

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

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**AUSTRALIAN DEFENCE FORCE**

**AUSTRALIAN ARMY, VICTORIA BARRACKS, NSW**

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

**PRESIDING:**

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

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

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

**1016 MONDAY 17 JULY 2006**  
**DAY 4**

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

**TRANSCRIPT VERIFICATION**

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

Signed..... Date .....(President)

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

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

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5 PRESIDENT: Good morning, Colonel.

COL GRIFFIN: Mr President, good morning. Forgive me if I address you from the seated position, but the technological arrangements that we have require all of us to be in a seated position addressing the Board.

10 Mr President, since we last adjourned, Counsel have been appointed to represent the two members who were in country at the time of the adjournment last, they are present this morning and I would like them to announce their appearances.

15 PRESIDENT: Yes, thank you.

LTCOL GREEN: May it please the Board, my name is LTCOL Bruce Green. Sir, Soldier 14 who has previously been granted leave to appear before the Board was previously represented by LTCOL McConaghy. Sir, subject to your leave, I appear for Soldier 14.

PRESIDENT: Yes, thank you. That leave is granted. Do you have, for wan to of a better phrase, a junior in a hot and dusty place?

25 LTCOL GREEN: No I don't sir.

LTCOL WILKINSON: Sir, Paul Wilkinson, I appear for Soldier 2 and I seek leave to appear for him.

30 PRESIDENT: Yes, that leave is also granted. Yes, thank you.

COL GRIFFIN: I understand that there may be one or more applications from Counsel to the President this morning.

35 PRESIDENT: Yes, thank you. Gentlemen, are there any applications?

LTCOL HOLLES: Sir, there are from my part, LTCOL Holles.

40 PRESIDENT: Yes, thank you Colonel.

LTCOL HOLLES: Sir, this application is not made lightly, it is made on specific instructions. The application in short compass is that those persons who either are partially completed or are to be cross-examined by video link from Iraq be physically brought before this Board of Inquiry so that examination can be conducted in, what I would suggest, is a more

45

acceptable way. By that I make no criticism of the technology, nor of the extraordinary efforts by Counsel Assisting in Iraq with the great difficulties that existed.

5 The net effect is sir, that after three days of cross-examination of a number  
of witnesses, none have been cross-examined to finality, most have only  
had the opportunity to give evidence-in-chief. The technology is, to say  
the least, fickle and it is extremely expensive. It places Counsel under a  
significant forensic disadvantage when cross-examining persons by that  
10 means.

I am well aware of the law on the issue, I am well aware that provision  
exists to conduct cross-examination of witnesses, evidence-in-chief of  
witnesses in the method which has been adopted. My challenge is not to  
15 the legality of the mode, but rather to its practical effect on the way in  
which the evidence is received and understood by the Board and by those  
persons who are affected by these proceedings.

Sir, the practice remains in this state, as you would be well aware, that  
20 whilst video link evidence is used as a standard form in Court proceedings  
involving overseas witnesses, the practice remains that there are  
significant bodies of evidence that are to be received on factual matters,  
evidence is still taken on commission in the country where a particular  
witness is if that witness cannot be brought to Australia or obviously in  
25 the case of criminal proceedings, it may be that the evidence is not taken  
at all.

Sir, this Inquiry is charged not to get a quick answer, but the right answer.  
It is critically important that the issues that have to be decided by the  
30 Board are decided on the best available evidence. My respectful  
submission is that the video link does not provide an opportunity for the  
best available evidence to be obtained by this Board.

There are a number of practical considerations which arise from my  
35 application. I can inform the Board that both Mr and Mrs Kovco clearly  
understand that if this application is successful, it will have the practical  
effect of extending the timeframe of the Board by a matter of months. I  
would respectfully suggest it will not extend the sitting time of the Board,  
but rather shorten it.

40 Sir, you might have anticipated from the line of cross-examination I took  
with the soldier in the room, that a number of issues within my brief  
which relate to matters going to the conduct of certain events within the  
organisation to which PTE Kovco was attached. It may well be, and  
45 pardon me for talking so obliquely, but I'm aware of the broader

implications of what I'm saying, it may well be that a number of other people might be found to be potentially affected in the course of cross-examination. Certainly, my instructions would indicate that that is a very live possibility.

5

Sir, without putting a number on those persons and by that I mean the total number, it could be somewhere between five and six to perhaps eight people.

10

There are a number of different options which are available to you, sir, if my application is to succeed. The first is that the Board proceed with all of the other evidence which it needs to take, including the evidence relating to identification, the failed attempt at repatriation and of course the forensic and technical evidence which is to be dealt with in the next week or so.

15

Secondly, at the conclusion of that evidence the Court could then make a better informed decision, in my respectful submission, as to whether the balance of the evidence should be received by video link or not. It may be possible for those soldiers involved to be brought back on the sustainment flight, I should say, each week on a trickle feed arrangement so that they are brought back to Australia so that they can be cross-examined.

20

Alternatively, it may be that at the end of the tour they return for cross-examination and should the Board's evidence conclude other than that prior to that time, the proceedings be adjourned so that can occur. I understand that there is some entitlement to a period of leave on return to Australia. It may be the case that persons so affected or persons to be examined in that way would prefer to be processed through the Board of Inquiry first before going on their leave; that's a matter for another time.

25

30

In summary, sir, the process of taking this evidence by video link is in my respectful submission forensically unsatisfactory. It is time consuming and it is ultimately unlikely to provide the evidence upon which the Board can make positive and satisfactory findings. The Terms of Reference, as I understand them, go not just to the actual events, but rather to the circumstances which surround it and also to recommendations to prevent, as best as can be done, such an event occurring again.

35

Sir, the video link in my respectful submission does not provide you with the evidence of a nature or quality which could lead you comfortably to form the view that you received the best evidence in the best possible fashion. I'm conscious of the delay, but my threshold submission is my clients are interested in obtaining the right answer, not the quick answer. Would you just pardon me for a moment.

40  
45

PRESIDENT: Yes, certainly.

5 LTCOL HOLLES: Thank you, sir, they're the submissions I wish to make.

10 PRESIDENT: Yes, thank you, Colonel. Before I turn to Counsel Assisting, is there any counsel representing who wish to make any submissions or make any comment?

15 COL YOUNG: Yes, Mr President, I have a few words I'd like to say in relation to the submission that's just been put. Earlier this morning we had a timely reminder about what this Inquiry is about; and that is, the death of an Australian soldier on operations. There's an onus on the Board to make objective and thorough investigation to determine how he died. I know that's an onus that you don't take lightly. How do you make that inquiry? By hearing the best evidence. No-one would dispute the best evidence is having witnesses in this room face-to-face giving evidence.

20 Irrespective of what submissions you hear from Counsel Representing, you have to be satisfied that at the end of this Inquiry you've satisfied yourselves that you've made proper and thorough investigation and that you've been seen publicly to have made that proper and thorough investigation. My position is that the best way of doing that is to have witnesses here face-to-face. It seems to be that it's possible, and you may need to make inquiry, as to whether individual soldiers could be brought back on a trickle feed effect, as put by LTCOL Holles. That would encompass no delay as they could be interposed during the course of taking other evidence.

30 I acknowledge there may be operational difficulties, but I think that's something that needs to be explored. Video link evidence is used and it's used broadly. However, we could remind ourselves that the evidence given by soldiers that we heard by video link was done in the early hours of the morning when they've been taken from operational duties. One has to question whether their mind is on the job as far as giving evidence to this Board or whether they're thinking about the duty they've just come from or just going to.

40 Mr President, we can assist you with submissions, but ultimately you and your fellow Board Members at the end of this Inquiry have to be satisfied that you've done everything possible to find out what happened to PTE Kovco. Those are my submissions, Mr President.

45

PRESIDENT: Yes, thank you, Colonel. Any other submissions?

5 LTCOL BERKLEY: Yes, Mr President. My client publicly acknowledges the grieving of Jake's mum and dad and also wishes to restate that she is grieving as well. It's in my client's interests though to have the Board determine the questions before it in its most expeditious manner. My client does not support a delay of months. My client is concerned that the Board will be unduly elongated. But my client also acknowledges this: that surely there must be provision to return small  
10 groups of soldiers from the operational area. For instance, there was the death of Jake and escorts. Surely that could be examined before we grant an application for an adjournment of some time.

15 That's of course going to be a matter which falls upon the good officers of the counsel assisting yet again and the Board's consideration. But in short, we don't support the elongation and we hope that our position is understood by all concerned. We would prefer that the matter went to its conclusion in its thorough and effective way; we certainly expect that to happen. There's been nothing to indicate that it won't so far. But it  
20 would not – and I repeat this – sit well with my client if the matter had to so she had to return back to Sale and to come back here again.

That's about all I've got to say about the matter, Mr President.

25 PRESIDENT: Thank you, Colonel. Any other contributions that Counsel Representing would care to make?

COUNSEL REPRESENTING: No, thank you, sir.

30 PRESIDENT: Thank you. Counsel Assisting.

COL GRIFFIN: Thank you, sir. As I understand the application that has just been put to you, Mr President and Members, it can essentially be reduced to this: the law allows for videoconferencing but that Counsel  
35 Representing feels a forensic disadvantage in the conduct of examination of witnesses. These video proceedings were canvassed well before I deployed to the theatre of operations and were accepted at that time. That is, of course, recognising the fact that they hadn't been seen and that people may take a different view after they had been seen. But the fact is  
40 they were canvassed before I left and plans were in place. A considerable amount of effort and cost has been expended in establishing this facility.

45 On that point, I should alert you to a particular technological fact; and that is this: the first lot of videoconferencing that we undertook was done at what is known as 128 kilobytes per second technological capacity. That

has since been very substantially increased to 384 kilobytes per second.

PRESIDENT: What does that mean in real language, Colonel?

5 COL GRIFFIN: What that translates to you for you and I, sir, and  
everyone else who doesn't understand the technological side of things is  
this: the bandwidth capacity - that is, the image that you will see if we  
undertake the activity again - is now the equal of that which is used by the  
Federal Court of Australia in its videoconferencing processes. It's not for  
10 me to give you evidence, sir, however, I did attend the test run of this on  
Friday night and what I observed was a substantial improvement on that  
which I observed at the other end in Baghdad some weeks ago.

15 So as far as the law is concerned, can I indicate to you, Mr President, that  
the Commonwealth Federal Court Act (1976), at section 47, makes  
provision for the receipt of evidence by video link. That provision has  
been used by the Courts and tribunals quite substantially over the years.

20 There is a considerable body of case law to reflect the growth and  
acceptance of video link transmission over the years. What was a novel  
concept six years ago is now readily recognised and utilised in both the  
criminal and administrative settings.

