

TRANSCRIPT OF PROCEEDINGS
UNCLASSIFIED

AUSTRALIAN DEFENCE FORCE

AUSTRALIAN ARMY, VICTORIA BARRACKS, NSW

INQUIRY INTO THE DEATH OF
PTE JACOB BRUCE KOVCO

PRESIDING:

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

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

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

1008 MONDAY 04 SEPTEMBER 2006
DAY 32

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.....  Date04/09/06.....(President)

Signed.....  Date 04/09/06.....(Recorder)

Signed.....  Date 04/09/06.....(Transcriber)

Signed.....  Date 04/09/06.....(Transcriber)

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5 PRESIDENT: Before I start the proceedings this morning, ladies and gentlemen, I want to make some comments; there's been some TV footage showing a particular soldier, Soldier 14, I want to make some comments about that.

10 This is an inquiry into the tragic death of PTE Jake Kovco whilst on active duty in Iraq. His mates are still serving there in harms way, his family, of course are concerned for them and they are concerned for the wellbeing of their own families. The protection of those soldiers and their identities and thus of their families, is a matter of our security and very much in the public interest.

15 On the opening day of this Inquiry, for those reasons as we set out on pages 15 to 20 of the transcript, I directed at page 20 that identities of Australian Defence Force personnel serving in Iraq be protected. The identity of a person, by definition, includes not just the person's name, but his or her face. Lest there be no doubt, I direct that pursuant to Defence Inquiry Regulation 62, in the interest of the defence of the Commonwealth, that the identities of witnesses before this Inquiry who are ADF members serving in the middle east area of operations are not to be disclosed and this includes their names and any images of their faces.

25 I understand that even as we speak there are pictures of Soldier 14 on an internet site. Those images should be removed immediately.

30 Any other comment required, Colonel?

COL GRIFFIN: No, may it please you Mr President - - -

35 LTCOL GREEN: Sir, before you move onto another matter, perhaps you should expand the width of your direction. You've directed ADF personnel serving in Iraq, a technical approach could be that ADF personnel who are presently back here and not strictly speaking serving in Iraq.

40 PRESIDENT: Yes, I take your point. Including those who were serving in Iraq at the time of this tragic accident.

LTCOL GREEN: Thank you, sir.

45 COL GRIFFIN: Thank you, Mr President. We have two witnesses today, the first witness is the Director of Psychology Corps, COL Murphy. Then

will be MAJ Sonia Byway who speaks to the Mortuary Affairs policy and can I foreshadow that on Wednesday, Soldier 20 will give further video evidence by link from Baghdad.

5 PRESIDENT: Thank you.

COL GRIFFIN: MAJ Hyde will take the first witness, sir.

PRESIDENT: Yes, thank you, Major.

10

MAJ HYDE: I call COL Murphy.

15 <COL PETER JOSEPH MURPHY, affirmed [1012]

<EXAMINATION BY MAJ HYDE

20 MAJ HYDE: COL Murphy, could you state your full name and occupation please for the record?---Peter Joseph Murphy, currently I'm the Director of the Defence Force psychology organisation.

25 Have you been provided with a copy of the rights and obligations of witnesses appearing before Boards of Inquiry?---I have.

Have you read that?---I have.

30 Where are you currently posted, sir?---I'm posted to Canberra, in the directorate of psychology.

35 What does that role involve for you?---Well as Director of the Defence Force psychology organisation I oversee the delivery of psychology support to Defence. The mission of Defence psychology is to enhance the capability, the operational effectiveness and force preservation of the Australian Defence Force and we do that through timely, pragmatic and culturally appropriate psych support delivery.

40 How many psychologists do you have within your organisation? ---Defence psychology really has four components. There's - the single services have their psychologists and psych examiners and psych assistance and there's a tri-service organisation of which I'm the director. As head of corps of the Australian Army Psychology Corps, I also have technical oversight of the components within Army. But to answer your
45 question we have, under my jurisdiction, I probably have about 80 full-

time psychologists, about 40 full-time - no, probably closer to 60 full-time psych examiners and psych assistants and of course there's the Army Reserve which has 100 positions for psychology officers and another 100 positions for psych examiners. About 50 per cent of those positions are currently with personnel.

Do you currently have any members deployed in any areas of operation? ---We do, it's a very busy time for us at the moment. I think - I can't give you an exact number, we have another team deploying this week to the but we probably have psychology personnel deployed at the moment.

Could you tell the Board the purpose of deploying psychologists?---It's a fairly long history. The first psychologist to deploy after the Vietnam conflict were to Namibia and the purpose of that was to conduct what we called at that stage, psychological debriefings to prepare the people for their transition back home and there are many other roles, but probably the other significant one was to conduct some research into the impact on our personnel of service overseas. Over time that's evolved and at the moment we have two main roles when we deploy overseas. One is we send people as part of a force extraction team to prepare our people for that transition home, but we also help them to I guess contemplate and think about their deployment experience, because our experience as an organisation and the research shows that it's important that people derive meaning from their time overseas. It certainly assists in preventing adverse consequences of the deployment experience; so that's another key role there. We have also have permanently - or not permanently deployed, but teams who are deployed as part of a contingent, and they provide a whole gamut of psychological support to the deployed contingent, including things like career management, selection type issues, support to critical incidents that may occur, performance enhancement initiatives and providing advice and support to Commanders.

What sort of service do your members provide to those about to deploy? ---We have a routine slot in the force preparation briefings that occur and it really depends on the deployment characteristics or what we presume are the main psychological threats of that deployment as to what we discuss with our members. But basically we're trying to pre-warn them about some of the psychological hazards of the mission and to get them to start thinking about how they're going to adjust, cope, maintain cohesion and morale within the force. The sorts of topics that we cover are combat and operational stress, the management of psychological casualties or psychological injuries, the psychosocial stages of deployment, including separation from family, general stress management. That leads into things like psychological resilience and adaptation, fatigue management,

including sleep management in the field, and if there's a danger of being captive, we talk about surviving the captivity. There are also more specialist briefings that we can provide on things like tactical negotiation, you know, getting through checkpoints, cross-cultural awareness and competence, trying to understand the local culture and how that impacts on how we should behave with the local people, body recovery tasks and managing displaced people or refugees.

Could you tell the Board what sorts of stressors the ADF members are subjected to in a place like Iraq from your organisation's perspective? ---Well, I can talk more generically. We've been researching the human dimension of operations since Timor in some detail. When members are deployed there are really six constellations of stressor domains or stressor factors. We've labelled those workplace stressors. A lot of the people are under the misconception that when you go overseas it's just the operational stressors that cause concerns, but in many cases our research suggests that it's the normal everyday workplace stressors and other stressors that cause more concern to our people. Part of this I think is because our soldiers and sailors and airmen actually expect the operational stressors and are well prepared for them, but sometimes when you're overseas and you're away from your normal coping supports day-to-day problems assume much greater prominence than we would give them credit. So workplace stressors is one. Things like perceived inequities, leadership concerns, policies and regulations at the unit level, and issues of lack of cohesion amongst work colleagues. The second domain I would call the potentially traumatic stressors, things like witnessing instances of inhumanity, witnessing widespread human suffering or destruction and experiences with death. A third stressor domain is, as I mentioned, the operational stressors, the harsh environmental conditions that our people are exposed to, the threat of serious injury or death; mental and physical fatigue are examples of those. Another domain is the organizational support issues. Just because people are deployed doesn't mean they don't have concerns about conditions of service or their career management, their administrative support, and certainly the quality of their clothing and equipment assumes great prominence for them. A fifth stressor domain is family concerns. I think we can all identify with this. The impact of deployment on family relations is of great concern to our people. Problems in the family back home that you cannot really help to resolve because of the distance and just the problems of communicating with family, either lack of communication or sometimes the mode of communication can be problematic in itself. Finally, and probably least important, there's a stressor domain that we've labelled ambiguity. It covers issues of things like concern about your own competence to do the job, control over your own work and concern or lack of clarity about your own work role whilst deployed, because on many occasions it's a dynamic

environment and our people are employed in tasks for which they might not be well trained.

5 Prior to a deployment, what sort of instruction do members have in relation to each of those six factors?---Well, I can't say that we actually talk to those factors specifically. We probably adopt more a generic - an umbrella approach to stress management. We certainly will identify some of those stressor domains and there tends to be a focus I assume or I presume on traumatic stressors. For example, when we prepared our people to go to OPERATION SUMATRA ASSIST in the Ache province we spent a good deal of time preparing them for issues of seeing destruction and bodies and having to possibly handle the bodies. Certainly our research shows that for those on SUMATRA ASSIST the exposure to potentially traumatic events was probably double that of most of our other overseas deployments.

10 If I could just pick up on the second factor that you have spoken about, which is the potentially traumatic events. What sorts of events do you envisage when you talk of those for members deployed on operations? ---Well, by definition, a potentially traumatic event should be outside the range of usual human experience. Interestingly, my own research suggests that issues of destruction and widespread suffering tend to have a good deal of impact, because most of our people are exposed to those sorts of things. There are other sorts of impacts that are much rarer, being held captive, being assaulted, for example, physically assaulted; they tend to be rarer. But they really - because there are just so many we tend again to I guess approach this from a fairly generic perspective and just talk about the potential for serious incidents that could have a very adverse outcome on their psychological wellbeing.

15 Is it the case that your organisation carries out a monitoring process for members on their return to Australia?---We do indeed. At the moment we have a two-step process. Towards the end of the deployment it tends to be fairly standard practice these days to deploy a psych support team. They conduct what we call the return to Australia psychological screen. Now, that screen involves several different components, one of which is to brief members, normally as a group, on the potential challenges of readjustment back into Australian society and into working in the non-operational context. So we call that a psycho-educational presentation or brief to our people. The next - - -

20 I'm sorry, just before you go on, can I ask you to describe for the Board some of the sorts of difficulties from a psychological perspective that members face returning from operations?---Well, there are just so many. I guess readjusting to the home life is a critical one for many people. I've

seen homecomings fall apart literally within seconds of stepping off the plane or coming down the gangplank, that the returning member doesn't comment politely about their spouse's hairstyle or the first question is about how bad was the damage to the car that was involved in an accident or these sorts of things. It can really destroy the homecoming that quickly. Other issues are when you do get home if there's an elder son, irrespective of his age, he may have taken over the role of father of the house. If there have been changes in the home that the homecoming member finds difficult to accept, that can generate tension and conflict. So all sorts of things in the family. A daughter who when you went away was pre-teen and when you come home she's now a young woman; these sorts of issues can be difficult to assimilate. Then of course there's the workplace. You come off operations where things are pretty serious and there's a constant threat on some of our missions and our people, by and large, are given a good deal of responsibility when they're overseas, particularly on some of our missions. Cambodia was a classic one where we had Privates and Corporals running displaced sections across the countryside. When they get home they find that it's back to the grindstone and their responsibility is taken away from them, the responsibility that they had on the operation. This can be a source of great frustration. There are also issues of career. Sometimes it's difficult to manage our people when they're deployed and when they get back they may feel or perceive that their career has been put on a second tier compared to their peers who stayed at home and so on and so forth. Then there's I guess the broader social integration. If people aren't welcomed home - I think the classic that we all know about here is the Vietnam Veterans. There can be a sense of alienation from society from the wider community. This can also impact on their general emotional and psychological reintegration when they get home. So getting back to the RTAPS, one component is the psycho-educational brief. A second component is a survey that they fill out that looks at issues of mental health but also issues of stressors and some outcomes, what we call strains. So issues of are they having headaches or have they been tired lately, are they feeling bored and frustrated, those sorts of things. And various other sort of smaller items looking at issues of commitment to the organisation and so on. The third component of the RTAPS process is to have an interview one-on-one with either a psychology officer or a psychology examiner. Our psych examiners are our other rank members and Warrant Officers of the Psychology Corps. They are trained to do these sorts of interventions. They have gained civil accreditation, a Certificate IV in Mental Health (Non Clinical) and they are also supervised by the psychology officers in the deployment. We've found that soldiers often prefer to have their screen interview done with a psych examiner because there aren't the issues of rank there that is of concern to some of them. We've evaluated the psychological screening process and

we've found that there's a good deal of trust as well between many of our ADF personnel and our examiners and our psychology officers. That's taken a good deal of time to generate that trust. We've also found that there's a great deal of acceptance, and certainly increasing acceptance with Army in particular, that this process is worthwhile and that our personnel, by and large, even look forward to their opportunity to discuss their deployment experience with a psychologist or a psych examiner. So they're the three stages of the RTAPS. As I said, we try and make sure it happens in theatre before return to Australia to forewarn our people and to get them on that road to readjustment, if that's required. The second stage happens normally three to six months after deployment. We call that the post-operational psychology screen. Now, if there are concerns identified in the RTAPS prior to them coming back to Australia, then certainly that post-operational psych screen will be brought forward and they may be formally referred. So that can happen immediately or at the one, two or three month phase, depending on the concerns raised. But for most people what we call the POPS occurs about three to six months after deployment. Again they are given a survey, a questionnaire. They fill out various aspects related to mental health and organisational health and effectiveness. Then they have a one-on-one interview. The difficulty that we've had in the past is that it can be difficult to track down these people and some of them are reluctant to have their POPS screen. And we're putting in place procedure so that we can ensure that our personnel do receive their post-op psych screen. One way that we've done that is within the PMKeyS we're putting a section in the operational cube that will - a couple of boxes there so that after the RTAPS or the POPS the psychologist or psych examiner will go in and tick those boxes. That will enable Commanders to take responsibility for monitoring the RTAPS and the POPS stages of the psychological screening process.

Now, you mentioned the survey material that is obtained from members on their return. What is done with that data ordinarily?---All right. That survey is often used as the framework for the interview with the psych or the psych examiner. So they work through that survey with them and raise any issues of concern. The interview is more than just a survey of course, but it certainly is a good template for getting discussion going. Then that information is sent to the psychological research and technology group in Canberra and they will put that data into a database. This year we've made a concerted effort to start regular analysis and topical analysis of the trends that arise from that information. We recently briefed the Army Safe Board on some of the select outcomes from the RTAPS and the POPS process.

Just as an aside, are you able to indicate to the Board what analysis of that data has shown up in terms of readjustment?---Well, we're writing

sometimes 30-page reports with numerous tables and figures and so on. I think one of the findings that I've stressed with the senior Commanders that I've briefed is that our rates of self-reported serious stress reactions are relatively low, in most cases below the 2 per cent mark. This compares with reports in the media with British and US service personnel that are much, much higher. But of course it's self-reported information. So that means that there could be limitations to the accuracy of that data. If a person is not willing to be honest about what's happening inside their heads, so to speak, then there's no way we can prove or disprove that until well down the track when some behaviours that are normally associated with psychological ill-health are apparent in the workplace, for example. So we just have to attach that caveat to this sort of information; that it is self-report and if people aren't prepared to be honest about their psychological status, then it's difficult for us to prove or disprove that.

