

TRANSCRIPT OF PROCEEDINGS
UNCLASSIFIED

AUSTRALIAN DEFENCE FORCE

AUSTRALIAN ARMY, VICTORIA BARRACKS, NSW

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

PRESIDING:

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

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

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

1005 TUESDAY 22 AUGUST 2006
DAY 26

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.....  Date22/08/06.....(President)

Signed.....  Date 22/08/06.....(Recorder)

Signed.....  Date 22/08/06.....(Transcriber)

Signed.....  Date 22/08/06.....(Transcriber)

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RESUMED

[1005]

5 PRESIDENT: Good morning, Colonel.

COL GRIFFIN: Good morning, Mr President. Good morning, Members.
First witness, MAJ Willetts. I call MAJ Willetts.

10 PRESIDENT: Thank you.

<MAJ MARK NEILE WILLETTS, sworn

[1007]

15 **<EXAMINATION BY COL GRIFFIN**

COL GRIFFIN: Major, would you state your full name for the record,
20 please?---8264646, MAJ Mark Neile Willetts.

What's your current posting?---I'm the senior doctrine officer for
engineers with the Land Warfare Development Centre.

25 Have you been provided with a copy and have you read Annex F to the
Inquiries Manual?---Yes, sir, provided and read.

You understand your rights and obligations as a witness in these
proceedings?---Yes, sir.

30 In April of this year what was your posting?---I was appointed to
Headquarters JTF633 as the J3X. That meant I was on the operation staff
responsible for force protection, chemical, biological and radiological
defence and other engineer services.

35 How did you come to be involved in the circumstances surrounding the
death of PTE Jacob Kovco?---The Commander of the Joint Task Force
appointed me to conduct a quick assessment.

40 What was your guidance and instruction for that activity?---I'll
paraphrase. It was to conduct the QA in accordance with extant policy.
The Chief of Staff of the headquarters told me not to limit my scope in
dealing with this incident and that I was to make recommendations as I
felt appropriate. I was also reminded that it was a quick assessment and
45 not a formal inquiry that I was conducting, which then placed limitations
on the aggressiveness of my questioning with respect to the witnesses.

When did you receive this task?---The afternoon of the 21st. It was about 1800 hours, after I'd returned from my afternoon briefings with the Americans.

5

Who in particular gave you the task and the briefing of your duty?---The tasking was advised to me most probably - I can't recall exactly - by the J3, who was my supervisor. The briefings were provided to me from the Chief of Staff and the Legal Officer on the headquarters at that time.

10

Did you receive any written terms of reference?---Not initially, though I think they might have been faxed to me subsequently. I conducted another QA and my memory of when I got which piece of paper authorising me might be confused.

15

Had you any training in the conduct of quick assessments or investigations, Major?---Specifically quick assessments, no, they were a concept that was introduced after my formal training as a full suite of training as an Army officer, we've been trained in investigations in that respect. I'm also a qualified fire investigator.

20

Had you any previous experience of quick assessments or investigations? ---No, this is my first QA. I had conducted many investigations before though clearly none of an incident of such import as this one.

25

What resources and assets did you have recourse to to undertake this task?---Effectively none.

30

I take it that the timeframe was given to you, were you given a reporting date?---As quickly as possible. I anticipate the QA to take no more than 24 hours and that is effectively how long it took. However, I was given guidance that we needed a solution in a relatively quick time.

35

Was a police investigation discussed with you at all?---Yes. The incident was a notifiable incident, so the Service Police had to be notified anyway. It was clear from the OP that an investigation was going to have to be conducted and that a Board of Inquiry was almost certain to ensue.

40

Could MAJ Willetts be shown - in fact I think the Secretary has already placed them on the desk before you. These are exhibits in these proceedings. Now, Major, in these proceedings you may be aware identities and other matters of operational security have been classified - - -?---Yes, sir.

45

- - - and to assist that process, there is a matrix of names with callsign

numbers beside them for individuals who are in theatre?---Yes, sir, seen and understood.

5 There is also a matrix for degrees of weapon readiness and - - -?---Seen and understood.

10 - - - certain positions and then on the other side of the table before you are the two exhibits. Now, documents and other material placed in evidence have been produced as classified exhibits, that is in full and they have then been redacted to protect matters of operational security. So there is a second redacted version?---Yes, sir.

15 Now, do you recognise the unredacted and redacted documents that are exhibit 145 before you?---Yes, sir.

What do you recognise them to be?---They're the initial quick assessment report that I provided to the headquarters in electronic form and hard copy on the afternoon of Saturday 22 April, the day after the incident.

20 Now, Mr President, Members, I've discovered this morning that there are handwritten notes which were provided to Counsel Assisting in Baghdad which I've just distributed this morning that related to the interview statements that are typed and appear in exhibit 145. We do not have the unredacted versions of those interview notes and MAJ Willetts informs me this morning that he doesn't have the original of that material before him, is that correct?---I may have the originals, but my trunks have only just arrived back from the Middle East and the field survey notebook should be in there somewhere.

30 We will attempt to recover the unredacted version of these original notes and provide them as soon as possible from 633. What I propose to do is to take you through the redacted copies of your handwritten notes and attempt to match them up with the interview notes that appear in the document - - -?---Yes, sir.

35 - - - with reference to the matrix of names. Now, if you go to the unredacted version, we'll do it this way if you follow through with me. At page 4 of your quick assessment appears a list of your enclosures and has names in full?---Yes, sir.

40 If we go to the first of those which you'll see is Soldier 17 on the list, do you have the redacted handwritten notes before you at the moment?---I have - I don't have the handwritten notes, no, sir.

45 We'll provide those to you now?---Can we confirm the callsign?

The callsign being 17 is the first person that appears - I beg your pardon, 19 is the first person that appears in your enclosures?---Yes, sir.

5 Is that correct?---19, sir.

Would you please - if you're provided with a pen, handwrite "19" on that copy of the handwritten notes where you identify it as matching the typed statement. Have you done that?---Yes, sir.

10

Does that document, the handwritten one, have a diagram at the top and below that "0930 D approx"?---Yes, sir.

15 You identify that as the statement of Soldier 19?---I'll just take a moment and confirm that, sir. Yes, it is, sir.

The next of your enclosures is Soldier 17. Do you see that on page 4? ---Yes, sir.

20 Going to the handwritten notes, does that have a diagram at the top and then the first line of handwritten notes "22 April '06 at Aus Em Baghdad"?---Just to confirm, it's the one with the diagram of the interior room with a stick figure drawn on it?

25 Yes?---Yes, sir.

Then the first full line it has:

Both (blank) and Jacob are issued first SLP.

30

?---Yes, sir.

Would you handwrite "17" at the top of that, please?---On the interview notes and my handwritten notes?

35

Thank you. If we go again to your enclosures list on page 4 of your quick assessment, the third soldier, would you confirm that Soldier 21 from the list?---Yes, sir.

40 Would you look at the handwritten notes and describe those handwritten notes and confirm that those are Soldier 21. Is there a line hyphen "first to open the door"?---Yes, sir.

45 If you would write "21" on both of those documents, please. Then if we go again to the list of enclosures, the next one you agree is Soldier 1?

---Yes, sir.

Do you identify that as in the handwritten notes being page 1 of 2?---Yes, sir.

5

On the first page of the two does it describe “the three guys were” and then goes on to set out:

No problems at all, highly trustworthy, good mates.

10

?---Yes, sir.

Would you write “Soldier 1” on the two pages of the handwritten notes and the one page of the typed notes, please. Then the fifth of your enclosures identifies Soldier 20?---Yes, sir.

15

That’s identified - I’ve confused myself there. Page 1 of 2 being Soldier 20’s notes?---Yes, sir.

20

And a single page being Soldier 1 in the handwritten notes?---Yes, sir.

Thank you. Just to confirm for the record, going back to Soldier 1, there was a one-page handwritten notes which described:

25

The three guys were no problems at all, highly trustworthy, good mates.

?---Correct, sir.

30

At Soldier 20 in the handwritten notes there are two pages of handwritten notes and the first page is marked page 1 of 2 and the second page is marked page 2 of 2?---Yes, sir.

35

If I can just confirm that what I’ve just shown you, the handwritten notes and the typed written document, comprises the totality of the quick assessment report that you submitted after completing your investigation? ---The report is the one titled and typed. The only contemporaneous handwritten notes that I made were the ones that have been copied and you’ve provided to me on a field survey notebook in my own scrawl.

40

Now, the document that is before the Board, your assessment - and if we return to page 4 where your enclosures are listed - is not dated or signed? ---Yes, sir, that would probably be from the electronic copy I forwarded to the Headquarters because I was not located at the Headquarters when I completed this report.

45

5 At the same time I printed off a copy and signed and dated it and then provided the hard copy to the Headquarters immediately I returned to that location. It would have been dated 22 April in the afternoon, approximately 1530 Baghdad time.

That's your recollection of the time that you completed the report?---Yes, sir.

10 That is, 22 April at approximately 1530 hours local time?---Yes, sir, local time.

You say in the quick assessment on the first page under the heading "Purpose":

15 *The purpose of this quick assessment is to enable the Commander Joint Task Force 633 to determine the nature and gravity of the occurrence, the nature and extent of information required to decide what type of administrative inquiry, if any, is most likely to provide that information and is most appropriate in the circumstances.*

20

?---Yes, sir.

25 Do I understand from that that your focus was entirely on an administrative inquiry and you were not having regard to any potential criminal or disciplinary proceedings?---No, I was looking for any potential criminal or disciplinary procedures. If I had found those, then my term of reference directed me to advise of such and the Commander would then

30 make a decision on a new course of action. Paragraphs 2 and 3 from my report are taken verbatim with the exception of the inclusion of CJTF 633 from the Defence policy on quick assessments.

35 Were you given any advice or did you receive any information in respect of talking to the people who had been in the room and conducting interviews with them before you embarked on your investigation?--- Before I commenced on the investigation I discussed with the legal officer the breadth and detail of my questioning. I saw a number of options that were possible ranging from the ridiculous to the plausible and he

40 constantly reiterated that I was conducting a quick assessment not an investigation and that I was not to be too aggressive in my questioning.

Sir, I propose that the notes that have been identified and marked with the callsigns be incorporated into the redacted copy of exhibit 145 and

45 tendered on that basis.

PRESIDENT: Is everybody comfortable with that approach they become part of exhibit 145 in its redacted form?

5 COUNSEL REPRESENTING: Yes, sir.

PRESIDENT: So be it.

10 COL GRIFFIN: Sir, that completes my questions for MAJ Willetts.

PRESIDENT: Yes, thank you.

LTCOL WILKINSON: I've no questions, thank you.

15 PRESIDENT: Yes, thank you. LTCOL Green?

LTCOL GREEN: Thank you, sir.