25 You, sir, no doubt, have considerable experience in the exercise of video  
link evidence in criminal proceedings in New South Wales, the criminal  
Courts that use video-link proceedings for sexual assault matters, child  
abuse matters and a number of other areas, frequently. These proceedings  
are not proceedings that are measured by very high standards of fairness  
and justice and evidentiary rules required in the criminal Courts system.  
30 This is an administrative fact-finding requirement; you are not bound by  
the Rules of Evidence.

35 Numerous federal tribunals of this nature - administrative inquiries - use  
video links regularly. For example, in the migration area - the refugee law  
area - there have been many hundreds of cases involving the use of video-  
link material that have been reviewed by the highest Courts and upheld.  
The recent body of case law to which I will directly refer you involves the  
quotation from the Chief Justice of New South Wales, Spigelman CJ. The  
case I'm referring to is a recent case, R v Lodhi (2006) NSWSC 587,  
40 27 February 2006. In that recent judgment, Whealy J canvassed the body  
of case law relating to the receipt of video-link evidence. He quoted from  
the decision of Spigelman J in R v Wilkie, Burroughs and Mainprize  
(2005) NSWCCA 311, where, at paragraph 25, his Honour the Chief  
Justice has this to say about video-link evidence:  
45

*Video link evidence is a precise, accurate and instantaneous reflection of the physical image and of the words of the witness. It is presented in the Court and, most relevantly, to the jury by means of audio visual images occurring in the Courtroom.*

5

He went on to say:

*In my opinion, the audio visual replication of the evidence by equipment physically located in the State and directly observable by a judge, jury and the public in the State, is sufficient to answer the description of a "trial held in the State".*

10

Whealy J went on to traverse a broad range of case law in both Australia, Europe and Britain reflecting the development of the receipt of video-link evidence.

15

Touching on matters such as the long-standing practice of the Federal Court in this regard, comparative costs, difference in time zones, perceived difficulties in examining witnesses, cross-examination, the appropriateness for audio visual link when dealing with centrally important evidence and the general assessment of credit.

20

Having canvassed all those issues, his Honour came to the conclusion that video link evidence is entirely acceptable in criminal trials and the Federal Court uses it in the Civil Branch of trial. Some aspects of consideration in that regard, that is in terms of the practical affect, have been mentioned. Counsel Representing raised with you the capacity of the witnesses to concentrate on the issue at hand when they have their job to go back to.

25

Mr President, because this application was quite properly foreshadowed with me by Counsel on Friday, I've taken steps to have a senior officer from the Joint Operations Command present to provide you with assistance, should you require it, on the practical effect of this application for the mission and for the members in theatre. He is present to give that evidence if you require. It will be necessary, because of the operational security aspects of his evidence in terms of the capacities and effect on the mission that that material be given in closed session.

30

35

It may be that Counsel would want to be heard before I put that evidence before you so I raise it now sir.

40

PRESIDENT: Is there any comment as to whether we should hear this gentleman or whether we should decide the matter on, what I will call, the balance of convenience, which in many ways is the argument in my view?

45

LTCOL GREEN: Not from me sir.

PRESIDENT: LTCOL Holles, any comment you want to make?

5 LTCOL HOLLES: Sir, it would seem that the evidence should be heard so that the Board is better informed as to the process. But I presume that the right to cross-examine the witness will be reserved in the process which my friend intends to adopt.

10 PRESIDENT: Of course.

COL GRIFFIN: That would be my intention sir.

15 PRESIDENT: Yes, you might call the gentleman from JOC then please.

COL GRIFFIN: Sir, could I ask that we then go into closed session before I call the witness?

20 PRESIDENT: Certainly. Yes, the Board is now closed to the public and those members of the public and press that are here, would they please leave us.

(Continued in closed session)

NTS

(Open session)

PRESIDENT: Is there any comment to be made from the Bar tables?

5 LTCOL HOLLES: Sir, simply in relation to the case of Lodhi which  
Counsel Assisting helpfully provided, that is a case which is very specific  
in its application. If you look at the development of case law in this area it  
is a recognition that the type of evidence that is received by video link is  
10 in effect by specific exemption created by statute; that is, in New South  
Wales the child sexual assault provisions provide specifically in the  
Children's Evidence Act that such evidence may be taken in a particular  
way thereby placing it outside the ordinary way in which evidence is  
taken. Lodhi was a case where of the three witnesses two were FBI agents  
presumably engaged in some task vital to the security of the United States,  
15 the other one was a federal prisoner in American custody.

It would have been somewhat difficult to obtain the evidence other than  
by video link. Again it related to a particular type of national security  
incident which is outside the scope of this matter. I presume there will be  
20 an opportunity at the end of what my friend says to address further if  
that's required. But simply on the case law I would say that it is of limited  
and specific – it refers to limited and specific circumstances. Would you  
wish me to address at this stage on the evidence of LTCOL Paine?

25 PRESIDENT: If you'd be so kind.

LTCOL HOLLES: Sir, very simply, the evidence is of a nature where it,  
with great respect, does not much assist the Board. The reality is that the  
SECDET is effectively in the last stages of its deployment. The soldiers  
30 as described by LTCOL Paine are focused elsewhere. They are working  
extraordinary hours over protracted periods of time. It is less than an  
optimum situation for people like that to give evidence. It may be  
ultimately that you take the view that the proceeding should be adjourned  
rather than somehow trickle feed the people required back from Iraq. It  
35 may be that the Court makes a case-by-case or informed decision after  
further submission as to what specific soldiers should be brought back and  
what evidence could be taken by video link.

40 But, sir, the bottom line, if I can so use the expression, is that the events –  
the evidence in effect has reinforced the application I've made; that the  
Board will not get the best available evidence via video link from tired  
soldiers. Unless there's some further matters which I can assist, they're  
the initial submissions I wish to make.

45 PRESIDENT: No. Any other contribution from Counsel Representing?

COL YOUNG: Mr President, just very briefly. As I said earlier, the onus is on the Board to make proper inquiry as an administrative matter. You have to decide how best to do that. Clearly no-one would disagree that the best way is having witnesses here. There are other considerations being given to you this morning.

It's just a matter of you weighing that up and, at the end of the day, being able to say publicly that you made proper inquiry into the death of an Australian soldier on operations.

Thank you. Colonel.

COL GRIFFIN: Yes, sir, just a couple of points, if I may. The first thing I would indicate, again by way of reiteration, is that there is substantial legislative basis flowing from the Federal Court Act jurisdiction and from the State jurisdictions for the taking of video evidence. There is very considerable case law now developed, which is addressed by Whealy J in the recent case of Lodhi, reaffirming that, with respect, powerful statement from the Chief Justice in the matter of Wilkie where he affirmed the suitability of video link evidence.

I would also mention the point made by Whealy J in consideration of the authorities. He says - I quote at paragraph 64:

*As the authorities I have referred to note, the concept of the fair trial is not to be equated with a perfect trial.*

In my submission, that translates into an administrative inquiry even more powerfully. You're not required to conduct a perfect hearing; you're required to conduct a fair hearing. A fair hearing can be done by the presentation of the videoconference evidence. Because when you reduce the application to its essentials, as I understand it, it is this: it is suggested that evidence from tired soldiers in theatre is not reliable. My response to that is that these people are conducting life-critical operations on a daily basis in theatre over six months. They are trained infantryman, they will be provided with rest and recuperation to allow them to present the evidence to you. You've already seen that evidence and made your own assessment of the suitability of it. And as I indicated to you, the technology has now been doubled to increase the quality of the transmission.

The other aspect that's been put to you in the application is, "forensic disadvantage in cross-examination." The disadvantage hasn't been explained to you. What is the disadvantage in hearing evidence from somebody orally whose picture you can see on that large screen before

you as opposed to having them sitting there? There is nothing put before you in argument yet as to what the disadvantage is.

5 COL Young has put to you, quite reasonably, that the best evidence is the best evidence, and yes, you could have the person here or you could have them on the screen. Spigelman CJ, the Chief Justice of New South Wales, is quite clear in the case of Wilkie where he says:

10 *A strong current of authority in favour of permitting the relatively new video link technology to be used -*

And further, and most particularly, in Wilkie at paragraph 25:

15 *Video link evidence is a precise, accurate and instantaneous reflection of the physical image and of the words of the witness.*

That's what you will have before you.

20 The countervailing aspect is, as the Lieutenant Colonel has just told you, a serious impact on the mission. Furthermore - and, Mr President and Members, quite tellingly - the application is open ended. You don't know how many people it is being sought to return to Australia. You don't know how long the delay is going to be before these people can be put before you. It could be three months before this Board is able to resume.  
25 It could be that, as more and more people are returned through what was put to you as the trickle effect, it continues to go on.

30 What can be done, as you know has been planned, is that these witnesses can be made available next week at the end of the camera so that you will see them on the quality of the image that you see before you now for their examination.

35 Unless I can assist you further, Mr President and Members, those are my submissions.

PRESIDENT: Thank you, Colonel. I propose to adjourn now; I just note the time. Perhaps we could resume at 1.30 to allow people to have a meal and also to have the Board consider the matter.

40 COL GRIFFIN: Mr President, I will hand up to you the case law that I referred to, being R v Lodhi, R v Wilkie and a Federal Court case of Tetra Pak Marketing Pty Ltd v Musashi (2000) FCA 1261.

45 PRESIDENT: Thank you. Thank you, ladies and gentlemen, we'll adjourn.

**LUNCHEON ADJOURNMENT**

[1223]

5

**RESUMED**

[1338]

10 PRESIDENT: Is there anything further to be said on the question of video links and that particular topic?

15 COL GRIFFIN: Sir, from my point, only to ask that you declare that the matters canvassed after the conclusion of the witness's evidence this morning, including my address to you and other remarks, be in open session retrospectively so that the Board is in open session from the conclusion of that witness.

PRESIDENT: I take it nobody has got a problem with that?

20 COUNSEL REPRESENTING: No, sir.

PRESIDENT: Make it so.

25 COL GRIFFIN: Thank you, sir.

30 PRESIDENT: I can certainly understand, and the Board understands, where the application is coming from. Certainly one feels an empathy with the witness or the ability to communicate with the witness, for good or bad, when that witness is physically in the room. That is a long, long, long tradition, and in many ways it is a tradition that has taken some time to overcome. Nevertheless, the practice of video link - taking evidence from a person away from the Courtroom or Board room - is now, today, almost routine. The situation will never be perfect.

