That's okay, they're people from your immediate accommodation block, are they?---Yes, the room next door and the room next to that.

35 All right, so basically the three rooms - was the person in the room with you among those people at the table?---Sir, I have no idea who was there. I just know that Soldier 19 was there because I remember - - -

40 And you remember Soldier 17?---Pretty much talking to him directly, sir.

And you remember Soldier 17 being there too?---Yes, he was there, sir.

45 You say that the other people were from the immediate proximity of room 8 which is where this happened?---I'm pretty sure this wasn't at the location of the Embassy, sir.

I appreciate that. However, did you not give sworn testimony a few

moments ago that the other people from the table were from the rooms adjacent to room 8 which is the room in which this happened?---No, sir, I'm referring to the other location other than the Embassy.

5 So the people in that other location are sleeping close to where you, 19 and 17 are sleeping; is that correct?---In the location other than the Embassy, myself, Soldier 17 and 19 - - -

10 Yes?---We were in a room. It was not just us three, it was in that location - I can't really say the numbers in here.

15 That's all right. But the other people in the room were talking with you; is that correct?---This was just outside the room, sir, I'm not sure if it's - if they were - I'm pretty sure they weren't from our room, that's why I'm unsure who they were, sir.

Were you accommodated with these other people with whom you had the discussion?---I'm not sure who was there, sir.

20 Is this location in which the discussion took place an accommodation location?---Yes, it would be evenly spaced between two doors to the two rooms next door to each other, sir.

25 So it is possible to ascertain where you were sleeping on this particular location?---Yes, sir.

30 And it's possible to ascertain the names of the people who were sleeping either side of you?---I was against a wall, sir, but I could say exactly everyone was sleeping inside that room, sir.

35 It is possible to ascertain the other people with whom you had this conversation by reference to the accommodation arrangements at this particular location; is that what your evidence is?---No, sir, it could have been anyone because obviously there was a few guys sitting around so people would come over and sit there and join in on the conversation, whatever it may be, sir.

40 Was everybody present at that discussion a member of your platoon? ---Yes.

Were there any persons of rank present?---I'm unsure who was there, sir.

Right. But they were all members of your platoon?---That's right, sir.

45 And there's, you think, about six there, is that right?---Yes, that would be my estimate, sir.

That was a discussion at which you, 17, 19 and three other people sat around and discussed what evidence you should give to the Military Police?---Actually, sir, can I clear that up, please, sir? I was actually confused about that, sorry. I actually was talking about this - I'm pretty  
5 sure this was actually at a later date and I was saying how - I'm pretty sure I was saying how I didn't want to say it because it was starting to make him look bad and that's when we said but it was good just to tell the truth from the start, sir. Sorry about that.

10 Soldier 14, wasn't your sworn testimony about five or 10 minutes ago that you sat down with 17, 19 and three other persons unnamed and worked out whether it was worth telling the Military Police about this silent cocking episode?---Yes, sir, I was wrong in what I said, sir.

15 So you've changed that, have you?---This - I'm very certain this actually took place after. I mean obviously this was later when we returned to the other location.

20 Just - I didn't mean to cut you off, please go on?---That's all right, sir, I'm finished.

Just five or 10 minutes ago you were very certain the conversation occurred before you spoke to the Military Police?---Yes, I correct myself on that, sir.  
25

Soldier 14, is there a single word you say that we can believe?---I beg your pardon, sir.

30 Is there a single word you say that can be believed?---Yes, sir, I'm telling the truth.

PTE Kovco was an expert with weapons, wasn't he?---I wouldn't call any of us expert with weapons, sir.

35 PTE Kovco certainly had an affinity with firearms, didn't he?---Can you explain what you mean by infinity, sir?

40 Yes, he was somebody who was interested in knowing how they worked and how to work them to the best effect?---You could say that, sir, yes he was very interested in firearms, sir.

45 Yes and he took care of his weapons, didn't he?---Obviously I wasn't within his section - in the location other than the embassy, sir, but from what I've seen with is civilian rifle, I'd assume that he takes - yes, very good care of his weapons, sir.

Can I suggest to you the last thing he's going to do is silent cock as you

have suggested, thereby damaging the extra core, especially when there is a much easier, safer and simpler way to bring the weapon to the same state?---Sir, may be - may be he wasn't actually aware of - that that damage would occur.

5

Soldier 14, the situation is he was carrying one of those 9 mm at that time you weren't, that's the case, isn't it?---That's correct, sir.

Were you ever selected for sniper training?---Beg your pardon, sir.

10

Were you ever selected for sniper training?---Yes, that's correct, sir.

Did you get the opportunity to go out on sniper duties when you were over there?---Yes, sir.

15

PTE Kovco did too, didn't he?---Yes, sir.

I suggest to you again that you did not see PTE Kovco do what you describe as silent cock the 9 mm?---Sir, I seen him do it, sir.

20

You don't want to change that evidence at all?---No, sir, I seen that happen.

Sir, I'm about to move to another topic. If anybody would like a break at this stage, it would be convenient, otherwise I'm happy to move on to another - - -

25

PRESIDENT: I think we'll continue.

30

LTCOL HOLLES: Thank you.

Just finally on the incident where you claim the silent cocking took place, what's your evidence now about any conversation you might have had with PTE Kovco as to what he was doing?---Sir, I didn't actually say anything until he'd actually pretty much completed what he'd done. Now, at that stage what I said to him - and might I - am I to repeat the words, sir?

35

PRESIDENT: Look, I suspect that the ladies in the room have heard it before, unfortunately, carry on.

40

WITNESS: Yes, sir. The tone I used to him, sir, was not a - I did not yell at him at all, sir, I did not berate him. I simply said to him in - in this manner of tone, "What the fuck are you doing" and he - and he pretty much - I can't remember the words he said. He muttered something and obviously agreed with what I said. He'd obviously got too involved in what he was doing, sir and then he unloaded the weapon.

45

LTCOL HOLLES: You see the situation is that when you were first asked that question in June you said PTE Kovco said nothing. You were asked a question - - -?---Yes, he didn't say anything, sir.

5 No, you just said he said nothing, he made no reply.

LTCOL GREEN: Page of the transcript?

10 LTCOL HOLLES: It's the case, isn't it?

LTCOL GREEN: Page of the transcript?

PRESIDENT: I've got to say, my memory is different.

15 WITNESS: Sir, he - he didn't actually say any words. He muttered something, I've no idea, made a noise or something along those lines, sir which told me that he was agreeing with what - what I'd said to him.

20 LTCOL HOLLES: Never took place, did it? I now wish to ask you some questions about the day, 21 April 2006. You were in the same location, were you not, with PTE Kovco immediately before you stood down from duty?---Yes, sir, that's correct.

25 You claim that you touched the megaphone, is that correct?---Yes, sir.

How often?---Numerous times, sir. I can't be certain of how many times.

30 Did you log those?---No, you don't - there's no log book for using megaphone, sir.

But you would use the megaphone in response to something down below, would you not?---Yes, sir.

35 You would use the megaphone in response to a particular event occurring down below, would you not?---Yes, that's right, sir.

You would be normally required to log such an event, would you not? ---No, sir.

40 Why not?---Because it was quite common that obviously cars were trying to park - get car parks on both sides of the - the road, like anywhere, sir. Obviously people that hadn't been in that little area before, they wanted a car park and they seen the area that was - with no cars there, they'd obviously automatically go and try to park there, sir. So you were quite often on the megaphone telling cars to - to move away from the area.

45

You never took the numbers of the cars trying to park?---No, sir.

You didn't think that was any value, was that the case?---That wasn't what was being done, sir.

5 What did you talk about in the hour or so you were in the location together?---We talked about my partner, how I was getting along with her. He spoke to me about the same with Shelley. He would - had some jokes about some other things, sir. Just general digger conversation, sir.

10 You dismounted at about 1500, is that correct?---Yes, sir.

You then moved through to the unload point?---Yes, that's right, sir. The - the beach is located before the - the entrance back into the - inside the building, sir.

15 You say that PTE Kovco was in front of you?---That's correct, sir.

How far in front of you?---About 10 to 15 metres, sir.

20 Is there any particular reason why he was that far in front of you?---I carried a bag wherever I went, sir. I had - I wasn't eating the - the American mess food at the time, I was eating my own meals. So I carried food with me, sir. So within the shift I was just packing up my bag, just general - I guess general quick little tidy up of the area, nothing special, sir  
25 and by the time I'd done that obviously he'd already got to that distance, sir.

He held the door shut on you?---Yes, that's right, sir.

30 How did that make you feel?---It was just - didn't really make me feel anything, sir. I probably had a little laugh.

Well you must've been a little annoyed, mustn't you, coming off shift, you've stayed behind, cleaned up, trying to get back to your  
35 accommodation and the door is being held shut - - -?---No, I wasn't - - -

- - - by somebody who is not a senior soldier like you?---I wasn't angry, sir.

40 You weren't angry?---It was all in good humour, sir.

Of course you then followed PTE Kovco, didn't you, back to the accommodation?---Can I state that my - my memory, sir, I don't remember walking down the stairs with him, sir. Now that I've seen the - the CCTV  
45 footage, I - I accept that, sir.

But you don't have a memory of that?---No, sir.

Any particular reason for that?---I - I just have no memory, sir.

5 The fact is that you'd caught up to him by that stage, hadn't you?---Yes.

Which side of the door was that on? Which side of the door he held shut was that on?---Do you mean where I caught up to him or - - -

10 Yes?---Inside the building, sir.

So you've gone through him holding the door on you at that stage, have you or not?---Obviously he held the door on me, sir. Once I was inside I assume - I have no recollection, sir. I'm just going off the footage that I assume that I - I caught up with him with inside the building.

15 You must have run after him to do that, mustn't you?---I don't think I would've been running, sir.

20 Walking quickly then?---Obviously once you're inside, sir, it's all stairs all the way down. I would say that - I can only guess, sir.

25 What's your position today on whether or not he had time to unload his weapons?---I still don't think he had time to unload his weapons at the unload bay, sir. But like I stated, he may have - he had - it's possible that he may have done that when he was inside the - inside the building, sir.

What, while holding the door closed?---Obviously I unloaded my weapon, sir, so he had - he may have had time to do that then.

30 The statement you made to your then Counsel in Iraq, I presume that that was made after you've had this discussion with Soldiers 19, 17 and others, is that correct?---What - what discussions was that, sir, sorry?

35 PRESIDENT: I think in fairness, I don't think it's counsel appearing or representing this particular soldier, or is that the one to one of the Counsel Assisting?

40 LTCOL HOLLES: Sorry, Counsel Representing I think it was, sir, to be honest. Do you remember FLTLT Lowe in Iraq?---Yes, I do, sir.

Do you remember making a statement to him?

PRESIDENT: He was Counsel Representing.

45 LTCOL HOLLES: Yes?---Yes, I do, sir.

Did you make that statement after you had had the discussion with Soldiers

17 and 19?---This statement was pretty early, was pretty much right at the start of the Inquiry, sir. Obviously before that I talked to them on plenty of times, sir. We were still in the same section together, sir. I'm sure we had plenty of conversations about what had happened. I'm unsure exactly what was spoken about in those conversations, sir. I'd say I had plenty of conversations before that, sir.