20 <EXAMINATION BY LTCOL GREEN

[1026]

25 LTCOL GREEN: MAJ Willetts, my name is LTCOL Green, I appear for Soldier 14. MAJ Willetts, just going through exhibit 145 which is your quick assessment, what you have purported to do in the first four pages is to give your summary and your impression of the available evidence, together with recommendations?---Yes, sir.

30 What you then do, commencing at page 5 onwards, is to give, in some cases, a verbatim account of the words that were spoken to you and in other cases a dialogued account of the words that were spoken to you? ---Yes, sir.

35 Do you understand the distinction between verbatim and dialogued account?---Yes, sir.

I think what you try to do is give verbatim where you considered the statements to be important - - -?---Yes, sir.

40 - - - and a dialogued account where you considered it to be background or fairly non-contentious?---Yes, sir.

45 Is that a fair assessment of the way that you approached the matter? ---Fairly much so, yes.

If I could take you to your typewritten notes concerning Soldier 19, which I think is the first of your interview notes that appears in exhibit 145?
---Yes, sir.

5 Where you would have at paragraph 8 the words:

I didn't hear the weapon being cocked.

?---Yes, sir.

10

Was that a dialogued version of accounts or a verbatim version of the accounts?---No recollection, sir. I'll look at my notes, that might - on the balance of probability, dialogue, sir.

15 Continuing in paragraph 8:

Member agrees this was possibly due to music being played loudly through iPod speakers.

20 ?---Yes, sir.

Did you form the impression that the music was very loud at or about the time that PTE Kovco was shot?---Yes, sir. Whether there was a momentary lull in the soundtrack, I don't know. But clearly they were playing music loudly, sufficiently so to annoy people in adjacent rooms and passing by the accommodation.

25

It was of such a level that one soldier, Soldier 21, was approaching the room to tell them to be quiet?---Indeed, sir.

30

And such a level that another soldier, Soldier 20, was starting to bang on the wall and yell out "Be quiet"?---Yes, sir.

So, you could probably agree with me that within the confines of room 8 the music would've been loud?---Yes, sir.

35

But I understand you to say you are unable to say whether or not the music had momentarily or perhaps ceased a period of time before the shot rang out?---Yes, sir.

40

But suffice to say that steps were in hand to try and have the music turned down?---Yes, sir.

Turning over the page to your interview notes, typewritten, concerning Soldier 17?---Yes, sir.

45

Your typewritten notes record that you were told by Soldier 17 that in fact the music was so loud he couldn't even hear the people banging on the walls to tell him to shut up?---Yes, sir, paragraph 8.

5

In paragraph 9, the words:

I didn't hear a DOWR change.

10 ?---Yes, sir.

Do I take it from that that you suspected that there had been a DOWR change, but Soldier 17 could not hear it because of the loudness of the music?---No, sir, I didn't make that presumption.

15

Why did you include the words:

I didn't hear a DOWR change.

20 ?---Because I considered a possibility of a change to the weapons readiness to be of significance.

Perhaps you misunderstood my earlier question. I said did you suspect that there had been a DOWR change which had been masked by the loud music?---No, I did not suspect one, but it was a plausible option and I could not discount it.

25

And to that end you conducted your investigation and made that specific assessment?---My assessment.

30

Turning over to the next page which is the typewritten notes of Soldier 21?---Yes, sir.

At paragraph 9, you include the words in the first person as follows:

35

I am sure I heard someone call Allah Akbar about 10 seconds before the gunshot.

40 ?---Yes, sir.

Was that an account verbatim or a dialogued account?---I cannot recall, however once he made that mention we discussed it for a period of time, particularly alluding to its use in Hollywood films and the member was quite adamant at that time that he did hear it.

45

So adamant to the point where you included the words in the first person commencing "I am sure"?---Yes, in fact I've placed quotations here:

Heard one person call "Allah Akbar" 10 seconds before.

5

I was about to move to your handwritten notes, just looking at your typewritten notes for the moment. But what you have done is you've gone back to your handwritten notes to confirm that your typewritten notes were in effect verbatim of what you were told by Soldier 21 at the time?---Yes.

10

Approximately how long after the event were you told this by Soldier 21, bearing in mind that my copy of the handwritten notes only bears the date 22 April '06, it doesn't bear a time?---The timeline, the incident occurred in the afternoon on the 21st, I was appointed early that evening, we did not move forward to the International Zone till about midnight, I did not move from the main SECDET location to the Australian Embassy until around 8 o'clock the following morning. So the questioning occurred predominantly through the morning. So it was sometime the following morning.

15

20

Would it be fair to say therefore that Soldier 21 told you that he was sure he heard the words "Allah Akbar" less than about 18 to 20 hours after the shot rang out?---Yes.

25

And that was something you questioned him on for a period of time?---A short period of time. I used an open and discussion questioning technique, rather than QA and he was quite adamant, in fact he was emphatic at the time that that is what he heard.

30

Soldier 21 seems to have recounted or taken a step back from your proposition in recent evidence to this Board?---Yes, sir.

Has there been any pressure on the soldiers there, so far as you're aware, to come back from the proposition that someone called Allah Akbar since you've conducted your investigation?---I'm unaware and I would expect to not be made aware if such pressure did exist.

35

Turning over the page to your typewritten notes concerning Soldier 1? ---Yes, sir.

40

Again Soldier 1 would have had this conversation with you about 18 or 20 hours after the shot rang out?---Yes, sir.

Would it be fair to say that Soldier 1 realised at that time that there were

45

difficulties or problems with the buddy system employed at callsign D?
---Yes, sir.

5 Was that something he indicated he knew of previously to PTE Kovco being shot or is that something he realised post that, it occurred to him within that 18 or 20 hour period?---I'm unable to answer that question, sir. I don't know.

10 You've used the words in your handwritten notes "without prejudice" or a shortened form of those words?---Yes, sir.

The exact words that you've used "w/out", which is a shorthand version for "without prejudice"?---Yes, sir, "without".

15 *The facilities at that point are now being modified to better facilitate buddy checks.*

?---Yes, sir.

20 What was the concept of you being told something without prejudice?---The soldier's intent was to advise me that they had now considered that there might be a problem up there and that they were taking remedial action. The problem is the nature of the spatial relationship with the OP and the theatre point.

25 I can understand that, but why was it told to you without prejudice? Is that something which was indicated to you which was not to be passed on further?---No, as I recall, Soldier 1 was saying that they didn't realise before, they didn't - they weren't sure whether it had configured to this incident or not, but in reviewing everything that had gone on in the last 12 to 18 hours they considered that there might be a better way of arranging that location. His thoughts and motivations I can't answer.

35 I asked you earlier whether or not Soldier 1 told you that the possibility for changing the location of the beach had occurred to him before or after the death of PTE Kovco and you said you weren't sure?---In recollection, I now believe that they considered there might be a connection and that they were going to address it, whether there was in fact a real connection or not.

40 There are no tricks to this question, I'm just trying to understand whether or not it was told to you that there was a decision to change the beach as a consequence of this or whether or not that decision was already in place but yet to be actioned at the time of PTE Kovco's death?---No, I don't believe a decision had been made before. But I can't guarantee my
45

answer on that, my recollection is hazy.

5 Had it been indicated to you that there was a realisation on the part of Soldier 1 or others in the hierarchy that there were problems at the beach at callsign D prior to the death of PTE Kovco?---I'm not aware.

10 Now, again turning to your typewritten notes concerning Soldier 20, your typewritten notes are at slight - they're at slight variance to your handwritten notes concerning the point - paragraph 12 and 13. You say in your typewritten notes paragraph 12:

I didn't hear anyone call Allah Akbar.

15 ?---Yes, sir.

In your paragraph 13:

Obviously they were mucking about. It was an accident.

20 Now, what I'm suggesting to you is when you look at your handwritten notes there is a slightly different flavour which comes from your handwritten notes than appear in your typewritten notes?---Yes, sir.

25 Do you agree that there is a slightly different flavour and the emphasis has changed between the two documents concerning that particular point?---I think you give me undue credit for seeing this construction, but yes, I can see that.

30 I'm not sure if that's a compliment or not, sir?---Well, it wasn't an insult, sir.

Because you see at the bottom of the first page, 1 of 2, the following words appear:

35 *Did not hear Allah Akbar, but it was obvious they were mucking about.*

40 ?---And I can't provide any further illumination. I can't recall exactly what was said.

45 But you would agree with me that the possible understanding of that part of page 1 of 2 is that you were told by Soldier 20 at that time he didn't hear the words "Allah Akbar" but it was obvious something was taking place?---I think what actually happened, sir, was after hearing somebody - one of the other witnesses previously say he did hear it, I then questioned

the subsequent witness to see whether he heard it. He said no. I didn't pursue that line of questioning any further.

5 Did you get the impression that Soldier 20 was telling you he didn't hear the words "Allah Akbar" but what he did hear was something consistent with that sort of activity, whatever that activity is?--On the balance of probabilities I would take it that when I questioned the soldier he answered no, he didn't hear Allah Akbar, but it was obvious that they were mucking around in there in some shape or form. The word - the
10 Minister used the term "skylarking".

Thank you, sir.

15 <EXAMINATION BY LTCOL BERKLEY [1043]

LTCOL BERKLEY: You also knew that Soldier 14 was one of the first persons to present at the room after the incident in which Jake was shot?
20 ---Yes, sir.

You didn't take a statement from Soldier 14?--No, sir, he was unavailable at the time. It was a QA, I needed to get in a timely manner an impression of what had occurred so that appropriate administrative action could be
25 taken. In reality, the QA was an administrative process. It was almost nugatory, a board of inquiry was almost certainly to be convened regardless of what I said and a service investigation because it was a notifiable incident had to be conducted also.

30 Indeed. You've just talked about your handwritten notes and your sentence construction. You probably construct sentences like an engineer does, which is perhaps you're better at other things than at sentence construction. Is that what you're saying?--I'd prefer figures and numbers, sir.
35

But when you presented to your higher headquarters your typed report you'd read that and was satisfied that that accurately reflected what you wanted to report for the purposes of your quick assessment?--I had a limited time frame. My greatest effort was placed into questioning those
40 people available and gathering sufficient information to make a report. The report I actually sent on included a couple of typos, which I shall have to carry the shame.

45 I'm sure that you'll have to pay for them forever?--Yes, sir.

5 But your interview notes with Soldier 20, rather than trying to make something of what you may have meant when you wrote something down with your hand, rather than try to make something of that, are you satisfied that your interview notes for Soldier 20 - - - ?---Are accurately reflected.

- - - accurately reflect what you want to report?---Yes, sir.

10 You to the embassy at about 0800 hours local time on 22 April?---To the embassy yes, it was about that time, sir.

15 You would have introduced yourself to the local Commander then in situ?---The Commander wasn't available at the time. They were expecting me because of radio traffic between their headquarters, the SECDET headquarters and that location. I was greeted by appropriate personnel at that location, taken to the scene and then provided with a location in which to question personnel.

