

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

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**AUSTRALIAN DEFENCE FORCE**

**AUSTRALIAN ARMY, VICTORIA BARRACKS, NSW**

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

**PRESIDING:**

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

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

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

**1101 WEDNESDAY 23 AUGUST 2006**  
**DAY 27**

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

**TRANSCRIPT VERIFICATION**

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

Signed.....  ..... Date .....23/08/06.....(President)

Signed.....  ..... Date ..... 23/08/06.....(Recorder)

Signed.....  ..... Date ..... 23/08/06.....(Transcriber)

Signed.....  ..... Date ..... 23/08/06.....(Transcriber)

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5 PRESIDENT: Good morning Colonel.

COL GRIFFIN: Good morning Mr President, Members. We're ready to proceed with the first witness from Baghdad, sir. However, I'm informed that the callsign matrix document is not before the witness. I propose to proceed until such point in time that we can't go any further and they're awaiting the delivery of it to their particular vicinity. So, sir, with your leave, I proceed to call Soldier 47.

PRESIDENT: Thank you.

15 COL GRIFFIN: Soldier 47, good morning. It's COL Griffin, Counsel Assisting here, Soldier 47.

**<SOLDIER 47, sworn**

**[1102]**

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**<EXAMINATION BY COL GRIFFIN**

25 COL GRIFFIN: Soldier 47, in these proceedings, to protect operational security the identity of individuals in the operational theatre is being dealt with by reference to a callsign matrix with numbers next to the names. I understand you don't have that in front of you at the moment, but that it is on its way to you, can you confirm that?---Yes, that is correct, sir.

30

Can you confirm - - -?---Sir, the matrix has just arrived now, sir.

It has arrived?---Yes, sir.

35 Would you examine the document please and ensure that it's your rank and name that appear next to the entry for Soldier 47?---Yes it is, sir.

40 Can you confirm that you understand your rights and obligations as a witness before a Defence Force Board of Inquiry?---I understand those rights, sir.

45 What is your current posting?---Sir, I'm currently posted to HQ 633 as the OIC of ADMIT which is the Australian Defence Force Middle East Area of Operations Investigation Team. Prior to my deployment here, I was posted as the Platoon Commander of 51 MP Platoon SIB at Enoggera

Barracks in Brisbane.

5 Soldier 47, the Board has two service police statements that have been made by you before it at the moment, do you have copies of your service police statements with you?---I have copies of one of my statements, sir.

Is that the one dated 26 May, or the one dated 21 June?---21 June, sir.

10 Do you recall including as a cover document to your service police report being 5 MP OPCAT 08 of '06, the report on the investigation into the death of PTE Jacob Kovco, a service police statement of three pages and then setting out a cover sheet, a table of contents and a summary of facts or statement of facts to cover the service police report which by the way is an exhibit before the Board now and that that statement of facts and your  
15 service police statement summary was dated 26 May, do you recall preparing those documents?---Yes I do, sir.

20 Soldier 47, also for operational security reasons certain documents are edited in a form that's called redacting where operational security matters are blocked out and consequently your report appears before the Board in its original format and then a redacted format. I now propose to tender the second statement, sir, being the statement dated 21 June '06 which is a two-page document. The other document is already in evidence as part of  
25 the Military Police report and unless yourself or Counsel propose to separately tender that document, I do not propose to tender it, it's already part of the report.

30 PRESIDENT: I'm comfortable with that. Yesterday, did we formally mark the Quick Assessment Report as exhibit 159?

COL GRIFFIN: I think it was already in evidence, yes. And we introduced the additional pages to that existing exhibit with the notes, yes, thank you Mr President.

35 PRESIDENT: Is there any opposition to the June report or the - - -

COUNSEL REPRESENTING: No, sir.

40 PRESIDENT: They will be marked as exhibit 159 in its redacted and restricted or classified form.

**#EXHIBIT 159 - JUNE REPORT IN REDACTED AND CLASSIFIED FORM**

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COL GRIFFIN: Thank you, Mr President.

PRESIDENT: Yes, thank you, Colonel.

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COL GRIFFIN: Now, Soldier 47, would you tell the Board please your training and experience as a Military Policeman?---Sir, I'm in my 26th year in the Army. I enlisted in the Army in 1981 and in 1984 I transferred to the Royal Australian Corps of Military Police and I qualified as a general duties Military Policeperson. In 1988 I then - - -

10

Sorry to interrupt you Soldier 47, but because of the audio link and the video link it would assist if you limited your movement because it distorts the imagery for the Board and also for my purposes, if you would speak a little more slowly than you normally do while I make notes of your evidence. So could I ask you to start again please?---Okay, sir. Sir, I'm in my 26th year in the Army, I enlisted in 1981. In 1984 I transferred to the Royal Australian Corps of Military Police and in 1988 I then qualified as a Military Police Investigator in the one of '88 Military Police Special Investigation course. In 1989, I attended the Military Police School and qualified as a Scenes of Crimes Operator and then in the periods of 1990 through to my present day I have done a number of civil police courses and detachments. Including in those courses and detachments is a detachment to the Victorian Police Homicide Squad and various other agencies around Australia. I've also deployed overseas on operations previously and during those periods of time I had whilst I was on operations in another theatre I conducted inquiries into the sudden deaths of Australian soldiers in that theatre. During my time as a Military Police investigator I have also done co-joint inquiries with civil police agencies into sudden deaths of soldiers within Australia and obviously the jurisdiction of the state police in those areas takes primacy. However, I've assisted with them in those inquiries. During my time whilst at homicide - during my time whilst as a Military Police investigator and overseas some of those sudden deaths inquiries have involved gunshot wounds.

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Thank you. Would you tell the Board now, please, how you came to be involved in the investigation of the death of PTE Jacob Kovco?---Sir, on the morning of 22 April this year I received a telephone call from my Officer Commanding, being MAJ Michael Pemberton, who was located in Canberra. He informed me that an Australian soldier had sustained a fatal gunshot wound whilst in his barrack room within his area of employment here in Baghdad. He then warned me out to prepare my fly-away team for an immediate deployment to the area. I then contacted the members of my fly-away team - - -

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45

Sorry to interrupt you, Soldier 47, but again a number of people will be trying to make notes. The proceedings are being recorded, but we'll also want to make notes of your evidence. So if you could just speak a little more slowly than you normally would, please. Thank you?---Yes, sir. I then contacted members of my fly-away team. Both of the two members I chose to accompany me on the deployment reside and are posted in Victoria.

I then requested that they attend their places of work and prepare themselves for immediate deployment, which I believe was going to occur that afternoon. I myself then attended my workplace and then prepared myself for immediate deployment. I also during that period of time made a telephone call to Baghdad to speak to Soldier 46 who had been given direct liaison back to me in Australia. I managed to get hold of Soldier 46 and during that time he actually informed me that he was not in location at the time of the incident involving the deceased and it took him approximately an hour to an hour and a half to arrive at the incident site. He also informed me that during that period of time he had ascertained that witnesses and clothing worn by witnesses had been washed and also that he also attended the hospital where the deceased was located and items of clothing belonging to the deceased had already been destroyed.

He also informed me that the room had been secured and that the witnesses were in location at that particular time. I then discussed just a number of other issues with Soldier 46 in reference to our deployment. I then arrived at work to prepare myself for the deployment and whilst at work I received a phone call from my Officer Commanding informing me that the team had been stood down. I asked for the reason why and he said that there was no approval yet from Chief of Army for us to deploy. I then returned home, but I also informed my other fly-away team members of the decision that had been taken.

I also informed them they were to still prepare and to pre-position themselves at Puckapunyal, which is just up the road from Melbourne, in case the deployment stood up again. At approximately 1600 hours that afternoon I received a further phone call to indicate that the team had been stood up again and approval had been given for us to deploy. I was then informed that I had to attend Brisbane International Airport by 1730 hours that afternoon for departure to the Middle East.

Do I understand you to be saying that the various things that happened during the course of the day did not negatively affect your final capacity to deploy as you had planned to do?---No, sir. We went through with the preparations just in case that the approval had been forthcoming. As I said, I pre-positioned my other two members at Puckapunyal, which was

just up the road from Melbourne, so they could attend Melbourne Airport if required. Also if I may add as well, sir, is prior to me actually stepping onto the flight - and I can't remember if it was in the afternoon or just before I stepped on the flight - I did request the OC, had he made contact with Baghdad in reference to the location of the deceased, because it was imperative that the deceased was not to be moved from Baghdad until my investigation team had arrived.

Why did you have that view?---Sir, to do an inquiry into the sudden death is that it's imperative that investigators obviously view the deceased. There's a number of requirements that need to be done in reference to the deceased, ie is to positively identify the deceased, document the deceased and also conduct any forensic examinations that may be required for future analysis by the coroner. Also being that there is a requirement that the deceased be in the custody of Military Police until it can be delivered to the jurisdictional facility that would actually do the post-mortem of the deceased.

In your mind was that the relative state coroner?---At this point in time I was informed by my OC that the appointed coroner was the Victorian Coroner and that he was liaising direct with the Victorian Coroner to obviously facilitate the delivery of the deceased to the facilities in Melbourne.

Can you just tell the Board a little history of the fly-away team?---Sir, the fly-away teams were - always been in existence. However, they have been the primary source for the investigative capability since the operation has commenced here in Iraq. Previously to that, investigators were part of the force within East Timor and have been part of other forces in Rwanda, Cambodia and other deployments overseas. The fly-away team in this case was there to support the force from Australia. Myself, my OC and my MP chain of command had never been in favour of having fly-away teams to support when you don't have a leading investigative capability when in country. As any investigator will tell you, and I think most people would realise, the first 24 hours of any major incident, especially involving a sudden death, is extremely important so as to ensure the security of the incident site and any forensic evidence that might be able to be obtained. So therefore is that whilst the fly-away teams were in existence, it wasn't as if that I was in favour of actually having just fly-away teams in support of the force.

Have you any previous experience of responding as a part of a fly-away team to the investigation of an incident offshore?---No, I haven't. But whilst I was deployed in another theatre I did request a fly-away team to support me during operations, and that worked quite successfully. Due to

the fact being is that I could do the initial work on the ground in reference to that incident that I requested the fly-away team to do. Once they arrived into country I could then hand over to the fly-away team any investigative work that I'd actually done.

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Now, you've described actually getting approval to leave and you did so the same day - is that right - 22 April?---That's correct, sir. I departed Brisbane Airport at 1930 hours on 22 April and I finally arrived in Kuwait after a stop in Dubai at 1630 hours Kuwaiti time on 23 April.

10

What happened once you arrived in that part of the theatre?---Once I arrived there, sir, SGT Hession and CPL White were already in location because they arrived on a different flight to me. I was met by SGT Hession and he informed me at that particular time that the deceased had been moved to Kuwait. This had surprised me and I was quite angry with it for the simple reasons that I explained earlier. Due to the time difference between the location I was in and Australia, I didn't phone my OC at that particular time. I waited till the next morning to find out a reason why. There was no need to look at the reason then and there because obviously the deceased had been moved. I then went back to the facility where we were to spend overnight because we were informed that our flight into Baghdad was not till the next morning. I then had to then attend an abbreviated version of RSLNI training, which also included attending the runnings for a shoot. I then arranged for myself and SGT Hession to attend the US morgue facility at the Kuwaiti Airport so that we could view the deceased.

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What happened when you attended at the morgue?---On attending the morgue there was US Army personnel in attendance at the morgue. They wheeled the deceased out into the morgue. There was an Australian Army Sergeant present at the time. At that particular time I didn't know his name. I - - -

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Do you identify him on the callsign? On the matrix before you can you identify him by number?---He is Soldier 2, but at the time I didn't know who he was until I'd actually arrived in location in Baghdad.

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Did you have any discussions with Soldier 2?---Only discussion was the usual greetings, "Hi, how are you?" et cetera. At no time did it cross my mind that he may have been an integral part of the actual investigation because there was an expectation of me at this particular time that all major witnesses in this inquiry were in Baghdad. At no time was I or did I expect that any major witnesses would be actually in location in Kuwait.

45

Aside from Soldier 2, did you meet any other members of Security

Detachment IX at the facility in Kuwait?---I didn't actually meet any of them, I saw a number of other personnel who I believed were from the Security Detachment, but I did not have any conversation with them at all.

5 Did Soldier 2 in your discussion with him tell you what he was doing there?---He informed me that he was the escort for the deceased. I didn't engage in much further conversation with him because he looked a little tired and he obviously looked a little bit upset, which is what I would naturally assume someone who obviously had worked with the deceased  
10 would be.

Was he present when you viewed the remain of PTE Kovco?---He was present in the mortuary room, yes, and at one particular time there I had to ask him the actual Christian names of the deceased because the only name  
15 I had at that particular time was the deceased's surname.

Was he physically present with the body when you examined the body and viewed the body?---Yes, he was.

20 Did you observe any form of identification in respect of the body at the time you viewed it?---There was no actual formal identification on the body. By that I mean dog tags or any type of bare markings that I could actually see at that particular time.

25 What did you actually do as part of your viewing of the body?---We actually documented the deceased by imagery, that being digital photographs. What we call "red film" is your normal old roll-on type film. And also by video. The only thing we didn't do with the deceased is what we would have normally done if it would have been in situation in  
30 Baghdad is we did not remove the deceased from the coffin because of the potential that if there was any forensic evidence left on the deceased is that we didn't want to endanger losing any further forensic evidence that may be on the deceased. So we didn't as what we would term "roll the deceased over" to take any imagery of the rear of the deceased. We left  
35 the deceased in the coffin that he was in at the time and we conducted all our imagery of just the frontal full view of the deceased. Myself and SGT Hession viewed what we believed was the entry point of the wound because at that particular time the deceased still had a bandage around his head which we believe was covering the exit part of the actual wound.  
40 The deceased still had a number of medical paraphernalia inserted within the deceased, which is what I would normally expect of a deceased person being returned for a post-mortem to a mortuary facility.

45 Did you expose the entire body?---Yes, we had only the frontal view of the whole body.

Did you observe any identification tags such as a tag placed on any part of the body, the toe, the finger, the wrist, et cetera?---At this particular time I cannot recall any tag being attached to any part of his body.

5

Did you give consideration to such matters as gunshot residue testing or preservation of any areas of the deceased's body?---From what I could tell from the deceased when I'd seen him it appeared that the deceased had been washed down and also it appeared that other substances may have been added to his coffin at that particular - prior to his delivery to the mortuary. So therefore that was one reason why I did not want to move the deceased any further, because if any gunshot residue had fallen off the deceased it still may be located in his coffin.

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Did anyone inform you that two of the members present from SECDET had actually been in the room at the time of the gunshot being fired? ---Yes, I had been informed the previous day in my telephone conversation with Soldier 46 that there had been two people in the room.

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Were you informed at any time that they were present in Kuwait at the facility at the same time that you were there on the way in?---No, I was not, sir.

20

If you had been informed of that, would you have taken any steps?---Most definitely, sir, if I was aware that any of the escort party had anything to do with the incident they obviously would have been spoken to there and then within Kuwait. But, as I said earlier, there was an expectation on my part that all major witnesses would still be located in Baghdad.