Thank you for the statement. You specifically stated in your evidence earlier that at some time you stood or sat around a table measuring one and a half metres by one metre, there were six people at the table and you had a discussion about what evidence you would give with a number of people, which included Soldiers 17 and 19. Do you understand my question so far?---Yes, sir.

Fine. Did that conversation happen, on your evidence now, between the time you gave your statement to the Military Police and the time you gave your statement to FLTLT Lowe?---I'm pretty sure that it did, sir. I'm quite certain.

You're quite certain that it did happen between the time of the two statements; is that correct?---Yes.

You agree that one of the purposes of making the second statement was to correct mistakes you made in the first statement?---Not so much - no mistakes that I'd made, sir, just small typos and just things that weren't correct, sir.

You resiled from - I use another word. In effect, in the second statement, you changed your evidence in relation to a number of matters, did you not?---I'm pretty sure it all stays the same, sir, it just - I've just tried to clear up certain areas and try to make my thoughts on certain areas more clearer.

Did you have the opportunity to read that statement prior to signing it with the Military Police?---The original, sir, yes.

You signed it as being true and correct?---Yes, that's right, sir.

Then when your own Counsel Representing at the time, FLTLT Lowe, gets you to make a further statement, you see the need to change what you've originally signed as being true and correct?---Yes, sir.

Thank you. This discussion between Soldiers 19, 17 and three others occurs between the two statements; is that the situation?---Yes, I'm pretty sure that's when it occurred, sir.

Thank you. Just going to the day in question, you've got back to your

accommodation about what time?---Not sure exactly of the exact time, sir, any time between 1500 and - 1505 and 1510, sir.

5 Was your roommate in the room at the time you got back?---I'm unsure of that, sir.

Have you ever discussed with him the sequence of your return to the room?---No, I haven't, sir.

10 Never?---No, sir.

You can hear the music from the room occupied by PTE Kovco and Soldiers 17 and 19?---Yes, sir.

15 That must have gone on for the best part of an hour; is that correct?---Sir, it wasn't actually annoying me in the slightest so I guess I wasn't really aware when it come on. But I think the first time I was really consciously made aware of it was when Soldier 20 asked me to tell them to quieten down.

20 So Soldier 20, who's your roommate, says to you, "Go and get them to quieten down"; is that right?---Yes, sir, along those lines, sir.

25 In fact, Soldier 20 had screamed out a few times words to the effect, "Shut the fuck up," hadn't he?---No, sir, that was what I yelled out, sir.

You yelled that out?---Yes, that's right, sir.

30 Is it possible you both yelled it out?---I thought that he actually didn't say anything, sir, but I could be wrong.

You must have found this noise coming from the room next door fairly irritating?---No, sir, I don't remember being annoyed by it at all.

35 Not annoyed at all?---No, sir.

40 Why did Soldier 20 seem to be agitated by it?---I'm pretty sure at the time that - actually, I'm certain at the time he was actually in his bed trying to sleep, sir.

45 Why did you shout the words, "Shut the fuck up"?---He - I think he - he asked me, he said, "Can you tell them to quieten down," and I was about to go and walk around and actually knock on the door. I sort of got up for a second and then I realised what am I doing, and I just yelled out.

Soldier 14, I'm about to put a series of propositions to you. They're hypothetical propositions in that I'm not saying that you did this; I'm

simply asking you to agree or disagree with the fact that you had the opportunity to do what I'm suggesting. Do you understand?---Yes, sir.

5 Fine. The room you were in is next door to room 8, isn't it?---Yes, sir.

It would take you about two seconds to get from your room inside the room next door, wouldn't it?---Not much longer than that, sir.

10 Equally, it would take you two seconds to get back from room 8 into your room, wouldn't it?---Not too much longer than that, sir.

Yes?---I wouldn't say two seconds but roughly five seconds.

15 Or less?---Hypothetically, yes, sir.

There's nothing to stop you moving very quickly into room 8 from the room you were in, was there?---I could get there quite quick, sir.

20 Yes. Indeed, Soldier 20 had asked you to go in and tell them to quieten down, hadn't he?---Yes, sir.

You are much shorter than what PTE Kovco was, aren't you?---Yes, sir.

25 A good, what, 30 centimetres or so shorter?---A lot, sir, yes.

You see, there would be nothing to stop you going into the room and you would have been confronted by PTE Kovco who was much, much taller than you. That's the case, isn't it?---Yes, he's a lot taller than me, sir, yes.

30 It would have been possible for you to pick the pistol up if it was lying on the bed, wouldn't it?---Well, before obviously I'd seen the photos and that, sir, I didn't know where he kept his pistol.

35 Thank you for the statement, Soldier 14. It would have been possible for you to pick the pistol up off the bed, wouldn't it?

LTCOL GREEN: I object to this question, sir.

40 PRESIDENT: The basis of it?

LTCOL GREEN: This is just hypothetical in the extreme, there's no basis for it whatsoever. It's against all evidence; it will make sensational reporting. It will serve no purpose whatsoever.

45 PRESIDENT: I can see it can cause some sensationalism but I'm going to allow it.

LTCOL HOLLES: There is nothing to stop you picking a pistol up off the bed, was there?---It's possible to pick up a pistol off all the beds, sir, yes.

5 You're aware, aren't you, of a number of incidents within the deployment of people waving pistols at each other in jest, aren't you?---Sir, I - that wasn't me that made that statement. I can't say I ever seen that happening, sir.

10 You are aware of it occurring, aren't you?---I never seen it, sir, I'd be going off the word of others, sir.

Well, you've heard about it happening, haven't you?---Yes.

15 LTCOL GREEN: I object to the question, sir. I think what LTCOL Holles is asking and what the witness is trying to answer are two different timeframes. I think the witness is saying, "I've heard of it in these proceedings," and LTCOL Holles is asking him to relate that back as if he understood that back then.

20 PRESIDENT: I think you've got to set the timeframe, Colonel.

LTCOL HOLLES: You were aware it was happening or it had happened prior to PTE Kovco's death, weren't you?---No, sir.

25 You've become aware of it since, have you?---Yes, sir.

30 When?---I've heard - obviously I heard the statement made by Soldier 30. I was present in Baghdad at the original - at the start of the Inquiry, sitting in on the Inquiry and I'm pretty sure I heard the statement, it was made then, sir.

There's nothing to stop you picking up the pistol and placing it close to PTE Kovco's head, was there?

35 LTCOL GREEN: I object to that, sir.

PRESIDENT: I'm going to allow it.

40 LTCOL HOLLES: Was there?---Yes, sir, the fact that we were mates, sir, and I would have no reason to do that, sir.

Physically there was nothing to stop you doing that, was there?

45 LTCOL GREEN: I object to that question. Physically there's no reason for anything not to happen or some things might happen, there just - it's meaningless.

PRESIDENT: You need to frame it a bit better, Colonel.

5 LTCOL HOLLES: If you were in the room and if you had the pistol in your hand, you could have held it at PTE Kovco's head, couldn't you?---I could have pointed it anywhere, sir.

Specifically, you could have pointed it at PTE Kovco's head, couldn't you?

10 LTCOL GREEN: Sir, this question is meaningless. It serves no purpose whatsoever; it is just sensationalist.

PRESIDENT: I agree it's sensationalist but I'm going to allow it anyway.

15 LTCOL HOLLES: Wouldn't you?---Well, I'm going to have to say no, sir because I know that - well I mean I understand you're giving a hypothetical, but you must understand that there would be - why would I do that, sir.

20 The process is, Soldier 14, that I ask the questions.

LTCOL GREEN: Well, sir, that's not the process. LTCOL Holles can't restrict the process to what he says is the process, that's not the process.

25 LTCOL HOLLES: Well, I don't to engage in a semantic argument with my learned friend. The reality is you don't answer a question with a question.

30 LTCOL GREEN: He can. There's no reason why he can't.

PRESIDENT: We're not going to go around in smaller diminishing circles. The Colonel will ask his question and live with the answer.

35 LTCOL GREEN: Or the question.

LTCOL HOLLES: You were angry about the noise that was coming from the room next door, weren't you?---No, sir.

40 There's nothing to stop you picking up the pistol, was there? Was there? ---Are we still going off the hypothetical that I'm standing in Jake's room, sir?

Yes?---Well obviously if there's an object somewhere, yes, I could pick an object up, sir.

45 Given that you're much shorter than PTE Kovco, the angle that you would hold that pistol up if you were holding it to his head would be angled

upwards, wouldn't it?---Well yes, sir.

That explains, doesn't it, your DNA over the slide and over the grip?  
---No, sir.

5

Soldier 14, you were in that room, weren't you?---No, sir.

It was you who discharged the weapon that day, wasn't it?---No, sir.

10 You've had discussions with Soldier 19 and Soldier 17 about what happened in the room, haven't you?---We have had talks on numerous occasions trying to work out what happened, sir.

And you were there in that room when it happened, weren't you?---No, sir.

15

That's the reason why it's your DNA on the slide, isn't it?---No, sir.

Nothing further, sir.

20 PRESIDENT: LTCOL Green?

LTCOL GREEN: I have no questions, sir.

PRESIDENT: COL Griffin?

25

COL GRIFFIN: Yes, thank you, sir.

<EXAMINATION BY COL GRIFFIN

[1118]

30

COL GRIFFIN: Soldier 14, in your evidence on 18 August at transcript page 1225, line 10, you described the stripping and assembling of the weapon that you observed with PTE Kovco a couple of days before 21 April and you said the following at line 10:

35

*First he proceeded to strip the weapon, sir. Once the weapon - once the slide was off and the barrel was off, he put the round into the chamber and then proceeded to put the weapon back together.*

40

You were asked:

*Did he have to force it closed?---It didn't look like he forced it at all, sir. Actually it looked like it was pretty smooth action.*

45

*You'd never seen that done before, is that right?---With a pistol, no, sir.*

5                    *Had you ever done it yourself?---No, sir. That's when I mentioned to him "What are you doing". He then - he said something back to me, it was - I'm not sure what he said, it was just an acknowledgement of what I'd said and he quickly unloaded the weapon.*

10                   *On 21 August, at transcript page 1238 you were asked what you noticed Jake actually doing with the weapon, again this is the incident a couple of days before where you say he silently cocked the weapon. You answered:*

15                   *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.*

15                   *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.*

20                   My note of your evidence today is that:

*My memory is he put it, that is the round, in the barrel before he put the slide on the weapon.*

25                   Is that the sequence, round in the barrel, barrel in slide, slide on weapon smoothly back into place, no forcing?---It was definitely before the slide was put back onto the weapon, sir. As I remember it he put it - yes, he put it into the barrel before he put it into the slide, sir.

30                   And then the slide was manoeuvred back onto the pistol grip part of the weapon?---Just as you were reassembling the weapon, sir.

35                   Pushed back and in one smooth action. Did he have to release the working parts forward by releasing with his thumb the slide locking lever?---I don't think I was paying that close attention, sir. I can - I could say, but I wouldn't be 100 per cent sure.

