

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

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**AUSTRALIAN DEFENCE FORCE**

**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**

**1011 FRIDAY 4 AUGUST 2006**  
**DAY 16**

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

**TRANSCRIPT VERIFICATION**

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

Signed.....  ..... Date .....04.08.06.....(President)

Signed.....  .. Date .....04.08.06.....(Recorder)

Signed.....  ..... Date .....04.08.06.....(Transcriber)

Signed.....  ..... Date .....04.08.06.....(Transcriber)

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Kovco 04/08/06

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NTS

PRESIDENT: Good morning, Major.

5

MAJ JOLLY: Good morning, Mr President. Sir, before we start, there are a number of housekeeping issues I would just like to raise with yourselves and Counsel Representing. Today we have scheduled WOFF Hunter, Soldier 34 and Mr Adams to give evidence. Soldier 34 and Mr Adams will be giving evidence by the VTC. The <deleted> are running the bridge for that and, as a result, we only have that link between 1130 and 1400 hours today. Sir, consistent with your Practice Direction that was sent out at the start of this week, it's proposed we sit through that period of time.

15

Also, sir, in accordance with the directions you gave me the other day, we've been able to rejig the camera setup. COL Young is occupying the nominated Counsel Representing slot for talking to witnesses in the MEAO. They will now see the individual Counsel Representing large and in full colour and, regrettably, they will also see Counsel Assisting as well. Obviously you and the Board Members will see it on the screen in front of you.

20

Therefore, Mr President, I call WOFF Hunter.

25

**<WOFF CHRISTOPHER FRANCIS HUNTER, sworn [1014]**

**<EXAMINATION BY MAJ JOLLY**

30

MAJ JOLLY: WOFF Hunter, your full name and current posting, please?---My full name is Christopher Francis Hunter. My current posting is 37 Squadron at RAAF Base, Richmond.

35

WOFF Hunter, do you recall giving a statement in the course of these proceedings?---Yes, I do, sir.

40 Could WOFF Hunter be shown his statement, please. You have two statements there, WOFF Hunter; one has been redacted for OPSEC matters. If you could just satisfy yourself that that is in fact the statement you provided?---Yes, that's the statement I made, sir.

Are there any additions or amendments that you need to make to that statement and, if you need to, take the time to read through it?---No, sir, I don't. I don't need to make any additions or amendments.

5 Mr President, I first tender WOFF Hunter's full statement and ask that that be marked as a classified exhibit, and then WOFF Hunter's redacted statement which I then propose to read on to the record.

PRESIDENT: Any objection to that process?

10

COUNSEL REPRESENTING: No, sir.

PRESIDENT: It will marked as 133 in its redacted and restricted form.

15

**#EXHIBIT 133 - REDACTED AND CLASSIFIED VERSIONS OF WOFF HUNTER'S STATEMENT**

20

PRESIDENT: I take it counsel has seen it?

COUNSEL REPRESENTING: Yes, sir.

PRESIDENT: Thank you.

25

MAJ JOLLY: Thank you, sir.

30

*I, Christopher Francis Hunter, make oath and say as follows: I am a member of the Royal Australian Air Force and a trained load master. I was posted to the Joint Movements Control Centre (JMCC) for the Middle Eastern Area of Operations (MEAO) at the time of the incident. I was the Operations Warrant Officer (OPSWO) for JMCC MEAO.*

35

*The first I knew of any requirement to repatriate the body of an Australian soldier was after a telephone call <deleted> <deleted> on Saturday, 22 April 2006. (Blank) as OCJMCC MEAO is my boss.*

40

*After that telephone call Soldier 34 spoke to United States military personnel at the theatre mortuary evacuation point (TMEP) located at <deleted> in order to sort out subsequent arrangements for repatriation. It is my understanding that in doing so <deleted> was adhering to the process set out in the*

*mortuary affairs plan set out in an annex to HQJTF Standing Instructions. I have seen that plan.*

5 *An Australian C130 military aircraft was inbound to the military side of <deleted> from Baghdad the following day, Sunday, 23 April 2006, and we were advised that PTE Kovco's body would be on it. Soldier 34 and I went out to KCIA before the C130 arrived at about 1600 hours. There was a bearer party on board consisting of eight members of the Security Detachment (SECDET) with whom PTE Kovco was serving. Also on board*  
10 *was an escort, being Soldier 2, <deleted>.*

15 *PTE Kovco's body was contained in a transfer case which is aluminium and has two parts. The transfer case was carried off the rear of the aircraft by the bearer party through an honour guard of two rows of 10 personnel provided by (blank) and loaded into a TMEP truck. I was a passenger in that truck and accompanied it all the way to the TMEP. Soldier 2 did not come in the truck, he was instead driven to the TMEP by Soldier 34.*

20 *The TMEP is made up of US uniform personnel who belong to the quartermaster core. It was TMEP personnel who opened up the truck when we arrived and who moved the casket into the TMEP. The TMEP has a large open area behind the front door and in this area are a number of stretchers on wheels. There is an office*  
25 *in the back right-hand corner and a hallway goes down to the back. It was in this area that TMEP personnel opened the casket, which they do as a matter of course upon receiving one.*

30 *I did not come forward of this open area and I did not view the inside of the casket. I saw the Australian Military Police view the body here and take photos. No consular officials were present at the TMEP. I did not know what Soldier 2's responsibilities as escort were. I did not know if he had to do anything other than*  
35 *escort PTE Kovco's body, meaning that he should do anything other than be there when there was any sort of movement of the body or casket. However, I did expect that he would identify the body.*

40 *Paperwork accepting PTE Kovco's body was prepared by TMEP personnel who also continued doing whatever they needed to do. PTE Kovco was placed back in the transfer case and the transfer case was placed into a refrigeration unit outside of the building. Soldier 2 returned to the (blank) with myself and Soldier 34 and*  
45 *was very quiet. Transferring PTE Kovco's body from the aircraft*

to the refrigeration unit at the TMEP took from about 1600 hours until 1800 hours on the Sunday. During all of this no civilian contractor was present.

5                    *On Monday, 24 April 2006 at about 1000 hours Soldier 34, Soldier 2 and I returned to the TMEP because Soldier 34 had arranged for a civilian contractor to collect PTE Kovco's body in an ambulance. The contractor who he had organized to do this was Mr Nasser of GAC, a subcontractor agent of Kenyon International. We all sat outside the front gate of the TMEP until the ambulance and Mr Nasser arrived at about 1100 hours. We escorted them into the TMEP where the bearer party of eight members of the SECDET and an Australian Defence Force chaplain had been for about 45 minutes before the ceremony.*

15                    *I noticed that some members of the bearer party had started to grow moustaches. Collection of the body by a civilian contractor is part of the mortuary affairs plan which was being implemented. It was <deleted> (blank) of the Royal Australian Navy who triggered the plan. The transfer case was placed into an ambulance. Solider 34, Soldier 2 and I followed the ambulance to the Al Sabah Hospital mortuary. We could see the ambulance for the entire journey. When we arrived at the mortuary I went in.*

25                    *Once the transfer case was removed from the ambulance mortuary staff tried to put it into the refrigeration unit, but it was too large and would not fit. They therefore opened the transfer case and lifted the black body bag out onto a gurney. They had great difficulty lifting it and I thought that they might drop him at one stage. They placed the transfer case against the back wall of the mortuary and left it there. They also placed some paperwork with the body. I do not know what that paperwork was.*

35                    *Mr Nasser and Soldier 2 may have signed some papers. However, I cannot be sure whether or not they did. I cannot be sure whether or not Soldier 2 looked inside the body bag at this point either. I spent most of the time outside smoking a cigarette. So I did not see into which door of the refrigeration unit the body was placed. It could have been in the bottom row third from the left but I cannot be sure. I am, however, sure that the body we came to collect on Tuesday, 25 April 2006 came out of the door that was second from left on the bottom row.*

40

5 We met with GAC at 1000 hours on Tuesday, 25 April 2006 at the Al Sabah mortuary to seal the casket. Alastar Adams from the Embassy was also there. There were a lot of people at the mortuary who I did not know and I do not know why they were there. A black body was produced from the refrigeration unit and placed on a gurney. Next to the gurney upon which the body bag was placed was another gurney with a wooden coffin on it.

10 The mortuary staff lifted the body bag from one gurney into the coffin on the other and again had a great deal of trouble doing so. The body bag seemed too big for the coffin. Mortuary staff opened the bag by unzipping it and Alastar and Soldier 2 looked inside. Soldier 3 and I stood back. Alastar had a printout of PTE Kovco's passport photograph. When I looked at the body  
15 the following day, Wednesday, 26 April 2006, the face looked nothing like the one in that passport photo. The mortuary staff indicated that everything was fine. They did not speak English.

20 Detol was poured on the body inside the bag and mothballs were placed in it. Soldier 2 was by this stage standing next to me and I said to him that we should zip up the bag properly as the mortuary staff had only partially done up the zip. Soldier 2 said this was a good idea and he stepped forward to ensure the zip was correctly secured.

25 A thin metal sheet was soldered over the body bag and a wooden lid was then nailed on to the coffin. Metal bands were sealed around the coffin and molten wax was placed on the bands where they joined. The Australian Embassy stamp was applied to the  
30 wax. I was standing about six to eight feet away from the coffin whilst this was going on. The mortuary staff were placing the coffin back into the refrigeration unit when we left at about 1100 hours. All of this took approximately one hour.

35 Soldier 34 and I arranged to take Soldier 2 to KCIA at about 1800 hours on the same day. GAC had arranged his travel and airline ticket. A civilian ambulance collected the coffin from Al Sabah Hospital Mortuary and Soldier 34 and a co-driver took the bearer party to escort the coffin out of the mortuary into the  
40 ambulance. The ambulance transported the coffin to KCIA, arriving at the airport about two hours before the Emirates flight was due to leave. No one travelled in the ambulance with the coffin. The bearer party also escorted the ambulance to the gate of the cargo terminal at KCIA. Soldier 2 saw it loaded on to the  
45 Emirates aircraft.

5                    *The bearer party then returned to the front gate on the military side of KCIA to wait for the aircraft to take off. Emirates were aware of what was going and did all they could to ensure that Soldier 2 went straight through Customs. This only took about 15 minutes. I handed my personal mobile phone to Soldier 2 so he could send me an SMS text message when the aircraft was pushing back, which he did. I then sent Soldier 34 a text message stating that the aircraft was on its way. I then returned to*  
10                    *(blank).*

15                    *The next day, being Wednesday, 26 April 2006, I woke at about 1100 hours. I became aware that Soldier 34 had received a telephone call from GAC who had been telephoned by Kellogg Brown Root, another contractor used by the Serbs in Iraq for mortuary affairs, indicating that in their opinion, the body of the ADF with the gunshot wound to the head was still at the Al Sabah Hospital Mortuary.*

20                    *(Blank), Operations officer of JMCC MEAO, and I went to the mortuary to have a look. We had requested that Alastar Adams meet us there. When we arrived, mortuary staff removed another black body bag from the refrigeration unit and we had to have a look. That was the first time I had actually seen the body. It*  
25                    *looked like someone with a gunshot wound to the head. I did not look closely for entry and exit wounds. Alastar confirmed that this was not the body he had seen t he day before. It did not look anything like PTE Kovco's passport photo, although (blank) thought the nose looked the same. There was bandaging around*  
30                    *the head which was a cone shaped, post mortem lividity around the eyes, which were also black and swollen. The face was swollen and there was an intubation tube coming out of the mouth.*

35                    *Mortuary staff pulled a thick cardboard tag from the bottom of the bag with the words, "Jacob Kovco," and a series of numbers on it. It was not attached to anything, it was just loose. There was no string attached to it and the eyelet was torn. I did not notice any bracelet on the wrist but we were only viewing the*  
40                    *body from the chest up.*

45                    *A lot of bustling was going on for about an hour. I rang Soldier 34 and said that we needed a definitive way of identifying this body as neither (blank) nor I were experienced. We thought it might be a good idea to obtain photographs of the body taken by*

5                    *the SIB in order to compare them with this body. I spoke to (blank) who had (blank), a doctor on the telephone. (Blank) described to me where the entry and exit wounds were. The entry wound, described as being on the right-hand side of the head about 2 to 3 mm above the middle portion of the ear, matched up with the body before me. I could not see the exit wound because of the bandages.*

10                   *This was taking place at about 1300 hours local <deleted> time, which was about three hours before the Emirates flight with the other coffin was due to land in Melbourne. We were now fairly certain that this body was that of PTE Kovco. The body bag was zipped up and returned to the refrigeration unit. (Blank) and I returned to (blank). Soldier 34 received the Special*  
15                   *Investigations Branch photographs of the body taken shortly after death on the Defence Secret Network on the condition that they be viewed and then deleted immediately. I viewed one of those photographs on the computer and knew it was the same body that I had viewed in person at the Al Sabah Hospital Mortuary that*  
20                   *day.*

*That evening, at about 1800 hours, (blank), Officer Commanding OC (blank), and I returned to the mortuary as the OC had been*  
25                   *tasked with completing a quick assessment into the mix-up of the bodies. I had another look at the body I had previously viewed that day and the OC was asking questions of Nasser, the GAC agent, and mortuary staff. The OC did not view the body as far as I'm aware.*

30                   *During this I received a telephone call from (blank). He wanted more detail and, from my conversation with him, I was led to believe that the Chief of Army was sitting with PTE Kovco's wife in Australia. They wanted to be certain. I was asked to roll over the body in front of me in order to see if there were a distinctive*  
35                   *tattoo on this body's back. I asked the two mortuary attendants and they refused. I stated to (blank) that I would roll over the body if required, but my preference was not to. He said it was not required. I was asked to check for a scar on the body's neck but this was not possible without removing the neck brace. I offered*  
40                   *to remove the brace but (blank) said that this was not required. The body bag was zipped up and we returned to (blank).*

*The following morning, being Thursday, 27 April 2006, Soldier 33 and I proceeded to the mortuary. Alastar Adams was also*  
45                   *there. Soldier 33, Alastar Adams and I again looked at the body*

5                    *which was contained in two body bags and identified it as that of PTE Kovco. His body, inside the smaller bag, was taken out of the large bag and splashed with a large amount of Detol. A sheet was placed over the smaller bag which was then placed in the casket. The larger bag was taken outside and cleaned and I observed body fluids pouring on to the concrete.*

10                   *Once the body had been placed inside the casket, mortuary staff placed a cloth and sawdust on top of it. I did not notice them do this to the previous casket. They then sealed it as before and wrote something in Arabic on it. Soldier 33 wrote in English, "PTE Kovco, Melbourne," or words to that effect. The casket was then placed back in the fridge.*

15                   *I am aware that there was discussion of putting the body back in the care of the military system at this time and a decision was made that this would occur. The body was then to be returned to Australia on the (blank) chartered (blank), (blank) aircraft. This is why the second casket was to be returned to the TMEP at KCIA. At 1700 hours on that day, being Thursday, 27 April 2006, Nasser, from GAC, met us back at the Al Sabah Hospital Mortuary in order to effect the transfer of the body back to the TMEP.*