25

Now, having completed your investigation processes there at the mortuary facility in Kuwait, what did you do next?---By the time we'd finished at the morgue in Kuwait there it was getting very close to 2300, nearly close to midnight. We had an early flight the next morning into Baghdad. However, on preparing for that flight in the morning the flight had been cancelled due to maintenance of the aircraft. Therefore, we then had to attend a coalition forces area so as to see if we could be emergency placed on a flight into Baghdad. That significantly delayed us there by about another six hours and we finally got on a flight I believe it was roughly about 1300 to 1400 hours that afternoon into Baghdad. We arrived at the headquarters where I am currently located at this point at approximately 1700 to 1800 hours on Monday, 24 April.

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Did you have any discussions with anyone about the investigation on arrival at that particular headquarters?---On arrival to headquarters, sir, it would have been approximately 2000 to 2100 hours that evening. I had a

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conference with the Commander at the time here and the Chief of Staff.

Is that Chief of Staff Soldier 39 on the list before you?---That's right, sir.

5 What was the substance of that conversation?---It was more of a obviously  
a greeting thing between myself and the Commander and obviously the  
Commander was interested in what my intentions were and how my  
investigative process was to actually take place. During those discussions  
10 there was some points brought up in reference to how I intended to  
conduct my inquiries and at one particular time there Soldier 39 disagreed  
with one aspect of the inquiry that I was going to do. I informed  
Soldier 39 that was for a decision for me to make, which he accepted at  
the time. However, following the conference later that evening the two  
15 legal officers that were actually in location at the time here came and seen  
me to discuss that point. I also informed the legal officers that whilst I  
understood where Soldier 39 was coming from, but I had my investigative  
process which I had to do and if I had to make decisions in reference to  
that investigative process, well, that was my decision to make.

20 In terms of operational security, is the point that you're talking about a  
matter that you can discuss in open proceedings?---Yes, I can, sir. It was  
to do with - I was informed that the major witnesses to the incident, some  
of them had made contemporaneous notes directly after the incident had  
occurred. I raised that topic during the conference and that was when  
25 Soldier 39 indicated to me that they were their personal notes and I had no  
right to take those notes from them. I explained to Soldier 39 that if I  
believed that those notes had any bearing on the inquiry is that obviously I  
would ask the permission of the soldiers in the first instance for them to  
voluntarily give those notes to me and if they didn't and I believed they  
30 had some bearing, like any other documentary evidence in relation to any  
inquiry, that there were procedures that I could do to actually seize those  
notes.

35 What happened after that?---As I said, I had those discussions with the  
legal officers as well. I stated my point of view to them and they  
obviously concurred with my reason of thinking. Then after they departed  
the area my team and myself, which was approximately 2200 hours that  
evening, tried to get some sleep. We'd just travelled obviously halfway  
40 around the world, had very little sleep at this time. Being the good  
soldiers we were, being 25 April the next morning we had an appointment  
at about 4 o'clock in the morning with sunrise and obviously Anzac Day.

45 Following the Anzac Day ceremonies, what did you do then?---We then  
had to deploy by rotary wing into the Security Detachment's location.  
That became problematic in itself due to the short notice, the equipment

that we had to carry. And keeping in mind is that the only equipment that we could deploy with was what equipment we had to carry. So three investigators had to carry their personal equipment, investigative equipment, their combat or body armour and personal weapons. Then we had to obviously deploy by rotary wing into the area. As I said, it was problematic getting there. It didn't run smoothly. It took about four to five hours to arrange the transport for us and then when it was arranged we were separated. I arrived into SECDET about an hour and a half prior to my other two team members actually arriving. By 1550 hours myself and my team were fully on the ground within the SECDET location.

Would you describe to the Board what happened then, please?---Once we arrived in the SECDET location it was then that I also became aware for the first time that the incident site was not actually at the SECDET location, which is known as Anzac Cove. Once again it was an assumption on my part that it was co-located and it was never informed to me that the area that I was going into, the SECDET location there was different to the area of accommodation to where the deceased incident site was. Once on arrival there I spoke to Soldier 30 and I believe - you have on the matrix here Soldier 33 and then Soldier 48. Is that the same person or are they two different people? The reason I ask is Soldier 33's position is what Soldier 48 is.

Soldier 33 has been identified as having left the theatre having been part of the command element at SECDET, Soldier 33. Soldier 48 has been identified in these proceedings as a member of your corps who escorted the pistol back to Australia?---Okay, no, in that case then, sir, is that the acting CSM at the particular time's name does not appear on the matrix.

The acting CSM at the particular time is not on the matrix?---Yes, that's right, sir.

Please go ahead?---I then spoke to the OC, obviously once again the normal greetings. I obviously informed him of the investigative process. He was very receptive. He understood what the process involved. He was extremely helpful. He informed me that his members were all available at any time to my team members for us to conduct our inquiries. I also informed him that I would like for him to know is that whilst there was the sudden death of the deceased needed to be investigated - that for his members to know is that we weren't there to come in and start rattling soldiers and to start harassing and haranguing soldiers. I treated this right from the beginning that there was an incident that occurred and it was our job to find out the manner of death of the deceased in relation to this incident. I also informed him, however, that if during our inquiries that obviously a person or persons were found to have some involvement,

5 direct involvement with his death, then obviously the manner of the way we investigated it would actually change. He was quite receptive of this because one of his concerns was that of how our approach might be to his soldiers. I was also very mindful of the operational conditions that these soldier were also under. These people obviously had work to do. They had to concentrate on their work as well. Whilst we had our job to do and everything else, it was our intention obviously to not create as much disruption as possible to their normal way that they had to get on and do business.

10 Did anyone have discussions with you on that day about the condition of the room where the incident took place?---I had my discussions with the OC. I actually mentioned to him that I was aware of certain things in reference to - - -

15 **Video link malfunction**

20 COL GRIFFIN: Sir, it appears that the connection at the other end has failed at the moment from the Middle East theatre operations to the hub or the trunk that is down. So we're waiting on reconnection at the other end rather than at this end. We're still up. I'm in your hands, sir, if you wish to pause here or adjourn.

25 PRESIDENT: I take it there's no indication of how long we're going to be.

COL GRIFFIN: Unfortunately not.

30 PRESIDENT: I think we might take an adjournment.

COL GRIFFIN: Very well, sir.

35 **ADJOURNED** [1142]

**RESUMED** [1146]

40 COL GRIFFIN: Sir, we resume with Soldier 47 and the link has been restored.

45 Soldier 47, when we left off, I'd asked you to describe any discussions you'd had on 25 April in respect of the condition of the incident site room?---Yes, sir, I had discussions with Soldier 30 in reference to the

incident site room. He informed me that the room was still secured. He also informed me that at that particular time that after I asked where the witnesses were that most of the major witnesses were part of the escort party which had returned to Kuwait with the deceased. As you could imagine, whilst I was displeased with that, there was nothing further I could do about that and I asked the OC if those members could be returned to this location as soon as possible. I then, after my discussions with the OC, got my team together so we could have a formal brief, have a look at our equipment to see how well it travelled and also conduct an investigative plan for the next couple of days.

I'd also re-established links with MAJ Pemberton to inform him of our arrival at the security detachment location and I believe it was during this telephone conversation at this particular time I had a lengthy conversation with him about how the deceased had been returned to Kuwait against the wishes of myself and his direction that he had asked 633 not to do. He informed me of a conversation he had with Soldier 39, I believe it is, yes, with Soldier 39 and some of the words that I can remember in reference to that was Soldier 39 said to him that that was part of the risk management of returning the deceased. As my OC explained to me there was nothing further he could do about that because the deceased had obviously been moved. He was very displeased about that decision as well.

I then had further discussions with my OC in reference to the - where the deceased was being returned to. Once again the discussions all centred around the deceased being returned to Melbourne, to the Victoria Coroner's office. I also tentatively started to discuss with him in relation to any exhibits that might be obtained during the inquiry of where they're to be returned to and I favoured the Australian Federal Police Laboratory in Canberra for the simple matter that we've dealt with them previously on a number of occasions. We also discussed again certain requirements that I would like to be done and made that were done during the post-mortem and those requirements obviously were for any GSR that was on the deceased, any flash burns that might be around the entry point of the wound, toxicology results, fingerprinting of the deceased, et cetera. As I said, we had quite a lengthy conversation reference to a number of these points.

Now, in respect of - - -?---On the conclusions of that - - -

I beg your pardon, I interrupted you, please continue?---No, that's fine, sir.

In respect of that planning, did the other two members of your team possess any skill sets different to your own?---Yes. SGT Hession recently

completed the New South Wales Ballistics course, I believe it was November 2005. It was a three weeks course which trains people on - on the - to be able to do ballistic examination on the scene. I must stress though that is not an analyst course, it's more like a Scenes of Crime Operators course in reference to a scenes of crime operator is a person who detects, collects and preserves evidence for future analysis. They do not analyse the actual evidence that is actually detected during that period of time. But the course that SGT Hession did, I believe, met those skill sets of detecting, collecting and preserving any ballistic evidence that may be obtained.

Given the skill sets, did you decide on a plan as to how to deal with the forensic scene itself in any way?---Yes, I did. Due to my role being the investigation team leader, my role is obviously to coordinate the inquiry, to do the administrative and log requirements and also to do all the command briefings in relation to the inquiry. I tasked SGT Hession with the responsibility of processing the incident scene and conducting inquiries at the - at the Australian Embassy and I tasked SGT White to conduct inquiries in relation to matters that would concern personnel located at Anzac Cove which was the accommodation area for the security detachment.

What happened next in your investigation?---That evening on the 25th we obviously got ourselves familiar with those and then the next morning on 26 April, the three of us departed ..... for the Australian Embassy for the incident site so that we could all view the incident site.

So that effectively was five days after the incident itself?---That's correct, sir.

What happened?---On arrival at the incident site we - I saw that the room that was allocated to the deceased, the door was covered with a tarp. On going behind the tarp with SGT Hession I saw that the door had a numerous amount of seals, wafer seals around the entry points of the door and the door was locked. I spoke to the Platoon Commander who is Soldier 1. Soldier 1 actually approached me and he seemed quite concerned at the time. It was - if I might just go back a step to the previous day. I'd also been informed that - by Soldier 30 that a number of people had entered the incident site prior to the room being secured and some of those had removed items from the incident site.

On 26 April when I seen Soldier 2 he actually - correction, Soldier 1 is it, my apologies, yes, Soldier 1, he looked a bit worried and a bit perturbed. I obviously introduced myself to him and straightaway he informed me that he had entered the actual incident room on the day of the incident. I

informed Soldier 1 that I understood what - the reasons why he may have done that, being emotive reasons. I didn't believe at this point in time that there was - that there was any indication that he did those for any other reasons that an emotional reasons. I emphasised to him that it was  
5 imperative at this particular time that I was informed of all personnel who had entered the room prior to it being sealed and what items had been removed and if those items had been replaced or where those items are now.

10 I said to him that if I was to find out in a months time other people had entered that room, well obviously I would be very annoyed and then that would cause me to believe that something untoward had of happened in that room. He understood and he informed me of what had actually occurred with the incident site prior to it being secured.

15 Now, the seals that you've described on the door, the wafer seals, were they intact or broken?---No, they were intact, sir.

20 What happened then?---We then obtained the key to the room which was in the custody of one of the Military Police, CPP Sergeants who was located at the embassy. SGT Hession then unlocked the door and then entered the - he and myself then entered the room. On entering the room, we stood at the doorway. Like any time of incident scene that you actually arrive, you appraise yourself from the entry point of the room,  
25 taking in all noted points of interest. It was from that point that we surveyed the walls of the room, the floor of the room and the ceiling of the room and from where we were standing at that particular time, there was only one indication of either an entry or an exit point where a projectile had either entered or left the room.

30 What steps did you take in terms of examination and forensic testing of the room?---I appraised myself of the room so as to satisfy my own self that I had full appreciation of the room. I also was requested by the OC - correction, Soldier 30 that morning that there was concern that the  
35 deceased had written a letter or a note to his wife and that Army Headquarters were very interested in retrieving that note so that they could return it to the deceased's wife. I informed Soldier 30 that I would have a quick look for the note, however I would not disturb the room fully until the forensic examination had been completed by SGT Hession.

40 During that quick look for the note, I looked in the obvious places where I believed that a person may put correspondence of that type and I could not find that and I then viewed certain other aspects of the room, that being where the pistol was located at that particular time and I must say here  
45 too, I forgot to mention earlier that whilst at HQ 633 we were handed a

disk containing a number of digital photographs that had been taken of the pistol in location shortly after the incident occurred on 21 April.

5 After looking at where the pistol was located when I was in the room, it was, to me at that particular time, in the same position that it appeared on the digital photographs. Later of course, close examination of the digital photographs to where the pistol was indicated that it had been slightly moved.

10 Did - - -?---And then after - - -

15 Please, go ahead?---Yes, sorry, sir. I then had a number of discussions with SGT Hession and one of those discussions was that we had both satisfied ourselves by checking the extremities of the room that there was no other entry or exit point of a projectile into the room. The only entry or exit point of a projectile was on this - was on the ceiling of the - of the roof. To me that then satisfied, in my belief, that there was only one shot fired and that from the indications of the information that we know that it was more than likely not from a hostile fire.

20 Did you formulate a plan of action in dealing with the pistol?---I instructed SGT Hession to process the room in accordance with extant policies for processing forensic evidence and that is to photograph in location to obviously take custody of any type of forensic evidence and once again I stress again, our job is to detect, collect and preserve, it's not to analyse. And I also directed SGT Hession that the room was to be - imagery of the room was to be fully done in digital, lead film and video. I then left SGT Hession in location there to conduct those inquiries and then I departed with CPL White, now SGT White, back to the Anzac Cove location.

35 Did you task SGT White with any duties?---On arrival back to ....., I then tasked SGT White to conduct inquiries in reference to the history of the issue of the particular weapon to the deceased, that being when the pistol was issued, who had previous issue of the - of the weapon, any technical inspections done of the weapon and any border surveys that actually had been done of the weapon. I also asked SGT White to also conduct inquiries in reference to any medical inquiries that had been done by the SECDDET medic who obviously attended the hospital and he obtained certain documentation from 10 Casualty Hospital in reference to Death Certificates, obviously doctor's notes et cetera that he had in his possession. So I basically tasked SGT White to do the inquiries that were needed to be done within .....

45 It was SGT Hession who was dealing with the room itself, is that the

case?---Exactly right, sir.

5 Were you involved at all in the hand back of the room?---Sir, I was involved. At the completion of the day SGT Hession arrived back at .... in mid-afternoon, we sat down, he obviously debriefed me in reference to what he actually done during that time, I viewed the imagery, I viewed the exhibits that he collected. He also informed me of certain information that he had obtained during that period of time. I then asked him after analysing all of the evidence and the information, was he satisfied that he could do what he could do with the actual room and he said "Yes". It was at this point that we had a number of conversations into what we couldn't do and this was due to the lack of scenes of crimes equipment that was at our disposal prior to deployment.

15 It should be noted here that over the - over the years, a lot of investigative equipment has depleted over the years through not being reissued or re-bought or whatever word is liked to be used and basically all kits that had been put together for deployments had been raided by people in location to meet the needs within the Australian location doing scenes of crimes work. On arrival at the incident site is we knew that we were deficient in a number of items, however here was no time to actually get those items prior to leaving Australia and we knew that there are some aspects that we would not be able to do.