20 Can you remember the order in which you did question them?---I do know that any questions relating to hearing "Allah Akbar" came after that soldier had indicated that he had given it.

25 That of course was - - -?---But I can't recall the exact - there was no logical approach to who I questioned first. It was who was available, because they were all on duty at various locations providing security to the facility.

30 Soldier 1, would you have seen him later in the piece?---Later in the piece, sir, yes.

Just in relation to Soldier 20's statement, the interview notes you've got there, it says this in paragraph 4:

The guys in room 8 were playing music, singing loudly.

35 Then there's the hyphen, the quote being:

Obnoxious digger shit -

40 which I think everyone can understand.

They were talking gibberish and I couldn't understand what they were saying.

45 That's what Soldier 20 said basically to you. That's what you wanted to

convey?---Yes, sir.

5 Did you get the feeling that it was the very poor singing, perhaps off-note singing, that was causing the disruption or the volume of the music?---I couldn't make a distinction, sir.

10 It's just that in one your handwritten notes - and I believe it belongs to Soldier 21 - was that the - and I'll just check that; yes, Soldier 21. Your handwritten notes reads this:

Noise that attracted me was associated with -

then there's -

15 *taking the piss generally but not out of each other. Bad singing perhaps.*

?---Yes, sir.

20 *Then heard call "Allah Akbar".*

It looks like:

25 *one pers 10 seconds before, didn't hear weapon cock.*

That's what your note says there?---Yes.

30 I'll go back to what you say in the written version that actually goes to the headquarters.

It was the noise that they were making that attracted me. It was the racquet associated with taking the piss generally but not out of each other. On questioning he may also have heard bad singing.

35 ?---Yes, sir.

40 Was it your impression - please answer yes or no, it's only a proposition of fact - that it was the verbal noise rather than the music that was the - the banter - - -?---From my contemporaneous notes and my report, then I would take it it was the individuals in the room who were making the louder noise, not the music that was being played.

45 When you arrived you spoke to the people who are listed at enclosures 1 to 5?---Yes, sir.

Are they the only people that you spoke to for the purpose of your quick assessment?---No, I casually spoke with a range of people at the location including the site support team and padre.

5

Do you know where Soldier 14 was? He may have been on duty, I don't know, but do you know just where he was at the time?---He wasn't - he wasn't reported as being in the room. No, that's all I can recall.

10 One thing that interests me is that we've had various people tell us in this Inquiry when they got to room 8 and I think, if I could use the term order of march that other than Soldiers 17 and 19 who were in the room, that according to your notes, Soldier 21 was the first in the room?---Yes, sir.

15 Now, also according to your notes, I think or at least a construction of your notes, that Soldiers 14 and 20 were virtually immediately behind him?---In the adjacent room.

But arrived at the room immediately after Soldier 21?---Yes, sir.

20

So the order of march would've been 21 and then either 14 or 20 because they were in the adjacent room?---I believe that to be the case, yes, sir.

25 It's your understanding that from the statement of Soldier 20 that both Soldier 19 and Soldier 14 attempted resuscitation on Jake?---Yes, sir.

And that they took Jake to the 10CSH on the? gator ---Yes, sir.

30 They were actually providing or trying to resuscitate Jake?---Yes. I would not necessarily say resuscitate, provide emergency first aide care to him.

When you spoke to the soldiers at the scene that next morning - - -?---Yes, sir.

35 - - - what was their emotional state?---They were clearly emotional, but not to the degree that I was - I was anticipating. But they - they were clearly suffering some measure of shock and some measure of emotional discomfort, probably at the loss of their colleague, but they - they had also been kept fairly well to their routine, they still had their duties to perform.

40

So they were still focused on their duties as well, is that what you're saying, that they were focused on - - -?---They still had their duties to perform, they appeared to be getting on with the job, did or didn't stop.

45 Did they appear to you to be fully open with you or did you detect any

reticence amongst them when you questioned them?---The two individuals that were in room 8, I believed without substantial evidence that they were withholding information, but I didn't pursue that further because I knew there was a Board of Inquiry that was going to delve into that.

And you just couldn't put your finger on what that was?---I found it difficult to believe that two individuals in the room would not have had more information with respect to what actually happened there. Their motivations for that, I have - I cannot speak to.

That was your impression as a (inaudible) in your Class of '84 RMC? ---Yes, sir.

And I can tell the Board that's only because I'd spoken to the witness outside and asked his history. So that you've been in the service for 22 years?---I joined in '81, sir, so 26, yes, sir.

You just felt that they weren't being fully open with you?---Wasn't so much a feeling as a logical deduction that it's a small room, there's three people in there, it's very difficult not to notice what everybody's up to.

Now, I understand that you didn't enter the room?---No, I did not.

Did you look into the room?---No, I did not.

You were aware of the location of the room?---Yes, sir. I observed the outside, all the four vertical surfaces, I couldn't see the roof and I didn't crawl underneath. I saw that the door had been sealed and I was shown a series of photographs relating to the room.

Now, did you establish at that stage, I know it was only a quick assessment, did you establish at that stage the problems with the photographs as to who they were taken by and when they were taken? ---Yes, that was provided to me at the time, but the information that was contained within them was not directly relevant to what I needed to find out with the QA.

And in fact I think your recommendations at paragraph 29 of your quick assessment were that a service police investigation team deployed you formally to investigate the incident?---Yes, sir.

And that a Board of Inquiry deal with it?---Yes, sir.

Could you tell that it was a matter of considerable importance that a

soldier had been shot?---Without doubt, sir.

5 Were you asked any advice from your headquarters, JTF633, were you asked any advice as to timings for an investigation?---Timings for the conduct of an investigation of the scene.

10 No, as to the commencement. Was there any request to you? You'd been to the scene, you'd made a quick assessment for your commanders, was there any discussion between you as to when the investigation should commence?---That discussion occurred prior to me going to the scene. When I was appointed I drew on my experience in fire cause determination and impressed upon the legal officer the need to conduct the investigation as quickly as possible. The best evidence is the freshest.

15 Indeed?---I'd also queried whether we could use American Military Police or investigators. They had a large variety of investigators on scene and I was told that that was not possible.

20 Now, if you need to look at the matrix. Who did you have that discussion with?---Not listed.

Rank level?---05 - 05 legal officer, Navy.

25 COL GRIFFIN: Sir, could I suggest that the witness could append on the bottom of a copy of the matrix of names he has, the rank and name and give the next number and that could be placed on the list.

LTCOL BERKLEY: Thank you very much.

30 COL GRIFFIN: Would that be Soldier 49, then on the list that you have MAJ Willetts?---Yes, he would be, sir.

35 LTCOL BERKLEY: When was that discussed with Soldier 49?---That was on the Friday evening before I deployed, sir.

So that's 21 April?---Yes, sir.

40 I think as part of your history you were head of the Army's Fire Department?---Yes, sir, for six years.

And you've investigated fires and the cause of fires?---Within the Army and with the Volunteer Fire Services outside, yes.

45 You were aware, I think, that the Americans actually had a CID Battalion? ---They had an MP Brigade on site, sir. There was a wide variety of US

Government investigators available in Baghdad at the time, yes.

5 Were you given a reason as to why it was not possible to seek the use of those resources?---I was advised by Soldier 49 that the DFDA preferred to deal with it. Whether that was true or not, I didn't have the time to further investigate and I accepted his advice.

10 It's just a simple matter to establish. You discussed the possibility of foreign assets being used that were in situ and available. You were given advice by an O5 level legal officer that no - DFDA Defence Force Discipline Act precludes that. Then you went on. You deployed the next day. Clearly by the next afternoon when you typed up your report you'd recommended that the SIB get involved?---A service police investigation, yes.

15 Because that was the only alternative if we weren't to use the foreign asset?---Yes.

20 I represent Shelley Kovco, as you know. One of the things that Shelley has heard throughout this whole process is some different stories from the Minister?---Yes, sir.

25 I understand that you probably would be aware of the press and some of the things that have come out and you must have compared that to your quick assessment and what you saw at the scene and noticed some differences?---Yes, sir.

30 What Shelley would like to do is to find out where those differences arise. Did you pass any information on to any other person other than to the person who appointed you?---No, sir.

35 I just do note that you took - - -?---I'll amend that. The Chief of Staff and I conversed in his role as representing the Commander, but it was between effectively the Commander, the Chief of Staff and myself.

That's Soldier 39?---Yes, it is.

40 I just noted that in paragraph 8 of your quick assessment you do note that you had received guidance from Soldier 30 to not limit the scope of the assessment and address all relevant aspects?---Yes, sir.

You came to the view in your quick assessment that what we had on our hands was a terribly unfortunate accident?---Yes, sir.

45 You'd asked Soldier 1 and he'd told you that there had been no

indications of the potential for self-harm?---Yes, sir. I spoke to various people. It would also be a very atypical situation.

It would be atypical?---Yes.

5

Now, just for completeness I want to ask you this question. I know that there's some MP officers or Australian Military Police Officers as part of the combined arms team?---Yes, sir.

10 They are not employed as investigators and aren't investigators, they're there for a completely different purpose?---Yes, sir.

15 Did you speak to any of those personnel in relation to the performance of your duties as a quick assessment officer?---I recall speaking to the Sergeant about viewing the room. Although I would have preferred to have seen the room without entering it, it was decided that I would not be given a viewing of the room. He referred to higher headquarters for that decision.

20 I just want to investigate that. As you can understand, the Board hears from lots of witnesses and we're trying to piece together - so the MP Sergeant actually said to you, "No, sir," or words to that effect?---He said he'd check. He came back to me subsequently and said, "No, I'm not allowed to provide you access."

25

Do you know which higher headquarters? Was it along his technical chain or his command chain, for instance?---I believe it was the command chain. He went to the SECDET headquarters and then it was confirmed from Headquarters JTF 633.

30

So at least on 22 April there was to be no-one in the room?---Indeed, sir.

Thank you very much. I have no further questions, Mr President.

35 PRESIDENT: Thank you.

<EXAMINATION BY COL YOUNG

[1105]

40

COL YOUNG: MAJ Willetts, my name is COL Young. I appear to represent the interests of PTE Kovco?---Yes, sir.

45 I gather from what you've said during your earlier evidence that you've done many investigations. Would that be fair?---Yes, sir, too many, too

tedious.

But you'd credit yourself with having some expertise in how to conduct an investigation?---Yes, sir.

5

You indicated that a legal officer had suggested to you that you shouldn't be too aggressive in your questioning. Is that right?---Yes, sir.

"Aggressive" was the word used?---No, that's the term I'm using.