40                   If you weren't paying close attention, why were you concerned sufficiently to then take it up with him?---If - to make it a bit clearer, sir, if you could imagine two sitting - I'm not sure what side we were sitting on, I'm pretty sure he was on the left of me. Obviously he was stripping his weapon, that didn't alert me a great deal - you know, that - he's trained to do that. I'm pretty sure it alerted me obviously when - I mean he's sitting right there, so I'm - I may not be staring at him, but I know what he's doing, sir, he's right there. Obviously when - that's obviously why I didn't see where a round would've come from. The next minute I knew he was placing a round into the barrel and reassembled the weapon and I was like - whoa

and it's kind of why I said that to him at that stage, sir.

5 I take it that you were concerned because the person sitting next to you had a short-barrelled weapon which was now in a condition where it could fire?---Yes, that's correct, sir.

10 And hit you?---I don't think I really thought about it hitting me, sir. I just - obviously when you do it with an F88 as well, sir, there is a chance of having a ND, sir. So that's what I was more worried about, sir.

10 So what was he doing with it at that time. It's in the condition where it can - all it needs is the trigger to be depressed and that weapon would have discharged, is that the case?---Yes, that's my understanding, sir.

15 Your recollection is that he just placed the slide on the grooves, pushed it back, let the working parts go forward, did he?---When he did it, sir, it was - it was quite - quite like a smooth action, he - I mean, I don't know if he's ever done that before, but he looked like - you know, he did it quite well. He wasn't like fiddling around, like trying to work it out. So obviously for  
20 me trying to break it down into individual little events, it's hard for me, sir, to say.

25 All right, and you've then drawn that to his attention, your concern about it and he's then rendered it safe, has he?---Yes, as soon as I said what I said to him and he responded, he unloaded it immediately, sir.

At transcript page 1225 at line 43 you were asked:

30 *How did he do that?---By manipulating - cocking the weapon and observing the round come out, sir.*

*Did you see the round come out?---Yes, I did, sir.*

35 As he put it back together in that smooth action you've described, did a round come out then?---Do you mean when he was putting it back, like as in completing the silent cock, sir?

Yes?---No.

40 It didn't?---No, sir.

I'm going to show you a video.

45 **VIDEO PLAYED**

LTCOL GREEN: Can that continue please, sir?

PRESIDENT: Can you continue on for a little while, Major, please.

5

**VIDEO PLAYED**

10 COL GRIFFIN: Soldier 14, you've seen the demonstration of placing a round in the barrel, placing the slide back on as you've described and assembling the weapon by definition as you see causes a round to be ejected?---Yes, you could say that, sir.

15 What do you say to that demonstration?---I didn't even - I didn't think of that - that that even would happen, sir.

20 I'm not asking you what you think of it; I'm asking you what you saw PTE Kovco do which, as we've just seen, as you describe, is physically impossible?---Sir, I'm still certain that I seen him do what I said that I said he did.

25 Are you saying that you stand by your evidence that he assembled the weapon as you've described and the round didn't come out, as we've just seen does? You stand by that evidence?---Sir, the only time that I seen the round come out of the weapon was when he unloaded it.

Well, if he followed the sequence that you describe which we've just seen causes a round to be ejected - - -?---Yes, sir.

30 - - - the weapon could not have been in a dangerous condition, could it? ---Going off the video, that's correct, sir.

I tender the video, sir.

35 PRESIDENT: Yes, thank you. Any opposition to the tender of the video?

COUNSEL REPRESENTING: No, sir.

40 PRESIDENT: Marked as Exhibit 175.

**#EXHIBIT 175 - VIDEO OF DEMONSTRATION OF SILENT COCKING**

45

COL GRIFFIN: I understand your evidence today to have changed in respect of the time you had the discussion with Soldier 19 about the silent

cocking, that is, that your evidence is that that conversation occurred after you told the SIB about it in your statement dated 30 April 2006; is that right?---Sorry, sir, was that the - that's the original statement to the MP sergeant, sir?

5

I understood during the course of your examination by LTCOL Holles that you originally said it happened before you told the SIB and then you changed that evidence on reflection during his questioning, and you said that it occurred after you had spoken to the SIB?---Yes, sir.

10

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

When did it occur to you that there may be some connection between the failure to carry out a buddy clearance as you left the checkpoint and the discharging of the shot later that day?---The first time - when I was asked by - in my Military Police interview if I unloaded his weapon and, when I replied, "No," the sergeant obviously gave me a bit of a look, kind of telling me that that could be bad later on, sir. No, I didn't - I'm pretty sure I didn't hear anything about it, sir, until just a little time before the Inquiry started. I do believe when yourself came to Baghdad and I was told that I was going to get Counsel Representing, sir.

15

20

After the shot rang out and you went to the room, did you think to yourself at that time or in the minutes and hours afterwards, "I didn't clear that weapon"?---No, sir, I don't think that really occurred to me. Probably - I can't be certain but I'd say it would have been at least a few days.

25

A few days?---I don't - sir, I can't be sure but I don't think I actually thought of that on the day. Obviously after it happened I was just obviously in the grief of what had happened. I can't be sure, sir.

30

Did you not say to yourself, "My God, there's been a dreadful accident, his weapon has gone off and I was the person on duty with him and I didn't clear his weapon"?---That - do you mean immediately, sir?

35

Or in the hours or minutes afterwards?---No, I don't think that was what I was thinking about, sir.

During those hours or minutes, did you not say to yourself, "I've seen him silent cocking that weapon, putting rounds into it"?---No, I don't think any of that come into my mind on that day, sir.

40

Were you aware that a quick assessment officer was conducting an inquiry into the incident on the 22nd and interviewing some of your mates?---I was aware someone was interviewing people, sir, yes.

45

Did it occur to you at that time to report to him or to anyone in authority,

(a) that you hadn't cleared Jake's weapon at the clearance point, and (b) that you had seen him silent cocking the weapon?---I don't think that I'd actually thought of that, sir.

5 Were you part of the bearer party that travelled with Jake's remains?---Yes, sir.

19 and 17 were part of that bearer party?---Yes, sir.

10 You were with them from 22 April until your return and the time you gave evidence to the SIB on 30 April?---Yes, sir.

Small group of you for eight days together?---Yes, sir.

15 Discussing the death of your mate, tragic circumstances of what had happened to him?---Yes, sir.

20 You didn't mention to anybody at that time that there had been no clearance of the weapon by yourself?---I know that I mentioned it to someone, sir. I'm pretty sure as soon as I realised, I mentioned it to someone, I don't know who. But I know that I did mention it to someone. Yes, sir.

25 When?---I'm not sure, I couldn't say.

Would you have a look at Exhibit 19 which is in front of you, please, it's your statement to the service police, and if you turn to paragraph 19, which is on the fifth page. Do you have that in front of you?---Yes, sir.

30 In the previous paragraph, paragraph 18, you describe the immediate aftermath of the shot. In the concluding sentence, you say:

*A short time later PTE Kovco was carried out of the room on a stretcher and placed on a gaiter and then taken to 10CSH.*

35 At paragraph 19 you say:

40 *From there I returned to the accommodation area and asked someone, "Was it a head wound or a chest wound?" and I was informed that it was a head wound. I knew then that it was pretty bad.*

45 That's all you say in that statement about what you did in the aftermath. Would you tell the Board what you did when you returned to the accommodation area, please?---I'm pretty sure immediately, sir, myself, Soldier 21 and another, we grabbed some paper towels and cleaned up some blood that had - a blood trail, sir, just to get rid of it straight away.

Then I'm pretty sure I went and sat in my room, sir.

Did you go back to Jake's room where he'd been shot?---No, sir, I'm pretty sure that was closed off straight away, sir.

5

Did it occur to you at that time that you had not cleared his weapon, the one that you had seen him the previous days silent cocking?---I'm pretty confident I could say no, sir.

10 You're "pretty confident" you can say no; what do you mean by that?  
---Yes, that I wasn't thinking about that at that time.

15 It didn't occur to you at all that a tragic accident that had just occurred to the bloke you had been on duty with who you had seen silent cocking the weapon a couple of days who you hadn't conducted a weapon clearance with, that didn't occur to you at the time?---No, sir.

20 It didn't occur to you to go into the room and check that weapon?---No, sir.

Did you go into the room and check the weapon?---No, sir.

25 In the nine days between the shot ringing out and you reporting to the SIB, did you tell anyone that there hadn't been a buddy clearance and that that weapon had been silently cocked in your presence by the deceased?---Yes, yes, I did, sir.

Who?---I'm not sure, I might have even actually told Soldier 1, sir.

30 You might have or you did?---I might have, sir, I can't be sure, but I think I - when it occurred to me that I hadn't, obviously it was on my mind and I wanted to make sure that that was known, sir.

35 When you got together with the bearer party the next day, after the death of PTE Kovco and you were with that group of mates who were taking him back to his family - - -

LTCOL GREEN: I don't think it was the next day.

40 COL GRIFFIN: Well, when did you assemble with the bearer party?---I think it was two to three days, sir.

45 Do you remember when you were identified that you would be part of the bearer party?---Yes, sir, when - when we were told, the first guys left that night and some of us left early the next morning and I'm pretty sure that was - like two days after, sir.

So you were together from around the 23rd of 24th, is that right?---Yes, sir, the 23rd, sir.

5 Do you recall talking to 19 and 17 the day after the incident, the 22nd?  
---I have a memory of talking to them. I'm not sure what day that was, sir. It was - obviously I talked to them a lot after the incident, but I'm remember we had a talk on what was going to happen like with the bearer party and - and that about - I think the next day, sir, I'm not sure.

10 Well, when you came together as a bearer party and you were together as a group, were you discussing amongst yourselves what the hell happened here?---Yes, of course, sir.

15 At that time, did you discuss with them, he didn't do a clearance with me?--Sir, I - I know that as soon as I - as soon as I knew I remembered that I had - had not done that. I told - I told someone straightaway. I made sure that people knew that and I know that I told some mates and I'm pretty sure that I even told Soldier 1, sir.

20 What did you tell those people you've just identified?---That I - that I didn't clear his weapon, sir, before we come down.

25 And did you tell them also that he'd been silent cocking the weapon?  
---No, sir.

Why not?---That didn't really occur to me. I think the first time I sort of come out with that - come out with that was may be in the police interview, sir, with the MP Police Sergeant.

30 Nine days after the shot killed PTE Kovco is the first time it came to you that he'd been silently cocking the weapon, that is inappropriately loading that weapon beforehand?---I - I was away the whole time obviously with the bearer party, sir, so that - that just didn't come into my mind, sir.

35 You are with the bearer party where you all talking about what had happened and do I understand you to be saying that it didn't occur to you for nine days that he had inappropriately loaded the weapon before?  
---Obviously I didn't think that that had any direct link with what had happened.

40 That's not the question I asked you. The question I asked you was, was it nine days after the incident before it occurred to you that the deceased had been inappropriately loading his weapon beforehand?---Yes. Yes, sir.

45 I'm now going to talk to you about your suggestion when I spoke to you last in evidence about the DNA profile being yours on the weapon?---Yes, sir.

You suggested then that it may have been as a consequence of the megaphone in the particular checkpoint that you were working, do you recall that?---Yes, sir.

5

Now, I understand your evidence today to be that on the day, you used the megaphone all the time, on that day?---Yes, we used it a fair bit that day, sir, yes.

10 You were there for two hours, at least you were there for one hour before Jacob Kovco came into the point?---Yes, that's correct, sir.