25                   *I also received a telephone call advising that Ambassador King wanted to be there. At the mortuary I introduced the Ambassador to Soldier 33. It was during this visit to the mortuary that Soldier 33, myself and Ambassador King were approached by two people from the Sydney Morning Herald. We declined to comment. We removed ourselves from the area and proceeded to identify the casket.*

35                   *We then went to the hospital entrance and spoke to people there about organising the ambulance. An ambulance came to the mortuary. Soldier 33 and I again identified the casket and it was placed on a gurney. Soldier 33 placed an Australian flag on it. A representative from Kenyon, named Robert Rowntree, was also there. He, Ambassador King, Soldier 33 and I all lifted the casket off the gurney and loaded it into the ambulance. Soldier 33 accompanied the ambulance to the TMEP while I drove Ambassador King and Robert Rowntree there in my vehicle. Nasser came in his own car.*

45                   *When we arrived at the TMEP there was a really nice casket waiting. We had asked the Americans to organize this for us.*

5 *TMEP staff went through their processes while Soldier 33 stayed with the body. Ambassador King was required elsewhere and had to leave. Since he had to come into my vehicle, I had to drive him. By the time I returned to the TMEP PTE Kovco's body had been placed in the storage refrigerator and I confirmed that Soldier 33 had identified it.*

10 *This took until between 1900 hours and 1930 hours. Soldier 33 and I stayed there until about 2330 hours when I met Soldier 34 out the front of KCIA. We picked up Ambassador King, Alastar Adams and Robert Rowntree from their hotel rooms and returned to KCIA by about 0100 hours. The Assistant Defence Attaché based at (blank) was also there. They wanted to see the casket loaded onto the aircraft. We waited until the aircraft finally arrived and had been loaded with all the other cargo. We ensured that the casket was escorted the entire way to the aircraft.*

15 *The Americans were exceptional in the degree of cooperation and understanding they gave us. A Marine Hercules landed with one of their dead and they held it up for 20 minutes so that our business would not be interrupted. They also provided an honour guard, a padre and a ceremony. They then began repatriation of their soldier. The aircraft containing PTE Kovco's body took off at 0600 hours on Friday, 28 April 2006.*

*Sworn at Royal Australian Air Force Base at Richmond, New South Wales on 6 July 2006.*

30 WOFF Hunter, having heard that statement, is there anything that you wish to add?---No, sir.

Thank you, Warrant Officer. Nothing further, Mr President.

35 PRESIDENT: Thank you. LTCOL Wilkinson.

**<EXAMINATION BY LTCOL WILKINSON**

**[1037]**

40

LTCOL WILKINSON: Good morning, WOFF Hunter. My name is Wilkinson and I represent Soldier 2 who was the escort?---Sir.

45 I want to ask you in the first instance whether you're familiar with a couple of documents that relate to mortuary affairs. First is document

called "The Land Warfare Procedure General Mortuary Affairs". Have you ever seen that document or are you familiar with that document?---I have not seen that one, sir.

5 The second document is one called "The Repatriation of ADF Remains From Outside Australia". Have you any familiarity with that?---I have seen that, sir. I saw it - I didn't see it as part of the whole repatriation process. I saw it after the event.

10 A part of that document, Annex A, is a document known as a duty statement for escort of deceased persons. Have you seen or have any familiarity with that particular document?---Only as a brief look at it, sir.

15 So it follows, therefore, if I could take you to paragraph 6 of your statement, and you say there:

20 *I did not know what Soldier 2's responsibilities as escort were. I did not know if he had anything to do other than escort PTE Kovco's body, meaning that he should do anything other than be there when there was any sort of movement of the body or casket.*

WOFF Hunter, that's basically correct?---Correct, sir.

25 I wonder if you could be handed a clean copy of the document referred to as Annex A, that is, the escort of deceased person's duty statement. You have that document in front of you. You'll note that it's a three-page document. I wonder if I could take you to paragraph 9 on the second page. Perhaps before I do that, just on the first page, general in paragraph 1, you'll see on the second line it says:

30

*An escort is to accompany the remains at all times.*

Notice that?---Yes, sir.

35

If I can take you to paragraph 9 which refers to duties of the escort and 9B says:

40

*The escort is responsible for the following tasks.*

Then it goes 9B:

*Ensuring the casket is consigned correctly at all handover points.*

That's actually very similar to the comment you make in paragraph 6, isn't it?---Sir.

5 That an escort is responsible for movement of the casket?---Correct, sir.

You can take it from me - and at the risk of leading evidence at the Bar table - that there's nothing - and I invite you to look - in those two and a half pages that require an escort to actually identify a body. Do you want to have a brief look at that document to see if - - -?---I'll just have a quick look, sir, just scan. I agree with what you just said, sir.

10 You agree with what I said. Mr President, this document has not been presented to any witnesses yet. It forms part of the Cosson Report which of course has been tendered. I don't know whether you want to have it tendered separately. As I say, it's already part of the Cosson Report.

MAJ JOLLY: Sir, I can confirm that. The document that LTCOL Wilkinson is referring to is Annex CCI of the Cosson Report which is before the Board as Exhibit C100. It's a matter for LTCOL Wilkinson whether he wants to separately identify - - -

PRESIDENT: Do you want it separately identified? I'm content to mark it.

25 LTCOL WILKINSON: Certainly, sir, yes.

PRESIDENT: I take it there's no objection to that course from Counsel?

30 COUNSEL REPRESENTING: No, sir.

**#EXHIBIT 134 - ANNEX CCI OF THE COSSON REPORT**

35 LTCOL WILKINSON: Now, given that situation, in the last sentence of paragraph 6 you say that, however, you did expect that he would identify the body?---Correct, sir.

40 Given what you now know, that there's no formal requirement for him to identify the body, your expectation would appear to be incorrect. But I take it that's all it was, was it? It was just - - -?---That's just an expectation, sir, that's correct.

45 A feeling?---A feeling that the escort would do that task.

I suppose it also follows that if you didn't know what the responsibilities of an escort were, that you wouldn't have told anybody in Kuwait whilst you were going through this process about what those responsibilities were?---That's correct, sir.

5

In particular, you didn't tell Soldier 2 what his responsibilities were or whether he required to identify the body?---No, sir.

10 I take it that you didn't tell anybody else?---I didn't tell anybody that Soldier 2 would be doing any identification of anything. I just solely introduced Soldier 2 as the escort at any given time.

15 Is that the limit of your recollection of what you did tell anybody relating to the - - -?---Absolutely. I only ever introduced Soldier 2 as the escort, sir.

And you don't recall any other conversations with any other person?---No, sir.

20 Relating to his role or his responsibilities?---No.

Can I take you to paragraph 12 of your statement in which you talk about that day on 25 April at the Al Sabah morgue?---Sir.

25 I wonder if you could just briefly describe what the morgue was like?---It was probably reasonable, sir, to say that we came from the TMEP, which was - as much as it was a sterile facility, it's a facility that the Americans have had in place for a long time and it was a very good setup, very clean, very professional. We then moved to the Al Sabah mortuary which was at  
30 best very run down, probably what a lot of people potentially would imagine even a third world country hospital would look like. Weeds everywhere, rundown buildings. It just looked - it looked almost abandoned to me when we first got there. And it was from our perspective extremely confronting, and particularly with the fact that we  
35 had PTE Kovco's workmates in tow, the SECDET personnel, that I was very concerned about those guys because they were quite rightly very upset about the whole affair. I was very concerned about their expectations when they saw it and how they would react. Being that if PTE Kovco had been a personal friend of mine, I would certainly have  
40 had a very ordinary reaction to it because it was - it just looked awful when we first got there. That's the best way to describe it.

45 Why were you there?---I was - I'd been in <deleted> at that stage for approximately five months as the Operations Warrant Officer for the JMCC. We were there as a headquarters element and I - Soldier 34, my

5 boss, had only been there about two months. So I was pretty much just being a driver. I knew the place, I knew <deleted> fairly well by that stage, I'd done a lot of driving over there, and I was pretty much just an extra body, and probably too at some degree a senior NCO present to just assist Soldier 2.

You've already mentioned Soldier 34 so obviously <deleted> was there with you?---That's correct, sir.

10 And there was a Mr Adams?---On that day, yes, that's correct, sir.

From the Embassy?---Mm.

15 Were there any other persons that you knew?---No, nobody that I actually met before. There was the GAC representative but I only met him - - -

Do you remember who he was?---Mr Nasser.

20 Was there any discussion at all about who was to do what, how things were to go about - - -?---No, the only defined role that I was aware of, sir, that Mr Adams, as the Embassy representative, part of his role is to - when the casket is banded with the wax, he's to place the Embassy seal on it. That's the only definitive role that I was aware of.

25 Was that the only definitive role that was discussed, if at all?---I don't even know whether that was discussed, to be honest. I think probably both myself and Soldier 34 had perhaps talked about it earlier, that he would do that.

30 Did Mr Adams present to you as a man who had experience?---Yes, yes, we'd had discussions with Mr Adams prior to that about what the Embassy did when there was repatriation remains, et cetera, to be done and he had been involved with, I believe, a couple of Australians earlier, but that was prior to myself actually getting to <deleted>.

35 And he carried himself as a person who knew what he was doing?---Yes, he did.

40 You say that he had a copy of PTE Kovco's passport photograph in your statement?---Correct.

45 Had you actually seen - do you recall ever seeing - - -?---I don't recall seeing it prior to the following day, which was the 26th, when I actually to do the identification myself.

But on that day, do you recall seeing the photo that day?---No, I don't, sir.

Sorry, no, I beg your pardon, on the 26th, the day after?---The day after, the 26th, I certainly saw it, yes.

5

Did the photo show PTE Kovco with a moustache?---No, it did not.

Did Mr Adams say anything to you or indeed anybody else present regarding identification of PTE Kovco's body?---Not on the 25th, no, sir.

10

Not on the 25th?---No.

So, to your recollection, you certainly didn't say anything to Soldier 2? ---Not as far as I'm aware, sir, no.

15

Did he say anything at all about the body he was looking at in the casket? ---The only recollection I have, sir, is that when the casket was sealed, both Soldier 2 and Mr Adams did have a look at what was in the body bag and I (sic) said something along the lines of, "Yes, yes," and I - that would indicate to me that they were doing an ID.

20

I'm sorry, I missed - who said, Mr Adams?---Mr Adams and Soldier 2 said it.

25

Do you recall any other conversation?---No, sir, nothing.

Apparently the staff indicated to you that everything was fine?---Prior - - -

30

When you, "the staff" - - -?---By that statement, sir, what I mean by that is that, "Is it fine for us to now go ahead and seal the casket?"

Do you remember who said that?---They were just making hand gestures, they didn't speak English.

35

It wasn't Mr Nasser?---No, I don't believe so, no.

That everything was fine?---Yes, it was just, you know, a thumbs up signal, sort of, "Can we go ahead and start sealing the casket?"

40

I've misunderstood. I assumed that what that sentence meant - - -

(VTC link interruption)

45

MAJ JOLLY: Perhaps if we try and push on, sir.

PRESIDENT: Indeed.

LTCOL WILKINSON: Just a couple of matters.

5

PRESIDENT: If it becomes too bad, we will -

LTCOL WILKINSON: It just read to me that the mortuary staff indicated that they had presented the correct body but you don't mean that?---I would take it meaning exactly that, sir, that we - i.e. the people who - the Australian military and the Embassy staff - were happy that they had ID'd the correct body and that therefore it was good, to use a military term, to go.

15 Did at any stage you consider that you should take more - - -?---Only in hindsight, sir. It wasn't part of my duties, I just didn't want to be seen to be, for want of a better description, gawking. I didn't want to - it's not a pleasant task to have to do and I certainly - I just didn't want to have to do it if it wasn't required of me.

20

So you could understand if a soldier who had been involved in three or four moves of the body from Baghdad had been involved in the incident itself - and you may or may not know that but in fact was - and indeed was concerned about the bearer party and concerned about his comrades, and as I say had already seen the body three or four times, you could understand that he would have a reluctance - - -?---Absolutely, sir.

25

- - - to look at the body because you yourself have just indicated that you have had a reluctance?---Absolutely, sir.

30

Thank you, I have no further questions.

PRESIDENT: Thank you. LTCOL Green.

35

LTCOL GREEN: No, thank you, sir.

PRESIDENT: LTCOL Holles.

LTCOL HOLLES: Just a very short issue, sir.

40

<EXAMINATION BY LTCOL HOLLES

[1052]

LTCOL HOLLES: WOFF Hunter, at the time that you first went to the morgue for the purposes of the body identification, were you aware as to the way in which PTE Kovco had died?---Yes, sir, I was.

5 You were aware it was a gunshot wound to the head?---Yes, sir.

Was there any discussion between you and Mr Adams as to the manner in which PTE Kovco had died?---No, sir.

10 Were you aware if Mr Adams had been briefed that he had died from a gunshot wound to the head?---No, sir, I'm not sure whether he knew or not.

15 Do you recall who it was that told you he died from a gunshot wound to the head?---The message that came out on the Saturday morning, 22 April, sir, came on the secret network and involved - there was talk of an incident involving a gunshot within the SECDET environs. So throughout the course of that day it was certainly confirmed. I'm pretty sure I just read the message that came out which was an incident report.

20 You were aware that basically it was a gunshot wound to the head. Did you at any stage see Mr Sinanovic's corpse?---No, sir. Only in the sense of within the body bag, I didn't actually see the body bag open, sir, no.

25 Probably to re-ask the obvious: did you at any stage see anybody else look at Mr Sinanovic's corpse?---Yes, sir, I did.

Who was that?---That would have been Mr Adams and Soldier 2.

30 Do you recall how long it was that Mr Adams looked at the corpse?---No specifics, sir, I would imagine - it may well have been 10 to 15 seconds' worth, if not a little bit longer, but I don't have any specifics on that, sir.

35 Do you recall if he was comparing it with some documentation?---He had the copy of PTE Kovco's passport photograph and he was comparing it with that.

Thank you, sir, they're the questions I wish to ask.

40 PRESIDENT: Thank you. LTCOL Berkley.

LTCOL BERKLEY: Thank you, sir.

45 <EXAMINATION BY LTCOL BERKLEY

[1055]

LTCOL BERKLEY: WOFF, I'm LTCOL Berkley, I represent Shelley Kovco, Jake's widow. We spoke yesterday about a number of matters. I  
5 think what I want to start of with is this: you're what's called a mover?  
---Correct, sir.

That was at least your role whilst in theatre?---That's correct.

10 Soldier 34 is your boss?---That's correct, sir.

You and Soldier 34 became involved in the movement of the body of a  
deceased Australian serviceman?---That's correct, sir.