10

Can we explore just what was told to you about how you should go about conducting this quick assessment by way of questioning and why you would use the word "aggressive"?---I could - the result of the discussions that I had with Soldier 49 was that I could gather information to allow me to make a decision with respect to the QA but that I was not investigating in detail what had actually occurred and that the soldiers I was questioning had no compulsion to answer, that they would be doing so willingly. I think the discussion originated because there was a number of options that I considered feasible at that time and some of them were seen as excessive by him, but that I would still need to ask appropriate questions to remove all of those possible options. If I went in with some preconceived ideas, then I would not be doing justice to PTE Kovco and I would not be best serving the needs of the department. I got the feeling he had already confined a range of options, whereas I was leaving my options fully open. He was concerned I might be going on, to use a term, "witch hunt".

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Who was doing the investigation, you or him?---I was conducting the QA, sir.

30

With the experience that you have behind you. Did you hold back or take a different approach to what you would have normally done following that discussion with the legal officer?---Not really, no, sir.

35

You didn't?---No. In determining fire cause you don't have the ability to compel witnesses. So same as a QA, you're just extracting what they're willing to give you.

40

If I can just borrow your term of not to be too aggressive, do you think you might have got more information from Soldier 17 and Soldier 19 if you took a more aggressive approach?---Possibly or I might have just shut them down, depending on my skill.

LTCOL Berkley asked you questions about getting access to the room and that was denied to you?---Yes, sir.

45

I think you've said you would have appreciated at least being able to look inside the room, not necessarily go in?---Yes, sir.

In para 13 where you refer to that you say:

5

The room had been secured by Australian MPs.

Did you understand the Military Police investigation had been commenced?---No, a service police investigation had not been commenced. As I understood it, the MPs on scene. However, they did secure the scene.

10

In relation to the photographs you were shown, do you know who took those photographs?---I can't recall now, sir, no.

15

You obviously made a judgment that it wouldn't have assisted to attach those photographs to your quick assessment?---It showed a general layout to the room, but in terms of my findings of most probably an accidental shooting, it would not have provided any discrimination as to whether it was accidental or not.

20

In paragraph 24 of your quick assessment under the heading "Logistics" I'm just interested in what you've said there:

25

The Mortuary Affairs aspect of this incident has been investigated in detail, implemented in accordance with policy and the personnel and logistics staff is continuing to closely manage this aspect to ensure dignity and probity with this necessary task.

Could you expand on where you got that information from, that the Mortuary Affairs policy had been implemented and was continuing?---Yes, sir. Bearing in mind that this report was prepared on the afternoon of the 22nd, I was part of the headquarters, we were meeting every 30 minutes on the Friday evening. I didn't depart there till around 2330. We were meeting every 30 minutes to discuss the issues, all of the primary references had been drawn out and we were openly discussing the best and most appropriate way to deal with PTE Kovco's remains and the many processes and policies that had to be dealt with to return an individual home. There was a very strong and clear and enunciated intent that we would do the most for the individual. The fact that subsequently it came unstuck is a terrible shame.

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40

Was anyone leading that particular discussion in the Mortuary Affairs side of things?---In particular the person responsible was the head of that particular cell in the headquarters; was Soldier 45. But generally these

45

meetings also included the Chief of Staff or the Commander. This incident was taken very seriously and we were very concerned to do the right thing.

5 Did you get any sense of urgency from those that were present as far as returning the body home as quickly as possible?---Yes, there was a spoken desire to have it returned - to have PTE Kovco's remains returned prior to Anzac Day. I don't know where that originated from, but it was certainly spoken.

10 Was that a driving force or was it just generally a process of let's get this soldier home as quickly as we can?---No, Anzac - prior to Anzac Day was highly desirable.

15 Do you know who was pushing that line?---I can't recall that.

One of the senior people present, do you know?---Clearly one of the senior people present.

20 You've already made a comment on what happened of course. So I won't ask you further on that. I've no further questions. Thank you, sir.

<EXAMINATION BY COL GRIFFIN

[1113]

25

COL GRIFFIN: Were you made aware at any time of the decision to move PTE Kovco's remains?---A specific decision no, sir. I'd left the headquarters by 2330. My focus from mid-evening was purely to address the QA aspects.

30

At the time that you left the headquarters that night did you know where PTE Kovco's remains were situated at that time?---I believe they were in transit or about to be moved from the hospital to the Mortuary Affairs - the American Mortuary Affairs unit at the airport.

35

My note of evidence you gave earlier was that after interviewing Soldier 17 and Soldier 19 you formed the impression - and this is my note, I may be wrong - that they were withholding information. Is that the substance of what you said earlier?---Yes. I didn't get an impression from their emotional demeanour, I just felt logically that if they were in such a small room with an individual they must have seen more than they did.

40

The point you're making there is that this was a deductive process that you went through based on what you were aware of the circumstances

45

rather than an impression you gained from their demeanour or what they said?---Yes, sir.

5 Did you communicate that view to anyone in the chain of command, aside from your formal report?---No, I did not, sir. If I thought it was worth mentioning, then I put it in the report.

Thank you, sir, I have no further questions.

10 PRESIDENT: Did you say to Soldier 17 or Soldier 19, "You must have seen more. Tell us what you really saw," or anything like that?---No, I didn't, sir. I didn't take an adversarial approach with any of the witnesses. I tried to keep it as much a discussion as anything else.

15 Anything arising out of that gentlemen?

COUNSEL REPRESENTING: No, sir.

20 PRESIDENT: Thank you, Major, you may stand down.

<WITNESS WITHDREW [1115]

25 COL GRIFFIN: Mr President, we'll now attempt to establish the link to Baghdad and our next witness will be the recently mentioned Soldier 45.

30 PRESIDENT: Very well. We'll leave the hearing room to allow you to do just that.

COL GRIFFIN: Thank you, sir.

35 **ADJOURNED [1116]**

RESUMED [1129]

40 COL GRIFFIN: Thank you, sir. The next witness is Soldier 45. I call Soldier 45.

45 **<SOLDIER 45, sworn [1130]**

<EXAMINATION BY COL GRIFFIN

- 5 COL GRIFFIN: Soldier 45, you'll be aware that we have a variety of mechanisms in place to protect operational security matters. Can you confirm that you have before you the callsign matrix that indicates persons by name and then has a number corresponding beside them?---Yes, sir, I have that in front of me.
- 10 Would you identify yourself on that list and indicate the number that appears beside you is in fact Soldier 45 beside your name and rank? ---Yes, sir, that's correct.
- 15 During the course of giving your evidence if you have the need to refer to anybody, please do so using the number next to their name. If it's another person that doesn't appear on the list, I'll ask you to write that person's name at the end of the list and give the next number in the list. Do you understand?---Yes, sir.
- 20 What's your posting now, please?---I'm the J1J4 on Headquarters JTF 633 and one of my ancillary duties is the Mortuary Affairs Officer for the MEAO.
- 25 Have you prepared a statement of your evidence for this Inquiry which amounts to some eight pages, plus annexures, which was signed on 31 July 2006?---That's correct, sir, yes, I have.
- 30 You'll be aware or you may be aware that in these proceedings an original document in its clear form will be tendered and a redacted version is also tendered in which the operational security matters have been blocked out. Do you have a full copy of your statement with you?---Yes, sir, I have the full copy.
- 35 Again could I ask you, where necessary, that you have regard to operational security matters as you are questioned about your evidence? ---Yes, sir.
- 40 Now, annexed to your eight-page statement is a series of emails?---Yes, sir.
- Are they produced from your computer system at 633?---Yes, they were, sir.
- 45 The covering sheet that was provided to me with your statement indicates

that the total statement with the annexures and the eight-page statement and the cover sheet amounts to 64 pages. Do you have that cover sheet as well?---No, I don't, sir.

5 Can you look at the emails and indicate whether the first one starts with the letter A at the top right-hand corner of the page?---At the top right-hand, sir, did you say?

Yes, is there a handwritten letter A?---No, sir.

10

Is the first email dated 22 April 2006?---Yes, sir, at 0647 time stamp.

Does it have a facsimile printer notation at the foot of the page?---No, sir.

15 If you go to the last of the complete emails on the document that I have the second-last page has an email with your identity above the date time group of 27 April 2006 at 0408 hours?---That's correct, sir, yes, I do.

20 Are you able to say if that's the span of the material that you intended to include in your statement?---I believe it is, sir, yes.

Sir, I tender the document.

25 **#EXHIBIT 149 - SOLDIER 45's STATEMENT**

COL GRIFFIN: Now, Soldier 45, I'm just going to address some parts of your statement with you. First of all, you've indicated at the opening of it that you have read Annex F to the Administrative Inquiries Manual and that you understand your rights and obligations as a witness before a Board of Inquiry. Do you confirm that?---Yes, sir, that's correct.

30

35 You say that in your role as the J1J4 your duties include the Mortuary Affairs Officer in accordance with the Commander Joint Operations Administrative Instruction. Do you have that document before you today?---Yes, I have the May '05 document, which was the current document at the time.

40 At the time of the incident, which resulted in the death of PTE Jacob Kovco, were you operating from a Mortuary Affairs plan that was an appendix to the CJOPS Administrative Instruction 0504 dated 10 December 2004?---No, sir, I was operating from appendix 5 to Annex B to CJOPS Admin Instruction 205 dated May '05.

45

Soldier 45, did you make any input into the BRIG Cosson investigation?
---Yes, sir, I was interviewed by BRIG Cosson by telephone.

5 Included in BRIG Cosson's investigation is the Mortuary Affairs plan I've just described to you, being appendix 5 to Annex B to the CJOPS Administrative Instruction 0504 dated 10 December '04. But as I understand your evidence, you were actually operating from a later document. Is that correct?---Yes, sir. As I understand it, the May '05 is the most current document.

10 This incident happened on 21 April '06. So the '05 document was the current one and was an update one assumes of the document that I've just read out to you, the '04 one. Did you have regard to the '04 document or do you work totally from the '05 document?---We're totally from the '05 document. I never refer to the '04 document, sir.

15 You understood your duties as the Mortuary Affairs Officer as you've set them out in paragraph 3 of your statement from subparagraphs (a) to (e)?
---That's correct, sir.

20 I understand you to say at paragraph 4 that you personally did not make the decision to use civilian air for the repatriation of PTE Kovco?---That's right, sir.

25 Would you tell the Board, please, who did make that decision, to your knowledge, and how it came about?---It was advised to me by HQJOC that they were engaging Kenyon and it was subsequently confirmed by Kenyon via email that they had been engaged by HQJOC. I don't know who specifically raised the task order or engaged them and made that
30 decision, sir. But Headquarters Joint Operation Command made that decision.

35 When was that decision conveyed to you?---It would have been on the morning of the 22nd.

Morning being your local time, some six hours behind Australian eastern standard time. Is that right?---Yes, sir, that's correct.

40 Would you describe to the Board, please, the Command Group discussions in which you were involved after you became aware of the fatality in respect of the movement of PTE Kovco's remains to Australia?
---Our focus was on getting the body of PTE Kovco to the theatre mortuary evacuation point, which is located in Kuwait. We examined the options that were available to us. We utilised an Australian C130 to move
45 the body from the morgue in Baghdad to Kuwait and then held the body

there until Kenyon were able to take charge of the process in conjunction with Headquarters 1 Joint Movement Group.