Could I now ask you to describe for the Board your understanding of human performance errors and non-compliant behaviour? What does that phraseology mean?---I guess I'll go back. My previous posting, I spent four years as the senior staff officer for human factors within the Army aviation capability. That entailed doing investigations, safety investigations, and research into safety climate and organisational culture. I think one of the important issues that was on the minds of our senior Commanders is safety, how it is developed, a strong, positive safety climate and how it is maintained and I think the Sea King Board of Inquiry is a good example of where these issues have surfaced and there were concerns about non-compliance. Now, the Military as an organisation tends to take a fairly dim and more of a disciplinary type approach to non-compliance issues, but the human factors world has identified that non-compliance can often - there are many reasons for this occurring and in many ways it's not human nature, but depending on the situation, there are - it's almost a widespread and is almost local rationality or a local acceptance of rules that are considered to be either civil or to be simply unachievable if the other demands on their time are to be met. So I guess what we're trying to do is educate our Commanders that there's no point identifying non-compliance at the individual level if there are other levels within the organisation that are fuelling non-compliance or pressuring people to not comply. So the whole approach to safety management within aviation, I think that is the leading light across the globe in terms of safety management and safety culture. The whole approach there is a systematic holistic approach to safety management and you need to look at the multiple levels within an organisation in order to understand outcomes and it's very easy with what we call the hindsight bias to sit in our chairs and judge the behaviour of people from our perspective, at our time and under our current sort of constraints and pressures. What we really need to do as investigators is to go back to their

situation, put ourselves in their place and try to understand the pressures, the local rationality attentions, the threats and so on that were operating at that time because we take a positive approach to human nature and we believe that most people don't intend to make mistakes, they don't want to make errors, but in many ways, the whole system can end up, not forcing them, but leading them down that path to error.

Now, you've said that much of the current knowledge and research emanates from aircraft - - -?---Yes, the aviation domain.

- - - problems, disasters, if I can use that term. In recent history, that is say over the last 10 years, what sorts of incidents and accidents have been investigated for the purposes of looking at human factors in terms of causation and accidents?---This is right across the field of aviation?

Yes?---I think there are quite a number of high profile incidents within aviation dating back as early as the 1970s, the Tenner Reef disaster where two aircraft collided on a runway for example and I think approximately 500 people died as a result of that and several other accidents really indicated that the human element was crucial. In these days it's quite common to quote that certainly over 80 per cent of aviation accidents and I think accidents across any transportation domain and perhaps even in other high reliability industries such as the medical industry, the nuclear industry and so on, probably 80 per cent of those incidents and accidents have a major component related to human error. So this - this lead to recognition within the aviation domain of the - of the importance of the human operator in maintaining safety and as a result of that, various programs generically called crew resource management were developed and what they aim to do is teach aircrew, maintainers, air traffic controllers and so on about the human dimension of safety within aviation and this is done in various ways by educating them about human performance limitations, educating them about human error models, educating them about human performance issues and so on, fatigue management, all these sorts of issues. We also try to modify their attitudes towards these aspects because it's only by really changing attitudes that we can change behaviour. There certainly is a certain amount of acceptance that behaviour can be modified through cohesion, but it is much better to modify behaviour intrinsically so that people understand the reasons for rules and regulations and why they are important.

In terms of that behaviour modification, what sorts of steps can be put in train to assist people in identifying potential problems and sources of error?---Well we run the three day courses on crew resource management within Defence and they tend to have about 10 modules and we try to

5 make those modules fairly pragmatic and give them ideas and techniques
for working on safety. I think fatigue for example is an area that's often
identified as a contributor to accidents and we do various things to try and
educate people in how to manage fatigue. One of those things was to
10 publish a Commander's Guide To Fatigue Management On Operations,
but we also publish regularly within a aviation capability, articles relating
to fatigue management, specifically for maintainers for example. We've
given them information on the science of napping, so that when they do
nap, we give them permission to nap when it's appropriate and we tell
15 them the best time of day to nap and how long they should nap and these
sorts of things and what sort of naps at which time of day will enhance or
maintain performance. So this sort of pragmatic information we provide.

15 We turn now to the subject matter of this Inquiry, that is the death of PTE
Kovco. Would it be fair to say that members in Iraq would be subjected
to stressors such as fatigue and other pressures that might impact on their
decision making processes?---I would suggest that, yes, you could
certainly make a case for that.

20 And in broad terms, what might those stressors be? You've talked about
fatigue, what effect does fatigue have on the decision making process?
---Well fatigue essentially - and stress and I think they're the two issues in
the middle east, they both can erode or impact adversely on almost any
human performance characteristic. So you name it, they tend to have an
25 adverse impact upon. Now, I guess the challenge for Commanders is
trying to get he balance right so that they can control for these impacts of
fatigue before they become serious and that's what the Guide On
Managing Fatigue talks about. We can try and prevent fatigue, but in the
Military sometimes fatigue is unpreventable, so then we start putting in
30 processes whereby we can manage fatigue. If we know soldiers will be
tired, then we try to give them duties that aren't - for example involving
weapons. We don't put them on a radio where there may be contacts and
they required - you know, quick and instantaneous or thoughtful decisions
to be made. We rotate tasks to stimulate motivation. We ensure that
35 people are working with another person because the impact of another
person nearby by and large is positive, although there can also be negative
aspects of working with others when you're tired. There can be a
tendency to off load responsibility to the other person. So getting back to
your original question, the sorts of stressors and so on that our people over
40 there are faced with really cross those six domains that I spoke about
before. Certainly there's threat to life, there are issues of responsibility, of
not letting your mates down, of communication with family, of seeing
widespread destruction, seeing suffering and so on.

45 Can I ask you now about the term "discontinuity" in relation to changes in

tempo, that is, from one activity to another. Firstly, where does that phrase come from?---Yes. I'm not sure where it actually comes from, but I think it refers to the work of a psychiatrist called Peter Burn in Vietnam. He was the first one who applied stress studies using the chemistry of stress in the field. So he was getting - he was initially looking at ambulance helicopter crew, so the dust-off people, because his thesis was that these people were probably in the most dangerous, the most stressful role in Vietnam consistently where they had to fly into very hot landing pads, take the injured and fly out. There was quite a high rate of these helicopters getting shut down. He thought that they would show increased stress responses. He was actually measuring this at the chemical level, which was quite novel at the time. What he found by and large was that their stress responses were suppressed to what we would have expected. With his discussions with these people he found that they had very strong psychological defences and they tended to negate or deny the threats that they were under. He then went on to look at green berets, which is a special forces in Vietnam, and found a similar sort of finding. But other people have coined the phrase "discontinuity stress", which essentially refers to people who are thrown into very high stress situations and then within hours they're back in an environment that is basically benign, such as some special forces and certainly helicopter crews, aircrews and so on. Other researchers have found that this has a debilitating effect over time. I think the classic case were the bomber crews in World War II who time and time again were thrust into missions over Germany and then came back home and had a couple of days respite and then were thrown back into again. By and large, people eventually would wear out. Very few people would either survive physically or psychologically a tour of 20 missions because the stresses were so great. I think the psychological explanation for this is that rotating from high stress to low stress is probably more challenging and debilitating than being just kept in a high stress situation for which you can adapt over time, such as frontline infantry, for example, in convention or conflict.

Does an element of complacency work into this equation, that is, when you go from a very high stress situation to that of a lower stress situation? ---I would - I can't cite any research that looks at this issue. But I certainly would think that most psychologists would predict that if there is dramatic changes in tempo and you go from a high stress to a fairly benign situation, that it is human nature to switch off and to start, you know, lowering vigilance and safety thinking and sensitivity to risk, because you just can't maintain that high level of vigilance and so on indefinitely. So I think if you are given that opportunity and you move from a high stress situation to a lower stress situation I would say it's a viable hypothesis that you would start to switch off. I don't like the term "complacency", but it's a well-accepted one I think in the military.

Are you able to make any comment in relation to PTE Kovco and his move from being on duty to being off duty in effect in his accommodation area and any possible errors that may occur as a result of that change in - -
5 -?---I haven't read his diaries directly. But I reviewed Prof McFarlane's evidence and he cites quite liberally from PTE Kovco's diary. I guess there are a couple of issues there. Certainly PTE Kovco spoke or wrote specifically about the need to maintain vigilance when he was out in the red zone in particular. So he was very aware of this concept. I think the
10 other issue that when he did get back to the green zone at one stage and his Section Commander extended one of his piquets and had two personnel on piquet he got quite angry. I thought that his anger was not really justified, but I think he felt that this requirement to have two people on duty and to extend that duty - I think he wrote quite directly that he felt
15 that this was overkill and there was no need for it, you know, this is the green zone, or words to that effect. That means that the threat is much reduced. So I guess his expectation was that things would be relaxed and the high tempo and the vigilance would also be relaxed. Now, I'm not saying he's correct or incorrect, but certainly his perception seemed to be
20 and he got quite angry about it, which we can understand was that thing should have been relaxes.

Can I now move to a different topic, and that is, the mortuary affairs issue, if I can use that broad term. Firstly, did you have any involvement in the
25 BRIG Cosson Report into the body mix-up?---Yes, she interviewed me for probably 30 minutes to an hour at one stage.

In broad terms, what input were you able to provide to her?---Well, I think the focus of the interview with me was to try and understand how the
30 body was misidentified in the first place. I raised I think four issues with her to try and help explain why that may have occurred. Now, this is coming from my experience as a safety investigator and as a human factors person. I'm trying to understand and explain why something may have occurred, I'm certainly not trying to sanction or blame the person
35 involved. So if we try to understand the situation - and I haven't been fully briefed on the circumstances. So forgive me if I get some of the details incorrect. But I think one thing that may help to explain was I believe the Sergeant involved was there with the consular official.

40 Sorry, could I stop you there a moment and ask you, do you have a soldiers matrix before you?---No.

I think you might?---Do I? Over here.

45 If there's any people by name that you'd like to refer to, could I ask you to

use the callsign matrix?---Understood. I think Soldier 2 was there with the consular official. Something that we talk about in the aviation domain is the authority gradient. What this means is if you're with another person and you perceive them to have greater responsibility by virtue of rank or some other disposition - it might be experience - that you may bow to their authority or their perceived authority. There are cases in the aviation literature where planes have literally been flown into the ground because the aircrew have not challenged the pilot flying the aircraft about what was happening. So this authority gradient is a very real concept and something that we talk to our aircrew about during crew resource management training, getting them to challenge this authority gradient if the situation warrants it. So I think perhaps Soldier 2 felt that this consular official had great responsibility in this domain than he and may have felt that it was - the body identification process was really the other person's responsibility; that's just one theory. Another theory that I raised with BRIG Cosson was that perhaps the human tendency to limit exposure to the grotesque may have had a role here. Now, of course there are other attitudes to this, that humans actually are attracted to the grotesque. Witness motor vehicle accidents and people stop to have a look and so on. But I think if you know the person involved there is a human tendency not to want to look at death and the consequences of death. So it may well be that Soldier 2 limited his exposure to the body and just glanced at it and said, "Yes, that's the body," without making a great effort to identify the body. Again I think from a human factors perspective, this is perfectly understandable. When we do train our soldiers, our Defence people, in body recovery tasks the fundamental principle is that of limiting exposure. We do this in many ways, you know, we have double gloves on, we have face masks to mask the smell, the gloves mask the tactile exposure. We try and rotate people so they're not exposed for too long to the remains. We screen off the area. We place the remains in opaque pouches and bags and so on and so forth. So there are many ways that we can limit exposure. So the second theory that I spoke with BRIG Cosson about was maybe this was just an innate human need or tendency to want to limit exposure to the dead. I think the third issue that I spoke about was fatigue effects. Now, my understanding is that Soldier 2 at this stage had been on the go for some time, was probably under a great deal of stress which can amplify the effects of fatigue. There are many, many symptoms of fatigue or outcomes of fatigue. They include drifting concentration, decreased vigilance, a tendency to skip or abbreviate procedures, a reliance on others to make decisions and a proneness to distraction. These and many other outcomes of fatigue may have had a role to play in the misidentification. Finally, I spoke to BRIG Cosson about stress and performance. There are some fascinating case studies that show that when you're under stress we often see, literally see, what we expect to see despite evidence to the contrary. A good example of this was the VINCENNES incident when a

US missile frigate shot down an Iranian civil airliner. The ship at the time, the VINCENNES was under attack from small surface boats. So they were in a combat situation under threat. The people in the combat control room actually reported that the Iranian airliner was descending, which is consistent with an attack profile. When in actual fact when they reviewed the screens and the data it was actually gaining altitude. A nearby warship, the USS SIDES, which was not under attack, reported that the aircraft was gaining altitude and was not a threat. But the people in the control room of the VINCENNES saw what they expected to see. They were already under attack, so they expected this aircraft to be coming in to finish them off perhaps. This resulted in the Captain of the VINCENNES shooting down the airliner because it was judged a threat. So this is just one example of people seeing what they expect to see when they're under stress and fatigue. It may be that Soldier 2 saw what he expected to see. Certainly there are other I think indications, you know, bandages in certain places on the body that also would be consistent with this expectation.

More broadly in terms of body recovery training for members, is there any particular training that you would advocate as being necessary for the proper fulfilment of this role?---The role of?

Body recovery and identification?---We haven't really spoken much about body identification, but we have developed presentations and handouts and we've written articles relating to body handling tasks. One of the outcome goals for the Defence Force psychology organisation this year is to produce another Commanders Guide, this one in relation to body recovery tasks. Now, an example of the sort of information that we provide was developed in this publication, a focus of human factors in aviation, which was published in December last year. Within this publication there is an article entitled "Body Recovery Tasks" and it talks about what our people can do prior to the task to prepare on seeing and after the task in order to minimise the adverse psychological impacts of doing these sorts of tasks. Following that article is an interview with a pilot who actually led two body recovery tasks from aviation accidents and the lessons that he learned from those. So this information is out there in the Defence public domain and that's one way that we're trying to raise the profile of how important it is to prepare our people for these sorts of tasks.

Would you agree that the task of body recovery or identification does need some training or direction on difficulties that might be faced? ---Absolutely. Our research shows that exposure to human remains and having to handle human remains is one of the not only the most distressing task that our people do, but it has a longer-term impact than

many of these other potentially traumatic experiences. So I think the data suggests that we do need to prepare our people properly to try and minimise those adverse outcomes.

5 Again in general terms, how would you suggest that members are best prepared? Are you able to comment on that?--Well, there are several dimensions to that. I could give you an example with the Sea King experience, but I'm not sure if I should go there. But suffice to say there are a couple of different phases to identifying and recovering the bodies in
10 the Sea King accident. One of our members who had to identify the bodies at night when there was some confusion about the number of survivors, he'd actually been prepared by the psychologist in his unit prior to deploying in Aceh and he'd been briefed on the principles of body recovery and body exposure. Talking with him it was very, very clear that
15 he had taken on board a lot of those lessons and his whole approach to his exposure and the exposure of his staff to the accident site was commendable and he tried to put in place those principles of minimising exposure and so on. So I think that's a good indication for me that if our people are aware of these ideas and these principles they go in forearmed and that can have a very positive I think impact on the process. I think the
20 other thing we need to do is have appropriate equipment prepared, body recovery cases or whatever you want to call them, with the things that will help limit exposure; screens, appropriate gloves and sufficient numbers of gloves, and things to mask the smells - there are different ways of doing that - protective overalls, and so on.

Now, the US Military uses DNA profiling for identification purposes. Are you able to comment on whether that would be a useful approach to take given the difficulties with physical identifications?--Well, it's not my
30 area of expertise, but I think I've been associated with doctors who - the doctor who commenced with DNA repository within Defence aviation. My view is that it does take time to identify bodies through DNA and it may not be pragmatic to try and identify bodies unless they are in such a state that there is no other feasible way of doing so. This is often the case
35 after serious aviation accidents. It would probably be the case after artillery or mine trauma in many cases, or in some cases at least. So really the organisation needs to weigh up the fact of if you have pretty much an intact body DNA may be positive proof, but it would take time. So it really - there are pragmatic issues to be addressed in that respect. But
40 certainly DNA has its uses and in situations like September 11 it was crucial to identifying remains. The tsunami as well it was crucial to identifying remains.