15 As you became involved in that role, is it true to say that no person -  
neither you nor Soldier 34 or any of the people that you were to be dealing  
with - had clearly identified roles?---That's correct, sir.

20 When PTE Kovco's body arrives at the Al Sabah mortuary, you were  
there?---That's correct, sir.

You had, of course, Soldier 34 with you?---Yes, I did, sir.

25 I think it was you who asked the soldiers from the bearer party to wait  
outside?---That's correct, sir.

Was that because of your concern as to what may have happened if they  
had have had full access to the mortuary?---In the sense, sir, as I said in  
my statement, that the mortuary staff - I actually thought at one stage they  
30 may well drop PTE Kovco when they were moving him and that  
concerned me greatly and was making me extremely angry, and I didn't  
have the level of emotional attachment that PTE Kovco's mates did. The  
guys were very upset about the whole affair, which was quite  
understandable, and I just didn't want them to be seeing how awful the  
35 mortuary was because - I used the term when I got back to base to Soldier  
34 that I believed if the guys had seen that, there may well have been a  
riot. Now, as a hindsight thing, that might have been a good thing if they  
had seen that and pointed out their concerns and then things may have  
turned out differently.

40 When PTE Kovco's body was placed into refrigeration unit, you didn't  
observe that yourself, did you?---No, sir, I was - I saw a door being  
closed. When I came back in, as I stated, I was out having a cigarette at  
the time so I didn't see definitely whether or not it was the same body bag  
45 that I had seen prior to stepping outside going into the refrigeration unit.

5 Mr Sinanovic's body - I hope I got the pronunciation right out of respect to that gentleman - was identified - sorry, we'll put it this way: when Mr Sinanovic's corpse was brought out for the purposes of Mr Adams and Soldier 2, how far away from them were you when, say, the body bag was unzipped?---Probably roughly similar distance to what I am to Counsel Assisting at the moment, sir.

10 About five metres?---Yes, that would be a reasonable assumption, sir.

15 Did you have a clear view of what was happening?---I could certainly see the body bag was opened and it was on the gurney. That was all, I couldn't see into the body bag and certainly couldn't ID anything in there. But I saw both Mr Adams and Soldier 2 go through their identification process, which was just - they had the passport photo and just - - -

When you say "they", who had it?---Alastar was - Mr Adams was actually holding the passport photo, from memory.

20 Did you see him do anything with the passport photograph?---Just have a look at it, sir.

25 Did you see him say - please, only if you remember - did he put it next to - - -?---Not that I recall at that level. I actually had to do that the following day because as I - again, as I stated, it looked nothing like what I was looking at, the passport photo. So I actually was holding it right there, but I don't recall Mr Adams doing it that way.

30 When you had to do it, I understand your evidence in that. I want to know what you observed Mr Adams do and for how long he did whatever he did?---Yes, he had a copy of the passport photo and was looking into the body bag. Like I say, I'm not sure exactly how long he did it, but it probably would have been about 10 to 15 seconds. I mean, time can seem to stretch out a little bit in those circumstances.

35 So 10 to 15 seconds?---That's a reasonable estimation, sir.

40 Was there any manipulation of the body bag by mortuary staff during that time, either by unzipping, moving - - -?---No, not when - not at that specific time, sir.

When you got to the identification phase you compared a copy of PTE Kovco's passport photo?---That's correct, sir.

45 With Mr Sinanovic?---No, it wasn't with Mr Sinanovic.

Sorry, with - - -?---With PTE Kovco.

5 What was the similarity there, if anything?---The only possible similarity -  
and it came up from I believe they're actually not named here - was the  
operations officer that I was with. He made the comment that he thought  
the nose may be similar, because it really just - we just couldn't ID what  
we were looking at. It just didn't look anything like the passport  
10 photograph.

When you were asked to identify PTE Kovco's body, you said that you  
asked mortuary staff to manipulate PTE Kovco's body bag?---That was -  
correct. When I came back in the second time that day, sir.

15 What were you looking for?---I was going to be looking for a specific  
tattoo that was on PTE Kovco's back. As stated, I was speaking to the  
gentleman at <deleted> who had said this tattoo is on the back. I  
requested the mortuary staff - and it was a skeleton staff by that stage  
because it was about 7 o'clock in the evening roughly. So there was only  
20 two mortuary staff and sort of a supervisor there. I requested that they  
actually manipulate the body - - -

And they refused?---And they were backing - literally backing off with  
their hands up, shaking their head.

25 I suppose communication difficulties would have prevented an  
explanation for their reluctance?---Correct, sir, because at that stage there  
was no translator there or anything for us.

30 Was there any other activity being conducted in the morgue at that time  
when they refused to - - -?---No, sir. It was all quiet.

You were the only one there?---I was there with - again I'm not sure  
whether he's named - -

35 But another?---With another Defence member. Yes, it was just us two.

There's no other activity going on?---No, it was all quiet, sir.

40 The only body that had been brought out was PTE Kovco's?---That's  
correct, sir.

After that I think you saw some photos from the <deleted>?  
---Correct, sir.

45

The photos that you have viewed were the photos of PTE Kovco and they were taken by the SIB?---That's correct, sir.

5 Tell me this: at that stage you said, "I looked at that photo and that was the body that I'd seen"?---That's correct, sir.

10 You didn't go back for any further positive identification?---No, sir, I didn't. I didn't feel I needed it. The photo that the SIB gentleman had sent down - I believe they sent roughly eight or nine photographs all up. I opened one of them and knew that it was exactly what I'd just - the person I'd just seen.

15 The comment that you made earlier on, it's made in comparison. The American attitude to the bodies of deceased servicemen and women is something that accords with what we would expect in our culture, in a Western culture?---Absolutely, sir, and the Americans, they are members of the Quartermaster Core, but they have to do a specific course to work within the mortuary area. So they're very professional at what they do and it's exactly what I would expect for the Military environment.

20 The attitude at Al Sabah morgue was something less than that? ---Absolutely, sir. I mean, I suppose that may well be a cultural thing and I don't wish to put anybody off side in that regard.

25 I'm not asking you to?---But I don't know - - -

30 It was very, very different?---Very different, sir, very different. A lot more - yes, there wasn't the level of solemnity, et cetera, that I expect to see. It was just - as far as they were concerned, it was just a business.

Thank you. Nothing further.

PRESIDENT: COL Young.

35

**<EXAMINATION BY COL YOUNG:**

**[1106]**

40 COL YOUNG: WOFF Hunter, my name is COL Young. I appear to represent the interests of PTE Kovco?---Sir.

In your statement at paragraph 11, towards the bottom of the page on page 3, I'll just get you to look at that for a moment?---Yes, sir.

45 You talk there about - the last couple of lines:



at a photograph, was all I felt I needed to look at because it was certainly what I had been looking at earlier in the day. So I was certain, but I was in at the mortuary and, you know, I had the individual on the phone who was requesting just more clarification, which was perfectly reasonable from my perspective. When I got told that the tattoo was on the back and I knew that PTE Kovco was lying on his back, I was quite reluctant to handle the body. But, as I stated, I was prepared to do it if I was told to do it.

10 Would you have felt more certain in your mind if you had seen a tattoo or had seen a scar?---I think so, sir, yes. I did feel bad about not doing it, but yes, I probably would have felt more certain. But I was very - I'd say "comfortable" is possibly not the correct word to use. But I knew that it was the best - as best as I could identify PTE Kovco.

15 Have you ever had to previously identify a body?---No, sir, I've never seen one before.

20 Paragraph 17, you talk about the following morning, 27 April. Mr Adams and yourself look at the body. Do you recall if on that occasion Mr Adams did something different to what he'd done on the previous occasion when he and Soldier 2 were looking at the body?---I don't believe so, sir. They were probably - because I was more intimately involved there may well have been a little bit more conversation between wardens.

25 When you say "there might have been", what's your recollection of what Mr Adams did or didn't do? Do you have a recollection?---He just - he had said - let me think, I'm just trying to work out whether he is there - he had come in the previous day when we'd been told there was a concern about the identification and he'd made a comment about the fact that it was a different - he was - on that morning, which was 26 April, he was looking at a different person to the one he'd looked at the previous day and that this person didn't have a moustache, whereas the person the previous day had a large moustache. So therefore, the following day, the 27th, we were just both confirming that yes, this was the person we looked at yesterday.

40 Paragraph 18, I'll just read this first sentence to you:

*I'm aware that there was discussion of putting the body back in the care of the Military system at this time and the decision was made that this would occur.*

Would you agree that begs the question as to why the body wasn't left in the care of the Military system in the first place?---Personal perspective, absolutely, sir. I can't understand why it was taken outside that.

5 Just confirm for me that PTE Kovco was at the TMEP initially?---When?

He's taken to the civilian morgue?---That's correct, sir.

10 He's then taken back to the TMEP?---Correct, sir.

Before he's loaded onto an aircraft to go back home?---That's correct, sir.

15 Had he not gone to that civilian morgue we may not have had this catastrophe that we've had - - -?---May well not have, sir. It would just be my personal belief that it wouldn't have happened.

20 What's your expectation of any ADF member serving overseas or indeed yourself if something was to happen as to repatriation of a body?---I would hope that there would be, you know, a large amount of dignity shown. There would be - that it would all be handled very professionally. I would hope to be - that it would all be handled by the Military and that I would be transported on military aircraft if it was to occur and obviously my family and everything, they would be handled appropriately and well, you know, so that everybody was all happy as you could possibly be. I'd expect to be handled totally within the Military system, sir.

25 Do you know whether there's a priority as to whether a body should be returned by the Military system or by a civilian system?---My understanding, sir, I did see a piece of paper - I'm not sure whether it was part of - I think it was part of Standing Instructions or something, that 30 there was a priority the way that a body should be moved. I think it was - I believe the very first one - I think I can state fairly definitely the first priority is to do it via Military means and the Military of the country involved. Then I think there was three priorities listed down and I think 35 the third one was civilian contractors.

I think the last one in fact is civilian contractors?---That's what I'm saying, sir, yes, three. Listed in order from 1 to 3 and 3 was civilian 40 contractors was the final one.

We chose the last option. No further questions.

PRESIDENT: Thank you. Counsel Assisting.

45 MAJ JOLLY: Just one, thank you, sir.

**<EXAMINATION BY MAJ JOLLY**

**[1115]**

5

MAJ JOLLY: WOFF Hunter, on 25 April, that Tuesday that you were in the Al Sabah morgue, was that the first time you had met Mr Adams? ---No, sir. I'd had a number of dealings with Mr Adams. He's part of the Embassy staff in <deleted>, and particularly the organisation that I - or the JMCC that I was working, we had a very good working relationship with the Embassy over there. A lot of dealings with VIPs, et cetera, travelling through the area and they have - when there's civilian VIPs, they handle it, but obviously within that area there's military moves that have to occur and then vice-versa with military VIPs coming through but they're coming through the civilian airport. There's certain civilian dignitaries, et cetera, that want to meet them. So I had met Mr Adams it may well have been in the first week that I was in the Middle East, which was back in November, and then a number of dealings with him from that point on.

10

15

20

Thank you, Warrant Officer. Nothing further, sir.

PRESIDENT: Thank you. Is everybody complete?

COUNSEL REPRESENTING: Yes, sir.

25

PRESIDENT: Thank you, Warrant Officer. You may stand down.

**<WITNESS WITHDREW**

**[1116]**

30

MAJ JOLLY: Sir, our next witness is Soldier 34, and I note that we could probably squeeze in a 10-minute break before we commence the VCM.

35

PRESIDENT: Yes, very well, we'll break for 10 minutes.

**ADJOURNED**

**[1117]**

40

**RESUMED**

**[1140]**

45

MAJ JOLLY: Thank you, Mr President. We have Soldier 34 on line in Kuwait. Soldier 34, can you hear me?

SOLDIER 34: Yes, I can, sir.

5 MAJ JOLLY: Can you also see me?

SOLDIER 34: Sorry, sir?

MAJ JOLLY: Do you have visual?

10 SOLDIER 34: Yes, sir.

<SOLDIER 34, sworn [1142]

15 <EXAMINATION BY MAJ JOLLY

MAJ JOLLY: Soldier 34, in front of you do you have a soldier matrix?  
20 ---Yes, sir.

Could you please identify your name on that matrix?---Yes, sir, my name  
is next to Soldier 34.

25 Soldier 34, do you recall providing an affidavit in these proceedings?  
---Yes, sir.

Do you have a copy of that affidavit in front of you?---Yes, sir.

30 Mr President, I tender a copy of Soldier 34's affidavit in full and ask that  
it be marked as a classified exhibit. I also tender a redacted copy of the  
same affidavit.

PRESIDENT: Is everybody comfortable with that course?  
35

COUNSEL REPRESENTING: Yes, sir.

40 #EXHIBIT 135 - CLASSIFIED AND REDACTED VERSIONS OF  
SOLDIER 34'S AFFIDAVIT

MAJ JOLLY: Soldier 34, are you able to turn the volume down at your  
end. We're getting a feedback?---Sorry, can you repeat that, sir, and  
45 speak a little bit more slowly?

Certainly. Are you able to turn the volume down at your end. At this end we are getting that audio played back to us on delay?---Sorry, sir, I still can't understand what you're saying.

5

That's okay. We might press on and see how we go. Sir, what I propose to do, as in the case of WOFF Hunter, is now read Soldier 34's redacted statement onto the record.

10 PRESIDENT: Thank you.

LTCOL GREEN: Sir, just bearing in mind the time delay and the time critical factor, it might not be necessary to read it on at this stage. Perhaps it should be read on a later stage and still maintain the content.

15

PRESIDENT: I've always wondered about - I know this is a very unusual situation in the way you're doing it where she is. I take it there's no - I'll use the word suspicion - if there's any difficulty with the affidavit in the sense that Counsel Assisting hasn't substituted a few pages.

20

LTCOL GREEN: No.

PRESIDENT: Do we really need to read it onto the record? Everybody's got a copy of it. Everybody's read it, everybody's seen it. Does anybody require it read onto the record?

25

LTCOL HOLLES: Sir, I don't, but can I say that this process is extraordinarily difficult with the echo effect, basically masking the - - -

PRESIDENT: I'm very tempted to do this: I'm going to invite you not to read it and simply tender it. I'm then going to invite the Board to leave for five minutes whilst you attempt to get rid of that echo.

30

MAJ JOLLY: Sir, there will be no-one more grateful than I not to read it onto the record. I endorse that. It's probably a good time to take a small adjournment to see if we can fix that audio.

35

40 **ADJOURNED** [1146]

**RESUMED** [1208]

PRESIDENT: Thank you, Major. I see we've got a much better picture of Soldier 34.

5 MAJ JOLLY: We have, sir, and we think we have a procedure in place to prevent the echo effect that you were hearing earlier. Sir, I note your view that there is no need to read Soldier 34's affidavit onto the record. As I said, I'm happy with that. Soldier 34, before I hand you over to Counsel Representing, in your statement you identify the following document: LWP1-1-8, the mortuary affairs document. Do you have that in front of  
10 you at the moment?---I'm just looking for that reference, sir. I don't remember referring to that as part of my statement. Which page is that on, over?