35 The video link that we saw in the initial stages of these proceedings was far from perfect. But it was, for want of a better word, adequate, and I am hoping that the promised improvements will be just that: an improvement. At the end of the day, tribunals such as this must make a series of decisions on balance. We must balance the need or the requirement for  
40 the best evidence to be produced, i.e. in person, with the practicalities of the situation and those sorts of things including, in particular, the delays that would be occasioned to these proceedings if you were to allow what I will call evidence in person. There is a balancing act to be done there.

45 Are the advantages that we would gain by having the people here so high,

5 so strong, so imperative, that they would justify the delays that would necessarily flow? As somebody pointed out - I think we owe it to COL Young - we are here not to get a quick fix but the right answer. Somewhere we have to balance those two things. This Inquiry could last for years and we could never get the totally right answer.

10 On balance, when one considers the advantages of having people here in presence, and contrast that with the delay and the very real stress that that causes to a number of people - not to put too fine a line on it, the family itself - the Board has concluded that the proper course is to proceed with the videoconferencing as is scheduled.

15 It may well be that at a later time a particular witness excites our interest and we may wish to speak to that particular witness in person. If that happens, we will deal with the situation when and if it happens.

NTS

Thank you.

COL GRIFFIN: Thank you, Mr President. May it please you, I call the next witness, Dr Duflou.

5

PRESIDENT: Thank you, Doctor.

<DR JOHAN DUFLOU, sworn

[1343]

10

<EXAMINATION BY COL GRIFFIN

15 COL GRIFFIN: Good afternoon, Dr Duflou, I'm COL Griffin, Counsel Assisting the Board of Inquiry. Would you confirm that you've read Annex F to the Defence Force publication that sets out the rights and obligations of witnesses before a Board of Inquiry?---Yes, I have.

20 Would you tell the Board your full name, please?---My name is Johan Duflou

What is your occupation?---I'm a forensic pathologist.

25 What was your involvement in the PTE Jacob Kovco post-mortem and other activity?---My initial involvement was I'm to give some advice to various personnel, both in Iraq and in Australia, in terms of the autopsy and how the body should be transported, following which there was some advice that I gave to the Deputy State Coroner in New South Wales, Mr Milovanovich, and then finally, doing the autopsy itself on Sunday, 30 April.

30 What are your qualifications, Doctor?---I have a Bachelor of Medicine, Bachelor of Surgery, Master of Medicine and Forensic Pathology. I'm a Fellow of the Royal College of Pathologists of Australasia. I have a Diploma in Aviation Medicine and I'm a Fellow of the Faculty of Forensic and Legal Medicine of the Royal College of Physicians of United Kingdom.

35 Do you have a military connection?---Yes, I do. I'm a Wing Commander in the Royal Australian Air Force Specialist Reserve.

40 How long have you been in your present position as a pathologist?---As chief forensic pathologist at Glebe for the last three years or so. As a specialist forensic pathologist at Glebe since 1988 and prior to that as a

45

forensic pathologist in South Africa.

5 Would you just outline now for the Board, please, how you became  
involved in this particular matter?---In part, as chief forensic pathologist at  
Glebe you have the problem, I suppose, of dealing with various high-  
10 profiled cases. So from that perspective I was the obvious person to  
select. The other reason why I was involved in this was because of my  
military appointment, that it was felt that in terms of any specific aspects  
which might arise which may be of relevance from a military perspective,  
15 that I would be the appropriate person to do the autopsy as well. This was  
following in fact discussions with the State Coroner as well, Mr John  
Abernethy. He felt that it was appropriate that I do the autopsy.

20 So there were two limbs to your involvement: (1) that you had an  
understanding of the military involvement which would assist you in your  
consideration of the matter?---Yes, certainly.

25 The second limb is that you're the chief forensic pathologist and you  
shouldered that responsibility of what may have been a high-profiled case  
in your position as the boss, for want of a better description?---Correct,  
yes.

30 I'll show you some documents. Now, are you the author of one of those  
documents?---Yes, the document titled "Autopsy Report for the Coroner"  
is compiled by myself.

35 I'm just going to step you through that document, doctor, for the  
information of the Board and interested parties. Firstly, do you recognise  
it and you're satisfied that it is your document?---Yes, absolutely.

40 What was the history of this document, how did you compile it, where and  
when?---The first step in compiling the document is I'm either at the time  
of the autopsy itself – so in other words, on 30 April – or in the hours  
subsequent to the autopsy I would commence dictating the report. The  
45 dictation would be based on various diagrams and other contemporaneous  
notes that I took at the time of the autopsy. The part that I would have  
dictated initially would have started on page 4, autopsy findings, and  
would involve essentially the basic autopsy findings where I examined the  
body externally and then internally. There report is then added to, both in  
the form of microscopic examination of tissues at a later date, probably  
fairly close to mid-May thereabouts, and then as assessment of various  
toxicology reports which were of specimens taken from the deceased at  
the time of the post-mortem. On receipt of all this information I would  
then go back and finalise my autopsy report, come to a conclusion as to  
the cause of death and make various comments on various aspects of the

death.

5 The second document, doctor, is that the toxicology report that you referred to?---This is one of – it appears to be a duplicate but it's one of the two toxicology reports that were done. This specific report is from the division of the analytical laboratories dated 11 May 2006. Essentially it involves the testing of blood and urine for a variety of substances, both medical treatment substances, as well as illicit substances and various other stimulant type drugs. A second toxicology report was also done specifically by the Australian Government Analytical Laboratory. That was specifically for the purposes of looking for anabolic steroids and other performance-enhancing drugs. I don't see that report here. But I can inform you that no banned substances were detected.

15 The first toxicology report that you refer to dated 11 May, that was done at your request?---That was done at my request, yes, as was the other one.

20 Is that a standard practice?---Absolutely, yes. In any case of trauma to the body as a minimum blood and urine would be sampled for toxicological testing and in selected cases additional testing or additional specimens would be sampled including bile, liver and stomach contents, if additional testing is required.

25 Mr President, for the assistance of the Board, I propose to tender the autopsy report, firstly, and then secondly, the toxicology report so that the Board can have them before the Board as we go through each of the document.

30 PRESIDENT: Thank you. Is there, firstly, any opposition to the tender of the autopsy report?

COUNSEL REPRESENTING: No, sir.

35 **#EXHIBIT 24 - AUTOPSY REPORT**

PRESIDENT: Is there any opposition to the analyst certificate or report being tendered?

40 COUNSEL REPRESENTING: No, sir.

45 **#EXHIBIT 25 – TOXICOLOGY REPORT**

COL GRIFFIN: Now, doctor, if we could turn the Exhibit 24, being your autopsy report for the Coroner. Would you step us through the document, please?---Yes, sir.

5

Starting at the front page?---The front page is essentially an identification of the body, how we did it. The deceased was Jacob Bruce Kovco. We have both our own case number and a Coroner's number. We were informed he was a 25-year-old man. The identification was by Inspector Hayes of the Homicide Squad of New South Wales police. The body was identified to one of our staff members, Mr Lindsay Flynn. The identification was of Jacob Bruce Kovco. We then did a confirmatory identification in the form of a dental identification by Prof Chris Griffiths, a forensic dentist. This was to make absolutely sure that we had the right body, using a scientific method of identification as opposed to a visual method of identification. After that are some details who I am and when I did the autopsy. On page 2 is a list of other people present at the autopsy at various times; they were not necessarily present all the time. In fact, specifically, Mr John Abernethy, the State Coroner, was there for the commencement of the investigation but left soon after that. A number of other people are present. I don't know if I need to detail what their function was to you.

No, thank you?---I then provide an opinion essentially I guess as a summary that the deceased was in fact Jacob Bruce Kovco, that he had died on 21 April 2006 at Baghdad in Iraq and that the cause of death was a gunshot wound to the head. In terms of time of death, I think I should indicate now that that was not based on any scientific findings on my part but purely on the basis of information provided to me. The next page, page 3, I start off with my report summary. Firstly, that Jacob Bruce Kovco had died of a gunshot wound to the head. I then have a short history in the first paragraph. The deceased was reportedly employed as a soldier and on active service in Baghdad. On Friday, 21 April 2006 the deceased's handgun, a 9 mm Mark 5 Browning pistol, discharged, resulting in a gunshot wound on the right side of the head. CPR or resuscitation was attempted at the scene and the deceased was evacuated to a US military hospital in Baghdad. The deceased underwent a number of investigations and other procedures before being declared dead about two hours after sustaining the injury. Possibly in explanation of this history, this was mainly made available to me through a police report form, also known as the form P79A, which is a report of a death to the Coroner. In summary, my autopsy found that there was a close range gunshot wound to the right side of the face immediately in front of the right ear. The track of the missile passed through the brain exiting from the left top of the head. There was associated lethal brain injury and

5 evidence of extensive bleeding. Apart from a number of very minor  
injuries of varying ages on the surface of the body, no other injuries were  
identified. Natural disease processes identified were limited to a degree of  
enlargement of the liver. Toxicology revealed medication typically  
10 expected to have been administered during the management of life  
threatening injury; specifically morphine, phenytoin and midazolam. No  
illicit drugs or alcohol were detected. I then go on to mention my  
pathology summary; in other words, the medical abnormalities. (1) a  
close-range gunshot wound to the right side of the head with lethal injury  
to the brain.

Can I just stop you there, doctor. I'm feeling rather unwell at the moment.  
Can we take a 10-minute break.

15

**ADJOURNED** [1357]

20

**RESUMED** [1405]

PRESIDENT: Thank you for your indulgence and thank you for your  
concern.

25

COL GRIFFIN: Thank you Mr President.

30 Dr Duflou, just before we adjourned, you had completed describing your  
report summary on page 3 of your autopsy report for the coroner which is  
Exhibit 24 in these proceedings now and in doing so, the last matter that  
you'd referred to was the toxicology results and I take it from that you're  
referring to the report which is now Exhibit 25 being the toxicology report  
relating to those medications that were revealed?---Yes, correct.

35 Just before we leave that point, those are typically medicines that would  
be given - or medications that would be given to a trauma patient in these  
sort of circumstances, is that right?---Yes, yes, correct. Morphine is given  
for a number of reasons, one of which is pain relief in case there was a  
problem with pain, but it appears extremely unlikely that that would be the  
40 case in this case. Phenytoin is a drug that is used to prevent seizures in  
cases of severe brain injury that can be seizures and Midazolam is a  
sedative agent that again is used during resuscitation and for pain relief.

So the presence of those agents is unremarkable?---True, yes.