45 Could I move to a separate topic now, and that is, suicide and its prevention. Do you have a document with you today suicide and its

prevention warning signs of suicide?---I do.

5 Could you tell the Board why you've brought that document along?
---Well, it's just research that I conducted many years ago, but I think in
terms of the predictors of suicide things don't change that dramatically
over time. It might just be useful for the Board to understand what are the
major predictors, what are some of the signs and associated signs of
people who attempt suicide. If I can go through some of those.

10 Yes, if you would, please?---I think some of the key predictors of suicide
is marital stress, a relationship break-up, troubles with employment,
financial problems, the increased use of alcohol and/or drugs, other drugs,
a recent suicide of a friend or relative and previous suicide attempts. My
15 understanding is that none of these would really apply to PTE Kovco.
Other distinctive or imminent signs that are strong indicators of suicide
include depression and a sense of hopelessness, preoccupation with death
or themes of death, the expression of suicidal thoughts outwardly, putting
one's life in order, making out a will and so on, withdrawal from friends
and family, the neglect of personal appearance and health, and in some
20 cases purchasing a weapon. Some of these are not relevant to PTE Kovco
because I'm sure he would have made a will before he deployed and he
had weapons as part of his daily duties. But again from my understanding
of the proceedings thus far, none of those signs would be associated with
PTE Kovco. He had a dream about death, but I wouldn't say that was a
25 preoccupation with death. And other associated signs that are not
necessarily predictive of suicide but are associated with it are changes in
personality or emotional state. I gather most people have said that
PTE Kovco was pretty much himself on the day and the days preceding.
Seeing oneself differently or putting oneself down, difficulty
30 concentrating, noticeable changes in eating patterns, sudden and extreme
changes in weight, significant deterioration in job performance,
unexplained lethargy or fatigue and excessive risk-taking. Again my
understanding - yours is obviously greater than mine, but my
understanding of PTE Kovco is that none or very few of these would
35 apply to him as well. So in terms of predicting suicide from my
perspective, there are very, very few indicators or predictors that this
would occur, if indeed it was suicide.

40 I tender the extract pages 1 to 6 of that document.

PRESIDENT: Is everybody comfortable with the tender of that
document?

45 COUNSEL REPRESENTING: Yes.

**#EXHIBIT 176 - SUICIDE AND PREVENTION WARNING SIGNS
DOCUMENT EXTRACT PAGES 1 TO 6**

5

MAJ HYDE: Sir, you've produced also to the Inquiry the book or the document "Focus on Human Factors in Aviation"?---Yes.

10 Are there any particular articles in there that you would commend to the Board?---I think so for the edification of the Board and I think I can say that the Sea King Board of Inquiry also found several aspects of this document useful. For example, there's an article on human error and current approaches to understanding human error. There's an article on the can-do attitude, which in many cases is I think associated with how the
15 Military regard and approach risk and its management. There's an article related to the Black Hawk crash, Black Hawk 216, two years ago and it talks about how we managed the human impact of aviation accidents including how we responded to the next of kin of those involved in that accident. There's a whole section in the document on self-care, which I
20 think is very topical. As mentioned before, there are two articles in relation to body recovery. In addition, there's one article on the DNA repository within the aviation capability. So I would recommend that you might glance through that document and there might be some things that take your attention.

25

Mr President, I'm not sure if I need to tender that per se. Maybe it's appropriate to do that for the record.

30 PRESIDENT: I'm perhaps more comfortable to tender it than otherwise. Is everybody comfortable with the Board (a) reading that document and (b) formally accepting its tender?

COUNSEL REPRESENTING: Yes, sir.

35

#EXHIBIT 177 - DOCUMENT "FOCUS ON HUMAN FACTORS IN AVIATION"

40 MAJ HYDE: Thank you, sir. Colonel, your organisation produces critical incident reports in relation to various matters. Is that correct? ---Well, we would do post-activity reports in relation to any critical incidents that we are called out to assist with, yes.

45 What's the purpose of those reports?---To document the psychological

support provided and to see if we can learn lessons from each of these cases.

5 You say to document the psychological support that's provided. Was SECDet IX provided with support, that is, were the members provided with support after the death of PTE Kovco?--Yes, indeed. My understanding it was quite comprehensive support.

10 In broad terms, what was the nature of that support?--Well, by and large, the CMS is a bit of a misleading acronym. It stands for critical incident mental health support, but the acronym for some reason is CMS. There are normally three main phases to this response. The first one is simply gaining information about the incident and putting in play a plan to support the personnel involved. If it is an incident such that people are
15 clearly debilitated immediately by the incident they may be provided with assistance. But what we normally try to do - and this is probably phase 2 of the response - is to allow people to use their own coping resources to master or to at least come to terms with the incident, because we don't want to foster dependency. If people are allowed to use their own
20 individual and social resources and they can come to terms with an incident, then so much the better. But we would normally follow up at about day three with psycho education, provide people an understanding of the human response to trauma because in some cases, just that little bit of information that says to a person you're not going crazy, this is what
25 most people do go through in response to these sorts of horrific circumstances is enough to provide them a sense of relief and enough to help them get through those early difficult times. Now, if people aren't - we normally then follow up at about seven days and - just to see how people are going on a one on one situation and depending on how they're
30 travelling depends on what sort of process is put in play. If they're not coping well, we may refer them for more intimate support and then normally there's a phase 3 follow up further on down the track just to, again, make sure that people are managing because response to trauma can be delayed by all sorts of periods.

35 Are you aware as to whether support was provided to the next-of-kin of PTE Kovco following his death?--No, I'm not aware of that. Normally the support to next-of-kin would come from the Defence community organisation. I mention next-of-kin in relation to the Blackhawk 216
40 because it was quite a novel initiative there which was to allow the next-of-kin to go to the accident site. This was probably a function of the response to the Blackhawk collision back in '96 to some of the concerns expressed by family, but also because there was no - there were no fatalities with Blackhawk 216, so it was probably more appropriate that
45 we allow next-of-kin access to the site. The intent for that was to help

5 them, enable them to understand what their loved ones went through by
looking at the wreckage and so on. We closely monitored them however,
we put in extra safety tiers to ensure their safety. We had - each person
had an escort, a Defence escort. Most of them were in the mental health
arena and we had a pretty much like a debrief with them at lunchtime and
we asked them to fill out a survey evaluating the activity. And apart from
a couple who admitted that the devastation or the destruction of the
wreckage was quite overwhelming for a moment, the response where, by
and large, very positive, but it was a very well controlled activity and it
10 certainly wouldn't be conducted again as - you know, just a matter or
routine, each situation would be addressed on its own merits.

15 Are you in a position to make any recommendations to the Board in terms
of critical incident management following the death of PTE Kovco in
these particular circumstances, in other words, is there anything you can
offer the Board about how your organisation might be able to assist
further or put processes in place that might assist members for the future?
---Well my understanding is that the process was well received by the
people overseas. I think the post activity report is only recently been
20 completed and I saw an initial report into what the response was, but I
haven't seen the final report. But I believe that the only recommendation
is that we - that Defence continues to support the notion of critical
incident mental health support because I think it's very - it's a very
proactive and potentially very useful initiative. I should say that in some
25 respect Defence is, you know, at the leading edge of this type of support.
I was recently at the National Disaster Mental Health Consensus
conference and I think Defence can hold its head up high as being at the
forefront of trauma management with its own well developed processes
and procedures that have developed over time and have been valid for
30 Defence in the situations that Defence finds itself faced with.

One last topic, sir, if I may and this is in relation to Soldier 2. After his
arrival in Baghdad and before his departure to Kuwait he had
approximately 24 hours rest. Are you able to say what effect that might
35 have had on his fatigue levels?

LTCOL WILKINSON: I think he needs to explain, over about a three day
period, is that what you meant, 24 hours rest, did you say?

40 MAJ HYDE: Yes.

LTCOL WILKINSON: Over a three day period, four day period.

45 MAJ HYDE: I'm happy to have it put on that basis?---Well without
talking to the soldier concerned, I really can't comment. It depends on

5 how he utilised his rest period, but 24 hours over a three day period, that's a maximum of 8 hours a day and if that's rest time, normally sleep time would be at the most 6 hours, probably even less. In the state that I assume he may have been in, sleep may have been very difficult to come by and by and large experts in the sleep field recommend 8 hours sleep each 24 hour period. So he was clearly sleep deprived, I would have to guess and that has all sorts of implications on performance, decision making ability and even wellbeing.

10 Yes, nothing further, thank you, sir.

PRESIDENT: Yes, thank you. LTCOL Wilkinson?

15 LTCOL WILKINSON: Yes, sir, thank you, sir. Just a couple of matters.

<EXAMINATION BY LTCOL WILKINSON

[1122]

20 LTCOL WILKINSON: My name is Wilkinson, sir and I appear for Soldier 2 and thank you for your comments or your evidence in relation to the comments you made to BRIG Cosson which are very helpful. But there is one area and I think you say you've seen the report of Professor McFarlane and there's one area in that report I'd ask you comment upon
25 and that is he felt that the fact that Soldier 2 was involved in the incident itself, in the death itself. He came in soon after and was involved in control processes and reporting and even arranged for photographs to be taken and things of that nature. And Professor McFarlane said and this is at page 655 of the transcript:

30
There are two issues, the first one is the ability of people to accurately identify faces that they have seen in highly stressful circumstances and I guess it's not very reassuring to the criminal justice system, but the accuracy of facial identification is much lower than people would like to believe.
35

That was the first issue and then he said the second relevant issue at page 656:

40
The second relevant issue about the body of research is that areas that are involved in processing traumatic memories are exactly the same neural circuits that are involved in facial identification.

45 Just briefly, in his report at page 20, he said this:

5 *The systems involved in facial recognition are the same neural
systems that are involved in the processing of traumatic
memories. Traumatic stimuli have the capacity to disrupt the
process of contextual information and the process of witnessing
10 PTE Kovco face by individuals who were known to him as part of
the body's identification process will activate these circuits in the
brain and the horror and distress of the individuals, combined
with the obvious signs of injury manifest in PTE Kovco's face is
likely to disrupt the underlying integrity of these neural systems
15 and their accuracy in the facial recognition task.*

20 Those matters appear to be a physical manifestation of the trauma that he
suffered and I'm just wondering where they fit within your three areas.
Would they be in the stress bullet point that you refer to in your evidence
15 when you talk about stress?---Well, yes. This sort of neurology is not an
area of expertise for me, I certainly admit that. I would - being a
pragmatist, I would think that the points that I raise are probably - how
can I say it, would have greater priority in terms of explanatory power, in
terms of what happened. So - you know, what Professor McFarlane is
20 saying may well be true and it may be - it may add credence to my
suggestion, my hypothesis that the Sergeant may have instinctively
limited his expose to the body because it may have been - have been -
begun to activate these traumatic memories. You know, this is a key
research interest I understand of Professor McFarlane, so he would
25 highlight this area and it's understandable too, but I think just the human
tendency to avoid horror, particularly if you know the person probably has
more prominence as an explanation.

30 Which then leads me to another comment that he made and again I'd ask
you to comment, and he was talking about recommendations and he said:

You can make recommendations -

35 This is at page 663 of the transcript:

*You can make recommendations such as that an individual who
didn't have a close approximate relationship to the individual,
but did know the individual and equally wasn't immediately in
40 their life -*

He means involved in their death -

*- might be the person who should carry out the body
45 identification.*

Do you have a view on who should be involved in this escorting process and as far as identification is concerned?---I think there're probably procedural mechanisms which by there is no need to identify the body in transit and I would think that those processes and procedures could be put
5 in place. I know that they - they may not always be achievable because of delays and the need to store bodies in particular places, but I still think even in circumstances such as those, there should be procedural mechanisms by which there is no need to open a casket or to open a body bag to identify the remains. So I think with a little bit of thought and a
10 little bit of policy, we could have procedures in place to - to negate the need to actually identify bodies in transit. But getting back to your - I guess your initial question, I think there are conflicting - I guess, goals in the repatriation of the body and most units would want to return their own. It's a source of pride, it's a source of professionalism to take your own
15 dead off the battle field or from the accident site and to return them home to their loved ones. And so to divorce the repatriation process from the unit concerned, I think could be unwise. This could be an argument for having two escorts, one who is trained such as a Military Police person, I would think. In the repatriation process, the technicalities and in body
20 identification if required, but as well as a person from the unit so that the unit feels that sense of ownership and responsibility.

Yes, I'm more talking about the identification process and removing the escort and that responsibility because I agree there's probably no reason
25 why a member of the unit shouldn't be part of the consignment process of the casket and that would be important, I would've thought, but we're talking about identification. I'm just wondering whether you feel that should be separated and that the escort should've been - - -?---Well, I think that makes sense and as I think I said, there should be procedural
30 ways to avoid the need to re-identify the body during - during transit. So there would be no requirement for anyone to identify the body. Of course the other challenge is that in some cases remains will not be identifiable in mass casualty incidents and so there are already experiences and I guess procedures whereby we return remains that are not identified and that is
35 sometimes the reality of - of these situations.

The other comment I'd ask you to make if you agree is it's probably not appropriate to have stressed individuals as part of this repatriation
40 process?---Indeed, yes. No argument there.

I your interview with BRIG Cosson, you refer to a publication that's coming, I believe?---Yes.

The Commander's Guide To Body Recovery Tasks expected to be
45 released by the end of 2006, where's that - - -?---That's one the drawing

board. We have quite a good deal of content and I have a team of four officers identified who will be working on that. I think they will start with a vengeance in October to put that publication together. It's similar in style

5 to the Commander's Guide On Fatigue Management During Operations which has been well received because it has largely Australian content in terms of anecdotes and examples and case studies and it's very practical in terms of the advice that it gives and the information provided.

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

PRESIDENT: Yes. LTCOL Green?

15 LTCOL GREEN: Thank you, sir.

<EXAMINATION BY LTCOL GREEN

[1131]

20 LTCOL GREEN: Sir, my name is LTCOL Green, I represent Soldier 14. Sir, within Exhibit 176 which you may recall is your Suicide Prevention document, your first heading is Major Predictors?---Mm.

25 I gather what you're saying there these are major predictors of suicide or potential suicide?---Yes.

An equally apt heading would've been Triggers Of Suicide, would it not? ---Well I'm not sure actually.

30 Well, you can predict something, but you need something more to occur when a suicide happens, don't you, you need a trigger?---Well you may not have a single trigger if you want to call it that.

35 In any event, what you've said as a major predictor, you've given instances of things like disharmony in a workplace, financial stressors or relationship breakdown?---Yes.

40 You've identified these as the usual or the major reasons behind suicide? ---They are predictors of suicide.

Beyond those factors, sir, would it be fair to say that some individuals might consider a factor to be a major or significant factor which you or I might consider to be minor or trivial?---Of course.

45 And those minor or trivial matters could lead to suicide attempts or

success in suicide?---I'm sure.

5 Sir, in - - -?---Human nature is - is very variable, so - and that's the challenge of psychology and psychology is the complexity of human behaviour. So these are not hard and fast predictors, they are general predictors.

10 Thank you, sir. Sir, are you able to tell the Board about suicidal ideation? ---What do you mean?

Well, do you know what suicidal ideation is?---I think I do.

15 What do you understand it to be?---When people are considering, having thoughts of suicide and perhaps how they will do it.

Dreaming or wanting suicide?---Dreaming or?

Dreaming of or wanting suicide?---I'm not sure about dreaming.