15 What was the process, would he take over the megaphone at that point or did you share it between you?---No, sir, it just sat there in front of me and obviously if a vehicle needed to move, he probably argued between me for a second that he was going to do it and someone would grab it and tell the car to move, sir.

20 Do you recall Jacob Kovco actually using the megaphone during that shift?---Yes - yes, I can, sir.

You have a clear recollection of that, do you?---Yes, I know that we were both using it, sir.

25 Had you been on shift with him before at that point?---Yes, sir.

Did he use the megaphone on that previous shift?---I'm unsure, sir, that would've been the day before, sir.

30 Well why do you have a clear recollection of him using it on the 21st? ---Because I - I remember him - that what we were using it for, several vehicles and the little kids to - to move away, sir.

35 But you don't have a memory of doing it the day before?---I don't really have any memory of the day before that, sir.

Well why do you have a memory of what happened on the 21st with the megaphone?---I - I just know that that's what happened, sir.

40 Well when did you first think about using the megaphone on 21 April for your evidence to this Board of Inquiry?---Do you mean the first time that I used it on that shift, sir?

45 No, what I mean is for your evidence to this Inquiry when did it first pop into your memory that you and he both used the megaphone on 21 April? ---From just when it happened, I just remember it - remembered it ever since - just since it happened, sir.

Do you mean when I asked you to account in the witness box for how your DNA profile came to be on the megaphone, it came into your mind at that time, is that right?---Sir, I - I know that we were using it because of the  
5 joke - like, because what we were talking about and obviously we were  
joking around and - you know, we were telling vehicles to move away and  
kids to move away and it was kind of like - you know, I'd do it and I'd go,  
"No, it's your turn now, mate" and he'd have a go and after that and when  
10 you brought up the - the DNA, sir, obviously that come into my mind that -  
that we were sharing that object, sir and the same with the telephone, the  
radio.

But you can't remember it the day before?---The day before the incident,  
sir?

15 Yes?---No, sir.

Have you invented this memory to account for that day?---No, sir.

20 But your evidence is that you can clearly recall Jacob using the megaphone  
and you using it that afternoon, but you have no recollection of the day  
before?---Sir, I don't really even have a recollection of anything on that  
day really before that OP, sir. It's just because that is such a significant  
event that has happened that I'm - that I can remember what happened  
25 then, sir.

How many times did Jacob use the megaphone that day?---I - I can't be  
sure of how many times he or myself used it, sir.

30 But you're sure that he used it?---Yes, I'm sure we both used it, sir.

But you can't remember how many times he used it?---Yes, that's correct,  
sir.

35 Did he use the telephone that day?---I have a memory in my head of that,  
sir. I'm not sure what - if that was on the day though, sir.

Did he use the .... that day?---I - I can't be sure of that, sir.

40 You don't know if he used the ....., is that right?---That's right, sir.

You don't know if he used the telephone?---I'm pretty certain that he used  
the telephone, sir. I'm just afraid that may be that memory is from a  
different day, sir.

45 Could the memory of the megaphone be from a different day as well?  
---No, I'm certain that that's on that day, sir.

Why are you certain it's from that day?---Because I remember the events that happened that day, sir, because I remember the kids running in front trying - harassing all the soldiers, trying to sell them lollies and that when they're not meant to be there, telling them to leave, joking around. I'd say that and then obviously we'd be speaking out in a loud voice and everyone would stop and turn and look at you. So you didn't really - it was a little bit embarrassing, sir, so you'd pass it to the next bloke and say "Now, it's your turn, mate" and they'd do it and obviously back and forth between us, sir.

Did that happen the day before?---I can't really remember what happened the day before, sir.

Is there anything else in the particular place you were at that you touched that Jacob Kovco also touched, other than the megaphone on that day? ---Objects, sir?

Yes?---There was an intercom unit, sir. I mean I can't say we definitely both touched them, sir, but objects that we may have touched or the - an intercom unit, the entrance to the door - actually, I take that back, there's no doorknob on that, sir, but there's a lock on the inside. Actually, sorry, I take that back, the door or the lock weren't there at the time. Compass, binoculars, sir. I was actually involved with the bomb reps, the mortar reps, (indistinct) as well. Obviously there's a - when you get in there you clear the stuff around away from you. There's a - .... that you might move - I don't think we touched it, sir, I'm just giving some examples. Just .... you might want to move away from your feet, there's ..... sir, we may have - he may have passed me .....and I may have ..... for him. He may have done the same for me. Both myself and Jake at the time were trying to get a .....

Do you recall giving evidence last time that you don't think you used the ..... that day?---Yes, I - I don't think I used the ..... that day, sir.

Having told us those variety of things that you may have touched, are you able to say whether or not Jacob Kovco touched any of those other things after you touched them, except the megaphone?---I'm confident that we both touched the megaphone, sir, I know that we did. As far as the other objects, the telephone would ring all the time from guys may be downstairs. I can't go into too much detail obviously for OPSEC reasons, sir, just that they wanted us to may be walk around and check something out or they were just ringing up to tell us to come - one bloke to come down and get some food for lunch, anything sir, the phone was ringing quite a lot, so I'm - I'm not 100 per cent certain, but I'm pretty sure we both touched that sir. As with the ...., I don't know if there were - what - if there was any need to use it on that day and for the rest, I was just giving

- just some examples of just - there's so many objects. I could've had a bottle of water, sir and had a drink and he's - could've asked me for a drink too and I've give him mine and - you know what I mean, sir. Obviously in those confines and in the job we do we're all really good mates, sir, so -  
5 you know, we obviously shared a lot of things and you're always in contact with each other. It's tight. I could've - I'm pretty sure my DNA would probably be - be all over his cams as well, sir, may be. Just such a tight, confined place, it's - you're always touching stuff, sir, you know. Your compass, it's - sorry, sir, I've gone off - went on a bit too much there,  
10 that's all I have to say.

When you sat in the point where you were, did he sit to your right or to your left?---I'm not sure, I'm - I'm pretty sure he sat to my left though, sir.

15 You've got a clear memory of so many things, you don't recall whether he was sitting on your right or your left?---Obviously we'd been in the OP on the days before that, sir, so it would change. I'm - why I'm confident that I was sitting on the right because obviously I was in there first, sir, so I would've been behind - further in, sir, to make room for him to get in, sir.

20 So you are confident about that?---To - to the best of my knowledge, sir, I think I was on the right hand, he was to my left.

25 Am I right in saying that the megaphone can be used in two ways, that is you can hold it up with the pistol grip and speak into the megaphone, through the back of the megaphone piece or must you use the handset as well as hold the megaphone?---That's a good point, sir. I - that's correct, you can either remove the actual hand piece and use it as two parts or - or you can actually attach that to the back.

30 In some cases the megaphone can simply sit on the front of the point and you just use the hand piece, is that right?---Yes, that is possible, sir, yes.

35 Which one did you use on that afternoon?---On that day we - we had it - it was mounted to the back of the megaphone, sir.

40 Do you mean by that that you had to hold the pistol grip as well as speak into the handset?---Yes as in it was one-handed, that's - it was all - it was attached to the back of the megaphone, sir.

So you could operate it one-handed?---Unless you wanted to use the siren on top, you have to use the other handset.

45 Did Jacob operate the siren?---See, sir, not - not every time - 99 out of a 100 times you'd probably go - you'd just - you'd operate the siren really quickly, just to get a really - just loud noise straight out and everyone looks up and obviously to get the attention of someone in a vehicle or whoever

and then you'd speak. And I'd say that was done 99 out of a 100 times, so I'd say yes.

5 You have a clear memory of operating the megaphone, my question is did he operate the siren?---I don't have a clear memory of that, sir, but I think that - that we both did that, yes.

Thank you, sir, I have no further questions for Soldier 14.

10 PRESIDENT: LTCOL Green, do you wish ask your client any questions?

LTCOL GREEN: I have no questions, sir. Sir, might he be released to be allowed to return to theatre?

15 PRESIDENT: We'll get to that in a moment.

When you speak through the megaphone, talking to the kids and whatever, what language did you speak in?---English, sir.

20 And you expect them to understand you?---They're - they're constantly there, sir, they are always there, we are always telling them to leave, they never go, they are always harassing the Americans, they can - they can speak English, sir.

25 Or Australian?---Or Australian.

Anything arising from anybody?

30 COUNSEL REPRESENTING: No, sir.

PRESIDENT: Yes, you may stand down for the moment. You might like to rejoin your Counsel for a moment.

35 <WITNESS WITHDREW [1205]

40 COL GRIFFIN: Mr President, I had arranged for Ms Franco, the DNA expert that you've received evidence from to be in the body of the Inquiry this morning to hear the evidence from Soldier 14. It may be that there is something arises from that that she may have that could assist the Board or not, I'd seek a short adjournment to consult with her to determine whether or not t call her to give evidence to the Board.

45 PRESIDENT: Any comment about that? We'll take a 10 minute break.

**ADJOURNED**

**[1206]**

**RESUMED**

**[1225]**

5

PRESIDENT: Thank you, Major.

MAJ JOLLY: Thank you, sir. I recall Ms Franco to the stand.

10

PRESIDENT: Yes, thank you.

<MICHELLE ANNE FRANCO, recalled and resworn

**[1225]**

15

<EXAMINATION BY MAJ JOLLY

20

MAJ JOLLY: Could Ms Franco be shown Exhibit C174, please.

PRESIDENT: She has it, I believe.

25

MAJ JOLLY: Ms Franco, could you please locate photograph No. 9 of that sequence of 14, please?---Yes, No. 9 was out of the package.

That's good, thank you. Ms Franco, you were present for the entirety of Soldier 14's evidence this morning?---Yes.

30

You heard him give evidence as to how the megaphone was operated?---Yes.

He describes operating it by using the pistol grip with the white transmitter part being attached to the end of it, and that's what is described in that photograph?---Yes.

35

Also Soldier 14 described a button somewhere up near the top of the megaphone that operated the siren?---Yes.

40

You recall COL Young's question on the operation of that button that in order to operate it it takes one or two fingers?---Yes.

45

Considering the evidence that you've heard from Soldier 14 this morning, Ms Franco, and using that photograph as a reference, are you able to say whether the likelihood of secondary transfer of Soldier 14's DNA on to PTE Kovco's gun is more likely or less likely given the evidence you've heard this morning?---Well, looking at the pistol grip, picture No. 9, it

appears initially to seem less likely for DNA to be transferred by secondary transfer using this type of apparatus. Now, I'm not sure, though, when you manipulate the switch for the siren where your hand should be, if it would cover the part that you actually speak into.

5

Unfortunately we don't have any evidence other than the button for the siren is on top of the megaphone, and you heard the response to COL Young's question and it was one or two fingers, that's the most that the Board has in relation to that?---On top of the - is that the switch just here?

10

I don't know, Ms Franco. Unfortunately we can't take it any further than that?---Okay.

Am I right in saying that in order for secondary transfer to have occurred, given the results that you found, that PTE Kovco would have had to have handled that megaphone with both hands?---I'm not sure what you're saying.

Sorry. You recall yesterday you gave evidence that, based on your observations of MAJ Young's manipulation of the pistol and the locations of DNA that you identified on the pistol, PTE Kovco would have had to have held the pistol with two hands in order for Soldier 14's DNA to cover both the slide and the hand grip?---Yes, the DNA - yes, it's the DNA profile of Soldier 14. That's true, because it was on two different spots, and that's assuming that it wasn't moved from one spot to another spot.