45 Thank you. Please continue with the summary of the pathology that you

were about to describe?---Firstly the major pathology was obviously a close-range gunshot wound to the right side of the head with lethal injury to the brain. Secondly, there was aspiration of blood or inhalation of blood into the lungs. The reason for this as I will go into at a later stage is that there was extensive fracturing or breaking of the base of the skull, that is that part of the skull between the brain and the back of the throat and this caused very extensive bleeding and inhalation of blood into the lung structure - into lung tissue. Thirdly, there was obvious extensive blood loss and again this is not at all unexpected with a severe gunshot wound to the head and the fourth item that I found was that there was a degree of enlargement of the liver and pre-empting that no obvious cause was found for that at the time of post-mortem.

Next are listed the various documents that were available to me at the time of the autopsy. There's firstly the form P79A that I have eluded to previously, this is the report of death to the coroner completed by a police officer of New South Police. The next three documents are, I believe, American Military documents in relation to a Death Certificate, a copy of the hospital report of death and a record of identification processing anatomical change and these were various documents that were received at the time of the post-mortem and relate to presumably the treatment of the deceased in the Military hospital. I did receive miscellaneous medical records relating to the deceased. I have since handed those back to the ADF. I also received a CD of a CT scan that had been done of the deceased in hospital in Baghdad.

Could you just elaborate on what a CT scan is please?---A CT scan is a form of X-ray where using computer technology multiple slices of the body can be visualised. What this can show in great detail is the nature of various injuries internally. It can also, in some cases, show the actual track of the missile and whether anything is still - any missile is still remaining in the body, but it gives a very good documentary record of the exact injuries.

Thank you Doctor, please continue?---I next list the various specimens that were retained for various purposes which I sampled from the body at the time of autopsy. Firstly I sampled representative parts of the body for microscopic examination of tissues and my report is included in this report. Various tissues and fluids as detailed earlier for toxicology testing. I took a small specimen of blood for comparison purposes, in other words for DNA testing if it was necessary and I understand that some DNA testing has been done. I took fingernail clippings and a rectal swab for comparison purposes if that was required. I've also stored a quantity of blood of the deceased in our freezers and I had also excised the gunshot wound and surrounding tissue for - and I stored that in a freezer in the

Department of Forensic Medicine, the purpose for doing that was, if necessary for further evidentiary purposes and also to show the exact nature of the gunshot wound if anybody else wanted to provide a second opinion in relation to it.

5

And do those samples remain in storage?---Yes they do, both the blood for storage and the skin from around the gunshot entrance wound is still in storage and will remain in storage for probably five to 10 years as a minimum or for how ever long is required.

10

Thank you. Please proceed Doctor?---I'd now like to move on to the autopsy itself and my findings at that autopsy. Prior to doing the autopsy we X-rayed the body and for that matter also had a dental identification of the body done. The entire body from head to toe was X-rayed. I noted that there was extensive comminutive fracturing of the skull. In other words there was extensive fracturing with interlacing pieces of broken bone, almost of the nature of an eggshell type - a broken eggshell. This is consistent with a gunshot wound of the head.

15

20

I noted a number of very small fragments of radio dense material, in other words on the X-ray they had a very white appearance that X-rays couldn't pass through. Presumably these were fragments of missile and they were noted in association with the head. So they were either inside the head or right on contact with the head, I was unable to tell. Typically when you have a gunshot wound to the head, even with a fully jacketed bullet, small fragments of metal pass together with the bullet and come off the bullet as it passes through the body and these can remain behind in the body and can be seen on X-ray. When it comes to actually trying to find these very small fragments at the time of post-mortem it can be almost impossible to find and that certainly was my experience in this case.

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No other significant skeletal pathology was identified in any of the other X-rays and no foreign bodies, any other material on the body that was unexpected was identified either. After doing the X-rays I then performed an external examination of the body. I must emphasise that during this time photographs were taken of all significant injuries and other abnormalities.

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Again I noted that the body was that of an adult male, he had the appearance of being about 25 years old. He weighed 88 kilograms and he had a body length of 1.85 metres. The body was received unclothed and I noted that there were a large number of apparent naphthalene balls on and around the body, mothballs effectively. As is often the case, the wrists had been loosely tied together with gauze bandaging. I noted that there was a complex tattoo of a dragon on the back of the chest on the left and,

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as I mentioned, dental identification was performed. I noted a number of post-mortem changes - these are changes that are expected of a body after the person has died - firstly, the body was cold to touch and there was settling of blood to the back of the body, known as post-mortem lividity; 5 rigor mortis, or stiffening of the body, was present and there was very early decomposition or marbling - that is where the veins become more apparent on the lower extremities or the legs. There was no significant decomposition of the body.

10 Next I noted a number of aspects of recent therapeutic intervention. All of these, I have to emphasise, are totally as expected in the management of the patient with a severe injury. A hard neck collar was in situ - that is one of those white collars around the neck - in case there was a fracture of the neck or any other injury; an endotracheal tube to assist in breathing 15 was present in the mouth; an orogastric tube, or a tube which enters the mouth and ends in the stomach, was present. I noted that there was a large, heavily blood-stained bandage around the head. There were multiple ECG dots - these are to measure the heart rate on the surface of the body. Drips were in place in both forearms; a urinary catheter was in 20 place and there was a urinary collection device present; in fact, a urine sample for toxicology was taken from the urine collection device, not from the bladder direct.

I noted that there was a vascular cannula in the right groin as well as one 25 in the left groin. There was an electronic monitor probe in the left groin as well. I noted that on the outer aspects of both eyes small cuts had been made in the form of 12 mm linear horizontal incisions. I understand that this is treatment that can be administered if there is pronounced swelling and distortion of the face to prevent further damage to the eyes and to be 30 able to open the eyes to see if there are any reflexes. It's not a practice to my knowledge that is much done in Australia at all but it is something that is done from time to time in the US.

I noted that there was an identification tag around the right wrist and this 35 had the markings "100.00." I noted there was a piece of string around the left large toe which I assume was for the purposes of a toe tag for identification purposes. I have to emphasise that toe tag was not present at the time of post-mortem. As part of our admission procedures we had placed a wrist tag around the left wrist with our own identification 40 information.

I then examined and described the various injuries in detail. Just as 45 explanation in terms of the description itself, I use what is called the anatomical position; in other words, I make the assumption, which can be totally invalid, that the deceased was standing bolt upright and directly

facing me for the purposes of description. Obviously the deceased is lying flat on the table so my assumption is incorrect to begin with. The reason for making this assumption, though, is because it's a standardised way of describing a body. So when I mention the right side of the body, it is the right side of the body itself, not my right side that I'm describing, as an example.

Also, the numbering of the injuries is done in a fairly arbitrary fashion, in this case with the most important injury first, and it should not be interpreted as meaning that one injury came before another. It is very much done in an arbitrary way.

I would like to start with the gunshot wound. On the right side of the head was an 8 x 6 mm puncture wound. This was located 1.72 metres above the level of the left heel and was in line with what is termed the external auditory meatus of the right ear; in other words, the ear hole. It was located 15 mm in front of the right ear, so about three-quarters of an inch in front of the right ear. Extending - again, assuming the deceased is now standing upright - upwards, downwards and backwards for a distance up to five millimetres. From this defect in the skin were a number of radiating micro tears. These are very small tears associated with a gunshot wound. They are not at all uncommon to see and, on their own, really mean very little except to say they are typical of a gunshot wound.

What was a bit unusual about this wound was that there was no obvious abrasion cuff in association with the wound. An abrasion cuff is almost always seen in a gunshot entrance wound and is caused by a bullet first abrading or grazing the skin as it enters the skin before it penetrates, so it causes a rim of grazing around the skin. This was not present in this case; sometimes you don't see one. I don't know what to say except it just wasn't seen in this case.

There was, however, a 30 x 30 mm area of blackening of the skin predominantly the lower end and to the back but, to a lesser extent, above and in front of the wound. There was also a 40 x 20 mm area of faint stippling of the skin which was noted mainly above the wound. The blackening of the skin is caused by impact of the skin with particles of burnt or partially burnt powder; for want of a better term, although it's not the case, the gunpowder from the cartridge. The stippling of the skin is caused predominantly by the projectile passing through the barrel of the weapon and, as it passes through, the rifling of the barrel to impart spin on the bullet, to give it better stability, shaves off very small particles of metal from the bullet. These particles leave the end of the barrel together with the bullet. Because they are much lighter than the bullet itself, the projectile, they travel a much shorter distance. In fact, in general after a

number of inches you wouldn't see this at all.

5 So what can be done by identifying this material is a reconstruction can be made in terms of how far away the weapon was from the head at the time of firing. On a very rough basis, I estimated a couple of inches at most. I say it's a rough basis because the way to find out exactly how far away the weapon was held on discharge is to do test firing. Obviously I didn't have access to that and that is something that ballistics officers from the New South Wales Police I understand did. But as a rough estimate, from my  
10 experience in seeing gunshot wounds, to me it had the appearances of not being more than a couple of inches or so.

15 So as I mentioned, the features were those of a close range gunshot entrance wound. As I have mentioned as well, I then excised this gunshot wound and I have kept that in storage for any purpose which you may require.

20 I next described the track of the missile. Again, I emphasise that this is assuming the deceased is standing bolt upright. The track of the missile passed upwards and to the left and in what is termed the coronal plane. In other words, if you draw a line through the body which bisects the body front and back, that would be the coronal plane. So the missile passed from right to left, upwards and really didn't go forwards or backwards particularly, but stayed in the coronal plain. The missile passed through  
25 the right temporal bone of the skull, essentially the temple, through the dura mater, which is the thick membrane covering the surface of the brain, through the right temporal lobe of the brain, through the white matter of the brain, the deep grain matter on the right. It crossed the midline past through the left parietal lobe of the brain, in other words, slightly higher or up the top of the brain, out through the dura mater on the left and the  
30 left parietal bone of the skull; that is, the bone on top of the skull on the left-hand side.

35 There was an exit wound at this location. It measured 27 by 35 millimetres. It was stellate in appearance, in other words, star-burst shape. It was 55 mm to the left of the midline; in other words, an imaginary line this time drawn through the middle of the body bisecting the body into right and left. And it was 25 mm, about an inch, in front of the external auditory meatus, remembering that the bullet had passed in about  
40 15 mm in front. So at the top of the head it was about 25 mm in front. So about a centimetre's difference. Again there was no abrasion cuffing, blackening or stippling in association with this wound, and that would be absolutely expected, that you would see none of those. If you saw any of  
45 those you'd be very worried that that could in fact be an entrance wound.

