

TRANSCRIPT OF PROCEEDINGS
UNCLASSIFIED

AUSTRALIAN DEFENCE FORCE

AUSTRALIAN ARMY, VICTORIA BARRACKS, NSW

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

PRESIDING:

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COL M CHARLES, Board Member
MR J O'SULLIVAN, Board Member

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MAJ A BELKIN, Counsel Assisting

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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

1002 THURSDAY 24 AUGUST 2006
DAY 28

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.....  Date24/08/06.....(President)

Signed.....  Date 24/08/06.....(Recorder)

Signed.....  Date 24/08/06.....(Transcriber)

Signed.....  Date 24/08/06.....(Transcriber)

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RESUMED

[1002]

5 PRESIDENT: Good morning, Colonel, good morning, all.

COL GRIFFIN: Mr President, Members, good morning. First witness I call BRIG Symon.

10 PRESIDENT: Thank you.

<BRIG PAUL SYMON, sworn

[1003]

15 **<EXAMINATION BY COL GRIFFIN**

COL GRIFFIN: Good morning, Brigadier. I'm COL Griffin, Counsel Assisting the Inquiry. Would you state your full regimental particulars for the record, please?---I'm 321690, BRIG Paul Symon.

What's your current posting?---I'm currently Director General Personnel Army.

25 Have you had the opportunity this morning to read a document setting out the rights and obligations of a witness in a Board of Inquiry?---Yes, I have.

30 Are you satisfied that you understand your rights and obligations as a witness?---Yes, I am.

Now, Brigadier, at the time of the death of PTE Jacob Kovco on 21 April 2006 were you the Commander of JTF 633?---Yes, I was.

35 Did you prepare statement of evidence which was given to BRIG Cosson as part of her investigation on 3 May 2006?---Yes, I did.

40 I show you a document. Do you recognise that as a copy of the statement that you gave to BRIG Cosson?---Yes, I do.

Mr President, Members, the document is already in evidence as part of the Cosson Report, which is Exhibit 100 at flag EE. However, I propose to tender the statement as a separate exhibit in its own right.

45 PRESIDENT: Is everybody comfortable with that course?

COUNSEL REPRESENTING: Yes.

PRESIDENT: Very well.

5

#EXHIBIT 164 - STATEMENT OF BRIG SYMON

10 COL GRIFFIN: Now, Brigadier, would you tell the Board, please, when you assumed your role as the Commander JTF 633 and how long you were there?---I assumed the command of 633 on 14 November 2005 and fulfilled those responsibilities until May 2006.

15 I'm just going to touch on some matters in your statement and ask you to expand as appropriate. You refer at paragraph 3 of your statement to briefs you were receiving on excerpts from the extant mortuary affairs policy. In evidence is the mortuary affairs policy again contained in Exhibit 100. I'm just going to show that to you. The mortuary affairs
20 plan appears at flag AA1. It's an appendix to an annex of the Commander Joint Operations Admin Instruction 002/05. Do you have that before you?---Yes, I do.

25 Is this the document that governed mortuary affairs during your tenure as the Commander of the Joint Task Force?---Yes.

Is this the document that you're referring to when you say in that paragraph 3:

30 *The J4 was briefing excerpts from the extant mortuary affairs policy.*

?---It was this policy, yes.

35 Was he actually presenting the policy document to you or simply briefing you on the content of the policy?---No, he was verbally briefing me on the contents of the policy.

40 That's a standard process for Commanders to receive briefs on the content of policy as part of your command process rather than you going to the document yourself?---Well, what had happened here of course is that we were trying to deal with a lot of issues simultaneously. What I elected to do was move into the centre of the headquarters where the operation cell was and convene hourly updates. The purpose of the updates was for all
45 of those people who had a role to play, whether they were the J4, the

logistics officer, as you say, or the public affairs officers or the doctor or the chaplain. All the operations staff, an opportunity for them to give me a briefing on where they were at, what the policies were so that I could give them some guidance. So it was a verbal brief and we - I instituted those hourly updates, verbal updates, really from the time that we were first notified of Jake being moved to the 10th Combat Support Hospital through until I would think about midnight that night. Then we slowed the tempo of the hourly briefings.

10 Would you just indicate to the Board, please, your understanding of the boundaries of your area of responsibility in terms of dealing with a casualty or in this case a fatality? Where does the boundary of your control finish? Is it the border of the MEAO, that is, the boundary of the area of operations, and does some other organisation take control outside or at the point where it crosses your boundary?---Well, my responsibilities were for all Australian Forces in the Middle East, whether they were in So that was the size of my national command. But the way the repatriation worked and the way strategic re-supply worked was that at Kuwait in this case there would be a cross-over of responsibilities from my staff and my responsibilities to my superior HQJOC. So from Kuwait rearward JOC was the lead and I would just support.

I just want to draw your attention to paragraph 23 of that particular document that I've shown you. Do you have that?---Yes.

You'll see there that it says:

In the event of the fatal cas the legal jurisdiction under which the remains will fall will depend on military, legal and diplomatic authorities. Unless these authorities make contrary arrangements, the remains will be under ADF jurisdiction. Unless specifically required under the terms of the SOFA with the host nation, bodies are not to be handed over to local authorities within the MEAO.

Now, was that a consideration as part of your staff appreciation process for dealing with the remains of PTE Kovco?---Yes, it was.

40 How did you take that into account and what direction did you give in that regard?---Well, I touch on this in my statement. I realise that paragraph 3 is a lengthy - the first sentence itself is a very lengthy sentence. But what I'm trying to highlight in that particular sentence is the various advice that I was getting in to me. This was one of a number of pieces of advice. So I was aware and was briefed on the policy. I'd been informed by the J07,

the doctor, who had been speaking to the doctors in at 10th Combat Support Hospital, that the body could not be held at 10CSH for a period of time, for a lengthy period of time, because it's not a holding facility. It's a facility that deals with casualties hourly. So I had those two issues. I was obviously weighing up the fact that the body had already been moved from the room immediately to the hospital. So I knew, you know, the body had already been moved at that point in time. I was weighing up the threat situation in Baghdad itself, which becomes an issue as I'm trying to weigh up the most sensible way to deal with this issue, the need for the members of SECDET to actually protect the embassy and to continue on with their task and the other issue. So I won't go through all. I mean, I'll have to if you wish to. But I guess what I'm trying to portray here is that at each of these hourly meetings I'm getting lots of different advice, some of them compete against each other. That's not unusual for a Commander to do this. This would be my fourth operation. This is not unusual in a way. My job is to make judgment. I set out in this the judgments that I made. So certainly that was an issue. I knew in the early hours as I was trying to weigh up the best way to go forward that that was a factor, but it was one amongst a number of factors. I guess it, if you like, steeled my resolve to try and use commonsense and judgment as we dealt with the issues that were unfolding.

You've indicated in that paragraph your determination to return PTE Kovco to his widow as soon as possible and that you directed that the body be moved from the hospital to the US holding facility at the Baghdad International Airport and you indicated a PM on 23 April as a planning time for the departure for the body from Baghdad. Why did you settle on that particular time as an indicator? What were your considerations there?---That was a personal judgment. I didn't settle on it. When the staff are all working very, very hard under tragic circumstances to try and do the right thing, the one thing they actually needed was a milestone. They needed some idea as to where we should be heading. There was some advice was saying this should take a lengthy period of time. I was, as I've indicated in here, disposed to return the body back to the family where Jake belonged as quickly as possible. But I didn't want to cut corners, I didn't want us to make mistakes. I made all of that very, very clear. But on the evening of the 21st when people were in shock, when people were trying to fulfil their obligations and do the right job, they actually needed one thing from the Commander, and that was to get some idea as to where they should be heading for. So I put 23 April down as the marker, but I made it very, very clear to everybody that if that was either going to too fast or we could speed it up, then that's why we're having hourly meetings, you know, keep me informed. But I'm going to go for the afternoon of the 23rd. It seems a reasonable period of time that - I mean, I knew we'd be working through the night of the 21st, as we did.

I knew that we'd be working through the 22nd and the night of the 22nd. So if the stars were in alignment I was really hopeful that we could move Jake out of Baghdad on the 23rd, afternoon. It did cross my mind that - two things. One is Kuwait is a lot safer than Baghdad, a lot safer than
5 Baghdad International Airport and a lot safer than 10CSH. So that was weighing on my mind. It was also fundamentally weighing on my mind that I did want the body to return home as soon as reasonably practical. That's the message that I was trying to give to the staff. I can assure you that in saying that I realised I was as a Commander at some risk here of
10 criticism, either that I'd be trying to move it too fast or moving it too slowly; and they're the competing pressures that you deal with. But I aimed for the afternoon of the 23rd and I made it very clear that if anyone had advice to me to say that is either impractical or the wrong thing to do, then to let me know and obviously I would have adjusted my aiming
15 mark. It was simply an aiming mark.

Brigadier, you've indicated an issue of safety. You'll appreciate that this proceeding at the moment is in open session, this is a public forum. So I'd ask you to bear that in mind and the operational security aspects in respect
20 of the question I'm about to ask you. But it's probably important that people understand and that the Board has an appreciation of what you're referring to there in terms of safety in that environment as opposed to Kuwait. So within the constraints of operational security, are you able to speak to just how the degree of threat in a place like 10CSH or the airport
25 operating at that time around 21 April?---I mean, the circumstance of 21 April, the environment then was not dissimilar to what you have now and the Board knows that only very recently the area of 10CSH and the Australian Embassy was shelled and some servicemen were injured as a result of that. The situation was the same in April. Baghdad International
30 Airport, the military side, which is where Jake's body was held, is similarly a target for insurgents. It is now and it was then. Kuwait, by way of comparison, the threat level in Kuwait is significantly less than that in Iraq. That's not to say that there isn't a threat in Kuwait, there clearly is. But in comparative terms, in me trying to weigh up the
35 differences in security, security in Kuwait is significantly better than Iraq,

10CSH, the military hospital where PTE Kovco died, are you able to speak as to how busy a facility that is?---Well, I know because I would visit SECDET - I would try and visit SECDET weekly, sometimes it was
40 every 10 days, occasionally it would be every two weeks if I was travelling. But I would almost without exception go and call in on the embassy. I would talk to the Ambassador. I'd talk to the soldiers at SECDET. I can't think of an occasion where helicopters were not flying into 10CSH in the time that I was there. I mean, even when we had the
45 memorial service for Jake helicopters were coming in. It's a very busy

facility.

5 Am I right in saying part of the reason for that being so busy is not just servicing American casualties, but also coalition and indeed Iraqi forces as well?---That's correct.

10 You refer in paragraph 4 to activities later that night. But before we move to that time frame, I just want to talk to you about the advice you received before the end of the evening. Paragraph 4 talks about advice in respect of Military Police input. Before that particular time there, which is 0130 D, that is, Baghdad time. Am I right in saying that?---Yes, that's right.

15 So that's early the next morning you were informed about MP input. Had you had any other input from the MPs up to that point in time?---No, because I didn't have MPs on the staff to provide that advice. So that the first MP advice I received is what I'm declaring there in paragraph 4.

20 I'll show you a document. You've actually been given two, but the one I'm interested in is the earlier one?---I've got two of the same.

One of them has been redacted; that's fine?---Sorry, yes.

Do you recognise it?---Yes, I do.

25 Is that an email that you generated?---Yes, it is.

When did you generate that from the date time group?---I generated this on 21 April at 2337 D time.

30 So again that's Baghdad time?---That's Baghdad time. That's 23 minutes to midnight on the 21st.

35 In these proceedings material is protected that is operational security and that relates to the identity of individuals. With your assistance, that document has been redacted to remove the identity of persons who are in theatre. So I'm going to tender, Mr President, the document in both its redacted and classified forms.

40 PRESIDENT: Any opposition to that course, gentlemen?

COUNSEL REPRESENTING: No.

45 **#EXHIBIT 165 - BRIG SYMON'S EMAIL DATED 21/04/06 IN ITS REDACTED AND CLASSIFIED VERSIONS**

COL GRIFFIN: Would you tell us why you generated this document at this particular time and to whom, if you can mention?---Well, I'll speak generically. Firstly, Jake's life was terminated at 1852, to the best of my knowledge, on the 21st. I'd been heavily involved with these staff updates and trying to keep people informed and to try and work through all the issues that were confronting me at the time. I had a - that sort of - this would have been just prior to the midnight update. It was probably the first chance that I had to actually sit down, collect my thoughts and actually put to the Commanders in the Middle East, the subordinate Commanders, because I had Air Force Commanders, Navy Commanders, Army Commanders throughout the theatre and my own principal staff. So you'll see at the top there that abbreviation of MEAO, that's the Commanders. That's an address group that I had for all of the Commanders that were subordinate to me in the Middle East, including Commanders in Afghanistan and other places. PSO stands for all the principal staff who worked for me, you know, including the chaplain and the public affairs people and all that. So primarily they were the recipients and I wanted to make sure that they understood from me (a) what had happened but (b) how they should approach the rest of the night and the days ahead. The information addressees contained key Commanders or staff back in Australia, a number of whom I had been talking to, the five principal people that I had been talking to back in Australia keeping them informed of what was going on. So that's the purpose of the email and they are the main people that are listed on that email.

Does that comprise your first formal consolidation of information to report both down and up the chain, if you like?---The first at my hand, but of course we had sent notification of casualty, a normal advice that we formally send from the headquarters had already been sent known as the NOTICAS. So that had already been sent and authorised by me or the Chief of Staff. We were the only ones - and I made this very clear at the outset - we were the only ones to release those sorts of signals. So the NOTICAS had gone already. The fatal cas had gone, the notification of the fatality from the time at which Jake was deceased. So those documents had already gone and been released. Our next piece of formal work that we were working on was known as the hot issues brief, which included the talking points. Now, I would have to check whether this predates the dispatch of the hot issues brief or postdates it; I'm not sure. We were moving as quickly as possible on both issues. I knew that I had to get advice out to Commanders to let them know what was going on because the word would get around.

Do you recall the content of the hot issues brief?---I know that it covered

5 the fact that Jake had lost his life. I know for fact that it did not speculate
on the cause of death and in fact I made sure that it didn't indicate or
speculate in any way. So I know that the hot issues brief, which I haven't
read since April, but I would stand by what went in that hot issues brief as
being a factual statement of what we knew at the time that we'd released
the hot issue brief.

10 You mentioned speculation and I note that you actually refer to it in this
document. In fact I'd ask you to read paragraph 4, if you would, please?
---Paragraph 4 reads as follows:

An investigation is underway.

15 Would it make sense to read the whole piece?

And to expand on as you see fit. For example, an investigation was
underway; how was it underway, what had you done in that regard?
---Okay. Well, do you want me to read the email complete or stop along
the way and expand?

20 Stop along the way as you do, thank you?---Okay. We'll I'll read the
email.

25 *This evening at 1852, live was terminated on PTE Jacob (Jake)
Kovco 3 RAR at the 10 Combat Support Hospital in the
international zone Baghdad. PTE Kovco sustained a 9 mm round
to the head while in his room adjacent to the Australian Embassy.
He was 25 years of age, is married and is survived by two young
children. OC SECDET described Jacob to me as a happy, very
positive soldier, a country lad, well respected and popular. An
investigation is underway.*

35 By that I mean I had appointed an officer, MAJ Mark Willetts, to be the
officer to conduct the quick assessment, that's what I meant by that
statement "an investigation is underway":

40 *My determination is that every dignity be afforded PTE Kovco in
death. In the short term this means that every staff process and
every staff action must be scrupulously correct. This is how HQ
JTF 633 can most tangibly help the deceased, his family,
SECDET and all his many friends. For Commanders, please
ensure your people are informed of the facts as I have relayed
them to you. Tomorrow, the Australian public will be informed.
Just prior to the announcement, I will unlock the welfare phones.*

45

I'll just elaborate on that. We have a separate of the Military communication system, we have a welfare system so that our soldiers can talk to the family. I had locked that welfare system down because I was dreadfully worried that people would speculate, that rumours would flow, so I shut down the system and then I - as I think will go on, I unlocked the phones. I unlocked the phones at 3 o'clock in the morning so that in particular, the members of SECDET could ring their families and I - it talks about this in the email:

10 *Tomorrow, the Australian public will be informed. Just prior to the announcement, I will unlock the welfare phones. It would be wise for a member serving in Iraq just to ring home, tell their loved ones they're okay, but please, no speculation, that would be most unhelpful. Although I have advised you the name of the*
15 *deceased member, this is not public information and is not to be released to your command. If any of your members know soldiers of SECDET it might assist them with their inquiries. If any specifically ask after or mention that they know PTE Kovco, you are to advise HQ JTF 633.*

20 Now, clearly my purpose here was that, being a large Military, but not that large - you know, people know each other, I was particularly concerned that some of the soldiers in southern Iraq, the that were serving down in southern Iraq that inevitably some of those soldiers would've done courses or something like that with - with Jake. So the Commander of AMTG who was one of the Middle East Commanders, he had the information as to who - who had died, but I'd left that he would not brief the name, but if that any soldiers had come to him and said - you know, is it Jake Kovco, then we would know and then we could make sure that that soldier would be supported and assisted as we explained to him that that was the case.