25 I also had discussions with SGT Hession at the incident site in reference to GSR of the room. We did not have the capability, once again due to the small amount of scenes of crimes equipment that we had to take any GSR. I also, with discussion with SGT Hession, in reference to what he thought the value of GSR would be from a room that had been occupied by soldiers for two and a half years who constantly handled firearms and ammunition and we were in the agreeance that there was probably no evidentiary value that could be ascertained that would directly pinpoint to help us in relation to the incident with the deceased due to the amount of personnel that would be in the room with weapons and ammunition over the past two to two and a half years or since the life of that particular room to accommodate soldiers.

40 We also were deficient the ability to take blood samples from the stains that were in the room and once again with my discussions with SGT Hession, because there was no indication that any other person's blood was in the room or was likely to be in the room, we took that to be then, well then we would have to just not be able to do that. If we had the equipment, it certainly would've been done.

45 After my discussions with SGT Hession back at ..... and as I said when I

was satisfied, I was fully aware from my discussions with Soldier 30 the day beforehand of having the room restored to its original state as soon as possible, more as a psychological factor to the soldiers that had to reside within the area and actually work within that area. Whilst at no time did  
5 Soldier 30 influence me in my decision of handing back the room, the decision was solely made myself after I was satisfied that all we could do with the room had been done.

At this particular time, the jurisdiction was still Victoria Coroner. At no  
10 time had I been informed anything different than the deceased being returned to Victoria. There was no expectation on my part that another agency was going to deploy in support of us as it hadn't happened previously and since 2000, since the three sudden type deaths that have  
15 occurred since 2000, that being in East Timor, the soldier in the Solomon Islands and a soldier in Kuwait in November last year, at no time had any other agency deployed in support of the investigative assets that were there at that time. So there was no expectation on me at that point that I was going to be supported.

20 I then either spoke to Soldier 30 that afternoon or it would've been the first thing on the morning of the 27th and I informed him that he could refurbish the room at his timeframe. He acknowledged that and he then set about to have that happen.

25 What was the position at that point in time with the pistol?---The pistol at that point in time had been taken on as evidence by SGT Hession. I was the property custodian for all exhibits that were as part of the inquiry. The pistol was taken on at that particular time was bagged in a plastic bag in the first instance and was receipted by me through our property register.  
30 SGT Hession had also receipted to me at the same time a plastic bag containing a cartridge case, a plastic bag containing a projectile which we'd recovered from the roof of the deceased's room, a magazine, an empty magazine, 9 mm magazine, that had been removed from the pistol, and 12 rounds that had been removed from that magazine. I'd also at that  
35 particular time when I receipted those items from SGT Hession had further discussions with him in reference to the state of the pistol that I had actually observed in the incident room at the time with SGT Hession.

40 During my conversations with SGT Hession I actually informed him that the state of the weapon which I'd seen, which has been described as stovepiped, ie the cart case being caught within the ejector port of the actual pistol. I had recalled that during my time at homicide and subsequent readings that I had known this as a dead man's hand, which  
45 was the fact being is that there is from theories out there that personnel who may attempt to take their own life through hesitation or the fact of

instantaneous death don't fully depress the trigger to allow the working parts to go forward can cause this action to occur and actually stovepipe the actual weapon. SGT Hession informed me that when he'd actually cleared the weapon, which was a requirement after he'd photographed it and everything else, in situ in the stovepipe condition, that it was in that state at the time. He believed that the cart case had not been fully ejected through the fact being that the working parts had not fully gone through its cycle.

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10 What did you subsequently do with the pistol? What plan did you formulate for its handling?---At that particular time, like any operation that we do, is once you're in location - and part of my job is then to start planning when your departure is expected to be as well. Knowing the length of time it took us to get into the location, I was cognisant of also

15 the length of time it may take to get out of the location. I began to - and knowing that the major witnesses still hadn't returned from Kuwait, I started to formulate what I believed was a return time that we could - the earliest that we could start leaving the location, not necessarily being a drop-dead date that's when we had to leave the location. It was my

20 intention at that particular time, unless directed by my OC, that those types of exhibits would return with me to Australia and then would be passed on to the designated forensic laboratory that would have been coordinated by MAJ Pemberton back in Australia.

25 Having dealt with the incident site on 26 April and had your discussions with SGT Hession about what he had done, as I understand it, you handed the room back to Soldier 30 either the night of 26 April or the morning of the next day, 27 April. Is that right?---Yes, sir. My recollection of it is I believe it was the evening of the 26th because I constantly would have

30 seen Soldier 30 around ..... and I had numerous conversations with him over a period of time in reference to how the inquiry was going, et cetera, and requests that I actually needed. I believe it was more likely on the evening of the 26th.

35 What happened after that? What happened on the 27th?---Sir, if I could just stay with the 26th for a moment as well. That during the course of the afternoon on the 26th I received a telecommunication from the J14 here at 633 in reference to obtaining photographs from me to be sent to him for identification purposes of the deceased. At the particular time that I got

40 that phone call the J14 only asked whether I was in possession of photographs and if I could forward them to him. I indicated to him for the reason why at which time he was reluctant to tell me. Obviously I was very reticent to forward him anything to do with my inquiry without a reason why. He said he would get back to me. I then received a message

45 to phone him back, which I did, there was no answer. Then

approximately a half an hour later Soldier 30 come and seen me and informed me at that particular time that the deceased had been - that the wrong body had been returned to Australia and that they needed images of the deceased that we had taken to confirm the identification of the deceased. Once I knew that, I had no problems with forwarding the actual photographs to the J14. I selected one or two digital photographs that I thought would suit the needs and they were forwarded to him. I then contacted my OC and had a discussion with him in reference to what he knew about wrong body being returned to Australia.

When did you learn about the involvement of the civilian agencies?---The first time that I would have been informed about any type of change of jurisdiction was in the early hours of the - approximately 0730 Baghdad time I received a phone call from the J3 at 633 here to inform me that the body was to be returned to the New South Wales coroner. I said to the J3 at the time is that that was not my understanding as I was still under the belief that the deceased was to be returned to the Victoria Coroner.

Soldier 47, what day?---This was the morning of 27 April.

Thank you. Please continue?---As I said, this was not my understanding because I had not been informed from my chain of command there had been any change in the jurisdiction of where the body was to be returned to. I had earlier that morning received a message that the medical documents and the death certificate were to be returned to Australia to be available during the post-mortem examination. So that morning prior to receiving the phone call from the J3 I started to put those arrangements in place. I'd actually spoken to Soldier 46 and asked him if he had one of his MP personnel available that could return evidence back to Australia. He said that he would make one available and that person doesn't appear on your matrix, sir. I believe where you have the person mentioned at Soldier 48 is the returning of the pistol I believe you said earlier.

Yes?---Well, the person I'm talking about now should be Soldier 48 and it's not that person that's named on there.

Is that person in theatre or in Australia now?---He's currently on ROCL back home, due to return back to theatre I believe next week.

We can deal with that at a later date. I'll get that name from you?---Yes, sir.

But if you could just tell us why that person is being mentioned now, what was his role?---As I said, sir, because I received an early morning telephone call - it was around about - correction, a message about 3.30 in

5 the morning of the 27th that HQJOC had requested that medical documents and the death certificate be forwarded to Australia ASAP to be available during the post-mortem examination. At this stage I still hadn't been informed that there'd been a change of jurisdiction. I was still under the belief it was still going to the Victorian coroner.

10 First thing that morning I had discussions with Soldier 46 to see if he had a Military Police CPP person available that could return those documents, because those documents were obviously in the custody of us at that particular time. I was extremely mindful of the continuity of those documents and the safety of those documents and any documents that are in the custody of the Military Police should always be handled and transported to any designated areas for them to be handed over by Military Police.

15 Soldier 46 identified a person for me and he would make him available to take those documents home. It was then at 7.30 in the morning that I had the phone call from the J3 of 633 who then informed me that he had been informed that the New South Wales Coroner was now involved and they required other items to be returned to Australia, ie the pistol, cart case, et cetera. I informed the J3 that I was not going to forward any exhibits to Australia without clarification from my OC in reference to the change of jurisdiction from the Victorian coroner to the New South Wales Coroner. He acknowledged that and he understood my concerns.

20 I then terminated the phone call with him and I contacted MAJ Pemberton and I informed MAJ Pemberton of my conversation with the J3 here. He was surprised, he had no knowledge that there had been a change from the Victorian coroner to the New South Wales Coroner. He told me to wait out and he would get back to me. Arrangements were then made that morning in reference to the documents to be returned to Australia.

25 I arranged for the member's transport and everything else back to 633 and then obviously onward to Australia to return those documents. During the course of the morning I had a number of conversations with the OC. He was still trying to verify who was the - which coroner was taking jurisdiction of the body. I believe it was approximately about 1430 hours on the afternoon of the 27th - that's Baghdad time - where he actually informed me that he had confirmed that the New South Wales coroner was now the - had taken jurisdiction of the deceased and the deceased's body was to be returned to Sydney in New South Wales.

30 He also informed me that he had to operate through a Defence Liaison Officer and he had no direct liaison with the New South Wales Coroner. This frustrated me to a point being is that as an investigative agency we

5 were being denied access to obviously an authority where we had to return exhibits. Obviously we needed to have discussions with them in their requirements of what they required. I had further discussions with my OC during the afternoon in various phone calls and during one of those phone calls again the frustration aspect came whereby is that even the Provost Marshall was denied direct liaison authority by JOC with the New South Wales Coroner's office.

10 It is extremely difficult when you do these type of inquiries to have these type of things changing midstream when you're trying to obviously follow a path and trying to satisfy the requirements in a timely manner and obviously have these things returned safely to a point so that they can be examined. Having the change, which I found quite strange, was six days after the deceased had sustained the injury that we had no clear indication to me at this point of which jurisdiction was going to be to receive the deceased and where the exhibits were now going to go.

20 During the course of the day I had numerous phone calls with people that were at 633 here. They were obviously being directed by JOC in reference to obtaining certain things. I had a phone call from the outgoing legal officer here at the time in reference to a conversation he had with JOC that they wanted the immediate return of the pistol, the cart case, the projectile and the ammunition for forensic examination. I informed that legal officer that I was not going to forward the exhibits, they were in my custody and until I had clearance from my OC about the jurisdiction, that I was not prepared to forward those exhibits. He understood my position and he acknowledged it. Then later that day I received a further phone call from the new legal officer that had been appointed to the area here again with the same request where I had been directed by JOC that those items had to be returned to Australia no later than 30 April.

35 Once again I informed the legal officer that I would not forward the exhibits to Australia without concurrence from my OC and that they would not be forwarded without a Military Police person having continuity of those items until they reached Australia. Once again he acknowledged and understood, but he did indicate to me that the direction was coming from a full Colonel at JOC and I made the remark is, "Well, I don't particularly care of his rank. I am the person responsible for these exhibit and until I have got the concurrence and I know exactly where these exhibits are going, they are not leaving my custody."

45 I had in some of my conversations with my OC that day is I then raised with him these concerns that I was having with the pressure to return these exhibits to Australia. We discussed certain options and it was at that time I discussed with the OC is that because we had a member returning to

Australia with the medical documentations and everything else - even though he had already left my location, he hadn't left 633 location, he was still waiting for a flight out of Baghdad. I confirmed that he was still here and I then said to my OC I was happy if we could get the exhibits to the Military Police person returning to Australia with the medical documentation, that he could return to Australia with the pistol, the cart case, the projectile, the ammunition and the magazine.

He concurred with my assessment and he gave me the approval to forward those to him. By luck, he was still in location. The transporting of the pistol then became an actual issue. I was also concerned with the fact being that due to the nature of the pistol and what forensic examinations that we needed done with the pistol, due to the climatic conditions, that the pistol was being - due to the climatic conditions here and how the pistol was being stored within a plastic bag, I was concerned that due to sweating that the pistol could have a condensation build-up within the bag, which could then obviously affect any type of forensic evidence on the pistol and also form any type of mould and that within the pistol or with inside the plastic bag due to the length of time that it would probably take for the pistol to be returned to Australia.

During our training - and it's an approved method which is used by a number of agencies that I'm aware of - is that we constructed a - by using a cardboard box whereby - with elastic that we could secure quite tightly the pistol inside the box and try and keep it at the temperature that it would be within the environment that we're in at the time. And also that the steady change of environmental temperature that it would go back to Australia. The pistol was mounted extremely securely within the box and was securely sealed so that at no time could it fall from the box and obviously be contaminated.

There was no possible way that I was going to allow the pistol to be returned to Australia inside just a plastic bag for the obviously security of the weapon and obviously the chances that it may be contaminated with the plastic bag breaking open and obviously the condensation effect that may occur. From my understanding with pistols as well, it is extremely difficult to obtain fingerprints from pistols due to the type of material they're made out of and the non-porous materials that would actually hold the fingerprints themselves. So therefore is that I was very conscious of the fact being is that all effort had to be made to ensure that the integrity of the pistol had to remain that way.

It's an interesting fact to note also that there are forensic companies that supply boxes which are already made in the size of pistols and rifles for that carriage that we had actually done. They are already pre-prepared

5 that way and they are for sale for forensic purposes to agencies around the world. There's actually a company in Canberra that actually do manufacture or are an agent for those. As I said, it's an accepted form of practice which we're trained to do and it is something that we need to be able to do on the ground here.

10 We didn't have the luxury of turning around and going down the road and buying one because of the area that we're in and we had to improvise. I believe that it was a very safe and secure method of returning the pistol to Australia.

15 Having learned that day of the involvement of the New South Wales coroner, when did you become aware of the involvement of the New South Wales Police Force?---I was informed the next day that - or it may have been late on 27 April that my OC informed me and said that he had to attend Sydney the next day and the coroner's office where he was going to have a meeting with the New South Wales coroner and he believed that there may be New South Wales Police in attendance at the time. By the next morning my time as approximately 6.30 in the morning I believe I  
20 phoned my OC and it would have been roughly about 1.30 Sydney time in the afternoon - - -

25 Of 28 April?---It's on 28 April, sir, yes. He informed me that he had had a meeting, had just come out of the meeting with the New South Wales Coroner. There were representatives of the New South Wales Police Force there including Detective Inspector Hayes from the New South Wales Police homicide squad. He said that the jurisdiction obviously was now the New South Wales Coroner and there may be - and I stress - there may be a likelihood that New South Wales Police may want to deploy to  
30 conduct inquiries. He and I arranged that in the next 10 or 15 minutes that he would have Detective Inspector Hayes with him so I could have a conversation with him in reference to obviously inquiries that we had conducted at this particular time.

35 Soldier 47, are you aware of a document promulgated by the Chief of the Defence Force on 14 May 2006 which is headed "The Conduct of Service Police Investigations on Operations" in which the Chief of the Defence Force has directed that:

40 *Recent events and initial feedback from the audit team reviewing the service police investigation capability clearly indicate the need to modify current procedures for the investigation of notifiable incidents, including on deployed operations. The aim of this instruction is to outline the revised arrangements I require*  
45 *to be implemented in the first instance.*

The Chief of the Defence Force then has set out his requirements which include - I quote at paragraph 4:

5                    *Initial lessons learned from the death of PTE Kovco indicate that the philosophy of reach back for investigative capabilities is not responsive enough for the preservation of evidence at incident sites.*

10                  The Chief has then gone on to direct that:

*As a result, where the operational circumstances and force structure dictate and the timeline for preservation of evidence and initiation and investigation warrant it, an investigative capability is to be organic to the deployed force.*

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Are you aware of that direction?---Yes, I am now, sir.

