REPORT OF THE HON D S MORRIS, Esq

MINISTERIAL REVIEW INTO ALLEGATIONS OF ABUSE AT THE WAIOURU REGULAR FORCE CADET SCHOOL FROM 1948 TO 1991

AND EVENTS SURROUNDING THE KILLING OF CADET GRANT BAIN IN 1981

1 December 2005

Report of the Ministerial Review Into Allegations of Abuse at the Regular Force Cadet School and the Killing of Cadet Grant Bain

This document is a copy of the report presented to the Minister of Defence by the Hon David Morris following his independent review of matters related to alleged abuse at the Regular Force Cadet School and the circumstances surrounding the death of Cadet Grant Bain.

The names of individuals have been removed from the report to protect the privacy of those who came forward to give evidence to the Hon Mr Morris during the course of the review. Two words on page 109 of the report have been altered with the Hon Mr Morris's concurrence to meet legal concerns (unrelated to any allegations of abuse) raised by one of the individuals interviewed. This amendment does not alter the overall meaning of the passage, nor does it impact on the Hon Mr Morris's findings in relation to the allegation of collusion between the Police and the Army.

Two appendices have also been removed for privacy reasons.

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REPORT OF THE HON D S MORRIS, Esq

1. MY APPOINTMENT

[1] On 20 October 2004, you appointed me as an independent assessor to review and assess –

[a] the behaviour and treatment of cadets at the Waiouru Regular Force Cadet School from 1948 to 1991;

[b] the events surrounding the killing of Cadet Grant Bain in 1981;

[c] other related matters;

– and to report to you thereon.

[2] Specifically, I was asked to:

[a] Review and assess the information received by your office and the New Zealand Defence Force from ex-cadets and their families and other parties (including Ian Fraser and the media) both prior to and during the course of this assessment.

[b] Review all relevant information held by the New Zealand Defence Force and other sources.

[c] Separate issues of alleged general mistreatment from those which may amount to criminal offending.

[d] Meet with the Bain family to identify outstanding issues for them in respect to the death of Grant Bain and assist in the resolution of these issues.

[e] Identify allegations outside the scope of this assessment and ensure they are referred for appropriate action to the responsible organisation.

[f] Prepare a report for you which proposes any further action to take place

2. PROCEDURE ADOPTED

[3] To enable me to fully consider and appreciate the relevant information received, all persons and organisations who had contacted your office, the New Zealand Defence Force or Mr Fraser, and whose addresses were available, were written to and advised of my inquiry and of my tasks. These persons and organisations were told further written material could be sent to me and, if they wished, I would interview them or their representatives. Mr Fraser originally claimed to have heard from approximately 300 cadets. He, in fact, supplied your office with 90 names and addresses. I asked him about this. He told me the balance of the 300 "did not want to go any further".

[4] In all, I have considered 473 emails and/or letters relating to the matters under inquiry. Some were brief, others lengthy, while still others were in the nature of extensive submissions. I have also considered statements obtained by the Police from Police personnel involved in investigating the shooting of Cadet Bain.

[5] I have interviewed 114 persons, of whom 81 were former cadets. This includes two interviews with Ian Fraser. Apart from face to face interviews, I have also spoken to a number of cadets by phone. I have also interviewed a number of Army and Police personnel and others who could provide material helpful to this inquiry. A list of those non-cadets interviewed is attached as Appendix A

[6] I wrote to newspaper editors who had published articles purportedly sourced from cadets. I asked for the names and addresses of the sources to enable me to contact the cadets concerned and confirm for myself the validity of matters referred to in the publications. As an alternative, I asked the papers to contact their sources and to pass on my desire to speak with them. These requests met with very limited success. I have therefore been unable to confirm the accuracy of all media reports. This is particularly unfortunate as the contents of some reports conflict with what I have been told by cadets who appear to be the cadets referred to in the articles. A number of reports can only be described as inaccurate.

[7] I have also considered relevant television and radio transcripts.

[8] To ensure as many persons as possible were made aware of my inquiry, notices were published in leading newspapers nationwide. The Regular Force Cadet Association was notified, as were Returned Service Associations.

[9] I have held interviews throughout New Zealand and with former cadets and others in Perth, Brisbane and Sydney. I have endeavoured to speak to all who wished to see me. I have seen all but the very few cadets where it has proved impossible to set up a meeting.

[10] I decided interviews would be as informal as possible, thus encouraging people to speak frankly of their experiences. It was made plain to each person interviewed the interview was being recorded to ensure the record of what they told me was accurate. I also stressed to each person interviewed the interview was on a confidential basis and that unless he/she was agreeable, his/her name would not be disclosed in my report.

[11] At interview, no oaths were administered. The only people present at the interviews were myself, a stenographer, my assistants Mr and Ms , the interviewee and any person whom he/she wished to be present. At the start of each interview the interviewee was advised he/she would receive a copy of the interview transcript and if he/she wished to make any amendments then he/she should do so and advise me of them.

[12] A few cadets claim to be entitled to compensation for physical, mental and/or psychological problems, past and present, which they allege result from their treatment as cadets. I have advised those interviewed the question of such entitlement (if any) was beyond the scope of my assessment and they should seek independent legal advice should they wish to pursue a claim. Clearly, any such claims raise complex legal and medical issues. To be properly determined they will require a formal hearing, with evidence on oath, expert medical evidence and cross-examination of not only the cadets but also others called in support or in opposition to their claims.

[13] A few cadets made allegations against named persons. I advised those interviewed my inquiry was not adversarial in nature and I did not intend to determine the accuracy of specific allegations involving named people. I indicated I may well not put specific allegations to any named individuals. I have, in fact, done so when the opportunity arose. I further advised these cadets decisions on particular individual complaints were not within the terms of my appointment. Any such specific allegations would, again, require a much more complex hearing than my appointment and powers envisaged.

[14] To ensure the privacy of persons whose names are not already in the public domain, or those who did not wish their name disclosed, an individual file was opened for every person who has given information, either in writing and/or by being interviewed. Each file has been given a number and I have undertaken to keep strictly to myself the name of the person whose number is on the file and what they have said to me. I will retain the master list of file names and interview records.

[15] From the commencement of my inquiries, has been the principal Army officer with whom I have dealt. He has been of invaluable assistance in researching material I have asked for and in locating the records of personnel I have wished to interview. The Commissioner of Police appointed to assist me in any inquiry I might wish to make of the Police. He too has been of great assistance.

[16] My inquiry has necessitated a consideration of events which occurred a great many years ago. Many of the accounts are second hand. A lawyer would label them as "hearsay". Some persons whom I would have liked to have interviewed are either dead or their present whereabouts unknown. Others have not come forward voluntarily. I have no powers of subpoena or search. I may ask questions. I cannot demand answers. A few cadets are clearly hopeful they will receive compensation for perceived wrongs. The possibility of self interest cannot therefore be ignored when considering what I have been told by them. Experience has shown with the passage of time, memory and recollections tend to be less reliable. Some events tend to be exaggerated, others minimised, depending on the individual concerned. I have tried to make allowances for these factors, and for the informal nature of my interviews, in coming to my conclusions.

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3. THE REGULAR FORCE CADET SCHOOL

[17] The School was established at Trentham Camp in 1948. In 1952, it transferred to Waiouru Military Camp. It was disbanded in 1991.

[18] Its objective throughout its existence was to recruit and train potential leaders and tradesmen for long-term service with the Regular Force. This, in reality, meant turning undisciplined youths into physically fit soldiers, ready if necessary to be successful in war. New Zealand's past and present involvement in military operations has demonstrated success is dependent upon co-ordinated team work. The Army is well aware of this principle. All soldiers must be able to depend absolutely on the reliability of their comrades to their right and left.

[19] Initially, to be eligible for selection applicants had to be male and aged generally between 16 and 18 years on enlistment. They remained at the School either for a full year or until their 18th birthday, whichever was the later. After graduating, cadets were posted to particular corps. From the mid 1950's, 15 year olds were accepted. In the 1980's, one year courses were developed. The last of such courses was completed in 1990. In 1991, the first six months course was introduced. In mid 1991, the second of such courses included for the first time female cadets. They made up approximately 25 percent of the intake. The School was closed in December 1991.

[20] To gain entry to the School applicants underwent a testing selection process and physical examination. Many applicants failed the selection process. A record was kept of selection interviews and the results of tests and the comments of the selection teams. This record was made available to the Regular staff in charge of the Cadet School.

[21] Generally, cadets were enrolled in either their School Certificate or their University Entrance year. Cadets came from all parts of New Zealand. They were from every background imaginable. Some were from the cities, others from country areas. Some were from large families, others were the sole offspring. Some were from single parent homes. A number came from families with a military background. Some had attended boarding schools, others had never spent a night away from home before they joined the Army. In most cases, the sole common denominator was a cadet joined because he/she wanted to be a soldier.

[22] At the School cadets were subjected to a training regime comprising a mixture of military and physical training, education and trade training. A cadet would initially undergo ten to twelve weeks basic training. In this time he would learn how to march, run, and fire weapons. It was a strict regime, the aim was to make recruits think quickly and act as soldiers and as members of a team instead of individual 16 year olds. It was not a school for debutantes or the faint hearted. Within moments of their arrival at the School, cadets certainly realised life in the Army was going to be very different to anything they had previously experienced at home.

[23] Courses of formal education, military and trade training followed the basic training period. Cadets' daily schedule included sport. Cadets were prepared for School Certificate and university examinations. Trade training was carried out by the various trade wings of the Army Schools of Instruction. Cadets were trained as mechanics, vehicle plant operators, panelbeaters, armourers, auto-electricians, carpenters, bricklayers, radio mechanics, electricians, telecommunication mechanics, butchers, cooks and rations storemen. Medical officer orderlies were trained by the Camp hospital. Some cadets were trained as potential Army instructors.

[24] Cadet life was not all work. Extra curriculum activities were numerous and varied. Participation in all manner of sports was encouraged, as were activities such as camping and tramping. The teaching and the range of sporting activities and the like available were similar to, if not better than, those found in many major New Zealand secondary schools of the time.

[25] The progress of each cadet through the various stages of his training was closely monitored at all times. The Officer Commanding the School received regular reports on each cadet. The reports came from the Regular Force personnel attached to the School. These reports were used to assess a cadet's potential and measure it against his actual achievements. The views of the cadet's Commanding Officer were also considered regularly. Where reports indicated problems or a lack of achievement or progress, the Officer Commanding would invariably discuss this with the particular cadet concerned and recommend the steps to be taken to overcome any problems. If the problems were considered insurmountable, or a cadet was considered unsuitable for the military, he was advised to leave the School, and invariably did so.

[26] Between 1948 and 1991, more than 5,000 cadets graduated from the School. Of those who remained in the Army, many attained senior command rank. Of those who at some stage left the military, many reached responsible positions in business

or the professions. It is clear almost all graduate cadets, whether they enjoyed the School or not, considered their time there was a pivotal period of their lives which has stood them in great stead in future life.

[27] For almost all of its existence, the Officer Commanding the School held the rank of Major and would normally have had about 12 years of commissioned service. Until January 1983, he was supported by an Administration Officer and a Training Officer. When 12 month courses replaced two year courses in 1983, these two positions merged and he was given the assistance of a second-in-command. Throughout its existence there was a School Sergeant Major. He was normally either a Warrant Officer Class One, Warrant Officer Class Two or a Staff Sergeant. He was responsible for matters affecting the welfare and training of the cadets. He provided day to day guidance to NCOs, set the regimental standards and maintained the School traditions. He co-ordinated many of the School's training and other activities. Education Officers and Chief Instructors were normally Majors or Captains. The number of Regular Force personnel attached to the School varied.

[28] In 1964, increasing recruiting numbers meant the cadets were divided into two companies, A Company and B Company. Each company had its own command structure. There was an Officer Commanding and a Company Sergeant Major. Platoon staff included Platoon Commanders, Platoon Sergeants and Section Commanders. Again, these varied in number from year to year. Demanding standards were expected of such staff. The Army selected some of its best Regular personnel to positions at the School.

[29] Cadet rankings were introduced to the School in late 1948. Initially, three cadets were appointed Senior Cadets and posted as Section Commanders within the company. The development had three objectives: it reinforced the Army's rank structure, provided incentive for performance and developed leadership.

[30] In 1949, the position of Senior Cadet was replaced by Cadet Sergeants, Corporals and Lance Corporals, who were employed throughout the unit as Barrack and Room Commanders, Platoon Sergeants, Section Commanders and 2ICs. This structure remained in place until the School was disbanded, with, in subsequent years, Cadet RSMs, CSMs and Colour Sergeants also appointed. These steps were taken, in part, because of the pressure on the Army to meet the requirements of Territorial recruits. Until 1983, senior cadets were almost entirely second year cadets. After 1983, senior cadets were those promoted during the year. The selection of ranking cadets was made by the School's OC after consultation with Regular Force personnel.

[31] These developments resulted in the reduction of Regular Force personnel numbers attached to the Cadet School. Cadets were given greater responsibility for their own administrative requirements and after-hours supervision. The latter, in reality, became the domain of the senior cadets, that is, those who were in their second year at the School. This seniority of second year and over cadets continued until took over in the early 1980's.

[32] While this cadet rank structure relieved the Regular Force of a good deal of administration and supervision and allowed cadets to show leadership qualities and potential, it is clear to me it has been the root cause of the complaints of mistreatment which I have had to consider. Its effect was to place 15½ to 16 year olds under the control and dominance of others in many cases but a few months older than their charges. Youths who were trained in arms had no training for such a task. In effect, teenagers were being taught how to kill during the day and put in charge of their fellow teenagers at night. The situation was a fertile ground for bullying. It clearly required close and continuous supervision by senior Regular Force personnel if it was to work.

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4. BEHAVIOUR AND TREATMENT OF CADETS

4.1 General discipline

[33] Throughout the School's existence there was constant pressure on cadets to perform to their true potential. A potential which many cadets now tell me they did not realise they in fact possessed. The Army clearly accepted the principle the alpha and omega of soldiering and training was discipline and drill. Discipline was firmly enforced. A professional soldier must be able to kill. To be able to kill is a demanding trade and requires strict training. Cadets' daily training and overall general supervision was the responsibility of the Regular Force personnel attached to the School.

4.2 Punishment

[34] Punishments for infringements noted by the Regular Force staff were imposed by the Regular Force staff or the cadets' CO. Lateness, untidiness, dirt in the barracks, equipment not up to standard and lack of personal cleanliness were not tolerated. Immediate punishments were usually additional drill, press-ups, or some other physical task. Change parades were common. These required a cadet under punishment to parade at frequent intervals in different states of dress with little time to change between each appearance. If the infringement required an appearance before the OC, this was by way of charge and penalties could range from loss of leave entitlement to a monetary penalty.

[35] For really serious breaches of military discipline cadets were discharged from the Army or otherwise dealt with under military law.

[36] I do not doubt some of the penalties imposed for what now may, at face value, appear to be fairly minor matters, would cause civilians today to raise their eyebrows. However, in considering penalties it must be borne in mind ever since armies have existed the penalties for rule infringement by soldiers have always been aimed at ensuring defaulters will not re-offend and will obey orders promptly and immediately. This has always been so, particularly in boot camps. From time immemorial, sentences imposed by the military have been on the basis of what is best for the soldier, his fellow soldiers and the Army – bearing in mind he is being trained to win wars.

[37] There are rules as to the way in which the Army expects things to be done. These rules are founded on experience gained in peace and war. If those rules are not adhered to, punishments will be imposed. This is why those who enlist in the armed forces are subject to military law in addition to the general criminal law of New Zealand. The Army is not an institution which allows democratic discussion. When an order is given, whatever its rightness or wrongness, or even its necessity, the Army simply expects it to be obeyed immediately and without question.

[38] Many cadets to whom I have spoken felt penalties imposed, particularly the additional physical penalties, did not always fit the crime but now accept the need for such penalties as part of the process of their becoming a soldier and part of a team in which every member could rely on all the others to obey orders unquestionably and promptly.

[39] Cadets who did not measure up to the exacting disciplinary standards were encouraged to improve their performance. If they could not do so, they left the School. After an initial settling in period, no restrictions were placed on cadets communicating with their parents. Most did so regularly. Parents who considered their sons could not cope were entitled to, and in fact did, remove their sons from the School. Some parents refused their son's requests to make application to withdraw them from the School. Parents were always able to contact and discuss any problems with the School OC. Many did.

[40] If a cadet suffered an injury which affected his ability to soldier, he received a medical discharge. A small number of cadets did so. In some cases the Army endeavoured to change a cadet's wish to withdraw – sometimes effectively. During the life of the School, few cadets failed to complete their training.

[41] The general behaviour of cadets was of a high standard, both in the Camp and beyond its confines. When misdemeanours occurred, sometimes civilian Police were involved. The most common misbehaviour appears to have been the smuggling of alcohol into the Camp. The drinking of alcohol by cadets was strictly forbidden. The Army took all possible steps to stop this habit but, as far as I can ascertain, with only limited success.

[42] It is, in my view, worth noting, in light of the present allegations, over the 43 year period of the School only three incidents occurred resulting in the death of cadets which gave rise to military inquiries:

[a] The landrover incident

This occurred on 3 September 1966 when an Army landrover crashed in the Makatote Gorge on SH4 at approximately 9 pm. The four occupants, all cadets, were killed. The landrover had been taken from the Cadet School without permission, and unknown to the orderly sergeant, about 7 pm. Witnesses reported the landrover passed a civilian vehicle at an estimated speed of 40 mph, the driver lost control on the narrow unsealed road, the landrover hit an embankment, went over the bank and into the gorge. There was evidence the cadets had been drinking.

[b] The shooting of Cadet Grant Bain on 13 February 1981.

[c] The grenade incident

This occurred on 26 June 1982 when a Cadet G was killed and two other cadets injured as the result of an explosion during an exercise on a basic communications course near the Waiouru Camp. The explosion was the result of Cadet G banging the bases of two grenade projectiles together, one or both of which were highly explosive. He had earlier recovered these and other items from an enclosed shell area near to the exercise area. Cadet G should not have been in the enclosed shell area, should not have removed the items and he should not have tampered with them or handled them in the way he did.

4.3 The barracks

[43] Cadets were housed in barracks. The usual barrack building at Waiouru comprised eight rooms sited on each side of a corridor which ran the length of the barracks. Ablutions, shower, laundry room, drying room and calorifier room were in the centre of the block. I have attached a plan showing this layout as Appendix B. These barracks were a great improvement on those at Trentham, which were leftovers from World War I.

[44] A section of eight cadets occupied each of the eight rooms. Each section consisted of one senior cadet (normally a Cadet Lance Corporal or Corporal) and seven first year cadets. Four sections made up a platoon, that is, 32 men. Each end of the barracks had one platoon. Two or three platoons made up a company.

[45] A Regular Force Corporal or a Lance Corporal occupied a small room at each end of the barracks. A senior Cadet Sergeant normally occupied another single room. Each senior cadet was responsible for and in charge of the cadets in his section. The Cadet Sergeant and the Regular Force soldiers were responsible for the platoon in their end of the barracks.

[46] A platoon's rifles were kept in a small room at the platoon's end of the barracks.

[47] As can be seen from the plan, there was little privacy in the eight man rooms. Little could happen in these rooms to one cadet without others present in the room knowing of it. Particularly after lights out. This has been confirmed by almost all cadets who have come forward.

[48] There was no restriction on cadets entering barracks other than their own.

[49] During the life of the School the number of barracks occupied by cadets varied, depending on the total number of recruits in each intake. At least three or four barracks were generally fully occupied by cadets.

4.4 Barrack room discipline

[50] This was seriously flawed. In the main it was left to the cadet NCOs and senior cadets. The 1981 Bain Court of Inquiry was told:

> The cadets are monitored in the barracks primarily by the use of the senior class rank structure, since our staffing is totally inadequate to cope with this additional responsibility. The Regular Force staff are also, up until the arrival of the young lieutenants, the platoon commanders and platoon sergeants, and, as such, also have a role similar to that of a housemaster in a boarding school, which involves to an extent, mothering the cadets. Because the type of NCO we require at Cadet School needs to be a mature responsible type of person, a large majority of the staff are married and consequently live out. However, there are a couple of Regular Force staff corporals who do live in the barracks, but it is unreasonable to expect them to spend their entire "free time", which is limited, with the cadets. In addition, the School Duty Officer inspects the barracks on a relatively formal basis each night, and both myself and , the B Company Commander, spend about two hours each night wandering around the rooms talking to cadets. Beyond this, any further control is in the hands of the senior class.
>
> ...
>
> The cadet system, because of the peer-group rank structure, has a code of silence which is almost impossible to break. Because we, as staff, place

> responsibility on the senior class for various functions, we must also back them up in their authority and be seen to be supporting them. This naturally gives rise to abuse of the power they have, as they are too immature in most cases to fully understand the responsibilities which they are expected to carry out.
>
> ...
>
> I have a great deal of sympathy for the senior class NCOs, since they don't have either the maturity or the training required to carry out the tasks that are expected of them as platoon sergeants or section commanders.

[51] , the OC of the Regular Force Cadet School at the time of the Bain shooting, told the Inquiry:

> Q. Do you have any staffing problems at the School?
>
> A. Yes, we do have significant staffing problems ...
>
> Q. Does the School have any special staffing requirements in view of the age of your cadets?
>
> A. ... In essence, there is a serious discrepancy which somehow needs to be resolved and efforts to achieve this have already been made. The staffing problem goes well beyond that of instructor availability, it is also concerned vitally with the supervision aspect in the barracks.
>
> Q: Are you aware of any harassment of junior cadets by cadet NCOs?
>
> A: Yes, this has been an ongoing problem, and whilst it is being controlled in the other platoons, I was aware that things were still not completely right in 2 Platoon.

[52] The Bain Court of Inquiry found supervision of barracks was intermittent and inadequate because of insufficient staffing. It expressed its concern the School was unable to supervise the barracks properly and thereby left this responsibility largely in the hands of cadet NCOs, who were only boys with little military or leadership experience. It noted most of the current cadet NCOs, who had attended a junior NCOs course the previous year, had failed to qualify because they lacked maturity and judgment. These findings were clearly established by the evidence before the Inquiry.

[53] The Court of Inquiry also found there existed a pervasive pattern of violence inflicted on junior cadets by cadet NCOs. Beatings of cadets by cadet NCOs was not unusual and the Court of Inquiry expressed its belief minor violence of various forms was widespread in the School, violence which it considered might well be accepted by the junior cadets. It said:

> In a very real but indirect way, the Court believes, the pervasive undercurrent of violence in the School contributed to the death of Cadet

> Bain. This violent undercurrent has probably existed in the School for many years. If this is so, the Court is surprised that there has not been an earlier death or serious injury inflicted on a cadet by a cadet NCO, particularly in view of testimony concerning the modification and use of blank rounds when he was a junior cadet. The School, and its cadets, may have been lucky. ... The Court does not suggest that junior cadets are likely to be killed with any degree of frequency. However, the Court considers that Bain's death should serve as a warning: it was the logical, if extreme, outcome of the violent nature of present cadet NCO leadership. The Court considers that three elements are required to control cadet NCO violence. First, all junior cadets should be fully and constantly informed of their rights, particularly in respect of assault. Secondly, very clear and precise rules of non-violent punishment should be prescribed for all cadet NCOs. These rules should be widely and frequently promulgated, especially to the junior cadets. Thirdly, the activities of the cadet NCOs should be monitored and controlled by full-time barrack supervisors.

Specifically when dealing with the question of staffing at the School, the Court said:

> In effect, the cadet NCOs have received their licence to harass the junior cadets through the failure of the Army to staff the School adequately. The cadet NCOs have filled the gaps in the School's staffing, and assumed some of the power of the staff accordingly.

[54] Almost every ex-cadet to whom I have spoken, or from whom I have received submissions or other written material, has told me discipline in the barracks after the evening meal through to reveille was enforced by senior cadets. Apart from the orderly officer and the orderly NCO going through the barracks normally after lights out, no Regular Force soldier played any effective role in controlling the action of senior cadets. The Regular NCOs attached to the barracks, certainly until 1983, were rarely seen in the barracks by the cadets after 5 pm.

[55] It is clear what is euphemistically termed "barrack room justice" was a very real feature of a cadet's life, certainly until the abolition of the second year cadet system in 1982.

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5. BARRACK ROOM JUSTICE

[56] This took many forms, often involving the bullying, in one way or another, of a junior cadet or cadets by senior cadets. The Army termed it "bastardisation". It has existed since the early days of the School. The Army does not dispute – and, indeed, has never disputed – some bullying occurred. It accepts it arose with the advent of the senior cadet system and cadet ranking. Examples of bullying are referred to in Major Taylor's publication *A Favoured Few*. It is also referred to in the publication *Regular Force Cadet School Parkinson Class then and now, 1964-2004* (Parkinson Class 40th Reunion Organising Committee, 2004, Ed Keith Westwater). In the latter the following statement appears:

> The senior cadets took great delight in sending us raw recruits all over camp in the search for some cans of ball-bearing paint or whatever. Some were very inept at handling their fellow men and some who were given promotion were outright little Hitlers.

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6. BULLYING

[57] Bullying in one form or another, particularly at schools, is not uncommon. It is a fact of life. Unfortunately, bullies flourish in school environments. The Flashmans and their hangers-on exist today just as they did when Tom Brown attended Rugby. No matter what steps school principals and staff take to stamp out bullying, it seems to survive. To suffer and endure it is unfortunately the lot of some. Its effect can vary considerably from person to person. Fortunately, in most cases, it is remembered as an unhappy stage of one's growing up. For others, the result may be much more complex. That bullying occurred at the School made it, I suspect, no different from many other secondary schools and establishments. It is the nature of some of the bullying which places it apart from others.

[58] A number of cadets have likened the treatment of junior cadets by senior cadets to the treatment meted out by prefects or senior pupils to junior pupils at boarding schools. Cadets to whom I have spoken who advanced this view, without exception, saw nothing of some of the bullying which I later describe, for example, spooning. All agree such behaviour, if it occurred, was unacceptable. In my view, it is unhelpful to make a comparison between what went on at boarding school establishments and the Army Cadet School. The two establishments are totally different in nature, with different aims, resources, activities and age groups.

6.1 Nature of the bullying

[59] I have been told of forced showering, nuggetting, spooning, barrelling, beatings and kicking, additional PT drills, verbal abuse, the ordering of menial tasks and extortion.

[a] Forced showering

Forced showering generally followed "gunge" parades. These parades were a regular occurrence. They happened almost every Sunday evening. They involved a close inspection of each cadet's barrack area for any sign of dust, dirt or the like. Rifles were inspected. A cadet's gear was also inspected to ensure it was in apple-pie order, every item cleaned and pressed. Contents of the lockers were checked. These inspections were made by senior

cadets in anticipation of the OC's inspection of the barracks on the following Monday.

A cadet whose gear or area was not up to scratch, or who was deemed to be dirty, could expect to be punished. Punishments ranged from being verbally abused at length by a senior cadet or cadets, being ordered to do press-ups or additional drill, being punched or kicked by a number of cadets, being forcibly showered and scrubbed with brooms.

The forcible showering and scrubbing took place generally in the ablution block attached to the junior cadets' barracks. The brooms were those used to clean the shower and ablution block. A cleansing agent would sometimes be applied to the junior cadet before or during the showering and scrubbing. Occasionally, the junior cadet would be paraded between the barracks before the showering and scrubbing or taken to the Waiouru stream for the cleansing exercise.

Any cadet who had not showered, or who was in the habit of not showering, or who had dirty underwear on his person or in his locker, was deemed dirty. He was labelled a "gunge". He was showered in the barrack block. He would normally be put alternatively under hot and cold showers. His scrubbing down would invariably cause lacerations.

All of the material before me points to senior cadets being the organisers of this form of punishment. Occasionally junior cadets were ordered to assist. They had little choice other than to comply. If they did not, they themselves ran the real risk of suffering this particular form of punishment.

While I suspect forcible showering occurred during the life of the School, from what I have been told it was rare in its first decade but became much more prevalent thereafter, tapering off from the early 1980's.

I have been told the purpose of the gunge parade and any subsequent scrubbing was to highlight the importance of cleanliness and hygiene as part of group living. This was stressed to cadets when they first arrived at Waiouru, and regularly repeated. I can accept the need to enforce hygiene, particularly in the circumstances of close group living. It is not acceptable, however, for one cadet to be

set upon by a group of others and taken to the showers and scrubbed, as I have described. I have been told by many cadets one scrubbing was usually enough and cadets fell into line. This does not make the practice any more acceptable.

No soldier is entitled to strike another. Each of the cadets who organised activities such as the forcible showering and scrubbing of others, or took part in them, is guilty of an assault. The appropriate course to deal with a cadet having a hygiene problem was to give him a direct order to shower and if he did not do so, place him on a charge and bring him before his CO. If his behaviour did not improve after this, for whatever reason, he could be asked to leave and/or discharged from the School.

This activity is illustrated by the following comments made to this inquiry.