Would you like me to read the email again:

35 *All our thoughts from the Chief of Defence Force, Chief of Army and me and all members of the Australian Defence Force are with the family and friends of PTE Kovco as well as all the members of SECDET 9. I would appreciate a special word in memory of Jake being made by Commanders on Anzac Day. Lest we forget.*

40 Now, in paragraph 4 of your statement made to BRIG Cosson, you describe in the early hours of the morning, 0130 D on 22 April, receiving advice that:

45 *The MPs had insisted that the body not be moved.*

5 Would you expand on that please?---Yes, this was again, it was a night
where I was getting a lot of information and competing information and
the J14 did come up to me and said that the MPs had said that the body
was not to be moved. I asked the question did they - “Do you know if
they appreciate that the body was moved within minutes of the injury
being sustained?” to which he said “Well I assume they know. And so I
was trying to weigh up in my own mind what exactly that advice meant. I
knew that - you know, clearly the incident site itself would be very, very
10 important to evidence that that was to be left untouched. I knew that that
was all very critical. But once the body had been moved from the room to
be treated, it had been moved. So I was trying to weigh up in my mind
what the - what the logic was behind the movement of the body and it
wasn’t apparent - it wasn’t obvious to me immediate to me what the logic
15 would be. So on the one hand I’m being told that the MPs say don’t move
the body and as I mention in paragraph 3, on the other hand, the body had
been moved to try and save his life, once. I’m then getting advice from
my doctor who is talking to the doctors in 10CSH who are saying - you
know, the body should be moved from 10CSH at some point in time, it’s
20 not a holding facility. The holding facility is at the airport. So the - the
body had been moved once. It was apparent or obvious to me from a
commonsense perspective why there was any impediment to the body
being moved from 10CSH to the facility at the airport.

25 I may have misunderstood you earlier, my understanding was that at the
time that you directed the body move from 10CSH to the airport, you
were unaware of any MP advice?---Correct, the body had already been
moved.

30 Right, so - -?---I’m sorry, I - let me be clear. I had already given the go
ahead that the body be moved from the advice from the doctor that the
body had already been moved from 10CSH. Subsequent to that I received
this verbal advice from the J4 saying that MPs had indicated that he body
should not be moved, but it had been moved.

35 But it had been moved once from the injury site to 10CSH, had it already
been moved from 10CSH to the airport?---It was - at 1.30 in the morning
it was probably just arriving. So I received this advice not to move the
body as probably the body was in the air moving to - well, was proceeding
40 to the airport.

Right, so it was already underway?---It was underway.

45 It was the subsequent decision to move the body from your location, that
is from Baghdad International Airport with your planning date or

indicative date of 23 April that that decision was made after having received the MP advice not to move the body?---That's right and the actual - at this point in time, the evening of the 21st, 22nd, the afternoon of the 23rd was merely a planning date. The actual decision as to when it be moved from Baghdad to Kuwait, I knew that there was time to receive additional briefings and the like. But the MP desire that the body not be moved from 10CSH it had happened, it was - the body was moving, it was subsequent to that and I asked that the information be passed back that the body has already been moved to BIAP and that's - that's where we were at that stage of the night.

Now, you mention in the paragraph further down that you despatched the JO7, that's the doctor, am I right?---That's the doctor.

15 *The Company Sergeant Major to meet the body and escort it on arrival at the airport in order to ensure that everything went well and the escort was coping.*

20 What do you mean when you use that term "the escort was coping"?
---Well I - I'd been informed by OC SECDET who he wished to - who he had selected to escort the body. I thought that was a good judgment on his behalf. I thought that it was very appropriate that the Platoon Sergeant be the person who provide those escort duties. I knew that by selecting a person of that rank and that experience you would have someone who knew the member very, very well and would be able to return the member to his family, his direct family and the broader family of - of the Battalion. But I also knew that that same person would've been, I guess like all of us, under quite some duress that particular evening. My Company Sergeant Major was a very experienced soldier and I wanted to have him as a Warrant Officer go out there and just see how the Sergeant was coping. I knew that he would be - he'd be doing it tough. I mentioned to the Company Sergeant Major that - to just help him with the dealings and the proceedings at the airport and then to bring him back and to - that I'd like to meet the Sergeant when he got back and talk to him. I wanted to sort of weigh up for myself how he was going and I'd also said to the CSM, I want you then to basically bed him down for the night and look after him, make sure he's looked after. So that was the role that I'd given the CSM.

40 Did you in fact meet the escort?---Yes, I did. I met - I met the escort Soldier 2. I met Soldier 2 from memory at about 2.30 in the morning and I called him into the office with - with the Company Sergeant Major, had quite a decent talk to him. He was very shaken as I expected. He - he had indicated to me the gravity of his responsibilities. He had struck me as an individual who was very professional, he had struck me as an individual

who was very caring and was taking his responsibilities very seriously. I knew that he was fatigued. We were all fatigued, but I knew that once we'd had that chat - you know, we could - we could lie - you know, he could have a rest. I knew he probably wouldn't sleep, but at least he could close his eyes and have a rest. But I was very impressed with him and I felt as I've always felt that OC SECDET had made a good choice and with a lot of these issues, I had backed OC SECDET's judgment which I stood by then and I stand by now.

10 In your discussion with Soldier 2, did you outline any responsibilities or duties for him?---I spent more time actually talking to him about Jake. I wanted to know about Jake. I wanted to convey back to Australia and the service chiefs what sort of fellow Jake was so that we could explain to the Australian public the type of soldier was. So - and I - because Soldier 2 was dealing with his own emotions, a lot of the discussion was based more on Jake and about how people were coping there and it seemed to me actually quite helpful to Soldier 2 to just have that discussion and get that - those sort of issues out. We then got on to his duties. He explained to me that he understood that it was his responsibility to - to bring the body back to the family and by the family again, I mean the direct family, but also the broader Army family with the 3rd Battalion. He indicated to me that he would take those responsibilities very seriously. If the nature of your question is, did I at that point of time articulate or specify from him exactly what I wanted him to do, no, I didn't. It would've been, in my view, quite inappropriate to do that at that stage. I think at that point in time it was more important that he be given an opportunity - it was more important that I be given an opportunity, if you like, to size him up and how he was going to go with this task, but also that he be given the opportunity to just talk to me about how he was dealing with it, how SECDET was dealing with it and how he was going to deal with his duties. So I left that discussion, we must have talked for, I guess, at least half an hour with quite a - a sense that he was going to take this - that he would be - you know, very professional, that he would do this to the best of his ability and I had a great deal of confidence that he would do everything in his power to make sure that the right body was returned to the family.

Did you get any feedback from your CSM or the doctor about Soldier 2 at that time?---I - I asked the CSM afterwards, after Soldier 2 had left the office. I asked the CSM to get him to a bed and then to come back and talk to me. So I guess it must have been 3 o'clock or 3.30 he came back and I just asked him how he was going. The CSM was similarly very impressed with him, he was very impressed with his professionalism and felt that he would be a good choice to escort the body back.

45

You say just after that, about the middle of paragraph 4:

5 *On hearing the MP advice I tried contacting Chief of Army to
advise him of the situation and to advise him that the body had
already been moved.*

10 Did you see the MP insistence that the body not be moved to have been
already overtaken by events, that is, that it applied to the movement from
the place where PTE Kovco had died and that that had already happened?
15 ---Yes, I did. That's exactly what I felt. But I knew it was an issue that
needed to be dealt with. I knew it couldn't - I knew that there was a group
of people who were about to be given a very difficult mandate, which was
to investigate this. Whether I liked it or not or whether I thought they
understood where we were at at that point in time, I was getting the
20 message that the body was not to be moved. So I knew it had to be dealt
with. Hence, my call back to Chief of Army and subsequently the Land
Commander who owned the Military Police. I wanted them to understand
the sequence of events that had occurred and the fact that this advice that I
was now getting was post the event.

20 Had been overtaken by events?---Had been overtaken by events.

25 You were unable to make immediate contact with the Chief of Army and
you spoke to the Land Commander who undertook to pass that
information on from you to the Chief of Army?---Yes.

30 Can you tell the Board the substance of that conversation, please?---I just
explained to him the sequence of events that night. I explained to him
really much of what is in paragraph 3 here, the sort of weighing up of
advice that I was taking. So the essence of my discussion with him is
35 contained in paragraph 3. There was nothing more to it than that. I was
just setting out for him the events as I understood them at that point in
time, the various pieces of advice that I had received and the fact that
whilst the body was in transit to BIAP that I had received this verbal
40 briefing that, you know, that the MPs were saying that the body should not
be moved. I mean, I knew it had to be dealt with, it was a serious issue.
But it was important that the Land Commander or the Chief of Army, one
or the other, that they understand the situation so that they could go back
to the Commanding Officer of the Military Police and explain the
circumstances that we were at at that point in time. That was my purpose.

45 At that point in time what did you actually know about the circumstances
of the death in terms of how it had happened?---All I knew was that there
had been a tragic accident in that room. That phrase "tragic accident" was
the phrase that OC SECDET had first relayed to me and was the phrase

that I continued to use, whether speaking to people inside the Middle East or back to Australia.

5 Were you aware of the type of weapon that had fired the shot?---Yes, I was aware that it was a 9 mm Browning pistol. I refer back to that earlier email in paragraph 2 where I indicate there that I was clearly aware that he'd sustained a 9 mm round to the head.

10 Were you aware that it occurred in the accommodation room in the presence of two other members of the unit?---At that stage I was aware. OC SECDDET had informed me of that and had informed me at his first briefing to me, his first call to me, that there were two other members in the room. He informed me that it was an accident and he informed me that neither of those two soldiers had witnessed the accident.

15 Later on that morning you say in paragraph 5 that you spoke with Chief of Army at about 0215 D on 22 April. You spoke with the Chief of Army. Would you tell the Board the essence of that conversation, please?---Most of that conversation was talking about the last few minutes of Jake's life. 20 OC SECDDET had briefed me on the manner in which his mates had said farewell to Jake. I knew the Chief of Army was going to be speaking to the media the next day. I really wanted to try and give the Chief of Army a sense both of what sort of fellow Jake was, what a good soldier he was, but I also wanted to convey to the Chief of Army how proud his mates 25 were of him and the manner in which his last moments were dealt with. So the majority of the call was in relation to that. I was really trying to help paint a scene in the Chief of Army's mind that he understood the sort of calibre of the individual that we're talking about and the closeness of him with his mates. Some of those anecdotes that I gave the Chief of 30 Army about the flag being draped, about the singing of the battalion song and those sorts of things were subsequently relayed by the Chief of Army to the media the next day. The issue about the guidance from the Chief of Army, the Chief of Army was very supportive to me. He indicated to me that we should try and return the body home as quickly as possible. This was very much in the term we should do this, and I agreed with him. That 35 was exactly my intent was well. My guidance to the staff was that we should move the body back as quickly as possible. That was my desire. It was also my desire, as I previously indicated, that in so doing we not cut corners, that if people were aware that it needed to slow down, that they let me know. So the Chief of Army and I were speaking as one here. This 40 is no pressure from the Chief of Army or anything like that. He and I were speaking as one, that it was our desire to return the body back to the family as soon as practical.

45 Was the proximity of Anzac Day a factor in the timing for the return of

the body?---It was on my mind. It wasn't a key factor. I could see a certain poignancy in a good soldier being returned to the nation on Anzac Day. It was in my mind. But it was, as I think I've tried to convey, one of many issues that I was trying to weigh. So it was not the overriding factor by any means. My desire was to get the body back at a time where we were - the processes and procedures would work and that we would get the body back to the family as soon as possible. But it would be wrong of me to say that it wasn't a factor; it was a factor.

10 Was it mentioned by the Chief of Army in his guidance to you that you were to get the body home as quickly as you could?---No.

You mentioned that you think - I quote:

15 *I think I mentioned in passing the MP advice -*

in your discussion with Chief of Army. Are you able to recall now whether or not you did in fact mention the MP advice to Chief of Army in that conversation?---Yes, I believe I did. I believe I mentioned to Chief of Army that I had had - he sort of asked the question, which good Commanders do, are there - what are the issues, what are the issues that you're worrying about at the moment. And I mentioned to him that I'd had this MP advice that the body was not to be moved. I explained to him that the body had already been moved. I indicated to him that I had already spoken to the Land Commander about it previously and that I was comfortable that I had made the right decisions along the way and I was comfortable that from the Army's side of the house, the Land Commander was dealing with the issues with the MPs. I knew full well that if the Land Commander needed to direct me as a result of his discussions with the MP to do something, then he would get back to me, but he didn't. So this was an issue to inform Chief of Army that I'd heard this advice from the MPs, but very much in the context of keeping him informed, but also letting him know that between myself and the Land Commander we are dealing with this issue.

35 Just for the sake of clarifying this aspect, is it your evidence that as of that point in time at around about 0215 D on the 22nd you understood the advice from the MPs not to move the body had been overtaken by events in that the body had been moved now to Baghdad International Airport and that the advice related to not moving the body from the place of death - and that had already happened - was any information given to you or anyone raise with you there should be no further movement of the body? ---No, my - it was confusing advice I was getting because the body had been moved from the room straightaway. So when I got this advice that the body was not to be moved, it wasn't passing the commonsense test.

When the body was moved from 10CSH to BIAP at around about that time, as the body's being moved, that's when I was informed that the body was not to be moved. Now, again I stand by what I'm saying. It wasn't passing the commonsense test. There was a lot of advice I was getting.
5 Some of it was up to date and some of it wasn't up to date. So I'm trying to make commonsense judgments here. I'm moving it - I authorised the body to be moved from 10CSH as a result of the doctor's advice that it's not a holding facility, that the facility is at BIAP. So that had already happened.
10
You didn't know about the MP insistence at that point?---Not at that point in time. So any subsequent advice about - well, the subsequent advice about moving the body wasn't passing the commonsense test for me. I wasn't then seeing that this advice was in relation to, "Well, you must
15 now keep it at Baghdad and not move it back to Kuwait." The body is either moving or - the body has either been moved or it hasn't been moved. So I was seeing the advice that I was getting as not up to date and therefore - hence, my discussions back to Australia to try and make sure that people understood the situation on the ground, understood that the
20 body had been moved initially to 10CSH and then it had been moved to BIAP. So we were already at that point, we'd already done two movements of the body. We needed to make sure that they understood that.
25
Nobody came back to you - am I right - and saying "Don't move it any further"?---No, I never received any advice to say, "The body now cannot move from BIAP to Kuwait." The key to moving the body from Baghdad to Kuwait was that we had the right processes in place, that the Americans who were holding the body in Baghdad that we'd complied with their
30 administration and all those sorts of things - so there's a whole lot of work that we had to do while the body was in Baghdad to then move it back to Kuwait. But it had never - I had not received any advice that it was anyone's judgment other than mine, taking into account all the advice I was given, it was no one's judgment other than mine to make the decision
35 when the body would move back from Baghdad to Kuwait. Now, clearly, if as part of the process, if there was a reason - compelling reason why the body should not move from Baghdad to Kuwait, then someone needed to tell me, but I didn't get that. I mean I simply didn't get that.
40
Now, to turn to the actual movement itself that did take place. Were you aware of the involvement of civilian contractor on the return of Jacob Kovco from the theatre collection point in Kuwait to Australia?---Yes and again as part of the ongoing briefings that we had that J14 had explained that that was the contract that was in place, that JOC would be activating
45 that contract. That didn't surprise me when - when I arrived in theatre in

November, WO2 Nary had passed away and I had been on the range with those members some days before and I was aware that - because I was in Kuwait at that time, I was aware that the processes - I had a pretty good idea - or a pretty reasonable understanding of what the processes in Kuwait were. I knew from WO2 Nary's death that there would be a Military escort, I knew that there would be a member from the embassy who would be involved in - in assisting Kenyon International with the identification of the body and the placement of the body onto the aircraft and that Kenyon International would then do that repatriation. Obviously I had observed in a - you know, in a - I don't say in a detached way, I wasn't Commander at that point in time, but I was in theatre. So I had watched that process work with WO2 Nary and so therefore it wasn't of a surprise to me when I subsequently learnt from the J14 that we would have a process whereby there would be a Military escort, a member from the embassy who would do that identification and then Kenyon International would manage the repatriation, that was not a surprise to me at all.

When did you become aware, do you recall, that it would be a civilian process rather than a Military process, that is service means to return - - - ?---I - I couldn't be sure. It would - I'd be surprise if I was aware before midnight of the 21st, but I suspect it would've been some time during the 22nd, certainly before the 23rd, the afternoon of the 23rd.

Was it your understanding that the decision to utilise Kenyon would be made by HQJOC and not your command?---Yes, I did. I mean I knew that the J14 had explained to me that from - from Kuwait rearward JOC was the lead and we would support any ways that they directed us, but they would - they would lead that part of the operation.

You mentioned that from your experience of the previous matter in November, that the escort would be involved in the identification of the remains. How did you come to that knowledge?---I - I don't know how I came to the knowledge, but when I spoke to the Sergeant that night - you know, I - I knew like he did that - that everyone wanted to return the body home to the family and that the escort was the person who had that terrible duty of - of escorting the body.

He was the continuity of - - -?---He was the continuity. He was - and that's why I thought the decision to use Soldier 2 was - was such a good one, partly because with his years of experience I thought that was good, because of his rank, I thought that was good, because of the character of the guy that I saw, I thought it was good and essentially I knew that he would be, from the families' perspective, the man who literally was with the body right from the start, right until he handed the body over. It

5 wasn't going to be someone that wasn't part of the Battalion family or not part of SECDET. It was actually someone who really cared, who really knew the soldier and to me that was important and to OC SECDET that was important and I backed his judgment then and I back his judgment now.

10 Now, you'll see at paragraph 6 of your statement you're referring to a discussion with your Chief of Staff some 24 hours later which would be therefore the early hours or the evening of 23 April about his discussions with the Military Police about the repatriation of the body. Now, this was before the actual movement of PTE Kovco's remains from Baghdad International Airport to Kuwait?---Yes.

15 He indicated to you that the Military Police were:

Comfortable with what I had done and had commented how the arrangements put in place by your headquarters would in fact expedite MP viewing of the body.

20 Is that still your recollection of that conversation?---Yes, it is and I guess that was just some comfort to me. I felt that - that the decisions that I'd been making in relation to the movement of the body were applying commonsense and my own judgment and I felt that they were right, that I was making the right judgments along the way and when I received that
25 advice from the Chief of Staff, it was - it was soft comfort to me that he was receiving this advice from the MPs to say that - I assumed that this had then been - with the lapse of time that the situation - the predicament that I'd found myself in 24 hours before had been explained to the MPs and so this was, if you like, some feedback to say that there was
30 recognition that the body had been moved within minutes and had subsequently been moved to BIAP and was, if you like - it just reinforced my judgments that I hadn't done anything wrong and that those arrangements, as it turned out, would actually mean that the MPs would - who I knew were flying to Kuwait at the time, would actually be able to
35 see the body earlier than if we'd left it in Baghdad.