Is it as a consequence of that that you are in your current position at the moment?---That is correct, sir.

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The New South Wales Police did subsequently become involved after you received that first indication. What involvement did you have with them? ---My initial contact with Detective Inspector Hayes was, as I said, shortly after I had that phone call with my OC I had quite a lengthy discussion with Detective Inspector Hayes in reference to obviously the inquiries to date. He understood everything I was saying. He concurred with a lot of actions that I had already implemented. We discussed obviously the incident room. I obviously informed him that procedures had already been put in place to obviously clean the room. Now that I was aware that he may be deploying I said to him that I would take measures to cease that what may be left of the actual room. He acknowledged that himself. Basically, the discussion was just in reference to all the inquiries that had been done to date.

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Is there anything else that you'd like to tell the Board?---I also during this period of time with Detective Inspector Hayes - he informed me of the date that the post-mortem was due to take place, which was 30 April. He asked me also of my requirements of the actual post-mortem. I once again reiterated my earlier comments that I made to the OC in reference to what my requirements were. He also concurred with that. He said to me that they would also look at DNA and that as well, which is a capability that we don't have mainly due to the fact that we don't have any trained personnel to meet the requirements of taking the DNA at this point in time. He also informed me that there was a possibility that due to the

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nature of the death that he was looking at trying to get one of his ballistic experts into theatre, which may be of an assistance to determining certain aspects in relation to the inquiry and basically as I said, it was just mostly around the - the inquiries that we had done to date.

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I then spoke to the OC as we once again obviously had numerous conversations again in reference to the way ahead and what was actually happening during an inquiry. I'd like to also point at this stage, sir, if I may is that this was probably the first real indication and it really made me feel as if that the direct liaison was occurring between us as the investigative agency and another investigative agency. The previous 48 hours from the time that I received the first phone call from the J1J4 in reference to the photograph and the other phone calls in reference to returning property et cetera and other aspects, my OC was dealing through other people and having no direct liaison with other investigative agencies when you're the primary agency trying to do a job is extremely frustrating. You are having people that, whilst I believe they've probably got good intentions about what they're asking or demanding, they have got no idea of the consequences of what some of those demands put on the investigative process and I found it extremely frustrating that me, as a person on the ground here trying to conduct inquiries into a serious matter like this was having to go through and dealing with numerous other people in reference to justifying why I wasn't sending stuff home and - and other people telling me what I had to do when I was a person that was trained and have considerable experience in dealing with these matters.

It was extremely frustrating for me and I think that you may have been handed by now is an email that I sent to my OC the next morning, being Saturday the 29th whereby is that for the actual first time since I'd arrived in Baghdad that I didn't have that weight of frustration of being - of having to answer questions which I - which I found were totally irrelevant at the time and having demands put upon me which I believe were very unreasonable. Right from the outset my point of contact should have been direct to my OC back in Australia and he should have had direct liaison with any jurisdictional investigative authority that was required without having to go through a multitude of other people.

Now, I read to you from Chief of Defence Force's 14 May 2006 instruction, I'll just read some more to you from that, under the heading Command And Control, the Chief of the Defence Force has indicated that:

*Investigator lead-in teams -*  
that is the position you occupy now -

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*are to be integrated into the relevant deployed force for all purposes other than the conduct of investigations into notifiable incidents.*

5 He goes on to say:

*In general, investigation teams are to be assigned under the operational control of the senior ADF Commander in the AO.*

10 Under the heading Reporting, indicates:

*The primary reporting chain during the conduct of investigations is to me -*

15 that is the Chief of the Defence Force -

*through the Provost Marshall, Australian Defence Force.*

20 Do you see that as a correction of the problem that was confronting you that you've described?---Yes I do, sir. It gives to me clear direction that all of my processes and all of my thought patterns and all of my decisions go through the Provost Marshall ADF and then any directions, decisions and that that are made from Australia come from him direct to me and as a person on the ground here leading an investigative team, I only - I only  
25 should be responding to one point of contact in both receiving information and the information that I'm - that I'm sending back to Australia.

30 Is it your evidence therefore that in the action that he took on 14 May 2006, the Chief of Defence Force has largely redressed the technical control problem that was troubling you?---Most definitely, sir, yes.

35 Soldier 47, the Board of Inquiry is authorised to make recommendations. Are there any matters that you wish to draw to the Board's attention in that regard and before you do so, can I indicate to you that matters have been raised about the possibility of utilising coalition investigative and forensic assets in theatre, can you speak to that?---Yes, sir. In reference to coalition assets, the - to actually use those assets you needed to have an investigative capability on the ground in the first instance to formulate the liaison, to know exactly what is in theatre to help you and to actually  
40 assist you. Since I've been on the ground here and my other investigators who are deployed around the area and one investigator who is deployed to the OPSEC area, he has done extensive inquiries with the UK SIB and has ascertained their availability to be able to assist him if the need be as much as I have in my location here liaised with the US CID elements that are  
45 located in my location.

5 Whilst the US CID elements here probably have the same amount of equipment and standard of equipment that I now have, they do not have a laboratory with an actual country to actually analyse the - any forensic evidence. However, that is being addressed by the US forces as we speak and there is an indication that they may have a laboratory actually in location here for any future forensic analysis. It's been positive from them from any type of cooperation and it's - from my part as well, I would be more than happy to assist them if they require with any of that.

10 But for me coming in to do the inquiry initially so as to speak, on the cold with no investigative liaison already been done here, it's extremely difficult to actually understand who is here, where they are located and it's not just simply the matter of picking up a phone and dialling someone or jumping in a car and driving down the road. The operation environment here is very restrictive and also being - keeping in mind, even if you can get that support, that support may not be in your location and still may take a considerable amount of time for that support to arrive in your location. Also you are - to have that support in your location you are obviously asking those elements to expose themselves to other risks that are inherent with operating in an operational environment.

25 In reference to other matters, sir, that you wish for me to actually comment on - actually address is that whilst I acknowledge that the Chief of Defence Force has taken considerable steps to improve the command and control of investigators, I also believe another way ahead would be the establishment of an ADF coroner so that me as an investigator on the ground would know exactly who I was working to from the outset. Whilst we've pointed out the Provost Marshall ADF would be the point of contact, the protocols that would need to be established for any future returns of deceased, any future returns of forensic evidence, where that's supposed to go for examination and all that, there would be a central point of contact and protocols put in place by an ADF coroner. How that happens, the administrations behind that and all those for, I leave that up to other individuals in Australia.

40 But for me as an investigator on the ground is having clear understanding of where I can obtain advice from or where I have to ensure things end up is 100 per cent help me on the ground instead of having to concern myself with those issues once I get into theatre. One of the other things that I would - that I think that I struck was that there were some senior commanders in the tri-service environment that I don't believe have a full understanding of what investigative process needs to happen in relation to sudden deaths. Whilst everybody can speculate about the reasons that they believe caused the death of a person doesn't necessarily mean that the

investigative process doesn't take its full course. The manner of someone's death, especially in circumstances like these, is a matter for the coroner or for a Board of Inquiry. It is not for those who are in location to make that determination.

5

I believe that whether it's some people are just naive or they believe there are more pressing and important matters to be done, haven't fully understood of what the investigative process is there to do and what the outcomes of the investigative process are set out to achieve. I believe that somewhere along the line and just not necessarily for Commanders, but even for senior NCOs who obviously deal with this with their soldiers and everything else is there needs to be education of the reasons why we have the investigative process into these matters and I believe that if that is not done, I believe that once again people that follow me in trying to do these investigations will come up against the same type of rank interference from people who don't fully understand of why we are here and what we are actually doing.

Is there anything else you'd like to say Soldier 47?---Sir, if I might just, in closing for you, is just I - I thought about whether or not to make a full statement or not in reference to obviously my inquiries and everything else is what - I just didn't want to regurgitate obviously the testimony that I've already given today is, but there are few things that I would just like to put on the record if I may. Sir, with your concurrence, I'd like to open my statement by saying that as I said, I don't intend to regurgitate any evidence that I have already given, but I would like to say that it should be known that the conduct of an investigation into the death in an operational zone cannot be likened in all of its aspects to the conduct of a similar investigation in Australia.

30

MP investigators are trying to be able to operate independently in very hostile environments with no infrastructure support and to make at times decisions without the assistance of superiors such is the nature where deployments can have us go. I've stated in my evidence my team of investigators deployed to investigate the circumstances surrounding PTE Kovco's death 24 hours after the incident occurred. The lack of investigative support on the ground at the time of the incident was the starting point for a number of significant and avoidable situations. Those being the loss of potential forensic evidence from the deceased and witnesses, uncontrolled access to the incident site and removing of evidence, the moving of PTE Kovco after direction was given not for him to be moved which eventually lead to his failed repatriation to Australia, witnesses not being in location at the time the investigators arrived, change of jurisdiction of the coroner for where the deceased was to be returned to, the interference that came from certain elements within the

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5 command structure and because we had no investigative support on the ground, no liaison being effective with coalition forces prior who may have been able to assist us on the ground. Also the fact being is that there was no expectation in part that any other agency from Australia was going to deploy in support of us.

10 I join my OC, MAJ Michael Pemberton in saying that I also had taken particular umbrage to the way the investigators have been portrayed in the media. The points I've raised in my testimony are facts and I'm disappointed that the positive acknowledgments of my team have not been notated, especially the significant risk that the team took in obtaining some of the evidence before the Board of Inquiry. Example, just one of these many instances where one of my investigators spent an hour on the roof of the deceased's building in very arduous conditions to locate the projectile fired from the pistol and in doing so, during that time was exposed to the potential sniper fire.

15 Hindsight is a wonderful thing stating what we should've done, but the Military Police SIB and the Military Police chain of command foresaw that by not having Military Police SIB assets as part of the deployed force would one day cause potential problems. Finally, I concur with my chain of command assessment to you over the past days that with better equipment and more manpower we could've performed better in the big picture, but I believe that we conducted within the limitations outlined during the evidence of this Board of Inquiry a very good inquiry. Sir, that's all I wish to say.

20 Thank you Soldier 47. I have no further questions for you. Mr President, I propose to tender the CDF's minute of 14 May 2006 titled Conduct Of Service Police Investigations On Operations.

PRESIDENT: Is there any comment or opposition to the tender of that document.

35 COUNSEL REPRESENTING: No, sir.

PRESIDENT: It's going to be marked as 160.

40 COL GRIFFIN: 160, yes.

**#EXHIBIT 160 - CDF'S MINUTE OF 14/05/06**

45 COL GRIFFIN: Please stand by Soldier 47?---Yes, sir.

PRESIDENT: Yes, thank you. LTCOL Wilkinson, any questions?

LTCOL WILKINSON: No, sir.

5

PRESIDENT: LTCOL Green?

LTCOL GREEN: No thank you, sir.

10 PRESIDENT: LTCOL Berkley?

LTCOL BERKLEY: I'm on my way, sir.

15 PRESIDENT: There will be a short delay whilst we change places so you can actually speak to LTCOL Berkley.

<EXAMINATION BY LTCOL BERKLEY

[1245]

20

LTCOL BERKLEY: Soldier 47, I'm LTCOL Berkley and I represent Shelley Kovco, can you see me?---Yes, sir. Yes, I can, sir, how are you?

It must be early over there?---Certainly is, sir.

25

I just want to take up on a few matters that Counsel Assisting has raised with you in his comprehensive examination of you. An ADF coroner, if we had an ADF coroner, would that coroner need the same powers as a civilian coroner?---I believe so, sir, yes.

30

If we had an ADF coroner, would you see Military Police performing the same duties as the civilian police authorities in the various states and territories as they assist the coroner?---Yes, sir, I do.

35

What do you see as either the equipment, training or technology lag in being able to get the service police to be able to perform the function that is performed for civilian coroners?---Sir, from my early days in the SIB and as I said I qualified in 1988 and that was prior to the SIB being disbanded in 1993 is that we had a very good program whereby is that we had a number of courses available to us, not only just Military courses, but obviously civilian courses whereby as we could do various types of scenes of crimes work. We also, in some areas, had detachments to scenes of crimes units whereby is that investigators, whilst working their Military time and responding to Military callouts after hours, also responded to civilian scenes of crimes callouts and worked with the local police scenes

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of crimes operator in assisting him with crime scenes. We had various detachments and as I've already explained, I was lucky enough to do my detachment to the Victorian Police Homicide Squad. I've also done and worked very closely with a number of state police drug agencies, but in  
5 1993 all that changed with the disbandment of the SIB and being localised and effectively losing technical control of them. I think MAJ Pemberton, during his evidence, informed that there was something like 50 to 60 per cent discharge rate from the SIB. We lost a lot of experience during that time. I suppose I was lucky that I'd spent seven years within that SIB  
10 frame and I had had a fair bit of experience to - to tied me over so as to speak, over the years and to go back on. But I must say that one of the things that frustrates me is a Platoon Commander of SIB elements in Australia is the lack of the wider understanding of investigations that my investigators have to do today and it's not because of their - they don't  
15 have the capacity to accept the knowledge, they just don't - there is no where for them to get the knowledge and to get the experience.

Thank you for that. Now, I want to turn to firstly the misplacement of PTE Kovco's body. It's true, isn't it, that in a shooting death or any other  
20 death, the body is to be treated as an exhibit?---That's true, sir, yes it is.

And you would maintain custody of the exhibit until it reached the appropriate, I suppose, end point for that exhibit, be it either the post-mortem facility or any other place as directed, that's true, isn't it?  
25 ---Yes, that's right, sir.

Now, we've heard MAJ Pemberton say that of course if the Military Police - the body hadn't moved and the Military Police had been able to get to the body, then the body wouldn't have been lost because it  
30 would've been treated as an exhibit, did you hear that?---Correct, sir.

You have been able to have access to the web site for the Board of Inquiry and have been able to view the comments of MAJ Pemberton in that regard?---Yes, I have, sir.  
35

This is not a sneak attack or a trick question. You had custody of the body in Kuwait?---Sir, we - yes, I understand your question and sir, at that particular time I made a decision. Because of the length of time it was taking us to get to - and once again is my belief from the outset of  
40 Australia is I believe that the - the longest period of time that it would take for me to get to Baghdad would be 48 hours. Now I was - obviously I was grossly miscalculated that. No one had actually, prior to us deploying, had actually done that and everything else and so 96 hours eventually getting there was extremely frustrating with the time delays. Also is I  
45 only had three investigators, myself and two others. Due to the fact is that

5 the deceased had already been moved, that transport had already been organised, that he had an escort already been designated from his Unit and the fact is that I was already aware that certain integrities of the investigation had already been compromised, I was becoming increasingly worried that other further problems may arise and that I would need all of my investigative assets on the ground within Baghdad.

10 As it turned out, as you've heard in my testimony, is another problem did arise when I arrived in Baghdad whereby the major witnesses weren't in location which is another frustrating point for me.