20 Fantasising?---Daydreaming.

Yes, fantasising?---Yes.

25 Conceptualising, thinking it through, desiring it?---I would say so.

They would all fall within the category of suicidal ideation?---Yes, I think some people would agree with that.

30 Fantasising about committing suicide?---Possibly.

Would that go so far as to include writing about it in a diary, the possibility of committing suicide?---Can you say that again?

35 Would that go so far as to include writing about it in a diary, the possibility of committing suicide?---Writing about the possibility or the intent?

40 Well, both. First of all the possibility or secondly the intention?---I see the two as different.

45 You've had some experience with PTE Kovco's diary where he wrote about the idea of putting a gun to his head and pulling the trigger one month before his death?---I had secondary exposure to the diary through Professor McFarlane's report.

That in itself would qualify or be categorised as suicide ideation, could it not?---What could be?

5 The writing of putting a gun to one's head and pulling the trigger and feeling the bullet enter one's brain?---Well, I would say - - -

MAJ HYDE: I object to these questions, Mr President, on two grounds: one, these matters were never put to the psychiatrist and secondly, I'm not sure that this witness's expertise extends to the line of questioning that
10 LTCOL Green is now putting to the witness.

PRESIDENT: Response Colonel?

15 LTCOL GREEN: Sir, it is true these matters were not to the two psychiatrists who came, but the rule of Browne v Dunn does not apply here.

PRESIDENT: I think it does. If you read the Practice Direction, it certainly does.
20

LTCOL GREEN: Right, sir. Secondly, I had different interests at that time compared to the interest I now have.

25 PRESIDENT: I think the question of the witness's expertise will be very rapidly dealt with by the witness. I'm sure he'll tell us if he hasn't got the expertise. Anything further anybody wants to put to me on the Browne v Dunn side of the house?

30 LTCOL BERKLEY: No, sir.

PRESIDENT: Nothing further?

LTCOL GREEN: Nothing further.

35 PRESIDENT: I don't propose to allow it.

LTCOL GREEN: Sir, do you have any experience in what might be described as frontal lobe epileptic seizure?---No.

40 Thank you, sir.

PRESIDENT: Yes, thank you. LTCOL Berkley?

45 LTCOL BERKLEY: Yes, thank you, sir.

<EXAMINATION BY LTCOL BERKLEY

[1136]

5 LTCOL BERKLEY: Sir, I'm LTCOL Tom Berkley, I represent Shelley,
Jake's widow. Just following on from those questions, but as your clear
understanding and this is what I got from your earlier evidence before
LTCOL Green started asking you questions, was your clear understanding
10 from the rather eminent opinion that you've read was that Jake didn't
display any signs of suicidal ideation?---Well I'm not sure that I can - I
haven't had access to his diary directly and I have not interviewed people
who saw him on the day.

I'm just asking your understanding of the evident opinion we've had from
McFarlane?---Yes.

15

And that opinion was, that you understand his opinion to be that he didn't
display any suicidal ideation?---Well I think - I think that's pretty clear in
his report for - for anyone to make that opinion, but - - -

20 Yes, but that's as you understood it? That's how you understood his
opinion, Professor McFarlane's opinion?---I'd have to re-read his
conclusion before I could.

25 All right, well - - -?---But I think - you know, essentially both he and
Professor Mitchell, were saying there weren't the normal indicators in
evidence.

Thank you, sir. I've nothing further. Thank you, Mr President.

30 PRESIDENT: Re-examination, Major?

MAJ HYDE: Just one topic, sir.

35 <EXAMINATION BY MAJ HYDE

[1138]

40 MAJ HYDE: Colonel, you were asked questions about Professor
McFarlane and Professor Mitchell's reports, would you defer to their
expertise in relation to issues of suicide?---I think I would, yes. But in
terms of - I think my expertise is in terms of human behaviour in
operations. I think I have a greater understanding of the stressors of
operational service than perhaps the two professors. So certainly in terms
of general psychiatry and the topic of suicide in the broad population I
45 would certainly defer to their expertise. Where I have value, I think, for

this Board of Inquiry is how I can integrate that with the Military aspects.

Thank you, sir. Nothing further, thank you.

5 PRESIDENT: Yes. Yes, thank you, Colonel, you may stand down.

<WITNESS WITHDREW [1139]

10

MAJ HYDE: Mr President, our next witness is here, but if it's convenient we might - - -

15 PRESIDENT: I think it might be a very good time to take a 10 minute break.

MAJ HYDE: Thank you, sir.

20 **ADJOURNED [1140]**

RESUMED [1204]

25

PRESIDENT: Thank you, Colonel.

30 COL GRIFFIN: Mr President, before we proceed with the next witness, I had indicated some time ago to the members of the next of kin through their Counsel that it may assist the Board in your deliberations to have statements from the next of kin on the matters in your Terms of Reference and other issues affecting them. I'm advised this morning that Mrs Judy Kovco has a statement that she wishes to make to the Board and that she'll be assisted in reading the statement by her son, Mr Ben Kovco.

35

PRESIDENT: Thank you. Is it proposed to do that now, is it?

COL GRIFFIN: It is.

40 PRESIDENT: Excellent. Yes, thank you.

MRS KOVCO: We understand there has been criticism levelled at the amount of separate representation given to us. I would like to say this on the matter: while Shelley and her family and our family all grieve for
45 Jake, our approach to the Board and the evidence before it has not always

5 been in one voice. There have been occasions when we have had quite separate and distinct views on the evidence and its presentation. The decision to provide separate representation was the right one at the time and the course that the Inquiry has taken bears out the wisdom of that decision. My family and I would like to thank you for that foresight.

10 MR B KOVCO: This statement is read on behalf of the parents and siblings of PTE Jacob Bruce Kovco. It is by no means a full account of the inadequacies shown by the ADF command and personnel in Iraq and lack of respect given to Jake in death. Initially the Inquiry made much of the dream that Jake detailed in his diary a month to the day before his death. We would like to make it very clear that many people, including his mother, have the same prophetic nightmares. She wishes that she didn't, but it does happen.

15 Less than a day after Jake's death the ADF via the Minister of Defence, Brendan Nelson, made a public statement that an accident had occurred while Jake was cleaning his gun, an account that the family and the majority of the Australian public rejected immediately. Dr Nelson then went on to change his statement to something even less believable when it was announced that Jake's body had been left in Kuwait. Can it go on record that all of the statements made by Dr Nelson were made before any investigation had been conducted and indeed before any of the soldiers who were witness to the event were questioned.

25 If the evidence presented to the Board is true, we know now that at the time that Brendan Nelson made these statements the ADF officially knew nothing of the circumstances surrounding Jake's death, yet still felt it acceptable to propagate nonsense to the media. We dwell here on Dr Nelson having made the statements. Although we know he is simply the talking head of the ADF, nobody in the ADF hierarchy from the officers on the ground in Iraq to the Chief of Defence have been willing to say that they or anyone else instructed the Minister to make these ridiculous claims. It begs the question, if Jake's body had been returned as originally scheduled, would the Minister of Defence have needed to change his story?

35 We feel that the ADF and its officers contributed to Jake's death by failing to properly follow and implement their own SOPs including the use of the so-called buddy system. It has been widely admitted during this Inquiry that soldiers coming off duty do not always unload their weapons, and by one soldier's account rarely follow the buddy system as it is intended. We also note that there is no proof that Jake did not clear his weapons and note that indeed his rifle was unloaded. While the evidence is only anecdotal, we have strong reasons to believe that Jake never failed to clear

his weapons when coming off duty, and this would fit with what we know to be Jake's meticulous handling of firearms.

5 The ADF as an employer had a duty of care to properly supervise and carry out inspections of the living quarters which are shared by other soldiers to ensure it is kept in an orderly manner to provide a safe environment for all of the occupants. The ADF through their command in Iraq failed to do this and therefore have their part to play in the loss of Jake's life. While we sincerely hope to find some answers via this Board of Inquiry, it is difficult to see it as much more than a face-saving exercise to protect the ADF ranking officers involved in this tragic incident. As the Inquiry progressed we still held onto the slim chance that the truth may be found.

15 Regarding the investigation into the incident, it was devastating to hear that the ADF handled the incident scene with a negligence that defies belief. Given the current evidence of Jake's roommates at the time, officers in Iraq would have very soon after the incident been aware that neither soldier could or was willing to say how Jake was killed. Under these circumstances even the most ill-informed person, indeed an individual who had never before investigated a potential crime scene, would know better than to allow the only potential witnesses to wash their clothes and themselves, return to their daily duties and then allow the clothing of the deceased to be destroyed. Trained military officers and MPs have no excuse; they are not new to this environment.

20 It is hard to imagine what the New South Wales Police officers must have thought arriving to a fully-stripped, effectively sterilised room, with a couple of blood stains on the carpet and a hole in the ceiling. We would like to be noted that in a civilian case the ramifications for individuals who handled a potential crime scene in such a manner would be significant. They would certainly face charges and a proper inquiry into their actions.

35 The ADF somehow found it appropriate to wait nine days before taking official statements from the soldiers of SECDET IX. This was nine days in which all the soldiers were free to meet and discuss what had happened with each other and talk about what evidence they would provide to the MPs, as happened according to the testimony of Soldier 14. Several soldiers have stated that the words appearing in their statements were "not their own words" and the Military Police Officer, SGT Hession, has openly admitted that in regards to the soldiers' statements there was some templating. Given the similarity and in many areas identical wording of the statements, it seems "some" would be a very economical description of the amount of templating that took place. These were essentially

nothing more than pre-prepared documents made ready for each soldier to sign.

5 Hearing the testimony of soldiers directly involved with Jake on April 21 was frustrating in the extreme. To touch on the absurdity of their evidence, we have Jake killed by a gunshot wound while in very confined quarters with two other individuals, Soldier 17 and 19. Soldier 19 claims t
10 have been looking away from Jake when he heard gunshot, yet says he reacted and turned quickly enough to see Jake falling to the floor. Soldier 17 openly admits to have been facing Jake, sitting so close that he was almost in bodily contact, yet saw nothing. In fact the claim is that he heard the gunshot and was completely unaware of an imposing 6 foot tall man falling to the floor practically on top of him. Difficult to stomach from professional soldiers whose training equips them better than most to
15 simply observe and report.

Soldier 14 is either unable or unwilling to adequately explain the presence of his DNA in larger quantities than Jake's own DNA on the weapon that
20 killed Jake. A scenario of secondary transfer of DNA proposed by Soldier 14, given the time frame, operational environment and the amount of Soldier 14's DNA on the gun, was shown by forensic experts to be virtually impossible. He also offers an account of Jake supposedly mishandling his pistol the week before his death, accounting in detail an event that has been demonstrated within the Inquiry to be physically
25 impossible. Furthermore, Soldier 14 via his legal representative refuses to cooperate with the New South Wales Police.

Soldiers 14, 17 and 19 have provided all this to the Board as their sworn testimony, but as conscious individuals it is absolutely insulting to have
30 this evidence put to us as the full and honest truth. Perhaps these soldiers can live with the decisions they have made and the effect it may have on finding the truth about Jake's death. Likely it will play on their minds for the rest of their lives. We hope they can live with that because we cannot. Not knowing exactly what happened to our son and brother will haunt us
35 for the rest of our lives.

Though we would like to believe otherwise, it is very difficult to move beyond the undesirable idea that the ADF and its representatives have gone out of their way to destroy as much evidence as possible in an
40 attempt to protect the organisation and its personnel from any implication of wrongdoing. The actions described above, among many others, coupled with the disturbing inability of the witnesses to the event to provide any credible account of what happened, makes it very nearly impossible to reach the truth of what occurred in room 8. In this the ADF
45 is solely responsible and the actions have almost ensured that the truth

may never be found.

5 As for claims by junior NCOs about Jake mishandling his pistol on several occasions, we would like to know why there wasn't any documentation to support these claims. Why wasn't he reprimanded as per operational procedures if any of these incidents really happened? We believe these did not happen and were fabricated to discredit Jake. The ADF seems to be in complete denial that its troops do anything other than play by the rules when off duty.

10 According to the testimony of soldiers in this Inquiry, they do indeed admit to games being played. Knowing Jake, the fun person that he was, he would have joined in any game as long as he felt there was no danger or harm to anybody. In any other workplace these alleged warnings would result in dismissal. Does the ADF want us to believe that they are willing to accept such an alleged mishandling of weapons? Are they so desperate to retain their soldiers that this kind of activity is acceptable?

20 On the repatriation, we feel very sorry for Soldier 2 for being put in the position of escort whilst being emotionally attached to Jake. However, after much consideration we've come to the conclusion that he and the embassy official did not carry out their task properly; that was, to identify Jake's body. It is unfortunate that Soldier 2 failed to make anything more than a cursory glance at the body presented to him in the repulsive mortuary and equally the embassy official who noticed that the body presented had a dark moustache whereas Jake had no facial hair in his passport photo, a fact he deemed unnecessary to mention to Soldier 2.

30 Simply, if Soldier 2 and the embassy official had said more than two words to each other the entire repatriation mess would have been averted.

35 It was another blow in a long line of insults to hear that the draft report by BRIG Cosson had been lost, but in hindsight this was not a concern as the report had little purpose other than to soak up some taxpayer dollars. The report could just as well have been written from an office in Australia. In a poor attempt to find any reason for the so-called mix-up of the bodies BRIG Cosson states one of the contributing factors was cultural similarities between Jake and the Bosnian contractor, Juso Sinanovic. Mr Sinanovic was Bosnian, with dark hair typical of his heritage, while Jake was Australian of a lean build with light-brown hair and blue eyes.

40 BRIG Cosson also claimed similarities between the names. Can someone explain to us the similarities between the names Jacob Kovco and Juso Sinanovic other than the first initial? The only similarity we can see is that both men were dead. Even their head bandages were completely

different. No specifics were put on where the similarities lay as there are none. We wanted to believe that this would become a learning exercise for the ADF as to what not to do if anyone else should be repatriated from Iraq. But it appears that the ADF has left its options open to use the same putrid contractor in the future if they should desire. We are disgusted that some other poor family may have to endure the same heartache we have suffered.

We did not have much faith in the process of the board of inquiry but we proceeded in the hope that it would deliver a positive outcome. But to our disappointment it did very little to uncover any truth. The only positive that we hope has arisen is that current and potential Defence personnel and their families are now acutely aware of how themselves or their loved ones may be treated if their lives are taken from them while serving their country.

We would like to express our thanks to all personnel involved here during this Inquiry for their endless support in making arrangements for transport and accommodation and day-to-day wellbeing. Our sincere gratitude must go to all of the legal team, Les Young, Tom Berkley, Michael Griffin and the Board Members. A very special thanks to Frank Holles for his endless endeavours for the truth, his friendship and his tireless efforts for Jake and our family. Thank you.

PRESIDENT: Thank you. That would not have been an easy exercise. Now, I take it that's in written form. The Board would like to receive a copy of that, but you might not like to give it to us until you've spoken to LTCOL Holles, and that I would understand.

MRS KOVCO: Sorry?

PRESIDENT: Have you spoken to LTCOL Holles about that becoming part of the record of the Board, in other words, one of the exhibits?

MRS KOVCO: No, I haven't, but you're welcomed to a copy of it.

PRESIDENT: I'd be grateful for that. Subject to the thoughts of other people, I would propose to mark it as an exhibit. Whether you would like to give it to us now or you'd like to talk to LTCOL Holles before you do that, that is a matter for you.

MRS KOVCO: You can have it as long as you give me a copy.