40 In the event PTE Kovco's body was moved by service means to Kuwait, but then a dreadful mix-up occurred and that different remains were in fact initial returned to Australia, I'll show you a document. Do you recognise that document, sir?---Yes, I - I do. Can I just record something here. I did the redacted copy for you on the addressees and I've just noticed that it's been put in front of me with the instructions that starts "Watch-keeper".

45 Yes?---And there are - there are some names there, the first two that

should be redacted as well, should be blacked out.

5 Thank you for indicating that, sir. I'd asked Counsel Representing to note
that with the redacted copies that they have and we'll take steps to amend
that after we adjourn. Would you tell the Board what the document is,
please?---This - this document was I guess along similar lines to the email
that I read out before and this is when I first learnt of the mix-up with the
body in Kuwait. My intent was the same as the previous email. It was to get
- to keep Commanders informed as to what was going on. I knew that
10 this awful mix-up would become news very, very quickly and it was
important that I send some messages, some clear messages, to the
Commanders. So this is dated 27 April just after midnight at - well, the
night of the 26/27 April half past midnight. I wasn't in Kuwait and I
wasn't in Iraq at the time. I was making my way to Afghanistan to see the
15 troops in Afghanistan. So I actually sent this message just prior to
jumping on the service transport with the Vice Chief of Defence Force to
Afghanistan. The purpose of this message is to just explain a mix-up has
occurred and try to explain to the Commanders how they should approach
this and the approach that I'm taking to this particular mix-up.

20

Would you read the first two paragraphs aloud, please?---

25 *To all, as you will be aware by now, 26 April will be marked as a
black day in our collective memories of our service with
OPERATION CATALYST. Through some quite unbelievable mix-
up at the civilian mortuary in Kuwait the body of PTE Jake Kovco
awaits repatriation home. This will be expedited as quickly as
possible. Our firm desire all along has been to dignify Jake's
death with accurate staff support and abundant empathy. I stand
30 by you all as National Commander in the knowledge that every
member of JTF 633 who has had a role to play in repatriating
Jake home has worked professionally and with great dedication.
If mistakes have been found to have been made by elements of
JTF 633, I accept responsibilities for those mistakes. If mistakes
35 have been made by organisations outside of JTF 633, I would
expect their senior management to accept responsibility in exactly
the same manner. After all, someone must be held accountable
for this dreadful mistake. Anything less than this approach shows
disrespect to Shelley Kovco and other Kovco family members. A
40 quick assessment has been instigated. No doubt other
investigations will follow. I imagine the terms of reference of the
Board of Inquiry might be expanded to include this incident. As
JTF 633 has done all along, we remain committed to sorting
through these awful obstacles and achieving the effect we desire,
45 that Jake return with dignity with his wife and two lovely children*

as quickly as possible. So please, for those of you with work still to do stay focused and help each other out.

5 Thank you, sir. Sir, I tender the document in its original and redacted form subject to the amendments the Brigadier will assist with after we complete his evidence.

PRESIDENT: Yes, very well. Any opposition to that document?

10 COUNSEL REPRESENTING: No.

#EXHIBIT 166 - MESSAGE FROM BRIG SYMON RE MIX-UP OF JAKE'S BODY DATED 27/04/06

15

COL GRIFFIN: Sir, the Board of Inquiry is authorised in its terms of reference to make recommendations. From your perspective, your unique perspective as having been the Commander on the ground during these particular events, are there any matters that you wish to draw to the attention of the Board or any policy development matters or the like that you feel relevant that you wish to raise?---I only have one. I think I'm aware of some of the policy changes that have been made in respect of repatriation of bodies. I'm aware that it's been directed that the number of escorts should be increased. I feel that that duty is a dreadfully difficult duty for anyone to do. I find it hard to believe in the 21st century that we can't help an escort with some form of technology that means that he doesn't have to view a body any more than necessary. So I would - in terms of policy I would just implore those people who think about repatriation think about human emotion, think about how difficult it is to fulfil those duties. If there are technological solutions that could compliment human solutions, then I would implore that we adopt those policies. That's all I have.

35 Do you have any views on the value to a Commander of having specialist investigative staff close at hand to assist in considering how to deal with matters like this?---Look, I mean, the Chief of Defence Force has changed policy there and has changed practice. He now has your specific - well, I'm thinking when you were asking me that question about MP advice in particular because that's the advice that I didn't have in my hip pocket. I think that changed policy is wise. I think that would have helped me. So I agree with that. I'm not sure that there's any other staff advice. I was getting a lot of advice, but I think that most advice was very professionally conducted and I was very happy with that advice. But I do agree with the Chief of Defence Force in placing an MP in theatre to assist

40

45

a Commander. I think that's a very wise move.

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

5

PRESIDENT: Thank you.

<EXAMINATION BY LTCOL WILKINSON

[1116]

10

LTCOL WILKINSON: Sir, my name is LTCOL Wilkinson and I appear for Soldier 2. Counsel Assisting has covered just about all the matters that I was going to cover with you. But I'm just wondering whether you're aware that Soldier 2 had actually been involved in the incident itself. Had anybody told you that he'd been involved in controlling the room and notifying people and arranging for photos to be taken and things of that nature at all?---I don't recall anyone telling me whether he'd been directly involved. I in the back of my mind assumed that he would have been involved; he was the Platoon Sergeant. I knew that he would have been involved. I knew that he would be - he carries responsibilities when an incident like this occurs. So I knew that he would have had quite some involvement in managing the tragedy.

25 Which might then also explain why you've indicated today that he looked as though he was doing it tough. That would have added to the stresses and the duress that you noted in him that evening as well?---He was like a ghost walking when I saw him in the early hours of the morning. He was wrung out.

30

It wasn't till about three days later that the body was moved from Kuwait. All right. As far as the role of the escort in identification, you've indicated just a few moments ago that you believed that the escort has some role in identification. Where does your understanding of that come from?---My understanding was that - and there's no delicate way to put this - but my understanding was that you have here a piece of cargo, indelicately put, but - - -

35

MRS KOVCO: He was not a piece of cargo. Don't you dare. He was my son.

40

WITNESS: I'm trying to explain the role of Soldier 2 as I understood it and my understanding of Soldier 2's responsibilities was to make sure that the body labelled made its way back to the family.

45

5 LTCOL WILKINSON: If I was to suggest that the only role he has is to ensure that the casket is consigned correctly and that there is no instruction, there is not a single piece of comment or anything related to the role of the escort to take part in the identification process, his role, as you've said, is continuity?---Yes.

10 And the consignment of the casket. So again I'm just wondering whether your understanding is that, in other words, consignment of the casket, or whether you have some other knowledge that I'm not aware of or indeed the Board is not aware of relating to the role of the escort as an identifier? ---Your understanding and my understanding are exactly the same. That is my understanding of the responsibilities. That is exactly what I was trying to say. I do wish to record that in trying to explain exactly what you've said and in trying to explain exactly what my understanding was that is what has upset, understandably, the family. But I was genuinely trying to explain that with words that were not well chosen.

15 LTCOL BERKLEY: Sir, at this stage I'm very reluctant to interfere with my friend's examination. But perhaps it might be an appropriate time for a short break. It's a matter for you of course.

LTCOL GREEN: I was going to make the same suggestion, sir.

20 PRESIDENT: I think there's much wisdom in that. We'll break for 10 minutes.

ADJOURNED [1121]

30 **RESUMED** [1144]

35 COL GRIFFIN: Sir, we resume, I believe, with LTCOL Wilkinson.

LTCOL WILKINSON: If I can just confirm the last thing you said, sir, and that was this that you agreed with me that your understanding then is that the role of the escort is to consign the casket and that you don't have any understanding that he's involved in the identification of the remains of a person?---I confirmed that that was my understanding and I wish I had reflected it in the same words that you had which are far more appropriate.

That's it. No further questions.

45 PRESIDENT: Yes, thank you. LTCOL Green?

LTCOL GREEN: Thank you, sir.

5 <EXAMINATION BY LTCOL GREEN [1145]

LTCOL GREEN: Sir, my name is LTCOL Green, I represent Soldier 14. Sir, you were asked to read aloud exhibit 166, which is your email dated
10 27 April 2006. Sir, I could tell whilst you were reading that, you were obviously feeling quite emotional about the loss of Jake, is that a fair assessment or comment to make?---That's a very fair assessment.

15 Would it be fair to say, sir, that you experienced a fair amount of distress for the loss of the soldier at that time?---Absolutely.

Sir, even though four months have now expired or passed since the loss of that soldier, would it be fair to say that you're still feeling a significant degree of distress over the loss of one of your soldiers?---Absolutely.

20 That feeling of loss has not left you yet, I assume?---No, it hasn't.

Thank you, sir.

25 PRESIDENT: LTCOL Berkley?

LTCOL BERKLEY: Yes, thank you.

30 <EXAMINATION BY LTCOL BERKLEY [1146]

LTCOL BERKLEY: Sir, I'm LTCOL Tom Berkley, I represent Shelley Kovco, Jake's widow and I know we've only had a brief chance to
35 converse this morning, but there's a number of questions that I want to ask you. I want to start off, I think, where LTCOL Wilkinson left off. Now, I have specific instructions from Shelley and the family and she's always told me this that they don't blame the escort or Shelley doesn't blame the escort for the misidentification. In fact that they put blame at the consular
40 level. But you saw Soldier 2 and he's basically ghostly in appearance when he's at the airport, I think that was your evidence?---Yes, it was.

Did you think of replacing him?---No.

45 I understand that there's a lot of people in the MEAO who are going to be

under stresses from to time, but you didn't, at that stage, say he can't do his job?---I - I genuinely thought that OC SECDET had made the right decision. I had watched him from the time he arrived and had been struck by how professional he was and how good his judgment was. So for me to overrule him on his judgment with respect to Soldier 2 was obviously within my remit, but I didn't feel it necessary. I - I genuinely believed then and genuinely believe now that a person in that position is very well placed. It's a very appropriate person. It's very appropriate that someone who was there sees the - takes the body home from the incident back to the family and that that person of the experience that we're talking about with respect to Soldier 2 is appropriate. It's been - you know, my reading of Military history, the role of that particular appointment - you know, has worked through the ages to fulfil those sorts of caring responsibilities for soldiers and I stand by - I stand by that.

Yes, but in short, you saw the man, he's obviously tired, worn out?---Yes.

And in short, you said no, he's capable to do the job?---Yes.

The Military Police advice, I want to get onto that subject. Now, you would've now as at either the evening of 21 April when Jake died or at least by early the next morning that a SIB flyaway team was going to enter your AO?---Yes.

When did you first hear about that, sir, was it on the 21st or the 22nd?---I think it was the 22nd.

The morning of the 22nd?---Quite early in the morning of the 22nd. It was a notifiable incident and therefore I knew that the MPs would be investigating and would take the lead with the investigation.

But I would've thought someone coming into your AO that you would've been notified these people are coming in?---Correct.

Of course you knew on the 21st, the date of Jake's death, that of course the MPs didn't want Jake's body moved?---Yes.

You gave an explanation about the way you dealt with that advice and you said that Jake's body had already been moved from the room?---Yes.

But of course that was a living and breathing Jake that left that room?---Yes.

To the hospital?---Yes.

Do you want to revisit that thought process at all in regard to that?---I'm happy to revisit it. The way you characterise it is clearly not the way I've characterised it, but I see your point. The - the issue then of the competing pressures on me was the indication by the US doctors that the
5 10CSH was not a holding facility, that as - as the Americans do when unfortunately someone becomes deceased in the CSH, the body is moved as quickly as possible to the holding facility at the airport. So that's - it was that advice that made sense to me, was logical to me. I mean I'd seen the sort of way that 10CSH operates. I didn't see it necessary to hold the
10 body in 10CSH.

Did you actually inquire or did any of your staff officers inquire as to how long 10CSH could've held Jake?---No, the doctor just indicated to me that he'd been speaking to the doctors and I don't think that they were putting
15 any hard pressure on us, it would be - it would be inappropriate as a good coalition partner for them to do that. But the - the message was conveyed to me that it's not a holding facility and at some stage I need to deal with moving the body to the holding facility.

20 Did you ever get advice if the body could be held in the American morgue at Baghdad International Airport?---Sorry, pardon?

Did you ever get advice that the body might be able to be held until the arrival of trained police investigators at Baghdad International Airport?---I
25 knew that there was no pressure once the body was at Baghdad Airport. I knew there was no pressure coming from the Americans as to the duration as to - you know, to how long the body stayed there. They were willing for the body to stay there for as long as necessary. So GEN Casey, the Commander there, the American Commander had spoken to me and had
30 indicated that he would do anything he could to help and there was certainly no pressure to move the body from Baghdad Airport.

Now, I want to go back to your evidence because as you'd appreciate if there's no pressure to move the body from Baghdad International Airport,
35 you know that there's specialist police investigators coming into your AO, why couldn't it just stay there?---I knew that the investigators were coming into Kuwait. I don't see - I didn't see then and I don't see why now whether it matter whether they saw the body in Baghdad or in Kuwait. In fact I knew on a distance motion calculation that they would
40 see the body earlier in Kuwait. So that - that was in my mind and the other thing that was in my mind was that I wanted to return the body home to the family as early as practicable.

45 Sure and that motive isn't being questioned by questions, sir, but we still have to go through the process, the family wants to know what thought

process that you used and it just seems, on the one hand, you would've appreciated of course that you've got a notifiable incident and service police would be involved, we know that. They just can't hear your nods over the transcription service, sir?---Yes.

5

The next thing that happens of course, you're going through this process. You would've appreciated of course that Jake may have yielded some evidence of his demise from his body, in other words, there is a forensic value in viewing the body of a deceased body, you would have appreciated that?---Yes, of course.

10

And that of course the more handling the body of the deceased goes through there is a possibility of loss of that forensic evidence?---I understand.

15

Did you actually appreciate that at the time that that was a risk that you were going to be taking, that there was a risk in moving Jake from Baghdad International Airport to Kuwait and that risk being the possible destruction of evidence?---The risk that was going through my mind was Jake's body being in Baghdad versus his body being in Kuwait. That was the risk that - that I lived and breathed in the six months that I was Commander. If at any - if at any point in time anyone had said to me that you are risking the body, you should not move the body from BIAP, rest assured I would not have moved the body.

20

25

I think that answers the question. So that was not part of your decision making process is what I'm getting at, that risk was not a part because it simply hadn't been advised to you?---Correct.

30

In any event and I just want to go back to this, in any event when Jake left room 8 alive, although mortally wounded, do you say that because Jake had left the scene of the incident that you considered that further movement of the body would not affect the investigation of the incident? ---That was my judgment, but as I've indicated all along, I was always willing and ready to receive advice contrary to my judgment and adjust my plan accordingly.

35

It was certainly the - and you've got it in your statement, the statement you made to BRIG Cosson on 3 May of this year, paragraph 4 at approximately 22 0130 D time in April, you were informed by J14 that the MPs had insisted that the body not be moved, see the word "insisted"? You said you'd already despatched the JO7 the CSM to meet Jake and escort on arrival at Baghdad International Airport:

40

45

in order to ensure that everything went well and that the escort

was coping.

See that?---Yes.

5 Then you say this:

On hearing the MP advice I tried contacting the Chief of Army to advise him of the situation and advise him that Jake had already been moved.

10

See that?---Yes.

15 It was obviously something that was important to you as a Commander to go to the Chief of Army at that time in the morning, trying to contact him to discuss the fact that you'd got advice on the one hand and we're not going to follow it on the other. Would you agree that it was very important?---Absolutely. I wasn't going to ignore the issue. I didn't - I didn't think the issue was an issue, but I wasn't going to ignore the issue. I didn't want strands, you know, left out there and that's why I tried
20 contacting the Chief of Army.

About 45 minutes later you were in contact with the Chief of Army. Then you say this:

25 *I think I mentioned in passing the MP advice and indicated that Land Commander Australia was dealing with the issue.*

You agree that that's in your statement, sir?---Yes, I do.

30 There seems to be a disconnect there. At one stage so important that you would speak to the Chief of Army to discuss the fact that the MP advice isn't going to be followed, 45 minutes later, still in the middle of the night, you think you mentioned it in passing. Is the terminology wrong there?
---No, I think the terminology is right. I think the terminology is right, but
35 the immediacy of it as an issue had in my mind been partly dealt with by the fact that I had spoken to GEN Kelly, the Land Commander who owns the MP. As I've said all along, I think I thought in my mind that what we are having here was a time/space problem, that the MPs back in Australia felt that the body should be held in place, that they didn't understand and appreciate that the body had been moved alive, the body had subsequently
40 been moved. I was just trying to therefore align the understanding back in Australia with the reality on the ground. So in contacting the Chief of Army I was - I didn't make a big issue then of this MP advice because I had discussed it with GEN Kelly and GEN Kelly had indicated to me that
45 he would work at his end to make sure that there's a common

understanding between people back in Sydney and people in Baghdad.

Of course it's not until later that day on the 22nd that the SIB fly-away team actually deployed?---Yes.

5

Were you aware of their deployment from Australia? Were you aware when they were exiting Australia coming to your AO?---I was informed that they were leaving.

10

One of the many pieces of information that you would get in any one day as a Commander of a very wide operational area no doubt?---That's right.

15

But tell me this: were you aware that your Chief of Staff had contacted MAJ Pemberton from the SIB and said, "I hear your advice, but we're going to risk manage the repatriation." In other words, "Thanks for your advice, SIB, but we're going to risk manage the repatriation of Jake." Were you aware of that?---I'm not aware of him making that statement or using that particular phrase. But it's I think unsurprising in a way in that when I had been informed initially, as I indicate in this statement, that the MPs are sending the message from Sydney don't move the body and I'm saying, "This doesn't make sense, we need to get Sydney and Baghdad on the same time zone understanding of what's going on," that it would be hardly surprising that the Chief of Staff would feel that I was using commonsense, I was using judgment in the movement of the body.