Just taking the latter part of your answer. For that to have occurred, we're going beyond secondary transfer then, we're talking about tertiary and upwards transfer?---Yes, although it depends if the primary transfer was on to a slide and then from that slide someone has removed it from the slide on to the grip and therefore there's a lesser amount.

But I take it from when you're saying a primary transfer to the slide, that would mean Soldier 14 holding the slide and then PTE Kovco gripping the slide and then gripping the hand grip, and it's that latter movement that could transfer Soldier 14's DNA from the slide to the hand grip? ---Yes. Now, he would either be holding the slide or spitting on the slide. His DNA would be on there like a primary transfer. That's what I mean by primary transfer.

40

If indeed the megaphone is the object by which the secondary transfer occurs, I think your response was that PTE Kovco would had to have used that megaphone with both his left hand and his right hand?---Yes. I'm sorry - could you repeat that question?

45

If the megaphone that you see in the picture there is the object of secondary transfer, then PTE Kovco would have had to have used the

megaphone with both his left hand and his right hand?---Yes, in manipulating the - then manipulating the gun and leaving both DNA of Soldier 14 on both pieces of the gun.

5 Is that the basis for your rationale or indeed your conclusion that, upon hearing that evidence and seeing that megaphone, the likelihood of secondary transfer is less likely to have occurred, or did you use some other process of reasoning to come to that opinion?---I said that the secondary transfer idea was less likely to have occurred with this apparatus  
10 than this apparatus mainly because the hands are away from the mouth area.

Thank you, Ms Franco. Nothing further, sir.

15 PRESIDENT: Thank you. LTCOL Green.

LTCOL GREEN: Thank you, sir.

20 <EXAMINATION BY LTCOL GREEN [1232]

LTCOL GREEN: Ms Franco, LTCOL Green again. Ms Franco, you've no doubt used a megaphone throughout your experience?---No, I don't  
25 think I've really ever used a megaphone and maybe if I did it might have been 20 or more years ago.

Been to sporting activities where you've seen megaphones being used?---Yes.

30 You can identify from that they're not designed to be used by just one hand, they can be used by left or right hands?---Yes.

In fact, they can be used by a person's dominant hand?---Yes.

35 In fact, they can be used by a person's inferior hand?---Yes.

And no doubt during the course of the operation, you could even swap using hands, starting off with a dominant hand, over to the inferior hand  
40 and back again?---I imagine so.

Thank you, sir.

45 PRESIDENT: LTCOL Holles.

<EXAMINATION BY LTCOL HOLLES [1233]

LTCOL HOLLES: You've just answered a series of questions about dominant and non-dominant or, as my friend referred to it, inferior hands.  
5 If you accept that a soldier in the situation about which we're talking will or should at least have his dominant hand on the pistol grip of his Styre, it would follow that he would use only one hand to manipulate whatever else he was doing, does that make it more or less likely that your theory is correct? If you don't understand the question, I'm happy to answer it?  
10 it?---It's not really, I suppose, my theory but it was the theory of secondary transfer of the gun in two positions.

Yes?---That's the theory. That would make it less likely. The more DNA present - yes, because that was the theory, you need two hands to operate  
15 the gun so two points of contact would be necessary, therefore two hands would have had to operate this megaphone to have the DNA present on the hands. But an extra hand using the megaphone would assist secondary transfer because it would load up more DNA as well.

20 But if it's one hand it in fact lessens the possibility of secondary transfer occurring?---In that theory of the two-hand operation for the gun but one hand would all - all that's necessary for secondary transfer to occur.

25 Thank you. Nothing further, sir.

PRESIDENT: Thank you. COL Young.

COL YOUNG: Just briefly, Mr President.

30 <EXAMINATION BY COL YOUNG [1235]

COL YOUNG: Ms Franco, could we just revisit a question I asked you  
35 yesterday about a lay description of DNA and I struggled with that. We had a chat this morning and, for example, if you picked up that glass and left some DNA, I asked you would you be able to see that under a microscope, for example. Just tell us what the answer to that was?---Not the actual DNA by itself. If I made a slide, like if I took a swab and then  
40 on a glass slide I made a smear of that swab and stained it with some chemicals and looked under the microscope, I may see a couple of skin cells. But I couldn't actually see DNA because the DNA is in the nucleus of the actual cell and there may be free DNA as well in that sample. So I couldn't actually see the DNA. When we sample DNA, trace DNA, it's  
45 only based on a logical approach looking for where a person could have touched. We can't actually zero in on the DNA by sight, it's invisible, the contact DNA.

So after taking a swab on a site where they may have left DNA, you need then to go through a process to be able to identify DNA?---That's right, yes.

5

I think I asked you on a previous occasion that you regard yourself as an impartial expert?---Yes.

10 Would you agree with me that experts can from time to time make mistakes in interpreting what they might be doing, results?---Yes.

15 Are you confident from your testing that the profile of Soldier 14 is on this pistol that we've been talking about?---Yes, well, I can only say about the swabs taken from the pistol because I didn't ever test the pistol. I am confident because the profile - I mean, we have checks in the laboratory and we have protocols that have to be followed, and we have checks and counter checks within the DNA processing. But apart from that, the evidence was assessed before any comparison samples came into the lab as well, as an extra check. I can be assured of PTE Kovco's profile not only  
20 because we had his reference profile but because we also tested a lot of items from the scene and also from himself. So I'm assured of his profile by other checks. The unknown profile was evaluated before the reference samples even came into the laboratory. So conclusions were made and then one by one profiles were compared to that unknown profile until we  
25 got the match with Soldier 14's profile.

Thank you, Mr President.

30 PRESIDENT: Thank you. MAJ Jolly?

MAJ JOLLY: Nothing arising, thank you.

35 PRESIDENT: Thank you. Thank you, Ms Franco, you may now stand down. The Board is extremely grateful to you and your organisation for the assistance that you've given us; thank you.

<WITNESS WITHDREW

[1239]

40

PRESIDENT: 1.30?

45 MAJ JOLLY: Soldier 39 is - we're due to hook up with him at 1330. Can I suggest 1345, though, to allow us to test and make sure he is actually where he's meant to be so we don't have any delays.

PRESIDENT: Sounds like a good idea to me. We don't want any glitches

with the technology, do we?

MAJ JOLLY: No.

5

**LUNCHEON ADJOURNMENT** [1239]

10

**RESUMED** [1446]

PRESIDENT: Thank you, Colonel.

15

COL GRIFFIN: Good afternoon, Mr President, Members. We return with a video link to Headquarters Joint Task Force 633 located in Iraq and I call Soldier 39, sir.

PRESIDENT: Thank you.

20

<**SOLDIER 39, sworn** [1447]

25

<**EXAMINATION BY COL GRIFFIN**

COL GRIFFIN: Soldier 39, you will recall that, for operational security reasons, the identities of individuals situated in theatre are being protected and persons referred to by a callsign that appears with a number next to their name on Exhibit 5 in these proceedings, the callsign matrix, do you have that document before you?---Yes, I do.

30

Would you please indicate that your correct name and rank appear next to the number 39 on that list?---I can confirm that.

35

Thank you. If you have the need to refer to anybody by name who is in theatre, would you please do so by reference to that document?---I will.

40

Do you have a copy of a statement that you prepared and signed on the 18th day of July this year?---I do.

If you just check with me: is that a six-page document?---Yes, it is, sir.

45

With 16 numbered paragraphs?---Yes, it is.

Are there any matters that you wish to change or amend in that statement?

---No.

Are you satisfied that it's a true and accurate of your evidence to the Board of Inquiry?---Yes, I am.

5

Can I just confirm from the first paragraph of that statement that you have read the annex setting out the rights and obligations of a witness before the Board of Inquiry?---I have.

10

I'm just going to take you to some parts of you statement. Before I do that I'm going to tender the document. Mr President, I tender the document.

PRESIDENT: Any opposition to that tender, gentlemen?

15

COUNSEL REPRESENTING: No, sir.

PRESIDENT: That will be marked as Exhibit - - -

20

COL GRIFFIN: I beg your pardon, I've just been corrected.

PRESIDENT: It's part of another exhibit.

25

COL GRIFFIN: It's actually already in evidence as Exhibit 146. I apologise, sir.

PRESIDENT: Thank you.

COL GRIFFIN: It was done during one of the - - -

30

PRESIDENT: The mass tenders.

35

COL GRIFFIN: The mass tenders, correct. So it's Exhibit 146. I'm indebted to the Secretary, as usual, for pointing that out to me. Soldier 39, I'm just going to refer you to some aspects of your statement. Firstly, as I understand it, your position is as the Chief of Staff of Headquarters Joint Task Force 633?---Yes, that's right.

40

How long have you been in that position?---I've been in that position now for almost five months. I took over on 10 April.

45

On the evening of 21 April when PTE Kovco sustained the gunshot wound, what were you doing at the time you first learned of that and where were you?---I was in the headquarters sitting at my desk, I understand, when I was made aware that there had been an incident. That had come through the watchkeeper at 633, and I was made aware initially by a verbal incident report and then obviously subsequent documented reports.

What was your role in the unfolding events?---I guess the best way to describe it I guess would be a supporting role. Obviously the commander was there at the time, as were the majority of the PSOs. As events unfolded, there was the need for advice to be given to the commander on a range of issues and I assisted in the provision of that advice, and I guess to some extent you could say that I coordinated the activities of the principle staff officers there in the headquarters.

Did you take any particular decisions yourself or was your role more, as you described it, in coordination of process and procedures?---Initially I don't recall making any decisions in my own right, although clearly later, as I've indicated in my statement, there were decisions made. But certainly up to the time of death, for example, I don't believe I made any decisions.

You say in paragraph 4 of your statement that your involvement included ensuring that only known facts were passed from the headquarters to the NOTICAS and the FATALCAS reports and public affairs talking points. Are you able to tell the Board what the content of the talking points that you provided were?---The talking points obviously go to DGPA, our public affairs bureau in Canberra, and they are a summarised statement of facts which basically encapsulate the events to date. They're the talking points which ultimately are passed to whichever Defence principal will front the media to give them the background that they would need to be able to answer the questions. They are a distillation of facts.

Did they contain a statement of what PTE Kovco was doing at the time the shot was fired?---I don't believe that it did. I don't have them immediately to hand, but if that question is in relation to the cleaning of the weapon, no. At no stage did any of those talking points refer to cleaning of the weapon.

What did they refer to, then?---They basically referred to the fact that at a particular time that PTE Kovco had sustained a gunshot wound to the head, and then it outlined actions taken by the SECDET members and by members in the 10CSH in order to try to save his life. As events unfolded, of course, it provided an ongoing update of the status of those events.

At any time did you or your headquarters to your knowledge make reference to what PTE Kovco was actually doing at the time he sustained the gunshot?---To my knowledge, no. I say that with some assurance because, clearly, after the immediate actions were taken, I reviewed the documentation that left this headquarters for exactly those purposes. I've been unable to find any reference to any activity, particularly in relation to cleaning of the weapon.