15 Unbeknownst to you, they were actually with you?---I take your point sir, is I did have custody of the deceased in Kuwait, however I made a decision that at that particular time I believed that my assets were more required within Baghdad and I was of the belief that - and the way that the deceased was - the coffin that he was in at the time, the transport plans that were in place at the time and the escort that was in place at the time, I believed that there would be no likelihood of what would've actually happened that we do know today.

20 The question I put to you was that unbeknownst to you when you were in the theatre mortuary evacuation point in Kuwait most of the primary witnesses or the most important witnesses were actually near you?---At the time, sir, I wasn't aware of that.

25 Yes, I know that?---It wasn't until I arrived in Baghdad that I became aware of that.

30 All right. Just for purposes of clarification, did you know where Jake's body was going after you identified his body in the theatre mortuary evacuation point in Kuwait?---Is your question to where he was immediately going from there or where his final destination was?

35 Where he was immediately going to go?---I actually seen his coffin wheeled back into what I would call the fridge element aspect of the mortuary with an Australian flag draped over the coffin.

40 Yes. Were you aware that his body was going to be sent to a civilian facility, a civilian morgue in Kuwait?---No, I was not.

45 If you had of been aware of that, would that have raised any alarms? ---What I would've asked is, as I said in my testimony earlier is because of the type of coffin that he was in and it was a aluminium metal type lined coffin and everything else is, the fact is that this - and the coffin becomes part of the forensic aspect of the deceased as well, is that I was of

the belief that he was remaining in that coffin with the Australian flag draped over and that he would be taken directly from there onto an aircraft returning to Australia. Now, if I was aware that he was going somewhere else where there is a possibility that something could've interfered with the deceased had moved into another coffin or whatever, that would've changed my decision in reference to what I would've done, yes.

What would you have done?---In that case there is I would've obviously ascertained what they were going to do with the deceased and obviously make sure that if - and once again is here I would have to go on the reliability of the people making the decisions to actually move him to another mortuary and whether or not he was going to be transferred to another coffin and everything else is more than likely and it's really hard without knowing that information is more than likely, I still may have proceeded with my investigation team because knowing of the problems that I've already encountered to Baghdad. But, sir, I can't honestly say what decision I would've made or anything else at that particular time because I wasn't confronted with that particular issue. It would've been something I would've thought about quite hard, yes.

You thought he was going to be returned to Australia from the theatre mortuary evacuation point in Kuwait, correct?---Exactly right, sir. And I was of the belief and I didn't check this out, but knowing the types of flights that were due in and out with the sustainment flight which is an Australian chartered flight I was just under the assumption that he would just be put on the Australian charter flight which lands at that - which lands at that airport and leaves from that airport.

Escorted by Soldier 2?---I didn't ask - escorted by Soldier 2, that's right, sir, yes.

Now, the theatre mortuary evacuation point, what did you observe as to its record keeping or its ability to pull the correct coffin from the refrigeration?---Well there was no drama, sir, because it had an Australian flag draped on it when I seen it at that particular time.

Did you know whether there was any bar coding done of the coffin that corresponded to the - for want of a better term, admission papers of the body?---I did not see anything directly on the coffin, no, sir.

On 27 April 2006 at 1559, that's at least the date stamp on the copy of this email, you sent an email and I think it was to MAJ Pemberton - - -?---Sir, if you just wait a minute I've got a copy of those emails here if you like and I can just grab it.

45

Please do?---You were saying 26 April, sir, is that right?

27 April at 1559?---Yes, sir, I have that email.

5 It starts with:

10 *Sir, good morning re our earlier telecom there are at this stage two possibilities which may have happened, however until the printing of the weapon is done I haven't discounted a third being someone else.*

Do you see that?---That's right, sir.

15 So it was always in your mind that you hadn't closed off the possibility that someone else may have been involved in Jake's death?---That's right, sir.

But as to the two possibilities that you discussed with MAJ Pemberton, the first one was this:

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*Kovco returns to his accommodation and fails to clear his pistol, the pistol remains in the holster and is placed on the bed frame. A short time later, whilst he is standing at his bed, he occupies the high bunk using his laptop computer, he sees the magazine on his pistol (in holster). Turning his shoulders towards the holster and using his left-hand he holds the holster, using his right-hand he pulls the pistol from the holster, however either the pistol doesn't release smoothly or he applies too much backward force and when the pistol is freed from the holster, his elbow in the backward movement knocks either the bed frame or mattress and the pistol discharges through the lower right side of his face in an upwards direction, exiting the top of his skull and onwards through the roof.*

35 Now, that was a possibility that you arrived at as to the scenario in which Jake died, is that correct?---Sir, it's a thought process that I had and I would like to just qualify that by saying is that from the outset of the inquiry when I discussed with the investigators that deployed with me is that I looked at what I consider is five possibilities into the way the manner of death may have occurred; those being is that his manner of death occurred by a third party, is that there was - a possibility there could've been a deliberate self-harm, possibility of an accidental self-harm, possibility of a malfunction or failure of the actual weapon and the fifth possibility an act of God. So during my whole process is that - and

40

45 my thought process that I did discuss with my investigators and with my

OCs is there are a number of scenarios which I was obviously always going through so that we could make sure that we covered as many points as possible to try and get to the manner of death of the - of the deceased.

5 Thank you for that. I would expect that you would have done that. But this particular scenario involving the accidental discharge of the weapon - you'd seen the room and you note that it's fairly close confines in there? ---That's right, sir, yes, it is.

10 Did that weigh on your thought processes in coming to the possibility of a bump on the arm in which that would cause the pistol to discharge?---Yes, sir. During my discussions with SGT Hession we - because of Soldier 19's evidence the fact is that he was bending down at the fridge at the time removing something from the fridge - I discussed with  
15 SGT Hession is there a possibility due to the close nature and where was he was bending down the fridge is if he stood up suddenly - if the deceased was holding the pistol could he have accidentally bumped him and not known by bumping him. SGT Hession agreed that was a possibility. That was another possibility that we actually looked at.

20 That he accidentally came into contact with one of the other soldiers in the close confines of the room and the weapon was discharged?---That's right, sir, without him knowing it. Soldier 19 was during his statement he gave to SGT Hession and my conversations with him couldn't recall bumping  
25 the deceased or anything like that though.

I want to refer you to an email sent apparently by you on 5 May 2006 date stamped 1637 hours?---Yes, sir, I have that.

30 It has this:

*Sir, reference our earlier telecom.*

See that one?---Yes, I do.

35 You say this:

40 *Both members who were in the room at the time have indicated that whilst there are no designated games that members play with their weapons, they have seen others within SECDET do things with their pistols like quick drawing, alternate (ie silent) cocking, and have a carefree attitude of pulling the trigger when the weapon is unloaded. One was prepared to have that notated in his statement whilst the other wouldn't.*

45

You then go on to say this:

*Both stated they never saw Kovco put his pistol to his head in jest at any time, and that's in both statements.*

5

See that?---Yes, I do, sir.

10 Just before we go on, you talked about the dead man's hand. That's also indicative of a person not intending - it's not a carefully aimed shot with the pistol held, it's also indicative of a person not intending to fire the weapon, isn't it?---That's right, sir.

Just as much as it could be of an intentional shot?---That's right, sir.

15 In other words, it's a rather useless theory, isn't it?---If that's your point of view, sir, yes, if that's the view you want to take.

20 What's your point of view? If you mean it remained equally intentionally or - intentional or unintentional, how does it help us?---Well, sir, I don't know what was going through his mind. At the end of the day we discussed all possible scenarios that may have occurred, sir. It's a process that we go through.

25 Yes, Soldier 47, but you've given me a lot of words. All I'm asking you is this, simple proposition. You can get a stovepipe and one of the theories of it is this dead man's hand. It can either mean that you hold the pistol and the action of the bullet going through your brain deadens the arm and so the pistol doesn't cycle as in a deliberate shot. It also means that if you're not intending it to go off, you're not holding it firmly so that the weapon will cycle, and that's just an equal possibility. I'm asking you as an investigator do you think that theory has any plausibility or any worth at all because it can mean both things at the same time?---I understand your question, sir. Both of those theories that you've put forward were actually considered by us and we actually worked through those through the questioning of the witnesses.

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You go on in that memo of 5 May 2006:

40 *The one that wouldn't have info in his statement also stated that at times back in Australia he had seen other members put weapons to their head in jest. He wouldn't put that in his statement, but I have it as part of my contemporaneous notes in my notebook.*

45 See that?---Yes, I see that, sir.

Then you go on to say:

5                    *So there is no evidence that SECDET members were playing games. But the two mentioned above in their statements mentioned their own theories as to how it happened and they believed that Kovco when the song was playing in jest may have put his pistol to his head in a joking manner not realising that it was still at the action condition.*

10

You see that?---Yes, sir.

15                    You're reporting I suppose a summary of your conversations with Soldier 17 and Soldier 19, are you?---It's a summary of the statements taken from Soldiers 17 and 19 and obviously conversations taken with Soldiers 17 and 19.

You go on to say this:

20                    *As I stated earlier in an email, an interesting theory was put up by both who supposedly didn't see what happened. I still believe that one of them did see and for his own reasons he is not divulging, maybe out of loyalty to a mate or saving embarrassment to the family, but that is my opinion, no proof.*

25

Do you see that?---Yes, I do, sir.

30                    Do you still believe that?---Sir, at the time of that part of the inquiry and everything else that was my thought process to my OC and I don't have any evidence to support that either of the soldiers did see anything.

I understand that as at 5 May that was your thought process. I simply asked you do you still have that thought, do you still think that one of them is not telling us everything?---I don't think so, sir, no.

35

You think they've told us everything?---From what I've seen reported and read, sir, is I believe so.

40                    Now, the last topic I want to get on to is what MAJ Pemberton called interference in the investigative process?---Yes, sir.

You had a conversation with the Commander of the Joint Task Force and Soldier 39 upon your arrival in Baghdad?---Yes, sir.

45                    When did it first come to your attention - was it in that meeting or at some

other time - that the SIB advice that the body not be moved was going to be ignored. I'm sorry, I withdraw that, it's got too long and convoluted. When did you first hear that the body was going to go back to Australia contrary to SIB advice?---The first time I became aware obviously was  
5 when I arrived in Kuwait because when I left from Brisbane I had no phone contact with Australia for something like nearly 24 hours. When I arrived in Kuwait I was informed that the body had been moved.

10 You know that was contrary to MAJ Pemberton's advice and contrary to your intentions as well?---That's right, sir.

15 Did you raise that with the Commander and Soldier 39?---No, I did not because I had no direct conversations with Soldier 39 in reference to the reasoning behind that. I decided to leave that with my chain of command to actually deal with.

20 Thank you, that's what I wanted to know. Did you at any stage have any discussions outside your chain of command, ie with HQJTF 633 or SECDET IX, in which you expressed your advice that the body was not to go back to Australia?---Off the top of my head, sir, I cannot recall, but in saying that, I did have a lot of discussions with Soldier 30 because obviously I was in his location. I discussed a lot of issues with him. I may have raised with him my displeasure of the deceased being moved, but, sir, I can't recall if I did or didn't. But I most certainly did not raise  
25 the issue with 633 though.

30 You were aware through your conversations with MAJ Pemberton though that he had raised it with 633?---Yes, and I was also aware that he had sent a signal to 633 outlining the requirements and the request that he had actually asked for.

35 How was it to work properly this investigation if the body was to remain at say Baghdad?---Yes, sir. If the body had remained at Baghdad we obviously would have attended the mortuary, certain requirements would have been done, ie to document the body, photograph the body and obviously then take custody of the body formally. I would have liaised with the CPP element here. It is commanded by Soldier 46 to see the available Military Police person to accompany the deceased back to Australia. What ideally would have been nice to happen as well is that if  
40 we got to the incident room that depending on departure dates for the deceased we probably may have been able to achieve sending back a number of exhibits at the same time with the deceased and everything else. But it would have been my intention, as with all Military Police and police inquiries, that all forensic exhibits and evidence is in the custody of  
45 police for the safe transportation to the rightful authority that needs to

receive them.

5 Were you ever told by any person in the command of either SECDET IX or HQJTF 633 that the investigation would be risk managed?---No, the only time I heard that phrase was I remember those words from when I spoke to MAJ Pemberton after I was either in Kuwait or I'd arrived here when we had our discussion about how the deceased ended up in Kuwait. I do recall MAJ Pemberton using the phrase "risk manage" in that conversation.

10 I can imagine you must have been upset about what was going on. But did you consider this: did you yourself consider an approach to allied forces who had the capability, particularly United States Forces, to get the body diverted through their facility for at least some sort of forensic investigation or did you sort of bow to the superior power of the coroner? 15 ---I understand what you're saying, sir. No, look, at that particular time in Kuwait and everything else, as I said earlier, I made a decision that because of a number of things that had gone wrong with the inquiry, the length of time it was taking us to get to Baghdad, that my purpose was to get my investigators to Baghdad. I had no knowledge of what capability 20 was available to me in Baghdad from coalition forces. As I said, we had no investigative support on the ground who could even advise me in the slightest bit. Also, sir, what you've got to understand is whilst you're here in this location is that you are very confined. Therefore, that even at SECDET or even in the international zone I don't believe that there is any 25 US CID capability within the IZ to begin with. So I don't know that for a fact because at the time I didn't even have that resource or knew if that resource was there. But the restrictive nature of the operation that we're under and the availability of just ringing up or driving down the road and having coffee and establishing all things is not real. It is just not there. 30

Thank you for that, it wasn't meant as a criticism. I just wanted to know what you may have considered as alternatives. Now, just the last couple of questions. When you spoke to SGT Hession as to the processing of the 35 room you discussed the issue of the utility of taking swabs for gunshot residue from the soldiers' clothing and equipment. Is that true?---Yes, sir, we discussed not so much the soldiers themselves, we were talking about the room in general. We were obviously aware that the two soldiers located in the room with the deceased had obviously washed themselves and their clothes had been washed prior to Soldier 46 being on the scene. 40 We obviously knew that obviously the deceased's clothing had been destroyed prior to Soldier 46 being able to make inquiries in relation to that. We were talking in the generic term of the room as a whole of considering what evidentiary weight would be achieved by GSR from the room and the contents of the room as a whole. 45

5 Were you aware that there was a second pistol in the room?---No, sir, we weren't. At the time that we arrived and went into the room there was only - the two firearms that were in the room was obviously the deceased's pistol, which was proven to have fired the projectile, and the Styre rifle which belonged to Soldier 17.

10 But you would have made inquiries in the normal course of events as to how many weapons were in that room at the time?---Yes, sir, our inquiries obviously looked at the issue of weapons to individuals at the time. There was no indication that any other person was in the possession of a pistol at that particular time. SGT Hession also informed me that when he first came across Soldier 17 and 19 to take statements from them they only had long arm firearms in their possession.

15 Are you saying that whilst your team was there you didn't establish, either through records or simply by asking say the Platoon Commander, how many weapons were in that room?---No, sir, we did establish. We actually asked the Platoon Commander and we had a look at records. It only came to our light after the fact when the pistol had been identified as the one that fired the projectile that there was a possibility that Soldier 17 may have had a pistol at the time.