20

We've got a soldier, Australian soldier mortally wounded in his barrack room. The only movement is he goes to the hospital from the evidence a very efficient and great feat from his mates, they got him there very quickly. He's operated on, medical procedures are applied and a decision is taken later that night of course that the life support for Jake is to be turned off. You're aware of all that. At this stage nothing has happened other than we've got a mortally wounded soldier. He's only gone where he should, to the hospital, and we've got a critical incident. You'd agree with that?---Yes.

25

One thing from Shelley's point of view that she wants to know is this: that couldn't have meant to you surely that because he'd been moved he could be moved further. I mean, forget everything else, he has to get to the hospital?---Yes, sure.

30

Again I go back to that point. Was that really a part of your consideration that he could be moved further, the fact that he'd gone to hospital?---Once he was deceased my desire was to return the body home to his family and to get there there were two milestones - given the repatriation milestones - that we had to work our way through. One was to the airport, which is a

35

proper holding facility for bodies, and the other was Kuwait.

5 But he would have gone to the airport anyway, wouldn't he?---He would
have gone to the airport anyway and he would have gone to Kuwait
anyway. So the question then or the judgment that had to be made is
whether there is anything stopping us or slowing us down procedurally - if
I'm doing anything wrong by saying to the staff, "Let's start the process
moving. Let's move the body from 10CSH to the airport and let's use the
10 afternoon of the 23rd as an aiming point to then move the body from
Baghdad back to Kuwait." As I tried to explain at the very start, in trying
to both make those judgments and give that advice to the staff I would
have always checked myself if at any point in time any medical advice or
any other advice came my way to say that's the wrong thing to do, don't
15 move the body. The issue with the MPs is that when the advice came to
move the body, it's the first I'd heard from the MPs they weren't to move
the body; the body had already been moved. So I couldn't turn the clock
back. Then I thought - and I still think - that we had a mismatch of
timing, that Sydney didn't know that we had already moved the body. So
we needed to explain the judgments that had been made based on all the
20 advice I had. That's why then subsequently it came as some comfort to
me 24 hours later when I get the next piece of feedback from the MPs
which is that they understand, they appreciate why I made the decision
and in fact they will be able to view the body sooner by the body being
back in Kuwait. They're the judgments that I made. I will learn as a
25 result of this BOI if those judgments were flawed. But I can assure you
that none of those judgments would have been made if any of the staff that
I was gaining advice from said, "You're making a fundamental mistake
here by moving that body." If I'd received the advice that the body should
not be moved from 10CSH from anyone, then I would have obviously
30 deferred to playing it safe and I wouldn't have moved the body.

Sir, thank you for that. But again the statement that you made, paragraph
4 says:

35 *I was informed by J14 HQ JTF 633 that the MPs had insisted that
the body not be moved.*

40 You seem to be differentiating, with respect, between that's the advice,
that's insistent, but my staff advice wasn't that it couldn't be moved?
---But the important point about the phrase that you've just made and the
insistence is that it's post the event, the body has been moved. So they
can say to me that they insist it not be moved, but it's like fifty-fifty
hindsight in everything. I was getting advice post the decision, post the
judgment. So if this instead of saying at approximately 22 0130 D, if it
45 actually said at approximately 21 2130 I was informed by J14 HQ JTF

633 that the MPs had insisted the body not be moved, the body wouldn't have been moved until I'd sorted through what the issues were.

5 Do you think that the MPs might have known that Jake passed away in hospital and that it would be inherent in their understanding that Jake's body lay in 10CSH?---I didn't know what the MPs knew and I didn't know what the MPs didn't know. But I did know that when I got that advice the body had been moved; it was post the event.

10 Now, we are going to hear from Soldier 39, your then Chief of Staff? ---Soldier 39 is my Chief of Staff, yes.

That's right, and we're going to hear from him. In paragraph 6 of your statement dated 3 May 2006 you say this:

15 *Some 24 hours later I recall my Chief of Staff, Soldier 39, telling me that he had spoken to an MP Major about the repatriation of the body. He indicated to me that the MPs were comfortable with what I had done and had commented how the arrangement put in place by HQ JTF 633 would in fact expedite MP viewing of the*
20 *body.*

See that?---Yes.

25 To the best of your recollection, sir, that is what Soldier 39 told you? ---Yes.

We've had evidence here from that MP Major that he was very unhappy, that there was no concordance concomitance or meeting of the minds
30 between he and Soldier 39. Again I suppose it's where the buck stops. But that was the advice that Soldier 39 gave you and you have a clear recollection of that?---Yes. But the buck stops with me. He's my Chief of Staff and I am responsible for the staff. I was the Commander. So let's not - - -

35 Indeed, sir. In fact you say in your signal - and I notice, sir, that you obviously work very long hours because - and I don't mean that in any smart way. A lot of the things you're doing are at night. But you did send a message that says:

40 *If mistakes have been found to have been made by elements of JTF 633 I accept responsibility for those mistakes. If mistakes have been made by organisations outside JTF 633 I would expect their senior management to accept responsibility in exactly the*
45 *same manner.*

Of course you're certainly not going to shirk any responsibility that might be shouldered home to your organisation?---No, I'm not.

5 And I appreciate that. Please don't think me impertinent, but I have to ask questions to alleviate the family's inquiries, particularly Shelley's. Now, if Jake had been handed to the custody of the Military Police for repatriation by service means it's unlikely we would have lost him. Would you agree with that?---Well, you know, I've been really pushing
10 hard and I pushed hard at the time not to speculate. So you're asking me to speculate. Of course I've got sympathy with what you're saying. I think you're absolutely right. But I have really been big on this speculation game. So I'm not going to answer your question as a speculation.

15 How about we go this way: it's a fact that as soon as he got out of military custody he got lost; that's a fact?---It's a fact that a mix-up occurred.

20 They lost his body. They sent Mr Sinanovic back to Australia and Jake wasn't in military custody then, was he?---That's right.

Recommendations for the future, would you support as a Commander the repatriation of bodies of our fallen to Australia only by service means, if at
25 all possible?---Yes, I would support it absolutely, and I add if we can take some of the human dimension out of this difficult task, then we should do so, which is the point I was making about - - -

30 Indeed. Of course our cousins from the United States of America being far bigger and far better funded they have all sorts of people, they have mortuary affairs teams and all those sorts of things we just don't have?---I don't think the Americans escort their bodies back in the way that we do. I think it's an Australian - well, it's certainly been an Australian tradition more recently and I think it's a very important tradition and I think it's a
35 very proud tradition that we should sustain.

What do you say about this policy of reach back? You see, if you would have had SIB or dedicated Military Police on your staff, then you would have got that advice - and that's not speculation?---Yes, I agree.

40 Reach back in the MEAO. I understand the sensitivities of this. But for that sort of specialist advice it's just not going to work, is it? A Commander just doesn't have the advice?---Well, the advice - of all the advices that I've had - I've indicated previously that the advice that I
45 didn't have in my hip pocket was the MP advice. Clearly I needed MP

advice.

As the Commander of JTF 633 you're also the Commander of the logistics asset in Kuwait?---Yes.

5

Could you have just said, "Don't worry about the three days or two days of going through this process of being briefed. Come straight through, first available means." Could you have done that?---I don't understand. Do you mean by military means or by - from Baghdad straight through type of thing, do you mean?

10

If a person was deploying into your AO they would normally go to the FLAAK in Kuwait and they'd spend some days there and they'd undertake the procedure?---Yes.

15

They would exhibit training and be tested on certain aspects of their military service?---Yes.

20

You could waive that at any time?---Yes. Following a risk assessment I could waive that.

25

So we've got a fly-away team coming. Did anyone ask you, did the MPs ask you, waive this time at FLAAK Kuwait, we need to get to the evidence now? Did anyone ever ask you that?---I don't recall being asked.

30

What we've got here is evidence that the MPs were delayed some time in Kuwait, as is the normal custom or the normal procedure. So the evidence in the room is ageing and they're delayed from getting to it. Did any of your staff appreciate that aspect of the delay in Kuwait?---I'm not sure that they did. I think that we had a culture in the headquarters that genuinely was not trying to impede, step in the way or work at cross-purpose to anyone's desire to do the right thing. It wasn't the culture. That's why I'm happy and proud to put my name to say ultimately I'm responsible for all the staff actions, because I know the mood the headquarters, I know the culture that was there. I know that they had both enough faith in me and the communication inside the headquarters that if anyone had said - if anyone had information that needed to be weighed up to change the course of events that we were putting in motion, that they would have done so.

40

45

I understand that. One thing that has worried Shelley is that okay, there's been a delay. Is that because you've got a critical incident and it just seems to me to be fair that it was a failure to appreciate the investigative needs; that is why the MPs had to wait around in Kuwait. Is that fair to

say?---I wasn't aware of any artificial delays being put on anybody.

5 It's not an artificial delay?---I'm not aware of any delays being put on anybody. I was genuinely keen that we progress sensibly forward as quickly as possible, you know, to help the MPs. I knew the responsibilities they were carrying and also to return the body home.

10 In hindsight then would it be advisable that if this happens again the Commander would say, "Don't worry about stopping at the FLAAK in Kuwait, get here as quickly as possible." Would you accept that as a hindsight view?---Well, it doesn't need to be hindsight, I agree with it anyway. And I didn't realise that they were held up. That's my point. I think in hindsight the set-up that I developed inside the staff of the hourly meetings when you're dealing with a crisis needed to broaden itself as we
15 got into the days after. That's what I regret. I think that I was trying when we were in crisis mode to make sure that we came together and align, and we were doing that on an hourly basis. Now, after midnight, 1 o'clock we didn't need to remain on an hourly basis. But the lesson I take away is that in days two, three and four where there are a lot of competing pressures there's a lot of advice that you're taking. There are some who - there's me who would like to return the body as quickly as possible. There are others who I'm trying to work out whether I need to slow things down or not, I'm trying to weigh this advice up. Then I think that same format should have probably been - should have occurred, you know,
20 perhaps every three hours, every four hours, and not only include people in Baghdad but include OC SECDET in the international zone, include the OC of the FLAAK, include, if necessary, the CO of the Military Police Battalion. I mean, we've got the technology to do that. So I think that the procedures that we put in place early were right to try and deal with all of the competing pressures and the various advice that was coming in. I feel that the culture was right, that if mistakes were being made or if we were trying to do things too quickly or we needed to slow things down, that we had the systems in place that people would alert me. Ultimately someone had to make the decision and I was the one being put on the spot to make
25 the decisions. It was not my intent to either move too quickly or too slowly. I wanted to move at the right pace and I regret that - again with fifty-fifty hindsight - that I didn't, for example, broaden the staff briefings out to other players who would be involved in this, OC FLAAK, perhaps the CO of the MP, perhaps the Land Commander, you know, other agencies, all of whom had a view as to how this should be dealt with.
30
35
40

The fact is that you know yourself as an experienced Australian soldier, as an adult, evidence doesn't get better with age, does it?---No, it doesn't.

45 You know that and you carry that knowledge with you as Commander of a

task force?---Yes, indeed.

5 You'd know that the fly-away team is deploying from Australia on 22 April and it takes them - yet they don't arrive in country for four and a half days. They weren't on a slow boat, they flew. You know that there is procedure where people are going to be required to stay at the FLAAK in Kuwait for a number of days. What evidence can you give us there? Is it appropriate, be it hindsight or anything else, that when you have specialists coming in for a job that they too wait in Kuwait?---Well, 10 there's no hard and fast answer. There's risk in the Middle East and you're forever as Commander weighing up risk. I saw as a positive - and history may record otherwise - the fact that the Military Police would be in Kuwait and the body would be in Kuwait. So, as I've put in the statement, actually that would expedite their viewing of the body. So I 15 didn't see what was occurring in Kuwait as a moment in time where we were either being unproductive or we were - I was in no way obstructing the investigation, because I know my responsibilities towards the investigators and helping them in every way.

20 No-one is suggesting for a moment that you obstructed anyone, sir. What we're going down this line - and this is the question that needs to be asked - you're the only one that can answer it. If say the Board found that the military investigation was interfered with, impeded, albeit innocently, would you be accepting the responsibility for that?---If my staff or I were 25 found, I would accept that. I would seriously regret it. But I would accept responsibility.

I can understand that we have all the good words for the people under your command now we're here investigating one small part of it. But the 30 fact is were you aware of the basis of the Kenyon contract with Defence? ---I was aware of the contract with Kenyon and I'd seen it some months earlier with the repatriation of WO2 Nary.

35 Were you aware that it's on demand, in other words, on request? They don't have the right to repatriate under the contract. They will perform a contractual obligation with us if we say, "Repatriate this body, please"? ---I mean, I'm not surprised that you would say that would be the case. That makes sense to me, but it wasn't - you know, I've explained that from Kuwait rearward was the responsibility of JOC. So I knew that 40 those sort of judgments would be being made.

That's what I want to get to. In your mind that was - the rear of Kuwait JOC is responsible for that?---That's right.

45 When Jake moved from Baghdad to Kuwait, were you still responsible for

him then?---Absolutely.

5 Again there's no impertinence implied in any of these questions. But if you were responsible, was it your staff or JOC who had to key up Kenyon or any other civil contractor? Who was it?---If by "key up Kenyon" you mean activate the contract - - -

10 Activate?---My understanding is that JOC would be responsible for activating that contract.

You were aware of course that Kenyon had successfully repatriated WO2 Nary?---Yes.

15 Of course they didn't do it on this occasion with Jake. Did you consider at all that there was any danger, having regard to that, of their previous success, in letting Jake out of military custody?---It didn't cross my mind that there was the risk that unfolded eventually. I could not foresee that.

20 There was certainly no pressure from anyone in Australia to get the body of Jake back to Australia at the earliest convenience. Is that true?---That's true.

25 That was your desire alone?---And I guess we're all human beings, I knew that the family would be very keen to receive the body home. That was weighing on my mind. But to answer your question, no, no-one directed me to get the body home on a particular date or at a particular time. They were judgments that I had to make.

30 Would you say it would have been nice to have Jake returned by Anzac Day?---Yes, nothing would have given me more pleasure that he return home on Anzac Day.

35 You're operating you said sometimes with confusing or conflicting advice?---Yes.

It's the lot of the Commander in that area of operations or anywhere, isn't it?---That's right.

40 To de-conflict the advice or to make headway through it, in particular, the confliction between the advice that you're getting from your staff and the MPs. You chose what you said was the commonsense test?---Yes.

45 That was the vector that carried your thoughts to your ultimate decisions regarding Jake?---That's right.

You said in evidence that you never received any advice that Jake could not be moved from Baghdad. That's correct?---That's correct.

5 You said that you didn't want any speculation as to the cause of Jake's death?---That's correct.

You backed it up and we see this in exhibits before us in bold "no speculation"?---Yes.

10 The only information about Jake's death that could have got back to Australia had to come through your organisation unless - - -?---No, not necessarily.

15 - - - it came back through the back door, through families and things like that?---Well, most of the information of course was coming from my headquarters. But I mean, this occurred at the embassy. I can't speak for communications from the embassy or the embassy staff. And I'm not hinting at anything here, but you're sort of inviting me to accept responsibility for all the communication out of Iraq.

20 No, I'm not?---It's hard for me to do that, but I'm certainly happy to accept responsibility for all the information that went out of me - out of my mouth and my headquarters.

25 I'm not asking you to accept responsibility for all the communications that came out of Iraq. You do, as you've just indicated, accept responsibility for anything that comes out of your headquarters?---Yes.

30 Again the Commander's lot?---Yes.

35 You must appreciate the immense sorrow by the family at the loss of Jake, for Shelley and the children, was compounded by the gut-wrenching torment when the wrong body is returned to Australia. Then they hear the Minister give a speculation about how Jake died. It turned out to be not only against the weight of the evidence in this Inquiry, but wrong. I think it's known and accepted that the Minister gave the wrong information. Can you assist us at all how would the Minister have got that information? Do you know? If you don't, just say so?---I don't know. I can assure you that the people I spoke to in Australia were, first of all, the Chief of Defence Force, the Vice Chief of Defence Force, the Deputy Chief of
40 Joint Operations and in Army I spoke to the Chief of Army and to the Land Commander, GEN Kelly. I can assure you that I speculated - I did not speculate in any of the conversations with those individuals as to how
45 Jake might have died.

I accept that question has to be asked. Who did your hot issue brief go to, CDF, Chief of Army?---The end recipient of the hot issues brief is the Chief of Defence Force and it was sent through JOC, which is the appropriate chain of command.

5

Again you would have been aware of the media attention in Australia that Jake's death attracted?---Yes.

10 Did any of the media reporting surprise you as to its accuracy or inaccuracy?---The media reporting surprised and disappointed me from the start and hasn't stopped since.

15 Having said that, was there any steps you could take as the Commander on the ground in the MEAO to correct it? I mean, could you go to the Director-General of Public Affairs, PR - did you go to that person and say, "You've got to correct this?" Did that cross your mind, that thinking?---It did cross my mind.

20 Did you do that, sir?---I asked senior officers, a senior officer, to try and ensure that there were no - that there was no speculation in the reporting. So after the initial report that included speculation went to air, I learned from OC SECDET of that speculation. I looked it up and I saw it for myself. I was very disappointed and I reported to my senior that speculation is unhelpful. I indicated that we've been working very hard in Iraq not to speculate and I just implored senior officers to ensure that there was no speculation back in Australia.

30 In your statement that you made to BRIG Cosson, you made that in May, do you have it in front of you, sir?---Yes, I do.

Paragraph 6, commences some 24 hours later, so that would've been in the wee smalls of say the 24th or late on the 23rd?---This would've been in the early - you know, midnight night 23/24.