15 My apologies. I thought you'd made an oblique reference to it. That's okay. We can move on. The soldier matrix that you have in front of you mentions, as I said, a number of ADF personnel. There is one person who is not on that list and if you need to refer to that person, that person is the officer who currently occupies the <deleted>. That officer's soldier number is 45. Do you know to whom I'm referring to?---Yes, sir.

20 Thank you, Mr President.

PRESIDENT: Thank you. LTCOL Wilkinson.

25 <EXAMINATION BY LTCOL WILKINSON [1210]

30 LTCOL WILKINSON: Soldier 34, my name is LTCOL Wilkinson and I represent Soldier 2. Can you hear me?---I can, sir. If you could speak up a little bit, that would be appreciated, over.

35 Soldier 34, in your statement you refer to one document, that being Annex A to an administrative instruction for OPERATION CATALYST in paragraph 4?---The document that you refer to, sir, is Annex A to my statement, not Annex A to the administrative instruction, but I know what you're talking about, over.

40 Are you familiar with the document that MAJ Jolly just referred to, and that is, the Land Warfare Procedures - General Mortuary Affairs, LWP-G1-1-8? Did you hear that?---Yes, sir. No, I'm not familiar with that document.

45 Are you familiar with another document briefly referred to by MAJ Belkin a moment ago, referred to as the Repatriation of ADF Remains from

Outside Australia?---Are you referring to one of the appendices to the Operational Administrative Instructions?

5 I'm not sure what it is an appendage to, but it's the document itself that I'm asking about and whether you have any familiarity with it: Repatriation of ADF Remains from outside Australia; have you ever heard of that document?---The only instructions that I am familiar with, sir, with regards to repatriation of remains from outside Australia is - there's two. There's the appendice to the Administrative Instructions and there's a - I  
10 know there was also a draft copy which was produced by 1JMOVGP which detailed a process.

15 MAJ JOLLY: Sir, if I may assist, the <deleted> Standing Instructions contains that document to which you're referring on our copy here.

LTCOL WILKINSON: Did you hear that, Soldier 34?---Yes, I did, sir. It contains the appendix to the Administrative Instruction but then there was another document which I referred to - I'm not sure if I referred to it as part of my affidavit or if I referred to it during the interview that I  
20 conducted with BRIG Cosson. So there are the two documents, both of which I've supplied previously.

25 I'm really asking about your familiarity with those documents, though, whether you know much about them?---Yes, sir, I am familiar with those documents.

Attached as an annex to the Repatriation of ADF Remains from outside Australia, Annex A, is a document referred to as "Escort of Deceased Persons Duty Statement." Are you familiar with that document?---I  
30 believe I've seen that document, sir.

Do you have it with you?---No, sir, that's not an attachment to the Administrative Instructions, that's an attachment to another document and I don't have a copy of that with me.  
35

That's right, you're quite right. But the answer to my question is you don't have it with you?---That's correct, sir, I don't have it with me.

40 What I'm going to do - it's a short document - I'm going to read two parts of it to you. Do you understand or did you hear me?---Yes, sir. Yes, sir.

In paragraph 1 of that document, it says:

45 *To ensure the repatriation of deceased ADF service personnel from overseas to Australia is conducted in a professional and*

*dignified manner, an escort is to accompany the remains at all times.*

5 Did you hear that?--- Yes, sir.

At paragraph 9 of that document, under a heading, "Duties of the Escort":

*The escort is responsible for the following tasks,*

10 and then it has:

*(b) ensuring the casket is consigned correctly at all handover points.*

15 ?---Yes, sir, I can still hear you.

Did you hear me read out what subparagraph 9(b) says?---Yes, sir, "The escort is responsible for ensuring that the casket is consigned at all points."

20

It wasn't a test but that was a fairly accurate reflection of what I did read. In that document - and you say you have some familiarity with it - there is no reference to an escort being responsible for identifying a body. Is that your understanding?---Yes, sir, that's my understanding of the document but I didn't read that document until post this event.

25

Therefore, you did not know that prior to the event?---No, sir.

If I can take you, then, to paragraph 13 of your statement?---Yes, sir.

30

You say you went to the Embassy that day with Soldier 2, Warrant Officer - there's a WOFF Hunter who's given evidence today?---Yes, sir.

And met a Mr Adams of the Embassy at that location?---Yes, sir.

35

Were there any other Defence personnel with you that day?---Yes, sir - no, sorry, just the three of us.

I notice that in your statement there is nothing to indicate that you know precisely what the roles and responsibilities of an escort were?---That's correct, sir.

40

Indeed, you've just told us that you weren't aware of that duty statement until after the event?---That's correct, sir.

45

When you were at the Embassy, did you or some other person introduce Soldier 2 to Mr Adams?---Yes, sir, we did.

5 Who? Who did, you or WOFF Hunter?---Sorry, sir, what was your question? We did introduce Soldier 2 to Alastar.

Did you at any stage tell Mr Adams what Soldier 2's role as an escort was or what his responsibilities were?

10 PRESIDENT: I think we've lost the sound.

15 MAJ JOLLY: Soldier 34, it's MAJ Jolly. Are you able to hear me? Sorry, Soldier 34, we didn't get your answer just then, you still had the microphone on mute. I'll ask LTCOL Wilkinson to ask the question again.

20 WITNESS: Okay, sorry, sir. No, no, it's fine, sir. When we went to the Embassy, we initially met with the Embassy manager, Samar Mansour. We introduced her to Soldier 2. We then - she then advised us that other documentation needed to be produced and that that was going to be produced by Mr Adams. She then went out and grabbed Alastar, brought him into the room and introduced him. I don't recall if we introduced Soldier 2 as the escort or whether we introduced him as PTE Kovco's  
25 sergeant or both, but I do not recall or believe that there was any discussion or detailed discussion of the responsibilities that he was there for.

30 LTCOL WILKINSON: Thank you. So you didn't tell anybody at the Embassy that it was Soldier 2's role to identify PTE Kovco's body?---(Inaudible) believe so, sir. We did discuss that Soldier 2 was accompanying PTE Kovco back to Australia but I don't believe that we mentioned or discussed that he was going to be identifying PTE Kovco.

35 At paragraph 15 of your statement you refer to the Al Sabah Mortuary or morgue?---Yes, sir.

You say that you were there and you were with Soldier 2 and WOFF Hunter, "and Mr Adams met us there"?---That's correct, sir.

40 You in fact actually observed the body of PTE Kovco. Did you know - --?---Sir, that day - no, this is the day the casket was sealed with the wrong body in it.

45 Yes?---So the body that I observed was the Bosnian.

Of course, I beg your pardon. Yes, quite correct?---Sir, on this day - - -

No, you're right, I'm wrong. You observed a body in a casket?---Yes, that's correct, sir.

5

You say in that paragraph 15 that there was nothing to suggest that it was not the body of a private who had died of a gunshot wound?---That's correct, sir, I couldn't see the whole body.

10 But you certainly didn't tell Soldier 2 to identify the body at the morgue? ---No, sir.

Did you personally consider taking any action yourself to identify the body in that casket?---No, sir.

15

What was your role there, what were you doing there? Why were you there?---Sir, I'm <deleted> so my role was - Soldier 45 appointed me as the lead and, as part of my role, I'm responsible for the repatriation or the movement of all personnel and freight and into and out of the MEAO. So my role was to ensure that - and to facilitate the movement of PTE Kovco back to Australia.

20

Thank you?---In being at the Embassy that day, part of my role is ensuring that paperwork is correctly completed and is completed, and part of Alastar's role in the process is the completion of paperwork and liaison with the contractor. So I was there to facilitate that.

25

Did Mr Adams present to you as a man who knew what he was doing? ---Yes, sir. We had previously discussed with Alastar being - I believe it would have been on the 24th, being the day that we went to the Embassy, his previous experience at the Embassy - sorry, at the morgue, including previously going there for the repatriation of Australian soldier remains.

30

He indicated he had experience at that sort of thing?---Yes, sir, he discussed a previous time when he had been involved.

35

Mr Adams observed the body that was in the casket on that 25 April? ---Yes, sir.

40 But he did not say anything, did he, regarding identification to anybody? ---I don't believe so, sir.

Are you aware that he had a copy of the passport photo of PTE Kovco?

45 MAJ JOLLY: Sorry, Soldier 34, we've lost your audio again.

5 WITNESS: Sorry, is that better? The previous day when we'd gone into the Embassy we had photocopied the passport when we cancelled it but I don't remember whether or not Alastair had a copy of the passport in the morgue on the 25th, sir.

10 LTCOL WILKINSON: But he certainly didn't say anything, did he - at the time he was observing the body, he did not say anything to Soldier 2 about ensuring that the body was the correct body?---No, I don't remember there being any discussion about whether or not the body we were viewing was PTE Kovco from anyone.

15 You say that - I'm just looking at your statement at paragraph 15, towards the bottom of the paragraph:

*The bag was zipped up further and the sheet was put back.*

20 Who did that? Who zipped up the bag?---That was done by the morgue staff there. Sir, I can remember when they initially zipped up the bag they didn't completely - they didn't do it properly and WOFF Hunter suggested to Soldier 2 that they needed to complete that. I think that when they did that I think Soldier 2 might have assisted, but I can't be sure.

25 Your belief is that it was in fact - - -?---In terms of completing the zip - sorry, sir?

30 But it's your evidence that in fact you thought it was the mortuary staff that zipped up the bag?---I believe it was the mortuary staff. Soldier 2 might have assisted with the final part of the zip, but it would only have been 20 centimetres or so. You definitely couldn't see the Bosnian rather still.

35 If I can now take you, funnily enough, back to paragraph 7 of your statement in which you talk about the process or the decision that went into the choice of who was to organise this. You talk about that in paragraph 7?---Yes, sir.

40 You say that you were involved in that decision and the decision was to use this Kenyon/Gulf Agency Co group to provide the mortuary - to use them because they have a mortuary capability. Is that correct?---The decision to use Kenyon was because they were the most timely means of repatriation.

45 There will be other Counsel Representing that will be asking you some questions probably in a bit more detail about the choice to use that

organisation. What I'm concerned about is the issue of responsibility for identification.

5 MAJ JOLLY: We don't have audio again, Soldier 34. If you could push your mute button, please.

WITNESS: I understand what you're interested in. Can you hear me now?

10 LTCOL WILKINSON: Yes, we can?---I understand, sir, that your concern is with who is responsible for identification.

In relation to Kenyon and/or GAC?---Yes, I understand, sir.

15 I believe in paragraph 23 of your statement - well, I don't believe. If we turn to paragraph 23 of your statement it would appear that the representatives of those organisations are distancing themselves from any role in the identification process?---Yes, sir. Once the fault had come to light that was definitely the impression that I got with any further  
20 interaction I had with anyone from Gulf Air Agency.

It would appear that they would be levelling the blame on misidentification to either the Embassy or to the ADF?---Yes, sir.

25 I have no further questions.

MAJ JOLLY: Mr President, whilst the next Counsel is moving into position, there was an inadvertent reference to Soldier 34's name. I'd as the usual direction.

30 PRESIDENT: Yes. The reference to Soldier 34 will be talking as Soldier 34 rather than by the name.

MAJ JOLLY: Thank you, sir.

35 PRESIDENT: LTCOL Green.

LTCOL GREEN: No questions.

40 PRESIDENT: LTCOL Holles.

**<EXAMINATION BY LTCOL HOLLES**

**[1235]**

45

LTCOL HOLLES: Soldier 34, I'm LTCOL Holles. I represent PTE Kovco's parents. Do you understand?

5 PRESIDENT: Soldier 34, can I ask you to do a couple of things. This is the President speaking now. You're not to speak to people beside you. You're in the witness box even though you're a long, long way from where we are in Victoria Barracks. So you can't sort of have a side conversation. I did notice earlier that you were taking notes with a biro. Please don't do that and please give the questioner your undivided  
10 attention. Thank you. Thank you, LTCOL Holles?---Yes, sir.

LTCOL HOLLES: Soldier 34, I'm LTCOL Holles. I represent PTE Kovco's parents. Do you understand?---Yes, sir, I understand.

15 Soldier 34, I have a short number of questions to ask you which globally address matters I trust which you've raised in your statement. Did Kenyon's have the contract in existence, that is, were Kenyon's already the subject of a contract between the ADF or the Australian government for the removal of remains from the theatre or was that something that was  
20 done on the spot as a result of commercial decisions?---No, sir, it's an ongoing standing offer which had been used previously. It was most recently used in November of last year. The standing offer is held by JOC.

25 So it's an arrangement which has been ongoing for some time?---Yes, sir, that's my understanding.

Were you aware if there was ever any inspection made of the facilities that Kenyon uses?---The facility that was used was visited by myself,  
30 Soldier 2 and WOFF Hunter prior to PTE Kovco being transferred from the US TMEP to there. It had previously been used in November last year, which was the last time a member was returned, that being the member that was returned from <deleted>. So I don't know, sir, whether the Kuwait Al Sabah morgue was inspected prior to the contract being  
35 used for the first time, but certainly we did visit it prior to PTE Kovco being brought through there on this occasion.

Thank you for that, and without giving evidence from the Bar table I think you'll find that the death to which you refer was a training death in  
40 Kuwait, not in <deleted>. The facilities would have been used I presume at that stage. Were you aware of that?---I understood that the death was in <deleted>, sir, but definitely the facilities were used last time.

45 Were you personally involved in that particular event?---No, sir, I wasn't deployed at that stage.

So Kenyon's have in effect an ongoing contract. Is that the case?---There is - I don't know if it's a contract, sir, or if it's a standing offer, but it is ongoing; yes, sir.

5

Were you locked into using Kenyon's on this occasion?---No, sir.

Would you agree with me that there was considerable haste to repatriate the body both before and after the misidentification?---Yes, sir, I believe that was the driving force and the highest priority.

10

That pressure came from the chain of command?---Yes, sir, that's correct.

Are you aware that US practice is to keep the remains of deceased members in country for considerably longer than two to three days?---Yes, sir. During my time at the TMEP they did discuss with us their processes.

15

They actually have about eight days to sort out all of the issues and get the bodies back safely and properly identified?---I don't recall how long they have for the remains in theatre for, but I do remember that it was longer than we had planned or were hoping for.

20

Would you agree with me that the ADF really had no sense of anticipation of the issues that might arise with repatriation of deceased members? ---Sorry, can you just repeat the word before "anticipation", sir, I didn't catch that?

25

Yes, I can. Would you agree with me the ADF really had no sense of anticipation of the issues that might arise with the repatriation of a deceased member?

30

LTCOL GREEN: Sir, I object to that question. It's so broadly framed and a lot of speculation on behalf of the witness - - -?---No, I wouldn't agree with that, sir.