In terms of the skull itself, there was very extensive fracturing. It involved both anterior cranial fosse, that is, that part of the skull that rests – that separates the brain from the eyes. The middle cranial fosse, essentially that part that separates the brain from the ears, as well as the right posterior cranial fossae, right at the back of the head on the right. There was very extensive fracturing of the fault of the skull; that's the top part of the skull. It was noted that there was outward bevelling of the skull in association with the exit wound. Essentially when a bullet passes through bone it causes quite characteristic damage to the bone itself and from that you can tell the direction of the bullet as well, whether it came in in the one way or out in the other. Again this was all consistent with the bullet entering the right side of the head and exiting from the left top of the head.

The brain, which weighed 1759 grams, which was a bit heavy and which is probably indicative of swelling of the brain after sustaining an injury, showed diffuse brain swelling and very extensive brain damage. I noted there were various types of bleeding over the surface of the brain, specifically subarachnoid haemorrhage and subdural haemorrhage. These are two expected types of damage to the surface of the brain. As I have mentioned previously, there was extensive disruption of brain tissue and there was bruising of the brain quite distant from the brain tissue itself. Again this is quite typical of a gunshot wound to the head where you have a wave of pressure passing through the brain in association with the bullet. So instead of causing damage, let's say, a centimetre in diameter, it causes damage through a very large area of brain.

Importantly, there was damage to the right mid-brain. This is a very basic part of the brain associated with – well, associated with very basic movement functions. As such, damage to that part of the brain essentially means that it is unsurvivable as an injury. So that part on its own would have resulted in death. The fact that there was very extensive damage to the cerebral hemispheres, the higher functioning parts of the brain, as well is again quite consistent with this being an unsurvivable injury. I noted that there were multiple smaller areas of haemorrhage in association with the missile track and then there was bleeding as well in an area of the brain called the cerebella tonsils as well as the occipital lobe.

This is evidence of pronounced swelling of the brain. Bleeding into the cerebella tonsils is often what is seen as a very terminal event when a person is on a ventilator, on life support, and that person will not survive at all if there is such damage. That was the gunshot wound. I saw a number of other injuries as well. Firstly, there was pronounced bruising, swelling and bleeding of the eyes. Now, this is not an indication of the deceased having been punched or sustaining any injuries to the eyes at all,

but is purely associated with the severe head injury, the damage to the skull itself and the associated shock wave into the eyes.

5 There was a 20 mm diameter faint red bruise on the left wrist. This I felt was associated with a needle puncture mark in a blood vessel, now noted in the medical record that I was shown today that the deceased had a blood gas analysis done as part of emergency treatment. Typically that would be the location where that blood would be taken. I noted a small scratch mark which showed early healing on the left forearm, a healing graze on 10 the left ring finger, a small graze on the side of the right hip. This appeared to be probably associated with the gunshot wound and the deceased either falling down or being transported.

15 There was another small recent graze on the left hip. There was a graze on the right calf at the back. Those were the injuries. I next made a number of measurements of the body for the purposes of possible reconstruction of gunshot wounds with various weapons. I made what is a fairly standard measurement from the first web space. In other words, the space between the thumb and the index finger and the web itself with the 20 hand outstretched in the anatomical position, which is basically adjacent to the sides of the body with the palm out forwards. From there from the left first web space to the tip of the left shoulder was 72 mm. From the left first web space to the right temple – again in the anatomical position – was 99 cm. The measurements from the right first web space to tip of the 25 right shoulder was 67 cm and to the right temple was 85 cm.

Following this, I describe my internal examination of the body. Firstly, the head and neck, as can be expected, there was very extensive bruising of the scalp in association with the gunshot wound, and there was also 30 limited bleeding down into the neck structures. I've essentially described all the pre-existing – all the abnormalities that were seen as a result of the injury sustained. I did not see any pre-existing abnormalities to any structures of the head or neck. I noted that there was blood in the nose and mouth.

35 Concerning the cardiovascular system or heart and major blood vessels, essentially the heart was normal, was normal weight, there was no obvious disease present. There was a small amount of bleeding within one of the cavities of the heart, and that is typically seen following a severe head 40 injury or following extensive blood loss; and I believe the deceased sustained both of those. The blood vessels of the body were normal in appearances. Obviously blood vessels within the head had been damaged severely as a result of the gunshot wound.

45 Concerning the respiratory system, the nasopharynx or the back of the

throat had been disrupted as a result of the fracturing of the base of the skull. Blood-stained mucus was noted in the back of the throat. The tube that had been placed in the throat ended appropriately in the trachea. Both lungs were heavy and they showed very extensive inhalation of blood, no other abnormalities of the chest were identified. Similarly, there were no abnormalities of the gastro-intestinal system.

I've mentioned previously there was a minor degree of enlargement of the liver, but no other abnormalities of the liver were noted. The spleen was normal as were lymph nodes and bone marrow. The kidneys appeared pale and this is typically seen in people who've lost a significant quantity of blood. I saw no abnormalities of the endocrine system, specifically the pituitary gland, thyroid gland or adrenal glands.

I've mentioned previously that I sampled a range of tissues for microscopic examination. The purpose of this is to see if there were any abnormalities that I might have missed on naked eye examination of the body. Essentially no additional abnormalities were identified.

I then transcribe a number of the toxicology findings, including the search for banded substances, for performance enhancing substances which was negative and I have mentioned previously the toxicology from the division of analytical laboratories which revealed morphine, Phenytoin and Midazolam.

Thank you Dr Duflou. I understand that there was no evidence of illicit drugs or alcohol?---Yes, correct. We looked for - or the toxicology lab looked for a range of illicit drugs as a non-inclusive list. As a minimum they excluded amphetamine, barbiturates, benzodiazepines or sleeping pills, cannabinoids or cannabis, cocaine, methadone, opiates like heroine. In other words all the fairly standard drugs of abuse.

A comprehensive screen was done which would have picked up a range of other drugs as well. I can't list those drugs, but most illicit and - well, most legally available drugs with a psycho-active component. A number of other drugs which have no effect on the brain, would certainly be identified. I also emphasise that no alcohol was detected.

Would that test have also detected steroid use?---Well, the reason for sending a specimen to the Australian Government Analytical Laboratory was that the division of analytical laboratories at Lidcombe of New South Wales Health, does not look for steroids. But the Australian Government Analytical Laboratory which is the laboratory that was used for the Olympic Games as an example specifically is set up to look for steroids and none were found.

5 Thank you. Did your examination reveal any evidence, aside from the gunshot and other injuries you've described that in your experience would be typical of assault upon the deceased?---No, there were no injuries to suggest that a significant assault had taken place.

10 Was there anything in the way of what would be typically defensive injuries incurred by the deceased in defending himself in any way?---No, not at all. The only injury which had - which potentially could be described as such was the bruise on the left wrist that I have mentioned previously, this is injury number 3 on page 6. I specifically examined that injury in great detail and noted that there was a needle puncture associated with that and I was gratified to find out today that in fact the deceased had had a very specific blood test done which would typically involve taking a sample from that very site.

15 Thank you and we'll come to that right now. That's the third document that I've provided you with this afternoon. Do you have it before you?---Yes I do, this is the statement by Robert Alexander Mazur.

20 And this document Mr President and Members was provided to Dr Duflou this morning. It's a statement made by LTCOL Robert Mazur who was the treating doctor at the hospital at Baghdad. I tender the document.

25 PRESIDENT: Any opposition to that section of that document.

COUNSEL REPRESENTING: No, sir.

30 PRESIDENT: That will be Exhibit 26.

**#EXHIBIT 26 - STATEMENT MADE BY LTCOL ROBERT MAZUR**

35 COL GRIFFIN: It contains a number of attachments and Dr Duflou, is it the case that you've had the opportunity to look through those attachments and they comprise what amount to clinical notes and hospital records of the treatment of PTE Kovco by Dr Mazur and his colleagues, is that right?---Yes, correct. I note that item C is the CD of the CT scan. But the remainder are various medical records and other documents in association with that.

40 I'll just hand to you now the CT CD. Now, am I correct in saying that you did have the opportunity to view this at the time that you conducted the

post-mortem, but not since?---Yes, correct. I just saw a copy of that one, yes.

5 Yes and was it of assistance to you in determining the opinion that you offered earlier that this was a non-survivable injury that PTE Kovco sustained?---Yes, correct. There is amongst these medical records and in fact also indicated as C is the report by the radiologist who interpreted the CT scan. And he or she indicates that - I'd have to find it again, but I seem to recall that there was an indication that it was non-survivable.  
10 Sorry, I can't see it now. Possibly it was not indicated here, but as an interpretation of the CT scan. The medical record does indicate at some stage that it is a non-survivable injury.

15 Now, the quality of the reproduction of the clinical notes is, it makes it very difficult to read, but having looked through them, is there anything about Dr Mazur's description of what took place at the hospital or in the notes contained within his statement that is in any way not expected for an injury of this nature or for the treatment given in the casualty section?---I think it goes without saying that medical practitioners working in a hospital like this would have extensive skill and ability in treatment of  
20 gunshot wounds from - in comparison by inexpert ability, this certainly appears to be very standard treatment and appropriate treatment throughout.

25 And looking at paragraph 9 on the first page of Dr Mazur's statement where he expresses:

*In my view he definitely had a non-survivable wound.*

30 Do you agree with that opinion?---Absolutely yes. The injury is quite typical of a fatal injury to the head and in my view it would have been quite unusual had the deceased survived this.

35 Dr Duflou, are you able to speak from your experience and knowledge as to if it were the case and I hypothesise here, if it were the case that the deceased was himself holding the weapon at the time it fired, are you able to speak to the position of the hand relative to the skull and the head at the time?---Assuming the deceased was standing bolt upright again, effectively the hand would be - well the weapon would be in continuity  
40 drawn backwards with the direction of the missile.

You're describing as you refer that - with your hand you appear to be holding the weapon at approximately a 45 degree angle to the upright plane, that is, if the barrel - the muzzle were pointing at 90 degrees  
45 straight up in the air, you're in fact demonstrating it at around the 45

degree angle from the upright. Is that right?---Yes, roughly speaking that would be about right.

5 Are you able to say whether or not the impact of the projectile with the dense skull bone can cause it to deflect from its trajectory of what would be a straight line otherwise?---Theoretically there can be some deflection. In general terms though, with a close-range gunshot wound and with a fairly large calibre bullet, which this was, there would be minimal, if any, deflection. So I think that within a few degrees – I mean, I'm being  
10 purposely vague about the number of degrees – the trajectory, if drawn backwards, would represent the angle of the weapon.