Any mention of the use of a computer at the time he sustained the gunshot injury?---(Inaudible)

Could you repeat that answer, please?---No.

Thank you?---Yes, I can repeat the answer; the answer is “No.”

5

We have some technical difficulties with the audio sometimes. In your statement you mention at paragraph 4 that you preferred the initial repatriation step to a location in Kuwait be by C130. Is that in fact what took place?---Yes, it is.

10

Did it come as planned at that time or was there any delay in what you had planned at that stage?---There was no delay in what we planned. I might point out, though, that the emphasis in that particular sentence is on the use of the word “Australian” C130 rather than some other C130. There are a number of C130s which fly out of Kuwait but at that stage our initial planning, my initial planning, had been based on flying PTE Kovco out of Baghdad on an Australian asset, because I considered that to be entirely appropriate. I should hasten to add, though, that at no stage was the planning accelerated or decelerated to achieve that timeline. It became clear to me, probably about 15 hours before the aeroplane arrived, that there was a possibility that an Australian C130 would be available. At that stage we were still awaiting paperwork from the US mortuary affairs system. But clearly that paperwork was finished in time for that repatriation to go ahead using the Australian asset. To a large extent it was coincidental.

15

20

25

Did you receive any direction to plan to have PTE Kovco’s remains returned to Australia by Anzac Day?---No, I did not.

30

Did you receive any indication that that will be the desired outcome from anyone?---I didn’t receive that indication from anyone else. At one stage in the planning it appeared as though PTE Kovco’s remains may arrive back in Australia on Anzac Day and I consider that that would have been entirely appropriate, and in fact that was mentioned in one of the hot issues briefs. But at no stage did it drive our planning, nor was it mentioned by anybody else back in Australia.

35

You mention at paragraph 7 of your statement that you were aware of some input from the Military Police - actually, you first mention it at paragraph 5 of your statement, of email correspondence in which members of the Military Police had indicated that PTE Kovco’s body was not to be moved until SIB had inspected the body, would you tell the Board about that please?---I’d just like to refer, if I may, to an email which I received at the time.

40

45

Yes, that’s a matter for the President.

PRESIDENT: Yes, certainly.

COL GRIFFIN: Yes, thank you?---I was first made aware of that via  
5 email as I've indicated there which had come from the JMCC personnel  
down south and had been relayed to me by other headquarters' personnel  
who were specifically involved in the movement of assets around theatre  
that there had been an email which had been put out by the MP Battalion  
back in Australia which indicated that as part of the lessons learnt from the  
10 death of another ADF member here in theatre some months ago that the  
SIB - and I quote here:

*The SIB will need to view the body as part of the incident scene.*

15 As I said, that email trail came to me via various parties and - but once  
reading that it became clear to me that - or at least in my view, the MPs  
had formed the view that PTE Kovco's body was still at the incident scene  
and obviously as I've stated there in my statement later on, I sought to  
speak to MP individuals back in Australia to obtain approval to further  
20 move PTE Kovco's body to Kuwait.

Now, you say that having spoken to that MP Officer at about 2245 D on 22  
25 April, MAJ Pemberton, that is the SIB Officer, gave verbal approval to  
move the body to Kuwait and - - -?---That's correct.

25 - - - MAJ Pemberton accepted that moving PTE Kovco's body to Kuwait  
provided an earlier viewing time than would otherwise have been the case  
whilst simultaneously facilitating repatriation to Australia?---That is  
exactly right.

30 I'm going to put to you some evidence that that officer, MAJ Pemberton  
has given to Board and then invite you comment on it. I'm reading from  
MAJ Pemberton's statement that he adopted in giving his evidence,  
particularly at paragraph 8:

35 *About 0500 hours that same morning I received a telephone call  
on my mobile from a male person who identified himself as -*

And I interpolate Soldier 39 -

40 *- the Chief of Staff at TF 633 in Baghdad. He said words to the  
effect "I am the Chief of Staff at 633 and I need to have a chat  
with you. You had a conversation with a Movements Officer  
earlier this morning, but I am aware of the insecure means that we  
are talking of, do you know what I am talking about?" I informed  
45 him that I was. He said words to the effect "I have a message  
here that has your name on it and that you have directed that  
things not be moved." I stated that was correct and explained*

5                   *using words to the effect "That we need to ensure that things remain as they are". He said words to the effect "I need your concurrence to move things". I said words to the effect "I cannot give you that and I, that possible evidence would be lost and also be contaminated if things were moved". He said "Well it will be risk managed and the body has been moved already". I said "If you have already moved the body, why do you want my concurrence?" He said "So we don't bang heads at a later date" or words to the effect. I said "Well we will have now lost vital evidence". He said "You need to understand the bigger picture here and why it is important to get the body home". I said "I do understand the bigger picture and that is why the body should not be moved, where is the body now?" He said words to the effect "Kuwait or on its way". I said "Can the body remain there until my team gets into country to have a look at it?" He said "It will be there for a little while". He then said he was sorry for ringing me at this time and hung up.*

20                   What do you say to that evidence, Soldier 39?---I'd say it's utter bullshit.

                    The entirety of it?---The salutations are correct, the rest of it, especially in relation to his refusal to provide that approval and most of the conversation is entirely incorrect.

25                   Would you tell the Board your recollection of that conversation please?  
---The conversation was short, it was affable, I had indicated that we did have a desire for a number of reasons to move PTE Kovco to Kuwait and those are the desires that I've spelt out there in my statement which was basically to attempt, where possible, to repatriate Jake on Australian assets because that was appropriate. He was very quick in providing that approval. He had no problem with it. I had pointed out to him that the body had already been moved twice and that I understood the risk inherent in - in further movement, that I also appreciated without being a forensic - of having a forensic background, that I was sure that time would also play a part and that - you know, the selling point for me to him was that the SIB would be able to view PTE Kovco's body in Kuwait earlier than would've been the case. He granted that approval willingly, absolutely willingly and I will point out that this approval was granted something like 14 hours before the body left Baghdad as opposed to his statement where he says - or he indicates that the body was already on its way to Kuwait. PTE Kovco did not leave Baghdad until pm hours on the 23rd, our time. That phone call was made at around 11 o'clock, around 2300 the proceeding evening. So there was a considerable period of time between that phone call being made and PTE Kovco being moved away from Baghdad.

45                   The Board has received some evidence about directly liaison authority being granted and then withdrawn between Military Police members at

5 SECDet and the Military Police Battalion Headquarters back in Australia. Do you have any knowledge, firstly of the approval of directly liaison authority and secondly of the subsequent withdrawal of that approval?---I have no visibility at all of that. In fact the first I become aware of that is you're telling me right now.

When the escort came to your location with PTE Kovco's remains, were you involved in dealing with the escort in any way?---No I wasn't.

10 Thank you, Soldier 39. I have no further questions at this stage, Mr President.

15 PRESIDENT: Do you remember we talked, Soldier 39, about that first email that you received from the Military Police, the chain, have you got any idea what time you received that or received that information?---I - I personally received it a few hours before I make the call, that was the first time I became aware of it. I understand that others had been made aware of that previously, but that information was passed to me by somebody in the headquarters here who was responsible for movement around the theatre, but it was about - I would guess, three hours prior to making the call.

20 Did you know at that time where the body was?---At the time I was made aware?

25 Indeed?---The body was at the Mortuary Affairs collection point at BIAP, Baghdad Airport.

30 LTCOL Green?

LTCOL GREEN: No, sir.

PRESIDENT: LTCOL Holles?

35 LTCOL HOLLES: Yes, sir, thank you.

PRESIDENT: We are going to have change Counsel's seats so they can talk to you via the video link, we won't be a moment.

40

<EXAMINATION BY LTCOL HOLLES

[1410]

45 LTCOL HOLLES: Soldier 39, I'm LTCOL Holles, I appear for the parents of PTE Kovco, can you see and hear me?---Yes, I can.

Have you ever previously been involved in the repatriation of a deceased

member of the ADF from overseas?---No.

Have you ever previously been involved in a sudden death on base somewhere in Australia?---No.

5

Do you have any experience whatsoever in the necessity to conduct inquiries in relation to sudden deaths?---I have been previously involved in Boards of Inquiry for aircraft accidents for in service.

10

I appreciate that, but my question is have you any previous experience in relation to sudden and unexplained deaths during your service career with the exception of the aircraft type of fatalities you're talking about?---No, no I haven't.

15

In paragraph 5, page 2 of your statement you say this:

20

*I was aware of email correspondence in which the members of the Military Police had indicated that PTE Kovco's body was not to be moved until the SIB had inspected the body. The body had already been moved from the place in which the shooting had occurred in an effort to save PTE Kovco's life.*

25

Are you able to expand on what you mean by that statement?---Well as I've indicated previously, I was made aware via the email trail that they had indicated a desire that the body was not to be moved until the SIB could get in theatre. But my understanding was, as I said, and I'll refer to this document again, that the SIB will need to view the body as part of the incident scene and I took that to mean that they're understanding was that PTE Kovco was still in his room. Notwithstanding that, I - I was aware of the significance of the SIB team and the evidence that that would ultimately generate and that's entirely the reason why I rang MAJ Pemberton in the first case and that was to gain approval to continue the repatriation towards Kuwait for two reasons. Firstly, to facilitate the repatriation in a timely scene and secondly, to use the limited Australian air assets in theatre if that were at all possible. Having said that, I can assure you that if that approval had not been forthcoming I would not have undertaken to - to move PTE Kovco to Kuwait, nor would I have advised anybody else in this headquarters that approval had been obtained.

30

35

40

I appreciate that. My point is simply this that you were aware that the SIB said they didn't want the body moved?---Yes.

45

Now, it would follow, would it not as a question of logic that frequently it's the case that the body of somebody who is shot, they are moved from the scene to a hospital or some other location where an attempt is made to revive them, that fails, so you in fact have a body which has already been moved?---Yes.

You then have a body in one location and an incident scene or a crime scene in another location?---Certainly.

5 Were you aware or did you consider the possibility that by moving the  
body from whatever mortuary arrangements were in place in Baghdad,  
there was a possibility of the loss of further forensic evidence in  
consequence of that move?---Absolutely and that's entirely the reason why  
I rang the nominated point of contact on the email. MAJ Pemberton was  
10 identified on that email trail as the point of contact if there were any  
further queries or questions and because I had a query and because I  
understood the importance of that forensic evidence to which you refer, I -  
I gained approval from him - from him to move the body. This was - and I  
need to be very clear here, this email was not drafted by MAJ Pemberton,  
15 but MAJ Pemberton was the nominated point of contact and clearly, whilst  
there was some question mark in my mind as to their understanding of  
where PTE Kovco's remains were, it was clearly spelt out that he was the  
point of contact who could provide approval for further movement. I  
sought that approval and it was granted willingly over  
20 12 hours in advance of the movement.

Right, did you clear up with MAJ Pemberton the place where the body  
was?---Absolutely. I was very clear. I had told him - I had told him quite  
clearly that I was aware that the body had already been moved twice from  
25 the incident scene, that is the first move to the CAS and the second move  
out to the Mortuary Affairs collection point. I was very clear on that. My  
point to him was that I needed to balance up or he needed to balance up  
more - more importantly, the importance of a third move. He understood  
that. He knew the body had been moved twice, I requested a third move  
30 and he granted that approval willingly and quickly.