35

MAJ JOLLY: What he says, sir. I don't think Soldier 34 is capable of giving the ADF's perspective on just exactly what its state of mind was, if indeed it could have that. I think the question needs to be reframed.

LTCOL HOLLES: All right, I'll come at it another way. Had you been briefed personally as <deleted> as to what your individual responsibilities were in the event of repatriation of a deceased member?---Yes, sir. My predecessor had been involved in a repatriation and he had discussed at length his role and the role of other members in that repatriation, including the use of the Kenyon contract.

40  
45

Did he do that with you?---Yes, sir, during my handover.

5 Is your evidence not that you didn't read Annex A to your statement until such times as you were aware that PTE Kovco's remains were to be repatriated?---Sorry, can you repeat that, sir?

10 Is it not your evidence that you had not read Annex A to your statement until such times as PTE Kovco's remains were to be repatriated?---No, I had read Annex A, Annex A being the administrative instruction with an appendice to the administrative instruction which contained a mortuary affairs plan. I'd read all of that that was available to me several - I think two of the three attachments weren't part of the administrative instruction that I had, nor were they locatable when I contacted both LHQ or HQ633  
15 on the death of PTE Kovco.

Your statement reads, doesn't it, a copy of that plan - that's the administrative instruction -

20 *Is annexed hereto and marked Annex A. Attachments 1 and 2 were not in the copy of the admin instruction that I had, nor was I able to source a copy of these.*

25 ?---That's right, sir. So the administrative instruction, one of the appendices to it contains the mortuary affairs plan which discusses the process to be followed. Of that there are three attachments to the appendices and two of those three attachments were not available to me. So I had read the appendice and I had read one of the attachment but I'd not read the other two.

30 So the total document was not available to you?---The other two - one being the location of the - sorry, sir?

35 The total document was not available to you?---That's right, sir.

40 Do you agree that there wasn't really any need to use Kenyon's given the availability of American resources within the MEAO? If you don't understand the question, please say so?---The Kenyon contract, sir, included the transportation of the member which - whereas the American facilities were only the provision of mortuary support. So I would agree that we did not need to use the Al Sabah morgue, which was a requirement of the Kenyon contract, if you were then going to use civilian transport. However, I would not agree that we didn't need to use the Kenyon contract due to the provision of mortuary services by the  
45 Americans. Given that the decision was made to transport PTE Kovco

home via civilian means, we then did need to use the Kenyon contract as under Kuwaiti law you must go through a civilian mortuary to then move a deceased member via civilian means.

5 The fact remains that you could have moved PTE Kovco's remains from the I think it's called a TMEP onto the military transport and taken him home that way, could you not?---Yes, sir, that's correct. We could move PTE Kovco home from the TMEP via either service or Australian chartered means.

10

That in effect would have prevented any need to go near Al Sabah morgue?---That's correct, sir.

Thank you. Nothing further, sir.

15

LTCOL BERKLEY: I've no questions for the witness, sir.

PRESIDENT: Thank you. COL Young.

20

**<EXAMINATION BY COL YOUNG**

**[1247]**

25 COL YOUNG: Soldier 34, my name is COL Young. I appear to represent the interests of PTE Kovco. Do you understand that?---Yes, sir.

Could I just ask you if there were another fatality, have you been provided with any new policy or interim policy on how you would handle that fatality?---Yes, sir, there is new policy which has been drafted.

30

Are you familiar with what that policy is?---Not intimately, sir, no.

Who would be familiar with that, do you know?---Soldier 45, sir, as the theatre mortuary affairs officer.

35

So if there were to be another fatality you're involved because you're a mover. Is that right?---Yes, sir.

Would your first port of call be to Soldier 45?---Yes, sir.

40

In paragraph 6 of your statement you list the order of priority about repatriating bodies. The last priority is Kenyon contract. Can you tell me why you chose - not just you personally but in conjunction with others - the Kenyon contractor, being the last in that order of priority?

45

MAJ JOLLY: Soldier 34, we don't have your audio. If you could un-mute your microphone, please.

5 WITNESS: Sir, the order of priority that I have listed in paragraph 6 of  
my statement is from the Administrative Instructions, however, I did  
actually make a mistake when I was discussing the order of priority in the  
statement that I gave to COL Griffin, being that the first order of priority  
is actually the sustainment flight and the second is service air. So do you  
10 want me to discuss the actual decision process that we went through or the  
order of priority as dictated in the Administrative Instructions?

COL YOUNG: Am I correct in saying that Kenyon is the last in order or  
priority?---I don't have the Administrative Instructions in front of me, sir,  
so I can't answer that.

15 Perhaps I'm not understanding. In paragraph 6, are you saying paragraph  
6 is accurate or not accurate?---I'm saying paragraph 6 is my recollection  
of the order of priority that we discussed and certainly the first two are  
inaccurate, and I'm unable to comment on whether or not the second two  
20 are accurate as I don't have the Administrative Instructions.

Understood. Can you tell me, then, the process for choosing the Kenyon  
contractor?---The decision to use the Kenyon contract was based on the  
fastest means available to us. PTE Kovco died on a Friday so if we were  
25 to use the A330 charter aircraft, it wasn't returning to Australia until the  
following Thursday. It would come to Kuwait the following Wednesday.  
If we used the Kenyon contractor, we could move him out on the next  
available Emirates flight. If we used a sustainment aircraft, being the  
sustainment C130, which was in theatre at the time, PTE Kovco would  
30 need to overnight at <deleted>. To avoid overnighing in <deleted>,  
another C130 would need to be pushed forward from Australia to  
<deleted> and <deleted> was ramping up at the time, therefore there were  
no C130s available to meet either the intra-theatre sustainment C130 or  
35 the inter-theatre sustainment C130, which was in the MEAO at the time.  
Therefore, the Kenyon contractor was selected as the fastest means  
available for repatriation.

40 Can you tell me why the fastest means available was so important?---No,  
sir, that was given - that direction was given to me by the chain of  
command.

Who in particular gave you that direction? Not by name, obviously but  
perhaps - - -?---Soldier 45, sir.

Can you tell me how far it is by distance from the TMEP, the American facility, to the civilian morgue that was used?

5 MAJ JOLLY: Soldier 34, we've lost your audio again.

WITNESS: Sorry, sir. I don't know how far it is by distance but it would take between an hour to an hour and a half to get there by car.

10 COL YOUNG: Can you tell me if Kenyon still has a standing offer or contract or has that been cancelled?---No, sir, it hasn't been cancelled, the standing offer is still current.

15 Is it within your knowledge to tell us how much Kenyon was paid for the work they were involved in in this repatriation?---No, sir, I don't know how much it was. I know that they're paid a yearly retainer and then I believe they're paid further on each instance, but I don't know how much it is. I don't have a copy of the contract.

20 Just take you to paragraph 26 of your statement. In that paragraph it would appear that PTE Kovco's 9 mm pistol came into your possession. Can you tell me how it came to be that you had possession of that pistol? ---The pistol was moved from Baghdad to return with PTE Kovco, sir. It was moved down via New South Wales Police, I can't remember who actually brought it down, but we didn't ever have - as in the mover never had possession of the pistol, sir.

25 You say in your paragraph:

30 *We had no diplomatic bag so we gave it to Soldier 33.*

What did you mean by that?---Generally, weapons are moved in the hold of an aircraft, sir. We were advised that the pistol was not to be moved in the hold of an aircraft because it could not be inspected by AQIS, that it needed to remain in its present condition. To move a pistol within the cabin on an aircraft, you would need to put it into a diplomatic bag. However, because we were advised at such late notice that it was not to move -

40 MAJ JOLLY: Soldier 34, we seem to have lost the last part of your answer there.

COL GRIFFIN: The line has dropped out.

45 MAJ JOLLY: I think we've lost it.

PRESIDENT: Yes, there was a little - a lightening bolt thing came up.

5 MAJ JOLLY: Mr President, I can indicate that the link we have with Kuwait is at 128 kilobytes per second. The link we have with Baghdad for the next round of VTC hearings is 384 kilobytes per second. So when we go into the links next week, it will be three times the speed and quality that we have here today.

10 PRESIDENT: I simply thank you for that.

MAJ JOLLY: Sir, it might be an opportune time to take a break so we can work out what's happening with the - sir, I speak too soon. Soldier 34, this is MAJ Jolly. Are you receiving us?---Yes, sir, I can hear you again and I can see you again, it's dropped back in. It dropped out briefly, sir. 15 Can you hear me now, sir?

Yes, I can, I'll hand you bank over to COL Young to ask his question again.

20 COL YOUNG: Soldier 34, we're almost finished. What I'm interested is the pistol. I'm interested in how it came to be in either your possession personally or someone in the movement's area where you work. Can you help me with that?---Yes, sir. The movers had nothing to do with the pistol, it was never in our possession. It came down from Baghdad via 25 either service or New South Wales State Police. We were advised that it was to return on the same aircraft as PTE Kovco, however, as the pistol may have had some evidence on it, we were advised that it was not to move as our weapons do move, that being in the hold of an aircraft, and that it was to be transported in the cabin on the aircraft. As we received 30 this information at late notice, we did not have sufficient time to organise a diplomatic bag; therefore we gave it to Soldier 33, as in the police gave it to Soldier 33. No movement personnel were involved in that transfer, and asked him to declare it on arrival into Darwin.

35 So when you say in your statement:

*We gave it to Soldier 33 -*

40 that's not accurate?---No, sir. The "we" did not include any movement of personnel. We were personnel at the scene.

So how it is within your knowledge that the police gave the weapon to Soldier 33?---We arranged for that transfer, sir.

45 In your final paragraph - - -?---The police were in contact with us.

5 You were saying the police were in contact with us?---The police were in contact with us during their return to Australia and they advised that they had the pistol and that it needed to go back with PTE Kovco. So that's what I mean by "we arranged for the pistol to be returned with Soldier 33".

10 Thank you, that clarifies it for me. My final question, in your last paragraph, paragraph 27, you say:

*It is my strong view that this contract should not be used again to repatriate bodies.*

15 You've told us that the contract still exists. But from your point of view you would not use Kenyon again if you were asked to make a decision on that?---I wouldn't use Kenyon again, sir, because of the requirement to put Australian personnel through the Al Sabah morgue, which I think should be avoided at all costs. I think that the process at the TMEP is much smoother and dignified and we're able to tie into the TMEP easily using either service air or the A330 sustainment flight, but I would not use the Kenyon contract.

Just finally, are you surprised that the Kenyon contract still exists?

25 MAJ JOLLY: Soldier 34, we don't have any audio from you again?---No, sir, I'm not surprised that the Kenyon contract still exists. It gives Defence a lot of flexibility and has been used successfully for other humanitarian disasters and by other governments and military. So I presume that it still exists because it affords us that flexibility. But we're under no obligation to use it.

COL YOUNG: Thank you, I have no further questions.

35 PRESIDENT: Thank you. Before I return to Counsel Assisting, is there anything anybody else wishes to raise with Soldier 34? Yes. Counsel Assisting.

MAJ JOLLY: I have no questions, sir.

40 PRESIDENT: Thank you, Soldier 34. We're going to terminate this exercise. You may now formally stand down, and thank you.

45 <WITNESS WITHDREW

[1303]

5 MAJ JOLLY: Mr President, given that Soldier 34 has taken some one and a half hours to do her evidence - and I can see you've made your own observations of the link that we have - I'm in your hands, sir, as to whether you want to canvass with Counsel Representing as to how they wish to proceed, as to whether they think they can deal with Mr Adams in the slightly less than one hour we have remaining before we lose this link.

10 PRESIDENT: Is Mr Adams available to us now?

MAJ JOLLY: My understanding is from Soldier 34 that he is in the vicinity of the hearing room in Kuwait.

15 PRESIDENT: Soldier 34 - - -

SOLDIER 34: Sir, just to interrupt, we can actually have the link available for longer, if that's what you'd need.

20 PRESIDENT: I think we'd be very grateful for that.

SOLDIER 34: From this end it's available for longer.

PRESIDENT: I don't know about this end.

25 MAJ JOLLY: Given that, sir, it may be an opportune time to take a brief adjournment.

30 PRESIDENT: Yes, very well. The Board is going to adjourn very briefly and if you, Soldier 34, could invite Mr Adams to basically take your place, we'll resume in five or 10 minutes.

MAJ JOLLY: Thank you, sir.

35 **ADJOURNED** [1305]

**RESUMED** [1314]

40 MAJ JOLLY: Sir, I indicated to you earlier this morning that we had the link with Kuwait until 2 o'clock. It now appears that we have it until 2.30.

45 PRESIDENT: Excellent.

MAJ JOLLY: Subject to your direction, sir, I propose we go right through to that time.

5 PRESIDENT: Does anybody want to make any comment about that? We'll go through to 2.30.

MAJ JOLLY: Thank you, sir. We have Mr Adams now in the witness box and I'll now arrange for him to be sworn.

10

<ALASTAR ADAMS, sworn [1316]

15 <EXAMINATION BY MAJ JOLLY

MAJ JOLLY: Thank you, Mr Adams. Do you have a copy of your statutory declaration before you?---Yes, I do have a copy of that.

20

Mr Adams, does your copy also have all of the annexures to your statutory declaration?---Yes, it does.

Are there any additions or amendments that you'd like to make to your statutory declaration?---No, there are no variations. Thank you.

25

Is the statutory declaration that you have prepared, is that the evidence that you so give to this Inquiry?---Yes, it is.

Mr Adams, have you a signed copy of your statutory declaration?---Yes, I have the original with me here.

30

Just to be complete, you formally adopt the signed statement that you have before you as the evidence that you give before this Inquiry?---Yes, it is.

35

Mr Adams, if at some point once you have concluded giving your evidence, if you could arrange for the original of your statutory declaration to be forwarded to the Board of Inquiry I'd be grateful?---Yes, I can do that if you just give me the instructions on where it is to be sent.

40

I'll certainly arrange for staff to do that afterwards. Mr President, I tender a full copy of Mr Adams' statutory declaration, noting that at this point we only have an unsigned one and when the signed original comes into country we'll bring that to the Board's attention and swap it over. I also have a redacted version of Mr Adams statement as well that I tender.

45

PRESIDENT: Very well. Is everybody comfortable with the tender of that statutory declaration in its current form, both as a redacted and classified document?

5

COL YOUNG: Mr President, could I just ask on what date Mr Adams signed his declaration.

MAJ JOLLY: Mr Adams, I don't know whether you heard that. Could you please give us the date that you signed your statutory declaration? ---Yes, I'm just checking. It's 10 July.

If I could now just confirm that your signed version of the statutory declaration is comprised of eight pages and 35 paragraphs. That's excluding the annexures I should say?---The statement is eight pages. The ninth page is notes which apply to a statutory declaration. It's not part of the statement but it is part of the declaration format. I think you asked how many pages in the attachments. I'd have to count those.

No, Mr Adams, my apologies. I was asking you how many paragraphs your statement is comprised of. The version we have here is that it's 35 paragraphs in length?---Yes, I confirm 35 paragraphs.