PRESIDENT: You can take that as a given. Perhaps we might arrange for the secretary then to make a copy of it and you might like to keep the

original.

MRS KOVCO: Sure.

5 PRESIDENT: Has anybody got any difficulty with it being marked as an exhibit?

COUNSEL REPRESENTING: No, sir.

10 COL GRIFFIN: No, sir, I think that's appropriate; thank you.

#EXHIBIT 178 - STATEMENT ON BEHALF OF KOVCO FAMILY

15

LTCOL BERKLEY: Sir, if I can through Counsel Assisting of course, my client has also prepared a statement. Shelley will be returning to the Board. It's proposed that statement be read by Shelley to the Board in a similar exercise, but that will be during the closing addresses, subject to anything that Counsel Assisting has any differences or other desires. That's the outline we have in mind and of course her statement will be tendered. It is completed and a copy will be given to Counsel Assisting. I know that today was the day and he'll get a copy. But we don't want it released or tendered until Shelley has read it.

25

PRESIDENT: By all means. Very well then.

COL GRIFFIN: Sir, that seems appropriate to me also. I note the time. Rather than starting the second witness now, sir, perhaps we could resume with the witness after the luncheon adjournment.

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PRESIDENT: At 1.30 then.

COL GRIFFIN: Thank you, sir.

35

LUNCHEON ADJOURNMENT [1221]

40 **RESUMED** [1336]

PRESIDENT: Yes, thank you Colonel, the next witness.

45 COL GRIFFIN: Mr President, I call MAJ Byway.

<MAJ SONIA ANN BYWAY, affirmed

[1337]

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<EXAMINATION BY COL GRIFFIN

10 COL GRIFFIN: MAJ Byway, would you state your full particulars for the record, please?---8215871 MAJ Sonia Ann Byway.

What's your current posting?---Just recently been posted to the Director of Military Personnel Policy as a Project Officer completing joint mortuary doctrine.

15

How long have you been in the service?---17 years.

Have you had the opportunity to read today, documents setting out the rights and obligations of a witness?---Yes, I have.

20

I'm going to ask you to be shown Exhibit 100 in these proceedings which is the report of BRIG Cosson into her investigation into the circumstances surrounding the wrong repatriation of PTE Kovco's remains in the first instance. Included in this document and for the Board and Counsel, it's at side flag Y1 to the report, that being side flag Y1 to Annex Y in the report. This is a document that purports to be notes of a telephone conversation between BRIG Cosson and MAJ Sonia Byway and has JO4 HQ NORCOM at the top, was that your last posting MAJ Byway?---Yes, that's correct.

30

Now, have you had the opportunity to look through this document this morning?---Yes.

35 It doesn't purport to be an exact record of the conversation, it's headed Notes Of A Telephone Conversation. Is there anything about it that is particularly wrong from your recollection of the conversation?---In particular the second paragraph that commences with "MAJ Byway advised", BRIG Cosson - the information that I provided in there, I wasn't able to speak directly about this particular incident because I didn't have detail, so the context of that information in that paragraph is in response to her question in an ideal environment, how do you see the process occurring and so I talked about the processes and procedures as outlined in the doctrine that was extant at the time.

40

45 I'll take you through your evidence for the Board by reference to this

document as a skeleton outline if you like of matters that we can touch upon. In the opening paragraph BRIG Cosson says:

That the witness -

5

that is yourself -

- is the author of LWP-G 1-1-8 Mortuary Affairs.

10 Now, if you turn to flag Y in the document, you'll see that Land Warfare Procedures - General (Mortuary Affairs) document, is that the document that she's describing you as the author of?---Yes, that's right.

15 It's dated 15 June 2004, could you tell the Board the history of your involvement in that document, please?---In 2001, I attended a logistic course in the US and as part of that course I had to produce a research paper, so I decided to look at the US mortuary affair system and compare it to mortuary affairs in the ADF and I realised very quickly that we lacked up to date and accurate policy and also doctrine. So on my return,
20 I contacted Director of Personnel Executive and put forward the concept of developing joint mortuary doctrine for the ADF. At the time funding was limited and it was deemed a lower priority, so the suggestion was we develop doctrine within Army, if funding was available and at a later stage, we would lever off that to produce joint doctrine. So I put up a
25 proposal on how I saw the doctrine being developed, we gathered a working group and that was how LWP came to be.

Now, this was, am I right in saying, a fortuitous development, that is it was incidental to your training in the general logistics area, but you
30 selected this area for further exploration, rather than being directed to go into the area as it were?---Correct, yes.

Had you had any previous experience or training in mortuary affairs matters?---No.

35

What do you understand from your perspective mortuary affairs to actually be?---I actually - in 2002, as a result of this and in order to finalise this, I went to the US and actually completed a Mortuary Affairs Officer course with the US Military, so that was my formal training.
40 Mortuary affairs to me covers four main functions; it starts at the incident site and incorporates search, recovery and evacuation, it incorporates identification, repatriation and then case management. So it essentially covers the whole process of dealing with the deceased right from the incident site, through to burial and case management with the family.

45

5 Just to take you back one step, you said you went to the US to finalise this, how did that come to be that you went to the United States?---Well in order to finalise this document, and there wasn't a lot of expertise within the ADF at the time, I put up a case to - to attend a Mortuary Affairs Officer course in the US and - and that proposal was approved and so that gave - that training gave me a better understanding of mortuary affairs operations and planning for mortuary affairs operations, the whole mortuary affairs process, what's involved in each component of that process.

10 Had anyone in Defence, to your knowledge, undertaken that type of training before you did?---No.

15 To your knowledge, has anybody undertaken that training since you did? ---No.

20 Could you tell the Board a little about the training that you did? Was it part of the United States Military training?---Yes it was. It was conducted at Fort Lee in Virginia, it was a five week course and attendees were predominantly at Lieutenant/Captain level from the US Military. I was obviously the only foreign student on the course. It was a five week course. It covered - covered a lot detail, right through the mortuary process, documentation, setting up a mortuary, everything that the US does on operations in setting up a mortuary facility and processing deceased service men and women, we - we went through that whole process. It also involved spending some time at the - the mortuary in Virginia, the civilian mortuary in Virginia, just to become accustomed with the process within a civilian mortuary and also the post-mortem process.

30 Could you offer a comment on the value of the content and conduct of that course for you in terms of understanding and developing Australian policy?---It was extremely valuable for me because I just could not - I just couldn't find any resource within Australia to tap into to get that sort of information and it also provided me with contact. So in developing the doctrine, if there are any queries, then I had some contacts within the US mortuary organisation that I could contact and clarify points. So it was extremely beneficial for me.

40 Other than using that training and experience to complete this Land Warfare Procedures - General document, has or have your skills and training been utilised in the mortuary affairs role since you completed that course?---I have been called upon on a number of occasions by different organisations in Defence such as HQJOC and Defence Health Services to provide guidance - doctrinal on policy guidance on mortuary affairs and

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I've also assisted in reviewing some of the mortuary affairs plans for HQJOC. I also deployed to Thailand to gain some operational experience in a mass fatality type scenario. So, you know, I've used my - my experience or training there as well.

5

Was that the tsunami incident?---That's correct, yes.

How did you come to deploy in that regard?---I've worked in - in looking at the whole mortuary affairs system for Defence, I've worked closely with Kenyon to try and understand what they can bring to Defence and their capability and they were aware that my opportunity to get training within Defence or experience within Defence is limited, so they contacted me and said there's an opportunity here if you're interested, so I took annual leave. Obviously didn't - wasn't paid by Kenyon in any way, shape or form and - and deployed with them for 21 days to gain that experience. As a result, I brought that experience back and passed that onto HQJOC. We had a mass fatality exercise, a three day exercise in Sydney, October last year which included organisations such as Defence community organisation, the National Welfare Coordination Centre, Strategic Operations Division, HQJOC and Kenyon and that was a really good exercise to better understand what each capability could provide in an operational environment. I've also used my training and experience in reviewing the current DI(G) 20-6 which is the most current DI on mortuary affairs and I'm also now the lead author for ADFP 1-1-1 Mortuary Affairs, so that's the joint doctrine which is leveraging off this one here.

Just to follow the association with Kenyon a bit further. Were you involved in any way in the Standing Agreement that is conducted between Defence and Kenyon International for mortuary affairs and repatriation? ---No, other than the fact that when I came back from the US and started looking at the - that advantages and disadvantages of developing our own capability within the ADF, I also looked at what services are outside Defence and if there was a mortuary capability with outside - outside Defence that we could tap into and came across two companies that provide the range of mortuary services. I presented this information to - in doing that, I also came across a contract between the Air Force and Kenyon that dated back to 1996, it was just a one-page contract. I presented this to Contracts Division in Canberra and suggested that if there's going to be a contract within Defence for the provision of mortuary services, then perhaps we need to look at expanding that not - to include Navy and Army as well, so it covers all of Defence. And also to look at expanding that if the ADF is not going to consider developing its own capability. And I left it with - sorry, Contracts Division. I know that they got a team of legal officers involved at establishing the requirement and

45

then looking at whether a contract should be developed and - and that's where - that's where the Standing Offer between the Commonwealth and Kenyon was initiated.

5 Were you involved in any way in the tender process or the contract negotiations?---No, no.

Now, in respect of Kenyon and your observation of the activities they can perform that you saw during the tsunami disaster aftermath, would you
10 tell the Board what it is that you saw Kenyon do in the field?---Kenyon have been involved in - they started out as an air - predominantly dealing with aircraft incidents, but they've been involved with September 11th, hurricane Katrina, Bali and also Thailand. They cover the whole range of mortuary services, as I said, from search and recovery, right through to
15 case management, memorials and - and dealing with families as well. They worked - they were assigned to the AFP in Thailand and they were predominantly responsible for logistic support to the AFP.

Can I just interrupt you, by AFP, you're referring to the Australian
20 Federal Police?---Australian Federal Police, correct, yes. But also the repatriation process. So the identification of remains was done. Each country who - who had, I guess, an interest, for lack of a better word, in the tsunami provided victim identification teams. Once the - the bodies were identified, then Kenyon facilitated the repatriation to the respective
25 home country. And that also involved embalming remains and basically preparing remains for movement.

But identification was not part of the service performed or required with Kenyon?---Not in this instance, no.

30 Do you have knowledge or experience of other repatriations for the Australian Defence Force carried out by Kenyon?---Yes, there was a recent - WO2 Nary, I believe, Kenyon were involved in that repatriation.

35 Now, if I could turn to, first of all, the Land Warfare Procedures - General (Mortuary Affairs) document of which you are the author, dated 15 June 2004, do you have that before you?---Yes, I do.

40 Where does this doctrinal document fit within the scheme or framework of doctrine that you've described, that is a DI(G)-PERS, this LWP and you also mention ADFP 1-1-1, could you just explain where those documents fit in terms of a hierarchy or a control?---The DI is the overarching policy, so anything within doctrine must conform to policy. Policy overrides the doctrine. The idea of the doctrine was to make it a very details one stop
45 publication for Commanders and subordinates on anything in respect to

mortuary affairs. So instead of putting out a DI and then a higher level doctrinal publication and then a more detailed one, we proposed that because Commanders have got so many different DIs and manuals to look at, we just have one manual that contains step-by-step procedures and processes. Because this is Army-centric, early this year I put up a proposal to now lever off this and develop joint doctrine, which is the Australian Defence Force Publication 1-1 Mortuary Affairs. That was approved. So this will be superseded once the ADFP is published, and we anticipate that will be published in November. As a result of this recent incident, we've also been requested to review the DI and the Directorate of Military Personnel Policy has carriage of that and they are reviewing that DI now. I believe that's due for release any time, you know, the next week or two.

With this, the LWP, being the June 2004 document, it's sponsored by the Land Warfare Development Centre, so it's an Army document. Is that right?---That's right, yes.

As it bears in its heading "Australian Army Land Warfare Procedures - General". If we could go to within that document section 1-3, please, chapter 1 mortuary affairs. Section 1-1 is the introduction, then 1-2 is the role of mortuary affairs. Then at 1-3 are set out the principles of mortuary affairs. In the first subparagraph under the subheading "Respect and Dignity" it reads that:

Remains should always be handled with respect and dignity at a level that would be commensurate with family, religious and cultural beliefs, desires and expectations.

Then there are several factors set out underneath that; timeliness, accuracy, compassion, security and communication. Now, BRIG Cosson in the document that we've been referring to as the skeleton outline of your evidence takes up in the first paragraph question 1-3(b) dealing with containment. But before we get to that, I just want to ask you about the respect and dignity issue. This Board has seen video evidence of the mortuary facility where PTE Kovco was taken and heard evidence, either orally or in written form, from various people criticising heavily the conditions of that mortuary environment. Are you able to say whether or not in the doctrine up until this point in time there is any way of anyone checking the facilities used by the civilian contractor?---Okay. I'm not sure that the decision behind using the civilian mortuary in the first instance, but it should be part of the planning process. So if you're developing a mortuary affairs plan you need to understand what resources are available to you outside of the area of operations and inside. If part of that mortuary plan is that you intend on using a civilian mortuary facility,

then you need to outline what is an acceptable standard for the ADF. This is one of the issues only a qualified mortuary specialist I guess is in a position to determine what is acceptable and what is not. I can't comment on this particular mortuary because, as I said, I don't know if that was included in the initial planning phase, if anyone took the time to inspect the facility and deemed it appropriate. But I mean, certainly that should be part of the initial mortuary affairs planning.

Is it also fair to say that in certain third world environments you have to make do with what you can in whatever facilities are available?---Perhaps if we're not relying on the US mortuary facility to provide support and that is the only option within theatre, then - I mean, the other option is too is the contractor has the ability to establish a small facility to prepare remains for repatriation. So if it's decided by Defence that they don't wish to conduct positive identification in theatre and they will do that back in Australia by an Australian coroner, then the contractor certainly has the capability to set up a small facility where all that facility will do is receipt the deceased into the facility and prepare the remains for transportation and then it's repatriated back to Australia for identification. So there are a couple of options available, just depending on I guess some key decisions about identification.

Is it within your knowledge as to whether or not the contractor could have bypassed the civilian mortuary in Kuwait and simply used the US Military facility?---Possibly. Without knowing the decision behind using the civilian mortuary, it's difficult for me to comment. But if I was a mortuary planner personally my preference would be to use the US mortuary system because I understand it and I know that they have very high standards and they have very strict procedures and processes. Then from that mortuary I would repatriate back to Australia. But, as I said, it's difficult for me not knowing the decision behind using the civilian mortuary.

Just a little further down those subheadings is accuracy. It says that:

Personnel must be mindful of the need for accuracy in identification of remains, processing documentation and repatriation of the remains to the next of kin.

It's somewhat prophetic that you wrote this in 2004, as I understand it, for the completion of this documentation and the second principle after timeliness was accuracy that you considered important. Could you tell the Board why that figures so quickly in your principles?---There's certainly enough evidence internationally and within Australia about repatriating too quickly at the expense of accuracy in identification and management

and custody of documentation and personal effects. So although the - we're always mindful of repatriating as quickly as possible, we can't compromise accuracy in identification and making sure that custody of documentation and personal effects is accurate as well. It doesn't just refer to - where it's got "personnel" there it incorporates all personnel. So it's not just mortuary trained personnel or mortuary specialist, but it also incorporates Commanders and subordinates as well.

Further down the page is the point that BRIG Cosson referred to in her opening large paragraph on the issue of containment where the doctrine states:

It is important to minimise unnecessary exposure of personnel to deceased remains and avoid the adverse psychological effects that are known to result from exposure to deceased personnel, particularly in mass fatality incidents.