1. **Cadet MR001**

> **Cadet MR001:** I didn't undergo anything but I saw the odd guy sort of bullied a bit for not being too up to scratch with his personal hygiene and he was sort of taken down to the shower and given a scrub.
>
> ...
>
> Well, you know, a person who's not clean within himself, not showering and washing himself every day and not wearing clean clothes, or particularly, underwear, every day.
>
> **Justice Morris:** What happened to him?
>
> **Cadet MR001**: He was normally just taken down to the shower block and showered with cold water and soap powder and a scrubbing brush.
>
> **Justice Morris:** Taken down, how do you mean "taken down"?
>
> **Cadet MR001:** He was escorted down.
>
> **Justice Morris:** I'm a civilian – what do you mean by "escorted"?
>
> **Cadet MR001:** He was walked down there by two other cadets and the whole block was there to watch him being washed.
>
> **Justice Morris:** These two other cadets, were those senior cadets?
>
> **Cadet MR001:** Yes, I think so, yes.

Justice Morris: And I've been told that on occasions that involved being put under a hot shower, then a cold shower, hot shower, cold shower?

Cadet MR001: I only saw cold showers.

Justice Morris: The scrubbing, how was that done?

Cadet MR001: With a long handled scrubbing brush.

Justice Morris: What was that normally used for?

Cadet MR001: Scrubbing the floor.

Justice Morris: How long would this exercise take?

Cadet MR001: Five, ten, minutes.

Justice Morris: Pretty painful for the fellow?

Cadet MR001: Very embarrassing for the guy, yes.

Justice Morris: Not too good?

Cadet MR001: No.

2. **Cadet MR232**

Scrubbings, gauntlets, scrubbings. The only scrubbing I seen done was done with hand brushes, with the bristly brushes. The guy was lying down - - I only seen it because I was being marched past the ablutions - - he was laying down on the floor with two or three guys on top of him and he was screaming and he was getting scrubbed by one of those hard scrubbing brushes.

3. **Cadet MR004**

He was a senior cadet sergeant, yes, and I think he was one of the cadet sergeants who used to run our platoon. They were in the middle there and they had yard brooms. This kid was made to run into each of these ends, run from one end and then into the other, he wasn't, I don't know how fast now, but he certainly would have been feeling this full on heat and full on cold down the other end there. And then they'd stop him in the middle, they'd make him lie down on his belly, and then they'd scrub him with this yard broom. He was screaming. And then they'd make him do it again. It happened more than once. I understand that he went into hospital afterwards. The hospital staff must have been aware of what was going on. And I also understand that he went AWOL a week or two after this event. He was consequently recaptured, tried, and ended up in Ardmore for some period of time, I don't know how long.

4. **Cadet MR341**

Cadet MR341: I was scrubbed.

Justice Morris: Tell me about it.

Cadet MR341: It was during the basic training. I had a shower one night and because we were rushed I left some green stains on my elbows. It resulted in me being forced back down to the showers and my elbows scrubbed with a scrubbing brush and with a yard broom.

Justice Morris: How many on to you?

Cadet MR341: From memory, there was six.

Justice Morris: Senior cadets?

Cadet MR341: And my year class.

5. **Cadet MR344**

... they would take you down to the ablution block. In the - - we used to have to clean the ablution blocks - - and they would have scrubbing brushes that were used to scrub cowsheds, or were made for scrubbing cowsheds. But we used them to scrub the floors. There was probably 15, 10 to 15, showers, no doors on them, and they would put it on full hot, full cold, full hot, full cold, all the way down, and they would push these individuals into the full hot and scrub them with a scrubbing brush, into the cold, into the hot, into the cold, into the hot, all the way along. And that was pretty near standard if you were dirty, either had dirty laundry, you were dirty in yourself.

6. **Cadet MR071**

Cadet MR071: They'd generally get held down under a cold shower and scrubbed with those old-time floor scrubbing brushes and Pearson's sandsoap until in some cases they'd bleed.

Justice Morris: Was once usually enough to make them - -

Cadet MR071: Usually, yes.

7. **Cadet MR082**

Yeah, the gungy parade was generally on a Sunday evening and they'd come through and it was just so bloody pedantic. They might find a hair or something in your bloody wardrobe and, yeah, quite a few of us, you'd be taken down to the showers and you'd be scrubbed down with the old yard broom and cold water, and I know some guys came out of those showers and bloody near their skin was taken off them. Yeah, Sunday nights was a pretty feared time of the week but I seem to recall during my first year when the beatings and that were taking place, and it got to the stage they were happening on a regular basis, you could expect to be beaten a couple or three times a week.

8. **Cadet MR126**

On another occasion I witnessed along with others a brutal assault on a younger cadet in an ablution block, which has showers. A cadet was forced to strip off all his clothes in front of 15-20 other young cadets. He was then forced to stand under a shower and cold water was turned on by the NCO for several minutes.

He was then removed from the shower and another cadet was forced to scrub the helpless cadet with a long handled, short bristled, hard, floor scrubbing brush. Both the front of his body and the cadet's back.

Following this the cadet was pushed back under the shower at which time the NCO turned the hot water on, only the hot water. This was repeated at least twice.

The cadet concerned suffered considerable pain. His back was extremely red and grazed from the bristles. And yet the perpetrator was never brought to account.

9. **Cadet MR165**

In the case of a perceived hygiene problem the offending cadet would be dragged into the shower block, stripped naked and scrubbed with a number of hard bristled yard brooms. The shower water would either be boiling hot or freezing cold.

10. **Cadet MR187**

The yard broom was a favourite tool of senior cadets. During winter they would hose you down with cold water and then scrub you with a yard broom. This was done inside and outside. At times you had to stay outside wet until you were shivering uncontrollably.

[b] Nuggetting

Nuggetting involved a cadet's penis and testicles being covered in boot polish and then the cadet being required to clean himself. It was a rare form of punishment. I have been told of only five instances of this happening to a junior cadet, each time at the hands of senior cadets.

This activity is illustrated by the following comments made to this inquiry.

1. **Cadet MR214**

Cadet MR214: I think it's just embarrassment. You get there and you get nugget put on your testicles and then the spoon. It's not a very nice thing to happen.

Justice Morris: I don't doubt that. I'm just trying to rationalise this in my own mind. You'd have to go and wash yourself afterwards?

Cadet MR214: Yes, have a shower and that, yes. The thing that was strange about it, my testicles didn't swell up like the guy earlier on in the year, which really swelled up. I wasn't very mature physically at that stage anyway, so I just didn't report it.

Justice Morris: You mentioned somebody else earlier in the year. Did you see this happening to someone else?

Cadet MR214: No, just before we went out in the field at the end of our basic training, this guy that was in the same platoon that I was he was spooned - - I never actually saw it, it wasn't until he came out of hospital that we heard about it. He was actually in hospital and got medically discharged.

2. **Cadet MR276**

I recall being "nuggetted" during a gunge parade. In this instance I was held down on the floor, had my shorts pulled down and nugget applied with a brush to my scrotum.

3. **Cadet MR008**

On your birthday all the first year cadets were grabbed by a group led by second year cadets, dragged to showers, clothing ripped off, you were held down forcefully so you couldn't struggle or lash out and you were nuggetted. Covered in toothpaste, foot powder, linament and poked with brooms then thrown into shower. I know for a fact only cadets to escape this, was the ones who had birthday during holidays which corresponded with May and August School Holidays. On the barrack notice board it had a nominal roll which had all Platoon members. Name, Regimental Number and date of birth on it so you could not escape the treatment. Something you don't forget.

[c] Spooning

Spooning involved a cadet's testicles being struck with a wooden spoon or wet towel. Fortunately, this too seems to have been a rare form of punishment. I have been told of three instances of it occurring, again on each occasion being organised by senior cadets.

This activity is illustrated by the following comments made to the inquiry.

1. **Cadet MR237**

Cadet MR237: Anyway, they grabbed me and were starting to punch me round a bit and I just started flailing, and then I was dumped on the floor and grabbed. I had guys on my feet and guys on my hands. And I was struggling. I had no idea what they were going to do, but we had heard of something called spooning, and they undid my belt, pulled my pants down, underpants down, and then were belting my scrotum with a spoon.

Justice Morris: How many were involved in that?

Cadet MR237: I believe, from the nightmares anyway, there was seven or eight. It probably would have taken that many to hold me at least, anyway.

Justice Morris: You mentioned two from your own room?

Cadet MR237: There were two first year cadets involved.

Justice Morris: The rest were seniors?

Cadet MR237: The rest were - - there may have been other first year cadets there but most of them were seniors. One was the actual company sar major at the time. I can't remember his name. I've shut it away quite nicely.

Justice Morris: Can you remember the name of any of them?

Cadet MR237: No.

Justice Morris: No? Alright. How long did this go on for?

Cadet MR237: I don't remember. I remember about three or four hits. I don't remember much else after that. I don't know how long it went on for. I don't know what happened after that even.

Justice Morris: Did you go to hospital?

Cadet MR237: Eventually.

Justice Morris: Over this?

Cadet MR237: Eventually.

Justice Morris: When you say eventually, do you mean some days later?

Cadet MR237: The next day, got up in the morning and was told if I mentioned it what I got the night before was nothing compared to what I was going to get.

Justice Morris: Who told you that?

Cadet MR237: One of the senior cadets who was not in our barracks.

Justice Morris: In other words, a cadet from another barrack area altogether?

Cadet MR237: Yep.

Justice Morris: Did he come across to your room and tell you or did he see you outside?

Cadet MR237: Um, I don't know that I actually saw him, because I was in the barracks trying to get out of bed, trying to get dressed, and I heard a voice say, [Cadet MR237], if you mention this, what you're going to get is nothing compared to what you got last night, and they were gone. So, it was done from the doorway. There was possibly other people in the room, although I was, as you can understand, not well. So I went out on parade. But I had a great deal of difficulty because my scrotum had swollen to quite some size.

Justice Morris: And you went down to the hospital after parade?

Cadet MR237: The last command I heard was "attention". Came to attention and I woke up in hospital.

...

Cadet MR237: Oh, I asked to go on sick parade and was told no. I asked to go on sick parade and they said, no, you can't, you're going out on parade, just as normal, so I did.

Justice Morris: And you fainted?

Cadet MR237: And I went out on parade and came to attention, which obviously means that you have your heels together, and there wasn't any room to get my heels together, so I collapsed on the parade ground and that's the last thing I remember for, I don't know how long. I mean, it could have been hours, it could have been days.

2. Cadet MR232

Cadet MR232: It's just that - - I've been through a hell of a lot of things. As I said, I'm sterile because of it. My private parts never developed because of what was - - I was hit with a towel, rolled up longways, soaking wet, felt as hard as anything - - -

Justice Morris: You were hit in the balls by that were you?

Cadet MR232: I was hit in the balls with that. And they used to come round and call out during the gunge parade, is your balls dropped yet, was one of the things they used to yell out.

[d] Barrelling

Barrelling involved a cadet being made to run the gauntlet of fellow cadets and/or senior cadets who punched and/or struck him with boots, fists or knotted towels.

This punishment was usually meted out in the corridor running between the two platoon areas by the ablution block and occasionally at the Waiouru stream or in the open area between the barracks. It was generally imposed for a breach by a cadet of the barrack rules or general disciplinary rules which reflected badly not only on the cadet's overall competence but the competence of his section, and in some cases his platoon. I have been told this punishment, which normally involved fellow section/platoon members, effectively stressed the importance of all members of a platoon/section working together as a team for the good of all members of that team, not simply for themselves.

While I can understand the importance of ensuring all members of a platoon or section understood and appreciated it was the overall good of the platoon or a section which was important, this does not justify the kind of punishment which I have just described.

Like the forced showering, I suspect barrelling has gone on from the early days of the School but, from what I have been told, it principally occurred between the late 70's and the early 80's.

This activity is illustrated by the following comments made to the inquiry.

1. **Cadet MR348**

> **Cadet MR348:** Bruising, sprains. Cadet C presented himself at the MIR once after having run a gauntlet where the whole company was forced to stand on both sides of a narrow corridor and kick and punch him as he was forced to run past. He was injured and he was taken to the MIR, medical inspection room.
>
> **Justice Morris:** When you say the whole company, how many people would that be?
>
> **Cadet MR348:** 100, perhaps 70.
>
> **Justice Morris:** Are you telling me that a young lad of somewhere about 15½ to 16½ had to run through a gauntlet

of 70 people and each of those persons was expected to kick him or hit him?

Cadet MR348: Yes, and if we didn't the threat was that we would have to join him.

2. **Cadet MR318**

Justice Morris: And those beatings-up, what form did they take?

Cadet MR318: Uhm, you just might throw a blanket over him and punch the shit out of him. Might line everybody up in the corridor and make them run down and everybody gives them a good kicking.

3. **Cadet MR083**

You mentioned the gauntlets. There were gauntlets. You can't really call them punishments because to me a punishment is for a misdemeanour. It was abuse, the gauntlets. You know, they would line the platoon, you know, half either side of the hall in the corridor and then individuals would be made to walk through and you all had to contribute with punching and what not. I remember one individual being put through the gauntlet and - - because we didn't really – we didn't have a problem with him - - it was the senior class that had the problem with him, that's why they put him there in the first place. I think a lot of us were pretending, we weren't really punching him. The NCOs knew that and there was one NCO that positioned himself at the end and when this guy came through he hit him in the abdomen and hit him that hard his feet left the ground. I remember that to this day because I was right there. The guy just went down, he just folded. He went down hard. And, you know, if the guy was that sore he'd probably just get put to bed for a while.

4. **Cadet MR087**

How can I best describe it. Well, if you can imagine, sir, the accommodation area of the barracks was shaped like an H. Each wing of the H represents an eight man room and the cross piece is the wooden corridor adjoining the rooms. It's probably approximately 25 to 30 feet long. The occupants of the four rooms were brought out, lined either side, and the transgressor – or perceived transgressor – was tasked with walking from one end of the corridor to the other and back again whilst receiving punches, kicks, slaps, whatever.

5. **Cadet MR092**

No, I got - - they would have raids on the barracks where they'd come through in all hours of the night and so forth. People would be singled out. I've been woken up, belted with a rifle butt, you know, woken up that way with a rifle butt to the gut. Literally turfed out of bed, pushed into – or

dragged into – the wooden corridor or the concrete corridor and had to sort of run the gauntlet and so forth. And you got hit with sticks, brooms, rifles. It was not a nice experience.

6. **Cadet MR237**

Cadet MR237: Well, there was the yard brooming again - - the one that I saw and we all had to participate in was where you lined the walls down the corridor here and somebody had to run through.

Justice Morris: That's called barrelling, isn't it?

Cadet MR237: Mmmm.

Justice Morris: What happened to them as they ran through?

Cadet MR237: Well, you had to punch them or do whatever you want to, kick them. And if you weren't seen to be doing enough you had to run as well.

7. **Cadet MR205**

Cadet MR205: If your hygiene wasn't up to standard they used to have a system called barrelling, where they would take you into one of these rooms, being the ironing room, and you'd be in there - - it never actually happened to me - - -

Justice Morris: It didn't happen to you?

Cadet MR205: I'd seen it because - -

Justice Morris: Just tell me what it is.

Cadet MR205: Yeah, you go in there and there'd be six or seven of your peers, sometimes more of them - - it didn't always happen inside, sometimes it would be outside. And they would just start barrelling you, you know, pushing you round, punching you, kicking you - - -

8. **Cadet MR008**

At night if a cadet had annoyed a Cadet NCO cadet would get barrelled which was attacked by group after lights out; cadet would have head covered and be punched below neck so no marks would show, this happened fairly often.

Some cadets who caused problems were made to run gauntlet which was cadets called into concrete corridor between barracks. Cadets told to line walls then offending cadet was made to run down corridor while being punched, tripped and kicked.

Another punishment for the whole of platoon was to be called into concrete corridor, made to stand facing wall with nose about an inch from wall and raise both arms above head for long periods. If you touched wall or moved you would be punched by Cadet NCOs.

9. **Cadet MR283**

> Barrelling was something that happened in my time and it was performed on a bloke by the members of his section because he had gotten them all in the crap, it consisted of three cadets on one side of the middle of the barrack room and three cadets on the other side, the offender was pushed from one group to the other to the sound of the Danube waltz and punched in the stomach or shoulders to send him on his way. Seemed to me to hurt the pride more than anything else.

[e] Beatings and kicking

Beatings and kicking of junior cadets by senior cadets, often apparently for no good reason, likewise appears to have been a fairly regular happening in the barracks from about the mid 1960's to the early 1980's. Many cadets who gave evidence in the Bain Inquiry referred to being kicked by senior cadets for relatively minor infractions of the rules and there was an ongoing inquiry into violent behaviour or treatment of junior cadets at the time Grant Bain was shot.

This activity is illustrated by the following comments made to the inquiry.

1. **Cadet MR318**

> **Cadet MR318:** The whole thing was if somebody wasn't doing the right thing, like, complete fuck-up, right, couldn't get their act together, basically it was up to the senior cadets to sort them out and also the other cadets of the same year. So if they were totally inept it was basically expected that they either got beaten up until they left or they started toeing the line.
>
> **Justice Morris:** And those beatings up, what form did they take?
>
> **Cadet MR318:** Uhm, you just might throw a blanket over him and punch the shit out of him. Might line everybody up in the corridor and make them run down and everybody gives them a good kicking. Surely you've heard all this before?

2. **Cadet MR082**

> Generally, you'd be asleep, a blanket would be thrown over you and either punched and kicked on the bed, or dragged off the bed, punched and kicked. I was on the second – on the first floor of the barracks and on two occasions I had the blanket wrapped round me and I was thrown off the balcony, and that happened to quite a few.

3. **Cadet MR330**

Cadet MR330: Several requests to ask me to go to specific places and I said no and that night they would pull the blankets over you, pulled them down, and you just get a flurry of kicks and punches.

Justice Morris: How often did that happened to you?

Cadet MR330: I only had it happen to me twice.

4. **Cadet MR004**

These guys came into the room, they abused us, they made us strip off, they made us assume what would be considered sexual positions, nothing else took place because they were beating us. And what I did was I feigned unconsciousness. They burned me with cigarettes. My heart rate was apparently racing so this Mal guy, who thought he knew something about medicine, thought it was something to do with the shock or something. I don't know. And then they left shortly afterwards. I didn't say anything about this.

5. **Cadet MR083**

Yeah, yeah. I'll have to think back 23 years. The first abuse to me was a beating from a lance-corporal where I was made to stand to attention in front of the members of the platoon in that room. I'd been caught laughing. And this lance-corporal took me into the room, had to stand there to attention, and I received seven or eight blows to my abdomen and by the time he'd finished beating me I was up against the wall. That was my first beating, that I recall.

6. **Cadet MR126**

On one occasion I threatened to report the assaults on Cadets to higher authority. Shortly after I was woken around mid-night by an NCO sitting astride on top of me so I could not move. He proceeded to move a knife around my face and forehead threatening me of serious consequences if I spoke out, saying I would be cut up. The fear I experienced was considerable not being in a position to defend myself nor I felt advisable to call out for help, after all, he had the knife. Obviously it was done when there would be no witnesses.

7. **Cadet MR165**

Nightly barrack-room raids were the most common way in which cadets were terrorized. Almost invariably they were conducted by the Senior Class on the Junior Class. The light fuse would be removed and a group of Senior Class Cadets would burst into a barrack-room late at night or in the early hours of the morning. At worst, they would tip everyone out of their beds and then proceed to punch, kick or strike their victims with rifles or broomsticks. This was hard to defend

against as the barrack-room commander would be a Senior Cadet and would not allow the section to barricade the door. Cadets would lay awake wondering if they were to be next on the "hit list".

8. **Cadet MR228**

I would be in bed asleep when a blanket would be placed over me and 2 or more other cadets would beat me. This would go on for up to 30 mins. Sometimes I would lapse into unconsciousness. I remember times when I would be passing blood in my urine for days from the damage inflicted.

9. **Cadet MR318**

Justice Morris: Did you ever hear the expression "take up the position"?

Cadet MR318: Oh yeah.

Justice Morris: What did that mean to you?

Cadet MR318: They bent over and you kicked them fair up the arse.

Justice Morris: With a boot?

Cadet MR318: Yeah. Boot on, yeah, 'cause that makes it hurt.

Justice Morris: Was that pretty normal?

Cadet MR318: Yep.

Justice Morris: And was that administered by senior cadets on junior cadets?

Cadet MR318: Yeah.

Justice Morris: Have you experienced that yourself?

Cadet MR318: Yeah.

[f] Additional PT drills

Junior cadets were regularly ordered to do excessive press-ups, drill movements and other physical activities, by senior cadets.

[g] Verbal abuse, menial tasks and extortion

A few cadets have complained of being verbally abused by seniors, having to clean senior cadets' gear, carry out menial tasks for seniors, and one cadet has gone so far as to allege a senior cadet forced him to hand over money on a regular basis. Unlike the other forms of bullying to which I have referred, I have found no substantial evidence to justify these allegations.

7. EXTENT OF BULLYING

[60] I have found this very difficult to assess, particularly for the following reasons:

[a] The School existed for 43 years. More than 5,000 cadets passed through it. I have received and read 473 emails and letters from cadets and others connected at some stage with the School. 215 of these persons claim to have been bullied or observed bullying of one sort or another as I have described. Of these, 51 took up my offer of an interview and have spoken to me. 151 cadets and other persons claim to have seen nothing which could fairly be called bullying.

[b] In some years where a cadet has described bullying behaviour, other cadets in the same barracks claim to have seen no such activity. I have earlier set out the layout of the barracks and the sleeping areas. I certainly would have expected, had the bullying complained of occurred as described to me, some, if not all, members of a cadet's section, and possibly his platoon, would have been aware of it happening. This is particularly so because the majority of the bullying is said to have occurred either in the evening or after lights out. I am satisfied, consciously or unconsciously, some of the descriptions given to me have been embroidered with the telling.

It also seems very likely different cadets are describing the same event, rather than each describing a separate occurrence.

[c] Many of those who now claim to have been bullied complained to no-one at the time. A number did not even tell their parents. Some say they did tell their parents but their parents did not believe them. Very few complained, as they were entitled to do, and knew they were entitled to do, to their CO or Regular Force barrack corporal. Few complained to the chaplains.

Cadets claim this inaction on their part was because of a fear of the consequences. Any such complaint, they say, would have become known to the person complained about and would simply result in further punishment or mistreatment. I am prepared to accept there is some truth in this claim and I note it is referred to in the Bain

Inquiry report. I am puzzled, however, if things were as bad as some now claim, why, when they had completed basic training and were transferred to a corps, they did not complain to those in charge there.

[d] I have sighted little medical evidence to support individual claims. In a number of instances this has been due to an inability to access former cadets' medical files from the Army or other hospitals. Of those I have sighted, I have certainly seen no medical evidence which supports claims there was widespread physical abuse of cadets. I have spoken to a number of medical staff who were attached to the Waiouru Base Hospital. Subsequently in this report I deal in some detail with the medical facilities available, which I can say were excellent. I am satisfied had the medical staff seen evidence of widespread abuse, it would have been reported by them to the senior Medical Officer who, in turn, would have reported it to the Commandant.

[e] Many cadets speak warmly of the senior cadets in charge of their section and barracks. Cadets very rarely suggest the senior cadets of a platoon or section joined in the bullying of members of their own section or platoon. Where cadets have recognised their assailants, the senior cadets have been, in the main, from other barracks.

[f] Cadets also speak affectionately of the senior ranking Regular Force NCOs – particularly . Many cadets clearly regarded these men as role models in every respect. They had experienced war. They knew their job as professional soldiers. They were anxious to pass on what had to be done to survive in battle conditions. Hard men, but strict and fair, is the expression which recurred again and again in interviews.

[g] Where it has been possible, I have put specific allegations to named individuals, who have denied them.

[h] Many cadets have told me there was a lot of talk about what could happen if you broke the rules or did not conform, but go on to say none of the things talked about ever happened when they were at the School. I simply cannot exclude the very real possibility much of what cadets heard and talked about, rather than saw themselves, was embellished in the telling over time and was effectively used to discourage those who might be thinking of flouting the rules.

Regular Force officers and NCOs, such as , have told me it was part of their responsibility to the young cadets to know what was happening in the barracks and what problems any cadets had. I accept these assurances. told me he had never heard of spooning or scrubbing until he read the articles and allegations in the newspapers. He says had he known of them he would have taken immediate steps to stamp the activities out, as they certainly had no place in the Army. I accept what he tells me. I am also certain had such activities been as common an occurrence as has been made out by some, the senior experienced NCOs in the Camp would most certainly have known about it. Their claims they did not know about it, which I accept, suggest to me the occurrences of spooning and nuggetting, for example, and the like, were far from regular happenings.

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8. THE ARMY'S KNOWLEDGE OF BULLYING

[61] Very few ex-cadets allege Regular Force staff were in any way involved in bullying. The very worst that can be confidently said of the Regular Force personnel is at times, while drilling and training cadets, instructors used language which would have had no place at a gospel meeting.

[62] The Army has always been aware some bullying went on. When it learned of unacceptable behaviour, such as I have described, it took steps to stamp it out. I am satisfied when claims of bullying surfaced, Regular Force staff sought to identify the perpetrators. An investigation into bullying was going on when Cadet Bain was shot. Shortage of manpower could not have made the School's task any easier. The position has been made even more difficult as cadets were clearly afraid to speak out because of what senior cadets, and even their co-cadets, would do to them. A cadet did not "dob in" his mates.

[63] I have been unable to ascertain exactly how many senior cadets, or others, were disciplined for bullying during the life of the School. However, many cadets and Regular Force personnel to whom I have spoken have told me of cadets being reduced in rank, dismissed, or given more severe punishment for, in effect, bullying.

8.1 Conclusion

[64] I have heard nothing to justify a finding Regular Force personnel were involved in the bullying of cadets. Likewise, a contention a culture of violence existed throughout the existence of the School is not supported by my inquiries and is a gross over-statement. I find the position to be in some years a few, mainly senior cadets, have behaved like a gang of thugs and have bullied a very limited number of cadets in the manner I have described. Such bullying has taken place despite attempts by the Army to cut out this type of behaviour, and certainly was not condoned at any time by those running the School. The subjects of bullying have generally been cadets who have either not met the standard of personal hygiene or consistently dragged the chain with respect to required standards for personal/ barracks presentation, resulting in all members of the cadet's immediate group being punished.

9. RESULTS OF ALLEGED BULLYING

[65] Claims made by cadets who allege they were bullied vary greatly as to how it has affected them. In most cases, cadets have simply put any experiences of bullying behind them and got on with their lives, either in the Army or outside of it. Those bullied appear to have been generally those unable, because of size or makeup, to adequately defend themselves. I suspect a number of these cadets should never have been selected for the Army and were clearly unsuitable for it.

[66] Some cadets certainly appear to have been affected by the bullying they received. Less than 30 claim the effects have been ongoing and have had a profound effect upon their lives, either physically or psychologically. To what extent these claims are soundly based, I am unable to determine on the material before me. Only a full hearing, with appropriate evidence, can come to a final decision after a consideration of each particular case.

9.1 Possible criminal offending

[67] All of those who took part in attacking or assaulting another cadet, in the manner I have earlier described, were guilty of assault. There is no question of them acting in self defence.

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10. SEXUAL ABUSE ALLEGATIONS

[68] A small number of cadets claim to have been sexually assaulted or forced to perform sexual acts. All those making such allegations were invited to attend for interview. Nine attended.

[69] Four cadets claim to have been made to either masturbate in front of others or to simulate intercourse. Three cadets claim to have had a broom handle forced up their anus. Ten claim to have been sexually assaulted, mainly by fondling of their genitals. Two claim to have been raped.

[70] The alleged perpetrators include fellow cadets, Regular Force personnel and civilian staff. A number of these allegations went unreported by the cadets at the time.

[71] Records I have been able to obtain show that the Army invariably took action against the assaulter in these cases when it could. Offenders were prosecuted and normally dismissed from the Army. There is certainly no basis to suggest if a complaint of a sexual nature was made, the Army did nothing about it. The very clear fact to emerge from my inquiries is no cadets, other than those involved, knew or were aware of anything of this nature happening in the Camp or in the barracks. Nor were those running the School aware of anything untoward unless it was reported.

10.1 Conclusion

[72] The suggestion sexual abuse of cadets was widespread is totally without foundation. Any occurrence reported or discovered resulted in immediate action being taken.

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11. MEDICAL FACILITIES

[73] These were excellent throughout the existence of the School.

[74] Cadets who woke up sick or became sick during the day went to the Medical Inspection Room at the Camp Hospital. They were then seen either by a doctor or a qualified nurse. If no doctor was in attendance and the nurse had any doubt as to the correct treatment, the cadet was sent to the Base Hospital to be seen by a doctor. A cadet injured in the barracks or on exercises was taken immediately to the hospital.

[75] From 1948 to 1991, there was always at least one doctor attached to the hospital, sometimes two. Normally there were three very experienced qualified nurses plus two junior qualified nurses. There was always a minimum of 12 medical orderlies. The orderlies were very experienced, most with many years of service. The hospital had 40 beds, with room for more. It was fully equipped to deal with emergencies. In addition to catering for Army personnel, the hospital tended to families of Regular Force staff. It also handled civilians admitted as a result of motor accidents. Extraordinary cases were transferred, when the need arose, to major city hospitals.