20 Again I'm not trying to criticise you. You're still not answering the question. Why didn't you know that Soldier 17 had a pistol as at 21 April?---Because from our inquiries there was nothing to indicate he had a pistol on 21 April. There was no pistol located in the room. We had no access to Soldier 17 to establish whether he had a pistol. From our inquiries by SGT White at the Cove there was no indication that he had a pistol at that particular time.

25 Are you saying that SGT White couldn't find any record of the issue of a pistol to Soldier 17?---Sir, you have to ask SGT White that. I tasked him to do certain things and he came back to me with certain information.

30 Again I'm just simply asking the questions that interest us here. You didn't know as at 21 April that Soldier 17 had a pistol that he kept on his body armour?---From my information that I had at the time is that that was correct, that Soldier 17 did not have a pistol at the time.

35 Who told you that he didn't have a pistol?---I can't recall. That was from the information that came back to me during the inquiry.

40 Every policeman says - - -?---I can't - - -

45

- - -“Coming from information,” but received from who?---Well, sir, I can’t recall who would have told me that. It was obviously part of the investigative process.

5 That’s, with respect, a meaningless statement “part of the investigative process”. You’re the investigator, you’re their team leader. There’s no criticism intended in this. Who told you he didn’t have a pistol?---Sir, I’ve already answered the question by saying that I tasked SGT White to have a look at the firearms and everything else. So I will presume that it  
10 would have been SGT White that would have informed me that PTE Kovco had a pistol within the room and there were no other pistols in the room, sir. I can’t recall the conversation. So you’re asking me to try and recall something that I can’t tell you.

15 You didn’t know then that there was another pistol. Did you find out whether Soldier 17 took Jake Kovco’s weapon in substitution of his own? ---I was informed of that, sir, yes.

20 Who informed you of that?---It could have either been when I was at the incident site Soldier 1 or it may have been SGT Hession through discussions. I can’t recall, sir.

25 Now, you know that Soldier 17’s F88 weapon was left in the room and it had certain body matter on it. You’re aware of that?---Yes, sir.

In your mind was there any need to test for gunshot residue around the probable site of where the weapon was fired?---Sir, as I said earlier, we talked about whether or not there would be any value in actually doing that considering the nature of the room, the environment that we’re in, the  
30 constant handling and firing of the weapons for range practices, et cetera, of whether or not there would be any worthwhile value in obtaining evidence to that. Also is, as I said earlier, our scenes of crime kits were so depleted that we didn’t really have the resources available to us to actually do that.

35 I can accept that proposition in relation to body armour and other combat equipment that is upon the soldier, it’s their personal issue, and they take it to the range it’s going to be covered in gunshot residue. There’s not much discrimination. It’s gunshot residue, it just might tell you the  
40 different chemical components?---That’s right.

45 But they don’t take the sheets to their bed to the range. They don’t take their laptop computers to the range. Did you think of testing them?---Sir, also keeping in mind that soldiers themselves every day - - -

Yes or no?---Correction, sir, yes or no is that yes, we did consider but no, we didn't because the transfer of gunshot residue from those soldiers to any parts of equipment within that room was feasible.

5 That's all you had to say; thank you. In relation to the kits that you had, I suppose any sexual assault kit would have swabs, which is basically cotton wool buds and a container to place them in. Most hospitals would have them. You'd agree with that I suppose?---Yes, I would, sir.

10 10 CSH, that facility, do you know if they had any? I'm not asking for a justification. Do you know if they had any?---No, I don't, sir.

Thank you very much, I've got no further questions. Thank you, Mr President.

15

PRESIDENT: Thank you.

**<EXAMINATION BY COL YOUNG**

**[1322]**

20

COL YOUNG: Soldier 47, my name is COL Young. I appear to represent the interests of PTE Kovco. I'm also representing the interests of PTE Kovco's parents, Judy and Martin Kovco?---Yes, sir.

25

I just want to cover a number of areas, but it won't take too long. Do you have a recollection of SGT Hession telling you that there was any blood on the 9 mm pistol that you located in the room?---No, sir, I don't have any recollection of that.

30

Are you aware from your own knowledge if there was any blood on that pistol?---From my understanding from the forensic examination there was no blood splatters on the pistol at all.

35

You've told us that your scenes of crime equipment were depleted, so you didn't have much with you when you went to Baghdad. Is that right? ---That's right, sir, yes.

40

The fly-away team has been in place for some little while?---That's right, sir.

45

Presumably that's designed to be able to move at short notice. Is that right?---Yes, sir, and I think I know where you're going with this. It's in reference to why didn't we have the equipment available, if I might be presumptuous.

Perhaps if you just wait for the questions and then you can give the answers?---Yes, sir, sure.

5 So fly-away team, presumably you have uniform and combat equipment in a trunk somewhere in your office or at home. Is that right?---Sir, the only thing we have in trunks is uniforms. We don't have combat equipment, ie CBA weapons and that at home, no.

10 Perhaps if you tell me as part of your fly-away team what you have readily available to pick up and take with you when you get on an aircraft?---At the time of this incident, sir, or what should have been there?

15 At any time as part of a fly-away team?---Well, sir, at any time what I should have is a cross-section of equipment whereby if I know the nature of the inquiry that I have to go and investigate I can then choose the type of equipment that I believe will be necessary to assist me with that. Now, our SOC equipment today contains a variety of equipment right through from sexual assaults kits through to arson kits through to a myriad of  
20 different types of kits. As a matter of fact in location now I have nearly three huge trunks full of scenes of crimes equipment. At the time when we deployed on this incident what I had available to me at that particular time was a kit that had been - how can I say - refurbished to the best of our ability about a year ago when I checked the fly-away team equipment to  
25 try and meet any contingencies that we incur on an operation. However, on the day that I picked up the kit it had been raided and depleted by my investigators in location to meet the needs of scenes of crimes work that we had to do within Australia.

30 I'm not sure if I quite follow you. In Australia before you leave to go anywhere you have some equipment available to you that you might need. Is that right?---That's right, sir, yes.

35 Within that kit, for example, is there sampling equipment to take a blood sample off a carpet?---Yes, sir, there is.

When you say the kit was depleted and used by others, are you talking about the kit in Australia?---Yes, sir.

40 Wouldn't you ensure from time to time that the kit was complete given that you might need to move at any time at short notice?---Yes, sir, you're right. Once again a check was done at the beginning of the year, like every other checks that we do in reference to equipment that was available. At that particular time the kit was - whilst I wasn't happy with  
45 the full contents of the kit and I informed my chain of command - and

there's one point I need to make here too, sir, is that on the first - in roughly September last year the battalion received the full scenes of crimes equipment that I now have in location here now. They were still sitting in the Q store from September last year up until after the incident involving PTE Kovco. The reason now being that they've obviously been issued is obviously a reaction to the lack of equipment that we had during that period of time. I had made it known through my chain of command to the OC5, MAJ Pemberton, that our scenes of crime equipment, both the fly-away teams and within locations in Australia, were severely depleted and we needed those stores to be issued immediately so that we could perform our function, if required.

Having made an approach to your OC, what did your OC do about it? ---He notified the chain of command back up the QM, as far as I'm aware, sir, and that's as far as I can answer that. Each time that I inquired I was given an answer that we need to get some people there to issue the stuff or it hadn't been inventoried yet or whatever, sir. I can say that there was probably three or four occasions that I've asked for the actual issuing of that equipment.

The chain of command is a useful term at times. You are the senior investigator in the SIB. Is that right?---I'm not the senior investigator. I have been an investigator for many years. My appointment as an officer, as an ASWOC officer within the SIB, I would be classified as a senior investigators, amongst others, yes, sir.

Did you tell your OC that you can't effectively do your job unless you're properly equipped?---Yes, sir, during our conferences - it came up during our conferences on each occasion.

It's the case, is it not, that when you got to room 8 and identified what appeared to be blood stains on the floor you did not have the equipment to take a sample?---That's right, sir.

Just moving to another topic. You told us about a conversation with Soldier 39 and he was reluctant to release to you personal notes taken by soldiers. Do you recall that?---It wasn't so much he was reluctant to release to me, sir, is because he wasn't in possession of those notes. I was informed that soldiers had made notes after the incident and when I raised that topic during my conference with the Commander he showed concerned that he believed those notes were the personal property of those individuals and that we had no right to those notes.

My question is, did you ultimately get access to those notes?---Yes, sir, I believe my investigators when they asked each person did they make

notes at the time each person voluntarily gave those notes which were attached to their statement.

5 You gave evidence that you together with SGT Hession agreed that there was no other entry or exit point in the room. Can you just tell me the process you went through to come to that conclusion?---Sir, it's employing the normal search pattern methods that you begin at a start point, check walls, ceilings and floors, all crevices and cracks, et cetera, from the start point. Then you end back at the actual start point again.

10 Can you tell me if you moved bunk beds or cupboards that were in place or did you not move anything like that?---I personally did not move any. I actually looked behind some. I didn't actually physically move, because you have to understand, sir, the size of the room is extremely small. So it was more a fact of crawling and looking rather than moving, because you couldn't really move things, so as to speak.

20 Would you say that was an effective search to come to the conclusion that there was no other entry or exit point if you didn't move things to see what might be behind?---What SGT Hession did do as he - because what I'm saying now, sir, is the initial look that I did with SGT Hession. When SGT Hession then processed the room he then moved things after he had photographed and videotaped to obviously double check to make sure that those things weren't there. But the initial appraisal of the room I did with SGT Hession was more of a look-see aspect without disturbing the room and also that we could keep the integrity of the room to be actually photographed and actually videotaped.

30 Do you know for a fact that SGT Hession moved things, as I've suggested ought to have been done?---I would assume he would do, sir, in the process of him processing the room for forensic evidence.

35 You mentioned that it's now possible to buy commercially boxes, if you like, to transport pistols and weapons that might be the subject of examination from crime scenes. Do you recall that?---Yes, sir.

40 Do you have any of those boxes in your kit at this stage?---No, I don't, sir. I only actually became aware of that when obviously the packaging issue was raised. Predominantly before that is we've always improvised with the making of those things ourselves in locations because keeping in mind, sir, that when we deploy on operations like this it's not as if we have a car that we can back up with a boot full of gear; we have to carry everything with us. So normally we obviously travel as light as we can with the maximum amount of equipment possible to do the job.

45

5 Given that the 9 mm pistol has been in the Australian Army for some time and is used as a secondary weapon by soldiers on operations, do you think it would be worthwhile, for example, having packaging to cover the 9 mm at least?---Yes, sir, and I believe that's in the process now of being purchased.

10 Soldier 47, I believe we talked about your concerns that the body had been initially moved, which would certainly interfere with you being able to extract forensic evidence. As far as covering hands, are they normally done - or are you aware that hands, for example, to preserve powder burns - is that done with plastic bags or paper bags? What would you do if you - is there a choice or is there one option better than the other?---Well, sir, my understanding with most forensic exhibits is the best type of material to do anything is with paper bag, and that's brown paper bag, because it's  
15 a less treated type material and it doesn't transfer any other types of materials that could affect the forensic value of anything. If paper bags aren't available the plastic bags are obviously the alternative that can actually be done.

20 As far as the pistol, you told us about why you didn't want the pistol left in a plastic bag. A paper bag could have been used but may not have been substantial enough, I guess, it could have torn or broken. Would that be right?---Most definitely right, sir. Keeping in mind we had to transport this pistol halfway around the world, sir, you know, whereby that we  
25 expected the pistol would be in transit from anywhere from 48 hours to 72 hours based on the time it took us to deploy into the area.

30 Just the final area I want to touch upon, had you been in place when this incident occurred you obviously would have been notified something had happened. Would it be your preference that you immediately commence an investigation and that a quick assessment not be done?---Sir, if I was in location if this incident occurred again my advice to the Commander would be that there would be no requirement for a quick assessment, because obviously a quick assessment person is not a trained investigator  
35 in the first instance. And also the likelihood of them contaminating anything in relation to the inquiry obviously would increase.

40 When quick assessments are done by people who are not trained, given that there might be something untoward, can that alert a person, a possible suspect that would then muddy the waters before you got to sort of do your investigation?---That's a possibility, sir, yes.

45 Your preference would be that you have first crack at any witness I suspect?---Yes, sir.

In relation to Exhibit 160, the CDF directive dated 14 May '06, paragraph 13, initiation of investigations - probably in fairness, you don't have this with you of course, do you?---No, sir, I don't.

5 I'll just read the paragraph to you and then ask you a question. Reference C, which is ADFP 614 of the Administrative Inquiries Manual, requires that:

10 *Where a quick assessment indicates that a service offence may have been committed, the matter is to be referred immediately to the Commanding Officer who will decide whether to refer the matter to service or civilian police for further investigation or possible prosecution in accordance with references D and E.*

15 You don't need to know what those are for the moment for the sense of what I'm going to ask you.

20 *This does not override the requirement to immediately report notifiable incidents as defined in reference A to the service police, nor does it preclude the service police from initiating an investigation using their own authority as a service police member under the DFDA. A service police initiated investigation must be immediately reported to the PM ADF who will bring the matter to my direct attention.*

25 My question to you basically is, would you be happy if that paragraph was amended to give some indication that in circumstances such as the one where this Board is looking at, that there not be a quick assessment and that service police immediately commence the investigation? Do you think that needs to be clarified?---Yes, sir, I do. I think that all matters should be reported to Military Police first and it's a Military Police decision and advice back to the Commander if there's insufficient information for us to advise them to do a quick assessment for us or we immediately take the investigation on.

35 Would you say that's particularly the case where there is a death and there's a firearm involved?---Most definitely, sir. I'm of the belief there was no requirement for a quick assessment to be done.

40 Thank you, Soldier 47, I've got no further questions.

PRESIDENT: Would there be an appropriate situation where perhaps the Military Police could do a quick assessment?---Sir, I actually highlighted that in my PAR back to my Commanders in reference to that I believe that if a quick assessment is required in a situation like this for Commanders,

45

5 that the Military Police probably would be the best persons to give that quick assessment after they have done their appraisal of the scene. Being trained investigators, I think the information that we could give back to Commanders that wouldn't compromise the inquiry would be far better than an untrained person who has got no qualifications in the investigation of these matters.

Counsel Assisting.

10 COL GRIFFIN: Nothing, sir, thank you.

PRESIDENT: Anything arising out of my question or any other questions?

15 COUNSEL REPRESENTING: No, sir.

PRESIDENT: Thank you, Soldier 47. That completes this exercise and you may now stand down.

20

**<WITNESS WITHDREW [1342]**

25 COL GRIFFIN: Sir, we have other witnesses available locally. If you consider the time appropriate to take the luncheon adjournment, we could return for the first of those other witnesses.

PRESIDENT: Say quarter to 3?

30 COL GRIFFIN: Quarter to 3, thank you, sir.

**LUNCHEON ADJOURNMENT [1342]**

35

**RESUMED [1447]**

40 COL GRIFFIN: Sir, I call LTCOL Cole.

**<LTCOL CLIFFORD FREDERICK COLE, sworn [1448]**

45 **<EXAMINATION BY COL GRIFFIN**

5 COL GRIFFIN: LTCOL Cole, would you state your full Regimental particulars for the record please?---My name is LTCOL Clifford Frederick Cole, 8239730 HQ 1JMOVGP.

What is your posting at HQ 1st - - -?---I'm the - the Officer SO1 Operations and Plans.