35 Right, at that time you knew that Jake was on his way to Kuwait or in Kuwait?---Yes.

40 You were happy that the - you yourself were happy, reassured that the difficulty over the conflicting MP advice and repatriation advice had been resolved?---I - I was happy looking at it objectively, I was reading the media reports and realised that it had become an issue, but yes, I was satisfied.

45 But when Soldier 39 spoke to you late in the night of the 23rd or early on the 24th you were satisfied then that because of what you were told that

the MPs were comfortable with Jake's movements to date?---Yes. Yes, I was.

5 And - - -?---Could I just also add that it was around this time that of course the lead investigator arrived. I don't know whether he has a number or - - -

I'm just about to get to that, sir?---Soldier 47.

10 Yes, indeed and I'd like to place this in the timeline because at this stage, after speaking to Soldier 39 you're comfortable that the issues about the conflict between the MP advice and the repatriation was settled?---Yes.

Then Soldier 47 arrives?---Yes.

15

You have a meeting with him?---Yes, I do.

Did he express to you any dismay, concern or any other emotion relating to the movement of Jake from Baghdad to Kuwait?---No, he didn't.

20

Did you discuss with him his investigation plan?---Yes, I did.

Of course as a Commander, you wanted to know where he'd be moving and who he needed to speak to?---I - I offered him our assistance if he needed it.

25

To make it available, yes?---So that was transportation, security and the like and so I was very conscious that whilst I might be the Commander in theatre, he was the lead of the investigation. In that respect, he had more authority than me in terms of the investigation, so I knew that it was my rightful place at that point in time to offer services so that he could do his job and - and he appreciated that. So we had that sort of chat to - to set him off on his way. That was the way in which he left my office.

30

Just to make it clear for all and sundry and may be listening, you just don't get in a car and go for a drive in Baghdad, do you?---No, no. We had to organise for - - -

35

Exactly, it's a big organisation, it takes some hours?---Yes.

40

But in any event, he said the soldier the wanted to the incident site and you were going to make people available naturally to assist him in his investigation?---Yes.

45

Are you saying that he didn't say to you, didn't express any displeasure to

you that Jake had been moved from Baghdad to Kuwait?---No, I don't.

5 Did Soldier 39 at any stage after the time you talk about in paragraph 6,
did he ever tell you that Soldier 47 was unhappy with the movement of
Jake from Baghdad to Kuwait?---I don't recall, no. I - I've - my memory
is that our - our relations with the MPs, the leading investigator were on a
very sound footing from the time - you know, that we had worked through
the issues of distance, from when he arrived in Baghdad I felt that we
were very comfortable with each other, that our relationship - you know,
10 was on the right footing and I never at any point in time felt that that was
going off the rails. If I did get that sense, if I had that concern, then I
would've - I would've done something. I offered to Soldier 47, I said - I
asked Soldier 47 "How will I know if you need anything from us or we
need to help you in any way?". He said "It would be my intention to keep
15 you informed". He said that he was hopeful that he would be able to give
me daily updates on how he was going so that I could - you know,
facilitate help. Now, that didn't actually transpire that way. I didn't
actually get those daily reports, but I knew that I had an understanding
with him that if anyone of my - my people were standing in the way of his
20 investigation or making life difficult for him that he had a - he had an
open door, he had an open line to talk to me, as indeed OC SECDET did
or anybody else.

25 Sir, were you aware of any signal traffic from MAJ Pemberton to your
headquarters or any other person under your command requesting that
Jake not be aware, were you aware of any signal traffic?---No.

30 It's not the sort of thing, just to make it clear for all concerned, it's not the
sort of thing that the Commander gets to see and read every day because
he's got staff officers to do that, you'd agree with that?---Sure, yes.

35 And you're reliant of course, because you can't know everything, on the
advice of your staff on many issues. Were you aware that Soldier 39 had
rung MAJ Pemberton to query his advice, rung him back in Australia to
query his advice - not advice, demand that Jake not be moved, were you
aware of that?---Yes, yes.

40 If you're aware of that, are you saying that Soldier 39 told you that the
problem was solved, that they're now happy?---Well I refer in paragraph 6
to my statement to - to that very issue and that I received advice from
Soldier 39 that any outstanding issues or difficulties had been worked
through and in fact I was given some positive reinforcement that the right
judgments had been made.

45 It must have given you some comfort what Soldier 39 told you because it

was a reason for you to ring the Chief of Army 24 hours earlier?---Yes.

That was the last that you heard of any dissatisfaction by Military Police with the movement of Jake?---That's correct.

5

I've got nothing further, Mr President.

PRESIDENT: Yes, thank you. COL Young?

10

<EXAMINATION BY COL YOUNG

[1244]

15 COL YOUNG: Brigadier, my name is Young, I represent the interests of PTE Kovco and currently I also represent the interests of Judy and Martin Kovco. You've been a Commander and I take it in the past, a Commanding Officer?---Yes, I have.

20 You've had dealings with the Military Police and the Special Investigation Branch?---I've had dealings with the - with the Military Police. I haven't had direct dealings - I don't recall having direct dealings with the - no, yes, I have. I have had dealings with the SIB before this incident, that's right.

25 You conducted orderly room hearings, for example?---Absolutely, yes.

You, as a Commander and as a CO, take advice from specialists such as legal officers, movers, logisticians, is that right?---Yes.

30 Would you regard the Military Police and Special Investigation Branch as some specialist advisers as well?---Absolutely.

35 Do you have an opinion of their professionalism?---Well I mean I have - we all have opinions and I wouldn't think it fair that I talk about opinions rather than what my responsibilities towards them are.

40 Let me approach it another way if it helps because it's an important issue. Are you prepared to offer an opinion as to whether the Military Police are properly manned and properly resourced as compared to other corps in the Army?---I'm not willing to - to offer an opinion. I - I would offer the opinion that the - the resources that came forward into theatre for the nature of the investigation seemed to me appropriate, but I'm a generalist in these issues, I really don't - I wouldn't wish to comment.

45 Having received some advice that the SIB had insisted the body not be

moved, you've said things such as:

5 *It was not obvious to me why the body should not be moved; not passing the commonsense test; someone needed to tell me why it shouldn't be moved.*

10 My question to you is, having received advice from a specialist corps, did you ask why the body should not be moved?---The advice I received was second-hand, so it was advice nonetheless. By - by referring the - by not
15 leaving the issue alone, by not leaving the issue hanging out there by actually jumping on the telephone to GEN Kelly late that night and asking him to look into this issue for me, I felt that I was doing the responsible thing. That if there were - if there was advice that I clearly needed that it wasn't the impression that I had in my mind that we had a time/space
20 problem between Sydney's understanding and Baghdad's understanding of what was going on. If I was missing something there, that by referring the matter to GEN Kelly, then if I - I had every faith that he would come back to me to say, Paul, you've got it wrong, you simply now must not move the body from BIAP or wherever. So - - -

25 Did GEN Kelly come back to you with any advice?---No, not with respect to the MPs, no.

30 So you don't know what inquiries he made, if any, about advice from the MPs?---No, I'm not sure. I should add that I worked for GEN Kelly, I worked for him for two years back in the mid-80s and I, having worked for him, had every faith that it wasn't something that - that he would either hold back from me or be very direct with me if - if I was doing something wrong, if the MPs had indicated to him that I needed to change my judgments, alter my judgments. I had every faith that GEN Kelly would tell me in no uncertain terms.

35 From the matrix there, you can identify Soldier 45 as to who that is? ---Yes.

He was the Mortuary Affairs Officer when you were there?---Yes.

40 He gave evidence the other day and I just want to read some of the questions and answers put to him and I'm referring to page 1314 of the transcript about point 30:

45 *When you had a handover, are you able to give us some idea of what that handover covered as far as mortuary affairs are concerned?---We were directed to read the Mortuary Affairs Plan in the admin instruction, the Commander Joint Operations Admin*

Instruction and I seem to recall briefly discussing the previous repatriation that had occurred and how it had been done.

5 *Were you referred to the Land Warfare Procedures General on mortuary affairs?---I was never referred, never even in fact made aware of that until after the fact that the publication existed.*

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

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

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

20 Just further on at page 1316:

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

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

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

35 Just bearing that in mind and I'll come to the Land Warfare Procedure publication in a moment. During evidence today you were talking about having a conversation with Soldier 2 and you've said:

I had every confidence in him that the right body would be returned.

40 But at that point in time, just before the body is moved, it wouldn't have crossed your mind, would it, that the wrong body could be sent home? ---No.

45 So perhaps you're saying that in hindsight of what's happened?---Mm.

In your discussions with Soldier 45 and given he was the Mortuary Affairs Officer, I assume he gave you advice?---Yes, he did.

5 Did he raise the question of identification as being a possible issue that you should be alerted to?---My briefings from him - my recollection of my briefings for him expressed very much Counsel Wilkinson's explanation as to the responsibilities of the escort.

10 At that point did you know that he would go to a civilian morgue ultimately before he was sent back to Australia?---At what point did I know?

15 At the point that you were discussing with Soldier 45 the movement of ID and being escorted, are you aware that he was going - - -?---I didn't know - I didn't know immediately although I - I knew in the back of my mind that we use the civilian mortuary before, so it wasn't surprising to me, but I don't recall at exactly what day or what - - -

20 Thank you. In exhibit 165 which is one of your emails today you said at paragraph 4:

An investigation is underway, my determination is that every dignity be afforded PTE Kovco in death.

25 Did you take into account, did it cross your mind that that dignity, your determination for that to happen would be observed by going through a civilian mortuary?---If I had any forewarning that his dignity in any way would have been compromised, then I would've stopped the process and made sure that I was satisfied.

30 I take it you wouldn't have had any idea of what the facility was like in the civilian mortuary in Kuwait?---No.

35 The Land Warfare Procedures General, you might recall in the part of the transcript I read to you that Soldier 45, it seems to me, was suggesting because it was an Army publication it didn't apply in a joint environment. Have you any comment to make on that?---Look, I think I have sympathy with Soldier 45 here. When we go on operations we have operation orders, operation instructions, annexes that are many and they're
40 developed at the strategic level in Canberra, worked through with - in Sydney and the aim is always to try and support the people forward. The most desirable outcome is that Soldier 45 and the responsibilities he has, the most desirable outcome would be that he actually has a document that takes doctrine, distils it to the situation in play, in this case an OP
45 CATALYST and gives him the information he needs to be able to perform

his responsibilities. I would think it completely unreasonable to expect him to be doing a library doctrine search on operations. The very purpose that we write these things, the very purpose of having commands at various levels is so that we support the people forward, we don't make their life more difficult. In theory, he should be able to reach to this and have the information that he needs to repatriate the body without mistake.

I accept that. The Mortuary Affairs Plan that he would have had with him and to give you advice makes no reference to identification. Do you see that identification of a body, do you see that as being a failure in distilling all the other information and reducing it to a workable annex to what you had available to you?---Doctrine or in this case?

Well, my understanding from what you've just said is people in Canberra perhaps bring together 24 or 30 publications covering death and mortuary affairs and the like, to give you in the field a workable document. They've left out any reference to identification, is that a failure on someone's part?---Yes, I think - - -

Well given what's happened - - -?--- - - - the failure here was identification, so yes.

If I go to the Land Warfare publication which is part of exhibit 100, section 4-3 Forensics And Identification:

Formal identification of remains is only to be conducted by qualified forensic specialists. Commanders and Unit personnel may assist in tentative identification due to close association at the time of the incident. However, mortuary specialists are to consider this temporary only. Preservation of remains, personal affects and tentative identification media will assist in the process of formal identification at a later stage. Formal identification of partial remains can only be conducted by qualified personnel.

At section 4.4 on Repatriation, I just want to read this paragraph:

Repatriation is the strategic movement of remains and personal affects from a theatre mortuary embarkation point rearward to Australia. Repatriation if not conducted with the highest level of professionalism will attract adverse attention from family and friends of the deceased and the general public and media. Unprofessional repatriation practises will generate scepticism about the complete mortuary affairs process and general handling of deceased service personnel. Unprofessional repatriation practises will very quickly erode public confidence in

the ADF.

5 Would that information have been useful to you at the time that you were considering repatriation of PTE Kovco?---I didn't need that information, I - I agree with that. I totally agree with it.

Well did you turn your mind - - -?---I think I totally agree with it.

10 Did you turn your mind to identification of Jake's body?---I turned my mind to returning the body with dignity back to the family. And - and I stand by - you know, the professionalism of Soldier 2 and of the staff at 633. So you're quoting words that are very - very prophetic given what happened.

15 Indeed?---But I have every sympathy with - with what's being - with what you're saying.

20 Brigadier, before we started this morning I said to you that lawyers have the luxury of asking questions with hindsight, but we're doing that for a purpose and this Board is here for a purpose and that's to determine where we got it wrong, if we did, and how we can get it right next time?---I understand.

25 So what I'm putting to you is, if you would have had something like this in front of you or your staff had given you the advice, would you have given greater thought to the possibility of a body being lost knowing it was going to a civilian mortuary?---If I had read that, if that was put in front of my face, I would have asked myself the question, is there any early warning sign that a mistake could be made, that a mix-up could be made of the body. I honestly believe that I would not have either predicted it or could I see early warning signs that that might be the case. I don't know that that would have given me any more focus than I already had in working hard to get the right body home.

35 So you anticipated the right body would get there. Soldier 45 anticipated the right body would get there?---Of course.

But that didn't happen?---That's right.

40 Are you familiar with the term "systemic failure"?---Yes.

What do you understand that to mean?---Where the processes in any system may break down.

45 If I put to you that a more realistic way of describing systemic failure is

that people within the chain of command made mistakes, would you accept that?---Yes.

5 So the term “systemic failure” could be seen of course to be a way of no-one accepting responsibility, no-one saying, “We put our hands up. We made a mistake.” Have you seen the term “systemic failure” used much in the military?---I have, yes.

10 Do you think it’s a good idea to use that term?---I think so. I think that - I’m very comfortable with the concept of responsibility and accountability.

15 Isn’t systemic failure a dishonest way of describing what happens and where mistakes are made?---I think that’s a leading question.

I’m allowed to ask you leading questions. You can answer it or you don’t have to. What I’m saying to you is are you of the view - I think you’ve just agreed with me - that systemic failure, another way of describing it would be people within the chain of command had made mistakes?---Yes.

20 So to use the term “systemic failure” I’m putting to you is a dishonest way of covering up where people have made mistakes?---I don’t see how you can say that.

25 I’m not suggesting we should be out to blame people and point the finger. What I’m suggesting is that if we’re to learn from this or any other inquiry we should be honest enough to say that within the chain of command something broke down here, these were the people that were there, they simply didn’t turn their mind to it; it was human error. Do you accept that?---Yes, I do.

30 So if this Board, for example, were to come up with a finding of there was systemic failure, do you think that would accurately describe where the process had broken down?---Well, I think again you’re - I think if the net result of the Board was that it just said - you’re suggesting that it says the systemic failure, but then doesn’t attribute where that human failing was or what the procedural failing was. Then the Board clearly hasn’t fulfilled its functions. I have no problem with that concept.

40 To use the term “systemic failure” it lets everybody off the hook and the system can say, “Well, it wasn’t my fault, it was the system’s fault.” That’s what I’m getting at. Would you agree with that sort of approach? I mean, this is a public inquiry?---I’ve said on a number of occasions that I believe that Commanders at all levels are responsible and I’ve stood up and indicated that right from the start. I believe Soldier 30 has done the

45

5 same and he's a very fine man for it. So I'm sorry if I'm not answering
the question well, but I - if the purpose of your questioning is to draw on
what the Board of Inquiry should be saying or what the Board of Inquiry
should be intimating, I don't think that I'm in the position to do that. But
if you're asking me the question, do I believe in the concept of
responsibility and accountability along the chain of command, yes, I do,
and I've set that out for you.

10 So the mortuary affairs plan that you had access to through your mortuary
affairs adviser, would you agree that could have been better drafted by
making reference to identification as being an issue, identification of
body?---Yes, I do.

15 So that's a failure on the part of the system somewhere. Someone who
distilled that document didn't turn their mind to it?---Yes.

Thank you, sir, I have no further questions.

20 PRESIDENT: Thank you. Colonel, how long do you think you'll be with
the Brigadier?

25 COL GRIFFIN: I have three topics, which I think can be dealt with fairly
shortly, sir. I note the time, but he's been there a long time and these are
fairly succinct matters and there are only three areas that I wish to touch
on.

PRESIDENT: Carry on.

30 <EXAMINATION BY COL GRIFFIN [1306]

35 COL GRIFFIN: One of which involves the presentation of three
documents to him. Copies of these have been prepared for counsel and for
the Board. If they could be shown to the Brigadier, please. Brigadier, I'll
lead you on these documents. There are three of them. They're all
classified. They all come from HQ JTF 633. If you'd look at them,
please, and put them into the chronological order from the date time group
in the heading of the signal?---Okay.

40 Now, taking the document which would therefore be date time group 21
1348 Z April '06 in that order?---Yes, the NOTICAS.

45 That' the NOTICAS?---Yes.

And that's the document that was generated by your headquarters notifying the chain of command of the very serious injury at the time that PTE Kovco had sustained?---Yes, I cleared this signal for release.

5 You cleared that signal?---Yes.

I tender the document, sir.

10 PRESIDENT: Everybody comfortable with the tender of that document?

COUNSEL REPRESENTING: Yes.

15 **#EXHIBIT C167 - DOCUMENT KNOWN AS NOTICAS**

COL YOUNG: I might ask COL Griffin just to identify which of the three we've got as the 167.

20 COL GRIFFIN: The 167 the heading is "NOTICAS Very Serious Injury".

25 WITNESS: The fourth line down gives the date time group. So you're looking for 21 1348. The NOTICAS is the first advice that the headquarters formally send out.

COL YOUNG: Thank you.