[76] I have interviewed .

[77] enlisted in 1966 and was initially stationed at Waiouru. He remained there until 1968. His successor was . retired after 18 years' service. He was then a Brigadier and the Director General of the Defence Medical Services. In his years in the Army he has held command posts at military hospitals both in New Zealand and overseas. He told me:

> **Justice Morris:** So you were there for a couple of years single handed?
>
> **:** Single handed. Well, that's not entirely true. Occasionally Territorial Force doctors would come and be there for a couple of weeks.
>
> **Justice Morris:** Oh, yes.
>
> **:** Occasionally there would be a civilian medical doctor, a civilian doctor. We had one there, a lady, who came and went. But by and large the integrity of the service largely depended on the military doctor and, I'd have to say, the nursing staff that we had.

Justice Morris: How good was your support staff?

: Oh, incredibly good. Just outstanding. The nursing officers were superb.

Justice Morris: How many did you have?

: Always had a matron, who was usually a senior major.

Justice Morris: She'd have done a fair number of years?

: She had. was my first. She was . And she was long serving. She was a splendid woman, in every sense. And she had varying, but I think her establishment would probably be four or five nursing officers.

Justice Morris: Yes.

: And then we had a group of what we call medical corpsman.

Justice Morris: Yes.

: And they were both boys and girls, men and women – and some quite senior NCOs. And the senior NCOs, the Warrant Officer, WO1, WO2, staff sergeant, sergeants, were usually very experienced people. There was the odd bloke left from the Second World War but I think there might have only been one or two by then, but Korea, and certainly Malaysia, or Malaya, was represented.

Justice Morris: They'd seen a fair bit of hard practise?

: They were very, very good and they were incredibly reliable and they understood the practise of medicine very well, and they stayed in the military because there they had the opportunity to do the things which just wasn't on out in civilian life because, you know what we're like, we're registered and we're ticketed and you're inspected, but there - - and if they proved themselves to be competent and reliable, then we, the medical officers and nursing officers, of course, just increasingly gave them responsibility. And these guys were willing to pick it up.

I asked him about injuries suffered by cadets. He told me:

Justice Morris: What happened - - did you see any kids where their injuries obviously didn't come from any sport?

: Well, I can't say that I did. In fact, I've thought about it and I'm sure I didn't. And one of the things I started to do in about 1965 was keep a diary, and I've just looked at them all and I can find no reference in any of them to anything of that sort.

He told me if cadets had been admitted as a result of beatings, he would have gone straight to the Commander, a . He accepted bullying went on at the School, but not to the extent of the beatings as claimed by some of the cadets from whom I have heard.

I asked him about allegations of mistreatment and he told me:

Justice Morris: Can you help me at all in this problem I've got of alleged mistreatment?

: Not - - I have no direct evidence of mistreatment.

Justice Morris: And you saw everybody who - - -

: Well, anybody who was serious. What would happen is - - I mean, triage was the thing. So if you've got a couple of hundred people reporting for sick parade, all the RNs on duty and all the senior medics would start screening people.

Justice Morris: All of these are reliable people? And if they had someone who said they had been assaulted?

: That's right. And they made notes. They all made their notes. And anybody - - I would start with them and then gradually there would be a cohort that they would have that they wanted to see the doctor. Furthermore, if anybody came and said they wanted to see the doctor, then they did. Certainly in my time. That was a very important bit and often they'd want to. But it was interesting that the soldier he had an enormous regard for the nurses and most of them actually wanted to see one of the nurses. That's the RNs. Because, I mean, they got a square deal from those women.

Justice Morris: Well, let me put it this way. If a cadet had come into the hospital and complained of being beaten up or of being punched by another cadet or cadets - - -

: I would have known.

Justice Morris: - - - you would have known - - -

: Oh, for sure.

Justice Morris: - - - either by seeing him personally or by the staff passing that on?

: The staff, oh, they couldn't have got to me quick enough.

Justice Morris: And you got none of that?

: None of that.

He also told me he had no knowledge of any sexual impropriety at the Camp. He said:

Justice Morris: Tell me, did you see any sign of sexual improper activities?

: None at all. None at all. And, of course, in those - - crumbs, we were pretty ultra conservative in those days, crumbs. I mean, hells bells. If there had have been any evidence of that the balloon would have been up in a big way.

[78] was first stationed in Waiouru in 1970 as second-in-command of the nursing staff. She was then a Registered Nurse with 10 years post graduate experience. She remained there for approximately 13 months when she was posted overseas to Singapore. She returned to Waiouru in November 1975 as the Matron and remained there until 1981. Her career was completed in 1991. She had then been the Director of Nursing for seven and a half years.

[79] I asked if any of the things she had seen at the medical station gave her any real concern about the treatment of cadets outside the medical profession. She said:

> : No, no, I didn't. Because I've done a lot of thinking about this since I knew you wanted to talk to me, about that first time I was posted to Waiouru. And they had a very, very fatherly sort of person - - a guy his name was, he was the Commanding Officer. And he was a real father figure, as far as we could see, and really cared for his cadets and he had good staff. Now, I can't remember when was there. Or whether he was even there when I was in Waiouru. But it was - - in those days it was the years of the older RSMs, yeah, the older Commanding Officers, who had this - - they seemed to have an empathy with these kids because they all had teenagers of their own.
>
> **Justice Morris:** So you can't remember seeing anything - - -
>
> : Not during that posting, no.
>
> **Justice Morris:** During that posting that indicated a cadet had been beaten up or anything like that?
>
> : No, no. As I say, if they said they tripped over a barrack box the night before and that's why their ankle was sore, their neck was sore, or something, then you couldn't - - -
>
> **Justice Morris:** If, for example, you had a suspicion that was incorrect and that he'd been beaten, what would you have done about it?
>
> : What would have I done, I would have, as I said, rung the doctor and said I'm sending him up and I want him investigated.
>
> **Justice Morris:** Nothing like that ever happened?
>
> : Not that I can remember, no. And I am sure I would have remembered.

She further told me:

> : Okay. We got the tripping over the barrack boxes and walking into wardrobe doors. There was one incident that I recall where, I think it was a Sunday night, because they rang me – I wasn't on duty – but the duty nursing officer was very concerned because we were getting a lot of cadets reporting to the hospital with bruises and knocks. And I went over once and checked out one they had over there and he was alright but I made a note of it - - -

Justice Morris: Can you remember the date of this?

: I can't I'm sorry. Oh, it would have been - - was the Commanding Officer at Cadet School but I can't remember what year it was. It would be sometime between 1980 - - it would have been between February 1980 - - sorry, 1976 - - it was '76 to '80. And I would have thought it would have been late '70s, but I couldn't swear to that.

Justice Morris: Now, let me get this right, because this is quite important - - -

: This is the only incident I recall.

Justice Morris: You were asked to go and have a look at somebody?

: I was asked to go and look at somebody because the nursing officer on duty was concerned that a number of cadets were being sent to the hospital. And I think at that stage I rang the orderly sergeant, or the orderly officer, from Cadet School and said I am very concerned about this, what is going on? Oh, it's just normal hi-jinks in the barracks, ma'am, I think was the comment I got. Something like that. So - - -

Justice Morris: Did you say bullshit?

: Sorry?

Justice Morris: Did you say bullshit?

: I probably did. I think I probably did. I did on a subsequent conversation I had with him. And, anyway, I recall that I was called back to the hospital because this cadet had been brought in unconscious. And I don't know how we found out, but we found out that, in fact, it had been one of those put the blanket over and punch him.

Justice Morris: Right.

: And I believe they belted his head against the wall, and he was unconscious. But we were told he'd fainted. That's right. And he had a bruise on his head and on his body, bruises on his body, and I said there's no way this boy's just fainted. So I rang the orderly officer - - -

Justice Morris: Who told you - - -

: I can't remember who told us - - oh, they called me over because he'd been brought in - - -

Justice Morris: Unconscious?

: Unconscious. The guys who brought him in said that he'd fainted.

Justice Morris: Can you remember if these were cadets?

: Oh, they were cadets, yes.

Justice Morris: Do you know if they were senior cadets?

: I think it was probably his mates that brought him in, but I couldn't swear to that either.

Justice Morris: I'm sorry, I interrupted.

: No, that's alright. I rang either the orderly sergeant or the orderly officer and I said this had happened and I wanted it investigated and the next incident from Cadet School that night I would be phoning the

Commanding Officer. And he said, you won't do that, ma'am. And I said, don't you bloody push me mate, because I will. And he said, yes, ma'am. The next morning the Commanding Officer - - I didn't get any more that night - - the next morning the Commanding Officer came to me from Cadet School and said, what happened last night, , so I told him - - -

Justice Morris: Remember who it was?

: Yes, it was . I told him and he said, thank you, and I would say that by the end of that week the four culprits - - what he did was he called a parade of Cadet School in the Camp cinema and they knew who the culprits were likely to be but they couldn't get the other cadets to report on them. And I can't remember what the term was, you may recall what the term is if somebody gooses on somebody or talks about them?

Justice Morris: Be a nark.

: Be a nark, that wasn't the expression they used but it - - -

Justice Morris: Dob them in?

: Dob 'em in, something like that.

: That's mentioned a few times.

: And I know - - told me afterwards - - or told me afterwards, I don't think he came to me, but he told me afterwards and he said, it was really incredible, he said, I stood there and I told them about the incident and, he said, I eyeballed the guys that I was sure were responsible while I was talking to them, and I also told the cadets that anybody who came into my office and gave me the information I required they would not be considered dobbing in and they would not get any punishment from any of the cadets either. And I think it was within about four hours he had all of the names he needed. And I know of those four guys that were found guilty, three of them were discharged straight away and one of them was sent to - - there was a big investigation, of course - - but at the end of it three of them were discharged from the Cadet School and the fourth one went to Ardmore and then was discharged. And I cannot remember what year that was. But that is the only incident that I can recall and it was dealt with straight away.

As to the procedure she adopted, she said:

Justice Morris: No. But I mean you went on the rounds, you'd go round every day I suppose?

: I did. When I was matron there I used to go and get a report in the morning from the night staff and from the morning nursing officer, the senior nursing officer, and then I wouldn't go and see the patients then unless they particularly wanted me to see someone. And then the doctor would do his rounds and there'd be admissions and discharges and all that sort of thing. And then after lunch I would go and get a full report from the then senior nursing officer. And then I would just take one of the medics with me and we would do a full round on all the patients. And sometimes stopped and gave them a bit of treatment on the way, and used it as a teaching round for the medic.

Justice Morris: Do you recall ever particularly noticing somebody who'd been beaten up?

: No, because the culture of the hospital at that stage was that if something like that had happened I would have been told about it when I came in.

Justice Morris: Right. Now, tell me, did you have any of these people in for suicide or attempted suicide?

: No. Some of the staff – in case you've heard this comment – some of the staff - - I remember an incident where one of the junior nursing officers they were going on and on and on about cadets being depressed. Now, I called them all together one day and I said, I wish you would stop saying that these cadets are depressed. I said, most of them it is the first time away from home. I said, they've been here since January – it was now about March or April or something – and I said they're away from mum, they're into a totally new culture of life and they are homesick. And they would present with really genuine abdominal pain or something, but in fact what they needed was a bit of TLC. And I think a lot of the cadets - - the comment was made once that they come up to the hospital so you'll look after them, you're the mother figure. And that didn't worry me at all, because that's what these kids needed. A lot of them needed - - now whether in fact they were covering up the fact that they were also being beaten in the cadet barracks, I don't know.

Justice Morris: You were largely dependent on what you were told?

: What we were told.

Justice Morris: And then, using your common sense, looking at the injury, you'd decide whether he was telling the truth?

: That's right. But the culture of your hospital was dependent on your doctors and your senior nursing staff.

Justice Morris: Well, I have it from you quite plainly, have I not, that if you had seen evidence of beating you would have reported it, either to your senior medical officer and/or the Camp CO?

: It would have gone right through. It would have gone right through to where it had to go to until something was done about it.

Justice Morris: Were you on the look-out for it?

: I don't know that I was on the look-out for it. But after the incident I've described, I was really aware. We had such a good networking system and I think the fact that a lot of the senior guys at Waiouru had been junior when I was there on my first posting and then I went back as the Matron and they were now senior, we had a good networking system. So that if they had a problem they would come to me and if I had a problem I could easily ring them.

Justice Morris: You don't think they would cover up anything?

: I would be very, very surprised.

[80] was stationed at Waiouru from mid 1980 to mid 1983. At one stage he was the senior Medical Officer. He confirms the competence of all medical

and nursing staff. He told me of the procedure followed if a cadet came in with some kind of an injury of any nature, either relatively minor or something serious. He said:

> : I can only say from my own point of view and how I dealt with it. And when I took over as the CO of the hospital I actually prided myself in insisting that, because I was ultimately responsible, that I was notified about every occasion when someone turned up at the hospital, and that during our regular sick parades that I saw everyone, and that also that I adjudicated. However, I cannot - - I can't say if someone turned up who was turned aside, and I was never advised and there was no record kept, obviously. But what I established for myself – and I can't say the same for the person from whom I took over – I know, in fact, that not everybody carried out the procedure in the way I did. But in the normal sick parade, which we'd run in the morning, everyone would come in, be administered initially by some administrative staff, whose documents were made available, and then they were brought in and they would be seen either by a nurse or a medic. However, I would see all the cases.
>
> **Justice Morris:** Right.
>
> : So, I - - well, when I say that, I mean, there may have been an occasion - - -
>
> **Justice Morris:** You may have missed the odd one or two.
>
> : - - - when I missed someone. But my process was that the medic would document the case, take down the history of the case, and then I would go around with each one and see them and either agree with what was written or comment about it. And I did it for two reasons. One was that I felt I was legally responsible for these people. That was point one. And the second was that I used it as a teaching opportunity for the medics, because the medics were given responsibilities beyond what most civilian medical people have who are not medically qualified.

He further told me:

> **Justice Morris:** Okay. Well, let's just take what I've got. Are you aware of the allegations that have been made as to what happened in the Camp?
>
> : Only in what I've heard on the news.
>
> **Justice Morris:** Alright. Well, let me tell you some of them. I don't know - - I'm not making a judgment on those at the moment, okay. For example, there's been a claim, there's claims that some fellows have been raped. Did you see any of that sort of thing?
>
> : I certainly have no recollection of seeing anyone that had either been indicated to me or - - it's 35 years ago - - but I'm sure if I had - - -
>
> **Justice Morris:** You'd have remembered it. Because it would have been a rare thing.
>
> : I would have. But if I had been concerned, I must admit - - I mean, when I heard this, the first thing, I picked it up on the news when these allegations were made - - is that I thought, okay, I know the

people in charge, I knew well, and the adjutant and various people. And while I'm aware of the way, you know, the military does things - - -

Justice Morris: Yes.

: - - - I would have been, I think, one of the first to raise this with the Commander if I thought there was obvious abuse. Because I think my record would show by a number of people I was involved with, and I was actually quite concerned about various ways of training, and instigated some changes in training methods. But not in a sense of brutality or, you know, interpersonal type situations at all. So I must admit I don't recall actually ever seeing any cadet - - -

Justice Morris: I accept that.

: - - - that would have come to me making a complaint. And, in fact, knowing the Army people, I would have been a bit surprised, certainly, if it had been indicated, because of the closed shop approach.

Justice Morris: Quite.

: However, I think if an injury had been odd, I would have been asking questions.

He also told me:

Justice Morris: Tell me this. Take, for example, if a cadet attempted suicide and went to the hospital, you'd be on to that right away, wouldn't you?

: I would be very - - I mean, we had during the basic training – not from Cadets that I can recall, but from the normal recruits – I had two people I had to actually persuade their parents to take them away because I thought the system was not for them. They had basically some psychotic manifestations. Now, they got in by telling lies in the first place. So it subsequently turned out that they had misrepresented themselves to the system and if someone had known at the point, they wouldn't have been there.

Justice Morris: But you can't remember any cadets coming in?

: I don't recall any cadets coming to me, you know, with those concerns.

Justice Morris: If they had, you would have - - if they'd come into the hospital because they'd attempted suicide or thought to be suicidal, it would have got to your ears, you would probably have seen them and you would have taken some appropriate action to quieten them down, or see the Commanding Officer, or something like that?

: If I felt that there had been a suicidal situation that would have been a major issue. I mean, we had the problem with the privacy thing as well, technically I'm not supposed to speak to their CO other than in general terms. However, I used techniques when things did arise, where I felt the hierarchy, or I wanted to find something out, which probably didn't disclose any of the real things. Or I would just say to the person, I want to talk to your boss, can I. Now, I didn't in those days, and it wasn't expected particularly, but I wouldn't have got a signed agreement to do so, but I think I understood the ethics. I mean, I was a bit older when I

went in. I'd been a general practitioner, I'd been a specialist, before I joined the Army, so I was about 37 when I joined. So it wasn't that I was going in as a greenhorn. You know, I'd been around a bit.

Justice Morris: Can you recall any instances of seeing cadets with signs of beatings?

: I have no recollection of that.

Justice Morris: If you had, what would you have done about it?

: I think quite clearly, if there'd been a suggestion that there'd been abuse, is that I would have been approaching their Commander, I mean, straight off. I had a good working relationship – particularly with in the time he was the Commandant of the Cadet School – and also with his 2-I-C, where, you know, there was the on the record and off the record type discussion with these people if there were concerns raised.

[81] served in the Army from January 1967 to September 1973. During this period he was attached to the Waiouru Base Hospital for approximately three to four months. He was the administration officer responsible for the administration of the hospital. His duties were non-medical.

[82] He too confirmed the overall competence of the doctors and medical staff. He confirmed the medical files were meticulously maintained. I asked him if he had ever seen any cadets in the hospital whom he considered had been beaten up. He told me:

: Yes. I was only there for, what, a few months.

Justice Morris: Yes.

: It was regular, it was regular.

Justice Morris: How bad were the beatings – how bad were the results of the beatings that you saw?

: Well firstly, I didn't examine anyone medically.

Justice Morris: No.

: It was just walking around and seeing people. I know what people beaten up look like and, yeah, sometimes they were bedridden, there were certainly in terms admissions of people being admitted and coming to hospital because often they may well be – I can recall a cadet coming into my office on one occasion looking for where to go, he was told to report to the hospital, looking where to go, and he had obviously been beaten up, he was upset and shaking, he was very, let's say, a preadolescent, he was an adolescent but a young boy, not a man.

[83] He told me of discussions that went on in the Camp hospital about the Cadet School. He told me of one instance when , who was the doctor in charge of the hospital at the time, actually rang the then Commander of the Army Schools about conditions and expressed to his staff in no uncertain terms of injuries being

suffered by cadets. Whether these were injuries from possible beatings or simply injuries suffered in the course of training is uncertain.

[84] was a cadet at the School in 1971. He joined the Medical Corps part way through 1972. He trained at the Waiouru Camp Hospital. He was there for approximately four to six months. He told me:

> **Justice Morris:** What had you seen, as far as injuries to cadets, which may have been suspicious?
>
> : Look, I have to be absolutely frank that I cannot recollect any specific. I'm sure there were cadets that came through, because cadets were getting injured all the time through work place accidents or whatever. But I can't recall any specifics.
>
> **Justice Morris:** How would you describe the facilities available to the cadets at the hospital?
>
> : I think they were fine. There was an accident and emergency clinic there. Most of the medical staff there - - there was 24 hour cover. There was a doctor on call 24 hours a day. Most of the senior medics and nursing staff – or a good number of them – would have had certainly recent combat experience in Vietnam, so they were capable medics.

said he underwent a degree of bullying while a cadet. He considers there were elements of it which were over the top but he saw nothing, either while as a cadet or in the hospital, to support the allegations of sexual assaults.

11.1 Conclusion

[85] What I have been told by medical and nursing staff does not, of course, cover all the years of the School's existence. Nonetheless, it is certainly apparent high standards were maintained and any matters which concerned medical staff were reported by the Chief Medical Officer to the School Commander.

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12. GENERAL CONCLUSIONS

[86] During the School's existence, I am satisfied some bullying as described of junior cadets by senior cadets has happened, notwithstanding steps taken by the Army to stamp it out. Sexual abuse of cadets was extremely rare.

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13. COMPLAINTS PROCEDURE

[87] I have considered the information made available to me by former cadets and staff of the Regular Force Cadet School, together with information given to me by the Ministry of Defence, regarding processes in place in the NZDF for its personnel seeking assistance in relation to complaints of an abusive nature. While these processes seem to be adequate, I am concerned that there appears to be no provision for following up or monitoring to determine whether they are successfully meeting the needs of the Defence Force or discouraging abusive behaviour within the Forces.

[88] I have also had an opportunity to review a draft copy of the Ministry of Defence audit report *NZDF Policies and Procedures Relating to Physical, Sexual, and other Abuses*. I note that this audit has reached the same conclusion.

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14. THE DEATH OF CADET GRANT BAIN

A. Sequence of events

[89] Cadet Bain [Bain] was shot in his barracks at the Waiouru Military Camp at approximately 9.05 pm on Friday, 13 February 1981. He died 15 or 20 minutes later. He was 17. He had been a cadet for less than three weeks.

[90] Regular Force personnel learned of the shooting within minutes of it occurring. They went immediately to the barracks. Two of the first there were and . Bain was then still alive. It was plain to the sergeant Bain was seriously injured. The sergeant did what he could for Bain, but Bain died within minutes of the sergeant's arrival. His death was confirmed by , the senior Medical Officer, who came to the barracks approximately five minutes after .

[91] Provost and the Army Training Group orderly officer, , reached the barracks shortly after . remained at the scene of the shooting and assisted in the cordoning off of the barracks. The officer commanding the Military Police unit, [ ], reached the scene about 9.35 pm. He took control of it. Having learned Cadet [ ] was the suspected offender and that he had run away, made arrangements to apprehend . He also sought cadet personnel who may have known .

[92] The Army informed the Police of the shooting. This was standard procedure. Cases of homicide and/or serious criminal offending were invariably passed to the Police for investigation and any subsequent criminal action. Essentially in such cases the Army's task was to secure the scene until the Police arrived, after which the Police took over.

[93] I have had some difficulty in determining when the first Police officers reached the Camp. Constable [ ], who was stationed at Waiouru, claims he took the initial call from the Camp at 7.20 pm, joined up with Constable [ ] and then drove to the Camp. When he arrived there , and were with Cadet Bain. says both he and were armed and entered the barracks with their weapons drawn.

[94] was the officer in charge of the Waiouru Police Station. He thinks he was telephoned by the Military Police between 9 and 10 pm. He says he was told a cadet had been accidentally shot by another cadet and the Police were wanted straight away. His recollection is he travelled to Waiouru on his own. He thinks arrived at the Camp about half an hour after him. He recalls speaking with the Wanganui Area Headquarters, telling them more staff may be needed.

[95] Having considered all of the material before me, including in particular the evidence before the subsequent Court of Inquiry from those who attended the barracks after the shooting, and the description of events by Police personnel, I am satisfied timing is to be preferred to that of and these officers arrived at the barracks between 9 pm and 9.30 pm.

[96] . At the barracks spoke to a Military Policeman. He was told it appeared while one of the cadets was cleaning his rifle the rifle had accidentally discharged and killed Bain. He examined the barracks. He observed Bain's body and his injuries. was in the barracks. was with him. told what he had been told by the MP. He asked him if this was correct. acknowledged this and said something like, "shit, I didn't mean it to go off". then – quite rightly, in my view – warned him about speaking further on the matter and repeated this warning in front of . was then certain charges would be brought against .

[97] was contacted. He and came to the barracks. This would have been about 10.15 pm. recalls being told by an MP Bain had been chased by . had a firearm. He had chased Bain into the barracks where he shot him.

[98] took charge of the investigation. As I have said, this was normal procedure. was an experienced detective. He spoke to . He also spoke to . As a result of Police initial investigations, decided should be charged with at least manslaughter. He tells me he considered whether a murder charge should be preferred but quickly decided there was no evidence to support an intentional killing by . needed more Police personnel from Wanganui to properly carry out the further and detailed inquiries required of a homicide. Either , or possibly on instruction, telephoned Wanganui for this assistance. did not then speak to his superior,]. is now dead.

[99] was telephoned by . thinks he took this call at the Taihape Police Station. He thinks he had taken there intending to arrest him and charge him with manslaughter. He intended to keep him in the Police cells at the station so could appear in the Taihape District Court later on in the morning of the 14th. This would be normal procedure.

[100] Both and recollections are the telephone conversation between and occurred before left for the Taihape Police Station with . I have spoken at length with all three. tells me he took Bain's body to the Wanganui mortuary, lodging it there at 4.50 am. This is recorded in his notebook. To be at Wanganui at 4.50 am he must have left the Camp with Bain's body between 2 am and 2.30 am. Had the conversation between and taken place after had returned to Taihape, neither nor would have known of the substance of it. Nor would Bain's body have been removed to the mortuary when it was, because until spoke to he was conducting a homicide inquiry, which would have necessitated the body remaining in the barracks until the DSIR had examined the scene and the Police had taken photographs, that is, there would have been no early downgrading of the inquiry.

[101] In his statement given during the course of Police investigation in 2004, confirms this timing. He says:

> I recall that came back after about half an hour or so and gave us an update. He did not tell us anything but said that he had to ring Wanganui.
>
> He came back again and told us that he [had] spoken with and that Cadet was going to be charged with a Firearm offence only and that it was all wrapped up.
>
> and I immediately questioned him about this decision and was taken aback by it as well. That was my impression.
>
> reply to that was "That's the old man's decision" referring to .
>
> I remember saying to , "You've got to be joking. His response was "No, that's the decision".
>
> This was not to be an interim charge while the investigation continued – it was to be the final result.
>
> The way I felt about it was that it was premature to make this kind of decision this early on and that things, the scene, the rifle and interviewing the witnesses, had not been done.

[102] I therefore prefer and recollection on this point to that of , and I find the conversation between and took place before left for Taihape.

[103] While there may be some uncertainty as to when precisely spoke to , it is clear during their conversation expressed his view the appropriate charge was manslaughter, and why. should have by this time received most of the information from cadets other than , albeit verbally, which was later heard by the Court of Inquiry. He tells me he passed this on to . This too would have been normal practice.

[104] was directed by to charge with the careless use of a firearm causing death. tells me he was extremely annoyed at decision. The other Police officers have expressed like views. was, of course, bound to follow direction. , subsequent to speaking to , arrested on a charge of careless use of a firearm causing death.

[105] As best as I can assess, the conversation between and took place within a few hours of initial arrival at the barracks. thinks was alerted to the shooting when request for further personnel went to Wanganui. Any request for such additional manpower required approval.

[106] I think it would probably be about 4 am at the latest on the 14th when was formally charged and arrested. Whatever be the precise time, the decision to bring the charge of careless use of a firearm causing death rather than the charge of manslaughter had then been made.

[107] On 14 February, appeared in the Taihape Court before Justices of the Peace. The charge he faced was carelessly using a firearm causing death. This offence then carried a maximum term of imprisonment of three months. He was remanded without plea until 18 February.

[108] On 14 February, the Army set up a Court of Inquiry.

[109] On 18 February, Read reappeared in the Taihape Court. He was represented by , then a barrister practising on his own account. had been instructed by family's solicitors in Christchurch. was the Police prosecutor. The charge of carelessly using a firearm causing death was read out.

entered a plea of guilty. The Police summary of the case was then either read or handed to Judge . He expressed concern the facts justified a charge of manslaughter and the charge laid was inadequate to meet the situation disclosed in the summary.

[110] sought an adjournment to discuss it with his superior, . submitted the prosecution should proceed. Perfectly properly, he drew to the Judge's attention the charge had been laid after consideration by senior Police officers and a plea of guilty had been entered. He submitted the Judge had no power to substitute a charge of manslaughter. spoke to . He was instructed to proceed. Judge upheld submissions. In doing so he said he did not feel able to substitute a charge of manslaughter, despite his feeling a more appropriate charge could have been laid. He convicted on the charge of carelessly discharging a firearm causing death. was sentenced to 200 hours community service and fined $200.

[111] The Court of Inquiry assembled on 15 February. Its President was]. Its members were and . Its purpose was the collecting and recording of evidence and the making of a report to , then the Commandant of the Army Schools, on the fatal shooting of Bain.

[112] The Court was directed to inquire into the following specific matters:

[a] The time and place the shooting occurred.

[b] The time and place and cause of death.

[c] The circumstances that led to the incident.

[d] Whether the appropriate weapon training and range control procedures and after-hours supervisory requirements had been exercised.

[e] Whether the administrative requirements following the incident were followed correctly.

[f] Any other relevant matters.

It was directed to complete its report by 5 pm on 17 February 1981, if possible. , as President, was to arrange for the summoning of all necessary witnesses.