10 Have you been shown a document that sets out your rights and obligations as a witness in these proceedings?---I have.

15 There are some operational security matters that are covered by use of a matrix of callsigns which appear on the table with you, if you have need to identify any person who is in theatre, would you do so by reference to the number that appears alongside the person's name?---Yes.

20 Have you prepared a statement of your evidence for the Board of Inquiry?---I have.

I'll show you a document. You'll see that one version of the document has parts that have been blocked out, do you recognise the document?---I do.

25 Is that your statement?---Yes.

Dated 28 July 2006?---That's correct.

30 Is there anything that you wish to amend or change contained in that statement?---No I don't.

Are you satisfied it's true and correct?---Yes I am.

I tender the statement, sir.

35

PRESIDENT: Yes, that will be marked at exhibit 161.

40 **#EXHIBIT 161 - STATEMENT OF LTCOL CLIFFORD FREDERICK COLE**

45 COL GRIFFIN: LTCOL Cole, how long have you held the position at HQ Joints Movements Group?---About 19 months now.

In your statement in the second paragraph on the fourth line down you describe your duties as including the provision of advice on all movements related matters?---That's correct.

5 And that's to JOC, is that right?---Effectively, yes.

Is it also to other deployed units in the theatre?---Yes, indeed we have personnel deployed overseas and they work for my Commander and work for him through me.

10

Would you tell the Board how you became involved in circumstances surrounding the death of PTE Kovco?---Sure. I was telephoned on the - in the early hours of Saturday 22 April by Soldier 34 to advise me of the apparent death of a deployed serviceman and my advice was sought on the movements of the remains of that soldier.

15

What advice did you give?---I made it quite clear that HQ 633 was responsible for movement within theatre to a designated point and strategic movement from that point back to Australia was an HQJOC responsibility and orders will be given as to how that would be achieved.

20

Who did you anticipate those orders would be generated by?---HQJOC.

And is that pursuant to any particular instruction or doctrine?---Standard operating procedure is that HQ 1JMOVGP is responsible to DCJOPS for the strategic movement of personnel materiel between Australia and the deployed force or area of operations. We work for DCJOPS and HQJOC gives us orders as to what is necessary to be achieved.

25

In paragraph 3 you described at about halfway down the paragraph, you gave some advice to Soldier 34 that she was to respond to HQ JTF633 direction for the removal of the remains for Iraq to a mortuary location in Kuwait designated by JTF 633. How did you know that would happen? ---Because broadly the SOPs for OP CATALYST indicate this and I've been working in the past with mortuary affairs and knew this to be the case.

30

35

You describe in the conclusion of that particular paragraph:

40

*Thereafter the return of the remains was to be undertaken by 1JMOVGP arrangements under HQJOC direction or possibly on orders from HQJOC under Kenyon contract arrangements as had occurred late in 2005.*

45

What particular matter are you referring to there in late 2005?---Is that

name on the list?

5 No. You can mention that name, it's on public record?---WO2 Nary was returned under Kenyon arrangements in November or December '05. We weren't involved in that move, but I understand it was completed successfully. Under normal circumstances movements of any materiel or personnel would have been undertaken through 1JMOVGP, but in the case of the Kenyon contract that was enacted on that occasion, we weren't involved and it was conducted successfully.

10 Do you have any knowledge of the Kenyon contract arrangements described in that paragraph?---Yes I do.

15 What is your knowledge of those arrangements?---I'm aware that the ADF does not have a range of capabilities such a forensic photography, forensic examination, identification and a great deal of experience in the handling of mass casualty scenarios and the Kenyon contract was enacted to deal with those sorts of issues and as pursuant to that capability, mortuary affairs was swept up as an option for ADF to make use of those support services.

20 Have you personally had anything to do with the Kenyon contract?---Only insofar that Commander 1 Joint Movements Group is - has a responsibility in the existing contract to actual works order to enact such support. This has been pointed out to HQJOC in the last 19 months that it's more appropriate that the responsibility be clearly given to HQ Joint Operations Command, not to the DCO, not to the Air Force and not to Joint Movements Group which obeys orders from HQJOC. Because of the appearance of my Commander on there, I've been acquired to comment and analyse the nature of that contract and probably in May 2005 a number of seminars were held with Kenyon personnel and HQJOC personnel to work out procedures - protocols, procedures and processes as to how such support would be employed.

35 As you understand it, I take it from your evidence that the Commander of 1JMOVGP is a person designated in the contract as a decision maker and executive authority?---Correct. But erroneously so.

40 But erroneously so and could you just say again why that's erroneous? ---Because we have no command authority to make such decisions. We will defer to HQJOC for those matters.

45 When was that first raised to the chain of command as being an erroneous situation?---Probably around May of 2005 when the seminars were undertaken. Strategic District Branch who had custody of this document

were advised, but I don't think it was - no action was taken to amend the document appropriately.

5 I'm just going to show you some Defence instructions, there's two of them; one is a Defence Instruction General and the other one is a Defence Instruction Army. The Defence Instruction General is DIGPERS20-6 with a title Deaths Within And Outside Of Australia Of Australian Defence Personnel. The Defence Instruction Army - I should also indicate the date of that document, the Defence Instruction General is 6 June 2003.  
10 The Defence Instruction Army is DIARMYPERS31-3 which has the title Army Funerals dated 26 November 1996. There is a substantial passage of time between the two documents.

15 For ease of reference Mr President, I'll tender them so we can talk about them by exhibit numbers. So I tender first the older of the two documents, the Defence Instruction Army.

PRESIDENT: Anybody got a problem with that?

20 COUNSEL REPRESENTING: No, sir.

PRESIDENT: Exhibit 162.

25 **#EXHIBIT 162 - DEFENCE INSTRUCTION ARMY DOCUMENT 26/11/96**

30 COL GRIFFIN: The document I have is 26 November 1996. And the second document for tender is the Defence Instruction General dated 6 June 2003, being the DIGPERS20-6.

PRESIDENT: Any difficult with its tendered?

35 COUNSEL REPRESENTING: No, sir.

PRESIDENT: Marked then as exhibit 163.

40 **#EXHIBIT 163 - DEFENCE INSTRUCTION GENERAL 06/06/03**

45 COL GRIFFIN: Now, for exhibit 162, being the Defence Instruction Army, would you turn to paragraph 23 which is under the heading Movement Of Remains and it indicates at paragraph 23:

5                    *Movement of bodies is normally to be by service aircraft. Civil aircraft may be used when (a) there is no regular schedule of flights by service aircraft on the route concerned; (b) owing to pressure on mortuary capacity, it is essential to arrange movement earlier than would be possible by using service aircraft; or (c) undue and inappropriate delay would result from waiting for a service aircraft.*

10                  Do you see that?---Yes, I do.

                    Now, if you compare that please with the other document, being the Defence Instruction General at paragraph 20 and 21 under the heading Repatriation Of Remains and it says at paragraph 20:

15                                    *On operations, the Commander of the area where the remains are located is responsible for the evacuation using available ground or air transport to the collection point.*

20                  It goes on to say:

*Where possible, the transport of remains from the collection point will be achieved under civilian contract arrangements.*

25                  It then gives in brackets:

*(reference M)*

                    And if you turn to the document reference M is:

30                                    *DIGPERS20-3.*

                    It then goes on to say at paragraph 21:

35                                    *Each situation will need to be managed on a case by case basis, the purpose being to expedite the deceased member's return to Australia.*

                    And then down at paragraph 21(c):

40                                    *Repatriation of the remains to Australia by the fastest reasonable means possible.*

45                  Those are the two documents that I wish to draw your attention to. Have you any familiarity with either of those documents LTCOL Cole?---With

the DIG, yes. And I have in the past seen the funeral one, but I have not referred to it as a matter of course.

5 I'm now going to show you the Mortuary Affairs Plan that was extant at the time and this is in exhibit 100 which is the BRIG Cosson investigation and it appears at flag AA1. And I believe that the Secretary made that open before you. Do you see the Mortuary Affairs Plan there?---I do.

10 Is this a document that you have any familiarity with and were you working from it at the time?---I wasn't working from it at the time, but I have had exposure to it.

15 Were you familiar with the requirement at paragraph 23, if you can turn to that please and you see there it says in the second last line at the bottom of that page in paragraph 23:

*Unless specifically required under the terms of the Status of Forces Agreement with a host nation, bodies are not to be handed over to local authorities within the MEAO.*

20 ?---I can see that, yes.

25 Were you aware of that direction?---No I wasn't. It would not have been my business to be aware of it because we're concerned about the movement out of that country, so the way that it's contract arrangements or local host nation support, I would not have made a differentiation between those two issues.

30 You were aware of at least one previous experience where precisely the same arrangements were activated, that is the Kenyon contract was used for the return of the soldier who had died in November last year in the theatre of operations?---I was aware of that, but I made no distinction from the use of civilian mortuary affairs, I made the assumption that the American support would have provided - would have been provided to the Kenyon contract, so I did not address that issue. I made an assumption.

40 Are you able to say whether or not you were involved in the decision to initiate use of the Kenyon contract arrangements?---When I telephoned the watch-keeper of having been advised of the incident I made it clear to the watch-keeper that the HQJOC J3 and J1 personnel should be aware of the existence of the Kenyon contract which had been used in the past. I asked for this call to be logged and the information provided to the J1 and J3 so that they could react as necessary and make an informed decision based on the facts which had to be verified by JTF 633.

45

5 What is the role of HQ 1JMOVGP in repatriation once the Kenyon contract is triggered or initiated?---The local contractor, as happened, would've made contact with my local representation, in this case, Soldier 34 and her staff, then they would have made - identified when the body was prepared for carriage, when the embassy had released - arranged for the body to be released, whether it's from a US mortuary or a civilian mortuary, we would've made the transport assets available and coordinated the movement back to Australia and organised the reception arrangements - tracked the remains back to Australia to ensure it was  
10 handed over to the reception parties and the relevant coroner and that's exactly what happened in the two instances that I dealt with.

15 Am I right in saying that there was a more significant HQ 1JMOVGP involvement in the return of the real PTE Kovco once it was recognised that there had been a mix-up in the actual bodies?---Yes, because we made arrangements for an aircraft to be - to be - to coincide with the requirements to deliver the body to Sydney. It was an aircraft that operates under charter to the ADF through my organisation. We coordinated the reception arrangements, however on the Emirates aircraft  
20 exactly the same way as we did for the ADF charter for the second return.

25 Are you able to say whether or not there was any discussion with your organisation about the use of the aircraft for the first attempted repatriation being a service aircraft?---There was no discussion. The first I knew of the decision to return the remains by Emirates was on the Monday morning when we were advised of a initially erroneous return date on Wednesday at 0030 which was later corrected to Thursday at 0030 hours, is the first time that I knew that arrangements had been made.

30 At any time did anybody mention to you a desire or an imperative or a wish to return PTE Kovco by or on Anzac Day?---No. No discussion, no advice, nothing until that email and then we had to react to that email.

35 Why was the repatriation of the remains not in the hands of HQ 1JMOVGP for the first attempt, but it was for the second?---I suppose because of the publicity. The initial return of WO2 Nary worked without our involvement and I imagine, I surmise the decision was made to employ the same protocols, process and procedures to effect the return of PTE Kovco's remains. When that did not work, the imperative was to  
40 find Australian ideally Military aircraft or a ADF chartered aircraft to effect the remains of PTE Kovco the second time around.

45 How long did that take from the time that you were involved, that is received direction, get a service aircraft to the time you identified an asset to use, are you able to say how long that took?---Yes. I was advised of the

error in identification on the evening of Wednesday at around 2120 hours. The coord Army who was dealing with the Minister and CDF at the time indicated that it would be preferable to immediately work on some solution to return the remains as soon as absolutely possible. We had a  
5 number of options and we were working on Sydney, but primarily Melbourne at that stage and possibly Sale. Because of the Muslim weekend there are a number of delays in being able to source charter aircraft. We eventually brought forward the departure of the A330 which is the ADF chartered aircraft and it flew on a high speed flight plan from  
10 Australia, into the Middle East and picked up the remains and brought the body back on a Saturday morning at around 06 or 0730 to Australia. So that was the mechanics of getting the body back as soon as possible.

That timeframe from trigger direction - - -?---Wednesday evening - - -

15 - - - from Wednesday evening to PTE Kovco being on ground back here in Australia Saturday morning?---Correct. And the contractors were contacted that evening to effect the A330 as belt and braces if the other options that we were looking at could not be achieved.

20 I understand your role is to make assets available to Command?---Broadly to coordinate assets that are made available.

Is it the case for the first attempt for the contractor you could have made or assisted with making air assets available had you been consulted?  
25 ---Potentially there were options, C130s which is the normal means if they'd been available, there's no scheduled aircraft. We had two aircraft committed to the Middle East in support to deploy troops. I was not aware whether JTF 633 ever consider utilising these - any of these aircraft  
30 which would've left a big - a shortfall in - in lift in the Middle East. There were four other aircraft which were unserviceable in Townsville at the time. So I don't know whether there were other C130 aircraft which were dedicated to anode at the time being made available. If I'd been asked, the A330 was grounded at the time because of the typhoon in Darwin. It's  
35 possible that we could have chartered a separate aircraft to meet the requirement if I had been asked, but can't say for certain that there would have been aircraft available.

40 Do I understand from your evidence, therefore, that at the time of the first movement of what was thought to be PTE Kovco the air assets available were limited in the way you've just described?---Very limited.

Are you able to say whether or not that was part of the decision-making process to activate the Kenyon contract?---Certainly this information  
45 would have been available to HQJOC staff through HQ Air Command. I

don't know whether the questions were asked, but I assume so. It would have had a bearing I imagine on that decision.

Now, do you still have the two Defence Instructions before you?---I do.

5

Is there anything about the documents, particularly the points that I drew your attention to, about which you feel able to comment, paragraph 23 in the DIA and the matters contained in paragraphs 21 and 20 in the DI(G) in respect of the normal movement of bodies, one being service aircraft and the other one in general terms being from the collection point under civilian contract arrangements?---Whatever the contents of DI(G), the contents of the DI(A) are reasonable and logical and that's what we would default to normally, to use military aircraft where we can and if the aircraft are not available for any reason, we would default to chartered aircraft. Then we would default to what we call regular public transport, RPT. We do this right across the globe every single day. The only thing that I was not fully aware of in the case of Kenyon's whether they would use access to a US mortuary, which is where deceased remains of ADF personnel are held because of support arrangements. I've made no judgment or had no knowledge that they would move the bodies from the US mortuary to any subsequent mortuary.

10

15

20

If you could go back to the mortuary affairs plan that I drew your attention to in the Cosson investigation and turn the page to paragraph 25. You'll see there on the third line of paragraph 25 - I'm sorry, the third line from the bottom - have you found that, COL Cole?---Yes, I do.

25

About halfway along the line it states:

30

*The priority of movement assets to be utilised -*

talking about the return of remains I interpolate -

35

*is in priority order sustainment flight, service means, Kenyon International Airlines, then civilian charter.*

40

?---There's a slight reversal from what I'd normally expect in the Kenyon. I suppose if you delete "Kenyon International" and insert "regular public transport", that would be wrong. But Kenyon International could well have chartered a civilian aircraft. So I don't think anything's untoward in that sentence. It's a matter of semantics I think or intention of the author.