Fine?--- I might add, as I said before, had that approval not been  
forthcoming I would never have contemplated telling the Commander that  
that approval had been granted.  
35

It's the case, is it not, that arrangements could have been made with the  
Americans to retain the body in country for an appropriate time if that was  
considered desirable by the Australian chain of command?---Of course.

40 There was no pressure by the Americans to move the body?---There was  
no pressure by the Americans, there was no pressure by the Australians,  
there was no internal pressure. The - an Australian C130 arrived at  
Baghdad airport pm hours on the 23rd and at that stage we became aware  
that the Military Affairs paperwork had been completed, it was entirely  
45 appropriate in my mind to proceed with that, there was no need to further  
delay his repatriation, nor had that airplane been accelerated to meet that  
timeline. It was a happy coincidence that Jake Kovco was able to fly out

of Baghdad on an Australian air asset. While you're contemplating that, I'd just like to flag the point, you asked a question previously as to whether I've ever been involved in a sudden and unexplained death, I answered "No", on clear reflection I have been a long time ago in my service career  
5 in the first year or so when a member of the ADF died with me out bush on a combat survival exercise.

Right, thank you?---I'm sorry if I've mislead you.

10 No, you haven't. It's an understandable slip. I was simply just concerned whether you in a command position had been involved in this type of responsibility before, that's all?---No, never in a command position.

15 Were you to any extent at all involved in the decision to use Kenyon's?  
---No.

20 Was there any thought in your mind about integrating the availability of the Australian C130 and Kenyon's in terms of the repatriation of PTE Kovco and if you don't understand the question, please tell me?---I don't really understand the question. I mean I guess it was integrated to some extent already in the sense that an Australian C130 went partway in the repatriation process and it was obviously going to marry up with the Kenyon's air asset later on, so I'm not just entirely sure where you're going with this.

25 All right, I'll ask another way. PTE Kovco could have been taken straight to the TEM EPN Kuwait, could he not?---No.

30 He couldn't have been?---No, he could not. No, PTE Kovco was repatriated to Kuwait as part of the US Military Affairs system in the sense that - you know, in an administrative sense he was their responsibility. An Australian air asset was used to move PTE Kovco ultimately and that was - that was entirely appropriate, but from an administrative - from a Mortuary Affairs perspective, he was in the US system at that stage in the sense that  
35 he went into a US mortuary initially in Kuwait and it was only at that point when handover was affected to Kenyon's that he was ultimately moved from the US mortuary in Kuwait to a civilian mortuary in Kuwait.

40 Just pardon me a moment please. Just one last question Soldier 39, did you take contemporaneous notes of the conversation you had with MAJ Pemberton?---No I didn't.

45 When was the first - - -?---I didn't feel - I didn't feel it necessary because of the affable nature of the conversation, because I was incredibly busy, because I was tired and because I - I actually didn't think, it did not ever enter my mind that MAJ Pemberton would appear to have reneged on that agreement.

5 It follows from that that you send a confirmatory email or other documentation confirming the conversation and the terms of agreement you reached with MAJ Pemberton?---I didn't send it to him, I did send confirmatory emails to the rest of the people here in theatre to say that I had spoken to MAJ Pemberton and that the issue - that is the issue of not moving the body had been resolved.

10 Do you have that document in front of you?---I do.

15 Do you have the date on it, please?---It's 24 April, dated 2300 D, that is literally - I rang him at 2245, it was probably, I would guess, something like a 3 minute phone call maximum. So I've generated this email within minutes of completing that phone call. As I said I didn't email him for the reasons outlined.

Finally, this mind sound like - I'm sorry, I didn't mean to speak over you?--No, you're right, go ahead.

20 This is not a trite question, it might sound like it. I presume the phone connection between you and MAJ Pemberton was okay?---Yes it was.

25 There's no technical difficulty or anything like that?---No, absolutely none. I apologised - I mean it was very clear in a technical sense. There was no problems with hearing what was being said for example if that's what you're driving at.

That's what I am driving at, yes?---Absolutely not. Clear as a bell.

30 Yes, thank you, sir. That completes the - - -

PRESIDENT: Yes, thank you Colonel. COL Young?

35 <EXAMINATION BY COL YOUNG

[1444]

40 COL YOUNG: Soldier 39, my name is COL Young, I appear to represent the interests of PTE Kovco. I just have a few questions for you. In paragraph 7 of your statement, just the first two lines, you say:

*given the competing requirements that I was aware of from investigative authorities and the need to repatriate the body.*

45 You've told us that if MAJ Pemberton had not agreed with you that the body could be moved, you would not have moved the body or you would have given that advice to your Commander, is that correct?---That's

correct.

5        Could we just look at a hypothetical, had that been the case, had MAJ Pemberton said the body should not be moved, what sort of considerations do you believe you would have discussed with your Commander, given that you've said there's a competing requirement from investigative procedures to repatriating the body, what sort of things do you think you might have discussed?---I - I would've discussed how best manage - how to best manage that situation. I certainly would not have contemplated moving the body, we would've looked at other movement options. I would've looked at the timeline which was driving the MPs arrival in theatre. We would've tried to determine exactly when they would have been finished with PTE Kovco's remains and looked at using other air assets if necessary to move PTE Kovco's remains to Kuwait.

15        Could I ask you, did you feel there was a sense of some urgency in repatriating the body quickly?---No I did not, not - not the slightest bit of pressure and in fact if anything, if I was going to be brutally honest to you I would suggest to you that I was - there's a possibility that I was concerned that it was probably going to take slightly too long. I was - I guess a little amazed at how long the paperwork took. But there was no pressure being generated from within or without in relation to the timeliness for repatriation.

25        In paragraph 3 of your statement, the last line there, you refer to J1J4 who was the Mortuary Affairs Officer and from the matrix you have, would that be Soldier 45?---Yes it is.

30        Did you rely - when you say particularly, did you rely on his knowledge of the Mortuary Affairs plan or were you across the plan yourself in some detail?---I was not across the plan. I did ask him to provide me a copy of the plan during the process, but I relied quite heavily on his professional advice throughout the process.

35        I take it from that therefore that you would not have been aware that within the plan there was no reference to confirming identification of a body during its movement?---I wasn't aware at the time, no. I guess I assumed that that was self evident.

40        If you accept from me that there was nothing in the plan along those lines, would you see that as a deficiency, especially given what's happened? ---Well it's - yes, it's a deficiency, that it raises the philosophical aspect of - you know, to what extent actions that you take to be automatic or innate to a process need to be legislated. And I make that point because during  
45        the process, in fact once it became clear that PTE Kovco's remains had remained in Kuwait, I asked the JO6 here, the legal officer in the headquarters to review the standing offer, particularly in light of the

requirement for somebody to have identified the remains and he as good as  
threw the document back to me saying that - you know, it is self evident  
from a legal perspective in the sense that if you contract somebody to  
repatriate a body it is inherent in that agreement that they repatriate the  
5 correct body and that made sense to me.

Were you familiar with the standing offer with Kenyon's?---Not at the  
time. I - again, as the repatriation unfolded I asked to see a copy of the  
standing offer.

10 When you say "self evident" and if you got confirmation from a legal  
officer that it was self evident, if the standing offer required the Military to  
actually specify to Kenyon's that identification was part of what they  
would be paid for, would that make a difference?---Well, in a legal sense it  
15 would - it would define, if you like, that process. That process that I would  
suggest to you is in some ways innate or self evident. But I do accept the  
point that where there are a number of people involved in the repatriation,  
having a clearly defined member, somebody who is particularly  
responsible for identifying the remains would have been most useful.  
20 Where there is a single escort and where there is no room for  
misinterpretation or any room for relying on somebody else having made  
that identification, I think is self evident. Where there are a number of  
people where it can be assumed - where each of the other people assume  
that the other is making that identification, yes it clearly needs to be  
25 identified who it is that is going to carry out that identification process.

Again where you mention the term "self evident", would you have had in  
your mind at the time that the Escort Officer would be the person that  
would carry out the identification as the body moved?---I did.

30 You did?---Yes I did.

Your Commander at the time has said that he saw the escort and that's  
Soldier 2 from the matrix, before he left on his escort duties. Do you recall  
35 if you saw Soldier 2?---I saw him in the headquarters late the preceding  
evening. Probably, I would guess, and I have no means of correlating this,  
but probably soon after I've made the phone call for example to MAJ  
Pemberton at about that time. So yes, I do recall seeing him. I don't  
believe that I saw him again then until we were conducting the ramp  
40 ceremony at the airport.

When you did see him, perhaps on the first occasion prior to the ramp  
ceremony, do you have a recollection of his appearance?---Like he looked  
a little tired, probably about as tired as everybody else was in headquarters.  
45 I spoke to him very briefly, he seemed - he seemed alert and he was  
certainly alert enough and able enough to be briefed on his escort duties at  
the time.

5 If I tell you that your Commander at the time described his appearance as  
"like a ghost walking", is that your recollection of what he looked like?  
---Not really, although I don't know when the Commander actually saw  
him. At the time I saw him he was - he was tired and I make the point that  
we were all tired at that stage, but he - he appeared to be quite capable. But  
the Commander may have seen him significantly later, I'm not sure.

10 Just one final question in relation to the plan, there's a brief reference to  
the escort, it refers to:

*ensuring that all associated administration is undertaken in order  
to repatriate the body to Australia.*

15 Would you support an added reference to that to give the Escort Officer  
some detailed guidance as to identification along the way?---Yes, in  
hindsight I think it clearly needs to be spelt out who has the responsibilities  
and - you know, I would support at least considering any proposals which  
would make the Escort Officer's job easier and less open to error. I'd  
20 certainly consider anything along those lines.

Thank you, Soldier 39. I have no further questions, sir.

25 PRESIDENT: Yes, thank you. COL Griffin?

COL GRIFFIN: Yes, thank you, sir, just a couple of points.

30 <EXAMINATION BY COL GRIFFIN [1433]

COL GRIFFIN: I just want to clarify some timings and dates, Soldier 39,  
please. You refer to an email that you distributed after your conversation  
with MAJ Pemberton and you were asked for the date and time group of  
35 that, would you mind repeating that, please?---It was 22 April 2006 at  
2300 hours. That is something like 14 hours before PTE Kovco left  
Baghdad.

40 When you originally gave that evidence I incorrectly wrote down  
24 April, I misheard you. So could I ask you to make arrangements to  
have a copy of that document forwarded to me, please?---Can you still hear  
me?

45 Yes, something happened here, but are you still hearing us?---Yes, I've got  
you loud and clear. Yes, I can. I will make sure that you are provided a  
copy of that email.

Thank you very much. Now, you also referred to your observations of Soldier 2 at the ramp ceremony, could you clarify when that was, please?  
---The ramp ceremony occurred - and I'm guessing here, it was very rough. I would've guessed it was about 1500 on the afternoon of the 23rd.

5

So that was on his way out?---Yes, that's when we were lined up. I was the flight commander for the honour party, if you'd like, so I was only able to see him from a distance. We were probably about 10 to 15 metres to their left as the coffin was loaded on to the aircraft. So I certainly didn't have a close look at him - - -

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You were - - -?---(Indistinct)

I'm sorry?---Sorry, because we were at attention at that stage, I wasn't in a position to observe him other than him passing through my immediate field of view.