Mr President, consistent with the approach we adopted with Soldier 34, I don't propose to read Mr Adams' redacted statement onto the record.

PRESIDENT: I'm comfortable with that if everybody else is.

COUNSEL REPRESENTING: Yes.

30

**#EXHIBIT 136 - CLASSIFIED AND REDACTED VERSIONS OF ALASTAR ADAMS' STATUTORY DECLARATION**

35

MAJ JOLLY: Mr Adams, do you have before you the material that you provided to BRIG Cosson?---No, I have not brought that with me.

In the course of BRIG Cosson's investigation you provided her with a statement. Is that correct? Sorry, Mr Adams, we don't have your audio? ---Sorry. Yes, I did make a statement and I can broadly remember the contents of that statement if you wish to ask questions about that. I think I would be in a position to answer.

40

Mr Adams, are you able to recall whether you signed that statement?  
---No, I did not sign that statement.

5 Why did you not sign that statement, Mr Adams?---I did not sign that  
statement because I did not have approval from my department to  
participate in the Inquiry at that stage, in her inquiry. Furthermore, the  
statement was a very bad record of the interview and I in fact asked - I had  
the interview taped. I was happy to provide that information. It was  
10 taped. But the record of the interview provided to me was conducted in  
situ by one of her assistants and it was in fact a very erroneous record. So  
I would not have been happy to sign it in any case.

Thank you, Mr President.

15 PRESIDENT: Thank you. LTCOL Wilkinson.

**<EXAMINATION BY LTCOL WILKINSON**

**[1232]**

20

LTCOL WILKINSON: Mr Adams, my name is LTCOL Wilkinson and I  
represent Soldier 2. Do you have before you a call sign matrix which  
identifies numbers and the soldiers who relate to those numbers?---Yes, I  
do.

25

PRESIDENT: Perhaps before you continue, Colonel, we might ask  
Mr Adams a formal question. Have you been provided, sir, with a copy of  
what's known as Annex F to the Administrative Inquiries Manual of the  
ADF which sets out the rights and obligations of a witness before a Board  
30 of Inquiry?---I'm not clear on the reference. I was given some references  
by BRIG Cosson and I don't think the reference is the same as the one you  
refer to.

It's a slightly different version of it.

35

LTCOL GREEN: I may be able to assist here, Mr President.

PRESIDENT: Thank you.

40 LTCOL GREEN: Mr Adams, this is COL Griffin. Do you remember  
having a meeting with me, sir?---Yes, of course I do.

Do you remember at the commencement of the meeting that I provided  
you with a document which is called Annex F to the Defence Inquiries  
45 Manual which set out the rights and obligations of a witness giving

evidence before Defence Boards of Inquiry in contradistinction to investigating officers such as BRIG Cosson?---I do not recall that clearly. In any case, I did not retain a copy. I'm quite happy to accept that you may have shown me a copy.

5

COL GRIFFIN: Sir, the only alternative, if necessary, is for us to send by facsimile transmission a copy of the document.

10 PRESIDENT: It's a comparatively short document, as I recall it. I wonder whether we could read it to the gentleman.

COL GRIFFIN: Indeed.

15 PRESIDENT: It's a formality, Mr Adams, but it does set out your rights and obligations and, for abundant precaution, I would ask Counsel Assisting to read it to you now.

20 MAJ JOLLY: Thank you, sir. Mr Adams, it's MAJ Jolly again. I'm now going to read to you Annex F to Chapter 7 of ADFP06.1.4. It's titled, "Rights and Obligations of Witnesses at Boards of Inquiry." The first heading is:

25 *Failure to appear as a witness*  
*Australian Defence Force personnel must comply with an order to attend as a witness in a Board of Inquiry. Discipline and/or administrative action will be taken against any ADF member who refuses or fails to attend a Board of Inquiry when ordered to do so.*

30 *Where a person is served with a summons to appear before a Board of Inquiry and is tendered a reasonable amount of travel to appear before the Board, it is an offence for the person to fail to appear as a witness without reasonable excuse at the time and place specified in the summons and then from day to day, unless excused by the President of the Board of Inquiry.*

35 *Failure to take the oath or affirm*  
*It is an offence for any person who is required to give evidence on oath or affirmation to refuse or fail without reasonable excuse to be sworn or make affirmation when called upon to do so by the President.*

40 *Legal protection of witnesses*  
*No legal action may be taken against any person in connection with anything said by the person as a witness in the course of*

45

5 giving evidence to a Board of Inquiry. This is the same protection afforded to a witness giving evidence in proceedings in the High Court of Australia. Your personal protection is one of the reasons why you must not discuss your evidence with any person other than the Board of Inquiry.

10 It is an offence for any person appearing as a witness to refuse or fail without reasonable excuse to answer a question relevant to an inquiry put to them by a member of the Inquiry, Counsel Assisting the Inquiry or a person entitled to examine witnesses provided that the President requires the witness to answer the question. A witness before a Board of Inquiry is not excused from answering a question on the grounds that the answer may tend to incriminate the witness except where the answer to the question  
15 may tend to incriminate the witness in respect of an offence with which the witness has been charged and the charge has not been finally dealt with by a Court or otherwise disposed of.

20 In cases where an Inquiry is being held in public, it would be a reasonable excuse not to answer a question if the witness considers on reasonable grounds that the answering of the question in public might disclose a secret process of manufacture or be prejudicial to the defence of the Commonwealth.

25 It is an offence for any person appearing as a witness to refuse or fail without reasonable excuse to produce to a Board of Inquiry a document or article that is relevant to the Inquiry and is within their custody or control following a lawful order or a summons to do so. In cases where an Inquiry is being held in public, it would  
30 be a reasonable excuse not to produce a document or article if the witness considers on reasonable grounds that the production of the document in public might disclose a secret process of manufacture or be prejudicial to the defence of the Commonwealth.

35 It is an offence for any person to wilfully give false evidence to an Inquiry. This applies to all evidence given and not only to that given on oath or affirmation. It is an offence for any person to wilfully insult or disturb, interrupt, use insulting language  
40 towards, defame or act in wilful contempt of a Board of Inquiry. It is an offence for any person who, without reasonable excuse, fails to comply with or to contravene a direction given by the President of an Inquiry which prohibits the disclosure of information or of a document. This offence includes the  
45 disclosure to information contained in a document which is the

subject of such a direction. This offence does not apply to information or documents which the Minister for Defence, by instrument in writing, made available to the public or to a person who has been authorised by the Minister.

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It is an offence for a member of the ADF or a person employed by the Commonwealth to disclose information contained in the report or records of an Inquiry. This offence does not apply to information or documents which the Minister for Defence has on instrument in writing made available to the public or to a person who has been authorised by the Minister. It is also not an offence to disclose information or documents in the performance of the duties of the office of that person.

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In all cases, the maximum punishment for offences under the Defence Inquiry Regulations is a fine of \$500 or imprisonment for three months. This is a general order for the purposes of the Defence Force Discipline Act 1982. You are not to victimise, penalise, harass, suborn, intimidate or threaten any person for their involvement in the present Inquiry. Failure to comply with this order will result in disciplinary action. Should you become aware of any breach of this order by any person, you are to report the breach to your Commanding Officer immediately.

20

25

Mr Adams, is there any part of that document that you need me to read back to you?---No. Thank you very much, I've heard it clearly and I understand it, and I accept everything that is contained in that.

Thank you, Mr Adams. Mr President.

30

PRESIDENT: Thank you, please continue.

MAJ JOLLY: I have no further questions, sir.

35

PRESIDENT: Thank you. LTCOL Wilkinson, I'm sorry for the interruption.

LTCOL WILKINSON: That's all right, sir.

40

<EXAMINATION BY LTCOL WILKINSON

[1331]

LTCOL WILKINSON: Mr Adams, I represent Soldier 2, who, on that matrix, you identify as the escort who assisted you at the Al Sabah morgue in the company of two other ADF members?---Yes, I understand.

5 I note from your statutory declaration that you've had 35 years' experience in consular service, that you've been involved in repatriation of remains on at least five occasions from Kuwait, and I notice also that you're very familiar with your own handbook?---Yes, that is correct, except I have not repatriated five remains. The fifth remains, I guess was  
10 the erroneous one. Perhaps if I clarify that and say we have had four remains to be repatriated, including the erroneous one; that made five.

In paragraph 6 of your declaration you refer to, in fact, the consular handbook that forms part of the declaration, Annex A. Do you have a  
15 copy of Chapter 22 of your consular handbook with you?---Yes, I do, it's part of the attachments.

If you could then help me with clause 22.3.1, which starts off by saying:

20 *The identity of the deceased must be established and confirmed as soon as possible.*

By whom?---This is normally done by the host country authorities. How they do that is not specified. I would point out that this is normally done  
25 at the time of death. In other words, it's essential to establish the identity of the person before any next of kin are informed.

Would not the consular official need to be satisfied that the identity of the deceased is established and confirmed?---No, that is not a role for the  
30 consular official. This identification process precedes the issue of a death certificate.

You say then that it's normally the responsibility of the local authorities. In this particular instance are we talking about the Gulf Agency Company or Kenyons?---No, we're talking about whoever identified the individual  
35 before the issue of the death certificate. So we're really talking about what occurred in Baghdad.

At paragraph 22.3.2 though the second sentence says that:

40 *In any case, Consular officials may consider it necessary in local conditions to satisfy themselves as to the identity of the deceased.*

The local conditions at Al Sabah - - ?---Yes, that is correct.

45

5 The local conditions at Al Sabah were appalling, weren't they? What sort  
of local conditions do you consider or did you consider necessary to  
satisfy yourself as to the identity of PTE Kovco on that particular occasion  
in April?---I wish to make a distinction here. PTE Kovco had been  
10 identified in Iraq and transferred to Kuwait. He was in a transition  
process. The identification has been done, the death certificate has been  
issued. It now becomes a transitory or a shipment problem. As far as Al  
Sabah mortuary is concerned, they have a death certificate in respect of  
the individual. They wish to be assured that they're transmitting the  
15 correct body.

My question relates to what is referred to in the second sentence of  
paragraph 22.3.2. I'm asking you what local conditions you would  
consider appropriate for you to satisfy yourself of the identity of the  
15 accused (sic)?---I'm not sure that I understand the question. But the Al  
Sabah mortuary are asking for the Consular official to be present and seal  
the coffin before they will release the body for shipment out of the  
mortuary. There are no special conditions other than that, over.

20 You refer to in paragraph 9 of your declaration. Why does a Consular  
official seal a coffin?---Simply because Al Sabah mortuary requires it.  
This is a process in my - over 30 years of experience I have never had to  
perform before. It is simply, as I see, an administrative procedure of the  
hospital, of the mortuary.

25 If you're required to seal a coffin, is there not at least by implication an  
obligation on you to satisfy yourself that the person being sealed in that  
coffin is the person who's supposed to be there?---Yes, I have stated  
previously that it is implicit if you place the Embassy seal on a coffin you  
30 know who is in there. One would not willingly ship an incorrect set of  
remains to loved ones elsewhere.

That's why you went to the Al Sabah morgue and had a look inside this  
particular coffin?---That is correct.

35 Were you also involved in the identification of <deleted>?---Yes, I was.

Why were you involved in the identification of <deleted>?---Perhaps I  
should clarify. I was involved in the sealing of his coffin, again because  
40 Al Sabah mortuary required the Australian Consular official to be there to  
seal the coffin.

I suggest you were the only person that did in fact identify <deleted>?  
---I'm sorry, that I'm only the person who did not identify?

45

The only person that did identify. No other person - - -

MAJ JOLLY: Mr President, I don't mean to interrupt LTCOL Wilkinson, but I'm just wondering what's the relevance of this line of questioning.

5

PRESIDENT: I can see where he's going. Continue, please.

LTCOL WILKINSON: The suggestion that I'm making to you is that you were the only person involved in the identification of <deleted> before he was repatriated to Australia?---You may make that suggestion but I do not recall clearly. I would be very alarmed if you're telling me that the Australian Defence Force decided that they would allow the Al Sabah mortuary and whoever to transmit their soldier back to Australia without being present. I do not recall, but if you're telling me that is fact, perhaps I have to accept that.

10  
15

I'm not saying that there was nobody else present. I'm simply asking you or suggesting to you that you were the only person that identified <deleted>. If you don't recall, please say so?---Well, I did not identify - if there was another official present, which I do not recall but I expect there was, I think we had the same process that we went through with PTE Kovco. I see no distinction between the two.

20

I'll move on. In paragraph 11 of your declaration - do you have it in front of you, paragraph 11?---Yes, I have it now.

25

It's blanked out in the redacted copy, but in fact it was Soldier 2 identified as the escort who was assigned to ensure that the body of PTE Kovco was returned to Australia?---Yes, I have that. That's my understanding, clear understanding.

30

To ensure that the body or the casket or the coffin was returned to Australia?---No, I think that's incorrect, because quite clearly he arrived in a body bag. He has to be put into a civilian casket at the mortuary and then transhipped. So to ensure that the correct body goes home he has to make sure that the body coming out of the body bag is the correct one and that it goes into the coffin destined for Australia.

35

If I were to suggest to you that there is in fact no requirement for the escort to ensure that the correct body is placed in that bag, what would you say to that?---Why would you say that when I'm told by either one of three particular soldiers who came to me that his task was to escort the correct remains all the way to Australia and to present them to the family on arrival.

40  
45

5 I'll certainly get onto that in a moment. Are you aware of a duty statement that an escort is required to have? Have you been given a copy of a document referred to as a duty statement of an escort?---It's possible that I have seen one as part of BRIG Cosson's inquiry. I'm not familiar with it, over.

There is not one in front of you at the moment, a copy of that duty statement?---No, there is not. No, I do not have one.

10 I'd ask to accept from me that there is a reference in the duty statement for the escort to ensure that a casket is consigned correctly?---I'm sorry, I did not hear that. Your voice was breaking up.

15 I'll repeat myself. There is a requirement under a heading called "Duties of the Escort" that:

*The escort is responsible for ensuring the casket is consigned correctly at all handover points.*

20 ?---I'm sorry, you'll have to repeat it, it's still breaking up.

I'll certainly repeat it. Under a heading, "Duties of Escort, The escort is responsible for the following tasks," of which one is:

25 *Ensuring the casket is consigned correctly at all handover points.*

?---Thank you, I've got that clearly. Are you asking me to comment on that?

30 No. You've got that clearly?---Yes, thank you.

There is nothing in that duty statement that requires an escort to identify the body?---Okay, I accept that. That is for the escort to understand.

35 He's required to ensure the casket gets to where it's supposed to go but he's not required to identify the body according to that duty statement?---I cannot comment on your procedures and I'm not privy to that duty statement when he appears at the Al Sabah Mortuary.