Would you agree with the priorities listed there?---Yes, I don't have any concerns. Sustainment flights if the ADF charter or it can be C130s.

45

Thank you, COL Cole. That completes my questions for the witness, sir.

PRESIDENT: LTCOL Wilkinson.

5 LTCOL WILKINSON: No questions, sir.

PRESIDENT: LTCOL Green?

10 LTCOL GREEN: No, sir.

**<EXAMINATION BY LTCOL BERKLEY**

**[1517]**

15 LTCOL BERKLEY: Colonel, I'm LTCOL Berkley and I represent Shelley Kovco, the widow of the deceased. I've got a few questions for you. But I want to take you to something that was said by Soldier 34 in Soldier 34's evidence to BRIG Cosson. For the purposes of the record, it's flagged at W of that report that's been tendered to us. Soldier 34 was  
20 talking about options to return Jake to Australia. She said this. This is on page 2 of her evidence:

*The three preferences out of the mortuary plan in the admin instruction: service air, sustainment flight or contract.*

25 Did you understand that the contract with Kenyon's was only on an on-request basis, in other words, they weren't contracted to provide all our movements, just if we wanted them to?---Correct, yes.

30 Soldier 34 goes on to say this:

*I discussed with the J4 Movements each of these options in turn. I previously discussed service air with my OPS Warrant Officer who was a load master by trade. I said to him, "If we use service  
35 air, how do we get him back?" He said, "Overnight ...."*

I take it Diego Garcia. She said this:

40 *I also talked to LTCOL Cole SO1 JMG. Overnight .... we can go service air all the way back. He said, "We can't do that because of the Solomons. So there's a shortage of service air."*

Do you recall that conversation?---Yes, I do.

45 She said this:

*We also discussed using sustainment C130 from Australia EO. "No," he said, "We still have the overnight issue at ...."*

5 That's an accurate record to your recollection of the conversation?---Yes.

Soldier 34 was asked in that inquiry question:

10 *Sustainment C130, were you considering that as an option for returning?---Yes, I'm pretty certain it was the Saturday. It was due in that weekend. My OPSO manages the C130s. He was concerned that I wanted to use one of the intra-theatre frames. Then we moved to sustainment. The J4 Movement said no, we'd have to wait till Wednesday. If we use the contract we can do it*  
15 *sooner.*

Now, was that conversation with you?---No, that was J4 MOV at HQJTF 633.

20 Question:

*You were thinking of using service air means before using charter?---Yes. The other options weren't open. My conversation was with -*

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and there's an officer named who was at J4 Movements in theatre.

30 *I don't know whether or not this is in theatre or not. But I presume that that officer discussed it with J14 or Chief of Staff. I said I think we are going to have to use the contract, but JMCC don't have a copy of it. The J4 Movement said he didn't have a copy either. I had a conversation with LTCOL Cole that night and he said, "You can't use service air, can't use sustainment." He said the contract with the JOC. So then he rang JOC, got*  
35 *back to me and said, "No worries."*

40 Do you remember that conversation?---The "no worries" bit, no, I don't recall, but certainly that's broadly in accordance with the nature of discussions, although it's not my decision to make - to determine whether service air is made.

We're just inquiring after the facts. There's no guns pointing here. It's just that it says this:

45 *I had a conversation with LTCOL Cole that night and he said,*

*“You can’t use service air, can’t use sustainment.”*

5 Why was that?---The decision to use intra-theatre aircraft is 633’s responsibility and if they’d made the judgment, then service air would have been used. If there were aircraft available in Australia and HQJOC have made the judgment to use service air, then that would have happened.

10 But I understand that, because I thought Soldier 34 was the mover in 633?---Intra-theatre. Everything else is dealt with by HQJOC between Australia and the area of operations. So we can discuss issues, options, possibilities, could be’s, might be’s, but the decision is nothing to do with JMCC for use of intra-theatre movement of material and personnel.

15 I just want to read these words to you again because the impression I get is slightly different from the answer and I just want to clear it up?---Sure.

Soldier 34 said:

20 *I had a conversation with LTCOL Cole that night and he said, “You can’t use service air, you can’t use sustainment.” He said the contract was with JOC.*

25 That gives me the impression that you’ve got to go with the contractor? ---No, not at all.

30 Did you say those words or words to that effect?---If I said those words, it was in the context of a discussion how the hell can we solve what is going to be a problem. We both knew that the C130s in the Middle East would unlikely be released. We knew that we had a desperate shortage of assets in Australia. We knew that if we had to overnight the sustainment aircraft, which was only single-crewed, overnight in....., we would have coordination problems and we’d have to make rapid arrangements with the US to arrange for reception and appropriate overnight holding. Those were merely issues for consideration. The decision for strategic movement still rests with HQJOC. So whatever discussions we might have, the assets - we knew what assets, what options we had available. But there’s no discussion to must use the Kenyon contract. It was merely an option for consideration.

40 How does that stand then with the instructions that normally we would return one of the fallen by service means?---If possible, if there was a scheduled aircraft.

45 Of course when the balloon had gone up, so to speak, and it was clear that

the body had been misidentified, we brought Mr Sinanovic back to Australia rather than Jake, then we moved things around and used service air and Kenyon were put on the sidelines?---Well, we used an ADF charter.

5

Same thing?---It's a civilian-run aircraft managed by civilians. But it works for Defence.

10 It's operated by the Defence Force for the Defence Force service air, isn't it?---Correct.

Thank you for that. There's a couple of things of course that we want to clear up because you could imagine the interest that the family has in this matter?---Sure.

15

In your statement you also say - I just want to go over to it - at the end that you had some advice from Kenyon. I think it's the very last paragraph of your statement. You see that?---Yes.

20 What did Kenyon advise, how did they assist?---For the first?

On the second one. I mean, the first one?---They were very supportive. They were very professional, they were very keen to - they did not believe themselves to be at fault.

25

I can imagine all that. But what did they do, is the question? How did they assist? I mean, your people got the sustainment flight, you brought it forward, it got over there. We've got Jake now. He's not going to a civilian mortuary. He's held in a military mortuary by the Americans. We go get him from the Americans and we put him on the sustainment flight. How did Kenyon help on that second occasion is simply the question?---It was a bit more complicated than that because the act of moving the remains to a civilian mortuary put it into the jurisdiction of the Kuwait civilian authorities. All the paperwork for the initial return had been prepared on that basis to secure the release of the remains, the processing of the remains into Kuwait International Airport and carried by Emirates. For carriage by what effectively was an ADF asset, a whole new set of paperwork had to be prepared to release the body from that civilian mortuary effectively in the custody of the Kuwaiti host nation and transferred back to the military to enable it to move out of the Kuwait military side onto ADF assets and out of the country.

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I understand that. That happened the first time. Unfortunately it wasn't Jake, it was Mr Sinanovic?---No, that had to happen again for PTE Kovco's actual remains. The act of releasing it and processing the

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paperwork with the Kuwait authorities was - the support was provided by Mr Almeida from Kenyon, the local Kenyon contract. And it was he who was advising us and the embassy and Soldier 34 on the documentation requirements. In the end we had to secure Kuwait CDF signature to effect the release from the Kuwait civilian side to the Kuwait military to enable Australian Defence Force to move the remains back to Australia.

That was facilitated by our CDF talking to the Kuwait CDF?---Yes, I believe so. But Mr Almeida as the Kenyon rep provided a great deal of support and a number of telephone calls between Soldier 34 and myself and Almeida to expedite whatever was necessary to secure the release of the remains.

Did you understand Mr Almeida to be working for Kenyon's or for a subcontractor to Kenyon?---I believe that - I understood that Almeida was a subcontractor for Kenyon's. I also spoke to the Kenyon representative in London to push matters on a bit and secure the release. There was a Kenyon contractor in Australia who was also in communications with Almeida to achieve the same ends.

I mean, people can tell you over the phone, "This is a very difficult process. This is a very difficult process." But do you recall what was the difficulty in the process, like what forms did they need that they didn't have already? Can you enlighten us if you know? If you don't know, don't guess?---What I did know - and we consistently face this problem - that when we hit a Thursday, Friday, which is a Muslim weekend, key officers in Kuwait military or civilian support do not turn up for work. The act of getting the necessary signatures and getting the paperwork is incredibly difficult and time consuming. We were under an imperative to achieve the remains return and we were up against the Muslim weekend. We were actually broaching new ground because we had to get the remains back from the civilian side. And there are lots of rules and regulations, as there are in Australia, back to the custody of the Australian - - -

That's what I was asking. What extra was required that we didn't already have?---I think the primary reason was the doctor's signature for original - original signature on the cause of death paperwork.

The real issue was the lack of bureaucrats there to be able to - - -?---And tracking down the doctor who was in a position to sign off the cause of death.

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

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- 5 COL YOUNG: LTCOL Cole, my name is COL Young. I represent PTE Kovco's interests and also Mr and Mrs Judy and Martin Kovco at the moment. You mentioned a moment ago there's a Kenyon contractor in the UK and also one in Australia?---They're representatives.
- 10 I understand in order to use Kenyon - and this was evidence given by the mortuary affairs officer - that his contact was to UK who then contacted someone in Kuwait. My question is, why could we not go through the Kenyon contractor in Australia who'd then go to Kuwait? Would you know?---No, I don't know.
- 15 Do you know who the representative in Australia is?---I spoke to him a number of times over the telephone during that period. Edwards I think his name is, but - I do know his name.
- 20 So we, being the ADF, have some contact with the person in Australia? ---And we've had contact with Kenyon's - the Kenyon-based organisation in the seminars in May 2005. I think Edwards was one of those people with whom we had contact.
- 25 Would you think it worthwhile that we encourage that face-to-face contact, if you like, with someone in Australia to deal with if there's a need to repatriate someone from overseas?---It would make perfect sense.
- 30 Paragraph 6 of your statement, just towards the bottom there, about the middle of the paragraph, I'll just read for you. You're talking to the HQJOC watch-keeper:
- 35 *If satisfied with the veracity of my information, I advised him that he should alert J1 and J3 staff of the incident and locate the HQJOC copy of the Kenyon standing offer for the provision of emergency services support ad mortuary services so that operations and personnel staff were aware of this support option.*
- 40 My question to you is, do you think you might have inadvertently indicated to the watch-keeper that Kenyon was the way to achieve the repatriation?---No, because the J1 and the J3 staff are paid to make decisions. The watch-keeper has got nothing to do with it. They'll make decisions on the basis of the assets available, the imperative to return the body, and we make the decisions. Officers at that level make these
- 45 decisions the whole time.

So what was your advice adding to their decision-making role?---There was no consultation. I had no knowledge of what discussions took place at all.

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What was the purpose of you ringing the watch-keeper?---Because I had information from my officer on the ground that something had happened and I would normally have been expected to have been consulted and provided advice on the movement options, which I discussed with Soldier 34. In the event, no such consultation took place and a decision was made without contribution from my organisation.

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So in mentioning Kenyon to the watch-keeper you were simply drawing to attention that that was an option?---Correct.

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No further questions.

**<EXAMINATION BY COL GRIFFIN**

**[1536]**

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COL GRIFFIN: LTCOL Cole, I understand from your evidence that HQ1JMG may be involved in providing or making transport assets available to the civilian contractor, Kenyon, or one of its subcontractors as part of the use or exercise of the mortuary services by the civilian contractor. Is that right?---If HQJOC had directed us to provide an aircraft to effect the repatriation of the remains with Kenyon having had previous action in support of that, we would have done it. But really the point of the Kenyon contract was that they would provide a service to ADF and in the case of the Nary incident, there was very little ADF - certainly 1JMG involvement. So if we'd been asked to provide support we would have provided some options.

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Do you have any SOPs to govern that relationship that you're aware of? ---With Kenyon?

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Yes?---Not specific with Kenyon. We've got access to the Kenyon contract and we wouldn't really expect to provide a support to them because we'd expect them to provide a complete service and, if necessary, charter an aircraft. The fact they chose to do it via scheduled regular public transport would have been part of the service they provided. But it wouldn't have been our first choice because of the cascade of choices that we would normally undertake, which is military, ADF charter or some other means.

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Does that follow from that that they're actually mutually exclusive, that Kenyon does what it thinks it needs to do?---Which is why we would have - why someone may have made that decision that it's a package, a solution, when we had very few other options because of aircraft availability or routes or lack of time perhaps.

Does it flow from that that once the decision is made to activate the contractor, that you have through your organisation no control, you don't exercise executive control in how they do their business?---Correct. We may well have been involved at the point of debarkation in Melbourne or Sydney to receive and administer the arrangements. But the aircraft coming in would have been notified to us.

Does it again flow from that fact that once the civilian contract is triggered, that the type of aircraft used is a matter for the contractor, not for you?---Yes.

So if they decide to use civilian aircraft, you have no say in that? ---Correct.

Is that still the situation, to your knowledge?---If a decision was made, for whatever reason, to use the Kenyon contract, yes. In hindsight now there will be a degree of sensitivity in how the Kenyon contract will be employed and how the remains would be brought back. The time imperative would always have a major impact on the decision because if aircraft are not available, if chartered aircraft cannot be purchased, and there was a time imperative, then use of an RPT option could well be the only option that we do have.

Sorry, you used an acronym there?---Regular public transport option, Emirates, a scheduled aircraft movement.

Has there been any amendment to policy arising from the incident this Board of Inquiry is looking into?---There are a number of instructions which are in the process of being given a formal stamp. We know that if at all possible ADF service assets would be used or an ADF chartered aircraft would be used. I suspect that there would be little interest in us using a regular public transport scheduled aircraft.

But there would be little value to be gained from denying the flexibility of using that, if necessary?---Absolutely. Yes, correct.

The Board is authorised to make recommendations arising from its findings and its inquiry. Are there any matters that you wish to draw to the attention of the Board from your expert or specialised knowledge of

5 these matters?---1JMG is responsible for strategic air movements. I was surprised not to have been consulted in the decision, but that's not to say I would have denied the Kenyon selection in view of the shortage of aircraft and any time imperative that hadn't been at that time made available to me. Was it a wrong decision? I wouldn't recommend against the use of the Kenyon contract in the future based on what I know to be the circumstances. So no, I have no recommendations other than that.

10 Policy development, anything you wish to recommend or mention?---No, I think the command control responsibilities are quite clear, that 633, the people on the ground make a decision and they make a decision on the best information available. HQJOC experienced staff, they know what assets are available and they know what their responsibilities are. There was an unfortunate confluence of circumstances that led to this situation.

15 I have nothing further, sir.

PRESIDENT: Anything arising out of that?

20 COUNSEL REPRESENTING: No, sir.

PRESIDENT: Thank you, Colonel, you may stand down.

25 <WITNESS WITHDREW [1543]

30 COL GRIFFIN: Sir, may it please you. That completes the witnesses for today. We return tomorrow with BRIG Symon, the Commander of JTF 633 at the date of the incident which led to the death of PTE Kovco, and staff officers from HQJOC.

PRESIDENT: Very good. 10 o'clock.

35 COL GRIFFIN: Thank you, sir, not before 1000.

40 **MATTER ADJOURNED AT 1543 UNTIL THURSDAY 24 AUGUST 2006 AT 1000**