15

You were referred to some evidence given by BRIG Symon about his observation of Soldier 2. Can I indicate to you that that observation was around 0230 hours on 22 April, so that was the previous day to the time that you're talking about seeing him?---Yes. Sorry, you're suggesting that he saw him at 0230 on the 22nd?

20

Correct?---Yes, I saw him considerably later that evening, probably - again, I'm guessing here - at about 2300, about the time I made the phone call. I wouldn't like to swear on that but that would be my recollection.

25

Bear with me one moment, please, the technicians are just speaking to me. I think we're going to lose the link on the hour, Soldier 39, to your understanding?---That appears to be the case, yes.

30

We've lost a link to another place so I'm going to keep going rather than pausing to restore that. So you saw him at the ramp ceremony and also you saw him on the night of the 22nd when you spoke with MAJ Pemberton; is that right?---Look, I think that's when it was. As I say, I wouldn't like to swear on that. I'm pretty sure that it was late one of the evenings and I can only imagine that it was the 22nd. I wouldn't have seen - I don't - in fact, that's not entirely true, I did see him when he first came in into the headquarters after repatriating - after moving PTE Kovco from 10CSH into the mortuary affairs collection point. I saw him very briefly then and I think at that stage his appearance reflected where he was at that stage, that is, having just delivered one of his soldiers to a mortuary affairs collection point. So I didn't see anything unusual in his demeanour at that stage.

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You offered the remark that he was alert enough to be briefed on his escort duties?---Yes.

What were those circumstances that you observed?---I observed him being briefed on those duties by the Sergeant Major here in the headquarters.

5 Are you able to say what the content of the briefing was?---No, I'm not, although my recollection is that the Sergeant Major was referring to a document and was stepping him through the particular requirements. I might add that I only saw him - I was passing by while that was happening so I only have - I only saw that happening for a few seconds.

10 Was that some time around the ramp ceremony on the 23rd or on a previous day?---No, it was on a previous day. Again, that's where I make reference to the 22nd at about 2300. I'm guessing that's when it happened. It was certainly - my recollection is that it was not on the day of the repatriation but prior to it. Perhaps my timing is in error here, it may have been earlier than I'm suggesting, but I would guess it's some time on the evening of the 22nd.

20 You mentioned in paragraph 4 of your statement and you've said again in your oral evidence about the paperwork being completed in time to use the Australian C130 to move PTE Kovco. What paperwork are you referring to there and why the delay?---I understand the US mortuary affairs system has administrative procedures that needs to be undertaken. I don't have a good insight into exactly what that paperwork comprises, but I was told by J14 and other people in the know that there still was a requirement for paperwork to be completed and at that stage it was essentially the driver. Perhaps that's combined with particular procedures that are required within the mortuary, I'm not sure, but in any case, it was their procedures which were required to be completed before Jake could be moved.

30 But those were United States processes and paperwork, not Australian processes and paperwork that you were waiting on?---Absolutely.

35 Finally, Soldier 39, the Board is authorised to make recommendations in its report. From your unique perspective as the Chief of Staff at the time and since, are there any matters that you would like to draw to the attention of the Board touching on any relevant aspects of the Inquiry or any doctrine or policy matters that you consider significant?---We've already touched on a couple of those: one is in relation to the escort duties. I recommend that we move ourselves into the 21st century and use identification methods which do not rely on the visual identification of individuals, particularly to facial features. I'm sure there is a way of doing that. Some of the other recommendations I guess that are foremost in my mind have already been caught up - captured by the CDF in his recommendations, largely which flow from the Cosson Inquiry. That includes, of course, the use of ADF assets as far as is practicable, but that's not so much from a movements point of view but probably from a morale,

you know, possibly an emotive point of view. I think it's entirely appropriate that Australian servicemen, particularly who are killed on foreign soil, are repatriated to Australia in Australian assets.

5 Thank you, Soldier 39. I have nothing else, sir, thank you.

PRESIDENT: Thank you. Gentlemen, anything arising out of that?

COUNSEL REPRESENTING: No, sir.

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PRESIDENT: Thank you, Soldier 39, you may stand down and we'll conclude this exercise?---Thank you.

15 COL GRIFFIN: Mr President, that completes the evidence for today. Foreshadowed now is for the Board to receive some training and instruction in respect of the characteristics of the use of the 9 mm pistol by subject matter experts during the course of tomorrow and Thursday, involving also a shoot.

20 PRESIDENT: I think Soldier 39 is still waiting on us. He can stand down, he can relax and your part of the exercise is done?---Mr President, if I may, I would just like to address a couple of points, if that's possible, before I step down.

25 Is everybody content? Certainly I'm happy with that.

COL GRIFFIN: That was the purpose of my last question.

PRESIDENT: Please do so.

30

35 COL GRIFFIN: Perhaps I hadn't made it plain?---I'm sorry. There are a couple of points that I've become aware of which I guess I would like to provide my input into. One of them I think relates to the arrival, time and date of the MPs in theatre. I think there was some conjecture that their arrival in theatre may have been delayed to enable them to conduct RSO&I training. I'd just like to point out that that is not the case. The MPs arrived in Kuwait, I think, at 0800 on the morning of the 23rd. Though they conducted activities in Kuwait, originally they were planned to move to Baghdad that afternoon, I think, on an Australian air asset, on the standard Endeavour service, which subsequently did not go ahead and our movements people here in the headquarters facilitated them as best they could to get to Baghdad and they arrived here pm hours on the 24th. I think that's probably at variance with some of the evidence provided previously, but I would make the point that they arrived here in Baghdad almost three days to the minute, if you like, after the incident. I would suggest to you that, given the time taken to make the decision to send them forward, the time taken in travel, the time spent in Kuwait and then the

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time awaiting to get on to a transport system which I would describe as  
clunky here in theatre, in the sense that, you know, being able to jump  
from one aircraft to the other is simply not an option, that having them  
arrive in Baghdad three days after the incident is actually pretty good  
5 going. So I would just like to put to bed any reference to them having been  
delayed any further than was necessary in Kuwait to conduct any RSO&I  
training.

10 PRESIDENT: Thank you for that. Whilst we're talking about delays in  
theatre and getting to theatre, the New South Wales civilian police, were  
they delayed in any way or were they required to undergo any special  
training before they were allowed into Iraq?---They flew straight in. The  
only delays in getting them to Baghdad were the delays embedded in that  
clunky transport arrangement I was previously referring to.

15 In other words, as much as possible they got the express service?  
---Absolutely.

20 Anything arising out of that, gentlemen?

COL GRIFFIN: No, sir.

25 PRESIDENT: Anything else you would like to add, Soldier 39, before we  
close?---I'll let you go this time. Thank you very much.

Thank you, you may now formally stand down.

30 <WITNESS WITHDREW [1442]

COL GRIFFIN: Thank you, Mr President. If we could then adjourn and  
return next Monday after the further training and shooting is undertaken by  
the Board.

35 PRESIDENT: Is Counsel Assisting and Counsel Representing going to  
join us in this training?

40 COL GRIFFIN: Certainly Counsel Assisting will be with the Board. It's  
open to Counsel Representing for them to attend. I'm not sure if they are  
accepting the opportunity or not. I understand that Mrs Kovco did not  
wish to attend and I'm not sure if Mr and Mrs Small are intending to  
observe, they can't participate, but to be there as observers.

45 PRESIDENT: They're welcome, of course.

COL GRIFFIN: The opportunity is made available.

PRESIDENT: I would have thought it would be non-entertaining but that's a matter for them.

5 LTCOL HOLLES: I'll certainly be there, sir.

COL YOUNG: Sir, for my part, I will be there and, if we're not resuming until next Monday, could I take this opportunity of indicating my absence on Monday next week, I have a long-term commitment to a criminal trial.  
10 It may be shorter than three days but at this stage it's three days. LTCOL Berkley will be back and he will look after my interests.

PRESIDENT: I was just going to say, provided Jake's interests are protected, I'm comfortable with that.

15 COL YOUNG: Yes.

LTCOL HOLLES: I'm in a similar situation, sir, I'll have another commitment for the next two weeks but I'll be back on the 18th.

20 PRESIDENT: Very good. Again, the same caveat, provided your client's interests - - -

LTCOL HOLLES: It's understood, sir. There's been close communication between COL Young, LTCOL Berkley and I on the issue and the cover provided remains.

PRESIDENT: Excellent. All right, then, we'll - - -

30 LTCOL GREEN: Sir, before we do. Soldier 14, may he be released from the day to day proceedings and be allowed to return to theatre?

PRESIDENT: Any comment you wish to make?

35 COL GRIFFIN: I see no reason not to release Soldier 14, sir. I've spoken with the civil authorities and there is no reason not to release him at this time, for him to return to theatre.

PRESIDENT: Does anybody else want to make any comment?

40 COL YOUNG: No, sir.

LTCOL HOLLES: I would be very grateful if he was given a direction not to discuss what's happened here with Soldiers 17 and 19, sir, if the Board feels it's appropriate to give that - - -

PRESIDENT: Anyone want to make a comment about that?

LTCOL GREEN: That's a direction, sir, which is not usual.

5 PRESIDENT: Isn't it usual to instruct witnesses not to speak to other witnesses?

LTCOL GREEN: I think it is, sir, but on the basis that I think 17 is finished, I think 19 is finished, and I think 14 is now finished. But sir, if that's a requirement in order to release him, it's a fair enough - - -

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PRESIDENT: I think it might be part of the deal.

LTCOL GREEN: Okay, sir, it's accepted.

15 COL YOUNG: Witnesses are always subject to recall too, Mr President.

PRESIDENT: Of course, particularly in a fluid situation we have here.

20 LTCOL HOLLES: I would be grateful also, sir, if that direction was communicated to the authorities in the other place to better facilitate those arrangements being put in place.

PRESIDENT: I don't think we can ask the normal supervisors to actually eavesdrop on their conversations.

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LTCOL HOLLES: I'm not suggesting that, sir, for one second. What I am saying is that those who are in the chain of command of Soldier 14 ought to be made aware of the direction so that they - - -

30 PRESIDENT: No problem with that. Any comment that you want to make, LTCOL Green?

LTCOL GREEN: No, sir.

35 PRESIDENT: Soldier 14, would you stand up, please. You're going to be allowed to go back to your proper job, if I can call it that, but part of the deal is that you're not to discuss what happened in this Board room with Soldiers 17 or 19 and, quite frankly, the Board will view very, very, very seriously indeed a breach of that. In other words, I'm giving you a very  
40 direct order that you will not discuss this with 17 or 19. Do you understand that?

SOLDIER 14: Yes, sir.

45 PRESIDENT: Very well. Make it so, and I would invite, Colonel, if you would be so kind as to pass that to the CO of SECDET so he's aware of it and pass it down his chain of command.

COL GRIFFIN: I'll do that, sir.

5 PRESIDENT: Thank you. You may sit down. Any other requirement?

COL GRIFFIN: No, sir, other than that, adjourn until Monday morning.

PRESIDENT: All right, we'll formally adjourn until Monday morning.

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**MATTER ADJOURNED AT 1450 UNTIL  
MONDAY, 4 SEPTEMBER 2006**

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