You heard the evidence this morning of COL Murphy, the Director of Psychology. Is there anything that you can add from your professional studies and experience to this point?---I've just been made aware with my dealings with mortuary affairs over the last six years and different people within the industry that this is - where we don't need to expose people to remains and deceased we should be avoiding that where we can. Certainly if they're not trained and they're not qualified to deal with human remains, then there's just no real need to do that. So that's what that point was emphasising. Certainly, as you said, COL Murphy raised the profile of that issue this morning.

In the relevant paragraph in BRIG Cosson's notes of her conversation with you she reports:

MAJ Byway also went on to advise that ADF personnel are not trained, nor educated, on the mortuary affairs process and consequently do not have an understanding of the requirements for taking custody as opposed to escorting of remains from the mortuary, including ensuring identity -

or "identifiers" she's written of remains. Now, in that quote that I've just read you've made a distinction there, or at least she indicates one, between taking custody as opposed to escorting the remains. Could you expand on that, please?---What I was referring to there was - and the term "identification" has been used a lot I believe over the last few weeks - is that there is a difference between identifying remains and the remains having been identified and now we're simply - we're arriving at the mortuary to take custody of the casket in order to repatriate. So the

escort's duty is the custody component of that. The identification process is usually done by mortuary specialists in a mortuary, whether that be in country or the decision is made to do the identification back here in Australia. ADF personnel we have are not trained nor educated on that custody process, which involves going into the mortuary and ensuring that there is a tag on the remains and that the receipt number on that tag matches the number on the body bag which matches the number on the casket which matches the number on the documentation. So someone who's not trained in taking custody of the casket, remains and any personal effects within there would not know to check for those particular items. We do have a limited ADF mortuary capabilities. They are Reserves; forensic odontologist forensic pathologist and an anthropologist. There's about six ADF qualified personnel. But other than that, we don't have any training for our personnel in that particular process.

It's been suggested in evidence before the Board that Military Police personnel may be appropriately trained and experienced to undertake the task of escorting a body because of their training in the continuity of evidence, maintaining control and continuity of evidence. Are you able to speak to that issue?---Limited. I would suggest that certainly police and also the Defence Aviation Safety Organisation have dealt with remains in respect to aircraft accidents where they are conducting an investigation. But I would question as to whether they know what to look for in a mortuary environment. They certainly deal with remains when it involves a scene and they are required to investigate that scene, and then they might be required to recover and remove remain. But my understanding is they don't have any training in the process that occurs within a mortuary. They certainly understand custody of evidence, but custody of remains and the procedures that occur within a mortuary I would say that they would have very limited experience and training in that.

If you would turn to section 4 of the document, which is under the subject heading "Forensics and Identification" at 4-1. I particularly want to draw your attention to paragraph 4-2-2 which talks about formal identification and in the last sentence says:

Military identification tags assist in tentative identification only and should not be removed from the remains prior to arrival at the field mortuary.

I and many others are aware of stories about dog tags, identification disks that soldiers wear on a chain around their neck and how they fit into the mortuary affairs plan. Would you tell the Board, please, what you understand the role and function of those ID disks or dog tags to be in the

identification process or how they should accompany an individual who's injured or killed on operations?---The role of the identification tags is just to assist in positive identification. So it's not - we never rely on personal effects on the remains to provide a positive identification. We rely on
5 methods such as dental, fingerprinting, footprints and DNA. But this form of media is a starting point for the identification process. Anything removed from the remains are never assumed to belong to a person. So as soon as they are removed they are known as "unassociated effects". If they arrive on the body when it arrives at the mortuary, then they consider
10 them to be associated, but if someone has removed them at any stage, then they are considered but not as - they're considered as unassociated remains and they almost would not become irrelevant, but a lesser factor I guess in the identification process.

15 Is there anything that states that one of the tags should be - that is, one of the ID disks worn on a chain around the neck - should be somehow affixed to the body, tied around the toe, placed in the mouth or secured somewhere else to the deceased?---No. The identification tag should always remain around the neck and we've certainly got away from the
20 practice of putting identification tags in the mouth because that ruins dentition and we use dental as the means to achieve positive identification. So they should just remain on the chain around the neck.

If removed in the course of rendering first aid to the person before they die, what would you see should be done with them?---Then all personnel effects should be transported with the remains through the whole process. So although they will be considered unassociated, they still remain with the deceased until positive identification occurs. All personal effects are usually placed in some sort of pouch and are just placed on the chest of
30 the deceased through the whole process.

In the next paragraph 4-2-3 the doctrine states that:

35 *Human remains pouches are to be correctly labelled to prevent unnecessary opening of the pouch before it arrives at the field mortuary.*

40 How do you see the identification process in terms of documentation being conducted? Is it just the pouch that is labelled or is the body labelled as well?---From the incident site are you suggesting?

I'm suggesting from the point of death, as in this case, in the nearest combat hospital?---No, the remains should to be labelled with a name until positive identification has occurred. So up until the point of positive
45 identification methods being used such as dental or DNA or

fingerprinting, then we should never just assume that is in fact the person because some of the issues that came out this morning, people are traumatised, there might be disfigurement of the body. So we don't make any assumptions prior to that positive identification process. In fact if we
5 choose to repatriate back to Australia without having conducted positive identification in theatre, then it's suggested that the remains come back as unknown until once again that positive identification has been conducted because there are obvious issues with labelling remains prior to that process being finalised.

10 In this particular case where do you see the positive identification best being undertaken, with the body and with the personnel who knew him at the time he died in the theatre and with the doctor signing the death certificate or some other time?---Well, that raises a couple of issues.
15 Firstly, the doctor wouldn't have raised a death certificate; he raises a certification of death, which is quite different from a death certificate.

Yes, thank you?---And it just depends on what resources you have in theatre and how confident you are in those resources meeting your
20 positive identification standard. So, for example, if the US mortuary are going to provide mortuary services to us deployed on operations and we're confident in their identification process we may even deploy an ADF forensic pathologist to be there for all post-mortems or all identifications on ADF personnel; then that is certainly an option. If we
25 are not confident in the process or for a single fatality we feel that it's in the better interests of us and the family to conduct that back here with an Australian coroner, then we can take that option as well. The other thing too to consider is that we shouldn't always assume that remains will be whole. If you get highly fragmented remains you may not have an option
30 but to conduct positive identifications in theatre because you may have a situation where you've not just got ADF remains, but you may have co-mingled coalition and Australian Defence Force remains. In a situation like that positive identification will be best performed in theatre.

35 For a single death such as this with a coronial interest in Australia and people on the ground who could identify the body, where do you think the positive identification should take place?---Well, even though the remains are being - usually the deceased would be moved to the mortuary and the mortuary manager would receipt that remain in but as an unknown. So
40 the whole concept of - even though there are people who can provide statements that "I was perhaps there at the time of the incident and I'm confident this is who it is," once again, we don't rely on visual identification and we don't rely just on personal effects on the deceased and we don't just rely on someone's statement to say that this is the
45 person we believe it is. We still go through that process of positive

5 identification. Just going back to what I said before, there are a number of options how we do that. I really can't comment on this particular case because I'm not aware of what facilities were available in theatre, what standard of facilities they were. So it's a bit difficult for me to say on that particular issue.

10 How then do you document the casket and the body for the purposes of the various phases of the transition of the repatriation? How should that be documented and labelled for - if the body itself is not going to be labelled and tagged, how else do you identify it for the movement process?--Well the normal process in a mortuary, and I can only speak from my experience, I can't speak on what happened in this particular incident, but normally when a body arrives at a mortuary it's received in. So it's - it's that facility's documentation and it's given a number and it's 15 the number that then goes on the remains and that same number goes on the body bag. Then the body may be stored for two or three days. When the body is - is brought out of storage in order for it to be prepared for movement, this is the custody issue where you would check the number on the body bag that matches the number on the body that matches the 20 documentation that the mortuary have used and that documentation can include identification documentation, it might include an inventory of personal affects that were brought in with the - the deceased and it might also include a - a cursory inspection of the remains, notating birthmarks, tattoos et cetera if positive identification was included. They are the sort of things you would sort of expect from basic mortuary documentation. 25 And then it's - all those documents are usually packaged up and a copy placed inside the casket and a copy placed on the casket, on the outside of the casket. And it's that number, that identification number that really should carry right through the repatriation process as well. So when the 30 casket moves to the - to the airport for repatriation, it's that number that should be notated, rather than using a name because positive identification hasn't yet been received. But I do know that different mortuaries have different documentation and do things differently and that's why it would be important during the initial planning stages to establish whether their procedures are adequate and meet our standards and expectations and if 35 we're happy with that. I certainly know that - I'm pretty confident that the ADF would be very comfortable with the documentation and the procedures used by the US Military, but how different civilian mortuaries document receipt varies.

40 You mentioned an identification number being given to various - the casket, the pouch and the body. How would the number be affixed to the body?--It's usually fixed on a - just a small tag that cannot be destroyed by - by body fluid, it could not be contaminated and it's usually either 45 fixed to the toe or the wrist of the remains.

Now, just a little further down that page of section 4, paragraph 4.25, the last statement reads:

5 *Unprofessional repatriation practised will very quickly erode public confidence in the ADF.*

Why did you include that in the doctrine?---Well experience has shown us also that it's usually through the repatriation process that the public and the family have first visibility of the casket and the remains coming back or insight - yes, visibility I guess is the better word. And if that process is conducted poorly, then it usually - families and the public will then usually question the rest of the process that's followed - followed the repatriation process. So although each - each stage of the mortuary process is important, we feel that if repatriation is not conducted in a - you know, in a highly dignified and professional manner, then that's essentially what will erode public confidence.

20 Could you turn now to flag Z, side flag Z which is the Defence Instruction (General) PERS 20-6, do you have that before you?---Yes, I do.

25 Can I ask you to page through firstly to paragraph 12 headed Securing The Scene And Remains At The Incident Site. Now, were you involved in the production of this document at all?---I was a reviewing officer for this document.

It reads at paragraph 12:

30 *Securing the incident site is essential to prevent contamination of evidence or looting of the site. It is a command responsibility to arrange for adequate policing of the incident site.*

35 Is that your considered view as well?---Doctrine also reflects this in that - that when an incident occurs, where possible, particularly in a benign environment, where Commanders can secure the incident site, that should be the first step.

40 Now, if you would page through, please to page 5, paragraph 20, under the heading Repatriation Of Remains, the last sentence in that paragraph reads:

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

45 It gives a reference, Reference M. Is that your understanding that the

doctrine is where possible use - or at that time of this incident, where possible the civilian contract arrangements will be utilised?---Well that's what it says there and this was extant at the time of this incident. Since then, the CDF has issued a directive to say in the first instance it should be
5 Military aircraft. Second option should be a national carrier and then the third option is arrangements under the civilian contract, but meeting our requirements and standards, or words to that effect.

So to return to the description you gave earlier of the hierarchy of
10 publications, this is the overarching document, or at least it was as of the date of the death of PTE Kovco and the repatriation action that was initiated, is that right?---That's right, yes.

The doctrine required, where possible, the use of civilian contract
15 arrangements at that time?---I'm not sure word for word in the doctrine, this is policy.

This is the policy so - - -?---So this has - this is overarching.

20 This is overarching?---Yes.

So the policy requirement was - - -?---Yes.

- - - utilise the civilian contract arrangements?---Yes.
25

Now, would you turn to side flag T please, which is the actual Standing Agreement - I beg your pardon, Deed of Agreement for Standing Offer with the Kenyon International Emergency Services organisation and Defence. On the copy that I have, at the end of the agreement comes the
30 Work Authorisation Agreement that was actually struck in this matter. Could you turn to that if you can, please. And as we understand the evidence of the J10, I believe it was, HQJOC, that this document was in fact sent to Kenyon some time after the contract was in fact - or the offer was in fact initiated to seek their services and you'll see there, it says
35 nothing about the identification of the remains or the manner of the repatriation. D you see it as - well have you seen one of these struck before?---No.

You mentioned a document that issued by Chief of Defence Force
40 following this particular incident. I'm going to ask the Secretary to show you an exhibit now, which I think is 172. It's a bundle of five documents, one of which is a direction from CDF to VCDF, which I think is the second document within the bundle. If you could remove that. Is that the document you had in mind when you were referring to changes since?
45 ---Yes.

5 Would you just refresh the Board's memory with what that document is, please?---The CDF issued a directive 10-06 to LTGEN Gillespie on procedures for the repatriation of deceased ADF members who die on duty and it's dated 27 May '06.

10 Have you been involved in that document or any policy development resulting from this particular incident?---Yes. When this was issued it indicated that any changes to this directive should be through the Chief of Staff, the CDF's Chief of Staff. I actually wrote to the Chief of Staff and raised some concerns about some of the issues in here, particularly the number of escorts required. However this directive, the information or the guidance from this directive was to be incorporated into policy, so the - the guidance stood and as a result the DI(G) 20-6 was reviewed and this

15 guidance was incorporated into that. But DMPP Director of Military Personnel Policy are in the process of also putting together a dot point for the CDF to provide him some advice on a couple of the issues in this directive.

20 Do you personally have any involvement in that process?---Yes.

What contribution, if any, have you made to date?---I'm working with DMPP to put the dot brief together, we're working on that at the moment.

25 You've mentioned the issue about escorts, could you just expand for the Board's edification what you're referring to there in that directive and what developments you consider to be appropriate in that regard?---Just from my experience and particularly with the US Military and they've certainly had to perform the escort duties on a number of occasions, we

30 just felt that two ADF members was perhaps unnecessary and if anything, it's just increasing exposure of ADF personnel to remains. And even though they're not perhaps sighting the remains, just the duty of - of being an escort and custodian of a casket with a deceased service person inside can be distressing enough. So we were just interested in getting some

35 feedback on what the decision was behind this particular serial 2C and our recommendation was that there's really only requirement for one escort. The issue is not - we feel that the issue is not the number of escorts you have, but the briefing that is given to those escorts and the duty statement that's provided to those escorts, that's what's important.

40 Now, you may have heard COL Murphy give evidence this morning that he saw legitimate reasons for the unit and members of the unit being involved in the return of the body and that escort function, do you have a view on that?---My personal view is that is reasonable and certainly

45 perhaps a factor of reality that the unit will want to be involved in

escorting, but I also concur with COL Murphy's comment that the escort should not be closely associated with the deceased or the incident and for the purposes of the joint doctrine COL Murphy is going to provide us some guidance for Commanders on what the selection process of escorts should be. But the working group for doctrine and COL Murphy is on that working group, all agree that they should not be closely associated with the deceased or the incident as well.

So am I right in saying that the response to these particular matters is evolving and is under a - and that's part of a considered process with working groups and key stakeholders have input to the development of this policy document and how we are going to deal with these types of things in the future?---Correct, yes.

Now, what would you say to the proposition that Kenyon and the facilities they can provide are really designed for mass casualty and fatality return as opposed to single incidents such as this?---They can also deal very effectively with single incidents, but it just depends on what we - what service we want them to provide. I mean they can provide the whole - whole mortuary affairs service or they can provide small components of it. So as I said, they can provide the whole mortuary affairs process, it just depends on what - what we require them to do and that would normally be stipulated in the Work Authorisation Agreement. So the Standing Offer is very general and outlines - I mean it details all the different services they can provide. The specifics for an incident should come out in a Work Authorisation Agreement, what exactly it is we want them to provide, what part of that service and to what standard.