[113] The Court heard from 25 witnesses, all of whom testified on oath. Fourteen cadets, including , gave evidence. The remainder of the witnesses were Regular Force personnel. They included Range Conducting Officers, and , , OC of the Regular Force Cadet School, , OC of Bain's Company, , , , , , the Duty Field Officer for the Army Training Group, of the Military Police and . No Police officers gave evidence.

[114] As the evidence before the Court of Inquiry is a contemporary record of what people said or did at and about the time of Bain's shooting, I have set out at length the relevant parts of it in paragraphs [123] to [141] of this report. It is particularly important as too is now dead.

[115] The findings of the Court were delivered on 22 February 1981. They were:

[a] Bain was shot in his barrack room at approximately 9.05 pm on Friday, 13 February 1981, and died some 15 or 20 minutes later from the wound caused by the shot.

[b] Before he was shot, Bain and other cadets were cleaning their M16 rifles for an inspection to be held the following morning.

[c] Bain was shot by , using another cadet's rifle into which had fed a live round.

[d] Prior to pulling the trigger, had pointed the rifle at Bain and had said to Bain words to the effect, "look it's on semi".

[e] Prior to pulling the trigger, ignored at least one warning not to be stupid from a fellow cadet.

[f] had earlier on 13 February obtained the same rifle from Cadet C, loaded it with what appeared to Cadet C to be a live round (in fact, it was not), pointed it at, first, members of his platoon and then chased Cadet C in the barracks where he then pointed the rifle at C and fired. Bits of powder hit Cadet C. The apparent live round was in reality an empty cartridge case with a live percussion cap.

[g] had obtained the ammunition which he fired at Bain and Cadet C during range practises.

[h] No animosity existed between Bain and .

[i] There were two possible theories as to the shooting of Bain:

[i] had knowingly loaded a live round into the rifle to use as a threat with no intention of firing it.

[ii] believed he had loaded the live cartridge case which he had in fact fired earlier at Cadet C and, accordingly, when he pulled the trigger he expected only a sharp bang to frighten Bain.

[j] The weapon training requirements were extensive and effective.

[k] The range control programmes were satisfactory and met regulatory requirements.

[l] Supervision of cadet barracks room activities was hampered by there being insufficient Regular Force staff to fully supervise the barracks properly. This had left this important responsibility largely in the hands of cadet NCOs who were, in many cases, only boys with little military leadership experience. The Court found it significant that most of the then current cadet NCOs who had attended the junior NCOs course failed to qualify because they lacked maturity and judgment. It found the School was doing the best it could with the staff available.

[m] Violence in various forms inflicted on junior cadets by cadet NCOs was widespread throughout the School.

[n] was a violent-natured NCO, constantly seeking newer and better ways of cowing and bullying other cadets. The Court detected a build up in his violent behaviour over the two weeks preceding the shooting incident. It found at first he had kicked junior cadets, then punched them, in one case quite severely, and then invented the scare tactic of firing a rifle (containing an empty cartridge case with a live percussion cap) at selected cadets. It concluded that in a very real but indirect way the pervasive undercurrent of violence in the School contributed to the death of Cadet Bain. The staff of the Cadet School, due to staff shortages, were working under an unreasonably heavy burden which had resulted in cadet NCOs being given a licence to harass junior cadets. The Court considered the School needed several full-time, live-in, barrack supervisors whose main duty would be to police the activities of the cadet NCOs.

[o] Medical and Police responses to the shooting were adequate, as was the notification of appropriate personnel.

[p] The Court recommended be charged with:

[i] Theft of ammunition.

[ii] Modifying ammunition.

[iii] Assault, or striking a soldier, namely Cadet GCW.

[iv] Firing a rifle at a soldier, namely Cadet C.

[q] It considered if such steps were not taken, cadets and servicemen at large, perhaps even the public, could gain an impression of unprincipled, unreasonable, leniency bordering on a whitewash.

[r] The Court expressed the view was an unsuitable soldier and should be discharged once the military charges, to which I have earlier referred, against him had followed their due course.

[s] The Court recommended:

[i] The staff of the Regular Force Cadet School be increased so that several full-time, live-in, barrack supervisors were available to police the activities of the cadet NCOs.

[ii] Junior cadets were to be fully and constantly informed of their rights, particularly in respect of assault.

[iii] Very clear and precise rules of non-violent punishment should be prescribed for all cadet NCOs and these rules be widely and frequently promulgated, especially to junior cadets.

[iv] Other military offences apparently committed by cadets and which had come to light during the investigation should be further investigated.

[116] On 25 February 1981, forwarded the report of the Court of Inquiry to the Headquarters of the Army Training Group at Waiouru. He endorsed the Court's general conclusions. He made the following specific comments:

a. Cadet acted in a most irresponsible manner and in so doing accidentally discharged a rifle which caused the death of Cadet G.D. Bain. Cadet was convicted ...

b. At the time of the incident an informal inquiry by RF Cadet School staff had just commenced into suspicions that the cadet NCOs of 2 Platoon, of which Cadet Bain and members, were over-stepping their authority. On the evidence assembled by the Court it appears that these suspicions were justified. It appears that had prior to the incident been acting illegally. It seems that the shooting incident was the culmination of a general tendency by Cadet to bully the junior cadets in his platoon.

c. It is my intention to formally investigate additional charges against with regard to his earlier conduct. These include the circumstances involving his possession of live ammunition, his assault of Cadet GCW and the earlier discharge of modified ammunition towards Cadet C. On the basis of his conviction by a civil court (together with these additional charges if proven) it would be my intention to recommend his discharge from the New Zealand Army.

d. I shall make separate inquiries into the conduct of the other cadet NCOs of 2 Platoon.

He further stated:

> I do nevertheless remain unsatisfied with the general establishment and manning level of the RF Cadet School regular staff. You will recall that this has been the subject of several formal submissions from me during 1980/81. That this specific incident involving the fatal shooting of Cadet Bain could have been avoided by appropriate staffing levels is debatable. What is not debatable is the further evidence of a general staffing deficiency at the unit. The indications being that the limited regular staff are forced to devote almost all their efforts to training and administration. The after hours supervisory capacity is very limited. This leads to a situation where cadet NCOs assume an over zealous and misguided interpretation of their role. A sub-strata of "barrack-room" discipline becomes imposed by the cadet NCOs. The situation is long-standing in that successive generations of junior cadets suffer the comparative subjugation of informal cadet imposed discipline in the expectation that their turn for the ascendancy will arrive the following year. It remains my contention that the role of the RF Cadet School must be balanced with an appropriate allocation of resources and in particular an effective quantity and quality of regular staff.

[117] , the then Commander of Headquarters Army Training Group at Waiouru, received report and the findings of the Court of Inquiry. He reported on it to Headquarters Land Forces. He was not entirely satisfied with the proceedings. He did not fully endorse the Court's findings and recommendations. He considered in some areas the Court had exceeded its terms of reference. He felt the report was unnecessarily emotive and in parts speculative. This, he felt, was partly due to taking evidence from a limited range of witnesses and then drawing comparatively wide conclusions. He accepted thought he had loaded a live

cartridge case, similar to the one he had fired earlier, into the rifle before pulling the trigger. He further accepted had only expected a sharp bang to frighten Bain. He agreed there were staffing problems at the School but he did not agree the burden on the staff was unreasonable. He directed the Military Police to investigate some of the matters raised by the Court of Inquiry, particularly with reference to possible offences created by other cadets. Nothing substantial was revealed from these investigations.

[118] took legal advice as to what action he should take against . He spoke to the Army's senior legal counsel, . has since died. He was a very experienced lawyer of undoubted integrity and a specialist in military law. Both men were appalled the Police had not charged with manslaughter. The Army, of course, could not now bring such a charge.

[119] advice was as serious illegal actions had been determined by the Police and the Magistrate's Court, nothing was to be gained by the prosecuting of the suggested further charges detailed in the Court of Inquiry's report. His advice was they were minor in nature, compared to the shooting of Bain and the Arms Act charge. He considered their prosecution would have no real effect on standing in the Army as it was extremely unlikely he would elect to be tried by court martial. accepted this advice.

[120] decided to take no further disciplinary action against . This course was approved by the Chief of General Staff. On 5 March 1981, was administratively discharged, category B3. This category covers the case where a serviceman has a character such that his retention in the Army is untenable. could not be dishonourably discharged as no court martial was held.

B. EVIDENCE BEFORE THE COURT OF INQUIRY

[121] I feel it is appropriate to take what may be considered an unusual step and detail the actual recorded relevant testimony of the witnesses called before the Court of Inquiry. My principal reasons for doing so are:

[a] A knowledge of the actual evidence given is the surest yardstick by which the findings of the Court of Inquiry can be measured.

[b] Witnesses before the Inquiry were available for interviewing and questioning by the Police. How many were interviewed and questioned I am uncertain. What is important is their evidence, and the admissions by of the part he played in the shooting, was certainly available before 18 February for consideration in the material relevant to the determination as to the appropriate charge to be finally brought against and in respect of which he would be required to plead.

[c] It would be inappropriate to consider the Bain family grievances without knowing exactly what those present, or closely connected to Bain's death, had said on oath a few days after these events.

[122] The record of the evidence before the Court of Inquiry, to which I refer, was made available to me by the Bain family. The Army, at my request, supplied me with a copy under the provisions of the Armed Forces Discipline Act, on the basis I would not publish it. The Bain family placed no restriction on the copy given to me. I have therefore felt free to refer to the evidence given at length.

[123] Cadet C, a member of Bain's platoon, said of the shooting:

> On 13 February at about 2 pm, came to me with a live round in his hand. He told me to give him my rifle so I gave it to him. Then I went over to Maleme Barracks where the platoon had to form up so the Cadet Platoon Sergeant could talk to us. We were away about five to ten minutes. When we were moving back to Galatas, I saw in between the barracks larking around with my rifle. He was pointing it at some members of the platoon as they walked past him. I thought that he had the round in the rifle, so I said something like, "He's got a live round in there." I ran up the corridor and followed me. I ran into my room and jumped up on Corporal T's barrack box behind the door. came into the room and said, "Aha, I've got you now", or something like that. He brought the rifle up to his shoulder and pulled the trigger. There was a bang like the

sound of a round being fired, only softer, and I felt bits of powder hit my arm. He said, "Aha, I have taken the projectile and the gun powder out." After that he laughed and joked. I was very shaken up for a while after this.

At about 9 o'clock the same evening, most of us in our room had our rifles out and were cleaning them. came in the room and he came over to me and said, "Assemble your rifle, Cadet C." He and I then did it together, and as we were putting the carriage into the rifle, he placed an empty cartridge case in the chamber. We then finished assembling the rifle. He got up, cocked the rifle and made the shell fly across the room. Then he said, "Oh, I might have another one in my wardrobe." He went over to his wardrobe and took out a glass beer mug. He took what looked like a live round out of the mug. He placed it in the chamber of my rifle which he was holding. Then he went around the room aiming it all over the place. Cadet Bain had just finished assembling his rifle. He moved into the aisle, and I think he was going to check his weapon as he usually did. waved his rifle in Cadet Bain's face. Cadet Bain pushed muzzle away with his hand. turned his rifle on its side showing the safety catch, and he said, "Look it's on semi, look it's on semi." Corporal T then said to , "You are a silly cunt." Corporal T turned his back on and started walking back to his bed. rifle then went off. Cadet Bain's body jerked and he fell sideways on to the floor. I didn't see actually pull the trigger. screamed something loudly and seemed very shocked. He threw my rifle on my bed and ran out of the room. Everybody ran out of the room in panic. I ran off down the corridor and I saw Cadet Sergeant Major H. I told him that Cadet Bain had been shot and he took off down the corridor towards my room. I went back to my room and there was one of the cadet corporals telling everyone to keep away.

Questions by the Court

Question 1: Are you sure of the time when Cadet pointed his rifle at you and fired a cartridge cap?

Answer 1: I think it was 2 pm, but I am not sure. I don't have a watch. I know it was in the afternoon.

Question 2: You said that when Cadet told you to give him your rifle at about 2 pm, he had a round in his hand. Was it a live round or just a cartridge case without a projectile in it?

Answer 2: It was a live round.

Question 3: Are you sure of this?

Answer 3: Quite sure.

Question 4: Did you see Cadet load a round into your rifle before he fired it at you?

Answer 4: No.

Question 5: How long was it from the time you handed Cadet your rifle at about 2 pm until you saw him with it when you returned to the barracks after the platoon meeting?

Answer 5: It would be 10 minutes at the maximum.

Question 6: When Cadet loaded your rifle just before Cadet Bain was killed, did you think he was loading a live round?

Answer 6: Yes.

Question 7: Why did you think it was a live round?

Answer 7: I am not sure, because I didn't see the round clearly, but I know he had what looked like a live round in his glass mug, because I had seen it there before. This live round was much bigger than an M16 round, so it wasn't the one he used. However, I wouldn't have been surprised that he had another one there.

Question 8: How did Cadet load the round which killed Cadet Bain?

Answer 8: He cocked the rifle and slid it in with his fingers.

Question 9: Apart from the incident in which Cadet Bain died and the earlier incident involving yourself, have you been present during any other incidents in which a cadet or cadet NCO pointed a rifle at someone?

Answer 9: No.

Question 10: What was your reaction to the incident in which Cadet pointed and fired his rifle at you?

Answer 10: I was scared. I was up on the barrack box against the wall and I was frozen there for about five seconds. I didn't feel right again for about half an hour, though I joked with other cadets about it.

Question 11: Did you report this incident to anyone?

Answer 11: No.

Question 12: Why not?

Answer 12: Because I'd probably get a hard time from the cadet NCOs for the rest of my basic. Also, I was afraid of what might do to me.

Of weapon safety training, he said:

Question 13: What did you learn about weapon safety during your training?

Answer 13: We are not to point a rifle at anyone. We are always to keep the rifle straight down the range. We have to check the rifle is empty when we take it out of the armskote, before we clean it, before we hand it to anyone, when placing it back into the armskote, and after shooting.

Question 14: Was weapon safety stressed by your instructors?

Answer 14: Yes, all the time.

Question 15: Do you think it would be acceptable for someone to point a rifle at another person in fun when they both knew the rifle was unloaded?

Answer 15: Not really, no. It would be an irresponsible thing. You never know when you might have a round in the chamber.

Of treatment of junior cadets by senior cadets, he said:

Question 16:	How do you feel about your cadet NCOs?
Answer 16:	They're okay. They are there to do their job.
Question 17:	Do you feel the same way about the Regular Force staff members?
Answer 17:	Yes.
Question 18:	Has any cadet NCO kicked or punched you?
Answer 18:	Yes, I've had a kick up the arse about a dozen or two dozen times, mainly from . On each time, I would be kicked once or twice, but not very hard. He usually kicked me with the side of his boot.
Question 19:	Have you been present when a cadet NCO kicked or punched another cadet?
Answer 19:	Oh yes, a boot up the bum. Just about everyone in our room has had this. This was done mainly by . Lance Corporal T did a couple, but he doesn't really put the boot in, he just boots you lightly and that's it. Once Cadet CS was booted by just about the whole platoon but most of us were wearing jandals at the time. I can't remember whether the cadet NCOs did any kicking. Sergeant G gave the order to do this. was there and I think Corporal J was there too. I think there was a couple more NCOs there, but I can't be certain.
Question 20:	Was a member of the Regular Force staff present on any of these occasions when cadets were kicked?
Answer 20:	Never.
Question 21:	Do you think cadet NCOs are permitted to kick or punch you?
Answer 21:	No they are not permitted to do that.
Question 22:	Have you been advised by anyone that the cadet NCOs are not permitted to kick or punch you?
Answer 22:	It mentions it in Standing Orders. We have been told to read them.
Question 23:	Did you report any of the instances of kicking and punching to anyone?
Answer 23:	No.
Question 24:	Why not?
Answer 24:	It wouldn't really be worth the trouble. If the cadet NCOs found out who dobbed them they would make life pretty hectic.

[124] Cadet TJM, another member of 2 Platoon, said of the shooting:

Sometime in the afternoon of 13 February the platoon was returning to our rooms. I walked into my room and saw Cadet C standing on a barrack box by the door. was standing near him with a rifle. I can't remember whether was pointing the rifle at Cadet C or not. I walked past them and then I heard a sharp crack like a small calibre rifle going off. I turned around and saw that was pointing the rifle at Cadet C. Cadet C looked startled. I can't remember anything else that happened after this incident, except that later on someone told me that the round that had fired at C had been emptied of everything except the primer.

Later in the evening, at about 9 o'clock, most of us were in Room 14 cleaning our rifles. I was standing beside Cadet H's bed with my rifle stripped on the bed. I heard ask Cadet C to assemble his rifle. I didn't take much notice of this. Cadet Bain was in the bedspace next to me. He had just finished assembling his rifle. I saw him come to the bed I was standing beside. I didn't really take much notice of him because I was cleaning my rifle. Then there was the loud sound of a shot, and when I turned around I saw Cadet Bain on the floor with what seemed like a bullet hole in his neck and with some blood on the floor. I was very shocked and just stood staring at Cadet Bain's body. The next thing I remember is Lance Corporal T yelling for an ambulance. I followed him out of the room so I could help get an ambulance. I ran to the Fire Station and spoke to someone there about the incident. I was still very shocked at what had happened, so they took me to the hospital where I spent the night.

Before this incident, on 10 February, our platoon was at Taylor Range having a shoot. I loaded my rifle and tried to cock it, but it jammed. came to help me. He took off the magazine and took out of it a damaged round. The head of the round was squashed back into the case at a strange angle. I don't know what he did with the round.

Questions by the Court

Question 1: Apart from the incident in which Cadet Bain died and the earlier incident involving Cadet C, have you been present in any instances in which a cadet or cadet NCO pointed a rifle at anyone?

Answer 1: No.

Question 2: What was your reaction to the C incident?

Answer 2: Surprised. I wasn't sure what had happened. I thought it was a bit of a joke.

Question 3: Did you report the incident to anyone?

Answer 3: No.

Question 4: Why not?

Answer 4: I don't know. None of us said any more about it.

Of weapon safety training, he said:

Question 5: What did you learn about weapon safety during your training?

Answer 5: We were drilled for safety of firearms at the range and back in camp. We were drilled always to point the weapon down

the range, never to fool around with it; always to carry out safety precautions before and after cleaning and before handing a rifle to another person.

Question 6: Was weapon safety stressed by your instructors?

Answer 6: Yes. It was.

Question 7: What did you learn about pointing a weapon at another person?

Answer 7: I don't remember them telling us directly not to do it but if we were ever caught doing so, they told us it was wrong.

Question 8: Do you think it would be acceptable for someone to point a rifle at any other person in fun, when they both knew the rifle was unloaded?

Answer 8: No, not really. But if we both know it's unloaded we would both know there will be no accident. But it's a bad habit to get into. It wouldn't be a good idea.

Of treatment of junior cadets by senior cadets, he said:

Question 9: If you know that pointing a rifle at someone is dangerous, why did you not report the incident in which Cadet pointed a rifle at Cadet C and fired something?

Answer 9: I didn't want to pimp on the NCOs. It was done in fun, I suppose. No-one else seemed to react as though we were going to report it. We never discussed it.

Question 10: How do you feel about your cadet NCOs?

Answer 10: They seem to try to be friends with you, but only up to a point. If you get too sort of buddy-buddy with them, they don't like it, because they think that if you're their buddy you will take advantage of them. I respect them because they have a job to do and they seem to be doing it all right to me.

Question 11: Are you afraid of them?

Answer 11: No.

Question 12: Do you feel the same way about the Regular Force staff members?

Answer 12: Yes, they seem of higher rank, but other than that they are just people who are controlling us, the bosses, sort of thing. I respect them and get on all right with them.

Question 13: Has any cadet NCO kicked or punched you?

Answer 13: I have had to adopt "the position", which is doubled over with your back faced to them. You get a swift kick up the bum. I have only been booted three or four times, each time I only got one or two light kicks from the side of the boot. If they wanted to take a harsher line, they can do so. They can put me on extra duties, scrubbing black marks off the

floor, that sort of thing. The kick was to show you that you had done something wrong, just a quick reminder.

Question 14: Have you been present when a cadet NCO kicked or punched another cadet?

Answer 14: Yes, a couple of times a day. I have never seen anyone punched. Just about everyone in the platoon has been kicked at least once.

Question 15: Was a member of the Regular Force staff present on any of these occasions?

Answer 15: I don't know, I can't be sure. If we were out on the range and they kicked us, an RF person might or might not have been present, I can't say.

Question 16: Do you think cadet NCOs are permitted to kick or punch you?

Answer 16: I don't think they are allowed to punch you, but a small kick to put you right is not wrong.

Question 17: Have you been advised by anyone that the cadet NCOs are not permitted to kick or punch you?

Answer 17: I was never told so but I knew that a cadet NCO once punched a bloke and was arrested for it.

Question 18: Did you report any of the kicking incidents to anyone?

Answer 18: No, I have never had any reason to report it.

[125] Cadet JES, another member of Bain's platoon, said of the shooting:

Sometime during the afternoon of 13 February, I was in Room 14 and I heard a sharp crack. I looked around and saw pointing an M16 rifle at Cadet C. was grinning. I don't remember much more about this incident, except that Cadet C looked very surprised.

Later on, between 9 and 9.30 that evening, I was in Room 14 making Corporal T's bed. While I was doing this, I heard say, "Put your rifle together, C", or words to that effect. I then noticed helping Cadet C assemble his rifle. The two of them were talking something about rounds. I heard say, "I think I've got another one in my wardrobe." He then went and took something out of his wardrobe. I couldn't see what it was. I heard him moving the working parts of the rifle. The next thing I noticed was playing the fool, and pointing the rifle around the room. Cadet Bain picked up his rifle and walked into the centre of the room. pointed his rifle at him. He said, "Hey, look Bain, it's on semi." Corporal T said to Corporal Read, "Fuck off", or something like that. I think he was trying to tell not to fool around. I then saw Cadet Bain walking backwards with his rifle pointed upwards trying to fend off Corporal Read's rifle. I turned around to continue making the bed when I heard an explosion. I looked and I saw Cadet Bain lying on the floor with blood all over his throat. Corporal Read then threw his rifle down saying "Oh God!" or something like that. He ran out of the room. I ran over to the MIR to get an ambulance. I spoke to three

people there, one of them went and got a medical kit and raced off outside to the ambulance.

Questions by the Court

Question 1: Apart from the incident in which Cadet Bain died and the earlier incident involving Cadet C, have you been present during any other incidents in which a cadet or cadet NCO pointed a rifle at someone?

Answer 1: No.

Question 2: Did you report the incident between Cadet and Cadet C?

Answer 2: No.

Question 3: Why not?

Answer 3: I thought that it was over and done with, and I thought it was none of my business. I think told us not to say anything, but I can't remember for sure.

Of weapon safety training, he said:

Question 4: What did you learn about weapon safety during your training?

Answer 4: One of the main ones was never to point a rifle at anyone loaded or unloaded. When handing a rifle over to someone else, we had to cock the weapon and show inside the chamber so they could see if it was clear or not. On the range, we had to keep the weapon pointing down the range. We had to take safety precautions before loading or unloading. We also have to check the rifle for rounds before cleaning it. We have to check it when taking it out of the armskote as well.

Question 5: Was weapon safety stressed by your instructors?

Answer 5: Yes, a great deal.

Question 6: Do you think it would be acceptable for someone to point a rifle at another person in fun, when they both knew the rifle was unloaded?

Answer 6: No, it would not be acceptable.

Question 7: If you know that pointing a rifle at someone is dangerous, why did you not report the incident in which Cadet pointed a rifle at Cadet C and fired something?

Answer 7: Well, wasn't exactly a friendly sort of person. If you backstab the NCOs, they usually found out about it and they'd get you back.

Of treatment of junior cadets by senior cadets, he said:

Question 8: How do you feel about your cadet NCOs?

Answer 8: I respect some of them, and there's some of them I don't like. Some of them I do like.

Question 9: Are you afraid of them?

Answer 9: I'm afraid of some of them. Personally, I think they're pretty good on the whole.

Question 10: Do you feel the same way about the Regular Force staff members?

Answer 10: Yes. They're all pretty strict, but they've got to be strict. Again, I respect them. I can't think of anyone of them I dislike.

Question 11: Has any cadet NCO kicked or punched you?

Answer 11: Yes, only kicked. I had to adopt "the position" of bending over and holding my hands in front of me. A cadet NCO would kick me hard with the flat upper part of his boot once or twice.

Question 12: Have you been present when a cadet NCO kicked or punched another cadet?

Answer 12: Punching, yes. I saw punch Cadet C on the arms and body about 10 times. However this seemed in fun, as Cadet C punched several times as well. I am sure this wasn't serious, they were just having a bit of fun.

I have also seen plenty of people being kicked. Just about the whole platoon has been kicked at some stage. About 10 cadets would be kicked each day. One cadet has been kicked many times. This is Cadet CS. He was late getting into the corridor with the rest of the platoon, and we all had to do press-ups until he arrived. Cadet Sergeant G and Lance Corporal T then told us to kick Cadet CS, which three-quarters of us did.

Question 13: Was a member of the Regular Force staff present on these occasions?

Answer 13: No, I can't remember any.

Question 14: Do you think cadet NCOs are permitted to kick or punch you?

Answer 14: I am not sure the Army would permit them to do this, but I don't really know.

Question 15: Have you been advised by anyone that cadet NCOs are not permitted to kick or punch you?

Answer 15: Yes. About three weeks ago, not long after we arrived, I think and told us that if senior cadets bastardised us, we were to tell them.

Question 16: Did you report any of the incidents of kicking and punching to anyone?

Answer 16: No.

Question 17: Why not?

Answer 17: I just don't like telling on people. I never got it bad enough personally, to tell on the NCOs, so I left it up to the people who got it bad enough to tell.

Question 18: Has anyone told you not to give this court certain information?

Answer 18: Yes, this Monday, 16 February, Lance Corporal T told our room not to mention the kicking. He mentioned that all of us in our room should stick together.

[126] Cadet AFW, another member of 2 Platoon, said of the shooting:

At about 9 pm on 13 February, I was cleaning my rifle on my bed. While I was doing this, I heard talking about rounds of ammunition. I heard a weapon being cocked and turned around to see holding an M16. I didn't see him load it. He waved the rifle around in the general direction of Cadet Bain who was standing in front of him. He mentioned to Lance Corporal T something about the rifle being on semi. Then the rifle went off. Cadet Bain staggered back a little and then fell to the floor. I bent over Cadet Bain to see if I could help him in any way. I saw that he was probably dead. I heard a rifle being dropped to the floor, and when I turned around was gone. I ran out of the room and saw Sergeant Major H who was coming to help.

Questions by the Court

Question 1: Did Cadet particularly pick on or dislike Cadet Bain?

Answer 1: No, no more than anyone else. I think Cadet quite liked Bain.

Question 2: Apart from the incident in which Cadet Bain died, have you been present during any other incidents in which a cadet or cadet NCO pointed a rifle at someone?

Answer 2: No.

Of weapon safety training, he said:

Question 3: Has weapon safety been stressed during your training?

Answer 3: Yes, we've been taught all the checks you must do on the range and when cleaning weapons. We've also been taught never to point a rifle at anyone, even when we know it is empty.

Question 4: Do you think it would be acceptable for someone to point a rifle at another person in fun, when they both knew the rifle was unloaded?

Answer 4: No. It's against safety rules. Even if they both knew it was unloaded, if they made a mistake anything can happen.

Of treatment of junior cadets by senior cadets, he said:

Question 5: Are you afraid of your cadet NCOs?

Answer 5: No.

Question 6: Do they inflict any punishments upon you?

Answer 6: Yes. They frequently punish us by a boot in the behind, and they also frequently lift us up by our underpants. We are also told to adopt an awkward position and hold it for say 10 minutes.

Question 7: Do you feel these punishments are fair?

Answer 7: No.

Question 8: Have you reported these punishments to anyone?

Answer 8: No, because I think cadets should stick together, unless things get very serious.

Question 9: Do you feel the same about the Regular Force staff members?

Answer 9: I think they are fair, unlike some of the cadet NCOs.

Question 10: Was a member of the Regular Force staff present during any kicking incident?

Answer 10: Not that I know of.

Question 11: Do you think cadet NCOs are permitted to kick or punch you?

Answer 11: No. They are not.

Question 12: Have you been advised in any way that cadet NCOs are not permitted to kick or punch you?

Answer 12: No.

[127] Cadet Lance Corporal MAT, a second year cadet in 2 Platoon, said of the shooting:

> At about 7 o'clock on 13 February, and I went to the Garrison Club. started talking to some friends of his who I didn't know very well so I left for 10 minutes. When I came back, we both went to the pictures. We left early, at about 9 o'clock, and I went back to the barracks, while went somewhere else, the Garrison Club I think. A little while later, came into Room 14 and started joking with some of us. He then went over to his bedspace and started fiddling around with a glass jar. A few seconds later, I saw him with what seemed to be a live M16 round. I was in my bedspace at the time and was about two feet from me. He had an M16. He pulled the working parts back and inserted the round into the chamber and let the working parts go forward. After that he pointed the rifle at various people, who took evasive action. He then pointed it at Cadet Bain who was standing in the aisle opposite him. He then turned around to me and said something like, "Look T, it's on semi." I was very shocked at this because I saw he had his finger on the trigger. I am not sure if I said anything to him, but I may have given him a verbal roasting. I was so distressed that I turned away slightly from .