30 COL GRIFFIN: Anyone else need assistance with identifying the document?

COL YOUNG: I just perhaps point out there's an X marking with some numbers at the top of the document, which might help us.

35 COL GRIFFIN: It's got a heading. It's a signal that has a heading next to where it says "subject". The next document, Brigadier, the subject matter is OPERATION CATALYST incident report?---Yes.

40 Do you recognise that document?---Yes, I do.

I tender the document, sir.

PRESIDENT: Any opposition to the tender of that?

45 COUNSEL REPRESENTING: No, sir.

#EXHIBIT C168 - OPERATION CATALYST INCIDENT REPORT

5

COL GRIFFIN: The third document subject heading "Change in Casualty Status to Fatal Cas"?---Yes.

Do you recognise that signal?---Yes, I do.

10

I tender the document, sir.

PRESIDENT: Again is there any opposition to that document?

15

COUNSEL REPRESENTING: No, sir.

#EXHIBIT C169 - SIGNAL TITLED "CHANGE IN CASUALTY STATUS TO FATAL CAS"

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COL GRIFFIN: Now, Brigadier, just some matters that were raised with you in questioning by counsel. There's reference in your evidence that Soldier 2, you described him that seeing him at around 2.30 in the morning of 22 April your time - the words you used was "he was like a ghost walking". Is it the case that you had intended a minimum of 24 hours rest at least for him before the ongoing next step?---I intended that, yes.

25

30

You were asked some questions about delay to the fly-away team in Kuwait. The evidence of the leader of that fly-away team given yesterday is that a substantial part of the delay that he experienced in Kuwait was due to the cancellation of an aircraft that was to bring him forward. Do you have any control over the aircraft in terms of the cancellation of unavailable aircraft?---Well, I manage the air schedule. I don't know the circumstances on which that aircraft was cancelled. Clearly a lot of the time that the aircraft are cancelled are because of maintenance issues or the like.

35

40

Finally, in respect of the time line for the Military Police advice that you received and the decisions that you took in respect of the movement of the body, can I just confirm your evidence is that at the time you first became aware of the Military Police "insistence that the body not be moved", by that time it had already been moved from 10CSH to BIAP?---I confirm that.

45

Subsequent to that you expressed through the chain of command concerns about the Military Police position on that?---Yes.

5 At the time that you took the decision to move PTE Jacob Kovco's remains from BIAP to Kuwait, did you take that decision in deliberate action contrary to Military Police advice?---No.

Why?---Are you asking me - - -

10

Why do you say no, what was the circumstance?---Was my advice contrary to - there was nothing contrary in anything that I did. There was no - what I'm saying is that there was no advice from the MPs that I needed to stop, slow down the movement from BIAP back to Kuwait.

15

Thank you, Brigadier. That completes the questions I had, sir.

PRESIDENT: Thank you. Were you the recipient ultimately of the quick assessment report into the loss of the body?---From MAJ Willetts?

20

Or from anybody?---I dispatched MAJ Willetts, President. I signed the terms of reference for his quick assessment and I read his quick assessment.

25

That's to the loss of the body as distinct from the accident?---I'm sorry. There were two quick assessments that I ordered. The one that I've just referred to is in relation to the death. I then subsequently when I heard of the mix-up ordered another quick assessment by another investigating officer. I was aware of that quick assessment and read that quick assessment as well.

30

I take it that will be available to us at some later time.

COL GRIFFIN: It's part of BRIG Cosson's exhibit I believe, sir. If not, I'll confirm that and make it available to the Board.

35

PRESIDENT: Very well. Now, the suggestion has been put to us that particularly for the critical incident, the death of the soldier, one possible quick assessment might have been, if it was possible, to have that quick assessment done by a Military Police officer as distinct from a generalist. How would you react to that?---I have no problem with that. I think the person best qualified to do a quick assessment should do a quick assessment. I selected MAJ Willetts and indeed OC FLAAK to do the - both investigating officers I selected at the time as being the people - given the options that I had, being the most experienced and I thought best

45

qualified to do the task. I could see very real merit that if I had a Military Policeman available in the hip pocket, then I would have used him to do the quick assessment.

5 Anything arising out of that, gentlemen?

COL GRIFFIN: Only, sir, to indicate that Exhibit 100, the BRIG Cosson Report - flag B is the quick assessment the Brigadier is referring to in respect of the loss of the body.

10

PRESIDENT: Thank you. The number of times I read that I find more things in it every time I read it.

COL GRIFFIN: There's much there for all of us.

15

PRESIDENT: Anything further, gentlemen?

COUNSEL REPRESENTING: No.

20

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

<WITNESS WITHDREW [1316]

25

COL GRIFFIN: Sir, can we take the luncheon adjournment at this stage?

PRESIDENT: I think that would be a very good idea.

30

LUNCHEON ADJOURNMENT [1316]

RESUMED [1421]

35

COL GRIFFIN: Sir, I call WGCDCR Guerin.

40

<WGCDCR LINDSAY JOHN GUERIN, sworn [1444]

<EXAMINATION BY COL GRIFFIN

45

COL GRIFFIN: WGCDCR Guerin, I'm COL Griffin, Counsel Assisting the Inquiry. Would you please state for the record your full Regimental particulars?---WGCDCR Lindsay John Guerin 8195593.

5 What is your present posting?---I'm the J10 at HQJOC.

How long have you been in that posting?---Since February.

10 Have you been shown today a document setting out the rights and obligations of a witness in Board of Inquiry proceedings?---Yes, sir.

Have you prepared a statement of your evidence for this Board of Inquiry?---Yes, sir.

15 Could that document be shown to the witness, please? Do you recognise that as being your statement?---Yes, sir.

Is there anything that you'd like to add to it or change what's in the statement?---No, sir.

20

Are you satisfied it's a true and correct record of your evidence to the Board?---Yes, sir.

25 What training and experience do you bring to the role of J10 HQJOC, WGCDCR Guerin?---Sir, the J10 is SO1PERS, it's a personnel - I'm a personnel branch head for HQJOC. I'm Air Force. I am ADMINO, Administrative officer which is a specialisation we have in the Air Force and my - my whole background, my posting history is all related to personnel type - type postings.

30

Would you just remind again how long you've been in your current posting?---Since February '06.

35 Have you occupied a similar position previous to that?---HQJOC is a - is a joint Unit. I have been the SO2 ADMIN or the Senior Administrative Officer for Headquarters Air Combat Group, Headquarters Tactical Fighter Group and Headquarters 81 Wing, fighter wing for Air Force.

40 Now, would you tell the Board please how you became involved in matters surrounding the death of PTE Jacob Kovco?---Yes, sir. At or about midnight on Friday - Friday night, Saturday morning I got a call from COL McManus is my superior, he's the J1J4 at HQJOC. He advised me that there'd been a report of a soldier had been shot in - in the Middle East, I don't recall him saying if it was actually in Baghdad, but a soldier
45 had been shot, it was not a fatality at that stage, but it was heads up to me

that it had happened. He asked me to - well be prepared to standby to standby and to contact the OC of the National Welfare Coordination Centre to advise him of the incident. We advised him because the NWCC has a 1800 number which is available to families for deployed personnel.
5 And if news such as that gets around, then they get their heads up that an incident has occurred. I did that. I advised him that it was and he advised his watch-keeper. At about 0800 on the Saturday morning I then got a call from the J14 duty officer at headquarters to say that it had been confirmed as a fatal cas and I then went in to work to process the NOTICAS. We
10 were preparing to send an SIB team. He just wanted guidance on the way ahead.

Did you have any involvement in the decision to send the fly-away team, the SIB team, that you just mentioned?---Well, yes. It wasn't my decision
15 in that I wasn't empowered to make that decision. There was conjecture as to well, when and if to send the team. That happened over the course of the day. There seemed to be - they wanted to wait until the results of a quick assessment had been done before they actually sent an SIB team. I felt that - - -

20 Excuse me. When you use the term "they", who are you referring to, "they wanted to wait"?---Well, it would have been 633. They were waiting on to send their - I felt that it was a notifiable incident in accordance with the DI(G) and we should start to send the team as soon as
25 we could.

Did you do anything to make that happen?---I provided my advice to the J3 branch at HQJOC. I provided my advice to COL McManus, the J14, in that I felt that we should launch with the team. That was confirmed I
30 think at about 1730, 1800 when I advised the duty officer at 1JMG that the SIB team were to travel.

That was on the Saturday, 22nd?---That was the Saturday, sir, yes.

35 Were you involved in any planning in respect of the repatriation of the body of PTE Kovco?---Yes, sir. When I got to work I - well, it was confirmed that it was a fatal cas. I then rang COL McManus and he acknowledged and said to advise Kenyon's who would then assist with the repatriation.

40 Did you advise Kenyon's?---Yes, sir. I rang Mr Mark Edwards, who's the Australian representative for Kenyon's, on his mobile number and it was about - it would have been close to 9 o'clock on Saturday morning. I advised him that there had been a fatality in Baghdad and we required
45 assistance to bring PTE Kovco home. I then followed that up with an

5 email. The address on the NOTICAS had the address as Sydney, a Sydney address, Wattle Grove I think it is. I advised Mr Edwards that the repatriation would probably be back to Sydney. He then undertook to contact the Kenyon representative in the UK because they were going to run for the job from over there, and I gave him the contact number for Soldier 45, the J14 in theatre in that he would be the primary contact for the arrangements for repatriation.

10 Could Wing Commander be shown Exhibit 100, please, at flag T. Do you recognise that document, Wing Commander?---Yes, sir, it's a photocopy of the photocopied copy of the standing offer that we have in our mortuary affairs folder.

15 First of all, let me tell you what that document is part of. That's the Exhibit 100 in these proceedings, which is the BRIG Cosson investigation report. If you would page through from that page and identify, if you can, the work authorisation agreement. Have you identified that?---Yes, sir.

20 Is that a document that you completed on 22 April?---Yes, sir.

Is that your signature and your details at the foot of it?---Yes, sir.

25 Did you complete that after you'd spoken with Mr Edwards?---Yes, sir, I started that on the Saturday and then I didn't do anything with it until some time - about a week or so later I think at least. We started to work on that there. I sent a minute - an email to Mr Edwards to initiate the work at the same time.

30 So that the process of activating the standing offer with Kenyon that you went through effectively involved three mediums: (1) a verbal communication by telephone to the Australian representative, Mr Edwards?---Yes, sir.

35 Could you just repeat what you asked him to do?---I advised him that there had been a fatality and we needed to repatriate the body back to Australia. I said that the primary contact would be the J14 in theatre, the repatriation would most likely be back to Sydney, being the address that was on there. At that stage the next of kin had asked for no names to be released.

40 You then followed that up with an email?---Yes, sir.

Was it again to Mr Edwards?---Yes, sir.

45 Were there any info addressees from other areas of Kenyon or command

in any way?---That's a good question. Sir, I may have info'd Soldier 45 on the email.

5 PRESIDENT: I notice we're using the Commander's name rather than his callsign.

COL GRIFFIN: Yes. I was just going to let that pass by because we didn't indicate where he was. But would you now give the standard direction then, sir.

10 PRESIDENT: I would ask the press not to refer to the Commander by name, but rather by the callsign Soldier 45.

COL GRIFFIN: Thank you, Mr President. I should have assisted Wing Commander earlier by pointing out to him that matrix that's on the desk. Wing Commander, in an attempt to protect people's families in particular people in theatre are being identified by that callsign number next to those people's names. So in future if you need to identify anyone if you'd do so by reference to the numbers?---Yes, sir.

20 Now, having sent the email, do you recall when you sent the email?---It would have been at or about 9 am on the Saturday.

The actual document that's in front of you now, the work authorisation agreement, is something that you commenced and completed over the course of the following week. Is that right?---Yes, sir.

25 Did you activate Kenyon's of your own volition or were you told to do so by anyone else?---I was told to do so by COL McManus, sir.

30 That's in the telephone conversation you had with him on the morning of the Saturday. Is that right?---Yes, sir.

Had you any previous experience of repatriation of deceased members?
35 ---No, sir.

Were you aware of the use of Kenyon's in any other circumstance?---Only per chance that I'd had some contact from a Major at NORCOM who was developing mortuary affairs doctrine. That was some time beforehand. I had access to the mortuary affairs folder in the branch and it was just per chance that I had opened the folder and was aware of Kenyon's. I didn't at that stage have a full understanding of their contract or the standing offer, just that they existed.

45 Have you yourself had any training in mortuary affairs?---How do you

mean mortuary affairs, sir? As the Administrative Officer I've had the misfortune to be involved with NOTICASs over my posting history. I haven't had any dealings with mortuary affairs in bringing bodies back to Australia. I have been involved with service funerals and so on beforehand.

Have you, for example, had any training in the mortuary affairs plan for OPERATION CATALYST?---Not so much training. I was aware of it in that it's the Admin Instruction for the operation and as the J1 it was something that I needed to be aware of. So I had an awareness of the plan, not so much training in it.

Is contract administration something that you have any training in or practical experience of?---No.

Did you have regard at any time to the standing officer deed that is at flag T in front of you at any time?---Could you ask that again, sir?

Yes. Did you actually read the standing agreement, the contractual side of things? Did you have any occasion to look at that as part of your dealings with Kenyon's, either before or during the repatriation?---Before I had - after I'd spoken to the Colonel and before I spoke to Mr Edwards, I had the folder. I had a very quick read, by any means a thorough read. There was a copy of an Admin Instruction in the folder which confirmed that authority for activating the standing offer rested with the J1J4 duty officer, which I was on that morning. That's when I then phoned Mr Edwards.

Would you turn, please, to Annex A to the standing agreement so that you have it before you. At the foot of each page - perhaps you might just clarify before you do this, this deed of agreement for a standing offer is dated 22 April 2003 between the Commonwealth and Kenyon International Emergency Services. Do you see that on the front page? ---Yes, sir.

Did you provide this copy to BRIG Cosson, do you know?---It appears to be - it's got a HQ 1JMG stamp on it. I provided JMG a copy of the standing offer on the Saturday. This is certainly identifiable as a photocopy, I would say, of the copy that we have in our folder. So I'd say it could possibly be - because it's got the 1JMG stamp on it, it could be a copy of the standing offer that I gave the JMG rep who came to headquarters on the Saturday.

And therefore a copy of the document that your headquarters holds on its file?---Yes.

45

Does the copy of the document that you have on your headquarters on the front page have someone's name handwritten across it like there is on this one?---Yes, sir.

5 As you go to the next page, does it have handwritten ticks down one margin and someone's handwriting circling "2" on the first page?---What, my copy or the copy - my copy here?

The copy you have in front of you?---Yes, sir.

10

On the next page someone has handwritten in the margin next to paragraph 6 you'll see there handwritten "rate"?---Yes, sir.

Then further down a question mark and a cross, paragraph 8?---Yes, sir.

15

Paragraph 11, someone has drawn a circle around the number "11"?---Yes, sir.

20 As you go through each of the pages there are various marginal annotations in someone's handwriting?---Yes, sir.

First of all, does your headquarters copy have similar handwritten annotations on it?---I couldn't say, sir.

25 If you would page through, please, to a page that you'll find is headed "Exhibit A Annex A". Firstly, on the page before that on one side there is the signature blocks on the contract. Do you see that, signed for and on behalf of the Commonwealth of Australia?---Yes, sir.

30 Then on the next facing page it says "Exhibit A Statement of Work"?---Yes, sir.

As you turn over it says what the Commonwealth will do after there's a whole series of abbreviations?---Yes, sir.

35

Then on the next page it sets out who the Commonwealth authorised delegates are?---Yes, sir.

Slightly above that at 1.6 it says "Kenyon will" and then 1.6.1:

40

provide on request any or all of their traditional services anywhere in the world once an authorised work authorisation agreement is raised by an authorised delegate of the Commonwealth.

45

?---Yes, sir.

Then at 1.7 it says:

The Commonwealth authorised delegates -

5

and it lists them?---Yes, sir.

Do you appear as one of those authorised delegates?---No, sir.

10

Would you agree with me that the first authorised delegate there, HQ AST Watch-Keeper, is in fact the command that you were presently with, the Joint Command, as it was then known at that time as Headquarters Australian Theatre?---Yes.

15

It allows the watch-keeper to be a delegate to sign the agreement. But technically you don't appear on that or your office doesn't appear as one of the delegates?---No, sir. But as I said, the mortuary affairs folder that we had in the branch included an extract from an Admin Instruction which was amended September '05 which the authorised delegates included the HQ JOC J14 duty officer.

20

Would you be able to provide that to me in due course after the adjournment from your file?---Yes, sir.

25

If we could go over to the next page which sets out the services and requirements. It stipulates there Kenyon traditional services, having seen in the previous page that Kenyon will on request provide any or all of their traditional services. Here the traditional services are set out at paragraph 1.1. It says:

30

will provide on request any or all of the following emergency services.

And then lists a series from A to L?---Yes, sir.

35

Then the next heading is 1.2 "Additional Commonwealth Requirements". 1.2.1:

40

Kenyon, if requested by the Commonwealth in an authorised work authorisation agreement raised by an authorised delegate of the Commonwealth, will meet on request one or more of the traditional services listed at clause 1.1 Annex A or one or more of the following requirements.

45

The first one:

is identification and processing of remains in accordance with disaster victim identification processes as agreed by Interpol.

5 Did you make any request of Kenyon International to provide one or more of the traditional services, and in particular, the identification and processing of remains?---No, sir.

10 Was there any discussion of the use of an Australian service aircraft or Australian chartered aircraft chartered by Defence for the repatriation of PTE Kovco initially?---Not that I'm aware of, sir, no.

15 Was that matter a matter for your consideration or a movements issue? ---That was a movements issue, sir. I had - my contact with Mr Edwards was to, first of all, advise him of our requirement and that his primary contact would be or should be Soldier 45. At that stage I had little information as to where PTE Kovco was and how it was going to be moved or anything else like that. So I had little information that I could provide Mr Edwards as far as any movements or aircraft type or anything of that nature.