40 But you say you may well have seen the duty statement as part of the BRIG Cosson inquiry?---Yes, that's post facto.

You say in paragraph 11:

45 *It was made clear to me by the Defence personnel that -*

and then -

5                    *responsible for checking that the correct remains were repatriated all the way to Australia.*

?---That is breaking up badly but I understand you to say that in my statement I said that it was clear to me that Soldier 2 was required to ensure that the correct remains made it safely back to Australia. That is correct.

In future, I wonder if you wouldn't mind, please, referring to the matrix. He's Soldier 2?---My apologies, I'm sorry.

15                    That's all right.

PRESIDENT: That will be met with the standard direction that the surname of the escort not be published and that he be referred to only in the press by Soldier 2.

20                    LTCOL WILKINSON: Mr Adams, by "correct remains," the suggestion is that these remains are properly identified remains. Is that what you mean when you say, "correct"?---Yes, that is so.

25                    And that you were told by Defence personnel that Soldier 2 was in effect required to check that the properly identified remains were repatriated to Australia. Is that what you're saying in your paragraph 11?---Yes, that is correct. Yes, I believed it was his personal responsibility to ensure that his soldier made it back.

30                    Who told you that? I mean, Soldier 2 didn't tell you that, did he? ---Soldier 2 was clearly of that understanding at a meeting we had especially on 24 April, he came into the office and we spent perhaps one to two hours together and we spoke about the process.

35                    Soldier 2 did not tell you that he was required to identify the body at any stage?---Sorry, that may be absolutely correct but part of that group told me that he was the escort and he was responsible to return the safe return, which implies, as you would suggest about Al Sabah Mortuary, that he has the right remains.

40                    Well, it wasn't Soldier 2. Who else of those members that you spoke to on the 24th at the Embassy do you say told you that it was Soldier 2's responsibility to correctly identify the remains?---I'm sorry, are you asking me to identify the individual?

45

Well, yes, except for if they're not on the matrix. If the people are on the matrix, would you refer to them by their number but, if they're not, you can refer to their name?---Yes, I understand. I cannot confirm who  
5 individually told me but it was either collectively, in the presence of Soldier No. 2, that notion was made quite clear to me that the escort would be ensuring their return. I doubt that it was Soldier 2 himself but certainly it would have been in his presence.

10 I can tell you this, that Soldier 2 has given evidence that he didn't tell you anything of the sort. There are only two other people present, were there not: WOFF Hunter and Soldier 34?---That's - that is correct, yes.

15 Apart from those three ADF members, have you spoken to any other Defence personnel about this matter on 24 April?---No. It would have been either of those two. If you ask me to speculate, and that's purely what it is, I would suggest WOFF Hunter made that clear to me because he was very efficient in his organisation and in his dealings. He seemed to be the hands-on person, but it would have been collectively in the group  
20 of all three.

Mr Adams, we've had the advantage this morning of evidence given by WOFF Hunter and, indeed, Soldier 34. If I can deal first with WOFF Hunter, he did not even know what the escort's role or responsibilities  
25 were?---Okay, I accept that.

He stated to us, he gave evidence this morning and in his statement, that he believed the escort's role was nothing more than to be there when there is a movement of the casket?---Well, I have seen a record of his interview  
30 with BRIG Cosson where he says clearly that - - -

No, hang on?---Sorry?

35 You cannot refer to matters that aren't before this Board in terms of evidence.

COL GRIFFIN: I object to the question. I can't agree with that at all.

40 PRESIDENT: The record with the Brigadier - - -?---Okay, I accept that.

Just a moment. The record with the Brigadier here is in fact part of an exhibit, the number of which eludes me at the moment.

45 MAJ JOLLY: C100, sir.

PRESIDENT: C100, and certainly in response I see no objection to the gentlemen saying it's somewhere else, here it is now. He's making answers the way he wishes.

5 MAJ JOLLY: Sorry to interrupt. I don't know whether the transcriber would have got Mr Adams' response down. I don't know whether, sir, you want to allow Mr Adams the opportunity to articulate his response.

10 PRESIDENT: Mr Adams, you started to talk about the transcript of WOFF Hunter's response to BRIG Cosson. If you want to talk further about that, please do so?---Thank you. All I wished to refer to was his statement that he supported Alastar Adams. Alastar Adams had no idea who PTE Kovco was, he did not know him from a bar of soap. Furthermore, I would add after the tortuous identification of the real PTE  
15 Kovco, he said to me, shaking his head:

*I cannot believe how Soldier 2 could get this mixed up.*

20 In relation to the escort's role, he's been quite clear in his indication that he did not know anything about that role in terms of identification? ---Well, I can only answer that question by asking you a question. Why was he at the mortuary? Why was he present at the opening of the bag? Why did he look at the bag if he was there to make sure that the coffin - the correct coffin was transmitted to Australia, then he didn't need to be  
25 there for the sealing of the coffin.

I'll get onto that, but we're dealing with WOFF Hunter and indeed that's precisely what he told BRIG Cosson. He said to BRIG Cosson, "I didn't know whether Soldier 2 had anything to do other than escort PTE Kovco,"  
30 that is, literally to be there when there was any sort of movement of the body or casket. So he said precisely the same as he said this morning about what he considered the role of an escort to be?---Might I remind you that the transaction for the removal of these remains to Australia was between Defence and the contractor. My only involvement was to secure  
35 the release of that casket, that remains, from the Al Sabah mortuary. So I had nothing to do with his role other than being present at that mortuary to get the release of the remains.

40 Thank you, but you've indicated that you said it was made clear to you by Defence personnel that the escort was required to identify those remains. At this stage all I'm trying to establish is which of the three Defence personnel you spoke to made that clear to you. I've indicated that it wasn't WOFF Hunter because he didn't know that the escort was required to identify the remains. I also suggest that in fact Soldier 34 did not give  
45 you any specifics about the precise role of the escort in terms of

identification because she didn't know that was a role that the escort was required to play?---I'm sorry to say that from the transcripts of interviews I've seen by Soldier 2 and by Soldier 34 that it's clear to me that Soldier 2 had viewed the remains on three or four occasions, that that was his purpose, to make sure that the correct remains went home. This is again after the event, but my clear understanding before I went to Al Sabah mortuary was that he would identify the remains. He would ensure that the correct remains went home. He knew PTE Kovco and I relied on him for his identification.

5  
10 All I'm saying, all I'm asking or suggesting is that in fact a member from the Defence Force did not indicate to you that in fact it was his role to identify the remains despite what you've said in your declaration?---Well, I'm suggesting otherwise.

15 You say that one of those three people did indicate to you or make it clear to you, as you've said, that the escort, Soldier 2, was required to correctly identify the remains?---Without trying to get down to the identification process, I would suggest that he was told to get the correct remains home. That means ensuring that he has the right remains. Now, if you're talking about formal identification, I think that is a process that is done before the death certificate is issued. He has to look at the remains to make sure that that's his man that's going home.

20 I'm not talking about that. I'm talking about your comment in paragraph 11 of your statement where you say it's been made clear to you that Defence personnel said that he was responsible for checking the correct remains were repatriated. All I'm putting to you is that there were no Defence personnel that made that clear to you at all?---Yes, that's just what I said, that I was told that he was to make sure that the correct remains get home to Australia and that he will present them to the family in Australia.

25 I'll move on. In paragraph 15 of your statement you indicate that you cancelled PTE Kovco's passport and took a photocopy of that?---Yes, that is correct.

30 You say that again it was confirmed that the escort - it's blanked out, but it's Soldier 2 was the escort for the remains and that it was his role to ensure that the remains made it back to Australia. Can you see the difference between ensuring that remains made it back to Australia as opposed to what I've been suggesting earlier, that when you're talking about correct remains that there's an implication of identification. Can you see that there's a difference between the two?---Yes, I see the

difference is that in para 15 I have not said "correct". But it's quite clear I mean the correct remains.

5 If I were to suggest to you that his role is simply to ensure that the remains without the word "correct" in front of it are the ones to be sent back, would you agree with me?---Well, I don't agree with you, no. But if I were to assume your proposition, why did Soldier 2 not ask me, "Is that our PTE Kovco we have there?" He would have checked with me.

10 We'll get to that, Mr Adams. Now, in paragraph 19 you refer to the remains that were being presented. You say the remains that were being presented by the mortuary workers were those of PTE Kovco. Is that what your handbook refers to, does it, when it talks about the responsibility of the local authorities? Is that what you are referring to in  
15 that last sentence of paragraph 19?---Yes, correct. The mortuary workers presented us with a body in a black body bag as the remains of PTE Kovco.

20 And you relied on that?---I relied on Soldier 2 to confirm that those remains were the correct remains, his buddy.

25 Again if I might refer you to what you've said in paragraph 19. You understood that the remains that were being presented by the mortuary workers were those of PTE Kovco suggests that in fact you were relying on those mortuary workers to provide with you the remains of PTE Kovco?---Sorry, I was not relying on them. My expectation was that when they presented the remains they were presenting me the remains of PTE Kovco. If that's clear, that's what I mean, over.

30 Then if we might move to paragraph 21. This is where we come down to this process, this identification process. You saw a body. How old did the body look to you?---I would not hazard a guess at the age. Bearing in mind the body is lifeless - I don't know whether you've seen a dead body. I haven't much experience myself. But very pallid, a little bit like a wax  
35 work. The body had bandaging around the head. It had medical tubing protruding from the mouth. I could not make any assessment as to the age of the person. I could see dark hair. I did not see grey hair that suggested the person was particularly old. Quite frankly, I don't know how old the Bosnian national was, over.

40 It turns out he was a man in his 40s. Did the body in the bag look like a person who was in their 40s?---I would reply in the negative. I have no idea how old the body looked, over.

5 You'd cancelled PTE Kovco's passport. Did you have cause to look at his age at any stage from that passport?---I don't recall his age, but I also was aware of media reports. I think I had a mental picture of PTE Kovco, perhaps not only from the passport but from images on the Internet. I'm not sure, but I'm pretty sure that I had seen images of him on media outlets, over.

10 But in any event, you noticed a moustache on the male in the bag, in the casket?---Yes, that's correct, I did notice a moustache.

I'll ask you some questions about that a little later on too. At paragraph 22 you say that Soldier 2 was standing next to you and he appeared to be looking directly at the body and that he didn't look uncomfortable or reluctant. Did you know that there's a human - - -?---Yes, I confirm that.

15 - - - tendency to minimise exposure to the dead. Have you heard of that expression?---I haven't heard of that expression until I saw excerpts from the psychologist that was consulted by BRIG Cosson. From personal experience I can say that probably is a natural tendency. I don't enjoy it myself, over.

20 Indeed, as you've already indicated, Soldier 2 had already seen the body of PTE Kovco some three or four times prior to 25 April?---Yes.

25 He was involved in the incident that resulted in the shooting of PTE Kovco?---Yes.

30 He was concerned about the bearer party and the remaining platoon members that had remained in Baghdad?---Yes, okay, I accept what you're saying. He did not make clear to me any reluctance. He did not ask me for any assistance, over.

35 All I'm saying is that perhaps rather than being demonstrative he might have simply been minimising his exposure to the dead; in other words, that he was perhaps in a state where he wasn't quite as lucid as he might otherwise be.

40 LTCOL HOLLES: Sir, can I object to this? It's really leading us nowhere. It's inviting speculation by this witness as to the thought processes that were in Soldier 2's mind at the time and it doesn't ultimately contribute anything to the Board's finding in its terms of reference.

45 PRESIDENT: Anybody else want to make any comment?

LTCOL GREEN: Sir, I've been reluctant to interrupt, but there has been a series of propositions put to the witness which to me didn't seem to be questions. I'm not entirely sure, like my friend, as to what the purpose is to assist the Board. Given the time constraints and the difficulties we have with the technology, it may be that perhaps a point could be made.

PRESIDENT: I think I might say to LTCOL Wilkinson this: I think the point you're trying to make has already been made.

LTCOL WILKINSON: Thank you, sir, I'll move on. Paragraph 24, you again refer to the fact that it had been made clear to you that you were not personally required to identify the body. You say, though, that you recall that PTE Kovco did not have a moustache in his passport photo:

*And I did not consider that the presence of a moustache on the body in front of me was necessarily inconsistent with that body being PTE Kovco.*

?---Yes, absolutely. In my own mind at the time, I thought, "The young man has grown a moustache," as quite often, when you get groups of young men away, they dare each other and they do that type of thing. I gave no reflection on whether it was allowed in the military or not, I'm not sure whether it is, but I did not think it was necessarily unusual and that it would distinguish the body I was looking at from the body of PTE Kovco.

So why didn't you just ask? Why didn't you just turn around and say, "Did PTE Kovco have a moustache"?---Because I just explained that I did not think that it was unusual that he may have grown a moustache.

It would have possibly resolved the issue if Soldier 2 had said, "Well, no," and then - - -?---I can't speculate on that but on the same lines, as we had completed the sealing of the coffin, I observed that the body, the remains that we had, were fairly large. I think this person was fairly thickset; I have no idea how PTE Kovco's appearance was. But in order to get the body in the coffin they had to push down on the legs and, as far as I was aware, the head was already against the other end. So I said to Soldier 2, "He must have been a big lad," to which he replied, "Yes."

Can you see my point? Given that you had a photo without a moustache and there was a moustache on this person in the coffin, if you had turned around and said, "Did he have a moustache?" the whole thing may have been avoided.

COL GRIFFIN: We've just lost the link.

MAJ JOLLY: Sir, we might just see if we can re-establish the link. Sir, we seem to have it back. LTCOL Wilkinson, you might need to just repeat that last question.

5

LTCOL WILKINSON: My final question, Mr Adams, is simply this, that - can you hear me?---Yes, I can, thank you.

If you had just mentioned that moustache to Soldier 2, perhaps the repatriation might not have failed?

10

LTCOL HOLLES: Sir, I object to that question.

WITNESS: There are a lot of ifs after the event.

15

PRESIDENT: Put it this way LTCOL Holles, if LTCOL Wilkinson hadn't asked it - - -

WITNESS: I cannot speculate if it would have changed the direction.

20

MAJ JOLLY: Sir, we might need to get Mr Adams to simply repeat his answer.

PRESIDENT: Mr Adams, I'm sorry, I was talking over you then. Would you like to repeat your answer, please?---Yes, I'm saying I cannot speculate whether it would have made a difference or not, bearing in mind your assertion that Soldier 2 was in no fit state or that he didn't - wasn't focussed on the issue. It may have changed it; it may not have.

25

LTCOL WILKINSON: No further question.

30

PRESIDENT: Thank you. LTCOL Holles.

LTCOL HOLLES: Sir, it's LTCOL Green.

35

PRESIDENT: LTCOL Green.

LTCOL GREEN: Sir, I have no questions.

40

PRESIDENT: Thank you. LTCOL Holles.

**<EXAMINATION BY LTCOL HOLLES**

**[1414]**

45

LTCOL HOLLES: Mr Adams, can you see and hear me?---Yes, I can, thank you.