Then I heard the rifle discharge and turned to see bits of flesh being blown out of Bain's neck and he fell to the ground. I ran from the barracks and then detailed some people to go to the MIR and Fire Station to get help. Then I went over to Maleme Barracks and told the cadet NCOs what had happened. I was very shocked and I didn't know what else to do.

Questions by the Court

Question 1: Where did Cadet have his hands when he was pointing the rifle at Cadet Bain?

Answer 1: He had his left hand on the handguard and his right hand was on the pistol grip with his finger on the trigger.

Question 2: What was Cadet reaction when he realised he had shot Cadet Bain?

Answer 2: He said something like, "Oh no!" I think the shooting was purely accidental.

Question 3: Are you aware of any incident that occurred just before Cadet Bain's death which indicated that Cadet was angry with Cadet Bain?

Answer 3: No, not really. However, when came back after the pictures he found his cassette tapes strewn all over his bed. He told Cadet Bain to find out who had done it or else he would have to iron his trousers. Cadet Bain didn't know who it was, and offered to iron his trousers. I don't think was very angry at Cadet Bain for this.

Question 4: Apart from the incident in which Cadet Bain died, have you been present during any other incidents in which a cadet or cadet NCO pointed a rifle at someone?

Answer 4: Yes, earlier in the day, I came into our room and saw C standing on my barrack box and was pointing a rifle at him.

Question 5: Did you hear a shot?

Answer 5: No.

Question 6: What was your reaction to this incident?

Answer 6: It was a breach of safety.

Question 7: Did you report the incident to anyone?

Answer 7: No. What we in the senior class try to do is handle barrack problems ourselves, and we only report it to the RF staff if we can't handle it or if it gets out of hand.

Of treatment of junior cadets by senior cadets, he said:

Question 8: Have you kicked or punched any cadet?

Answer 8: Yes, just kicking. That form of punishment is only used when the juniors start stuffing round the NCOs. If this form of punishment was not used, I think the junior class would become slack and idle, which they were. Under the same

circumstances last year, this form of punishment occurred if you stuffed up. You tell the cadets to, "Adopt the position", and they just bend over. My form of kicking was to hit them with the side of my boot, once.

Question 9: Have you been present when a cadet NCO punched another cadet?

Answer 9: No.

Question 10: Was a member of the Regular Force staff present on any occasion when you or any other cadet NCO kicked a cadet?

Answer 10: I can't say, I'm not too sure. If they were, they would probably have warned us not to kick again.

[128] Cadet CIK, a member of 2 Platoon, said of the shooting:

About dinner time, I think, on 13 February, I was going back to my room like other members of the platoon, when I saw with a rifle. He was waving it around and pointing it at other cadets.

Later that day, between 8 and 9 o'clock, I had just finished cleaning my rifle, when I went to the window of my room which faces Room 14, Galatas Barracks. I saw Cadet Bain standing with his back to me but half side on so I could see part of his face. Further into the room, I saw standing facing Cadet Bain and me. He was holding a rifle. He had his right hand on the pistol grip of the rifle. He was pointing the rifle at Cadet Bain. The rifle went off. Cadet Bain stiffened and fell backwards. then threw the rifle away and moved quickly out the door. I then heard the cadets in Room 14 shouting for an ambulance.

Questions by the Court

Question 1: When you saw Cadet pointing his rifle at Cadet Bain, where was left hand placed?

Answer 1: I am reasonably sure it was on the rifle. His left hand was near the pistol grip.

Question 2: Apart from the incident in which Cadet Bain died and the earlier incident involving Cadet C, have you been present during any other incidents in which a cadet or cadet NCO pointed a rifle at someone?

Answer 2: No.

Question 3: What was your reaction to the incident in which Cadet waved his rifle around and pointed it at other cadets?

Answer 3: I thought it was silly, but he was just joking.

Question 4: Did you report this incident to anyone?

Answer 4: No.

Question 5: Why not?

Answer 5: I didn't think there was any need to. I just thought there wouldn't be anything done because it was just something

stupid. I just thought he'd get a telling off, and we'd get into trouble for going to the RF staff over him.

Of weapon safety training, he said:

Question 6: What did you learn about weapon safety during your training?

Answer 6: Safety comes before everything else. As soon as you pick up your weapon, you make sure there's nothing in the breach. If you hand your weapon to somebody, you show him there's nothing in the breach. Whenever you carry your weapon, you carry it at the high port. If you are out at the range, you don't do anything until you are told to do it. You always keep your weapon pointed down the range. When you pick up your weapon from the armskote, you check there is nothing in the breach. You check it again before you clean it. Just before you put it back in the armskote, you check there is nothing in the breach again.

Question 7: Has weapon safety been stressed during your training?

Answer 7: Yes, very strongly. If you are seen to make a mistake it is corrected on the spot. Sometimes the cadet NCOs would give us a kick or a slap when we made a mistake.

Question 8: What did you learn about pointing a weapon at another person?

Answer 8: It was highly dangerous, and if we got caught doing it we'd expect some form of punishment.

Question 9: Do you think it would be acceptable for someone to point a rifle at another person in fun, when they both knew the rifle was unloaded?

Answer 9: No. There's always one chance there might be something up the breach.

Question 10: If you know that pointing a rifle at someone is dangerous, why did you not report the incident in which Cadet pointed a rifle at other cadets?

Answer 10: I was a bit scared to, because if he'd got into trouble he would have come back at us.

Of treatment of junior cadets by senior cadets, he said:

Question 11: How do you feel about your cadet NCOs?

Answer 11: Some of them are all right, but others just like pushing you around. There are a few that I hate their guts. Some you can really get on well with, and there are others that sort of follow the moods of the others. Some of them do a good job. We listen to them because they are more of our age, but some of them, they're sort of power crazy, they just like pushing you around.

Question 12: Do you feel the same way about the Regular Force staff members?

Answer 12: No, they don't usually tell you to do things unless they have a purpose. None of them I've had anything to do with are power crazy or like pushing you around.

Question 13: You said that if you made a mistake the cadet NCOs would give you a kick or a slap. How were these kicks and slaps administered to you?

Answer 13: The kicks were reasonably hard. Most of the time, we were told to bend over with our hands on our knees and then we would be kicked once in the backside. At other times we would be slapped on the head but this wasn't done very hard.

Question 14: Were you kicked or slapped in the presence of a Regular Force staff member?

Answer 14: No, it was usually done on the range some distance away from the Range Supervisor.

Question 15: Do you think cadet NCOs are permitted to kick or slap you?

Answer 15: No.

Question 16: Did you report any of the instances of kicking and slapping to anyone?

Answer 16: A group of us got together over one incident involving Cadet CS and a couple of us went to see . I don't know when they saw because I didn't go with them.

[129] Cadet JGO, a member of 2 Platoon, said of the shooting:

At about 8.30 pm on 13 February, I was buffing up the floor of my room when I looked into Room 14, Galatas Barracks which was directly opposite my room. I saw a cadet, who had his back to me, throw his rifle into the air and fall sideways. I didn't hear a shot, probably because I had the polisher going and this made a fair bit of noise. I thought nothing of the incident, but a few seconds later there was a commotion in Room 14. I looked up and saw everyone leaving the room. I think was the last person to leave. He walked quickly out of the room.

Questions by the Court

Question 1: Apart from the incident in which Cadet Bain died, have you been present during any other incidents in which a cadet or cadet NCO pointed a rifle at someone?

Answer 1: No.

Of weapon safety training, he said:

Question 2: What did you learn about weapon safety during your training?

Answer 2: Not to point the rifle at other people. That includes swinging it around and on the range, keeping it down the range instead of turning around and facing the group behind. Before handing a rifle to anybody, to check there are no rounds in the chamber. Before stripping or cleaning a rifle, always carry out safety procedures to make sure there's no rounds in the chamber. When you get a rifle out of the armskote or put it back, you check to see there are no rounds in the chamber.

Question 3: Was weapon safety stressed by your instructors?

Answer 3: Yes, a lot. During our first week we were taught a lot about weapon safety. We were told many times never to point a rifle at anybody. Whenever we accidentally pointed a rifle at somebody, we were corrected by our instructors.

Question 4: Do you think it would be acceptable for someone to point a rifle at another person in fun, when they both knew the rifle was unloaded?

Answer 4: No, because it's common sense safety never to point a gun at anyone. There could be a rare chance that a round had moved up the barrel, and when you move back the firing parts it comes back.

Question 5: If you made a mistake in weapon training, were you punished for it?

Answer 5: Yes we were made to do press-ups, given extra duties, and often we were given a boot on the backside.

Of treatment of junior cadets by senior cadets, he said:

Question 6: How was the booting administered?

Answer 6: We were told to bend over and hold our knees and we were given one hard boot.

Question 7: When you were booted, what part of the boot would strike you?

Answer 7: It was usually the top of the foot.

Question 8: Who administered the booting?

Answer 8: It was always the cadet NCOs.

Question 9: Was a member of the Regular Force staff present during any of these bootings?

Answer 9: No.

Question 10: Are you afraid of your cadet NCOs?

Answer 10: No, not really, but you get a bit wary of them.

Question 11: Do you feel the same way about the Regular Force staff members?

Answer 11: No. You can talk to them without fear of repercussions. The cadet NCOs are likely to punish you for anything you have done wrong.

Question 12: What sort of punishment do they give you?

Answer 12: Extra duties, extra drill, change parades. stopped change parades about a week ago. On one occasion, when Cadet CS was late getting out into the corridor, Lance Corporal T told the whole platoon to give him a boot in the backside, which most of us did. was present at the time.

Question 13: Have there been any other incidents like this?

Answer 13: No. Not on that scale.

Question 14: Was Cadet CS injured?

Answer 14: Yes. He had to go to hospital.

Question 15: Did the Regular Force staff find out about this?

Answer 15: Yes, definitely.

Question 16: Have you or any other cadets complained about the treatment you have been getting from the cadet NCOs?

Answer 16: No. I haven't, but other members of my platoon have The Regular Force staff got the senior class together last Sunday, after Cadet Bain died, and told them to lay off the junior class. Friday was a pretty bad day for bastardisation. However, the cadet NCOs have now singled out the cadets who they think complained, and are starting to make life difficult for them, like ripping up their bedrolls and giving them extra little jobs to do.

Question 17: Do you think cadet NCOs are permitted to kick or punch you?

Answer 17: No, I don't think so, because it's never done in the sight of a Regular Force NCO.

Question 18: Have you been advised in any way that cadet NCOs are not permitted to kick or punch you?

Answer 18: No.

[130] Cadet WPB, another member of 2 Platoon, said of the shooting:

At about 8.30 pm on 13 February I was just about to do my ironing when I heard a shot. I looked through the door which faces Room 14 and saw Cadet Bain falling to the floor with blood around his neck. I didn't see anyone holding a rifle. I went out the door to see what was going on and Lance Corporal T yelled "Get an ambulance", so I ran to the Fire Station and they arranged for one to come.

Questions by the Court

Question 1: Apart from the incident in which Cadet Bain died, have you been present during any other incidents in which a cadet or cadet NCO pointed a rifle at someone?

Answer 1: Yes. When we came back from weapon training on Friday afternoon, I saw Cadet pointing a rifle at Cadet C. C hid behind someone else and they all seemed to be treating it as a bit of a joke.

Question 2: What was your reaction to this incident?

Answer 2: I thought it was a bit of a joke.

Question 3: Did you report this incident to anyone?

Answer 3: No. I didn't report it.

Question 4: Why not?

Answer 4: Because I just thought they were joking around.

Of weapon safety training, he said:

Question 5: What have you been taught about weapon safety during your training?

Answer 5: We have always been taught about safety. Every time we take the weapons out we have to check them for the rounds.

Question 6: What have you been taught about pointing rifles at others?

Answer 6: We have been told never to do this. In our rooms, we have to point the rifle at a wall.

Question 7: Do you think it would be acceptable for someone to point a rifle at another person in fun, when they both knew the rifle was unloaded?

Answer 7: No. I don't think it should ever be pointed at anybody else. You'd never know if it was unloaded or not. It's the danger involved if it's loaded.

Of treatment of junior cadets by senior cadets, he said:

Question 8: If you know that pointing a rifle at someone is dangerous, why did you not report the incident involving Cadet and Cadet C?

Answer 8: I don't know, no reason.

Question 9: Are you afraid of your cadet NCOs?

Answer 9: Sometimes, because they can hit us, but we can't hit back.

Question 10: What do you mean by hitting?

Answer 10: Well they can hit us with extra duties and drill and things like that.

Question 11: Has any cadet NCO kicked or punched you?

Answer 11: Often they boot us. We have to adopt "the position" which is bending over. Sometimes the NCOs kick us once or twice in the backside. If you move while you are being kicked, they will kick you again. At times other cadets are told to kick us, and if they don't do it hard enough, we have to kick them back. Another variation is that the NCOs knee you in the side of the leg when you have adopted "the position" and think you are going to be kicked.

Question 12: Was a member of the Regular Force staff present on any of these occasions?

Answer 12: No.

Question 13: Has any cadet required medical treatment as a result of kicking?

Answer 13: Yes. Cadet CS. He showed us that his bottom was split open by the kicking, which the whole platoon had to do to him because he was late getting into the corridor.

Question 14: Do you think cadet NCOs are permitted to kick or punch you?

Answer 14: No. They are not.

Question 15: Have you been advised in any way that cadet NCOs are not permitted to kick or punch you?

Answer 15: No.

Question 16: Did you report any of the kicking incidents to anyone?

Answer 16: I didn't really report it, but when asked if anyone had been hurt or anything, all of us in our room just told him about Cadet CS.

Question 17: Have other cadets complained?

Answer 17: Yes, five have and the cadet NCOs are now picking on them.

Question 18: Do you feel the same way towards the Regular Force staff members as you do towards the cadet NCOs?

Answer 18: No. The RF staff don't punish for doing things wrong, they just correct you.

[131] Cadet PCN, a member of 2 Platoon, said of the shooting:

On 13 February, we had just come back from the range and we were putting our rifles away in the armskote. This was approximately 4.45 pm. Cadet C walked up to me and said, " got my rifle and he's got a live round in it", or something like that. Cadet C then went into Room 14 and stood just inside the door. followed him into the room. I could see them both clearly standing near the door. pointed the rifle at Cadet C who got up on a barrack box. I heard the sound of something like a cap gun going off. Cadet C grabbed his arm near the elbow and started rubbing it. He looked surprised. laughed and joked about it.

Questions by the Court

Question 1: Did you think this incident was serious or just a bit of fun?

Answer 1: I thought it was a joke. No-one seemed to be taking it too seriously.

Question 2: Apart from this incident, have you been present during any other incidents in which a cadet or cadet NCO pointed a rifle at someone?

Answer 2: No.

Question 3: Did you report the incident to anyone?

Answer 3: No.

Question 4: Why not?

Answer 4: I don't know. I took it as a joke.

Of weapon safety training, he said:

Question 5: What did you learn about weapon safety during your training?

Answer 5: Check all the weapons; make sure there were no live rounds in the magazine or chamber when we leave the range, and every time we get the rifle out of the armskote, and before you put it in there; and when you clean it; and when you give the rifle to somebody else (they check it too).

Question 6: Was weapon safety stressed by your instructors?

Answer 6: Yes. Fairly severely.

Question 7: What did you learn about pointing a weapon at another person?

Answer 7: Not to do it at all.

Question 8: Do you think it would be acceptable for someone to point a rifle at another person in fun, when they both knew the rifle was unloaded?

Answer 8: Not really. It is a bad practice. Even if you've checked it say 10 minutes before, someone might have loaded it.

Question 9: If you know that pointing a rifle at someone is dangerous, why did you not report the incident involving Cadet and Cadet C?

Answer 9: I suppose I just didn't obey what I'd been taught, and I forgot. I suppose I should have reported it.

Of treatment of junior cadets by senior cadets, he said:

Question 10: How do you feel about your cadet NCOs?

Answer 10: Sometimes they are all right, but sometimes they go a bit far. Sometimes you like them because they teach you what to do. When you do something wrong, they really blow you

up. Though they're only trying to help you, you still dislike them.

Question 11: Do you feel the same way about the Regular Force staff members?

Answer 11: No. They are more friendly when you are not actually working. On parade, they're about the same as cadet NCOs.

Question 12: Has any cadet NCO kicked or punched you?

Answer 12: Yes, only kicking. If you did anything wrong they used to make you bend over and give you a good boot up the backside. You had to adopt "the position". You'd usually be kicked by a cadet NCO, though often you'd be kicked by another cadet who was told to kick you by a cadet NCO. You'd be kicked only once with the side of the boot, sometimes the toe of the boot.

Question 13: Have you been present when a cadet NCO kicked or punched another cadet?

Answer 13: Yes, both. I'd say all our platoon have been kicked. Two or three times a day some cadets would be kicked. Once we were doing change parades and Cadet CS was late. Sergeant G, and Corporal T made him bend over by every second or third person and get kicked. I am not too sure whether we were wearing sandshoes or boots. The Cadet NCOs kicked him as well. I'm not sure which cadet NCO gave the orders to kick him. On about 11 February, the day of the School Sports, came into the room and walked up to Cadet GCW and started slapping and punching him. It looked as though he was punching him fairly hard. This went on for a minute or a couple of minutes. Cadet GCW fell on his bed and kept on punching him. At the end, laughed and walked away. I think Lance Corporal T was in the room at the time but he didn't do anything to GCW.

Question 14: Was a member of the Regular Force staff present on any of these occasions?

Answer 14: No.

Question 15: Do you think cadet NCOs are permitted to kick or punch you?

Answer 15: I don't think so.

Question 16: Have you been advised in any way that cadet NCOs are not permitted to kick or punch you?

Answer 16: I think I've been told this, but I'm not too sure.

Question 17: Did you report any of the instances of kicking or punching to anyone?

Answer 17: Not for a while. On 13 February, I and four other cadets went to see to complain about the treatment we were being given by the senior cadets.

Question 18: Has any cadet NCO reacted to your reporting your maltreatment to ?

Answer 18: Yes, Sergeant G, Corporal V and Lance Corporal T got the five of us into Sergeant G's cube and told us that we had backstabbed the NCOs. He said that, since we'd done this, he was going to get us for anything he can, and that we'd be put on that many days CB it wouldn't be funny. He said he'd get us for anything he could. He said that last year the cadet NCOs had been backstabbed by some cadets: one ended up in a mental institute, and another one got a discharge. He was just trying to scare the hell out of us. I felt a bit worried about this, but I couldn't do much about it, so I just left it to see what happened.

[132] Cadet GCDW, a member of 2 Platoon, said of the shooting:

Around about dinner time on 13 February, I was putting my rifle back in the armskote, when Cadet C ran out of the doorway of Room 14 saying, "That mad bastard has got a live round up the spout," or he may have said, " has got a live round in the chamber." Cadet N and I told him, "Don't be stupid, where would he get the rounds from." Cadet C walked back into his room. I then looked into the armskote. When I looked back at Room 14, I saw pointing an M16 at Cadet C. They were standing inside the door of Room 14 and I could see them both clearly. I heard a sound like a cap pistol or starting gun going off. Cadet C jumped up in the air and rubbed his right upper arm. Cadet C looked startled as if he couldn't believe what had happened. Later, he just carried on as if nothing had happened.

Questions by the Court

Question 1: Did you consider this incident to be serious?

Answer 1: No, not in relation to what is normally happening in the barracks.

Of treatment of junior cadets by senior cadets, he said:

Question 2: What sort of things were happening in the barracks?

Answer 2: We'd be given change parades; cadet NCOs would make us stand by our beds and then they'd pull our beds to pieces and throw things out of our drawers. Sometimes, cadet NCOs would punch us. They wouldn't punch the bigger cadets, just the smaller ones. On other occasions, we would be kicked by the NCOs or we would have to kick each other.

Question 3: Were you ever punched by a cadet NCO?

Answer 3: Yes, many times. The worst occasion was when came into my room. I asked him what time we would fall out for dinner. He said, "You should know that." Then he punched me, slapped me and pushed me over onto the bed, and continued punching me while Lance Corporal T sprayed

me with starch. This went on for about three or four minutes.

Question 4: Have you been kicked or taken part in kicking other cadets?

Answer 4: Yes, many times. On 13 February, I and the other members of the platoon were told by Lance Corporal T, Sergeant G and to kick Cadet CS. Most of us did so. After the first five or six kicks, Cadet CS appeared to be in great pain. Every time he was kicked, he would lean against the wall and start moaning but we had to carry on until everyone had finished, including the NCOs, who also kicked him. Afterwards we asked Cadet CS to show us his bottom. He did so. It was all red and it was cut open. Later we complained to about it, and Cadet CS went to the hospital.

Question 5: How do you feel about your cadet NCOs?

Answer 5: I've had enough, I want out. As they said, they'd crack us if they wanted to, and I've gone past that.

Question 6: Are you afraid of your cadet NCOs?

Answer 6: Yes. Every time I or they move I'm afraid they are going to hit me or punish me for something. What they can do is make you stand to attention, then they snap their fingers in front of your eyes. If you blink, you receive extra duties or fatigues.

Question 7: Are you afraid of the RF staff?

Answer 7: No. I find them quite human compared to the cadet NCOs.

Question 8: Have the cadet NCOs inflicted any punishment on you or members of your platoon in the presence of members of the RF staff?

Answer 8: No. They never do that. They make sure we are on our own.

Question 9: Are you aware of similar instances occurring in other platoons?

Answer 9: Yes, but I don't think they are getting it as badly as we are.

Question 10: Have you reported this state of affairs to your platoon or company commander?

Answer 10: Yes, five of us reported it to at about the time Cadet Bain was killed, and now we are suffering for it. The cadet NCOs have made it clear that they are going to pick on us because we pimped and backstabbed them. They said we will have charges coming out our ears after the 23rd which is the first day of charges. On the night of the 15 February, the five of us were called into Cadet Sergeant G's cube and told by him that we were "marked men" and could expect no mercy. He told us, "Only little boys and women go to see the RF staff." He made it clear that we were not to go and see the RF staff again for any reason.

Question 11: Are you afraid to go back to your platoon right now?

Answer 11: Yes. I'd prefer to go home or anywhere, except go back to the platoon.

[133] Cadet RLS, a member of 1 Platoon, of the range activities said:

On 2 February, on the Taylor Range, I found a .308 round on the ground. The projectile was pushed back into the cartridge, and it was clear that there was no powder in it. I took it to and asked him how you could get the powder out. He just said it can be done by using your teeth. He then took a .223 round out of his pocket and showed me that he had taken the powder out of it. The round had a projectile on it and an unfired detonator.

The next day, Cadet CDP and I were loading M16 magazines under the supervision of . We had spilt some live rounds into the cracks between the ammunition boxes forming a wall on the range. He told us that we had to get the rounds out of the cracks because someone could find them and remove them. He said no-one was allowed to remove ammunition from the range. He said, " would kick my arse if he knew I had a live round in my pocket." He did not show us the round.

Questions by the Court

Question 1: At the end of the range practices on 2 and 3 February, were you warned by the range conducting staff not to remove ammunition or produce from the range?

Answer 1: Yes, on both occasions. On 2 February, I think we were warned by , and on 3 February I think it was given by .

Question 2: Was present when these warnings were given?

Answer 2: Yes, he checked our weapons.

[134] Cadet CDP, a member of 1 Platoon, of the range activities said:

On 3 February (I know it was that date because I keep a daily diary) I was on the 100 metre range collecting M16 magazines after firers had used them. I took the magazines to where and Cadet RLS were loading magazines. told Cadet RLS and me to get some rounds out of the cracks between the large ammunition boxes which formed a wall on the range. We tried to do this but we couldn't get them out. We told this, and we started talking about rounds generally. told us that we shouldn't leave rounds lying around and it was an offence to remove them from the range. He then said, "If knew I had a round in my coat pocket he would kick my arse." He may have said shell instead of round, I am not sure.

Later, near the end of the shoot, one of the cadets had a problem with the rear sight of his rifle. took what looked like a live .223 round out of his pocket and adjusted the sight with it.

Questions by the Court

Question 1: At the end of range practice were you warned by the range conducting staff not to remove ammunition or produce from the range?

Answer 1: Yes, gave it.

Question 2: Was present when this warning was given?

Answer 2: I don't know.

[135] Cadet GDG, of 1 Platoon, of the range activities said:

On or about 10 February, my platoon was at the Taylor Range having a shoot. Just before I started to shoot, used what appeared to be a live .223 round to put a deflector on my rifle. I am sure it was a live round, because it looked normal and there was no firing pin puncture in the base of it. He played with it a lot and rolled it around in his fingers, so I got a good look at it.

After the shoot was over, Sergeant G gave the usual warning that we were not to remove ammunition from the range. Shortly after this, said in front of a squad of about 15 of us, "If Sergeant (Someone) knew that I had a live round in my pocket he would kick my arse." I am not sure of the name of the Sergeant.

Questions by the Court

Question 1: Was Cadet present when Cadet Sergeant G gave the warning not to remove ammunition from the range?

Answer 1: Yes. He was.

Question 2: After this warning was given, did Cadet show you the live round he claimed he had in his pocket?

Answer 2: No.

[136] Cadet said:

I am a second-year cadet. I am the Second-in-Command of 2 Platoon of A Company of the Regular Force Cadet School. As such, I assist the platoon sergeant in supervising barrack activities, and I assist the Regular Force instructors in weapon training for my platoon. Until 13 February, I lived in Room 14, Galatas Barracks.

At about 7 pm on 13 February, Lance Corporal T and I went to the dry canteen. About half an hour later, we went to the pictures, which we left at about 8 pm, before the film ended. We went back to the dry canteen. I remained there with Sergeant Major H until about 9 pm. Lance Corporal T left shortly after we arrived.

I returned to my room and noticed that someone had strewn my cassette tapes all over my lowboy. Since Cadet Bain had asked to use my cassette recorder, I had left him in charge of it. Therefore, I told him to find out who had messed up my tapes or else he would have to iron my trousers. Cadet Bain then asked one or two people in the room, but no-one owned up to it. I did not pursue the matter further.

Then I thought I would have a bit of fun with a .223 round that I thought I had removed the powder from. I told Cadet C that I had an idea and I was going to help him assemble his weapon. We did this. I am not sure when I got the round out of the glass mug in my lowboy. It could have been before

or after we assembled the rifle. Anyway, I got it out of the mug in which I had a few odds and ends such as screws, chalk, drawing pins, a 7.62 drill round and a .223 projectile. Then I broke the weapon open, pulled the working parts out and inserted the round into the chamber. I put the working parts back in and closed up the rifle.

I saw Cadet Bain standing in front of me with his rifle. We both started fooling around with our rifles, as in a western movie. We both pointed our rifles at each other. I told him that I had my safety catch off. Then I pulled the trigger. My rifle fired and Cadet Bain fell to the floor. I was stunned for a few moments and just stood there looking at Cadet Bain. Then I put my rifle down on Cadet C's bed, and ran out of the room. I ran up Hospital Hill and into the Home Valley. I ran up as far as a two-storey range building. I decided that it was foolish to run away, so I returned to the Cadet School Orderly NCOs' room.

Questions by the Court

Question 1: Did you load an empty cartridge case into Cadet C's rifle just prior to loading the live round?

Answer 1: I can't remember.

Question 2: When you pointed your rifle at Cadet Bain and told him that the safety catch was off, did anybody tell you not to be stupid?

Answer 2: Yes, I think Lance Corporal T did.

Question 3: Why didn't you listen to his advice?

Answer 3: Because I believed that I had an empty cartridge case in the rifle.

Question 4: Did you point your rifle at anyone other than Cadet Bain?

Answer 4: No.

Question 5: How did you obtain the 7.62 drill round?

Answer 5: I can't remember, but I've had it in my glass mug for about a year.

Question 6: How did you obtain the .223 inch live round which killed Cadet Bain?

Answer 6: During the range practise on the 13 February, I was supervising three cadets on the firing round. One of them, I think it was Cadet TJM, couldn't cock his weapon after loading it. I removed his magazine, and found there were 21 rounds in it. There should only have been 20, so I removed the top round and put it in my coat pocket. When we got back to the barracks at about 4 pm, I discovered the round in my pocket and put it in my glass mug in my lowboy.

Question 7: Did you ever place another cartridge case in your glass mug?

Answer 7: Yes, one other one. I took it from the range on about 9 or 10 February. I intended to use it on a drill cane that I had given to me. I removed the powder from it on the range and later put the projectile and the cartridge case separately into my

glass mug. I found that the projectile was too small for my drill cane so I just left the parts of the round in my mug.

Question 8: Did you use a .223 inch round to make adjustments to cadets' rifles on the range?

Answer 8: Yes, on one occasion I used it to remove the deflector for a left-handed firer.

Question 9: What did you do with that round when you had finished removing the deflector?