20 Thank you, sir, I have no further questions for WGCDR Guerrin.

25 PRESIDENT: Thank you. LTCOL Wilkinson.

LTCOL WILKINSON: No questions, sir.

PRESIDENT: LTCOL Green.

30 LTCOL GREEN: No, sir.

PRESIDENT: LTCOL Berkley.

35 LTCOL BERKLEY: Just a few, sir.

<EXAMINATION BY LTCOL BERKLEY

[1451]

40 LTCOL BERKLEY: WGCDR Guerrin, as you know, I'm Tom Berkley and I represent Shelley Kovco. As I understand your evidence, COL McManus said get Kenyon's involved?---Yes.

45 That's the end of that. You said in your statement that you contacted MAJ Neville Paine in Melbourne regarding the preferred place of

repatriation and naturally enough I think you worked out that when people looked up Jake's records they had his residential address at Wattle Grove where he normally resided?---Yes, sir.

5 Jake's family, Shelley and the kids, like many others on - to be with the extended family?---Yes, sir.

You got a call I think you said the OC advised that the NOTICAS had the incorrect address for the emergency contact. Which OC are we talking
10 about there?---I'm sorry, that's OC of NWCC.

NWCC stands for?---National Welfare Coordination Centre.

MAJ Paine said that the next of kin preferred the body to be returned to
15 Melbourne and not Sydney. You can see that obviously they're down there, so that would be the best place. Well, whether it was or not, that was their choice. Did you get any pressure to have the body brought back post-haste?---I don't know if there was any pressure there. There is a preference expressed - and I can't recall whether I got him - from him
20 directly because I did speak to CO3 RAR - and it was a desire to, if they could bring Jake back by Anzac Day. So that was I guess a bit of a goal.

Getting Jake back by Anzac Day, who conveyed that information to you? Was that CO3 RAR?---If it wasn't him directly, it was indicated that it
25 was a preference for him.

That's the CO's preference?---Yes.

All we're just trying to chase down for the Board is the only thing - I
30 don't know whether you've seen an email from Shelley. She just says could the body be brought back to Melbourne or to Victoria. Have you ever seen that?---That email was at the request - my initial advice to Mr Edwards was that - because of the address on the message was that the body be returned to Sydney. It was my second conversation with OC
35 NWCC that he confirmed that the address was incorrect and that they were actually down in Sale. I then spoke to Neville Paine, MAJ Paine, and he did confirm that yes, they were in Sale and that they had a preference for the body to be returned to Melbourne. I then passed that on to Mr Edwards, both by phone and by email, that - because they were
40 down in Sale, the preferred destination back to Australia was in Melbourne. Mr Edwards said that he would prefer that in writing. I then spoke to Neville and he then arranged the email contact with Shelley.

So Shelley's email was generated, to your knowledge, as a request from
45 MAJ Paine following on from a down the line request - a direction from

you from a request from Kenyon's?---That's correct.

There was nothing in that email about urgency or anything else, was there?---No.

5

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

PRESIDENT: Thank you.

10

<EXAMINATION BY COL YOUNG

[1455]

15 COL YOUNG: WGCDCR Guerrin, my name is Young, I represent the interests of PTE Kovco and currently, in addition, Mr and Mrs Kovco, Jake's parents. Just one issue I'd like to take up with you. In your statement you've talked about the Military Police being prepared to move and you contacting Mr Edwards of Kenyon. Was that happening at about
20 the same time?---Yes, sir. It was - yes, there was phone calls going everywhere.

Did you alert Mr Edwards from Kenyon that the Military Police would have an interest in PTE Kovco and, on the other hand, did you alert the
25 Military Police that there was a private contractor being engaged to move Jake's body?---No, sir.

Just on reflection now, do you think that might have been useful, that both of those parties who had some obligations, if they knew that there was
30 another party interested as well? Do you think that might have been helpful to both of them?---Well, certainly I think in hindsight it would have been. My role at that stage was just to - just for advice. As I say, the primary contact for them was to be Soldier 45 in theatre because they were on the ground, they knew what was happening.

35

Thank you. That's all I have, Mr President.

PRESIDENT: Thank you. Do you propose to tender the statement?

40 COL GRIFFIN: I do, sir, thank you.

PRESIDENT: Is there any opposition to the tender of the Wing Commander's statement?

45 COUNSEL REPRESENTING: No, sir.

#EXHIBIT 170 - WGCDCR GUERRIN'S STATEMENT

5

PRESIDENT: Anything arising out of the - - -

COL GRIFFIN: No, sir. Thank you.

10

PRESIDENT: Thank you, WGCDCR Guerrin, you may now stand down.

<WITNESS WITHDREW

[1457]

15

COL GRIFFIN: Sir, I call COL McManus.

PRESIDENT: Thank you.

20

<COL B N McMANUS, sworn

[1501]

<EXAMINATION BY COL GRIFFIN

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COL GRIFFIN: COL McManus, I'm COL Griffin, Counsel Assisting the Inquiry. Would you please state for the record your full name and Regimental particulars?---8218587 COL Barry Neil McManus.

30

What's your current posting?---My current appointment is the Chief Administration Officer Personnel and Logistics at HQJOC.

35

Does that bear an alpha-numeric title?---I'm commonly referred to as the J1J4 which is Military speak for personnel and logistics.

How long have you occupied that position?---For 18 months.

40

Can you confirm that you have been shown a document setting out the rights and obligations of a witness before a Board of Inquiry?---I can confirm that.

45

Now, did you prepare a statement of your evidence for the Board of Inquiry, Colonel?---I did.

5 I'll show you a document. In these proceedings, this is a public inquiry and in an attempt to protect operational security matters a matrix has been devised setting out individual by name and then a corresponding number. I'd ask that you have regard to that if you need to name anyone and also if we transgress onto matters that you consider to be matters of operational security, if you would alert me or the President to that fact so that we need, if necessary, to go into closed session?---No problems.

10 Now, looking at that statement, the document that's just been presented to you, are you satisfied that that is your statement for the proceedings?---I am.

Is there anything in it you wish to amend or add?---No, I don't.

15 Is it a true and accurate record of your evidence?---Yes.

I tender the statement, sir.

20 PRESIDENT: Any opposition to that tender?

COUNSEL REPRESENTING: No, sir.

PRESIDENT: Marked as 171.

25

#EXHIBIT 171 - STATEMENT OF COL McMANUS

30 COL GRIFFIN: Colonel, could you tell the Board please how you became involved in the circumstances surrounding the death of PTE Jacob Kovco?---Certainly. My appointment at HQJOC has me responsible for, as I said, personnel on logistic issues to which mortuary affairs fits within that particular remit. I'm responsible for the ownership of a document called The Administrative Instruction which has certain responsibilities to me for the overall control or coordination from a policy perspective or operational directives perspective on behalf of my boss in support of the theatre. As such, in incidences such as this I'm normally contacted by our operational watch staff to alert me to an incident that would occur within a respective theatre of operations.

40

Now, before we come to the matter of PTE Jacob Kovco, have you had previous experience in respect of dealing with the death of soldiers on operations?---Unfortunately, yes.

45 In your current position?---In my current appointment.

A matter that occurred in the Middle East area of operations in November last year?---Correct.

5 Now, the Mortuary Affairs Plan, I'll ask if the witness be shown Exhibit 100 please. Colonel, what we're going to show you is an exhibit in these proceedings which is the BRIG Cosson investigation report and I'll ask that you turn to flag AA1 which is, as we understand it, the Mortuary
10 Affairs Plan that you just described, being part of the Administration Instruction for Offshore Operations. Do you have the Mortuary Affairs Plan before you?---I do, yes.

You recognise that as being that document that was extant at the time of the death of PTE Kovco on 21 April?---Absolutely, yes.

15 Could you tell the Board the division of responsibilities between 633, the theatre headquarters and HQJOC in respect of matters to do with the mortuary affairs?---Certainly. The Mortuary Affairs Plan that's laid out in the Admin Instruction is there to provide policy and guidance to the
20 theatre for them to be able to conduct their own tactical business in - in regards to mortuary affairs planning. We certainly don't get into the detail of you are to and how to in the document. It sets policy and guidance because of the fluid nature of operations within, not just the Middle East, but indeed on any of our other operations internationally. The document
25 itself provides that broad policy guidance, but it also relies on Commanders in the field and subordinates using sensible judgment to adapt to the situations as they're presented on the ground.

30 So when you use the term "policy guidance", it's, to use a vernacular, it's not written in stone. That is, it's there for guidance, is that the case?---It's not dogmatic. It's a set of guidelines for somebody to operate within or if they are going to operate outside of it, they'd know why they're operating outside of it because they've breached it for whatever particular reason is necessary to meet the tactical or national situation at that
35 particular time.

Now, if we could come to the matter of PTE Jacob Kovco and when you were first notified and what actions you took, if any?---Certainly. I was notified on the evening of the incident. My first notification was that
40 there had been a gunshot injury to a soldier in the Middle East. I was on an insecure communications line at that particular stage and so I was not able to get hold of any of the detail. That message was passed to me from my counterpart, the J1J4 at HQ 633. At that stage, it was an injury with no detail and certainly my contact then back into HQJOC to the watch-
45 keeper network alerted me to the fact that the HQ knew that something

was - something had happened in the Middle East and that actions were being taken in the Middle East and here in Australia to notify relevant Commanders and individuals.

5 Subsequent to that activity, the following morning as a follow-up on my particular part and as a result of what I remember as a phone message from the J1J4 in theatre, I then discovered that unfortunately PTE Kovco had died overnight. I did not know his name at that particular stage and I've subsequently come to believe that the person that was talked to me -
10 that was advised to me on the phone was indeed PTE Kovco. At that particular stage again I was on an insecure line, but in my ability to then phone back into HQJOC, I became alerted to the - to the knowledge that the operations cell at - the operations centre at JOC was managing the issue and that the J1J4 in theatre was managing the issue from a
15 Commander 633 perspective.

Did you take any steps?---At that stage I phoned my J10, WGCDR Lindsay Guerin, WGCDR Guerin is the Staff Officer Personnel within the HQ, he's one of my direct subordinates and in this particular instance he
20 was the officer responsible at that stage from a personnel and logistics branch point of view for the management of the incident.

Did you give him any guidance or instructions?---Not specifically. The issues that are set out within the Administration Instruction, I felt were
25 suitable to manage the task. They had certainly been successful, if I can put it in that particular term, in the repatriation of our other casualty in the Middle East the year before and indeed had been the same policies and procedures we had used on a range of other operations where
30 unfortunately soldiers, sailors or airmen had passed away as a result of either accidents or actions on operations.

Would you please turn to paragraph 23 of the Mortuary Affairs Plan that's before you. And perhaps page through to ensure the context of which the part of the document I'm going to raise with you and you'll see it's
35 headed Personnel, paragraph 23?---Yes.

It says:

40 *In the event of a FATALCAS, the legal jurisdiction under which the remains will fall will depend on Military, legal and diplomatic authorities. Unless these authorities make contrary arrangements, the remains will be under ADF jurisdiction. Unless specifically required under the terms of the SOFA with a host nation, bodies are not to be handed over to local authorities*
45 *within the MEAO.*

Now, the evidence before the Board is that PTE Kovco was moved from Baghdad to Kuwait, that the Kenyon contract was initiated and in that process his body was handed over to the local authorities?---Sure.

5

That appears to be inconsistent with that aspect of paragraph 23 that I've drawn to your attention, can you speak to that?---Certainly. What's in the documentation is correct and it's reliant upon the Status of Forces Agreement or SOFA as you described it which is a - it's almost a treaty level document between relevant countries as I understand it which sets out the parameters to which Australian Defence Force personnel can serve within a foreign country. And in this case, the two countries involved that you mentioned, we have an agreement certainly with the second of the countries where we have the ability to deal outside of the normal authorities' requirements from a jurisdictional perspective.

10

15

In this particular instance though one of the issues that became apparent is as a result of a decision to move the remains of PTE Kovco home on a civil aircraft. In the case of a civil airliner as I understand it for a civil - the Civil Airline Authority, the company I can't remember off the top of my head which airline organisation was used, part of their process to extract from Kuwait is to have a Death Certificate signed by a Kuwaiti mortuary. So in that particular case it's not a question of the SOFA saying that we didn't have to hand over to a local authority. My understanding is that in this particular case we weren't applying an authority requirement, we were actually applying a requirement to meet the airline's needs to be able to place the casket onboard that aircraft so that the remains could be brought home in the most expeditious manner.

20

25

30

Now, the evidence of WGCDCR Guerin is that you advised him to ring Kenyon to put in place or activate the SOFA?---Certainly.

What do you say to that?---Yes, the Kenyon's contract is just a standing part of our support to theatre. It's mentioned in the same documents you've referred to here in the Administration Instruction. The Kenyon's contract is a fairly all encompassing style of contract that has been in place with the Australian Defence Force, as I understand it, since at least 1997 and it may indeed have been in place before that, although I can't comment in that particular regard. We'd used the Kenyon's contract certainly for the other incident that occurred in late 2005 and the Kenyon's contract provides us with a range of support skills facilities and indeed knowledge at both receiving end and despatch end that we just don't have within the Australian Defence Force. So putting the Kenyon's contract in place is almost a standard particular package of support to theatre or to any of the overseas operations. And I use that in the example for - for be

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it the Solomon Islands, the tsunami incident in Sumatra. I understand it was also used in the Bali incident, although I don't have direct evidence of that, it's an understanding that I had. So it's a standing offer that is in place. I understand it's an Australian Government standing offer, not just
5 a Defence standing offer, although we certainly have our own specific elements to that within the agreement we have with Kenyon.

So do I understand you to be saying that there is a significant history, you mentioned a number of incidents where the Kenyon's contract has been
10 activated to provide repatriation services of deceased Australians?
---Absolutely.

And in ADF circumstances, could you just repeat the ones that you are aware of, the incident in the Middle East last year?---The incident in the
15 Middle East last year, one in OP ANODE where a soldier passed away as a result of an accident and then the - the support that we gave to the Sumatra assist activity, the tsunami incident that occurred in Indonesia whereas part of the whole of government extraction of remains of individuals from the theatre, the Kenyon's contract was part of that
20 particular activity.

Does it follow from that that the immediate response was to utilise Kenyon's, rather than considering some other form of service type repatriation?---I think you'd probably need to be a little bit careful there.
25 The Kenyon's contract is an all encompassing package. Most people just view it as a package to move the remains of someone from point A to point B in aircraft and that's the way most people view the particular contract. It's actually a lot more wide ranging than that. The contract provides us, as I mentioned before, with a range of skills that we just don't
30 have within the ADF. Kenyon's is a contract that's also used - or contractor that's used by the UK and the US Defence Forces for the extraction of individuals from theatre. And it covers such activities as control and operation at mortuaries at either end of the - the strategic air link, work with coroners on this end of - in Australia, coordination with coroners, coordination with morgues and undertakers, it works with - on
35 the far end or in the theatre end, working with various host nation or national authorities such as mortuaries in their particular circumstances, police forces, government authorities, Department of Interiors for example and it enables a range of packages that are - I suppose paperwork that we
40 just don't have the skills to manage or the knowledge to manage within the Australian Defence Force at this stage.

Could you just page through in the Cosson investigation report to the end of tag T, that is the end of T you'll see - T is the Deed of Agreement, so if
45 you'd just go to the first page of T?---Yes.

Is that what you understand the Kenyon contract to be, that document?
---Yes, the 2003 document which is a review of the '97 document as I understand it.

5

Now, if you'd right to the end of that, which is, I think, the second page before the flag U?---Yes.

It bears GEN Gillespie's signature as the procurement approver, do you see that?---Mm.

10

Underneath in what appears to be his handwriting is written:

15

I endorse the proposal with the following requirement to be framed in the statement of work "the bodies of Australian service personnel killed on operations remote from Australia are to arrive in Australia on a national carrier aircraft".

20

Do you know if that stipulation by GEN Gillespie at the time was converted into the policy document to your knowledge?---I'd have no knowledge of such.

25

The decision to actually activate Kenyon, was that actually your decision? Did you generate that decision through WGCDR Guerin as he has given evidence?---I certainly advised him to get in touch with Kenyon's, is a sort of standard procedure. As I said, we don't have a range of those skills, particularly at the - be it in Kuwait or in other countries, to deal with the relevant local authorities and indeed then to arrange the Australian end of the coordination with various sort of coroners and undertakers and so on. So they're part of a support package, but it's - engaging them is the first step to it, it's then the detail or the amount of support that they provide within that package that I suspect is where the thrust of where your question is sort of going.

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Were there any other options considered in your mind at that time, other than Kenyon?---Again, Kenyon's are the only agency that's able to enable extraction from a theatre for us and that's, as I said, it's part of a larger package. As I said most people understand Kenyon's to just be aircraft from point A to point B, it actually does much more than that. Everyone gets sort of hung up on the aircraft part of it, that is just one part of the package. So when the package is initially engaged, you don't actually know that all of the full detail of what's required on the ground, it's a dynamic or developing situation. And so the people in theatre need to continue to develop the requirements for extraction from theatre as the situation is unfolding. So getting Kenyon's in place upfront allows them -

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it initiates from an ADF perspective their representatives getting on the ground as quickly as possible so that we can assist in the expediting of the remains to Australia as quickly as possible.

5 You had personal knowledge of at least one recent conduct of that activity by Kenyon for the Defence Force?---Absolutely and worked very successfully.

10 Kenyon's, at Exhibit A, which is part of the T flag, if you page your way through you'll find Exhibit A. Unfortunately I can't give you a page number, I'm sorry. But this report is constructed in a way that doesn't allow me to do that. But if you page through you'll find Exhibit A, annex A setting out services and requirements. It's actually called Exhibit A, Annex A?---I know the one you're talking about. Yes.

15 And there it sets out at 1.2 Additional Commonwealth Requirements and it says:

20 *Kenyon, if requested, will meet on request one or more of the traditional services listed or one or more of the following:*

?---Mm.