5 Now, on page 2 of your statement you have a bullet point about halfway down the page which has the date time group 21 2000 hours D April '06, D being your local time in Baghdad. Is that right?---That's right, sir.

10 You describe there that the Commander Joint Task Force 633 was speaking to the Vice Chief of the Defence Force and asked you to speak with the Vice Chief. You say:

I spoke to Vice Chief Defence Force to confirm the movement arrangements for the body.

15 That's at 2000 hours on the night of 21 April, the incident. Is that right? ---Yes, sir, it is.

20 Would you tell the Board the detail of that discussion about confirming the movement arrangements for the body?---From my recollection, he asked basically what the arrangements would be as far as getting the body to Australia. I don't remember the actual specifics of what he said to - what I said to him. But I do recall him asking about coroners and whether it will just be the state coroner that would handle the investigation once the body arrived back in Australia. I indicated from the Mortuary Affairs
25 plan that it would be whichever state coroner depending on the state that the body was returned to.

30 Returning to the time frame of around 2000 hours your time on 21 April, had a decision been made at that point to return PTE Kovco to Australia?--I think he was always going to be returned to Australia, sir. It was just via whichever means or mode. I believe our responsibility in accordance with the plan was to get the body to Kuwait and hold it there until handed over to Headquarters 1J Mov Group.

35 Had there been any discussion as to the need to preserve the body in country awaiting police investigation of the matter at that time?---I don't know if it was at that time, but certainly we then became aware of the requirements of the Military Police to observe and investigate the body. Certainly the movement of the body to Kuwait would actually facilitate
40 that in a faster manner than would have been if we kept it at Baghdad.

45 Why was that?---Because the police investigators were flying from Australia. So it would have taken probably another day for them to get up to Baghdad in order for them to inspect the body at the morgue here in Baghdad.

Who made that decision to move the body to Kuwait?---I believe the Commander did, sir. I guess there's another factor too, which is the US morgue here in Baghdad can only hold bodies for a certain length of time. I don't know precisely how long. But I don't believe they would have been able to hold onto the body for that long because they had a limited capacity.

Did you discuss that with them?---With whom, sir?

With the American staff in charge of that facility?---No, sir, not me specifically, no.

Are you aware if anyone else did?---I believe our doctor at the time had discussed that point with me.

With you? But do you know if he or anyone else had spoken to the Americans about continued use of the facility for the remains of PTE Kovco?---Not specifically, no, sir.

I see from the timeline that you then had a conversation at 0200 the next morning with Chief of Army, you say there that he advised you he was going to be conducting a doorstep interview at 1030 eastern standard time and wanted to get a sense of what had gone on. Did you provide him with a sense of what had gone on?---I was - I indicated upfront that I was very hesitant because I hadn't actually been at the scene and that I'd simply been receiving information and getting a sense of what's going on in the headquarters. So I certainly gave him what we knew at the time which was that he'd been shot and that we were working to get the body back to Australia. He was interested to know specifically if - if we felt it had been suicide and at the time, whilst I couldn't specifically say yes or no, the sense was that we didn't think it had been suicide at the time.

Were you able to provide any detail as to what you thought had happened?---Sir, I have some notes on the actual conversation which I might refer to if I may.

I'll just defer to the President. Mr President?

PRESIDENT: Happy for him to do so. Please do that.

WITNESS: Thank you, sir. He was interested to know if there'd been any other coalition forces involved and I, at the time, was able to indicate that there'd only been Australian soldiers involved in a room with other Australian soldiers. As I said, he asked if we felt that suicide had occurred

and I - as I said, at the time I said the thinking was that we did not think it was likely. I advised him that if - that he had died from a 9 mm round and so that we - we were confident that a cap had come from a pistol, a 9 mm pistol. I advised them that we had sent out a Quick Assessment Officer to do a quick assessment and then I gave him a brief timeline of when it had occurred, when PTE Kovco had died and when the next-of-kin had been informed as I'd been advised by the National Welfare Coordination Centre. I was very hesitant to go on any further, sir, simply because I just hadn't been there and recommended that he speak to the Commander at the time and I then went and advised the Commander that the Chief of Army had called and the Commander undertook to speak to him in more detail about the situation and provide him an update.

COL GRIFFIN: Thank you. The next dot point you refer to a discussion with the Director General of Public Affairs in respect of the media release timings. Did you have any input into a media release?---No, sir, no. The public affairs people on our staff provided the talking points which were then cleared through Headquarters Joint Operation Commanded height.

Two dot points after that at 0322 hours D time on 22 April, you describe a conversation with a J1J4 at HQJOC which concerned the civilian contractor Kenyon International. What were you told in that conversation?---Could I refer to my notes again, sir?

I'm sure the President is happy for you to do so.

PRESIDENT: Indeed I am.

WITNESS: At the time he advised me, and I think this is the first time I was formally advised by HQJOC that Kenyon would be utilised to return the body to Australia and that they would call back with the details with regards to who in Kenyon I would be in contact with and also he would advise which state in Australia the body will be return to. He then explained to me that there was some legislative requirements as to which coroner had the authority for these sorts of matters.

COL GRIFFIN: And the next bullet point you describe a further conversation which also makes reference to the Defence Investigative Agency needing to be involved. Do you have some notes about that conversation?---Yes, sir. Basically J1J4 advised me that Kenyon will be in contact with me and that they operated out of the UK and he advised me that the Defence Investigative Agency needed to be involved and then I inquired a few matters with regards to him in regards to any idea on which state at this stage where PTE Kovco needed to be returned to.

45

When did you first become aware of an actual timing for the movement of PTE Kovco out of Baghdad?---That was - that was really confirmed, I think, sir, at that meeting on the - with myself, the Commander, not Soldier 39 and Soldier - - -

5

We don't have a number for the CSM, Soldier 45, but are you referring to the meeting described on the last dot point of page 2 of your statement? ---Yes, sir. Yes, sir, I am, yes.

10 You there report that the Commander of JTF633 advised that he would prefer to move the body on Sunday, 23 April?---Yes, sir.

15 Are you able to say why that time Sunday was selected as the time to move?---He had an Australian CI30 that was available at that time, sir, to move down - move the body down from Baghdad to Kuwait.

20 Do you recall at any time any reference to a desire to have PTE Kovco's remains returned to Australia before or by Anzac Day?---I'm not sure there was a desire, sir. I think there was some indication that at one stage he possibly may be returned on Anzac Day and I think people thought that was going to be fairly significant. As it turned out that wasn't able to be achieved due to the paperwork requirements, but I don't believe it was ever directed or indicated that the intention was to get the body home on Anzac Day or before.

25

30 Are you able to say where that indication of, if possible, where the indication relating to Anzac Day came from?---I think it was just realised when we were going through the timeline of discussions with the various agencies such as Joint Movement Group and Kenyon that - initially, it was very early on, that the body may be returned by Anzac Day.

35 You describe in the next bullet point a reference to concerns about a letter for Mrs Shelley Kovco, can you tell the Board about that please?---Yes, sir, I was at - in the meeting that I attended with - at 0625 that we previously mentioned, it became apparent to me that there - and it was advised in this meeting that there was a letter that PTE Kovco had prepared for Mrs Kovco and I understood from what - the way it was described to me that it was a letter that was a standard thing that some of the soldiers had done in the event of something unforeseen happening and that - I'll just correct myself that, Soldier 16 had been given the letter to hand to Mrs Kovco in the event that something did indeed occur.

40

45 You say in the next dot point that you received a copy of an email indicating that PTE Kovco's body was to be returned to Melbourne? ---Yes, sir.

Were you simply the recipient of information at this stage, or were you involved in decision making as to movements and destinations?---I was simply a recipient of this information, sir.

5

Did you in fact yourself exercise any command functions in relation to the movement of the remains, other than to coordinate with requests or advice coming from external agencies?---I never executed any command functions, sir. I'm simply a staff officer who is a conduit for information and providing advice to the Commander, sir.

10

In terms of executive functions other than the decision to move the body as soon as possible, did JTF633, to your knowledge, make any decisions in respect of the return of the remains of PTE Kovco?---JTF633 was responsible for making a decision to move the body to Kuwait, sir, which was our responsibility as a headquarters and the actual ultimate repatriation was a decision not made by this headquarters, sir.

15

At a dot point further down the page at 22, 1251 hours D you refer to your reply to Mr Rowntree of Kenyon's email and in the last sentence in that dot point you advise that the escort would be Soldier 2, do you see that? ---Yes, sir.

20

What involvement, if any, did you have in the appointment of Soldier 2 as the escort?---I wasn't involved in that process at all, sir. I was simply advised when the decision was made.

25

Did you participate in any briefings of Soldier 2 at all?---No I didn't, sir. In fact I don't believe I really spoke to him at all that much at all.

30

Were you involved in any way in the selection of the bearer party or briefings of the bearer party?---No, sir, no.

You say at the top dot point on page 4 of your statement that on the evening of the 22nd you forwarded a scanned copy of the passports for PTE Kovco and Soldier 2 to Mr Almeida, being a representative of Kenyon's agency in Kuwait. Why did you do that?---To facilitate the (inaudible) that was required for the - the body to be released from Kuwait. Kenyan had required copies of the passports in order to facilitate that paperwork, sir. The passports were on the - on the person of Soldier 2, the escort and so I retrieved a copy, scanned them in and forwarded them to the Kenyon representative as requested.

35

40

You say at dot point further down on that page at 1530 hours on the 23rd that you attended the ramp ceremony farewell for PTE Kovco's body at

45

5 Baghdad International Airport. Would you tell the Board about the conduct of that event please?---Well it was extremely moving, sir, and extremely well done as well, I feel and done in, I think, an appropriate and dignified manner. We had a US Platoon, if you will, of soldiers there who stood on one side of the ramp and the Australian Headquarter staff on the other and we gave an appropriate farewell I believe from Baghdad.

10 Now, over the course of the next two pages of your statement you describe the events about the further repatriation and you say at the last dot point on page 5 at 1752 hours on the 26th, Mr Rowntree from Kenyon called you to express his apologies relating to the return of the incorrect body. What did he tell you?---He was extremely apologetic. He said he - to quote him "chew out the undertaker" referring to the subcontractor in Kuwait that they'd utilised and we discussed - and I asked him to look at
15 other options to get him home at that stage. But he - he was extremely apologetic.

20 Now, on the next page at page 6 at 1817 on the 26th you describe that you were informed the Movements Group could not charter an aircraft to return the body as the paperwork won't be ready. Can you tell the Board some more about that, please?---Soldier 34 had been basically given the task to get the body home as quickly as possible and obviously it was a matter of priority that it was done as quickly as possible. We'd asked the soldier to identify whether a specific aircraft could be chartered
25 specifically for that purpose and she advised that her headquarter had investigated that option and they could not get the charter paperwork ready in time for - for such paperwork to be done for the body to be returned in time and then she went on to explain that there was a delay because we were now reaching into the Arab weekend, being Thursday
30 and Friday and that's when most of the government departments closed down in order to allow that release of the body from - from Kuwait.