Answer 9: I put it back with the other ammunition.

Question 10: You have admitted that on two occasions you had a .223 inch round in your pocket at some stage during a range practise. Did you have a live round in your pocket on any other occasion?

Answer 10: No.

Question 11: Did you ever say to another cadet during a range practise that you had a live round in your possession?

Answer 11: I am not sure.

Question 12: Were you always present when the usual range warning was given at the end of a shoot?

Answer 12: No. Except for one occasion, I was away somewhere else on the range cleaning up. On the one occasion I was present, I was standing in the background and the range warning was not directed at me.

Question 13: Did any of the senior members of the range staff require you to check yourself for ammunition before leaving the range?

Answer 13: No.

Question 14: Were other senior cadets ever checked, as far as you know?

Answer 14: No.

Question 15: Who conducts the checks of weapons, magazines and pouches at the conclusion of each firing detail?

Answer 15: Senior cadets.

Question 16: Do you consider yourself to be a member of the range conducting staff?

Answer 16: Yes.

Question 17: Were you ever employed as the NCO in sole charge of the ammunition point?

Answer 17: Yes, twice.

Question 18: Was there an incident late in the afternoon of 13 February involving your pointing a rifle at Cadet C?

Answer 18: Yes. Just before tea, at about 5 pm, I took the live cartridge case out of my glass mug. This was the case from which I had removed the projectile and powder. Then I took Cadet C's rifle from him and loaded the round into it in front of

Cadet C. He then went over to a platoon meeting in Maleme Barracks. When he returned I chased him up the corridor into our room. While I was running, I may have been waving the rifle around a little bit and I could have pointed it at one or two cadets. Cadet C stood behind the door in our room. I followed him. I went round the door and pointed the rifle at him. I then pulled the trigger. There was a small bang and Cadet C jumped a little and looked surprised. He said that he had felt the wind from the cartridge on his arm.

Question 19: Do you think Cadet C knew that the round you had put into the rifle was not a proper live round?

Answer 19: I think so. He saw me load the cartridge into the rifle. He was laughing as I chased him down the corridor, but he changed when I pointed the rifle at him. He became somewhat unsure at that point.

Question 20: While you were waiting for Cadet C to return from Maleme Barracks, did you point the rifle at any other cadet or cadets who passed you?

Answer 20: I am not sure.

Question 21: Did you think that this incident with Cadet C was a serious thing?

Answer 21: No. I thought it was a bit of a joke. I knew, however, that if a RF staff member had caught me at it I would have been in for trouble.

Question 22: You are employed as an Assistant Instructor. Have you passed the Basic Instructors' Course?

Answer 22: I attended one late last year, but I didn't pass it. I was graded "Not Qualified" and I understand this meant that I came nowhere near passing the course.

Question 23: When you were a junior cadet undergoing basic training, how were you treated by the cadet NCOs?

Answer 23: They treated us fairly hard, much harder than the Regular Force staff members. We were punished for even small offences. One of the things we had to do was attend change parades. This involved us changing our clothes and equipment about 10 times in half an hour. We would have to appear dressed in whatever odd dress the NCOs thought up. It could include dress such as one sandshoe, one boot, civilian shorts over the top of army issue underpants with a singlet over the top of a PT jersey, webbing under a plastic raincoat and carrying a pad and soap. Another punishment was booting. We would have to bend over and get booted hard by either an NCO, or a group of NCOs, or sometimes most of the platoon. This sort of thing was usually treated as a joke by everyone.

Question 24: As a junior cadet, what did the senior cadets tell you would happen to you if you didn't submit to this punishment?

Answer 24: Nothing. We respected the senior cadets and always did as they told us. However, we were told by the senior cadets not to tell the Regular Force staff members about the punishments. We knew that if we did dob in any of the senior cadets we would be taken into a senior cadet's cube and given a good hiding.

Question 25: Was punching reserved as a punishment for very serious offences?

Answer 25: Yes. It was normally given by the very senior cadets such as CSMs.

Question 26: Whereabouts on the body were cadets punched?

Answer 26: Above the waist and below the neck where it couldn't be seen by RF staff.

Question 27: Are your senior class treating the present junior class in the same way that you were treated as the junior class?

Answer 27: Yes, except that we are probably treating them a little easier than we were treated. In addition, they have more privileges than we had, such as going to the movies, smoking, etc. Therefore, we try to remove some of these privileges from those junior cadets who we feel don't deserve them, by conducting extra drill parades, inspections and fatigues.

Question 28: Have you kicked any junior cadets this year?

Answer 28: Yes, frequently.

Question 29: Have you punched any junior cadet this year?

Answer 29: If I have, I can't remember.

Question 30: Have you poked or jabbed any junior cadet this year?

Answer 30: Yes. I can't name the people I've done it to. I've just done it often. When the platoon are lined up in the corridor being inspected or having a talk to and someone had spoken out of turn or hadn't got their gear up to scratch, I poked them to get the message across. I used the four fingers of the hand and pushed them into the cadet's chest two or three times, fairly hard.

[137] was the Range Conducting Officer for most range practises involving Bain's platoon and was the Range Conducting Officer on 2, 3, 9, 10 and 13 February. In reply to questions from the Court, he said:

Question 1: Do you stress safety during the cadets' weapon training?

Answer 1: Yes, I am very safety conscious, I take every opportunity to stress the importance of safety. I consider it an important aspect of weapon training.

Question 2: How do you train cadets not to point their rifles at others?

Answer 2: I explain to them the effect of what would happen if a round was discharged with their rifle pointing at somebody.

Whenever I see a cadet pointing a rifle at someone during a lesson, or at any time, I correct his mistake at once and point out to him the effect of a gunshot wound on the part of the body he pointed his rifle at. I try not to make my description of the effect too grisly, but I aim to be realistic.

Question 3: Do you differentiate between pointing a loaded rifle at someone and pointing an unloaded rifle?

Answer 3: There is no difference. I try to develop a habit of weapon safety in my cadets.

Question 4: At the end of your range practises, do you warn all participants not to retain ammunition or produce from the range?

Answer 4: Yes, on every occasion. Always.

Question 5: Who gives this warning?

Answer 5: In the majority of cases, I do. I can recall one incidence when did it.

Question 6: Was the warning given at the end of the practises on 2, 3, 9, 10 and 13 February?

Answer 6: Yes.

Question 7: Was everyone at the range, including the cadet NCOs, present when the warning was given at the end of the practises on 2, 3, 9, 10 and 13 February?

Answer 7: Yes. The senior cadets would be on the flanks or forward of the squad beside me. I use them to check weapons, magazines and pouches.

Question 8: Was Cadet present for the warning on 2, 3, 9, 10 and 13 February?

Answer 8: Yes. I am sure, as far as I can recall.

Question 9: Could a cadet NCO have been absent elsewhere on the range, cleaning up, when the warning was given on 2, 3, 9, 10 or 13 February?

Answer 9: No. The last thing we do before leaving the range is the declaration. Every other administrative detail is completed by that stage, including cleaning up the range.

Question 10: Who was responsible for the ammunition at the range during the practises on 2, 3, 9, 10 or 13 February?

Answer 10: About 90 per cent of the time it would have been Cadet .

Question 11: How many Regular Force staff do you usually have conducting a range practise?

Answer 11: We usually have five, but on one occasion I can recall there were only two.

Question 12: What are their duties?

Answer 12: One NCO was usually in charge of the butts; one would be the Range Conducting Officer, another the Range Safety Officer, and the remainder would be safety supervisors and coaches. On some occasions, the Range Conducting Officer would do some coaching, as would the Range Safety Officer, where safety permitted. I would like to point out that we are always short of staff on the range. Because we have a limited amount of time at the range, we try to get as many cadets on the mound at one time, so that they can get as much practise as they need to qualify. Usually we have between eight to 14 cadets on the mound at one time, depending on the range we are using. Ideally, we should have one coach per firer plus a Conducting Officer, Safety Officer and Butts NCO.

Question 13: Did you receive any report of ammunition being in the spaces between the ammunition boxes in the walls on the Manning Range?

Answer 13: No.

[138] was the Range Safety Officer at the pertinent time and was the Range Safety Officer on 2, 3, 9, 10 and 13 February. In reply to questions from the Court, he said:

Question 1: At the end of your range practises, do you warn all participants not to retain ammunition or produce from the range?

Answer 1: I don't personally, but it is done.

Question 2: Who gives this warning?

Answer 2: I do not normally give the range safety clearance at the end of a shoot. However, on the shoots in question, I remember the warning being given by or .

Question 3: Was everyone at the range, including the cadet NCOs, present when the warning was given at the end of the practises on 2, 3, 9, 10 and 13 February?

Answer 3: Yes. We had the senior cadets standing on either the left or right flank of the junior class.

Question 4: Was Cadet present for the warnings on 2, 3, 9, 10 and 13 February?

Answer 4: Yes. As far as I can recall, he was present at all of them.

Question 5: Who was responsible for the ammunition at the range during the practises on 2, 3, 9, 10 or 13 February?

Answer 5: Cadet and two other senior class cadets were responsible for loading the magazines and distributing them on the mound prior to each detail shoot.

Question 6: How many Regular Force staff do you usually have conducting a range practise?

Answer 6: On 2, 9 and 10 February, there would have been four. On 13 February there were five, but on 3 February there were only two.

Question 7: What are their duties?

Answer 7: They are mainly coaches. One is also the Range Safety Officer, and another the Range Conducting Officer. On all days, one NCO would be in charge of the butts, except for 3 February when two of us were on the mound.

Question 8: Do you use the cadet NCOs to check weapons, magazines and webbing at the end of a shoot?

Answer 8: Yes. Always under the supervision of a Regular Force staff member. This is intended to give the cadets some additional responsibility, without prejudicing safety.

Question 9: Did you receive any report of ammunition in the spaces between the ammunition boxes in the walls on the Manning Range?

Answer 9: Yes. I had a look, and it seemed to be 7.62 ammunition, so it can't have been dropped there by the cadets. We tried to get the ammunition out but couldn't. Unfortunately I forgot to report this later.

[139] , the Officer Commanding the Regular Force Cadet School, gave evidence of his involvement in the inquiries. I do not find it necessary to refer to this evidence. His involvement in events occurred after he went to the barracks following the shooting and from then on he liaised with the Police, assisting their inquiry to enable the Police to determine information as to what charge should be laid. He stressed the significant staffing problems. On Bain's death, he said:

Question 5: Do you feel the School's staffing difficulties in any way contributed to the death of Cadet Bain?

Answer 5: One can never be sure. It would be very difficult for staff, no matter how many I had, to be present 24 hours in all parts of the barracks to prevent one soldier from shooting another. However, I believe that, had sufficient staff been available throughout all aspects of training and supervision, then it would have been a lot more difficult for an incident of this nature to have taken place. To support this contention, the mere arrival of the three platoon commanders on that very day enabled a lot more vigilance to be mounted in those barracks that evening.

Question 6: If your three platoon commanders had been posted to you much earlier than 13 February, do you feel the chances of Cadet Bain being shot would have been reduced?

Answer 6: I'm sure they would have, because the very nature of the platoon commander's duties requires a lot of evenings spent in the barracks, which up until this time had been done by the company commanders and NCOs. The problem of over-

zealous senior class cadets has always been present, and the mere presence of platoon commanders in the barracks goes a long way towards curbing irresponsibility. In the few hours that the newly appointed 2 Platoon Commander had had with his platoon that evening, he had already confirmed earlier suspicions, of both myself and his Company Commander, of heavy-handedness by some senior cadets in that platoon.

Question 7: Is weapon safety stressed by your staff during the training of cadets?

Answer 7: Yes, weapon safety is of vital concern to me, and of course I expect the same of my staff.

Question 8: How are the cadets' rights explained to them?

Answer 8: During the normal course of instruction. In these instances, without referring to a detailed programme, it comes within the terms of military offences and conditions of service. Both these aspects are introduced throughout the course of basic training.

Question 9: Have the cadets been informed that their NCOs are not permitted to strike them in any way?

Answer 9: Yes they have, in relation to both common assault and the military offences, as I explained in answer to the previous question.

Question 10: Are you aware of any harassment of junior cadets by cadet NCOs?

Answer 10: Yes, this has been an ongoing problem, and whilst it is being controlled in the other platoons, I was aware that things were still not completely right in 2 Platoon. was in the process of investigating this particular problem at that time (13 February).

[140] , OC of A Company, said:

At some time on Friday 13 February (I can't remember whether it was morning or afternoon) I received a telephone call from Mrs C, Cadet C's mother. He is a cadet in 2 Platoon. She was concerned because he had either written or spoken to her on the telephone about some instances of bullying in the barracks. I then arranged for Cadet C to come and see me so that we could discuss the instances concerned. Cadet W's mother had rung me with a similar story. He is also a cadet in 2 Platoon. I then arranged to interview W as well. I learned from them that in 2 Platoon there were instances of kneeing junior class cadets in the thigh, kicking them in the backside, pushing them over beds to the extent that the plastic fittings on an M16 rifle were broken, wall lamps were broken. It appeared these alleged offences were being perpetrated by Cadet Sergeant G and Cadet Corporals and T. I informed , OC Cadet School, of the information that I had learned.

Because of the delicate nature of the balance of power in Cadet School, it is difficult to pin charges on senior cadets using the evidence of junior class. I

had to demonstrate quite positively, to the two cadets that I had spoken to, that I was in a position to offer them protection from any retribution. In discussion with , I arranged a roster system whereby myself, , and would take a one hour shift and continuously move around the barracks paying particular attention to 2 Platoon throughout the whole night. (I was fortunate to have these officers as they had only reported for duty that morning.) The aim of the roster was to ensure that no further bullying occurred, but if anything did occur, we would be able to have a non-cadet to give evidence in an orderly room. In other words, we wanted to catch them red-handed.

At approximately 2100 hours that evening, it was my turn to go on for an hour. When I entered Room 17, which is one of the 2 Platoon rooms, a cadet took a pace forward and asked if he could speak to me. I think it was Cadet N. I told him I would speak to him straight away, and we moved to the TV room which was more private. Before I had managed to talk to him, he was followed in by Cadets W, C, B, McM and S. I very quickly learned the gist of the complaint, which involved the entire platoon being ordered to kick Cadet C in the backside. I saw Cadet C's backside which was severely abrased. I then told all the cadets to go over to my office in A Company Headquarters. They were all petrified that, having come and spoken to me, reprisals would be sought by Cadet Sergeant G, and Cadet Corporals and T. Once back in my office, I got to come over, as he was their new Platoon Commander, rang the hospital to see if was available, and was told that he was. I rang home. He had not arrived home at that stage, and I left a message for him to ring me urgently. I wanted to discuss the C incident with him to get advice as to what immediate action I should take.

arrived. I left the cadets in his care, and took C across to the hospital. When I got to the hospital, I was told by the Duty Sister that there had been a shooting in the cadet barracks. All this happened fairly quickly, so I would estimate it was not much more than 2110 hours when I arrived at the hospital.

Questions by the Court

Question 1: Do your instructors stress safety in weapon handling?

Answer 1: As Training Officer for RF Cadet School, I try and visit as much training as possible each day. From my observation of the instructors, they have almost gone to the point (if it's possible) of over-stressing the safety aspects of weapon handling. It is my impression that the instructors appreciate the age and limited experience of cadets in handling weapons, and consequently stress safety very strongly. I have seen on one of the range practises where a cadet didn't actually turn around with his rifle, but it was not pointing directly down the range, and he was given practically a five minute lecture on that aspect of safety.

Question 2: Who conducts the cadets' weapon training?

Answer 2: The Cadet School is divided into three streams for basic training, two platoons in each stream. This means that there are, in most cases, I think, four staff members for approximately 60 cadets. As a result, apart from the training

and lessons which are conducted by the Regular Force staff, coaching in small squads and coaching on the ranges (including the conducting of TOETS) is carried out by senior class cadets. We try and use cadets who attended an instructors' course last year. However, of the 18 who attended the course, only four obtained a partial qualification, the rest failed. We are obliged to use these cadets in these tasks, as otherwise we would be incapable of carrying out any form of concurrent activity while on the range, and also we would be unable to provide any form of close supervision or coaching. With four instructors for 60 cadets, it is almost impossible without the assistance of senior class. Also, particularly on ranges (where Regular Force members must be used in the key appointments of Safety Officer, Conducting Officer, Butts NCO) generally the ammunition NCO and coaches on the mound are made up from senior class; not by desire but by necessity. However, the basic instruction on weapon handling, particularly the safety instruction, was all handled by the Regular Force staff in the early stages of training. We have worked closely with the School of Infantry with shooting coaches courses, whenever possible, to use personnel from those courses to assist us with coaching on the range. However, this has been extremely limited, as it is difficult for both our schools to dovetail our training programmes. Stream 1, however, of which 2 Platoon is a part, did have the benefit of shooting coaching instruction by a School of Infantry Shooting Coaches Course on their first time on the range.

Question 3: How is the cadets' behaviour monitored in the barracks?

Answer 3: The cadets are monitored in the barracks primarily by the use of the senior class rank structure, since our staffing is totally inadequate to cope with this additional responsibility. The Regular Force staff are also, up until the arrival of the young lieutenants, the platoon commanders and platoon sergeants, and, as such, also have a role similar to that of a housemaster in a boarding school, which involves to an extent, mothering the cadets. Because the type of NCO we require at Cadet School needs to be a mature responsible type of person, a large majority of the staff are married and consequently live out. However, there are a couple of Regular Force staff corporals who do live in the barracks, but it is unreasonable to expect them to spend their entire "free time", which is limited, with the cadets. In addition, the School Duty Officer inspects the barracks on a relatively formal basis each night, and both myself and , the B Company Commander, spend about two hours each night wandering around the rooms talking to cadets. Beyond this, any further control is in the hands of the senior class. I have noticed in my walking around that the married staff also seem to spend a fair proportion of time each night in the barracks with their troops. In my Company, I know of instances where the time required to be spent by married

> staff with cadets is placing a severe strain on their marriages. To an extent, the system works because of the loyalty and devotion of the staff who do more than should be reasonably expected of them. Despite all these checks, I know there have been instances in the barracks of harassment of junior class cadets. I have felt an undercurrent of tension during the last two weeks, particularly in 2 Platoon. However, it has been impossible to place a finger on it, despite lengthy interviewing of all members of the Company. It was only on 13 February that I actually started to get some concrete information on which I could take some definite action.
>
> The cadet system, because of the peer-group rank structure, has a code of silence which is almost impossible to break. Because we, as staff, place responsibility on the senior class for various functions, we must also back them up in their authority and be seen to be supporting them. This naturally gives rise to abuse of the power they have, as they are too immature in most cases to fully understand the responsibilities which they are expected to carry out. It is quite easy, therefore, and my enquiries have shown at least one example of this, that the senior class actively prevent junior class from allowing the Regular Force staff to find anything out. I believe that this system is basically a sound one in that it develops the espirit de corps of the Cadet School and allows for the development of potential of the senior class in leadership qualities. However, due to the lack of Regular Staff monitoring, there are occasions when this system fails, as it gets abused.
>
> I have a great deal of sympathy for the senior class NCOs, since they don't have either the maturity or the training required to carry out the tasks that are expected of them as platoon sergeants or section commanders. Perhaps a short course before they take up their rank would be an appropriate way of at least partially solving the problem. Notwithstanding this, the majority of the senior class cadets this year impressed me with their conscientious attitude and moderate approach to the junior class. They put in more hours probably than anyone, receive no extra pay, and the only rewards are a few rather minor additional privileges and prestige for a job well done.

[141] Of the remaining witnesses, only one, , said anything of any real moment concerning harassment. He told the Court:

> I have no actual knowledge of harassment within the last 18 months. However, prior to this, the Military Police had an active involvement with the cadets, in so much as the result of complaints and enquiries we had occasion to search the barracks and, as such, had established a relationship with the cadets that made us aware that such incidents have occurred. Recently, we have not been called to the Cadet School to conduct any searches or investigations, and as such, have had virtually no contact with

the cadets. I believe that, in the past, we have been of assistance to the Cadet School in so much as searches we did conduct revealed minor offences which were referred to the School Staff. The searches, I believe, were a deterrent to the cadets to keep anything unlawful in their wardrobes as they were not aware of when or where a search would be conducted by the Military Police. During this time, we would have searched virtually every cadet's property two or three times a year. It is conceivable that, had the same procedures been followed, then the bullet such as was in cupboard would have been discovered, or certainly would not have been left in his cupboard for such a long time.

C. Issues raised by the Bain Family [the family]

[142] They are essentially:

1. should have been charged with manslaughter.

2. There was collusion between the Army and Police resulting in being charged with carelessly discharging a firearm causing death rather than manslaughter.

3. The Court sentence passed on was meaningless.

4. There was no formal Court of Inquiry.

5. , Chairman of the Court of Inquiry, was pressured to go easy on .

6. Despite the Court of Inquiry's recommendation be charged with a number of offences, the Army took no such action against him.

7. The Army failed to adequately supervise the behaviour of cadets in their barracks.

8. The Army failed to adequately supervise the use and handling of ammunition on the firing range.

9. The Army gave too much unpoliced authority over junior cadets.

10. Neither the Army nor the Police spoke to the family about the charges, nor did either advise them of when was to appear in Court. Court appearance was "conveniently" held on the same day as Bain's funeral.

11. The Army misinformed the family of where Bain had died.

12. The Army took at least one photograph of Bain lying dead on the floor in his barracks. This photograph was subsequently used by the Army in its training programmes, unbeknown to the family and without their permission.

13. The family has been given a general run-around by the Army and the Police for the past 22 years.

[143] In considering these concerns of the family, I have taken into account:

[a] The evidence before the Court of Inquiry, the Court's reasoning and its conclusions.

[b] The comments thereon of senior Army officers, including (ret'd), (ret'd) and (ret'd).

[c] Newspaper accounts of appearances in Court and the conduct of the proceedings.

[d] Correspondence subsequent to Bain's death between the Army, the Police, the family or its representatives.

[e] Material received by your office or by myself since this inquiry was set up.

[f] Matters raised by the Bain family.

[144] Besides speaking with the family, I have interviewed specifically on these issues:

[a] (ret'd), former Cadet (ret'd), (ret'd), (ret'd), (ret'd), (ret'd), (ret'd), (ret'd), (ret'd), (ret'd), (ret'd), (ret'd).

[b] Former Commissioner of Police (ret'd), (ret'd), (ret'd), (ret'd) and (ret'd).

[c] Many former cadets and Regular Force instructors.

[d] .

[145] I have also considered the report of on matters raised and seen statements from persons he or his staff interviewed in the course of their inquiries.

D. The individual issues

(1) The charge brought against

[146] I find the family's contention established. I am satisfied should have been charged with manslaughter. My reasons for so finding are as follows:

[a] Manslaughter is the killing of a person by another by an unlawful act or by a failure to carry out a duty imposed by law, or a combination of both. A person in charge of a rifle is bound to exercise due care in the handling of it. Furthermore, it is an unlawful act to do what did, namely point a loaded rifle at Bain and pull the trigger. The evidence is clear he did just that. Although considered a charge of murder, no-one has seriously suggested had what lawyers call a murderous intent at the time he pulled the trigger and killed Bain. Proof of any such intention is not an element which has to be established on a charge of manslaughter. The evidence of fellow cadets, and his own acknowledgment, show decision to pull the trigger did not result from any action which could properly be described as accidental or unintentional. This was not a case of a rifle discharging while it was being cleaned or because it was knocked in some manner. It was discharged because deliberately pulled the trigger when the rifle was pointed at Bain. Whether this happened when was fooling about or not is irrelevant.

[b] was charged under the Arms Act with carelessly using a firearm causing death. The maximum penalty for such offence in 1981 was three months' imprisonment. The then maximum penalty for manslaughter was life imprisonment. The Arms Act provision was intended to cover cases where a death occurred in circumstances where the degree of culpability or criminality was slight. Such was not the position here. As a senior cadet, was well aware of the dangers associated with the mishandling of a rifle and ammunition.

His actions, in my view, showed a total disregard for the safety of human life.

[c] All Police officers who attended the barracks considered should have been charged with manslaughter. Likewise all military personnel. has told me he and the other members of the Court of Inquiry were shocked when they heard the nature of the charge brought against . He tells me the members had no doubt the charge should have been one of manslaughter. The decision was not, of course, theirs to make. The matter had been taken over by the Police. counsel, , acknowledges would have had difficulty in successfully defending a charge of manslaughter.

[147] I would have thought had a charge of manslaughter been laid, the aggravating features of conduct were such that on conviction he would in 1981 have received a sentence of between three to four years' imprisonment.

(2) The collusion claim

[148] The family are adamant was not charged with manslaughter because senior officers in the Army and the Police decided the only charge to be brought was one under the Arms Act. They contend the reason for doing so was to keep a lid on goings-on in the cadets' barracks and a lack of discipline, both there and on the range. They contend if the detailed circumstances surrounding Bain's death had been made public, the image of the Cadet School would have suffered irreparable damage.

[149] Having interviewed members of the family, I am satisfied these beliefs are genuinely held by them. I am also satisfied they hold understandably strong feelings of grief and frustration arising from their inability to obtain what they consider was information concerning Bain's death to which they feel they were entitled.

[150] I have considered their contentions. I have carefully evaluated the material made available to me and what I have been told at interviews.

[151] I find the family's contention is not established. I am satisfied there was no collusion between the Army and the Police, or any members of either force, on what charge Read should face.

[152] My reasons for so determining are:

[a] Bain died at approximately 9.30 pm. By the time the Police had arrived at the Camp, Army headquarters had been notified by the Camp of his death. Exactly when the first Police reached the scene is uncertain. They were certainly there by 10 pm. The only Police officer who attended with authority to decide what charge should be considered was . It is likewise uncertain exactly when he arrived, but I am satisfied he was there before 11.30 pm. He was told by an MP on his arrival a boy had been shot when cleaning his rifle. After considering the situation, he felt a charge of manslaughter was the proper charge to bring. This was a view shared – as far as I can determine – by all other Police officers at the scene. reached this conclusion on the basis of carelessly handling his rifle and pointing it at Bain, rather than pointing it and then deliberately pulling the trigger.

realised he would require further Police personnel to carry out a full investigation into the circumstances of Bain's death. Wanganui was telephoned for this to be arranged. was rung back by his superior officer, . outlined the circumstances of the shooting, as he then knew them, to . He told he considered the appropriate charge was manslaughter. This would have been on the basis of carelessly handling his rifle.

disagreed with . He considered the circumstances justified no more than a charge of careless use of a firearm causing death. He directed to arrest on such a charge.

was extremely annoyed. He felt was wrong. He could not, however, override instructions, being his senior officer. He subsequently arrested on the charge of careless use of a firearm causing death.

The instruction resulted in the Police investigation being downgraded.

cannot now recall the exact reasons gave for his decision not to charge with manslaughter. He confirms, however, there was never any suggestion had received instructions, either from the Army or senior Police officers, to lay

the lesser charge. is adamant it was own decision.

also says would never have countenanced any interference by either the Army or by a senior Police officer in an investigation of this nature.

[b] Exactly when spoke to is uncertain. For the reasons I have given earlier, I accept the conversation took place before left the Camp and before was arrested. Whatever time it was, there is no evidence whatsoever received a direction from any person, either in the Army or in the Police, over the nature of the charge to be laid. had authority to determine the nature of the charge and was not required to seek prior approval from his then Area Commander. This is confirmed by former Commissioner of Police, , and the then Area Commander, .

[c] has no direct recall of matters surrounding the shooting. He thinks he was first told of it late on the evening of the 13th. He was rung at home. He cannot now recall who rang him or the exact time of the call. He thinks it could have been , or the senior sergeant at the Taihape Police Station. An entry in his personal diary for the 13th reads:

> Notified of shooting of Army cadet by another cadet accidentally at Waiouru. Boy died. Other arrested for careless use of firearm.

This is the final entry in his diary for the 13th. The time of the call is not noted. Initially thought he had received the call at about 7 pm on the 13th. Clearly that cannot be correct because Bain died at approximately 9.30 pm and was not arrested until the early hours of the 14th. accepts he would have made this entry in his diary on the 14th. Not necessarily at the time he received the call. This, I think, is probably the correct sequence. I would certainly have expected a District Commander such as to have been told relatively quickly of a shooting incident in his command area and the outcome of any investigation.

[d] diary also records telephoned him at 7.30 am on the 14th. The entry reads:

rang 7.30 am re details of Army cadet killed by another cadet by rifle shot yesterday. Looks accidental though careless.

confirms it is probable would have gone through the evidence of what had happened with him so as he could satisfy himself action taken was appropriate to the situation. He has told me he would have expected to have had at that time statements from witnesses. I do not think, in fact, had any such statements at that time. I am satisfied was then acting solely on what he had been told by .

[e] On 24 April, wrote to the Bain family solicitors as follows:

> Receipt is acknowledged of your letter 16 April 1981 concerning the late Grant Donald BAIN.
>
> I consider it inappropriate to define or refer to all of the factors that were considered when a decision was made over the charge preferred against . However, I attach a copy of a newspaper report pertaining to the matter, which is self-explanatory.
>
> It will no doubt be obvious to you that the main issue was the degree of culpability involved in the actions of the offender at the time.