5 I'm LTCOL Holles, I appear for PTE Kovco's parent's; do you understand?---Yes, I do.

10 In 35 years of consular service you would have been in the repatriation of the remains of many Australian nationals, I presume?---I've had some involvement. When you say "many," I really couldn't put a number on it, but certainly I have repatriated remains from other countries before I came to Kuwait, yes.

15 It's indeed one of the responsibilities within the consular service to attend to the facilitation of that when and if it's required?---Yes, it is.

20 Is there now or was there at the time of this particular matter any memorandum of understanding or interdepartmental agreement between Department of Foreign Affairs and Trade and the Department of Defence as to the repatriation of deceased ADF personnel from overseas, I should say of which you are aware?---Not that I'm aware of, no. No, not that I'm aware of.

25 Is it the case that the understanding, such as it was, in relation to the responsibilities for PTE Kovco's repatriation relied upon the discussions between you and various members of the ADF prior to going to the Al Sabah morgue?---Yes, that is correct.

30 I just wish to read you a portion of BRIG Cosson's report. Sir, I appreciate this is a document which is given a certain classification. Perhaps if I could just approach Counsel Assisting to see if there's any objection to the particular passage I wish to read.

PRESIDENT: By all means.

35 LTCOL HOLLES: Thank you, sir. This is a direct quote:

40 *Consul also observed the body had a moustache which did not appear on photographs he had seen previously but did not think it significant to comment about this.*

Would you agree or disagree with that proposition?---No, that's correct, that's the way I expressed my observation.

45 With the wisdom of hindsight, are you able to say if you saw any racial similarities between Mr Sinanovic's body and that of PTE Kovco which

you looked at several days later?---I would be hard pressed to make racial similarities. I could say they were both Caucasian and taking you back to the Al Sabah Mortuary the first time, we as the group there were presented with a Caucasian male which was our expectation.

5

Is it fair to say that the only similarity between the bodies is that they were both Caucasian?---I'm not sure. The appearance of the bodies was radically different. The bandaging, the extent of bandaging was very different.

10

Certainly Mr Sinanovic's appearance was that of somebody of middle European appearance?---Yes, absolutely.

And PTE Kovco, because of the injuries, it wasn't obvious what his racial ethnicity was?---No, he was obviously Caucasian European as well.

15

But that's as far as you could go, I would suggest to you?---In relation to PTE Kovco, I could not determine his identity, for example, by comparing the remains with my image of his passport.

20

Thank you, sir, that concludes my cross-examination.

PRESIDENT: LTCOL Berkley.

25

**<EXAMINATION BY LTCOL BERKLEY**

**[1421]**

30

LTCOL BERKLEY: Good morning, sir, I'm LTCOL Tom Berkley and I represent Shelley Kovco, Jake's widow. Sir, I have a few matters before you that shouldn't take long. In evidence given by you this morning your time, this afternoon our time, you said that you had seen the transcripts of interviews with Soldiers 2 and 34. Do you recall giving that evidence? ---I'm sorry, do I recall giving evidence?

35

Do you recall telling us not long ago that you had seen the transcripts of interviews with Soldier 2 and Soldier 34? Do you recall telling us that? ---Yes, that's correct. Yes, I did say that, yes.

40

Who provided those transcripts to you?---They were provided to me by BRIG Cosson.

45

Do you remember which month of the year that they were provided?---I would suggest it would be some time in June when she was preparing her report.

Did you draft your statutory declaration, the one that is now before this Board, in July 2006?---That is correct.

5 Did you rely on any parts of the interviews with Soldiers 2 and 34 in making your statement; in other words rely upon those transcripts for the existence of a fact?---Yes, I understand your question perfectly and my response is absolutely not. If you compare my statutory declaration, it is very consistent with the record of interview I provided to BRIG Cosson  
10 when she came to Kuwait to initiate her inquiry.

When you went to the Al Sabah Mortuary on the first occasion, you went there armed with a photograph of PTE Kovco; is that correct?---No, that's not correct. I was called to Al Sabah Mortuary after the Defence officials,  
15 including Soldier 2, had arrived at the mortuary expecting to obtain the remains. Neither Defence nor the agency had advised me that I should be there to seal the remains.

When you went there to seal - - -?---Sorry, I lost track there.

20 When you went there to seal the remains were you armed with a photograph of PTE Kovco?---Sorry, yes. My prelude to the answer was that I rushed from the office to be at the mortuary to perform that function. I grabbed with me the plastic file of papers that I had in case of need.  
25 Amongst those was a photocopy of the passport, not a photo, but a photocopy of the passport, a copy of the death certificate and perhaps some other papers; I don't recall.

When you walked into the mortuary area you tell us in your statutory declaration that a coffin was prepared and was lying on the table. You say this:

*We advised the mortuary staff that we were now ready to proceed with the sealing of PTE Kovco's coffin.*

35 Do you see that in your statement, sir, paragraph 19?---Yes, okay.

You had the photocopy of the photo of PTE Kovco on your person at that time?

40 MAJ JOLLY: Sorry, Mr Adams, we don't have your audio?---Sorry. I had these papers in a plastic file. The first thing that I did upon arrival at the mortuary was to go to Soldier 2 and I had my sheaf of papers. I said, "Do you have his passport?" and he said yes, he had all of the papers

there. I might add, including a document issued by me which was a certificate of non-embalment, over.

5 In your statutory declaration at paragraph 24 you say that you had a photocopy of PTE Kovco's cancelled passport with you. Are you only referring to that part of the passport that has the personal particulars and photo of the passport holder?---Yes, that is correct.

10 Did you pull it out and look at it at all during the sealing process?---I never consulted it at all. As I say, I checked to make sure that he had the original - sorry, Soldier 2 had the original passport. Those documents were in the plastic folder and I placed those on an adjacent coffin of some other person, over.

15 Why did you look at the body if not to identify it?---I looked at the body to make sure that it was a Caucasian, also to be with Soldier 2 as he checked. I did not ask Soldier 2, but he was there with me looking to make sure that he had the correct remains, over.

20 Or that's your assumption at least. Is that fair?---That's fair.

25 You say at paragraph 22 of your statement that Soldier 2 did not say anything. Is that what actually happened?---Yes, I don't think he expressed anything at all, over, except - sorry, I make a statement there that he leaned over the coffin and zipped up the body bag and he addressed the mortuary workers and said, "Hang on, you should zip that up properly," but he ended up performing that function himself, over.

30 I think you say at paragraph 25 of your statement this:

*While Soldier 2 made no overt comment confirming that the remains were those of PTE Kovco, I understood his silence to indicate tacit confirmation of PTE Kovco's identity.*

35 Do you recall saying that in your statement, sir?

MAJ JOLLY: Sorry, Mr Adams, we didn't get your reply?---Sorry. Yes, I do recall.

40 LTCOL BERKLEY: Then you say this:

45 *In all of these circumstances I had no reason to doubt that the remains were those of PTE Kovco and that it was appropriate for the Australian Embassy seal to be affixed to the molten wax on the steel bands wrapped around the coffin.*

Do you recall saying that, sir?---Yes, I do.

5 Sir, it's implicit in that, isn't it, that you took upon yourself a responsibility to at least satisfy yourself as to the contents of the coffin that was going to have our Embassy seal upon it? Is that correct?---I think that is quite correct.

10 Now, sir, we're all smarter in hindsight. I simply want to put this to you: is it the case that that satisfaction was based on the fact that Soldier 2 stood mute?---Yes, that is correct.

15 MAJ JOLLY: Mr Adams, we're approaching the time where I think we might lose the link. If it does drop out either myself or COL Griffin will contact you by telephone.

20 LTCOL BERKLEY: Sir, we're approaching that time. I've no further questions at this stage. I might have just a few later. I apologise for that. I would like to have encapsulated it. I think I may have. Sorry, Mr Adams, I'm addressing the President. So I'll leave off my examination at this stage.

PRESIDENT: Very well.

25 LTCOL BERKLEY: Thank you, sir.

PRESIDENT: Thank you. COL Young.

30 WITNESS: Excuse me. I'm advised that the link will probably run on, over.

MAJ JOLLY: Thank you, Mr Adams.

35 PRESIDENT: If need be, if you need some time to consider things, LTCOL Berkley, subject to COL Young's thoughts, I'm prepared to have you come back.

LTCOL BERKLEY: Thank you, sir, I'd prefer that.

40

**<EXAMINATION BY COL YOUNG**

**[1434]**

45 COL YOUNG: Mr Adams, my name is COL Young. I represent the interests of PTE Kovco. Can you hear me okay?---Yes, I can, thank you.

Mr Adams, would you agree with me that bodies can be mixed up in transit?---I think the case is proven, yes.

5 In paragraph 29 of your declaration you refer to adopting a methodical approach to assist with and facilitate positive identification of the deceased consistent with the procedures in the consular handbook. This was on the occasion when you were actually identifying PTE Kovco. What I want to ask you is - - -?---Yes, that is correct.

10 - - - if you could explain to me what that methodical approach was, what in fact you did?---Okay. I was in the company of two Defence personnel. They had viewed the body previous to me I think and they called me down to the mortuary. When I viewed the body, the remains, I could not  
15 assess the likeness to the passport photograph. I then suggested that they try to obtain further information that would lead us to conclude that it was PTE Kovco. None of those present had seen PTE Kovco before. My first suggestion was can you get any information about PTE Kovco after his death that we can check against to ensure that the remains we're looking  
20 at are those of PTE Kovco. WO Hunter said to me, "I'll call my father, he's a doctor, and ask him what we might expect to see." He made a phone call. He then made another phone call. My next suggestion was, "Look, the Military Police have been to investigate and I understand they've taken photographs of the body." I don't recall how I knew that,  
25 but I was aware of that. I said, "Is it possible to get photographs of the remains so that we can compare those against what we're looking at?" WO Hunter made another phone call and I assumed it was to the Military Police. I think it might have been to somebody from mortuary affairs in Canberra. I've learned that subsequently, but I thought he was talking to  
30 the Military Police. And they gave him an exact description of where the bullet wound was and they described also some detail about his appearance. We went back and viewed the remains and we were pretty sure that it was PTE Kovco by checking the bullet wound and of course the appearance of the face was very obvious to us. Subsequent to that, we  
35 went back to the Gulf Agency to prepare duplicate documents because we had to get the correct remains home. All we had were copies from the first shipment. While I was there the Gulf Agency produced a part of the death certificate which I had not seen previously and it was an anatomical diagram of PTE Kovco upon which was detailed quite a lot of information  
40 about medical tubing, a neck brace, hospital patches, that sort of thing. Now, it was not clear to me at that point that I recalled seeing all of those assigned when we looked at the remains. But it was pretty sure that we had PTE Kovco. The Minister for Defence called me and I detailed what had happened and he said, "We have to make absolutely sure," and I said,  
45 "Yes, the conclusive proof will be when we can check the photographs." I

said that in the belief that PTE Kovco had been positively identified in Baghdad. So we would then be comparing like with like. And that's what happened, over.

5 Thank you for that. The reference to procedures in the consular handbook, can you give me some ideas of what those procedures are?---If you're talking about to try and determine identification of somebody that's not clear, you might be talking about dental records, DNA tests, type of thing, over.

10 When you and Soldier 2 looked into the body bag on the previous occasion would you say that Soldier 2 adopted a methodical approach to identification?---No, I don't think he did, but my understanding was that he was a colleague. My expectation was that he would visually be able to identify PTE Kovco, over.

15 As you've told us, you were relying on him as being the person doing the identification. Is that right?---Yes, that's absolutely right.

20 We heard from WO Hunter this morning and he told the Board that he has a recollection that when yourself and Soldier 2 looked inside the body bag both of you said either "yep" or "yes" and he understood that was a confirmation of identification on the part of yourself and on the part of Soldier 2. Do you have a recollection of saying something like that? ---No, I do not and I do not recall Soldier 2 making that statement either, over.

30 Just finally, you said in your evidence today it's implicit if you seal a coffin you know who is in there. How did you satisfy yourself that it was PTE Kovco in that body bag?---I think we've been there before. I relied on Soldier 2. His failure to raise any alarm assured me that his colleague was there and it was safe to seal that coffin and send the remains home, over.

35 Given your agreement with me that Soldier 2 did not adopt a methodical approach, and given your lengthy experience as a senior consular official, you didn't think it was appropriate perhaps to get him to confirm to you with words such as "Is that PTE Kovco"?---I think I've already stated that I interpreted his failure to raise any alarm as tacit agreement that that was PTE Kovco. The lack of a methodical approach I assumed - no, not assumed, I understood was not necessary as he was a colleague who would readily recognise PTE Kovco. So that the need to check any sort of tagging would not be required. He would visually look at those remains and say, "That's my man," over.

45

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

PRESIDENT: Thank you. LTCOL Berkley, do you wish to resume?

5 LTCOL BERKLEY: No, sir, I don't. Thank you very much.

MAJ JOLLY: No questions, sir.

10 PRESIDENT: Thank you, Mr Adams, that completes your evidence this afternoon and we thank you for the time you've given us. You may now formally stand down?---Thank you very much. I understand the family of PTE Kovco may be there. If I could offer my very sincere condolences. I'm well aware of the pain that they have been through. I'm also acutely aware that the family of the Bosnian national also went through a lot of  
15 pain and I feel for both families. I had extensive dealings with the Bosnian ambassador here and the whole incident certainly is very much to be regretted and I am very sorry and sympathetic with what they've gone through. Thank you.

20 Thank you, Mr Adams, I'm grateful to you for that.

<WITNESS WITHDREW

[1444]

25

MAJ JOLLY: Mr President, they are the witnesses for today. We have no other witnesses scheduled and I understand that we're not due to resume until Wednesday of next week.

30 PRESIDENT: Very well. What time on Wednesday, bearing in mind the scheduling for the VTC? Are we able to arrange a 10 o'clock start?

LTCOL GREEN: Mr President, we have been advised that Soldier 14 has returned from theatre. As a consequence of that, there are some matters  
35 that will be dealt with between now and Wednesday. We would ask that we resume not before 9.30 on Wednesday.

PRESIDENT: Is everybody comfortable with a 9.30 start on Wednesday?

40 LTCOL HOLLES: Sir, I'd prefer 10 o'clock for reasons which I'm prepared to divulge at a later stage.

COL GRIFFIN: As I've indicated, sir, not before 9.30 would be my request. If you indicate that we resume not before 9.30 and I'll talk to  
45 Counsel outside about their requirements, if you wish.

PRESIDENT: I don't know what LTCOL Holles' predicament is.

LTCOL HOLLES: It could be worked out with Counsel.

5

PRESIDENT: Nothing LTCOL Holles - if he could be here by 9.30 without moving the world he'd be here and I'm prepared to make it 10 o'clock.

10 COL GRIFFIN: Very well, sir. Thank you.

PRESIDENT: 10 o'clock it is.

15 **MATTER ADJOURNED AT 1446 UNTIL  
WEDNESDAY 9 AUGUST 2006**

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