Are you able to speak to what happens to a person, to their body, upon the immediate impact of the round as you've just described? How does the  
15 body move, for example?---That, to a very large extent, depends on what part of the body is injured. In this case what is critical is that there is damage to the deep grey matter of the brain as well as to the mid-brain. The deep grey matter is a part of the brain through which all the nerves for movement go through. In fact, if you have a stroke which causes paralysis  
20 more often than not the damage is to a part of the deep grey matter. So if you damage that area you would almost instantly lose the ability to move. In a situation like this it would be quite reasonable to expect the deceased to drop immediately to the ground. There could be some spasmodic movement after that, but I certainly would not expect the deceased to  
25 make any meaningful movement after that at all.

Does the collapse of the body – may it involve the legs simply buckling up underneath the body rather than being extended as one would have if one fell to the ground still conscious?---Well, the body can literally  
30 crumple in on itself, yes. So the description that you give of the legs under the body, yes, that would be quite reasonable.

Are you familiar with any phenomenon of stovepiping I believe the expression has been used where someone has fired a shot and then the  
35 hand is unable to complete the movement of the weapon causing the round to block. Are you familiar with what I'm putting to you?---Yes, I am. I must say that I've not had extensive experience in that phenomenon. But my understanding is that for a weapon to – a semiautomatic weapon to cycle correctly and for the cartridge to be  
40 ejected you need – well, if you have excessive recoil, in other words, the weapon isn't held properly and tightly, the recoil of the weapon will prevent energy dissipating or causing the projectile to exit, resulting in what is called stovepiping; in other words, with the cartridge partially ejected from the weapon. This would correspond I believe quite well with  
45 the evidence of the deceased dropping to the ground deeply unconscious

essentially from the moment the bullet hits his body.

So that because of that massive damage there has been no follow-through, if you like, with the physical action of the weapon?---Yes, correct.

5

Doctor, are you able to speak to the physical effect within, for want of a better description, the seam of spray patterns or whatever of body parts or blood where someone sustains an injury like that in close confines of a room?---You get a number of blood patterns in association with a gunshot wound in general terms. The first that you get is a blow-back type pattern where you have blood on the surface of the weapon itself and often inside the barrel. Secondly, you obviously have an extensive amount of bleeding from the gunshot wound, and this can result in a very large pool of blood on the ground, for example. Next, you can have bleeding from – well, in association with the bullet leaving the body and the spray of blood out, together with possibly brain tissue as well. Then if the person maintains a cough reflex you can have coughing of blood of the deceased in an involuntary fashion before the person dies.

20 From what you've seen of Dr Mazur's notes I believe he recalls at paragraph 8 the amount of blood products that were given to the deceased. Are you able to describe to the Board an indication of what sort of blood loss PTE Kovco had suffered?---That's very hard to say, but in general terms it wouldn't surprise me at all if he had lost blood in the – possibly in  
25 one, two or even three litres of blood.

You've described the presence of naphthalene balls, also known as moth balls I understand?---Yes.

30 When the body was presented to you, was the body in a container at that time?---Yes, the body was received in a coffin and it was I think an aluminium coffin. It certainly had a metal appearance. Within that coffin the body was in a body bag and there were these naphthalene balls on the surface of the body.

35

Looking at your report, you conducted your autopsy at 1015 hours on 30 April and we understand that PTE Kovco died in the evening of 21 April? ---Yes.

40 What is the effect from your perspective as a forensic pathologist in terms of the delay or the passage of time between the deceased and the presentation of the body for you for your examination from a forensic perspective?---As soon as a person dies they start deteriorating. There is – well, the cells within the body start dissolving and bacteria from within  
45 the bowel start invading the remainder of the body. This is slowed down

if the body is stored in a cool place, a refrigerator, for example. In general terms, a body can be kept in for a forensic pathologist acceptable condition for about a week if it is refrigerated. There are two other ways of preserving a body, if you like. One is by embalming, which has the advantage of effectively preserving a body indefinitely, but has the very significant disadvantage of interfering dramatically with toxicology testing, almost making it impossible. The next option available is freezing the body. That has a very major disadvantage as well in that prior to dissecting the body the body would need to be defrosted, which can take a very long period of time. There is also significant damage to the cells within the body. Freezing water is larger than - or takes up a larger volume than liquid water and all the cells within the body would burst. This would make microscopic examination of the body impossible. I must say that the deceased was in surprisingly good condition considering that he had died nine days or so prior to my examination and he could very well have been showing the features of advanced decomposition by the time he came to me. I had expected that and that would have made the autopsy very difficult indeed in that all detail would have been lost. So in my view, if anything, the deceased was kept almost in optimal condition after his death, presumably as a result of quite good refrigeration.

There is some evidence of ammonia being put on the body, as well as the naphthalene balls. Is there either a positive or negative forensic effect from that type of interference with the body during that handling process?---I'm not aware of the purpose of ammonia but then I'm not an undertaker or funeral director so I'm not too sure of all the methods used. The main purpose for using naphthalene is as an insecticide to keep insects away, specifically to keep flies away to prevent infestation by fly larvae. If there had been such an infestation, this would have destroyed a large amount of the physical evidence available. So it was a good idea if the body could not be totally secured from flies.

In respect of gunshot residue for your purposes, was there anything that you saw or observed that had interfered with your capacity to consider gunshot residue in the handling of the body before it came to you?---Gunshot residue testing was done - I understand it was negative or it wasn't helpful. I also understand that the body had been washed. It's certainly possible that washing a body could result in loss of residue. So from that perspective, washing the body was not a good idea.

You mentioned earlier in respect of the wound there being the presence - I think it was the blackening to the rear, upwards and downwards but not from the front. If I could just ask you to revisit that part of your evidence, yes, the fourth line of your paragraph 1 under "Gunshot wound":

*Extending superiorly, inferiorly and posteriorly for a distance of up to 5 mm in length were a number of radiating micro tears.*

?---Yes.

5

So am I right in saying that that's backwards, upwards and downwards where you say "superiorly" - - -?---Superiorly is upwards, inferiorly is downwards, posterior is backwards.

10

Do you draw any conclusion from the absence of - that would be anteriorly, would it, the - - -?---Yes, sir.

- - - fourth direction?---No, I don't know what to make of that. It's an observation, I don't think it means anything one way or the other.

15

Your reference to the absence of an abrasion cuff: do you draw any conclusions from that absence?---No, it was something unusual and I recollect discussing it with the ballistics officers as well as something that was unusual. Possibly it has something to do with the specific type of ammunition used, I don't know. It's unusual but I don't think anything specific can be made of that.

20

Thank you very much, doctor. That completes my examination-in-chief, sir.

25

PRESIDENT: Thank you. COL Young.

COL YOUNG: Mr President, in accordance with your practice direction, I'll exercise my right to go last.

30

PRESIDENT: Certainly. Colonel.

LTCOL WILKINSON: Just a couple of matters.

35

<EXAMINATION BY LTCOL WILKINSON

[1500]

40

LTCOL WILKINSON: Wilkinson is my name; I appear for Soldier 2. Just on this issue of post-mortem changes to a body, I'm particularly concerned about the face?---Yes.

45

What sort of changes would occur to a face, apart from, of course, the trauma itself?---After death and assuming that there is no advanced decomposition, the biggest changes are of pallor of the face, in other

words, the face appears paler than usual as a result of blood draining from the face, and obviously the loss of expression as all the muscles in the face relax.

5 When would these changes - - -?---The loss of expression essentially happens at about the time of death. The pallor of the face commences probably within about an hour or two after death and should become very obvious within three or four hours.

10 What about, say, 24 hours, would those sort of changes have occurred? ---The pallor will be very much established at that stage.

Is there any decomposing at that short timeframe?---There can be but in this case there wasn't.

15 You mentioned the embalming process and how that affects toxicology. What is embalming?---At a very basic level, embalming is any technique applied to the body to preserve the body in some way after death. At a slightly more detailed level, you can embalm the body in a number of  
20 ways. You can either embalm it externally by covering it with disinfectant-type solutions or other materials, which I believe is the case here. You can embalm the body by injecting it with various chemicals, or you can embalm it by effectively removing the blood and inserting preserving chemicals. That is the most typical way of embalming that is  
25 done in Australia but was not the case here.

No. Was there any evidence of external embalming?---The presence of the naphthalene balls is probably a feature of that. As an extreme  
30 example, what you would do is place the entire body, for instance, in a formalin solution, in a bath of formalin. That would be an extreme example of external embalming; that was not the case here.

Is there any less extreme versions in relation to external?---Coating the body in various chemicals and, as I've mentioned, naphthalene balls is an  
35 example of that, would be one way. The ammonia, if ammonia was used, it possibly could be as well, although I'm not certain of that technique at all.

40 What would that do to appearance?---I don't know.

That's all, I think.

PRESIDENT: Thank you. LTCOL Holles?

45 LTCOL HOLLES: Thank you, sir.

5

LTCOL HOLLES: Dr Duflou, you've indicated that you provided three types of advice on initial contact by the ADF; correct?---Yes.

10

I presume when you gave advice to the persons in Iraq and Australia that related to preservation of the incident scene, preservation of physical aspects of the incident scene?---No, it was not. I gave no advice in relation to that. My concerns were very much with the body only.

15

You gave advice as to the method by which the body should be transported back to Australia?---Yes, in effect, as quickly as possible without embalming of the body.

20

To whom did you give that advice?---I can't remember who the person was. As an excuse, I was on holiday out travelling at the time when I gave that advice. I kept no notes.

So the advice was get it back quickly?---Correct.

25

And it should be refrigerated or maintained at a cool temperature?---Yes, for the entire duration.

30

You indicated in your report that when you examined the body initially it had rigor mortis that late after death?---It's uncommon unless the body has been refrigerated quite constantly for the duration.

35

So that would indicate to you there had been a reasonable degree of refrigeration at the time?---Yes, correct. And taking that together with the almost total lack of decomposition of the body I felt that the body had been well refrigerated for almost the entire duration.

40

Is it usual, given that level of refrigeration, to have naphthalene balls, et cetera around the body?---Bodies that are transported internationally often have a variety of preservation materials with them. As I've mentioned, embalming is common. In fact in civilian transportation is it almost invariable that there will be embalming of the body. To have some form of attempt at preservation is not at all uncommon.

45

Have you personally struck naphthalene balls before?---Yes, I have.

Often?---No. After saying that, I don't often deal with repatriated bodies.

I can recall one episode of a large number of naphthalene balls. I can't remember where the body came from. But in general terms, I wouldn't see more than about one or two repatriated bodies a year.

5 You identified the cause of death as a single gunshot wound?---Yes.

You've made a number of inquiries with the New South Wales police who are responsible for the preparation of various reports to the State Coroner in relation to the death of PTE Kovco?---Yes.