35 At page 7 of your statement, the second last bullet point, you refer to the first advice of the New South Wales Civil Authorities, that is police and coroner being involved in the matter. Is that in fact the first notification you received, that is at 1215 hours D time on 27 April?---I believe it is, sir, yes.

40 In the next dot point on the same day shortly after that conversation you refer to a telephone call from Mr Rowntree of Kenyon advising against the use of a Military aircraft to return PTE Kovco's body to Australia as:

We will encounter problems.

45 What problems?---The paperwork that was originally raised was raised for

the body to be returned on civilian aircraft via civilian means and it was indicated to me that the paperwork would have to be redone to allow it to be returned on a Military aircraft and noting that we were in the middle of the Arab weekend, it would be nigh on impossible for that to be achieved, the new paperwork to be raised, a clearance from a Kuwaiti Government official to be given and they were advising me specifically against the ADF moving down the Military Service means options for that reason.

However, I understand from your statement at page 8 at about halfway down the page that the Chief of the Australian Defence Force then took some action about the release and the ability to return the body. Is that right?---That's correct, sir. It became apparent that there was two key departments in the Kuwaiti government that could authorise the release. One was the Minister of the Interior and the other one was the Ministry of Defence. That became apparent and I communicated that to the J1J4 and HQ Joint Operation Command. I believe the message must have been passed back to Chief of Defence Force and Chief of Defence Force contacted his counterpart in the Kuwait Defence Force and made arrangements for the body to be released by Kuwaiti Defence ministry official.

Do you happen to have the Mortuary Affairs plan before you now, Soldier 45?---Yes, I do, sir.

Could I invite you to turn to paragraph 23?---Yes, sir.

You'll see in the sentence that commences towards the end of the third line, I'm just going to read it to you:

Unless specifically required under the terms of the SOFA with a HN, bodies are not to be handed over to local authorities within the MEAO.

Do you understand SOFA to be Status of Forces Agreement or Status of Forces Arrangement?---Yes, I do, sir.

Do you understand the acronym HN to mean "host nation"?---Yes, sir.

The MEAO of course means the Middle East Area of Operations?---Yes, sir, that's correct.

Were you familiar or did anyone provide you with advice as to the terms of the SOFA about the handing over of bodies to local authorities within the Middle East Area of Operations?---Sir, I was not familiar with the Status of Forces Agreement.

5 Were you aware that the Kenyon International contractor in the course of its activities for the return of PTE Kovco would hand over his body to local authorities?---I'm not sure what that means, sir. What do you mean, sir?

10 Did anybody indicate to you how Kenyon were going to take PTE Kovco home, that is, after you had arranged for him to be taken by Military means to Kuwait, were you advised at any time that he would then be handed over during the course of the civilian takeover by the contractor to the local authorities rather than stay within Military control?---Yes, sir, I was advised by Soldier 34 that that would be the process. I believe also that the subcontractor advised me of the same process.

15 If we turn to paragraph 25 of the Mortuary Affairs plan if you look there at the sentence commencing in the fifth line:

20 *The priority of movement assets to be utilised is sustainment flight, service means, Kenyon International Airlines, then civilian charter.*

25 Did you have regard or did anybody mention to you the consideration of that priority of movement assets in the return of Jacob Kovco's remains? ---I was aware of that line, sir. I'm also I guess aware of the sentence prior to that where it says Joint Movement Group has that responsibility from the TMEP to Australia. So I felt that it was a Joint Movement Group decision. I'm also acutely aware, sir, and it was brought to my attention early on in the piece that the previous repatriation that had been done through Kenyon had indeed been done via civilian means as well. So I was aware of a precedence and I was also aware that it was J Mov Group's responsibility, not ours, to decide on that priority.

35 Were you of the understanding that that previous use of the civilian means had been successfully undertaken?---Absolutely, sir, absolutely.

40 How was that fact conveyed to you?---I believe it was part of my handover from my predecessor who was here at the time during that particular repatriation. Also, it was pointed out to me by my movements adviser with a number of copies of the email traffic and task orders that were associated with that previous repatriation, sir.

45 So is it your understanding that despite the words in paragraph 23 of the Mortuary Affairs plan, that unless specifically required under the terms of the Status of Forces Agreement, bodies are not to be handed over to local authorities. That was done in this particular case and was also done in the

previous case?---Yes, sir.

Thank you, sir, I have no further questions for Soldier 45 at this stage.

5 PRESIDENT: Thank you. LTCOL Wilkinson.

LTCOL WILKINSON: No questions, sir.

PRESIDENT: LTCOL Green.

10

LTCOL GREEN: No, thank you, sir.

<EXAMINATION BY LTCOL BERKLEY

[1218]

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LTCOL BERKLEY: Soldier 45, I'm LTCOL Tom Berkley and I represent Shelley Kovco, Jake's widow. Do you understand that?---Yes, sir.

20

I have just some questions for you and I want to take you through the first part of it being the advice from the Special Investigation Branch of the Royal Australian Corps Military Police that the body not leave Baghdad. Do you understand what I want to talk to you about?---I believe so, yes.

25

It comes down to this: I think you gave evidence that you became aware of the MP requirements to actually get hold of the body, to observe the body and to investigate what happened to Jake prior to the body being moved to Kuwait. Is that correct?---I'll just double check that, sir, on my notes, if I may.

30

Sure?---Yes, sir, that's correct. I was advised about the SIB involvement at 0616 D on 22 April, my time, by J1J4 and HQJOC.

35

So that's 0616 D on 22 April?---That's right, sir.

That's the early hours of the next morning after the shooting?---That's right, yes.

40

Your J1, is that Soldier 39?---I beg your pardon?

You were advised by your J1 at HQJOC - sorry, HQJOC. I'm sorry about that?---It was J1J4 at HQJOC.

45

Now, we know that at that stage that Jake's body was still at Baghdad

International airport. Is that correct?---That's correct. He was at the Mortuary Affairs collection point which was run by the US Military.

5 He was going to go down to the theatre mortuary evacuation point in Kuwait; that was the initial plan?---Yes, sir.

10 When you got that information, you were advised of that requirement, I think you said that you weren't a decision-maker, you passed it up the line?---Yes, sir.

15 There's nothing in the emails that you've extracted or your diary notes that you've extracted that I can see that you mention that?---That I passed up the line, you mean?

20 Yes, that you passed it up the line?---Well, I think it was also being passed by another means to other staff officers and principal staff officers in the headquarters at the same time. I'm not sure if I did specifically raise that point with the Commander or whether he was already aware, or they were already aware of the situation.

25 So where you have on page 2 of your statement - you say:

22 0616D April 6 J1J4 HQJOC called me to advise that J10 HQJOC had been in contact with Kenyon and that a Kenyon representative from the UK will contact me. He advised me that the Defence investigative agency need to be involved.

30 See that statement there? That's a little different from saying that you were advised that they didn't want the body moved. Would you agree with that?---Yes, sir.

35 But the specific advice that you got from Joint Operations Command was that the Military Police did not want the body moved?---No, sir, I never received that advice.

40 What are you telling us, that they - - -?---Simply, sir, that the investigation would be conducted and needed to be conducted by Defence investigative agency, that's all.

45 That was it, there was no mention to you that the SIB did not want the body moved?---No, sir. In subsequent conversations or discussions it was never mentioned to me. It was more being handled at the Chief of Staff Commander level that issue.

45 You were aware because you perceived it through your own senses, your

ears or eyes, that they were dealing with that issue of whether the body should be moved?---I certainly became aware of that, yes, sir.

5 Were you aware that at that level those officers were aware that the MPs didn't want the body moved?---It became apparent to me that that was indicated. I don't know when specifically that was indicated to them.

10 Are you aware of a decision taken by those senior officers to move the body anyway?---Yes, sir.

15 Are you aware that that decision was taken in the face of that Military Police advice?---I believe that they had spoken to the Military Police and come to an agreement. That was my understanding. I mean, you'd have to speak to the Commander and Chief of Staff specifically about the details of those conversations.

20 We will. But Soldier 39, did Soldier 39 indicate to you that there had been an agreement with the Military Police regarding the moving of the body?---I believe so, sir. I believe at the end of the day it was going to allow the Military Police the opportunity to view the body sooner than they would have, as I've previously stated.

25 You've been in country for some time or in theatre for some time now. What about this proposition: that if the body had awaited for the Military Police in Baghdad we wouldn't have lost the body. Does that seem a logical conclusion to you?---I don't believe that's correct at all, sir.

They would have lost it?---Who do you mean "they", sir?

30 The Military Police?---I don't believe the Military Police ever had any custody of the body, sir.

35 On 27 April - this is on page 60 of your statement, the second-last entry - you called - this is at 27 0209 D time April '06- you say you -

40 *called Mr Rowntree at Kenyon regarding preparations to return PTE Kovco to Australia and asked if he can get anyone to embalm the body. He said that he would look into it and get back to me.*

45 I take it that was your request to have the body embalmed?---No, sir, you would see the previous dot point that I have there where DCJOP, deputy chief joint operations, had called me and asked that I investigate the ability of arranging an embalmmment.

Just your note says:

I called Mr Rowntree and asked if he can get anyone to embalm the body.

5

So that was just an inquiry as to whether an embalmer was available?
---Yes, sir.

10 Did you appreciate that embalming may remove some vital forensic evidence relating to the death of the soldier, Jake Kovco?---No, I didn't, sir, and at the same time I was aware of the admin instruction which requires the embalmment of bodies prior to returning to Australia.

15 If moved by civil air because the Kuwait authorities want bodies embalmed?---No, I believe the Mortuary Affairs plan says it's an AQIS requirement.

20 On the 27th at 1215 D the J1J4 HQJOC called you to advise you of the New South Wales Police and coroner involvement. He also stressed the importance of the sustainment flight arriving on time in Sydney. He also asked for an update on when the SIB would be returning. Then the next entry is 27 1234 D April '06. You say:

25 *Mr Rob Rowntree from Kenyon UK called to advise me against using Military aircraft to return the body to Australia as we will encounter problems.*

30 Can you recall what problems that were going to be encountered?---Yes, sir. They were - as I previously stated, it was requiring to re-raise the paperwork during the Arab weekend and getting a Kuwaiti official to authorise the paperwork for a Military aircraft extraction as opposed to what was previously arranged, which was a civilian aircraft extraction.