25 The first thing there is "Identification". Was it envisaged in your thought processes that the request for return of the body would also be a request for that particular service, that is identification of the body?---That's not normally one of the activities that occurs. In other relevant Defence documentation the identification of remains - the formal identification of remains is an activity that occurs in Australia. Tentative identification, if I
30 could use that word loosely, may be used in theatre, but that's not a formal means of identification. In this particular case, identification and processing of remains, to my understanding, is the assistance in the identification back in Australia to prove beyond reasonable doubt that the individual is in the - in the remains pouch is who we actually perceived it
35 to have been. Or if it's in the case of where have no idea who the individual is, then identifying through dental records or whatever other method or means of identification, who that individual particularly is.

40 So, as I said, you need to think about this Kenyon's contract thing, it's not just a far end, but also at the home base end as well so that in this particular case, identification as I understand it to be would be assisting us with identification for positive proof here in Australia through the coroner. And certainly Kenyon's are happy to assist us with that and it's a, as I understand, a relatively easy process anyway, but they are well connected
45 to the coronial system within Australia, as an example and we very helpful

to us, not just in the previous incident that occurred in 2005, but indeed in this particular activity with identification of remains once they've returned here to Australia.

5 On the second page of your statement, at the end of the second paragraph, state that you had been advised:

There was a desire to have the remains returned to Australia on or before Anzac Day.

10

Are you able to say whose desire that was?--No. No, I'm not. WGCDR Guerin on a phone call to me - because I was not in proximity to a secure phone during the period of time, he was advising me by mobile phone of incidences they were occurring or updates and in one of his updates which
15 was as simple as ringing me to let me know that the remains were to be returned to Australia. The aim was to return the remains as expeditiously as possible and that there had - was a desire and he didn't know where the desire had come from, from my recollection, to have the remains returned before or on Anzac Day.

20

Colonel, I understand you've brought along with you a series of documents relating to policy development in the aftermath of this particular matter and I have here five documents. Because of the volume of them, they have not been reproduced yet for the Board or for Counsel, so I'm going to hand them up to you and ask you to identify them serially.
25 Before you do, if you could just tell the Board globally what they are in terms of policy, what they relate to?--The five documents are related to ADF policy in regard to mortuary affairs. The five documents sequentially are a message from CDF advising on some immediate issues that he required to be fixed as a result of initial findings from both the quick assessments that occurred in theatre and some preliminary activities from the Cosson Inquiry as I understand it, the detail I'm not fully certain of, but certainly it's a message from him telling us to put in place a range of adjustments to our current policies and then the following four
30 documents that I'll talk about are then based off that original message from CDF's office, are then adjustments that we are currently working through or are in draft or extant format right now to take into account that direction that he has given to us to implement for operations.

40

The first one of those is a directive from the Chief of Defence Force to my boss, the Commander JOC, GEN Gillespie on applying his message. The second one - sorry the third document I have then as part of that is a rewrite of one of the Defence instructions, Personnel 20-6, which is Mortuary Affairs In The Australian Defence Force and that is a draft
45 rewrite at this particular stage awaiting clearance, but certainly the tenants

of that are based off the guidance in the message from Chief of Defence Force and aspects of the recommendations from the Cosson Inquiry. The fourth document is a rewrite of the Mortuary Affairs Plan, the one that you directed me to here within the Cosson Inquiry is a complete review of that Mortuary Affairs Plan based against the guidance in the CDF directive and the draft rewrites of the Mortuary Affairs Policy document and the last document a weightier tome is a new Australian Defence Force Publication 1.1.1 on Mortuary Affairs which currently is at draft stage, but is being prepared for clearance as I understand that and they are five documents that we are working through, guidance, policy, doctrine to enable us to tighten issues associated with the repatriation of Australian servicemen or women from areas of operations.

Sir, I propose to tender the documents as one bundle with the cover being the CDF's instruction, the signal instruction with the others as necessarily related documents as described by COL McManus.

PRESIDENT: Is everybody comfortable with that approach?

COUNSEL REPRESENTING: Yes, sir.

COL YOUNG: Sir, if I could just make this observation; I've got some questions I'd like to put to COL McManus, the answers may be in those documents, but I'm not going to have a chance to read those before I put those questions, but perhaps I can put them and he can say yes, to his knowledge they're there or no, they're not.

PRESIDENT: I take you to page 43. Very well, yes, marked as 172.

#EXHIBIT 172 - BUNDLE OF DOCUMENTS

COL GRIFFIN: It's drawn to my attention that there may be classified matters in some of the documents, Colonel, are you able to speak to that? ---The highest classification in any of the documents is Restricted. Certainly the directive from the CDF to the Vice Chief or Commander Joint Operations is an unclassified document.

On that basis, sir, perhaps it would be best to prepare a redacted version or a public version of the exhibit that has the CDF's instruction and then GEN Gillespie's instruction. Is that right?---Of the directive to - - -

Both those are public documents, could it be, COL McManus. Is that right?---I will perceive certainly the directive could be, but I'm certainly

not the authority for that question.

5 In that case, sir, perhaps the four attachments - that is, the five documents be classified and then the CDF's directive be the only document in the redacted public version of that exhibit number.

PRESIDENT: All right, the CDF directive will be an unclassified document or redacted document and the remainder will be classified.

10 COL GRIFFIN: Thank you, sir.

PRESIDENT: Maybe at a later time we'll be able to release those.

15 COL GRIFFIN: Thank you, sir. Something has escaped me, but I'm sure I'll remember it by the time for re-examination. But other than that, I have no further questions at this stage of COL McManus.

PRESIDENT: Thank you.

20 LTCOL WILKINSON: No questions, sir.

PRESIDENT: LTCOL Green.

25 LTCOL GREEN: No, sir.

PRESIDENT: LTCOL Berkley.

LTCOL BERKLEY: Just a couple, sir.

30 <EXAMINATION BY LTCOL BERKLEY [1531]

35 LTCOL BERKLEY: COL McManus, I'm LTCOL Tom Berkley and I represent Shelley Kovco, Jake's widow?---I understand.

One thing is important is this: Kenyon's is basically an on-demand contract, isn't it?---Absolutely.

40 The normal and preferred method of returning the remains of our fallen back to our shores is by service air?---Generally speaking, yes.

45 Why in this case did we not look at service air?---I can't answer that. That decision was taken in theatre I think. I don't know the detail to that. My understanding - and that's the best that I could give you to your question -

- is that with the best of intentions the fellows in theatre attempted to enable the return of the remains as quickly as possible. In this particular instance, as I understand it, the fastest means of returning the remains to Australia was through a civil air carrier. I would be personally confident that the fellows in theatre looked at other options to extract the remains of PTE Kovco to Australia as quickly as possible. If this was the best means that we could do it in time, then that's why they would have gone with that particular option.
- 5
- 10 That's speculation, isn't it? I mean, what I'm getting to is this: WGCDR Guerin said you told him to activate Kenyon's. You were responding to a request from JTF 633 to activate Kenyon's. Is that what you're saying?---Yes.
- 15 Now, as the PERSLOG, you seem to - you'd probably be master of all those instructions?---I wouldn't say I'm a master of them. There are certainly quite a number, but it's - I have a good working knowledge of most of the documents that are within my purview.
- 20 Do you have the matrix in front of you with the list of soldiers?---Yes, I do.
- Is Soldier 39 your counterpart in the Middle East?---No.
- 25 Is your counterpart in the Middle East listed on that matrix?---Yes, my counterpart in the Middle East, my direct working counterpart, the J1J4, is Soldier 45.
- 30 Would Soldier 45 know of the - do you think he should know of the existence of DI(G) PERS 20-6?---I can't really answer that question. I would comment that in the mortuary affairs instructions it's within the Administration Instruction - sorry, the mortuary affairs annex that's in the Admin Insts for operation in the Middle East highlights 20-6 as one of the key references to the document. Indeed if I remember the read of that particular annex as it was back then in May 2005 it actually highlights the information that's contained within the mortuary affairs annex is a range of different documents, however, people should read references A to whatever they were, K, or whatever, of which the primary document is 20-6.
- 35
- 40 As I understand it, your headquarters is the higher headquarters for JTF 633?---Certainly.
- 45 You would be the personnel and logistics adviser down the line down to even the task groups and anything below them. It's your headquarters is

running all that?---Yes, if there is something that they feel that they can't solve, then they will come to us for advice or information.

5 Were you ever informed that the Military Police had insisted that PTE Kovco's body not be moved from Baghdad?---No.

10 Did you become aware of that at all later?---Yes, I became aware of it later, but certainly not - I think you'll find if you go through the mortuary affairs annex there it identifies in I think it's about the second or third page that the scene of an incident should be secured.

15 It's clearly all there, particularly in 20-6. So your headquarters in the field didn't come to you for advice on that issue?---No, certainly did not come to me. I could not comment as to whether they went to any of the other staff on the headquarters. But certainly I did have discussions with Soldier 45, one phone call in particular, where he did - he was advising me, as you will have probably seen from my statement - he rang a couple of times to update me from his end of line and he did ask for some advice to which I pointed him to the mortuary affairs annex within the Admin Instruction and the relevant references that are in there of which 20-6 is the primary.

20 The only other area I want to deal with is this: that as the superior headquarters you would obviously be the persons who would know of and probably organise the deployment of persons into the MEAO. Is that fair?---Yes.

25 Who in your organisation in your headquarters does all that?---It's normally managed through the 3 branch, the operations branch. To be fair here, a range of the other branches will provide specialist advice to them. They aren't the authority, but certainly other branches will provide advice on numbers of people, types of people, skill sets of people and so on.

30 Responsibility for Jake's body, BRIG Symon told us that his responsibility ended rear of Kuwait?---That's correct.

35 Then it's JOC's responsibility?---Very much so.

40 We know from reconstruction that we only lost Jake when he went out of military hands. We delivered him to Kuwait mortuary evacuation point or embarkation point, but after that he was lost. When he gets to Kuwait, is he your responsibility to repatriate or is he JTF 633's responsibility to repatriate?---JTF 633's, that is, within the area of operations for the Middle East. And the assets and elements that are located there are under the, as I understand it, command and control of Commander of 633.

Thank you, sir. Nothing further, sir.

PRESIDENT: Thank you.

5

<EXAMINATION BY COL YOUNG

[1539]

10 COL YOUNG: COL McManus, my name is Young, I represent the
interests of PTE Kovco. You'd be aware now that identification of
PTE Kovco's body became an issue and misidentification caused the
problem in repatriation. The mortuary affairs plan that was extant at the
15 time makes no reference to identification of the body being an issue to
even consider. Can you say if that's now been amended?---Yes, I can.

It has been amended?---It has been amended.

20 Within the report done by BRIG Cosson there's a copy of a Land Warfare
Procedures (General) on mortuary affairs. Is that a document you're
familiar with?---Yes.

25 Would there be a copy of that at your headquarters on your desk, as it
were?---Not on my desk, but within my branch, yes.

30 Is that something that you've had regard to, given your responsibilities
for mortuary affairs?---Certainly. It is an Army publication, not a joint
publication. Indeed if you have a read of it you'll find that a range of its
content and concepts are actually found in most of the other documents
that are referred to in the Admin Instruction anyway.

35 Just on that point, looking at the Land Warfare Procedures (General)
mortuary affairs, it refers to associated publications, some 24 of, and
suggest they all should be read together. That's a fairly impossible task
for most staff officers, but particularly for a staff officer in the field I
would suggest. Would you agree with that?---You're asking me to make
comments on the capacities of individual staff officers. I know staff
officers that could read thousands of documents and digest them and I
know others who could read one.

40

45 Why don't we talk about you then. Land Warfare Procedures, plus 24
other documents, could you be across those, do you think, in a short
period of time or would it take you a little while?---It would take me a
while, and that is why those documents, those relevant documents, are all
reduced in size. The key elements or the key tenets are removed from

5 those particular documents and placed into things such as the Admin Instruction to give the people the key issues upfront. Then if they have any questions from there they can then refer to certainly the relevant reference if they were looking for other clarification. So instead of having to search 24 documents, you have one single filter to then work through.

10 That's the way it ought to be. Would you agree though that the mortuary affairs plan which did not address identification was deficient at the time? ---I'm not certain that I could say that it is or it isn't. The identification issue in this particular instance the references are there for it.

15 Let me put it another way: the escort officer was given a task as an escort officer. If there had been a reference to identification in some document that we're moving a body, bodies can get mixed up, warning lights - I suppose what I'm putting to you is if it had been raised as an issue someone would have turned their mind to giving the escort officer a more thorough briefing, for example?---I think the point you're trying to make is actually what I think considered the deficiency is a briefing to escort officers. I think that is the key issue that's been missed in this particular regard from my perspective, and certainly has been addressed in a rewrite of the relevant instructions.

20 What about the future as far as Kenyon's is concerned, do we still have a standing contract with them?---It's a standing officer, it's not a contract. There is still a standing offer. I'm unaware that it's been reviewed in any detail. I can't answer that for you. You would need to ask others for that particular response. It is still there, it is still extant for us, because, as I mentioned, there are a range of the issues at both ends of the breach here that we just do not have ADF skills for.

30 Just finally, given that ultimately PTE Kovco was returned to an American mortuary and from there onto an aircraft, could we not utilise the experience of our US allies there in mortuary affairs and go straight from there to an aircraft rather than through a civilian mortuary, would you think?---Absolutely. As I explained a little earlier on though to COL Griffin in his questioning, in this particular instance the decision sequence from - this is from my perspective - the decision sequence here is because the decision was taken to try and get PTE Kovco home as quickly as possible, to do that was to get it onto a civil aircraft. To clear through that civil aircraft for its own cargo loading requirements it has to then in the movement of remains on a civil airliner needs to have a death certificate, or a certificate of death I think it's probably called, from that particular country to allow it to be loaded. Now, that's an unfortunate consequential action as a result of the decision to expedite the remains on a civil aircraft. The point that you make is quite valid and indeed the US

mortuary organisation located in Kuwait are very supportive and helpful to us and have been in the previous incident that COL Griffin alluded to earlier on.

5 So from what you say I take it was the - or would you agree it was the perceived need for haste that brought about this problem?---I think the issue of going through the civil mortuary was a consequential issue to that decision, yes.

10 Thank you, sir.

PRESIDENT: Colonel.

15 <EXAMINATION BY COL GRIFFIN [1546]

COL GRIFFIN: Thank you, sir, and I have remembered what it was. Colonel, the Board is authorised to make recommendations over its report.
20 From your perspective as the J1J4 at JOC and with the benefit of exposure to those recent policy documents you've spoken to, is there anything you'd like to draw to the attention of the Board?---I suppose from a board perspective the fact that we unfortunately have to bring some of our soldiers home from operations as a result of a death through whatever
25 action is unfortunate. Wherever in the world this is there is no one single solution. Each location is dynamic in its own particular regard. Each nation that we would deal with in that particular activity is dynamic in its own national policies and responsibilities. So one specific solution to one particular theatre may not necessarily be suitable to all parts of the world.
30 So my own personal concern is that whilst we may wish to drive a specific solution for one incident, we need to remain flexible and adaptable enough to change in situations or different national requirements or different international requirements for the return of any of our soldiers, sailors or airmen who unfortunately lose their life overseas. So what we have been
35 attempting to do in the crafting of all of the relevant documents is keep the key tenets of return of soldiers, sailors and airmen within military hands. But I would highlight that there are potential examples - I say "potentially" because they would develop as situations occur - where that may not necessarily be physically possible. I don't say that as an issue of
40 great concern, it's just a fact of life.

PRESIDENT: So one size does not fit all?---One size doesn't fit all at all.

45 Are there any other organisations beside Kenyon who offer similar sorts of services?---Not that I'm aware of. There probably is. I'm not the

contract coordination authority for this particular activity. My understanding, Mr President, is that the contract that we have within Defence is an adjunct to one that has been extant within other government departments, and I understand that to be Foreign Affairs and Trade, has been around for some period of time. So we have just leave it off a whole of government approach, as I understand it, to the return of remains from overseas through a standing offer to which, as I pointed out before, the standing offer gives us the ability to choose respective services within a broad sort of parameters.

5

Any further questions, gentlemen?

COL GRIFFIN: No, thank you, sir.

15 COUNSEL REPRESENTING: No, sir.

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

20 <WITNESS WITHDREW

[1549]

PRESIDENT: Any further witnesses?

25 COL GRIFFIN: No further witnesses today, sir. On the point of further evidence, I can indicate to you that - actually there is a matter I must address first. Two particular places were mentioned in BRIG Symon's evidence relating to countries. I'd ask that you give the direction that those countries not be published.

30

PRESIDENT: I'd be grateful if the press would not publish the names mentioned in BRIG Symon's evidence today; that's a classified piece of information.

35

COL GRIFFIN: Thank you, sir. The other point is that on the evidence presently available to Counsel Assisting there are no further matters that will touch on the interests of Soldier 2. I've communicated this to LTCOL Wilkinson and I understand that he's agreed to withdraw now his appearance on behalf of Soldier 2 on the proviso that should anything arise in the future that I would notify him and that the Board would draw any matters to his attention that were required upon the conclusion of the remainder of the evidence in the proceedings.

40
45 PRESIDENT: A very sensible attitude. Thank you for that. We won't

have the pleasure of LTCOL Wilkinson's company tomorrow.

LTCOL WILKINSON: Or indeed for about a fortnight.

5 PRESIDENT: Some little time.

COL GRIFFIN: Some time, sir, yes. We will return tomorrow with a further specialist from the New South Wales Police Service or it may be from the forensic services group. But in any event, that individual will speak to issues concerning the gunshot residue and on present indications that is the only witness that I have for you tomorrow.

PRESIDENT: Very well then. Not before 10.00 tomorrow?

15 COL GRIFFIN: Thank you, sir.

**MATTER ADJOURNED AT 1552 UNTIL
THURSDAY 25 AUGUST 2006 AT 1000**

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