10

Is it reasonable to say that there is nothing to indicate that this was a suicide?---When you consider whether a death is suicide, accident or homicide – and I certainly considered all three options – you need to consider the seen circumstances, the history and any other information as well as the autopsy. If I took the autopsy on its own without any other consideration at all suicide would be a possibility that I would consider. But from the other information that I have received I would certainly not be able to make to the level of – well, even to any level of certainty that this was a suicide. In my view, this is not.

15

20

It's the case, is it, that it's more likely an accidental death?---From the additional information, yes.

25

Doctor, you may or may not be able to comment on this, and please, I'm not trying to put you on the spot. But there were a number of reports in the newspapers immediately after PTE Kovco's body was repatriated that the gunshot wound was not a close-range wound. Are you aware of those reports?---Yes, I'm very aware of them.

30

Are you able to tell the Board of Inquiry anything about those reports? ---In my view, the reason why those reports came out were the result of somebody informing the media that there were no marks around the gunshot wound. There was no blackening, there was no stippling. Now, in fact I had removed the gunshot wound, including the surrounding marks. After the body had left the Department of Forensic Medicine, yes, those were not present. So I can only conclude that if that report was made on the basis of what was actually seen on the body after it had left us, yes, that was correct. But in fact what wasn't known presumably to whoever leaked that information was that I had removed that injury and it was in our refrigeration area.

35

40

You say that the body was received basically in reasonable condition given the time which had elapsed since death?---Well, I think I received it in very good condition.

45

Did you personally take or did you supervise the taking of the swabs from the hand for gunshot residue?---From recollection, they were taken while I was in the room. I can't remember who took them. Presumably one of the crime scene officers, but I can't remember.

5

Pardon me asking something as basic as this, but is there a presumptive test and a definitive test, the GSW?---I understand so, but I certainly don't express expertise in the area.

10 Was there one or two attempts at testing, as far as you're aware?  
---Multiple swabs were taken from the hands using a standard test kit that is used in all gunshot wounds. These – the test kits, which are in the form of metal stubs with adhesive material on them, are then forwarded to a laboratory. I think it's a laboratory in Victoria, but – the person that  
15 forwarded those would be able to tell you – for further testing.

But as far as you're aware, the test were inconclusive?---As far as I'm aware, yes. I was involved in a meeting with various police officers who investigated the case where we discussed any outstanding issues and other  
20 matters that needed to be looked at. Gunshot residue was discussed at that meeting.

The 9 mm parabellum is a relatively slow round, is it not?---Well, compared to a rifle, yes, it is slow.

25

It's a large round, if I can use the expression; that is, whilst short, the mass of the projectile itself is quite big?---Yes, it is.

Are you able to comment upon the effect that has in causing spray, if I could use that expression, on the exit wound? If you don't understand the question, please say so and I'll try and put it another way?---I don't know if I can comment on it, except to say that it can happen. But in terms of how much it would happen relative to let's say a 38 calibre or a 22 calibre handgun I don't know. There would certainly be a lot less destructive  
30 force compared to almost any rifle. But in terms of the actual spray pattern of blood, I don't think I can answer that.  
35

Are you able to say how far you'd expect the spray pattern to travel?---No, I don't think I can answer that.

40

Or indeed the diameter of the spray pattern?---No.

Doctor, did you provide any advice to anybody within the ADF as to appropriate methodologies for identification of the returning body?---Yes, I have in the past and in terms of this case yes as well. That was  
45

unfortunately after the body had been returned already, but not at the time while the body was still in Iraq, to my knowledge.

5 What are you able to say about the method of identification adopted by the ADF?---In general terms visual identification of any dead body is inherently unreliable. I think this case unfortunately illustrates it very well that a person arguable with the best intent in the world can misidentify a body. I've mentioned this before, but as an example that I use in my lectures on identification I show a photograph of Marilyn  
10 Munroe after death, the photograph is freely available on the internet as are most things and this photograph I challenge anybody to say is Marilyn Munroe and yet she died, not of a head injury or with any medical treatment or with any survival after sustaining the head injury, but of a drug overdose and yet she cannot be recognised. Visual identification  
15 unfortunately is inherently very, very unreliable.

The alternative is non-visual identification and that is using various scientific techniques available to identify a body. Essentially your options; dental identification, which we have factored in this case,  
20 fingerprint identification, DNA testing and comparison, possibly using various specific physical appearances. So if there is a highly individual tattoo and especially if it has been photographed previously that could be a good form of identification.

25 And there was in fact a tattoo in this case was there not?---Yes, there was. It was a partially completed tattoo of a dragon.

Doctor, the condition of the body as received, it was absent the usual post-mortem changes the same as it left the hospital in Iraq as you  
30 understand it?---Yes.

That is it had a hard collar, that is a collar that holds the neck in place?---Yes.

35 It had the bandages that one would expect which were applied by the treating staff at the hospital?---Yes.

It had, as you've identified in your report, a number of locations or spots where some sort of ECG device was fitted?---Well that was below  
40 the - the neck, but there were tubes in the mouth as well.

There were tubes in the mouth which were located, there was two cannulas?---Yes.

45 And that's a condition of the body as it would have been - - ?---Yes.

- - - at the time it would have been seen by people saying their farewells to the body in the hospital in Iraq?---I think to all intents and purposes the body would've looked like that, yes.

5

So the physical condition of the body would've remained constant from the time it left the hospital in Iraq to a time it arrived in the morgue in Sydney?---To all intents and purposes, yes.

10

So it's standard practise is it not when somebody dies in hospital in circumstances such as this to leave the cannulas, the ECG points, the braces, the badges, et cetera on the body?---Yes it is and the reason for doing that is so that we can make an assessment as pathologists if the treatment - if anything had gone specifically wrong with the treatment. So as an example, was the endotracheal tube to assist breathing was it in fact placed in the trachea, the windpipe and in the right location in the windpipe or somewhere else. So it's very important to keep these items on the body.

15

20

And as you've identified, the puncture mark would've been used to obtain a sample for the blood gas examination?---Correct, that was the puncture mark in the left wrist, yes.

25

So basically the body that left Iraq physically was the same as the body that arrived at your hospital?---Yes.

Just pardon me for a moment please sir. Yes thank you Mr President, that's the cross-examination.

30

PRESIDENT: Yes, thank you. LTCOL Berkley?

LTCOL BERKLEY: Yes, thank you.

35

<EXAMINATION BY LTCOL BERKLEY

[1520]

40

LTCOL BERKLEY: Doctor, I'm LTCOL Berkley and I represent Shelley Kovco on my right, Jake's widow?---Yes.

One of the things we're going to inquire into of course is the misidentification of the body whilst Jake was still overseas. Do you understand that?---Yes.

45

All right. You said in your autopsy finding that the body was that of an

adult male whose appearances were consistent with the stated age of 25 years?---Yes.

5 All right, does that mean that he looked to you like a 25 year old?---Overall, yes - well, that's not to say that he couldn't have been 35 or 20, but yes.

10 Sure, but he didn't look considerably older, such as say 20 years older?---No.

Thank you. Now, one thing that is important I suppose is your evidence about the preferred method of identification of bodies?---Yes.

15 I see that you've had Professor Griffiths to supply you with a dental identification?---Yes.

20 Did you have Jake's dental records, Military dental records?---Well, I didn't have them personally, but I think that - well, presumably either Professor Griffiths or AIRCDRE Griffiths and Dr Lane would have had them to be able to do that comparison, but essentially you can't do a comparison without having the record available.

25 Yes, of course. Did you, when you note in your report that you did in fact have miscellaneous medical records of the deceased, were any of those miscellaneous medical records contained in his Army medical file?---Yes, I had access to at least one of the Army medical files. I can't recall now, but it may have been both his Base medical record as well as his deployment record or one of them. I - I just can't remember how many I had.

30 You wouldn't expect those files to be very thick in the case of a fit young 25 year old?---No they weren't.

35 And there was certainly nothing in the files to indicate any intentional act of the decease in his demise?---No.

40 All right and the next logical question is, there's nothing from your autopsy or examination of the body that could indicate any intentional act of the decease in his demise?---No.

All right and the other thing that interested me was when you said in your evidence that the gunshot residue could be removed by washing?---Yes.

45 What sort of washing? Are we talking about a cursory wipe down or a thorough scrub? Is there, through your experience, is there a tendency of

5 gunshot residue to survive just a wipe down or is it easily removed?---Well it is my understanding that it does, yes. Although, at the same time, often when - well, not often, but on occasion when the person who is being tested definitely was the person who handled the weapon, you can still have a negative gunshot residue as well.

10 Certainly, but I think it does survive I think say a cursory attempt or perhaps a less than intense effort to get rid of it?---That is my understanding, but I'm not an expert in gunshot residue.

15 No, certainly not, because obviously it falls upon us to find out what degree of washing was done. But the absence of the gunshot residue, doesn't mean that you didn't handle the gun, it's certainly just that there's no evidence at all as to who handled the gun from that basis alone, would you agree with that?---I'd agree with that, yes.

20 Yes, thank you, doctor. Doctor, one final matter on instructions. In your experience when a weapon is discharged close to a body such as in this case, what appears to be in this case, would you expect blood to be found, blood from the deceased to be found upon the weapon?---Probably the best person to ask is a physical evidence type person. But after saying that, yes, I would expect it more often than not.

25 Is that because you expect some blood to also be ejected from the entry wound?---Yes, correct.

The amount of blood obviously depends on the size of the wound and the proximity to the weapon, doesn't it?---Yes, it does, amongst other reasons.

30 Thank you, doctor, for your time. I've no further questions.

**<EXAMINATION BY COL YOUNG**

**[1326]**

35 COL YOUNG: Dr Duflo, my name is COL Young. I represent the interests of PTE Kovco. In your report you mention a piece of string was noted around the left large toe. I presume there would have been a tag attached to that, but it wasn't at the time?---Yes.

40 Is there a protocol for tagging bodies for identification purposes that you're aware of?---I think it's fair to say that each organisation that deals with large numbers of dead bodies has its own approach. Our approach is to place effectively a hospital-type identification tag around the left wrist.  
45 The tag is a plastic one that cannot be removed except by cutting. So once

it's locked into place it can't be removed. It's also relatively watertight in that you slip a piece of paper with information into that tag; very, very similar to your standard hospital identification band. That's one technique and that's the one we use and I think it's a very good technique. Other  
5 places certainly have the habit of using the good old-fashioned toe tag. I think the disadvantage of that possibly, as can be seen in this case, is that if a toe tag is made of light cardboard, that if it gets wet it can fall off, it can come loose from the piece of string. I know that some places use – they actually write on the body the name of the person on the body itself,  
10 often on the leg or on the arm. Essentially any method which puts the name of the body somewhere on the body or as a second best on the body bag is a good method.