The document that I drew your attention to which is the Work Authorisation Agreement in this particular case is silent essentially on the variety of services that are set out in the contract that Kenyon can provide, is that right?---It certainly doesn't tell me what it is Defence want Kenyon to provide for this particular incident. It needs to - I feel that it needs to be a lot more specific than that.

Now, the individuals charged with conducting these sorts of activities within the headquarters, are you able to say whether or not this is a principal function of anybody in the various organisations, or is it just another job amongst many that some people in the staff or personnel area are loaded up with?---Yes, it's definitely a secondary task all throughout Defence. There are no designated mortuary affairs positions within Defence and certainly within HQJOC it's a secondary function for someone. And I'm aware that there's no training provided to that - to accompany that - that task either.

Am I right in saying that the major disaster exercise that you went through which involved Kenyon and other agencies last year subsequently that people from HQJOC were rotated in their position, posted out so that that corporate knowledge was lost?---That's right, yes.

5

Now, were there any gaps in the ADF capability that existed at the time of PTE Kovco's repatriation that only Kenyon could provide?---Well, as I mentioned before the ADF really doesn't have a capability, it's very limited. I mean we really - it can perform small parts of the mortuary affairs process, for example, it can - it can conduct transportation within the repatriation process, but it doesn't have a capability to prepare remains for transportation. It can conduct case management within the mortuary affairs process, but even that is limited in a mass fatality incident. And mass fatality for DCO and defined by Defence is five fatalities or more. So it's a very limited capability. It could conduct search and recovery, but we don't have any training in Defence on search and recovery and depending on the situation, if it's an aircraft accident, there's a very - or a mass fatality incident, there's a very strict procedure for gridding an incident area like that and we don't have people trained to do that, other than those reserve forensic personnel that I mentioned earlier. So our capability is very limited and the mass fatality exercise that we conducted in Sydney in October last year raised a lot of these issues and it made Defence aware of its limitations in regards to mortuary affairs, but it also made us aware of what resources we have available to tap into to augment our limited capability.

25

Now, from your experience in the practical application of mortuary affairs in the aftermath of the tsunami and from what you've seen since in staff rolls and otherwise, are you satisfied that ADF is now properly progressing and evolving the policy documents to deal with this so that there's never a recurrence of what happened with PTE Jacob Kovco?---I actually feel that the fundamentals of our current mortuary affairs system are very sound and we've conducted - we've conducted successful repatriations previously. I think where perhaps we need - where our effort needs to be focused on is the application of those processes and procedures. I don't think that Commanders are aware that perhaps the doctrine and the policy is out there to support them and so if they're not aware of these publications, then the application of the mortuary affairs process is vulnerable to error. So I'm - personally I'm quite comfortable in what we have in respect of mortuary affairs in Defence, but where we need to focus our effort now is training and education to make sure that people are aware of these.

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Well given that the Defence Instruction (General) said where possible utilise the civilian contract, is that still the situation?---Yes and that's part

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of the - this mortuary affair system that we have in place is that it's not necessarily about us performing all the functions ourselves because as you can appreciate it takes many years to grow the experience and - that Kenyon have and they have the equipment, they have the experience, they maintain competency of their personnel. So that's - that's all part of the system and I - I certainly endorse the use of the contractor and I - I feel it's dangerous for Defence to try and perform some of these functions themselves when that - they don't have personnel trained or qualified to do so. And as I said, the contractor provides the most professional and dignified service we could provide to our deceased service men and women. What we need to focus on is educating our mortuary planners and people who fulfil these mortuary appointments on how best to utilise that capability as part of the whole system, the mortuary system.

15 Is there anything that Kenyon did in the repatriation of PTE Kovco that ADF could not have done within its capability?---I'm not - I'm just not privy to the details of this repatriation, so I'm not able to comment on that.

20 Are you aware that Kenyon used a subcontractor in this first failed repatriation?---I've heard that, yes.

In the document the BRIG Cosson compiled, which I hope is before you? ---Is that Y1?

25 That's Y1, yes. About two-thirds of the way down, the paragraph - there's a sentence that commences:

Upon Defence arranging to collect the remains -

30 Do you see that?---Yes.

- the contractor should (if tasked to do so) attend the mortuary, check the documents, check the tag on the body corresponds with the documentation, oversee preparation of remains for transporting, including sealing the casket and then inform the Military escort and other relevant authorities such as HQJOC that all is in order for repatriation to commence.

40 Is that what should have happened?---As I mentioned at the start, BRIG Cosson said - or her question to me was, "In an ideal world, how would you see this occurring?" And I said that I wouldn't have the escort in the mortuary if it's not necessary. What I would do is in the Work Authorisation Agreement have the contractor perform all those requirements inside the mortuary. Firstly because they're familiar with the mortuary environment and they know what to look for as well. They

know what documentation to check and they know how remains should be prepared for transportation. I said to her that I would have the escort standing outside the mortuary. Once Kenyon have received and - received a handover of documentation, personal affects and the casket, it is that that I would hand to the escort and say it's now over to you as the custodian during the repatriation process. So that's what is meant by that paragraph.

5
10 Including checking the tag on the body corresponds with the documentation?---Correct, yes.

Now, if the work authorisation - well how would you specify that that's what was required by the contractor in the Work Authorisation Agreement that we've looked at at flag T?---Sorry, can you just rephrase that?

15 Yes, what you've just described as I understand is what you would anticipate happening in the mortuary by the contractor, checking the tag on the body matches with the identification documentation?---Yes.

20 Do you see that as necessarily implied in the role of the contractor, or does it need to be spelt out in the Work Authorisation Agreement?---I think it - some of it is implied. Like Kenyon would understand what the process that occurs within a mortuary and if - if something wasn't familiar with them, then they would raise that as an issue before they took custody of the casket. But you would certainly, in the Work Authorisation Agreement, need to indicate to them that identification is being conducted by this particular mortuary or it's not so that Kenyon know whether they are collecting positive identification documentation as well, whether they are looking for a name or whether they are looking for a number. So there would have to be some detail about what occurs in the mortuary on the Work Authorisation Agreement just so they - they are in a better position then to know what exactly they're looking for.

25
30
35 Do I understand you to say that the minimum process would require the contractor in the transitioning of the body from the mortuary into the final case it's going to be sealed to necessarily require the contractor to check those various numbers, that is the number that's on the body - - -?---That's right.

40 - - - the number that's on the pouch, the number that's on the documentation that's both inside the casket and attached to the outside of the casket?---Correct. And any personal affects they would ensure that there was an inventory for those personal affects, they would check the personal affects against the inventory, they would make sure that we received a copy of the - the inventory documentation. So yes, they - anything to do in the mortuary Kenyon could do for us on behalf of us,

45

rather than the escort performing those duties.

5 Are you able to say whether if that wasn't done in this case it should have
been done as part of the Standard Offer?---We're just having a look at the
Work Authorisation Agreement and if that's - I wouldn't have had the
escort going in to the mortuary conducting an identification of any sort. I
guess that - yes, if I was the mortuary planner that would be my
10 preference is to have a qualified mortuary specialist conducting those
tasks on behalf of us, leaving the escort to be purely a custodian of the
casket.

At the moment the Work Authorisation Agreement before us that was
given to Kenyon and admittedly the evidence is it was given about a week
15 after they were asked to undertake the activity verbally says essentially
that Kenyon is asked to provide -

*Commence the following traditional service work that matches
the traditional services in response to the incident described
below: fatality of PTE Jacob Bruce Kovco, fatal shooting, 21
20 April '06, repatriation -*

That should be repatriation, there was a typographical error -

25 *- repatriation of remains of PTE Kovco back to Australia.*

If that's all that was said, is it your opinion that the contractor should have
looked at the tag on the body for the number, the number on the
documentation and the number on the casket, even though it wasn't
specified in the Work Authorisation Agreement?---No, that was not an
30 implied task. I wouldn't - I wouldn't take that as an implied task at all.
And repatriation is - there's a whole - there's a whole process within
repatriation. So you can't - it's - there's a lot of assumption with just
putting repatriation is it - is it taking custody of the remains for the escort,
is it preparing the remains for repatriation, is it organising the movement
35 and reception so to be honest, that statement doesn't say a lot to me and if
I was - if I was a mortuary officer on the ground provided with that
statement, I guess I would have to question what part of the repatriation
process do you want me to fulfil.

40 I have some documents that I'd like to show to the witness, Mr President
and it may be an appropriate time to take an afternoon break to allow me
to familiarise MAJ Byway with those documents before I ask her any
questions about them.

45 PRESIDENT: By all means, 10 minutes then.

SGT Thompson's statement is Annexure C, which is a record of personal effects. Is that right, MAJ Byway?---Yes, that's right.

5 Now, those three documents, are they in your understanding of what you've seen of the US system the type of documents you would anticipate seeing in such circumstances as this?---Yes, that's correct.

I tender that document, sir.

10 PRESIDENT: Any opposition?

COUNSEL REPRESENTING: No, sir.

15 **#EXHIBIT 179 - CLASSIFIED AND REDACTED STATEMENT OF SGT THOMPSON WITH ANNEXURES**

20 COL GRIFFIN: The second document that will be shown to you is this time from Specialist Crispo of the United States Army who is an employee at the theatre mortuary evacuation point at the Kuwait facility that the US authorities have. Attached to it is a US Military Police or Service Police document also in the name of Specialist Crispo. You'll see in paragraph 5 there of the affidavit of Specialist Crispo, MAJ Byway, he
25 says about halfway down the page:

30 *I placed a tag on PTE Kovco's finger, another on the zipper of the body bag and a third on the transfer case handle. Each tag bears a number which is registered at the theatre mortuary evacuation point -*

or TMEP, as the acronym appears -

35 *and this number appears at the top of each form concerning that body. I did not subsequently remove those tags.*

Is that what you would anticipate would happen in the normal course of events?---Yes, that's right.

40 I tender the document, sir.

PRESIDENT: Any opposition to that?

COUNSEL REPRESENTING: No, sir.

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**#EXHIBIT 180 - CLASSIFIED AND REDACTED STATEMENT OF
SPECIALIST CRISPO OF THE UNITED STATES ARMY**

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COL GRIFFIN: The point has just been drawn to my attention that there are some identities in the document. So they'll need to be redacted before they become public documents.

10

PRESIDENT: Very good. Then both of those documents will have a classified and redacted form.

15

COL GRIFFIN: The next document is an affidavit of SGT Himenez(?) of the United States Army, also from the theatre mortuary evacuation point in Kuwait. In his first page of his statement he identifies three annexures, one being a blue cardboard folder containing all of the paperwork being 15 - and that's his amendment there in the statement, he's changed from 25 to 15 folios prepared by the theatre mortuary evacuation point in relation to PTE Kovco's body. You'll see that in that blue binder are the documents?---Yes.

20

He also refers to Annexure B being a blank cardboard tag of the type used by the theatre mortuary evacuation point for the purpose of identifying remains. Do you see one of those in the binder?---Yes, I do.

25

Is that similar in your experience to the tags you've seen?---Yes.

30

Would you hold that up and show the standard cardboard type of tag with an eyelet and piece of string can be used to attach?---And occasionally you'll see them covered on contact and you use a waterproof pen to scribe them to the tag, but that's standard.

35

He refers at Annexure C to a photograph of the entrance to the theatre mortuary evacuation facility. Do you have that in the binder?---Yes.

40

As you go through those 15 folios of pages in the blue binder, which he refers to as all of the paperwork prepared by the theatre mortuary evacuation point in respect to PTE Kovco, are they typical of the documentation in your experience that would be present?---Yes, they are.

Again there is identification of personnel whose names will need to be redacted, sir.

45

PRESIDENT: Again there will be a classified and redacted version and they're not to be released of course until they're redacted.

COL GRIFFIN: I tender that statement with the three annexures, sir.

PRESIDENT: Any difficulty with that?

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**#EXHIBIT 181 - CLASSIFIED AND REDACTED STATEMENT OF
SGT HIMENEZ WITH ANNEXURES**

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COL GRIFFIN: Finally, sir, your Terms of Reference require the Board to report on a variety of matters and also to indicate where certain evidence has not been made available. I have here a minute which is a decision brief done by the US General in respect of our requests to video the mortuary facilities at the US theatre military evacuation point. The US Commanding General very kindly agreed to our interviewing of the staff that produced those documents that have just been tendered, but indicated that for policy and security reasons we were unable to videotape those interviews or to videotape the facilities. I hand up and tender the minute in that respect.

15

20

PRESIDENT: Any difficulty with that document?

COUNSEL REPRESENTING: No, sir.

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**#EXHIBIT 182 - MINUTE IN RESPECT OF DECISION BY US
GENERAL RE VIDEOTAPING OF US MORTUARY FACILITIES
AND STAFF**

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COL GRIFFIN: Thank you, sir. MAJ Byway, the Board is authorised to make recommendations. Are there any matters that you wish to draw to the attention of the Board for policy, doctrine, training and development that haven't been touched on or that you would like to sum up?---Can I refer to my notes?

35

It's a matter for the President, but I'm sure he'd be happy for you to do so.

40

PRESIDENT: Yes, you may?---I feel that there are five key issues that we can look at for improving our mortuary affairs system. This is not necessarily as a result of this incident. This is just based on my experience in developing mortuary affairs over the last six years. The first one which I think is essential is training and education. I think very few commanders and subordinates are aware that doctrine and policy actually

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exist in the ADF. We develop doctrine in a manner such that Commanders have a step-by-step guide. So I think if this document, if they were aware of it, would actually be very helpful. As I mentioned previously, the ADF is now producing joint doctrine as well. So it will
5 pertain more specifically to maritime and air incidents rather than just land. I don't think we're talking about lengthy or complex training. We're looking at perhaps a two to three day course for mortuary planners or people who are placed in positions as mortuary affairs officers just to familiarise them with doctrine and policy, to take them through basic
10 planning - the process and also considerations for a mortuary affairs operation and letting them what resources we have available both within the ADF but also through our contractor as well. Pre-deployment briefing, not just psychological preparedness, but I think it would be worthwhile for deployed personnel understanding the basic procedures or
15 actions on in the event of an incident. Something as simple as securing the site and preventing unnecessary access to that site would go a long way. Also briefing pre-deployed - as part of pre-deployment preparation running people through the escort duties and, as mentioned before, psych preparedness. The other aspect of training and education is promotion
20 courses. I think that all promotion courses or basic initial employment courses, even command and staff college, would benefit from at least a 40-minute presentation on what mortuary affairs is and what doctrine and policy we have available out there. The second issue is the escort issue. The intent of escorts always has been and continues to be custodians only.
25 I think we need to emphasise that if people are not qualified or trained to be in a mortuary environment, then people need to ensure that Commanders and subordinates stick to that escort duty statement. I think stepping outside that duty statement is vulnerable to error. I also strongly believe that it's only necessary for us to have one escort for all those
30 reasons that COL Murphy alluded to this morning. The other issue is the use of contractors. The ADF does not have a dedicated mortuary affairs capability. It doesn't have an extensive - it has a very limited capability. I strongly believe that the use of contractors is the most professional service that we can provide to our deceased service personnel. The experience
35 that the contractor has and the training that they have would take years for Defence to develop. But what I believe we need to work harder at is the relationship between the contractor and Defence, better understanding each other's limitations and expectations as well in the event of an incident. I believe that the contractor should be involved in the planning
40 process right from the initial outset during the initial stages of developing the mortuary plan so that they know likely tasking and we know what resources they have available to assist. The issue of identification, Defence has never endorsed visual identification as a process for ID'ing
45 personnel. It's not a reliable means of ID and there are plenty of examples, both nationally and internationally, where visual identification

has failed, particularly in incidents of mass fatality like Bali and Thailand. So I guess Defence need to during their mortuary affairs plan outline whether positive identification is going to occur in the AO or outside the AO and then make sure that their mortuary system is set up to support that and that any form of identification should only be done by qualified personnel. My last point is DNA reference samples. A DNA repository or the issue of DNA has been pursued by a number of people over a number of years including AIRCDRE Chris Griffith who's one of our mortuary specialist. He's a forensic odontologist. The issue of DNA certainly came out in the Board of Inquiry for the '96 Black Hawk incident where it was recommended by the Coroner that if DNA reference samples had been available identification would have been made a lot quicker than it was. We have a current program in Defence, but it's currently limited to aircrew. In February this year I submitted a proposal through HQJOC intending for it to go to COSC proposing that we extend this program to all ADF personnel. DNA actually assists with an expedient identification, but it may also be the only means of gaining identification where there's a mass fatality or high fragmentation. So I think that's one particular area that Defence should seriously consider looking at to improve our mortuary affairs processing future. That's all I have, sir.