35 On the 27th 1328 D April '06 - this is on page 8:

40 *Mr Rob Rowntree from Kenyon in Kuwait called me to provide me with an update on the condition of PTE Kovco's body and that he could not do a lot with the body without compromising the post-mortem examination. I told him not to embalm.*

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

45 Was that the first time that there was any decision taken, at least at your level, that embalming may destroy vital forensic evidence?---No, sir, you'd see on the 27th at 1015D I'd spoken to J1J4 at HQJOC and also

then subsequently received an email from J07, who's the senior medical officer at JOC, advising me that the Victorian coroner had advised that they did not want the body embalmed and it was for those specific reasons that you've just stated.

5

Now, of course you became aware that our CDF called the Kuwaiti CDF and after talking the Kuwaiti CDF cleared Jake's body for release from Kuwait. You knew that was about 27 1449D on April of this year; see that?---Yes, sir.

10

Obviously from the next entry, 27 1454D April 2006, Kenyon UK were hanging on a decision as to how the body was to be repatriated, either by Military or civil air; see that?---Yes, sir.

15

At that stage the decision was taken Military aircraft were to be used to return Jake's body to Australia; see that?---Yes, sir.

Do you recall what sort of aircraft Jake was repatriated to Australia on?
---Yes, sir. It was the Military chartered 830.

20

We didn't have any available assets in theatre. I mean, just taking away the need for the CDF to CDF clearance, but we weren't able to get a flight other than - and I'll change my question to this: we weren't able to get a Military flight of whatever nationality other than that particular flight that the body went on, or was it the case that was the first available after the clearance was given for the body to go by Military means?---The 830 was really the first available aircraft that we were working in parallel to the Kenyon civilian means. We were also I guess aware that the only other Military aircraft we have available to us in theatre are C130s. It would have taken a number of legs and a number of days to do so and it would have required some specialist preparation and management of the actual repatriation, which we simply don't have that ability in theatre to do, sir.

25

30

I take from your evidence that you weren't a primary decision-maker in relation to the repatriation of Jake Kovco to Australia. Would you agree with that?---I think that's fair to say, sir, yes.

35

But in one of your conversations, I think it was with Mr Rowntree - apparently there's two of them, there's a Kenyon UK Rob Rowntree and there's one in Kuwait as well. Is it Kuwait?---Well, they're both based in the UK I believe. One works for the headquarters, the other one is an embalmer; both have the same name.

40

Now, I think you said earlier on that Mr Rowntree had chewed out the subcontractor in Kuwait over the body mix-up?---Well, that's what he

45

advised me, sir, yes.

Do you know the name of the subcontractor that he was referring to? Was it GAC?---Yes, sir.

5

You're the Mortuary Affairs Officer. Did you know that Kenyon had subcontracted their contractual responsibilities for the repatriation of bodies?---I believe it was advised to me fairly early on by Kenyon that they had, that that's what the arrangements were.

10

Was there any inspection made of the subcontractor's facilities to see whether they were suitable for the repatriation of Australian bodies? ---Well, no, sir, and I'm not sure who would have been qualified to do that.

15

What about your self as Mortuary Affairs Officer?---I don't believe I would have been qualified, sir.

20

You'd appreciate that there may be some customary differences between the way that the honoured dead are treated in Australia and in other countries; you'd be aware of that?---I guess so, yes.

25

So you're just not aware whether anyone sought to see whether our honoured dead would be treated appropriately according to Australian customs?---I wouldn't put it that way, sir. I was aware that we had previously utilised Kenyon and successfully repatriated an Australian body.

30

It still begs the question - and I know it's not your responsibility because, as you've told us, you've got the title "Mortuary Affairs Officer" as part of no doubt other titles that you have. You're just not aware - and that was a simple question - of anyone checking the suitability of the subcontractor's facilities?---I'm not aware of that, sir, no.

35

How strong was the desire - this is early in the piece - to have Jake's body returned by 25 April? I'll withdraw that because you said you're not sure if it was a desire, but aware that at one time Jake may have been home on 25 April. Was it a desire, was it a preferable thing in the headquarters? ---Not at all. I think it just became apparent that - and the way that the things were heading that the timings were working out, that it could be possible that, you know, he could be home on Anzac Day. I think they felt there was some significance in that. But there wasn't any desire or any push or any strong direction given to make it happen on the Anzac Day.

45

You weren't aware of any pressure from Australia from the family to have Jake's body returned with any indecent haste?---Not with any indecent haste, no.

5 When it became obvious to the headquarters that a terrible mix-up had occurred, did you take a role in trying to have Jake correctly identified? ---I facilitated and assisted where I could in providing photographs that were available to me, passport photographs, and that was about it, sir.

10 On reflection, it was Jake that left the 10CSH and went to the Baghdad International Airport, that was Jake, you'd agree with that?---Yes.

It was Jake who got to the theatre mortuary evacuation point, do you agree with that?---The - yes, indeed. In Kuwait you mean, yes.

15 Yes. The Military police reviewed the body in Kuwait at the theatre mortuary evacuation point, did they?---I'm not sure where they viewed the body, sir. But they certainly did it in Kuwait, yes.

20 We lost him when he left the Military system to go into the subcontractor system, is that as you understand it?---I believe that the body was mixed up after having been handed to the subcontractor, sir.

25 One thing the family - well particularly my client would like to know is as to whether if another soldier dies, is he to be repatriated through civilian or Military means?---The Chief of Defence Force has issued a directive, sir, which specifically refers to the direction or directs, I guess, that all subsequent deaths are to be attended by service means where possible.

30 Thank you Soldier 45?---No, I don't believe that will happen again.

Thank you. I've got no further questions, thank you, of this witness.

35 PRESIDENT: Yes, thank you. COL Young? We just need a few moments while COL Young resumes his seat.

COL YOUNG: Sir, I'm happy to proceed. I don't know if the witness needs a break at all. I'm not sure what the conditions are over there.

40 WITNESS: I'm fine thanks, sir.

PRESIDENT: Yes, he's fine.

45 <EXAMINATION BY COL YOUNG

[1242]

5 COL YOUNG: Soldier 45, my name is COL Young, I represent the interests of PTE Kovco. If you can just bear with me a moment while I organise some paper?---Certainly, sir.

10 You've told us that your duties are, what you describe as J1J4, is that correct?---Yes, sir, that means I'm the principal staff officer responsible for personnel and logistics. The one being personnel and four being logistics.

Does that keep you fairly busy from day to day?---Yes, sir.

15 Particularly busy all the time, or are there highs and lows?---It's all relative I think, sir, but certainly I would say very - very busy, yes, all the time.

You're fully occupied?---Absolutely, sir.

20 You've told us that your job dealing with Mortuary Affairs is an ancillary duty, is that right?---It's one of my additional duties, yes, sir.

25 When you had a handover, are you able to give us some idea of what that handover covered as far as Mortuary Affairs are concerned?---We was directed to read the Mortuary Affairs plan in the admin instruction, the Commander Joint Operations Admin Instruction and I seem to recall briefly discussing the previous repatriation that had occurred and how it had been done.

30 Were you referred to the Land Warfare Procedures General on Mortuary Affairs?---I was never referred - never even in fact made aware of that until after the fact that that publication existed.

35 In hindsight would you like to express an opinion on the handover you got given you weren't even alerted to that document?---Well it's a land warfare publication and not necessarily relevant in a joint - joint environment, sir.

40 What do you think the Land Warfare Procedures on Mortuary Affairs might cover?---Mortuary affairs, it was specific to Army - Army purposes, sir.

45 We're talking about the death of an Australian soldier, are we not? ---Absolutely, sir.

Assuming it had been brought to your attention, if I tell you that the procedure refers to associated publications and in preface it says:

5 *This publication should be read in conjunction with other publications and documents in particular -*

and it lists 24 various publications. How practical do you think that would be in your position given you're fairly busy, for you, as a Mortuary Affairs Officer to be across 24 different publications?---Without any proper training, sir, I don't believe that's very practical at all.

10
15 You gave some evidence about the US morgue in Baghdad having a limited capacity and you were asked if you discussed with them the possibility of them keeping PTE Kovco's body there. You told us you hadn't had any discussions with them, but you had a discussion with your doctor. Do you know if your doctor had spoken to the US morgue in Baghdad?---As a part of his duties he's required to liaise with all the in-theatre health assets that are available to us and he had certainly been out there when the body was first delivered to the morgue on the early hours of Saturday morning and - and he would've spoken and certainly spoke to the senior NCO in charge of the morgue there.

20
25 Do you know what the capacity at the US morgue in Baghdad is, how many bodies can they hold?---Not specifically, no, sir, no.

30 Would you think as one of our allies we might have been able to prevail upon them in this special case to hold a body for a couple of days until the SIB arrived?---I would've thought so, sir. Depending on the situation and the number of casualties - I beg your pardon, fatalities that the US would've incurred at the time, it would've been dependent on their needs at the time.

35 Yes, that's understood. As far as you know no attempt was made to do that?---No, sir, no.

40 You told us about having a conversation with the Chief of the Army and you had some notes which you kept and you gave him a brief as best you could on what had occurred, do you recall giving that evidence?---Yes, sir.

45 During that conversation did the Chief of the Army say to you the Minister would like PTE Kovco's body returned by Anzac Day?---No, sir, no, not at all and it's certainly not reflected in my notes either.

Did he say that the Chief of the Defence Force would like PTE Kovco's body returned by Anzac Day?---No, sir, it was never indicated to me at all

by anyone.

I think you said you advised the Chief of the Army that he should speak with your Commander there about further information?---Yes, sir.

5

As the Mortuary Affairs Officer and discussions in relation to movement of the body, did you see yourself as having any special expertise so that you could drive the procedure?---I'm not quite sure what you mean, sir. I mean as far as driving, what do you mean?

10

Driving in the sense of either if not making executive decisions, giving some specific advice to commanders given that you're the Mortuary Affairs Officer. In other words, are you an expert in that area or is that the role of being a Mortuary Affairs Officer to have some expertise?---I certainly don't consider myself to be an expert in Mortuary Affairs, sir. I consider myself to be knowledgeable in the art of logistics and I believe that the movement of the body was a - to put it bluntly, a logistics movement process.

15

20

As the Mortuary Affairs Officer, would you like to express an opinion on the process of HQJOC in Australia speaking to somebody in the United Kingdom who in turn talks to somebody in Kuwait to organise the return of an Australian soldier, could I suggest that's somewhat convoluted, would you agree with that?---It's a long - we're a long, long way away from anywhere, sir, so it's always going to be a convoluted chain. I don't really have a firm opinion on that, sir.

25

30

As the Mortuary Affairs Officer do you know if Kenyon the contractor was ultimately paid for whatever services were provided?---No, I'm not aware of that, sir.

35

Do you recall offhand if there's anything in the annex in relation to the Mortuary Affairs Plan about identification of a body and how that's to be done?---No, sir, no.

40

You don't recall or there's nothing in there?---No, there's nothing in there, sir, sorry.