In relation to a person being asked to identify a body, I note your evidence  
15 about changes to the face, for example, pallor and change of expression. Given that being the case, would you agree that using a photograph to identify a body would not be helpful?---I don't think it would be reliable. Besides the change of expression from a live person to a dead person, which I don't think can be over-emphasised, the presence of the injuries or  
20 the medical appliances, the swelling of the face, it really wouldn't surprise me if there be a misidentification.

You said that visual identification is unreliable and you've offered the opinions of some alternatives, mainly scientific, DNA, fingerprint, dental.  
25 Could you assist further if someone has to identify a body in the field, as it were, where DNA testing is not easily accessible and other scientific testing is not easily accessible? Could you give advice to someone on what they might look for and how they might help them to identify a body?---Well, I think what's important is that not only the face should be  
30 used to identify a person, especially if there's a facial injury. In the case of PTE Kovco there was a tattoo and a fairly individual tattoo, especially considering it was half done. That would be very useful in this specific case. If he was wearing another form of identification, a dog tag or similar, and it was still on the body, that would be very helpful as well. I  
35 think I have to be pessimistic and say that if you're going to do visual identification the chances of a misidentification occurring again is only a matter of time.

Would I be right in saying you've made autopsy findings consistent with  
40 suicide?---Yes.

Many?---Yes, my – well, the coronial investigation in New South Wales has as one of the end points the identification of the body, the time and  
45 place of death, the cause of death and the manner of death. One type of manner of death is suicide. The purpose of the autopsy is to assist in any

or all of those aspects. If I can provide an opinion as to the likely manner  
of death I try and do that for the Coroner. In most of my autopsy  
reports for the Coroner I will provide an opinion of manner if that is  
reasonably obvious from the circumstances and the autopsy findings. I'm  
5 cognisant of the fact that for making a determination of suicide that the  
level of certainty has to be well above that of balance of probability. For  
me to advise the Coroner that this is a likely suicide the things that I look  
for, besides the typical type of suicide, if you like, are – so whatever  
mechanism is used, that it has fairly typical features of that. I would also  
10 like a history of depression with or without previous episodes of self-  
harm. Generally, unless there is a suicide note or a very strong indication  
of the person taking his own life, I would hesitate to suggest that it would  
be suicide. Looking at this case specifically, I understand there's no prior  
history of depression of any significant nature. There's no history of self-  
15 harm, there is no suicide note. So even though there is a gunshot wound  
to the side of the head, which is a fairly typical type of suicidal injury, in  
the absence of those other features I don't think that a determination of  
suicide can be reliably made in this case at all and that the features, if  
anything, together with the history indicate that this is an accidental  
20 discharge of the weapon.

Thank you, doctor. I've no further questions.

25 <EXAMINATION BY COL GRIFFIN

[1534]

COL GRIFFIN: Do you still have exhibit 26 before you, doctor? This is  
LTCOL Mazur's statement?---Yes, I do.

30 If you would turn to paragraph 16, please. You'll see there that Dr Mazur  
said:

35 *I can say that based on the CT scan and my physical findings  
regarding the gunshot wounds, there was an instantaneous loss of  
consciousness and feeling. In layman's terms, he would have  
experienced no pain.*

40 Do you have an opinion on that issue?---I think that's a fair comment to  
make. There is nothing in the autopsy that would go against that.

Now, you talked about your own department's practise in tagging  
bodies?---Yes.

45 Are you able to tell the Board of what you experienced the bodies coming

to you that have been through emergency departments of hospitals in New South Wales?---All cases - well, anybody that has been admitted to a hospital must have an identification tag on their - on their wrist, that is standard practise and more often than not, there is one on the wrist and  
5 one on an ankle in case one gets lost or gets damaged in some way or other. We also have a requirement that any medical paraphernalia that are used and are on the body at the time of death must remain on the body and the reason for that is, as I've mentioned, so that we can make an assessment in terms of whether those items were placed correctly.

10 Is the clothing that the person was wearing important as well for your purposes?---It can be and I suppose viewing this from a homicide autopsy perspective and certainly the way that I approached this autopsy was as if it was a homicide autopsy and the protocols that I used were homicide  
15 autopsy protocols. One of the things that would need to be done is that the clothing would need to be removed from the body and I would then hand them to a crime scene officer. I personally do not examine and describe the clothing in detail, that's generally the job of a crime scene officer. But identification of various damages to clothing can be very  
20 useful in terms of assessing what may or may not have happened. Taking this case into account of course, well the gunshot wound was to the head. So unless PTE Kovco was wearing a hat at the time there would be no damage to the clothing at all.

25 The other matter is that because he was taken to hospital, one of the first things that would happen at the hospital is that all his clothing would be removed. The reason why you do this in cases of severe trauma is to make sure that there are no other injuries to the body. Just because you see a single presumably lethal gunshot wound to the head, doesn't mean  
30 there aren't other injuries. So you must remove the clothing from the body to do that full assessment. Of course after that, it's very good practise to make that clothing available. I must say that in New South Wales more often than not the clothing is available to police, but there have been many occasions over the years where the clothing has vanished.

35 In a case such as this, were it to be the case that the deceased was wearing a short sleeved physical training t-shirt, are you able to speak to the importance of sleeves or otherwise in those circumstances of gunshot residue and other material?---There's always a possibility of having a back  
40 splatter type blood arrangement on the clothing. In terms of residue I don't know if there would be or wouldn't be. But the appearances of the blood on the clothing may assist in some way or other in deciding what may have happened.

45 Would you recommend that that would be something that Defence should

take into consideration in the managing of incidents like this, the preservation of clothing and other material?---Yes certainly. Without opening a Pandora's Box, you can all have almost - there are almost no occasions where you have too much physical evidence. Once you've  
5 disposed of something you can never go back to it again. Once the clothing has been disposed of - you know, we can only speculate as to what was on the clothing. If we had the clothing in front of us, we could make a reasonable assessment of it. It's the same with any other item of potential evidence, it should be available if at all possible.

10 You've been asked questions by several of the counsel for your opinion in this matter in respect of self harm and suicide?---Yes.

15 You've talked about indicia that you take into consideration. Have you been made aware of a journal that was kept by the deceased?---Yes, I have, both through media comment as well as through more formal channels.

20 Have you had the opportunity to read the entry relating to a dream of injury that he experienced?---No, I haven't read it myself.

I'll show you a document. It starts with an entry headed at the top "Day 14 Date 21 March" and it runs for that page and the succeeding two pages. I'd ask you to examine that. Just read it through to yourself, doctor,  
25 please?---Yes.

Have you read all three pages?---Yes, well, I've got to about halfway down the third page.

30 You'll see there's some reference - and if you'd accept from me that the evidence is that this is a journal maintained by PTE Kovco, that entry being made on 21 March, precisely a calendar month before the incident that resulted in his death. He's described in there or the journal entry describes injuries of wounds. Are they consistent with the injuries and  
35 wounds that you observed in the deceased?---Yes, they are.

Having read that material, does it affect in any way your conclusions in respect of self-harm or suicide?---It's very difficult to comment on this in that it's so eerily similar. I don't view this though as a typical or in  
40 any way typical of a suicide type note. It appears to be a description of a dream. I'm certainly not a psychiatrist or a psychoanalyst. But it's either coincidence or something that he'd thought about before; I don't know. It's certainly strange, but I don't know if I can comment further on that.

45 Indeed. As I understand it, it's either at the top of the second or the third

page where he expressly makes the point that this is not suicidal ideation?  
---Yes, that's right. He says here:

5 *I know it wasn't about killing myself. So I'm a bit worried it  
might be a premonition.*

But to use your own words, the actual injuries are – if I quote you  
correctly – eerily consistent with those that he in fact did sustain?---Yes,  
correct.

10 Would you defer to specialist mental health psychiatric opinion in respect  
of the relationship between that journal article and self-harm or suicidal  
inclination?---Certainly.

15 It's not an area that you profess expertise in per se?---No.

Thank you. Mr President, I have no further questions for the doctor.

20 PRESIDENT: Anything arising out of that, gentlemen?

LTCOL HOLLES: There are two issues, sir, one strictly by leave and one  
arising directly out of my friend's further remarks. I might deal with the  
matter arising first.

25 **<EXAMINATION BY LTCOL HOLLES** **[1544]**

30 LTCOL HOLLES: It's reasonably typical for people who are engaged in  
dangerous occupations to think about the consequences of things going  
wrong in that occupation, isn't there?---I would hope so, yes.

That letter may be no more than that?---I don't know.

35 The point by leave, sir. There has been some indication – and I  
understand your evidence is no stronger than some indication that the  
body may have been washed with ammonia or something similar before it  
was repatriated?---Yes.

40 Or at some stage during the repatriation. The postmortem photographs  
would tend to indicate there was still a quantity of blood around the  
head?---Yes, there was.

45 It would be logical to assume, would it not, that the head at least was not  
washed?---I don't know. I would hope it wasn't. But I don't know how

the mortuary staff in Iraq or the transporters of the body would have dealt with the body.

5 Without trying to import some omniscient knowledge to you, doctor, it would be pointless washing the hands or washing the feet or washing the trunk and leaving the head alone if it was done for some purpose of preserving the body?---Presumably, yes.

10 Thank you, sir.

PRESIDENT: Anything further?

15 COL YOUNG: I've just got one further question by leave, sir, which might assist.

PRESIDENT: Certainly.

20 <EXAMINATION BY COL YOUNG [1546]

25 COL YOUNG: Doctor, in your experience dealing with autopsies and suicides and the like, is it usual that people who suicide do it on their own, as it were, and not in front of others? Are you able to make a comment on that?---Well, there certainly have been suicides where people have done it in front of other people, but in general terms it seems to be something done with the person alone, yes. It would be unusual to have a suicide in the presence of a couple of people in a bedroom, for instance.

30 Thank you, doctor.

PRESIDENT: Thank you, doctor, you may stand down. The Board is very grateful to you.

35 <WITNESS WITHDREW [1547]

40 COL GRIFFIN: Sir, I note the time and rather than embark on another witness and then stop straightaway, it may be useful if we adjourn the day's proceedings at this point to prepare that witness so that we can commence immediately tomorrow morning.

45 PRESIDENT: Obtained.

COL GRIFFIN: Thank you, sir.

5 **MATTER ADJOURNED AT 1548 UNTIL  
TUESDAY 18 JULY 2006 AT 1000**

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