This letter was in response to concerns raised by Mr Bain Senior about the nature of the charge brought against and the circumstances surrounding his son's death.

[f] I questioned about this letter:

> **Justice Morris:** Interestingly enough, that is the first diary, contemporary diary we have. So I accept entirely what you say there. You will recall that subsequent to this there was a lot of correspondence, some addressed to the Police, some addressed to the Army, by the family of the dead boy, and apparently at one stage or other their solicitors wrote to you, I think - - -
>
> : They wrote to me.
>
> **Justice Morris:** - - - and you wrote back this letter here of the 24th of April. I don't know whether you've seen that recently. Just cast your eye over that.
>
> : Yes. The detective inspector or detective superintendent from Christchurch did send me a copy of that, yes.

Justice Morris: Now, before writing that letter did you have a look at the file?

: I cannot say, Sir. I surmise I would have done.

Justice Morris: You would, wouldn't you, before you wrote a letter to solicitors acting.

: Yes, you would have to be acquainted with what you're talking about. But, as I say, Sir, it was one of these things - - this whole issue to me is this: that I have no instant recall on any particular matters in relation to it. I remember that there was an incident of sorts but as far as the recall of that, considering the fervour of 1981, I'm afraid that I have no direct recall of the matters.

Justice Morris: Before you wrote this letter you went and got a copy of the newspaper clipping? That would have been probably on the file.

: Yes, I suppose it would have been.

Justice Morris: So you probably did get the file. I mean, surely before you wrote to the family of this boy a letter like this you would have checked out that there was nothing in what they were saying, or very little.

: I would surmise that I would have been acquainted with the file.

Justice Morris: Right. Can you tell me this. Were there statements on the file from the witnesses?

: I surmise there would be, Sir, but I - - -

Justice Morris: Just let's follow this through.

: The file would contain statements.

Justice Morris: If it contained statements and you read them all and you, having read them, considered that the appropriate charge was the one that had been laid. Am I correct, from reading that letter?

: In conjunction with the file, certainly I would have had a discussion with on that and we would have looked at all aspects of the issue and on that I would have based my reply.

Justice Morris: So you would have been happy with the charge that was laid?

: Following discussions which would have undoubtedly taken place between us and, as I say, the interaction of the investigating officer and the person - - -

Justice Morris: You would have been happy with the charge? I mean, you don't recall sort of saying to , what the devil did we lay that charge for?

: As I say, I have no recall on that at all, Sir.

Justice Morris: But just being frank. If you looked at the file and the statements and you came to the conclusion it should have been manslaughter, you'd have said so to at least ?

: Certainly would have.

Justice Morris: And you wouldn't have covered it up by writing a letter saying everything was hunky dory?

: Goodness gracious me.

Justice Morris: That be right?

: It's a Police file, Sir, and it's open to - - -

Justice Morris: Yes, quite. I'm just wondering how you could say the charge was correct when the evidence that I have – and I can show you from the Court of Inquiry – shows that this boy pointed the rifle, the loaded rifle, at the dead boy and then deliberately pulled the trigger. Now, it's not a scrap or anything else, but pointed a loaded rifle at this other boy and then deliberately pulled the trigger. I have that evidence before me. And it's taken from a fellow cadet, and it's acknowledged in his evidence by . Now, I'm just trying to puzzle how it was that you with all your years of experience felt that did not justify a charge of manslaughter. Can you help me please?

: I find it hard to help you, Sir, because I have, as I said right from the outset, I have little or no recall of this matter.

Justice Morris: Yes, but what I'm saying to you is that you tell me that in all probability you had looked at the file, you had looked at the statements on the file, and you had spoken to Butler. Am I being fair about it?

: The ways of doing it at times, Sir, might not have been a - - it might have been handled slightly differently to that. It might have been the file might have been there, we looked through the - - might have gone through - - might have gone through - - as I say, this is what irks me. The fact is this, that whereas I can recall other particular incidents around about that time and subsequent to that time, I have no particular recall of this particular case, and so it's purely conjecture on my part, Sir.

Justice Morris: Well, I find that, with respect, a little difficult to follow. Because you write this letter – and there's no argument about that?

: No, no.

Justice Morris: And as a competent officer, before you write the letter you'd obviously look at the file and consider the material on it. I mean there's no point looking at it unless you consider it, right? Now, on that file, if I accept what you tell me, there were statements. Now, if the investigation was carried out adequately the statements would have been from

the cadets who were there at the time of the shooting and would also have contained the statements they gave to the Court of Inquiry which was completed and taken before the charge was finally dealt with in the District Court. So you would have had all that material in front of you and you would have also had the benefit of speaking to . Right? All I'm asking you is this. Can you tell me how you would justify laying a charge of carelessly discharging a firearm causing death when the evidence is that the rifle was pointed at the dead boy and the trigger was pulled and that was the second incident that this had occurred on during the day. I find it very hard to follow, . I'm just trying to see what possible reasoning there was behind it.

: I find that difficult too, Sir. But it would be - - I can only expect that it would be a sort of a culmination of an explanation which was supplied by plus the facts as recorded, Sir. It's just unfortunate to me, Sir, that we haven't got the Police file here.

Justice Morris: That would be the first thing we'd like to have seen! I'm just wondering - - another possible explanation may be – and I'm postulating this – is that didn't get a full picture from . Can you conceive of that happening?

: I don't think and actually hit it off too well together, Sir. There was a wee bit of animosity there.

Justice Morris: Just talking to me here this morning, it seems a very very quick decision to charge the careless use and then allow that to sit in the Court for four or five days and continue with it instead of upping the charge. From what I've told you, you'd have to agree with that, wouldn't you?

: If the facts are as related, Sir, I would have expected that to be done. And again I come back and say it's completely foreign to the way worked and I'm sure that or would - - -

Justice Morris: I have had nothing but high praise for . That's what makes it even stranger. And, of course, putting it bluntly to you, man to man, that's what the family's saying, that something or somebody got to for him to make the decision that he did to keep it at the lower charge.

: I find that hard to believe too, Sir, knowing as I do. And also the fact is this: that he had really, he had little or nothing to do with the Waiouru Camp in the normal course of events. It wasn't a fact that he socialised at the Waiouru Camp – to my knowledge. I can't recollect that to any great - -

Justice Morris: Alright. I think that's just about it as far as I'm concerned. would have had the authority to select the charge?

: Absolutely, Sir, absolutely.

Justice Morris: And it would have taken something really out of the ordinary for you to override him and sort of say, look, we should be doing this or that?

: It would be an unusual situation because the thoroughness of the man, particularly on evidential points of view, he was unique. He was exceptionally thorough and demanding of his staff in that regard. And he had been a prosecutor for some time as well.

I am satisfied , relying on experience, did little more on the 14th than [agree to] decision to prosecute on the lesser charge. The matter does not appear to have been referred to him again until after had been convicted and sentenced.

[g] The Military Police played no part whatsoever in the selection of the charge would face. recalls when he got to the barracks he briefed his staff with particular emphasis on preserving the scene. This was standard procedure. He also checked to see who had been in the barracks and when. He recalled a photographer from the RNZAF, who was at Waiouru, came and took photographs of the scene.

[h] recalls some discussion with about the nature of the charge would face, whether it should be careless use of a firearm causing death, manslaughter or murder. Discussions of this nature between, in effect, two professional policemen is understandable. Frankly, I would have thought it strange if no such discussion took place. feels the discussion probably took place at the Camp before took to Taihape. accepts he spoke to , probably along the above lines, but he is uncertain where such discussion took place. With the passage of time, this is not surprising.

Significantly, is adamant when he left his understanding was the charge against would be manslaughter.

[i] The family have suggested the friendship between and may have influenced the decision not to charge with manslaughter. There is no foundation whatsoever for this suggestion. Both men accept they became friendly when

was stationed at Waiouru. It would be strange if they had not. Their working paths must have crossed regularly.

, however, absolutely refutes any suggestion he tried to influence , or in fact, could have influenced . He is also adamant that if he had had his way, he would have had charged with manslaughter, if not murder. He puts it very bluntly, and says if he had attempted to influence the laying of the charges would have told him "to go and get stuffed".

[j] I accept what says. I am satisfied he felt the minimum charge should be manslaughter. I gained the clear impression there had at times been slight friction between the Military Police and the civil authorities as to the nature of charges which should be laid. The military clearly feel the Police did not deal firmly enough with some charges involving firearms and the like. I accept in no way did attempt to influence . The decision was simply not his to make.

[k] confirms no pressure at all was put on him from or, indeed, any other Army officer. As I have said, he felt the charge should be manslaughter and he was overruled by . The only possible criticism of is when he spoke to his investigation had not been as full and as detailed as it could have been. More time and investigation would certainly have shown a clearer picture of what had occurred. No cadet to whom I have spoken recalls speaking to a Police officer at length about events of the evening. I suspect a good deal of what knew when he spoke to had come from members of the Military Police who had spoken to the cadets who could assist with inquiries.

[l] There is no evidence to support the family's contention that an un-named and unidentified senior officer or officers in both services arranged to lay the charge of carelessly using a firearm causing death to protect the image of the Cadet School. It must have been clear to everyone concerned whatever charge was laid the shooting would receive publicity. It, in fact, did. Quite considerable publicity. There is before me simply nothing to support the claim senior officers from both these services conspired together to, in effect, pervert the course of justice by putting pressure on persons in the Police responsible for the bringing of charges and the swearing

of the appropriate information. Unfortunately, it is a claim easy to make and particularly difficult, with the passage of time, to refute.

[m] I asked his opinion of . He said:

> I found him an extremely capable Police officer. He was very well experienced. He entered the Police around about 1951, I would say, round about that time. He served in most aspects. I can remember him being the head watchhouse keeper in Wellington way back in those early days, a very competent officer. A chappie who had leadership abilities, had been a schoolteacher, was intelligent, perceptive, and a good knowledge of man management matters. There are other qualities I could speak about with because I knew him probably from the time that he entered the Police.

[n] was, of course, bound to carry out directions from . was his senior officer. In 1981, the Police had the responsibility of determining what charge to bring and against whom. The position is no different today. In 1981, it was not mandatory Police practice to advise relatives of a deceased the nature of charges they were contemplating laying. Some officers did, some officers did not.

[o] has told me he has no recollection of ever being approached about the Bain shooting. Such a matter would be the overall responsibility of the Area Commander – then . Only in exceptional circumstances would a homicide inquiry be referred to him, or his then 2IC, .

[p] He confirms was a very competent officer and would have had authority to decide what charge should be laid against . told me:

> **Justice Morris:** Would it be likely that you would be contacted on a matter such as this?
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> **:** The only reason they would contact my Headquarters, which would have been or myself, is wanting manpower or expertise, fingerprint people, something additional that they haven't got there readily available. We would provide it. Now, if it was a sticky manslaughter or homicide, I used to go to them when I was head of CIB, and I think would go up too, but he can't have known about it.
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> **Justice Morris:** We've been told by the detective sergeant who went to the scene and who, I think, was in charge of the Taihape Station, that when he decided it should be a

officers. He did not name the senior officers, but clearly he was referring to and .

[156] After hearing submissions, ruled the plea of guilty by having been taken on the Arms charge he could not substitute a charge of manslaughter. I do not feel it necessary to decide the correctness or otherwise of such ruling.

[157] The summary given to detailed how had taken a .223 calibre M16 rifle round from the firing range in defiance of Army regulations and search procedures intended to prevent just such actions. He had then drawn the bullet from the case and extracted the charge leaving only the primer in place. He had kept this bullet.

[158] The summary further set out on a later occasion had taken a second bullet which had been jammed in a rifle and the bullet forced back into its case. It said he had done nothing with this bullet. It detailed how on Friday 13 February decided to scare a fellow cadet with his rifle and loaded the first bullet. He then chased this other cadet, pointed the rifle at him and fired the round with only the primer in place. There was little sound and no real harm done. This, of course, was referring to the earlier incident involving Cadet C.

[159] The summary further detailed how had found his tape cassettes disturbed and blamed it on Bain. He then decided to repeat the earlier joke and loaded the second round into the rifle. It stated seemed genuinely to have overlooked at that point that this round had not had the charge extracted, the bullet having been pushed back into the case reinforced the impression it was a dud. It detailed how pointed the rifle at Bain and pulled the trigger, whereupon the bullet hit Bain on one side of the jaw and passed through his neck, killing him.

[160] Whatever the Police may have known of the details of the shooting when was arrested, clearly by the time the summary for the Court was prepared, which would have been some time prior to 18 February, they were aware of the more significant features surrounding the actual shooting. These features are highlighted in the evidence given before the Court of Inquiry. They are the features which, in my view, make it a clear case a charge of manslaughter should have been brought against . This could and should have been done before the case was called in Court on 18 February – and certainly before pleaded guilty to the Arms Act charge. The Police regularly "up" charges from the original charge on which a

person has been arrested when their inquiries are completed and before final pleas are entered. Had this course been followed, the situation which arose in Court on 18 February would have been avoided. would have faced what, in my opinion, was the appropriate charge, the outcome of which would have been determined either by a Judge, or Judge and jury, in due course.

[161] Understandably, comments received considerable publicity. On 19 February felt it necessary to issue a public statement. In the statement, published by the *Wanganui Herald*, he said:

> In the view of the police, the appropriate charge was laid. There was nothing to suggest the offender had deliberately fired a rifle at the deceased knowing then that a live round was in it. The degree of culpability is the main issue here and the circumstances indicated that the appropriate charge was laid under the relevant Act.

said the charges were laid on his instructions, "naturally after careful consideration of all factors", and the direction had been later confirmed by .

[162] I have already detailed recollection of his discussions with . is adamant would not have made a decision without sighting statements of witnesses, etcetera. I am satisfied, however, on this occasion he did just that. At the latest, the instruction to would have been given at approximately 4.30 am. I have already given my reasons for thinking the instruction was in fact given some time earlier. There is no evidence to suggest written statements had been obtained by then. On this occasion has relied on what he was told by . I suspect he was not told what subsequently accepted, namely, he ( ) had pointed a loaded rifle at Bain and pulled the trigger.

[163] I find it difficult to understand comments as reported on the 19th. How he considered, after a careful consideration of all factors, the charge under the Arms Act properly reflected degree of culpability is beyond me. Nor can I understand how , if indeed he was made fully conversant with the facts, agreed with the choice of charge. has told me he would have considered the file and statements thereon. He accepts if he had known had pointed a rifle at Bain and then pulled the trigger, the charge should have been manslaughter.

[164] I can understand the initial charging of under the Arms Act while Police inquiries continued. I cannot, however, understand why, once the details outlined in the Police summary became known, the appropriate charge of

manslaughter was not laid. As I have said earlier, the charge of manslaughter did not require proof had deliberately fired the rifle at Bain knowing then that a live round was in it. decision to continue only with the Arms charge, I regret to say, was an error of judgment on his part. In fairness to , it may be when he spoke to , was not made fully aware of the details of the shooting as subsequently disclosed to the Court of Inquiry, and particularly admitted actions.

[165] I can understand the family's concern. Quite rightly, they feel should have been charged with manslaughter. Quite correctly, they consider that if this had been done the public would have learned in much greater detail just how and why Bain died. But it is a quantum leap to conclude because , and possibly also , made this error of judgment there was collusion between the Police and the Army to ensure a lesser charge was laid against . There is before me nothing in any shape or form to justify such a conclusion.

[166] It is clear from the inquiries I have made, something of a rivalry existed between the Military Police and the New Zealand Police at this time in Waiouru. I have serious doubts whether either was very happy to help the other in their investigation and this has resulted, I think, in the Police inquiry being done in far less depth than it should have been. I consider the proper course would have been for to have initially been arrested on either an arms charge or a charge of manslaughter, the charge to be regarded as a holding charge until a full investigation had been carried out. Regrettably, this was not done. The Bain family is entitled to feel very aggrieved over that failure.

(3) The sentence

[167] In passing sentence on , stated:

> All I can require this lad to do is put something back into the community as in happier circumstances the cadet would have done. Prison at 17 would not serve any purpose. You should resolve to give more than your share to the community for the rest of your life to make up for the loss of Cadet Grant Bain.

[168] It is plain the Judge felt should have been charged with manslaughter. When sentencing on the Arms Act charge, however, he most certainly was not entitled to impose on the sentence he would have imposed on him had he been charged with manslaughter. The Judge was bound to act in accordance with proper sentencing principles. He clearly did just that.

was a 17 year old and, so far as I am aware, had no previous criminal convictions of any kind. There is no ground on which the Judge can be criticised for the sentence he imposed.

[169] I have been told may not have served the 200 hours of community service directed by the Court and part of his service time was spent working on the Waiouru golf course, which is a community facility owned by the Army. I have confirmed did work there. The working out of his sentence was the responsibility of the Justice Department. It was not a matter over which the Army or the Police had any control and it is not a matter I can, at this stage, investigate.

(4) The Court of Inquiry

[170] The Court of Inquiry was authorised by s 137 of the Army Act 1950. Its members were , and . All statutory requirements were followed. Witnesses gave their evidence on oath. The oath was administered by . The evidence was recorded. Each witness subsequently signed the transcript of their evidence as being correct. The transcripts of the cadets I have already set out in paragraphs [123] to [141] of this report. I am completely satisfied the hearings were conducted properly and in accordance with all statutory requirements.

[171] The family's contentions, as best I can assess them, are:

[a] There was no Court of Inquiry; or

[b] If there was a Court of Inquiry –

[i] Cadets were not sworn.

[ii] Cadets signed their statements of evidence without regard to their accuracy because they were ordered to do so.

[iii] The signed statements contained inaccuracies and/or omissions.

[iv] A number of cadets were sedated after the shooting.

[172] I have interviewed , and . I have also interviewed seven cadets who are recorded as giving evidence before the Court of Inquiry. It is very plain to me Messrs , and took all

possible steps to ensure any cadet witnesses were not overawed or threatened by having to appear before them. All three men realised the shooting of Cadet Bain had been a traumatic event and some cadets may well have been frightened of "ratting on" senior cadets. This latter comment is particularly relevant to the questions asked concerning the striking of junior cadets by senior cadets.

[173] A number of the cadets have told me they now feel, because of the informality of the hearings, they were not appearing before a Court of Inquiry. For example, Cadet W said:

> **Cadet W:** No. We did an interview and wrote out a statement but we never went to a formal military Court of Inquiry.
>
> ...
>
> **Justice Morris:** They've told me – and it seems to be the position – that this was the statement that you made in front of the Inquiry.
>
> **Cadet W:** Well, I never went into what I call a formal Inquiry. I never went - - -
>
> **Justice Morris:** But you went to an inquiry didn't you?
>
> **Cadet W:** Well, I might have sat down like a room now with three officers and they took evidence but I never actually - - -
>
> ...
>
> **Cadet W:** I remember talking to three officers and taking a statement.
>
> **Justice Morris:** And did you give them a statement?
>
> **Cadet W:** Mmmm. Because I signed it at the end of it.
>
> **Justice Morris:** You see your signature on that, don't you?
>
> **Cadet W:** Mmmm.
>
> **Justice Morris:** When did you sign that?
>
> **Cadet W:** I couldn't remember. It wasn't long after Bain got killed.
>
> **Justice Morris:** It's obviously your signature and what you said. Do you accept that? Well, you would have read it before you signed it?
>
> **Cadet W:** Mmmm.

Cadet M said:

> **Cadet M:** On the night of the incident itself I became quite - - -
>
> **Justice Morris:** Upset?
>
> **Cadet M:** Upset, yes. Emotionally upset. It was quite a fright to me. And therefore some of my memory may not be very accurate, but I was, I recall, after the fire station I went to the MIR and I was held - - not held - - I was made comfortable at the MIR in a bed and I spent the night there. I saw no other people other than orderlies that looked after my condition until the following morning when one of the other people mentioned in the report,

our platoon sergeant, picked me up and was very comforting, very supportive of me, dropped me back at the barracks. He would have had a very clear understanding of my involvement.

...

Cadet M: I don't have a very clear memory of the interview and the faces that were in it, as such. I more remember it as a room, an office style room, tables laid out like this. I thought there was a couple of gentlemen facing me, like, one maybe beside you and someone off to one side. I don't recall the person off to one side particularly well, but I recall was taking some sort of notes, and the two gentlemen interviewed me.

Justice Morris: There was also a stenographer, because this was being taken down as you gave it.

Cadet M: Right.

Justice Morris: Do you remember that?

Cadet M: That's what I say, I do recall someone to one side of me taking notes.

Justice Morris: Okay. And my understanding, or what I've been told anyway – and it seems to be so – is that once this was typed - - this had to be typed up - - -

Cadet M: Sure.

Justice Morris: - - - and then it was subsequently shown to you.

Cadet M: It would require my signature as correct.

Justice Morris: You checked it and signed it.

Cadet M: Although I don't have absolute memory of every moment, I don't dispute that that would have happened, yes.

Justice Morris: Okay. So, I can take it, basically, this is what you told them?

Cadet M: That is exactly as I recall.

Justice Morris: And that would be your best recollection at the time?

Cadet M: Obviously now it may well be prompted by that but, again, I don't disagree with any recollection at the time. I wouldn't be able to put out of my memory on to paper that amount of detail.

Justice Morris: Tell me this. You said something about you thought there was something missing from here. Remember saying that at the beginning, or did I mishear you?

Cadet M: When I'd spoken to the Bains and himself, the part that I thought was different was the fact that initially when the Bains contacted me they asked me whether or not there had been a Court of Inquiry, and by the word "Court" they were trying to talk about was it a courtroom, and I said, no, to my recollection there was no courtroom, it didn't look like it does in the TV movies where there's lots of people around and it's very formal.

Justice Morris: But it certainly was an Inquiry!

Cadet M: It definitely was an Inquiry. It definitely had the formality of Inquiry as well. The people far outranked me, in both standing in the military and their age, obviously, and it was a formal thing. People sat around at tables - - -

Justice Morris: It wasn't a Mickey Mouse outfit was it?

Cadet M: Oh, no.

Cadet C said:

Justice Morris: Now, when did you first know you were going before the Inquiry, the Army Inquiry?

Cadet C: Probably not long before it actually happened. I have a very vague memory of it and what I remember of it, it seemed more like an orderly room than an Inquiry. I - - we were marched in in front of, I believe, three senior military - - -

Justice Morris: That's right. There was a Major, a Captain and a Warrant Officer.

Cadet C: Oh, everyone was Sir back then. But, yeah, they had the lanyards and all that sort of carry on. I did have a question of whether I was sworn on oath and I have no recollection of that.

...

Justice Morris: Alright. Now, can you tell me this. When you were spoken to by the MPs was there any pressure put on you?

Cadet C: No. I think it was very much more just finding out what happened. In saying that, it was late at night, we were, you know, quite high strung at the time.

Justice Morris: I appreciate that. No problems with that. Now, when you were in front of the three man tribunal, was there any pressure put on you there?

Cadet C: To give the questions an answer? No, I don't believe so. It was more answer the question truthfully and accurately.

Justice Morris: And you did?

Cadet C: Yeah, yeah.

...

Justice Morris: The other thing is this: it was your rifle which was the rifle used by when he killed Bain. You accept that?

Cadet C: Yep. That's how it happened. Actually, the account that's in there of the actual shooting incident I believe is quite accurate. Yeah.

Cadet OR said:

Justice Morris: Here's the evidence you gave at the Inquiry. I got this from the Bains. I got a copy from the Army with restricted use of it, but the Bains had a copy so they gave me a copy and I've used it. That's it there. I imagine it's accurate. Would you just check that. You probably can't

remember exactly what you said now. The underlining, I think, is one of the Bain family's underlining. It's certainly not been done by me.

Cadet OR: Yep. I think this is pretty much - - this is the same documentation as what I - -

Justice Morris: Pretty much what you said?

Cadet OR: Yep.

Justice Morris: Alright. Now, is there anything you'd like to add to it?

Cadet OR: To be quite honest, no. I sort of said that to . I said I consider that is my factual statement. It was present at the time, so. After reading through it, I said, yep, that's about it.

...

Justice Morris: Now, just coming to the Inquiry itself. There was a , who was the Chairman. There was a Major, a Captain and a Warrant Officer 2.

Cadet OR: Mmm.

Justice Morris: Do you remember them?

Cadet OR: No. And this is my point of conjecture, whereas I – even 20 years on – cannot recall fronting a Court of Inquiry.

Justice Morris: Right. Well, this evidence here, do you remember going in front of somebody and giving this evidence?

Cadet OR: It was more like a group of us were put into like our lounge room, our tea room in the barracks, and we were asked - - or we were asked questions individually and then those statements were taken, probably at our Cadet School headquarters.

Justice Morris: That's with your MPs?

Cadet OR: The MPs or whomever. That - - I'm a little bit grey in that area, but I'm adamant that that evidence that was in that report was not said in front of three high ranking Regular Force staff.

Justice Morris: Why do you say that?

Cadet OR: I don't know.

...

Cadet OR: Yeah, but I cannot recall being in front of a Court of Inquiry. I mean, like, if you sitting down at a table across from you, from somebody, just in an office.

...

Justice Morris: The procedure that's been described to me is that one person, one of the three members of the Court, would administer the oath to you and then you'd give your evidence, it was recorded, as you say, taken down, and then some time later, when it was transcribed, because it had to be transcribed obviously - - -

Cadet OR: Transcribed, yes.

Justice Morris: - - - you signed it, as you have here.

Cadet OR: Yes, yep.

Justice Morris: Remember that?

Cadet OR: I don't argue against the signature on the form, but what I argue against is that I cannot recall - - and I've still got a fairly good strong recollection going back 20 years on that - - is actually going into a formal - - marching into a Court of Inquiry, which I know what they existed of even at that early stage, and fronting a board of three. Now, into a formal sort of question and answer, or sit down period of time where they say questions were asked me, that is pretty much more clear in my mind. Whoever it was that conducted it with me, I'm not too sure. Of those three parties. But I would have taken an oath.

Justice Morris: Once it was transcribed, you signed it?

Cadet OR: Yes.

Justice Morris: Okay. Let's just see where we go to from there. Can you remember how much time passed between you giving your evidence - -

Cadet OR: For the shooting?

Justice Morris: It's all been taken down in shorthand.

Cadet OR: Right.

Justice Morris: And then it had to be transcribed. So there was a gap. Remember that?

Cadet OR: Yes.

Cadet S said:

Cadet S: I can remember things of interest, of note, things that stuck out. A lot of things. You may ask me do I remember the Court of Inquiry. I don't.

Justice Morris: Not at all?

Cadet S: No. I don't remember. I think there was a question session but I'm pretty sure it was a smaller, a smaller type session where I was - - -

Justice Morris: With a number of others?

Cadet S: Well, there only would have been one or two people in the room. That's the picture I've got. I haven't got a picture of being marched in and swearing on the bible in a room full of people with - - -

Justice Morris: I don't think there was a room full of people, but there were three officers.

Cadet S: There may have been.

[174] I am satisfied all cadet witnesses were spoken to before the hearing by either the Military Police, a senior NCO, or . They were spoken to almost immediately after the shooting, and certainly within a few hours of it. described the position in his evidence to the Court of Inquiry:

> After all this had happened, there was a lot of work involving issue of mattresses and blankets, and putting A Company cadets to bed on floors in

> B Company rooms and then closely monitoring the cadets as many of them were very upset. We did rounds of the barracks continuously until about 0200 hours. I had accompany me until approximately 0300 hours. The cadets who were particularly upset (apart from M and J, who I understood had been admitted to hospital) I gathered up and put in the Cadet RSM's room. These were cadets who were either sitting up on their beds wide-eyed or were sobbing on their pillows. Most of them came from 2 Platoon. There were a couple of senior class cadets who were also very upset. These were senior class cadets from other platoons. We simply sat around in the Cadet RSM's room talking, smoking cigarettes and drinking coffee until breakfast time. I thought it was preferable that they sat in a group and talked rather than remain on their own in the dark.

Cadet S said:

> **Cadet S:** They were looking after us as young fellows, I know that. They babied us for a wee while. They treated us pretty well. They treated us like teenagers, and that's all we were, 16 or something, I think it was.
>
> **Justice Morris:** You are about the fourth person to say that to me.
>
> **Cadet S:** And so I really think they tried to look after us, tried to give us the white glove treatment, and I think we moved on from there and we've all done pretty well because of that, I think. I mean, no-one's dwelled on it, no-one's - - -
>
> **Justice Morris:** Should never have happened.
>
> **Cadet S:** - - - had issues. It shouldn't have happened.

[175] I accept a number of the cadets were traumatised by the shooting. A number were sedated. Clearly none had experience of Court of Inquiry procedures. This is not surprising as they had not been in the Army for more than three or four weeks.

[176] There is no basis whatsoever to suggest pressure was brought to bear on them at any time. All cadets accept their signatures on the Inquiry record, which I have earlier set out. No cadet claims their signed statement contains an inaccurate description of events. Any claim the signed statements were inaccurate or omitted details was not verified.