Thank you. Thank you, sir.

25 PRESIDENT: LTCOL Wilkinson.

LTCOL WILKINSON: Yes, just a couple of matters.

30 <EXAMINATION BY LTCOL WILKINSON [1552]

LTCOL WILKINSON: My name is Wilkinson, I appear for Soldier 2 who was the escort. In your notes of telephone conversation with BRIG Cosson you refer in the last paragraph - the last few lines on the first page - to what you've been talking about, and that is, that the role of the escort is limited to custodian responsibilities. You've just suggested a recommendation that that remain. You refer to a definition, the responsibilities of an escort are defined in the 1 Movement Group SOP moving of remains. I take it that document, which also appears in BRIG Cosson's report at CC - do you have that before you?---Yes, I do, sir.

45 Is that the document you're referring to, Movement of Deceased Persons From Outside Australia?---Yes, that's correct, and there's a duty statement

attached to that.

5 That particular document doesn't describe the duty statement, but there is an annex to that duty statement for the escort. Paragraph 9 of that duty statement refers to precisely what you've been talking about, doesn't it, and that is:

The escort is responsible for the following tasks: (b) ensuring the casket is consigned correctly at all handover points.

10 There is nothing in that duty statement about identification or a role for the escort to identify, is there?---No, that's correct.

15 There's nothing in your own document, that is, the mortuary affairs document that you authored, that indicates an escort is required to identify the body?---No, that's correct.

20 Can I take you to paragraph 4-3-9 of your - I keep calling it yours, but the mortuary affairs document that you authored and just two matters relating to that, if I might?---4-3-9.

Under the heading "Escort and Bearer Party"?---Yes.

25 About halfway down you refer to:

Personnel are to receive a detailed brief on the correct protocols for performing escort and bearer party duties before departing their unit location.

30 I guess that's sort of a like to have or a nice to have. At the moment that wouldn't be possible unless you personally were providing the brief. There aren't any sufficiently trained people to be able to provide a brief of that nature to anybody at the moment, are there?---We've clarified this in the joint doctrine, but what we're referring to is a detailed brief; so their
35 duty statement and what their responsibilities are.

40 Are there presently people that would be able to provide that sort of brief to units?---Well, in theatre it's usually the mortuary affairs officer that is appointed that would normally do that.

The mortuary affairs officer?---Yes.

45 I think the point though is that there needs to be more training and a broader scope of people to be able to provide that sort of advice or brief to the escort. Is that your recommendation?---Yes, certainly. And even the

mortuary affairs officers in theatre it's usually a secondary appointment and they've received no training themselves. So they would more than likely simply read straight from the duty statement.

5 The other thing is at the start of that there's selection of suitable personnel. Again what are your views regarding what a suitable person would be as far as an escort is concerned? For instance, you heard this morning COL Murphy suggesting that perhaps the person that knows the person very well isn't. Would you agree with that?---Yes, I would. Once again
10 with - COL Murphy is part of the joint doctrine working group and we've requested that he provide us with some Commander's guidance on what's suitable.

15 What about a person that is displaying signs of stress or tiredness or has perhaps been very heavily involved in the process; would that be a suitable escort?---I would suggest not, no.

Thank you. No further questions.

20 PRESIDENT: LTCOL Green.

LTCOL GREEN: No, thank you, sir.

25 PRESIDENT: LTCOL Berkley.

LTCOL BERKLEY: Yes, just a few to wind off the afternoon, sir.

PRESIDENT: I'll believe it when I hear it.

30 <EXAMINATION BY LTCOL BERKLEY [1557]

LTCOL BERKLEY: Major, I'm Tom Berkley, I represent Shelley
35 Kovco, Jake's widow. In an email BRIG Cosson sent to both a Dr Ramsey and a Dr Ali at the Al Sabah Hospital in Kuwait city - I just want to read you a bit of - it appears it's a working email BRIG Cosson sent from an email and they appear to have attached a reply throughout. I hope I'm quoting them correctly, but it says this. I'm looking at the
40 standard of the contractor:

There are no third country nationals in Kuwait. These are Egyptian, Syrian and Bangladeshi expatriate labourers.

45 These are the people I think are working at the mortuary. It said this:

5 *The management of the morgue is entrusted to an Egyptian who has had some primary education. He is responsible for the morgue refrigerator and reports any problems. He is also the foreman for the other workers to see their daily roster.*

It's spelt "rooster" in here.

10 *He works under the manual workers hospital administration. He does not work under the doctors. The morgue maintenance is under the responsibility of the engineering department.*

It then goes on a bit further on because BRIG Cosson apparently said this:

15 *In addition, I propose to find that a number of environmental factors peculiar to the Al Sabah Hospital mortuary contributed to incorrect identification by the Australian officials.*

She goes on to say that:

20 *These factors included poor illumination in the mortuary and the tendency of people to crowd within the limited confines of the mortuary.*

25 The reply:

30 *Indeed, that is a correct observation. Remember when you came it was a relatively calm day. Often the Egyptians in particular come in busloads. The Indians flood the place. I do not know if on the day the Australian was wrongly identified if the place was crowded. However, when Americans or English or representatives of a "rich country" or persons like Australians the morgue workers usually try to impress the relatives and clear the place for them. Do you remember when you and I entered the*
35 *morgue the relatives of the Indian - poor man - were shoved off. Dr Ali told them to stay only for your sake.*

It just goes on, apparently from BRIG Cosson:

40 *For those unaccustomed to working with dead bodies, the mortuary could be regarded as oppressive, confronting, lacking in comfort for anyone grieving the loss of family or friends and not professionally managed.*

45 *Yes, indeed -*

is the reply.

5 *It is, however, not easy to find an official employee to work day and night in this morgue. The culture of the expatriate crowding has literally destroyed a very nice attached place with air-conditioning. There is a garden at the back with chairs. Sorry you did not see it. However, the cooling power of the refrigerator uses the latest technology and is up to international standards.*

10

The last part to trouble you with is this. Apparently BRIG Cosson said this, if I read this correctly:

15 *I propose to recommend that the bodies of deceased Australian Defence personnel should not in future be stored at the Al Sabah Hospital mortuary.*

The reply:

20 *I would put it another way, "that bodies be sent directly to Australia". Your words as stated will have a negative effect on the Australian expatriates living in this country, perhaps other negative effects.*

25 What Shelley wants to know is of course how Jake winds up in a place that even locally is described as not being certainly up to our cultural standards and our expectations. Does the mortuary affairs policy proposal that affects mortuary affairs, does it have a basic standard for Australian soldiers or are we going to take what we can get if we use civilian means?---It doesn't have a standard laid out. Once again I guess it comes
30 down to using specialists to advise us on whether the facilities within country are appropriate or otherwise. I mean, I don't understand - I'm not sure where the decision was made to use the civilian mortuary and what the thought process was behind that decision, whether there were no other
35 resources available. But if there are other resources available - I mean, this should come out in your initial planning as well, what facilities have we got available in theatre.

40 Just getting to that, you would expect the mortuary affairs officer to have satisfied themselves, if there is a subcontractor being used, that any facility used for the storage of the bodies of our dead at least meet with what we in Australia would think it be acceptable standards for our form; you'd agree with that?---Yes.

45 I think that's one of the problems that you've identified in your evidence-

in-chief, of course there's not enough attention paid in the planning process to the very real possibility of mortuary affairs being - having to be performed, if that's the correct phrase; you'd agree with that?---Yes, which comes back to training people.

5

I took it from your evidence that you consider that identification of the deceased you'd prefer that it is a scientific process to establish the identity of the deceased with the best technology available to us by - perhaps in the case in which we don't have much of a body by DNA, but if we've got dental records, that sort of thing. Is that correct?---That's a positive identification is achieved through scientific means.

10

When we had a situation like in PTE Kovco's case we had his death certified by an American physician/doctor, someone who would appear to us to be at least capable of certifying that someone has passed on. Do you know, have you investigated why there was some delay in chasing down a Kuwaiti doctor to perform the same function when we already had that certificate?---I'm not able to answer that. I don't know the details of the incident.

15

I'm after your opinion. I'm not suggesting that you were consulted in any part of this. We had a situation in which a decision was made to repatriate Jake by commercial means. That repatriation was going to be done within days of Jake's death. I think you know that the Americans usually say that their repatriation process will take somewhere in the order of seven to eight days. Would you agree with that?---Yes.

20

From your knowledge of mortuary affairs and of course the knowledge that it's not exactly - sorry, the facilities aren't exactly like you'd find in an Australian capital city in the middle of a war zone - do you think seven to eight days is a reasonable planning time for the repatriation of our deceased?---If positive identification is going to be achieved, yes.

25

Indeed, because in the theatre those assets themselves may or may not be available and may be required to be brought in to obtain that positive identification?---Correct.

30

Is it your view that if the positive identification cannot be achieved in the field, then the deceased or other remains of the deceased are returned to Australia for that purpose?---Yes.

35

Do you propose that in any new mortuary affairs policy that a minimum or an indicative time frame would be set to perhaps avoid some indecent haste in the repatriation of Australian soldiers?---No, I don't think we should put a time frame on it because every situation will be different.

40

45

But we have said in doctrine that we should not be in a hurry to repatriate at the expense of making sure that the process we follow is accurate.

5 Something you said to Counsel Assisting earlier on, COL Griffin, I think you said that the latest policy says that a civil method of repatriation is the preferred method. Was that your evidence?---That's in the current DI, DI 20-6, but that is being changed at the moment to reflect the CDF's directive.

10 Because of course you probably watch the news and everyone from - well, at the Minister of Defence and the Leader of the Opposition, all these people have said, "Well, we ought to use service means." But of course that's subject to availability, isn't it?---It is, yes.

15 In a situation such as in the present case there was no reason for our mortuary affairs officer at the headquarters of the JTF not to have liaised with our coalition partners, British or American, so that Jake could have been stored at the theatre mortuary evacuation point run by them. Would you agree with that?---If there was no reason why that couldn't have been done, sure, that's what perhaps should have occurred.

20 But you would see that an officer in that position might think to impose themselves upon or at least ask our coalition partners could we use their facilities. Would you think that would be the normal course of events?---I would expect that that arrangement would be established before our troops deploy.

25 One would have thought it would be part of the planning process? ---That's correct.

30 The contract that we have for non-military repatriation, currently that's with Kenyon International, as I understand it. Of course we're not part of the process of entering into that contract, that's for someone else. But the contract seems to be clearly an on occurrence or on demand sort of thing. Of course we can ask them to do any particular part of the mortuary affairs for us. Do you understand that?---Yes.

35 So we could ask them to deploy some forensic pathologists, say, "Here's Jake's records. We'll get him back home. We just want you to get some forensic pathologist to have a look at and identify this body for us." We could do that? Is that your understanding of the contract?---Yes, they can provide any mortuary service that we need them to do.

40 And any little bit of it that we want?---That's right, it doesn't have to be the whole process, it can be any small component of that process.

I understand that we have Reserve officers in Australia who are forensic pathologists who have indicated their willingness to deploy at short notice for the same purposes?---Yes, that's right.

5

Tell me about that. That's a facility that we've got currently obviously with Reserve officers who are keen enough to do so. Has someone taken that seriously that suggestion?---Once again these people are not widely known, the availability of these people are not widely known within Defence. In short, no, no-one has taken hold of their details and what their capability is and has that on hand ready to utilise.

10

I simply don't know and I'm asking the questions for obvious reasons; I don't know the answer to this one. So we don't know whether like HQJOC knows of the existence of these people or their preparedness to deploy at short notice?---I know for a fact that HQJOC do not have their details and are not aware of their capabilities.

15

Because they're exactly the same forensic pathologist who'd be used for exactly the same purpose within Australia, aren't they?---Correct, yes.

20

Thank you very much, Major. Nothing further, sir.

PRESIDENT: Kenyon's, I take it they're a rather big organisation. Are there any similar organisations about?---There's one other organisation that I'm aware of called Blake's. It's a UK-based organisation, but it's very small in respect to personnel and equipment and also experience. I think Blake has been around for quite some time but they specialise in aircraft accidents predominantly. So their experience outside of that is relatively limited. As I said, they have very little equipment and personnel to tap into.

25

30

Now, presuming we went down the route of a DNA repository, in other words, everybody who joins the ADF gives a sample of his DNA or her DNA, and we have a death again in Baghdad, would the Americans have the facilities to test or assess that DNA before the body leaves the theatre?---No, they don't have the testing facilities over there unless they establish a contract with someone over there. But my understanding is there are very few laboratories in the world that specialise in DNA profiling. So what would potentially happen is a sample is sent back to Australia, a sample of the remains, and the reference sample is drawn from the repository and the match is done back in Australia or it may be done in the US. I know Kenyon have contracts with laboratories for this purpose. So that would be an option as well.

35

40

45

Anything arising out of that, gentlemen?

COL GRIFFIN: Sir, just one final question.

5

<EXAMINATION BY COL GRIFFIN

[1613]

10 COL GRIFFIN: MAJ Byway, do you know if the United States are still
using their own military capacity to return or to repatriate deceased
members or if they have recently moved to a contract provider as well?
---No, my understanding is they are still using their own aircraft. That's
because they have lots of them, a lot more than us. But interesting to note
15 is that they don't use escorts from the AO back to Dover mortuary. The
escort role commences from Dover mortuary to the family. The aircraft
Commander takes custody of the casket and it's his responsibility from the
AO back to Dover.

20 Dover being mainland United States?---Yes, sorry, in Maryland. That's
their mortuary.

Thank you. Nothing further, sir.

25 PRESIDENT: Major, I'm aware that you've got a keen interest in this
matter and been keen to assist the Board and I'm grateful to you for that
enthusiasm. Thank you for that. You may now stand down.

30 **<WITNESS WITHDREW**

[1615]

COL GRIFFIN: Mr President, that completes the evidence for today. We
have the Director-General of the Defence Community Organisation who
will give evidence tomorrow afternoon at 1330. So with your leave, sir,
35 we would adjourn to return at that time.

PRESIDENT: 1330 tomorrow.

40 COL GRIFFIN: Yes.

PRESIDENT: Is everybody comfortable with that time?

COUNSEL REPRESENTING: Yes, sir.

45 PRESIDENT: Very well, so be it; 1330 tomorrow.

COL GRIFFIN: Thank you, sir.

5 **MATTER ADJOURNED AT 1615 UNTIL
TUESDAY 5 SEPTEMBER 2006 AT 1330**

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