Do you think there should be?---I certainly do now, sir. That said I think there's an expectation or an understanding that when - when you are moving a body that it is the body that you expect it to be.

45

Since these events I think you refer to a directive from the CDF as to any future casualties, fatalities and how they were to be moved. You've received something in writing, have you?---CDF has issued a directive

and
also a signal specifically referring to all future handling of fatalities in operational areas, sir, yes.

5 Can I just ask you when it's your turn to come home and handover to somebody else, have you worked out what you might tell that person in your handover? Would you expand on the handover you were given, for example?---Absolutely, yes, sir.

10 I've got no further questions, sir.

PRESIDENT: Colonel?

15 COL GRIFFIN: Thank you, sir.

<EXAMINATION BY COL GRIFFIN

[1254]

20 COL GRIFFIN: Soldier 45, in your statement you refer to SO1JM3/5 HQ Joint Movement Group, are you able to identify that person - well firstly, is that person in theatre or in Australia?---No, he's in Australia, sir, in HQ 1J Joint Movement Group.

25 And his name?---LTCOL Cole.

Did you have any discussions with LTCOL Cole regarding the repatriation arrangements?---Only after the - or around the 26th, 27 April, sir.

30 What was the nature of those conversations?---I was speaking to him specifically about the options with regards to charter or the various modes and methods of transportation which would've been his - his responsibility for providing advice to the Commanders back home in Australia on.

Just to confirm your evidence, as I understand it your position is that the decision to utilise the civilian contractor to return PTE Jacob Kovco's remains to Australia was made at HQJOC?---Yes, sir, I believe that was the case. I never actually rang Kenyon which was from HQJOC had been directed by someone who'd made a decision to use Kenyon.

40 Would you agree with me that paragraph 23 of the extant Mortuary Affairs Plan stated in essence that bodies are not to be handed over to local authorities unless specifically required by the SOFA?---That's

certainly stated in paragraph 23, sir, yes.

5 This Board, Soldier 45, has the power or is authorised I should say, to make recommendations as part of its report. Given your experience in theatre and your involvement in this particular matter, are there any matters that you would wish to draw the attention of the Board that I haven't asked you about or other Counsel haven't questioned you about or that you consider to be relevant and important?---No, sir, no.

10 Thank you, Soldier 45. I have no further questions, sir.

PRESIDENT: Yes, thank you. Soldier 45, it's the President speaking, there's at least, I understand, two mortuaries American run in Baghdad and that's the one at the hospital in which Jake died, are you aware of that
15 mortuary or is there a mortuary there?---No, sir, no, I don't believe there is.

So as far as you're aware there's no place there to, for want of a better word, keep bodies for any length of time at all?---No, sir. They can't hold
20 bodies there for any substantial length of time. They move all their bodies to the Mortuary Affairs collection point at Baghdad International Airport.

Now, at Baghdad International Airport are you aware of, for want of a better phrase, the average holding time?---No, sir, no, not off the top of
25 my head, no.

Are you aware of the capacity of the morgue?---No, sir, no.

30 Any questions arising out of that, gentlemen?

COL GRIFFIN: Yes, sir, I do.

Soldier 45, have you actually visited the 10CAS facility and observed where the facility as part of the hospital where they placed people who
35 have died?---No, sir. I've never been into that location. I have visited the mortuary evacuation point in Kuwait and inspected its facilities and received a brief on those facilities.

Is it the case that you cannot actually say whether or not there are
40 refrigerated holding facilities for bodies at the hospital and that you base your earlier remarks simply on the fact that the Americans do move people to the mortuary facility at the airport, that is you don't know one way or the other whether or not they have refrigerator mortuary facilities at the hospital?---I was not aware of that, sir, no.
45

Yes, thank you, sir.

PRESIDENT: Yes, thank you Soldier 45, you may now stand down, thank you.

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<WITNESS WITHDREW [1259]

10 COL GRIFFIN: Sir, next witness at 633 is Soldier 30. We have the facility until at least 1400. If you wish, we could take a short break while Soldier 30 is made available.

PRESIDENT: I think we might do that.

15

COL GRIFFIN: Thank you, sir.

ADJOURNED [1300]

20

RESUMED [1318]

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COL GRIFFIN: Sir, I call Soldier 30.

PRESIDENT: Thank you.

30

<SOLDIER 30, recalled and resworn [1319]

<EXAMINATION BY COL GRIFFIN

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COL GRIFFIN: Soldier 30, I just have a couple of questions for you. The Board has received evidence that Soldier 21 originally informed the quick assessment officer that he was of the view that he had heard somebody use the term "Allah Akbar" coming from room 8 as he was on his way to it. He subsequently gave evidence under oath that he had reconsidered his position on that and was no longer of the view - or his evidence was no longer that he had heard that. After his reflection he didn't feel confident that he could say that he had heard those words. Are you aware of any pressure being brought to bear on Soldier 21 or indeed

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any other members of your unit in respect of their evidence for this Inquiry?---No, sir.

5 You'll be aware that the Board is authorised to make recommendations as part of its report. As I understand it, you've had the opportunity to follow the transcripts of the proceedings and you're aware of a number of matters that have arisen. Is there anything that you would like to say to the Board in respect of recommendations or any other matters of significance or relevance from your perspective as the officer commanding SECDET IX?---Yes, sir, there is. Firstly, I'd like to thank you for the opportunity to address the Board. And firstly, I'd like to clarify a number of issues that 10 have been raised in the course of the Inquiry by one of my soldiers in particular. His comments have caused some distress amongst my combat team because they have painted us in an unprofessional light and they have caused unnecessary distress to our loved ones at home. In particular, 15 the following points I think should be noted by the Board: you've been told that this particular soldier deployed into Baghdad and that his weapon was unserviceable for the first three weeks that he was here. Unfortunately, he failed to tell you that he was not carrying that 20 unserviceable weapon, it was in fact with the armourer for those three weeks being repaired and at all times he was carrying a serviceable weapon.

I've also been told that my soldiers play western style quick-draw games. 25 This is simply not true. My soldiers conduct standard weapon training, as do all professional soldiers from around the world. This includes the drawing of the pistol from the holster. It's not a game, it's training. It's conducted in a supervised and safe manner and it's designed to make these soldiers more proficient and therefore save lives. You've also been told 30 that we don't have enough pistols and that they're old. I can assure you that my combat team has ample pistols and whilst the design of those pistols is old, the ones that we carry have all been completely rebuilt in the last five years and are in excellent condition.

35 He also made several comments about our equipment. He's intimated that we are poorly equipped. This is simply untrue. Our equipment is the envy of all of my coalition colleagues in Baghdad. There are always some minor things that can be upgraded, but that's only natural. We have been issued excellent weapons with specialist optical sights world class body 40 armour and helmets and our vehicles are the best in the area of operations and our communications and IT equipment is excellent. In general, we are extremely well-equipped.

45 Throughout the course of the Board of Inquiry there's been much emphasis placed on my SOPs and the buddy system. I feel that the point

5 may have been lost that I was under no obligation to have SOPs at all and I was under no obligation to utilise the buddy system or any other additional safety precaution. We could have deployed and conducted this operation without either. I made the decision to write comprehensive SOPs and incorporate the buddy system because my experience told me that this was the correct and professional thing to do. I believe that the SOPs have provided a very sound base for the success that we have achieved in our mission and the buddy system has reduced the possibility of negligent discharge of weapons.

10 I think it's ironic that one of the key areas of scrutiny within the combat team has been these two areas which a less professional organisation would not have bothered to implement at all. I believe that there's been little recognition given to the fact that over 100 of Jake's colleagues have continued to and still are operating in Baghdad. I believe that their situation has not been duly recognised and they have not been given the popular support that they are due, particularly by the media. The soldiers in my combat team are the best in the world. They have proven that on this operation time and time again.

20 They are young Australians that should be held up as a source of pride. This has generally not been recognised by the media and therefore the public. I would request that the media and the public recognise the outstanding professionalism and courage that their diggers display day in and day out in Baghdad, even in the face of the tragedy of losing their mate. These soldiers have endured media speculation, scrutiny and innuendo. They've endured the loss of the body of their mate. They have endured the loss of the investigation report. They've endured the pressure of three investigations and a board of inquiry.

30 All of this has been endured whilst deployed on operations in Baghdad. Although they have been clearly distressed by these distractions, and feel that their professionalism has been called into question, they have continued to serve our nation with distinction. It is time to give them the recognition for that service. To Shelley and to Mr and Mrs Kovco, I extend my heartfelt and sincere apologies for what happened to Jake. You know only too well what I thought of the man as a soldier and as a human being.

40 My life changed forever on 21 April 2006 and the devastation that I have felt and shared with my soldiers will never leave me. I am a father and a husband. Even so, I cannot begin to imagine the pain and the anguish and the emptiness you must be feeling. I wish I could change that for you, but I can't. I can tell you, however, that Jake was loved by his brothers in the combat team. This was demonstrated in how we farewelled him. I was

with Jake when he died. The room was full of his mates talking to him and holding him and holding each other.

5 They were devastated but they gave him a farewell that will remain etched in my memory forever. It was truly befitting of a paratrooper. You gave us the privilege of sharing Jake's life. In the end, there was nothing that I could do to save him, there was nothing that anyone else there could do. In your absence I gave Jake a kiss on the cheek just before he died and I told him that you loved him. I want to thank you for letting me have that
10 honour. Once again, I'm truly sorry that I'm not bringing him home. Sir, that's all I have to say.

PRESIDENT: Thank you for that. Colonel.

15 COL GRIFFIN: Thank you, sir, I have no further questions for Soldier 30.

PRESIDENT: LTCOL Wilkinson.

20 LTCOL WILKINSON: No, sir.

PRESIDENT: LTCOL Green.

LTCOL GREEN: No, sir.
25

LTCOL BERKLEY: No, sir, I've got nothing.

PRESIDENT: COL Young.

30 COL YOUNG: No, Mr President.

PRESIDENT: Soldier 30, if I may say, can I simply say this: that I'm glad to see that a CO continues to be the champion for his troop. I'll simply say no more. But I think you get the gist of what I'm trying to say.
35 Thank you for that?---Yes, sir, thank you.

COL GRIFFIN: Thank you, sir. That completes the evidence from the Baghdad link for today. I'd ask that we now adjourn and return not before 10 o'clock tomorrow. We have more evidence to receive by video link
40 from Baghdad and also further witnesses to give evidence in person tomorrow.

PRESIDENT: Thank you. We'll now adjourn. Thank you, Soldier 30, you may now stand down.
45

COL GRIFFIN: Sir, might I just ask Soldier 30 if he could provide a copy of, if he has, a statement - a copy of what he just read for my purposes, please?---Yes, sir, of course.

5 Thank you, Soldier 30.

<WITNESS WITHDREW

[1329]

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**MATTER ADJOURNED AT 1330 UNTIL
WEDNESDAY 23 AUGUST 2006 AT 1000**

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