[177] I am satisfied none of the allegations made are established or justified.

(5) Possible pressure on

[178] I reject this contention. My reasons for doing so are:

[a] I have spoken with . He received his orders on 14 February. The matters he was required to inquire into I have already set out in detail. Clearly he was not required to determine whether a charge of manslaughter or otherwise should have been laid against . This was a matter then in the hands of the Police.

[b] On receipt of his instructions he spoke to . He was told the Police were charging with an offence. was not told what offence and, in fact, did not find out until during the Inquiry. He was told "not to make it a witch hunt, not after anybody", or words to that effect. He took this to mean the Inquiry was to do a fair and impartial assessment of what had occurred. He certainly did not understand he was being asked to follow any particular agenda.

[c] denies any pressure was applied to him, as alleged by the family. He has told me he did not feel he was under any pressure to go easy on . Clearly, from the findings of the Court, it did not go easy on .

[d] I have spoken with . He accepts he spoke to . There is nothing unusual in this. He denies he put any pressure on . He accepts he drew attention to the fact it was not the Court of Inquiry's obligation or duty or task to investigate whether a charge of manslaughter should be laid against .

[e] I have spoken with and . They confirm no pressure whatsoever was put on either of them.

[f] All Court of Inquiry members heard of the charge laid against and were appalled it was not one of manslaughter.

(6) The Court of Inquiry recommendations

[179] I have earlier detailed the Court of Inquiry's recommendation as to what further charges should be brought against Read. In fact, as the family contend, the Army brought no charges against him, although he was discharged. As no court martial was heard, he could not be dishonourably discharged.

[180] conviction on the arms charge in the District Court would not have been a bar to the bringing of further charges, as recommended by the Court of Inquiry. Those charges could clearly have been established.

[181] I have earlier referred to the legal advice given to and on which he acted. While I can understand the basis for the late advice to , with all respect to , it would have been more appropriate to have brought the further charges and allowed matters to take their course.

(7) Failure to adequately supervise the behaviour of cadets in barracks

[182] I have already expressed my view that, in some years at least, due to the shortage of adequate numbers of Regular Force personnel, the barracks, particularly at night, were essentially run by senior cadets. Visits from either the orderly officer, the Company Commander or Regular Force NCOs in some years appear to have been very limited.

[183] Although it is impossible to state dogmatically if Regular Force officers and/or NCOs had exercised more supervision in the barracks Bain's death would have been avoided, I think it is fair to conclude if visits by Regular Force personnel had been more numerous the chances of any cadets handling a rifle as did would have been reduced. The chance of detection would have been increased and been a deterrent to any such behaviour.

[184] However, it would have been impracticable, and inconsistent with the School's training and aims, to have an officer or Regular Force NCO present on every occasion when cadets were preparing for inspection and cleaning firearms. There is no reliable evidence to support a contention cadets were in the habit of acting and handling their rifles as did. So far as I am aware, no other similar incident had ever previously occurred. Before Bain was shot, nothing had happened to suggest to the Army this type of incident could happen.

(8) Failure to adequately supervise the use and handling of ammunition on the firing range

[185] The family's contention is the Army well knew the importance of controlling activities on the range and ensuring no live rounds were removed from it. The Army accepts this. Regular Force NCOs were trained to act as range instructors. The family contends the Army was careless in relying upon cadets such as Read to

carry out duties on the range, clearly the proper responsibility of trained Regular Force personnel. They further contend an earlier practice adopted by the Military Police was to check the barracks without notice looking for such things as live rounds. Mr Murray Bain has told me this was the practice when he was a cadet some years prior to his brother's period in the Army.

[186] All cadets told the Court of Inquiry safety when handling firearms was stressed in training. A number of witnesses spoke of the controls exercised by staff during range practise. I refer specifically to the evidence of and .

[187] , who gave evidence to the Inquiry, was interviewed by me. I asked him about steps taken on the range because he had spoken about them at the Inquiry and I set out here his answers to a number of questions:

> **Justice Morris:** Could I come to the other problem, or problems. Read should not have had those rounds in his hut?
>
> : No.
>
> **Justice Morris:** He got them from times when he was at the range.
>
> : Well they were never checked. Because most soldiers do not steal rounds from the range.
>
> **Justice Morris:** But the reasons the checks are there are to ensure that they don't. Now, he's got by these checks.
>
> : Quite easily I would think.
>
> **Justice Morris:** Why do you say that?
>
> : Because they're really not checked.
>
> **Justice Morris:** Just enlarge a bit on that would you?
>
> : I know they're not checked.
>
> **Justice Morris:** Why?
>
> : When I was a second lieutenant and then a lieutenant, I spent a lot of time on the range. I was never ever checked, ever. I never stole any rounds either but I was never checked. I could have easily stolen rounds. You're never counted how many rounds you fire. You might fire 200 rounds, 300 rounds, a thousand rounds, in a day. No-one's counting them.
>
> **Justice Morris:** What you're saying is it would have been dead easy - - -
>
> : Dead easy to pocket them.
>
> **Justice Morris:** Did they ever find any in the huts, to your knowledge?
>
> : I used to do a barracks' search every week. I never ever found any rounds. But they could have been hidden up in the ceiling, or I don't know. I mean I found a whole lot of booze once and the reason I found it was I could see grubby fingerprints on the tiles where they'd lifted the tiles up, put their booze up in the ceiling. And if it hadn't been for the

> grubby fingerprints I never would have looked there. I don't know whose it was, I never did find out whose it was.
>
> If you look at the cadets, there's four of them there in Fiji *[indicates photograph]*. I mean they can secrete rounds of ammunition in all sorts of places on the uniforms that they're wearing.

[188] Many former cadets have described the range procedure followed when they were at the School. As in any situation where there are rules, strict application of the range rules depended on who was running the drill. Some cadets have described the checks as perfunctory at best. It is evident there was a possible flaw in the system which enterprising cadets seized upon to circumvent the rules of non-removal of ammunition from the range.

[189] A number of cadets, while referring to the actions taken before troops left the range, have made it very plain if a cadet wanted to smuggle a round from the range he could easily do so.

[190] Shortage of Regular Force staff has obviously resulted in second year cadets being involved on occasions in the checking procedures. This is clear from evidence before the Court of Inquiry. Neither nor the other senior cadets should have been given this responsibility. It placed them in a position where they could, if they wished, quite easily remove ammunition from the range.

[191] The Court of Inquiry found no failure as is essentially now alleged. It rejected claims he was not present at the range when some of the required warnings were given and determined he was well aware they applied to him.

[192] I have always been reluctant to differ from a Court which has heard witnesses and made rulings of credibility, particularly, as here, where the Court is adjudicating on matters in which it has expertise. In this case, however, I must do so. My reasons for doing so are:

[a] had attended the basic instructors' course and failed miserably. He was therefore unqualified to do the very task assigned to him on the range. This situation stemmed from a shortage of trained staff. Using non-qualified personnel such as carried the built-in risk of ammunition being wrongfully removed, as in fact was able to do on more than one occasion. The system should not have allowed this situation to arise.

[b] was able, at least on two occasions, to remove ammunition from the range and, of further concern, he was able to boast openly about what he had done.

[c] The evidence of , and various cadets, confirm the checks were often inadequate or not strictly enforced.

[193] I accept immediately no matter what checks were put in place, a determined person could probably successfully remove ammunition from the range. The only real safeguard would be to ensure if a cadet was caught removing ammunition extreme penalties would be imposed and all cadets were made aware of this. Senior Regular Force personnel should have been carrying out the duties of policing the system.

[194] I am told would have been acting under the supervision of a Regular Force NCO. A system where, in effect, a safety supervisor has to be supervised by a senior supervisor, who no doubt has already got his hands full with overall supervisory work, is far from an ideal situation and inspires me with no confidence in its effectiveness.

[195] I find this contention established.

(9) was given too much unpoliced authority over junior cadets

[196] It can now be seen, with the benefit of hindsight, the Army did give too much authority. It was "on to him", however, at the time of Bain's death. This is clear from the evidence before the Court of Inquiry. The problem facing the Army with , and with others of his ilk, was to obtain evidence to establish claims of misconduct which would stand up before a court martial or a civilian authority. As the evidence before the Court of Inquiry shows, and my inquiries also confirm, this was clearly no easy task. Cadets simply did not complain about mistreatment.

(10) Lack of communication with the Bain Family by either the Army or the Police

[197] Today there is a much closer relationship between prosecuting authorities, victims and their families than was the case in 1981. In not notifying the Bain family of the charges and steps being taken, both the Army and the Police were following the generally accepted practice in 1981.

[198] The family suggest sentencing date was deliberately picked to coincide with the date of Bain's burial, thus ensuring their absence from the sentencing. This suggestion is totally without substance. appeared for sentence on 18 February because he was remanded to so appear when he came before the Justices of the Peace on the 14th. The Court in making this remand would have had no idea when Bain was to be buried. The 18th was clearly set as the date for to appear as it coincided with the attendance at the Taihape Court of the District Court Judge. The Army would have had no input into this decision.

(11) Misinformation as to where Bain died

[199] The Bain family was initially advised Bain had died in hospital. How this came about I cannot determine. There is nothing to suggest this was a deliberate deception on the part of the Army.

(12) The photographs of Bain

[200] Bain's body was photographed before it was removed from the barracks. How many photographs were taken I have been unable to discover. I have sighted one. I was shown it by the Bain family. It shows Bain lying dead on the floor of the barracks.

[201] The Bain family claim other photographs were taken. has informed me a number of photographs were taken. I expect there were. It is normal practice at a homicide to have a number of photographs taken. The Army understood any photographs were given to the Police. This was the normal procedure. Any such photographs would have been destroyed when the Police file was destroyed. Clearly, however, at least one was retained. The Army, after comprehensive checks, does not consider there are any others but cannot give an unqualified assurance.

[202] Regrettably, the one retained was subsequently used by the Army in its training programmes. It was intended as a training aid showing the importance of handling firearms carefully and conscientiously at all times. It was recognised by a close associate of Mr Murray Bain in 2002. No approach had been made to the Bain family for leave to use the photograph. Understandably, they were very upset when the matter came to light.

[203] The Army has apologised for the use of the photograph.

(13) The Bain Family has been given general run-around by Army and Police for 23 years

[204] In late March 1981, Bain's father, Mr N D Bain, wrote to the Chief of General Staff seeking advice of the facts surrounding his son's death.

[205] It appears he had earlier spoken to , OC of the Cadet School, and by late March was getting conflicting versions of what had happened on the night his son died.

[206] On 26 March, , as Commandant of the Army Schools, wrote to Mr Bain outlining developments and the results of his own investigations. A follow-up letter to Mr Bain was sent on 6 May by Major General Poananga, Chief of General Staff. He wrote:

> I have now had the opportunity to study the Court of Inquiry and I am able to confirm the information given to you by .
>
> In the simplest terms, the boy concerned with discharging the weapon acted in a thoroughly irresponsible manner. And, as you are aware, was dealt with in the District Court in Taihape and found guilty of carelessly using a firearm. Apart from his punishment in the District Court he has since been discharged.

[207] On 1 July 1981, Miss Marilyn Waring MP wrote to the then Minister of Defence, with a copy to the then Minister of Police, advising:

[a] The Bain family were constituents of hers.

[b] They had asked her to make inquiries into the following matters:

[i] Who made the decision not to lay a charge of manslaughter and why?

[ii] Who were the witnesses at the trial and who called them?

[iii] Why was no action taken by the Army in respect of an earlier threat by against another cadet?

[iv] Whose negligence accounts for a shooting in an Army barracks?

[c] She was seeking an appointment with the Minster to discuss the matter.

[208] The Minister received a detailed reply from the Army on the questions raised. He met with Miss Waring on 24 July. Miss Waring then advised there were two further issues raised by the Bain family, namely:

[a] The time taken to discharge after being convicted in a civil Court; and

[b] The apparent insensitivity of the Army in posting Bain's brother to Waiouru while was still there.

[209] The Army made further inquiries into these matters. It advised the then Minister. The advice was, I expect, passed on to Miss Waring.

[210] On 13 September, Mr Bain Senior wrote to Miss Waring at length. Essentially he questioned the correctness of the Army's information and raised a number of questions. He wrote:

> In conclusion I would summarise as follows. It is my belief that all the facts relating to Grant's death have not been disclosed nor investigated, that the Army was negligent in exercising its responsibility on February 13th, that the Army was negligent in not preventing a further incident between Bain and , that I find it insulting the Police should ask me to identify my son's body at Wanganui and then state that I never did so in terms of the Coroner's Act: after having complied with every request made by the Police, that if a coroner's inquest was held the next of kin were not notified, that if a coroner's inquest was not held it is not too late, that a full inquiry is needed to satisfy all parties concerned, that I have had related to me an account of events on February 13th by a witness and that mention of prior events to the shooting have not been considered in any correspondence received to date, that events prior to the shooting make it hard to believe that the fatality was an accident. Finally, that I would record that during the funeral preparations on the day of the funeral the Army contribution was most appreciated. In all other respects in this tragic affair my dissatisfaction with the Army and the Police is total.

The Minister provided detail to Miss Waring on 10 November 1981. His letter, in effect, rejected the family's claims.

[211] In addition to taking their concerns up with the Army, Mr Bain Senior raised them with the Police.

[212] On 16 April 1981, his solicitors wrote to the Police at Wanganui. replied on 24 April. He stated:

> I consider it is inappropriate to refer to all of the factors that were considered when the decision was made over the charge referred against . However, I attach a copy of a newspaper report pertaining to the matter which is self-explanatory.
>
> It will no doubt be obvious to you that the main issue was the degree of culpability involved in the actions of the offender at the time.

[213] On 6 November 1981, the Minister of Police suggested a meeting between Mr Bain and the Police. Mr Bain subsequently met with on 16 May 1982. had the Police file with him. Mr Bain, on 16 May 1982, wrote to Miss Waring as follows:

> I have met with at the Hamilton Police Station. had with him the Police file relating to the fatality; and from his observations and those of the legal section in Wellington, it is apparent that Grant's death was not an accident.
>
> In brief, the Police at Wanganui who were in charge of the inquiry failed to conduct the inquiry correctly and failed to lay the correct charge; all of which has allowed a young criminal to walk free among New Zealand society.
>
> Having confirmed my belief about the "accidental shooting", I will not pursue the matter further. I would ask you convey my appreciation to for his assistance. Again my grateful thanks to yourself.

[214] Clearly, therefore, by May 1982, although the Police and Army had disagreed with the contentions raised by Mr Bain, both departments had fully and indeed, quite quickly, replied to matters raised by him or by others on his behalf.

[215] No further requests were made of the Police or the Army by the family until early 2002, when Mr Murray Bain inquired about the events surrounding his brother's death and the existence of the photograph of Bain taken in the barracks. He also asked for a copy of the Court of Inquiry records.

[216] The Army replied in March 2002. It detailed what was known about the taking, retention and use of the photograph. It apologised for the distress it had caused. It refused Mr Bain's request for the Court of Inquiry records. Detailed reasons were given for this refusal. These were not acceptable to the family. Mr Murray Bain repeated his request for the Court of Inquiry material. In late March, he wrote to MPs Mr Shane Ardern and Mr Ron Marks seeking their assistance to obtain release of the Court of Inquiry papers. Both these gentlemen

wrote to your office seeking your assistance. You obtained a report from the Army and replied at length in mid May as follows:

> Thank you for your letter dated 22 March 2002, concerning the distress caused to the family of Cadet Grant Donald Bain. I apologise for not responding sooner but I wanted to write after the Chief of General Staff (CGS) had an opportunity to review the matter and to take any corrective action he determined as being appropriate. These steps have now occurred.
>
> On reviewing the matter CGS directed that an officer from Army meet with the family at Te Awamutu and make available to them the Record of Proceedings from the Court of Inquiry as well as to answer any further questions the family may have. This occurred on 22 April 2002 and my understanding is that the meeting was generally viewed as positive by the family. However, they remain concerned at the use of the photo and issues of culpability over Grant's tragic death. You are in receipt of the e-mail the family sent to .
>
> CGS has subsequently written to the family, again apologising for the use of the photo, as well as writing to his senior commanders advising them that he considers it inappropriate for such photographs to be used as training aids. Culpability is one area where CGS believes it is inappropriate for him to make comment. Decisions at the time were made by a range of Army personnel who are no longer serving and who faced a unique set of circumstances. They acted on a course of action that they determined was the best for all parties concerned, having taken into account all the competing interests.
>
> CGS has confirmed his intent to actively pursue any additional information requirements the family may have in the future. To that end the officer who visited the family will remain available as a permanent Army point of contact for the family.
>
> I am now satisfied that the matter has been dealt with as best it can be given that it is some 21 years since the tragic accident occurred. Army will remain responsive to the needs of the family and await the decision of the family as to how they will now proceed. I hope this answers your queries.

[217] At the end of April, Mr Murray Bain had met with , who gave the family access to the record of proceeding of the Court of Inquiry. The family remained dissatisfied with the Army's attitude to the shooting of Grant. They considered the Army should shoulder some responsibility and not try to place all the blame on . They did not accept the Army's apologies for its use of the photograph. The Chief of Army Staff wrote to the Bain family on 15 May, as follows:

> I would like to take this opportunity to personally write to you having now been fully briefed on the circumstances surrounding Grant's death. It seems clear to me that your continuing search for information surrounding the incident could have been addressed earlier.
>
> I have been briefed by on the family meeting that occurred on 22 April 2002. He believes the meeting was generally positive and allowed a

number of your questions to be answered. However, I am also aware of the sentiments you expressed in your recent e-mail to . As regards the photographs I would like to personally apologise for their use as a training aid within Army training establishments. The decision to do so was taken quite some time ago but it was inappropriate and insensitive to the feelings of your family, and for that I sincerely apologise.

The issue of culpability for Grant's death is a matter I feel I am unable to make comment on. Decisions at the time were made by a range of Army personnel who are no longer serving, the police and the Courts, all of whom faced a unique set of circumstances. All took the course of action they determined was the best for all parties concerned, having taken into account all the competing interests. For me to comment now would be inappropriate.

I hope your family's access to the Record of Proceedings of the Court of Inquiry has helped you all better understand the facts surrounding Grant's tragic and untimely death. I will continue to provide you with as much assistance as I can, and I reiterate the offer made by to make available the Record of Proceedings of the Court of Inquiry at a later date if you so wish.

[218] On 15 September 2002, the Ombudsman advised on a referral by Mr Murray Bain:

[a] The Army was prepared to release a copy of the findings of the Court of Inquiry subject to the deletion of certain names in order to protect the person's privacy.

[b] The evidence and submissions before the Court of Inquiry appeared to be protected from disclosure.

[219] On 4 October 2002, the Army supplied a copy of the record of the proceedings to Mr Murray Bain under cover of the following letter:

Pursuant to Rule of Procedure 159 of the Armed Forces Discipline Act I have reviewed your request, made under the Official Information Act 1982 (OIA), for a copy of the Record of Proceedings of the Court of Inquiry (COI) conducted into the fatal shooting of your brother Grant at the Regular Force Cadet School in 1981. It is my decision to release to you a copy of the Report of the COI only.

In making my decision I am guided by the finding made by the Ombudsman that evidence given to a COI is not considered official information and therefore not subject to the OIA, however, the Report of the COI is considered official information.

Furthermore, in accordance with the Privacy Act 1983, specifically Privacy Principle 11, I have had excised from the Report those parts that refer to other living natural persons with the exclusion of Cadet whose role in this incident is a matter of public record.

[220] On 11 October, Mr Murray Bain sought from the Army a copy of any Military Police inquiry file relating to his brother's death. No such file existed.

[221] In April 2003, the family sought to re-open the Coroner's Inquest into Grant's death. This was refused by the Solicitor-General.

[222] In April 2004, wrote to the Army seeking information under the Official Information Act and later published material relating to the treatment of cadets and the death of Grant Bain.

[223] On 4 November, you set up this Inquiry.

[224] From the foregoing, it is clear when the family raised matters with the Army they were acted on. The family have not been given the run-around. Their requests may not have met with the results which they wished to achieve. At all times the Army has given them such information as it considered the family were legally entitled to receive. The Army's position throughout has been legally correct: see *Berryman v Her Majesty's Solicitor-General for New Zealand* (Wild J, Wellington, 18 February 2005).

[225] As part of its overall contention regarding Grant Bain's death, the family claim the destruction of the Police file was deliberate and part of the "cover-up" by Police and Army. There is no merit in this suggestion.

[226] has made detailed inquiries into the movement of this Police file. He is satisfied the original investigation file and any other Police material was destroyed in accordance with normal procedure.

[227] Such a file as the Bain shooting would go into General Filing and in 1981/1982 would probably be held for up to seven years. His inquiries show the file was last filed in 1982 in Wanganui. It would therefore have been destroyed by 1989. He has drawn my attention to a 1985 change of policy for the destruction of files and, indeed, this file might have been destroyed somewhat earlier than 1989.

[228] All files are retained at Wanganui. There are none held there beyond 1998. No record is kept of specific files destroyed. They are destroyed by years, not by reference to subject matter.

[229] There is, therefore, no basis for any suggestion the file has been deliberately destroyed to hamper a detailed inquiry into the Bain shooting. Its destruction came about in the normal course of Police activity.

[230] The Bains claim they were told by the file was at the office of the Police Commissioner. This appears to be correct. The Superintendent acted on incorrect advice he was given at the time. The Superintendent made an assumption the file had been archived when, in fact, it had been given to General Filing and been accordingly destroyed in 1987 or 1989.

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15. MEETINGS WITH THE BAIN FAMILY

[231] I have had three meetings with members of the Bain family. In 2004, I met with Mr Murray Bain and Mr Bruce Bain, brothers of Grant. In 2005, I met twice with the two brothers and on these occasions Grant's father was with them. On all occasions , a family friend, was present. The last meeting was on 1 August 2005.

[232] I found all are clearly firmly wedded to the contentions I have detailed previously. They have supplied me with material relevant to the issues and the names of any persons they consider could be of assistance. They insist the Army should accept responsibility for Grant's death. Essentially, they contend although was the person who fired the fatal shot, this would not have happened if stricter control of the range activities had been in place, thus making it impossible for to remove live ammunition from it. They also argue had there been stricter control of the barracks and the cadets' activities therein, would not have been able to behave as he did.

[233] Their contentions cannot be dismissed out of hand. I have earlier found there was slackness on the range on occasions and also a failure to closely monitor activities in the barracks. The code of silence among cadets clearly existed. earlier activities involving Cadet C should have been reported. If they had been, immediate action would no doubt have been taken and there is a real possibility the shooting of Grant Bain would not have occurred. Some responsibility for his death must therefore lie with the Army.

[234] When I met the family in March of this year I indicated the progress I had then made and my probable findings on most of the matters raised by them. I sought their response. They stand by their allegations. I have reconsidered everything they put to me.

[235] In accordance with the terms of my appointment, I asked them what they required to be done to close this very unfortunate matter. They seek:

[a] An acknowledgement by the Army and the Police of errors made.

[b] A personal apology from the head of the Army and also from the Commissioner of Police.

[c] Reimbursement of costs they have incurred.

[d] Monetary compensation for the emotional distress they have endured over Grant's death and the misinformation given to them.

[236] Without indicating my view as to the justification or otherwise of their claims, I suggested, because of the complicated nature of the claims, it would be advisable for them to seek legal advice. I understand they have done so. To date, I have had no approach from counsel. I have received a list of costs incurred by the family.

[237] The Army has already apologised for the use of Grant's photograph and for the unfortunate advice as to where Grant died.

[238] As to the claims for compensation and damages, the family has undoubtedly suffered considerable trauma through the loss of a loved one, the use of the photograph and the misinformation as to where Grant Bain died. The question of how much, if anything, they are entitled to claim for expenses or compensation is a complex issue. At present, I am simply unable to make any recommendation and would require considerably more information before being able to give you a recommendation.

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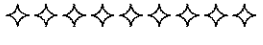
16. ALLEGATIONS OUTSIDE SCOPE OF INQUIRY

[239] 27 persons have alleged impropriety of one form or another outside the scope of my Inquiry. The allegations did not involve cadets at the Cadet School or activities at the School. All of these persons have been advised to take the matter up directly with the appropriate branch of the Service involved. I have not referred the allegations to the particular branch of the Service, as to do so would have meant I had to disclose the identity of the individuals concerned in breach of my undertaking to them not to do so.

[240] One allegation involved injuries allegedly suffered by a School cadet at a cadet camp which was in part, as I understand it, being run by the Army. The injury occurred in 1976. I believe the Army is aware of the allegations and the nature of the claim. It may be appropriate for the Army to refer this matter to the Crown Law Office for further action and consideration.



17. SUGGESTED FURTHER ACTION

[241] If you intend to make this report public, a copy of it should be made available, before it is made public, to:

[a] ;

[b] ;

[c] ;

[d] Members of the Bain family; and

[e]

[242] It would be advisable to have the report, if published, printed on the Ministry of Defence Review website. This will enable any cadet, or other person interested in it, to see it without the need to contact your office.

[243] The NZ Defence Force should monitor its complaints procedure regularly to ensure it is operating effectively.

[244] Cadets who claim to have been assaulted, sexually or otherwise, have always been entitled, if they wished, to lay a complaint with the Police alleging the assault. In some cases this has been done and action taken either by the Army or the Police. This right can, if not already exercised, be exercised, if they so wish, today. You have no right, nor obligation, to instigate Police action and, on the material available to you, should certainly not do so.

[245] Claims for compensation by individual cadets and the Bain family raise complex legal issues which involve the application of the relevant Accident Compensation legislation. In addition, I anticipate the type of claims may involve elements of exemplary damages with the concept of vicarious liability requiring consideration. Any such claims involving these complex legal issues are capable, in my view, of resolution with appropriate resolution mechanisms agreed to by the parties involved.

[246] Having considered and discussed the Bain family claim with members of the family, I have identified issues not only as listed above but further issues relating to copyright, particularly in relation to the photograph and its use, which would require possible consideration of privacy issues and consent.

[247] Having also spoken with possible claimants, I am confident a confidential mediation process, appropriately managed, would bring most, if not all, claims to a conclusion. In view of my findings such a process is recommended, particularly as any alternative must involve costly and time consuming litigation before the Courts, a procedure which I sense is not desired by any of the claimants, certainly not by or the Bain family.

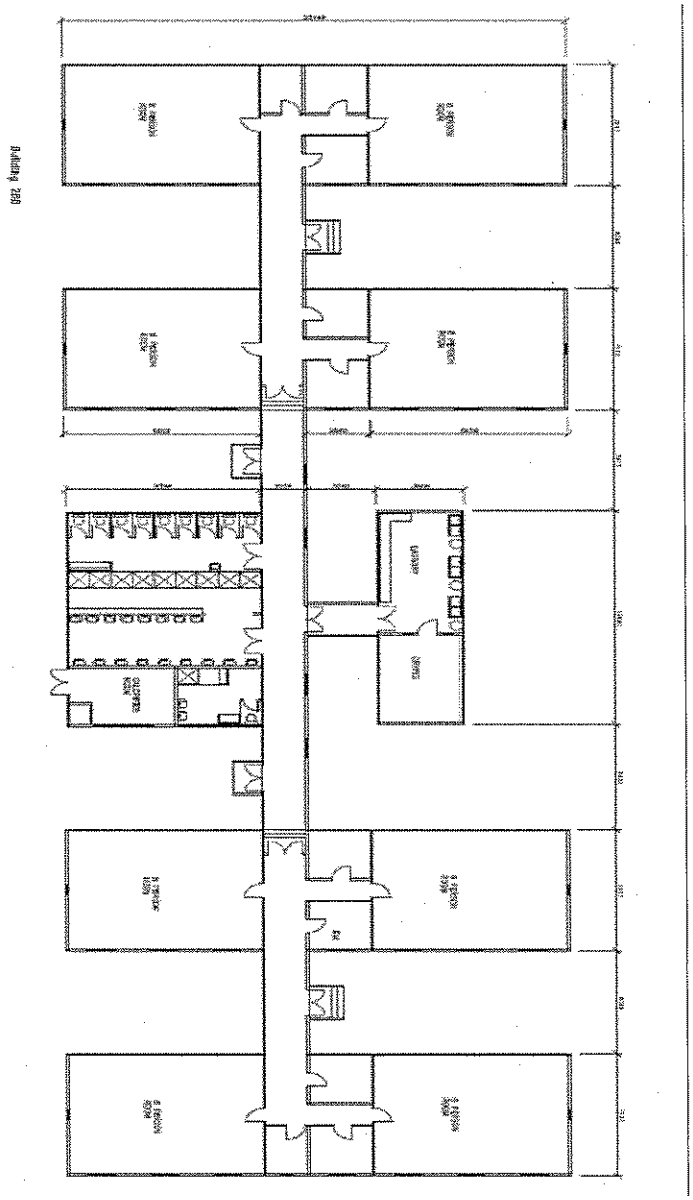
Hon D S Morris, Esq
August 2005

APPENDIX A

Persons Interviewed

APPENDIX B

Plan of the Barracks



Plan of the Camp