

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

1346 TUESDAY 05 SEPTEMBER 2006
DAY 33

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.....  Date05/09/06.....(President)

Signed.....  Date 05/09/06.....(Recorder)

Signed.....  Date 05/09/06.....(Transcriber)

Signed.....  Date 05/09/06.....(Transcriber)

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RESUMED

[1346]

5 PRESIDENT: Good afternoon Major, good afternoon ladies and gentlemen.

MAJ JOLLY: Good afternoon, sir. Sir, the first witness for this afternoon is Ms Janet Stodulka, I call her.

10

<JANET LOUISA STODULKA, sworn

[1347]

<EXAMINATION BY MAJ JOLLY

15

MAJ JOLLY: Ms Stodulka, your full name and your current position you hold within the Department?---My full name is Janet Louisa Stodulka and my position is Director General Defence Community Organisation.

20

Ms Stodulka, have you had an opportunity to read Annex F to ADFP on administrative inquiries?---Yes, I have, thank you.

25

Ms Stodulka, before we get into your statement, could you just give us a very brief overview of, firstly your department and the role it performs within ADF and then secondly, what your role involves as the Director General?---Yes. My organisation is called the Defence Community Organisation and we sit within the Defence Personnel Executive Branch within that. We're an organisation of about 220 people and we have staff, military and civilian staff in a headquarters in Canberra and in 32 other locations around Australia. We're an organisation that provides social work, counselling and other support services to Defence members and their families as well as a number of, what we call, retention programs such as childcare, spouse employment, families with special needs, education support and so on.

30

35

And your role?---My role as the Director General is I'm the branch head, which means I'm the senior officer within the Defence Community Organisation, I'm responsible and accountable for the performance of the organisation nationally.

40

Does that also involve a policy role as well?---We - in the Defence Community Organisation we have both a policy role and a service delivery role and the majority of the policy work is performed within the

headquarters which I lead and service delivery is predominantly performed in the area teams around Australia.

5 Is part of that role designed to provide advice to service chiefs on how better to utilise your organisation's resources?---Absolutely and also for us to obviously take advice from the three services, Navy, Army and Air Force as to how best they think we can support their people and their families.

10 As a result of this inquiry, have you provided a statement in terms of the role of your organisation and your organisation's offices in terms of the PTE Kovco Board of Inquiry?---Yes, I have.

15 Do you have a copy of that?---Yes, I do.

If you could just turn to the last page of that statement and after paragraph 33, that's your signature, is it, Ms Stodulka?---Yes, it is.

20 I believe you've attached two of the relevant Defence instructions to that statement?---Yes, I have.

Sir, I tender that statement.

25 PRESIDENT: Any opposition to that tender?

COUNSEL REPRESENTING: No, sir.

30 PRESIDENT: Yes, it will be marked as Exhibit 183.

#EXHIBIT 183 - STATEMENT OF MS STODULKA

35 MAJ JOLLY: Sir, that statement has been provided to Counsel Representing earlier this afternoon.

PRESIDENT: Thank you. Continue, Major.

40 MAJ JOLLY: Thank you, sir. Ms Stodulka, could I take you to paragraph 30?---Yes.

45 You refer to your organisation redrafting its current practice guidelines. For the purposes of giving evidence today, have you provided me a copy with your notes on the draft guidelines?---Yes, I have.

Do you have a copy there that you're able to refer to if the need arises?
---Yes, I do.

5 Firstly, could you briefly describe the purpose behind the redraft of the
practice guidelines relating to bereavement support?---We have practice
guidelines in the Defence Community Organisation which we're updating
on a fairly regular basis, and that's to reflect new research and lessons
learned as we do our work. The practice guidelines' purpose of those is to
10 give principles base guidance to our people in the field so that they
understand their responsibilities in a particular area of their work, in this
case supporting bereaved families, and to highlight to them specific issues
and tasks that need to be completed in order for them to fulfil their
responsibilities.

15 Are these guidelines based on practical involvement in boards of inquiry?
---Yes, they are.

I take it they're also based on DCO's role in dealing with bereaved
families in general, not just those that go on to boards of inquiry?
20 ---Absolutely, yes.

Have you had an opportunity to incorporate any lessons learned from
DCO's involvement in this Inquiry?---I guess we've had some feedback,
constant feedback process when we're providing services to families or to
25 the organisation. So we're reflecting on that. Those lessons are picked up
in the draft working notes that I've given you a copy of. That guideline
will be work shopped on Friday with a number of my experienced
colleagues.

30 How close are these guidelines to publication or are they still yet in the
embryonic stage?---They're still in an embryonic stage. I haven't yet
work shopped them with my practitioners from the field, nor given access
to the services to these guidelines.

35 I take it therefore they're not yet ADF policy?---No, not at all.

Is it not putting it too highly to say that these are your views in terms of
the wider policy context as the Director-General of DCO?---My views and
views of other members of my team. So some ideas in here I may not
40 have fully thought through yet or may not even agree with and views that
I may have put in there practitioners in the field may say to me that really
doesn't make sense for us when we're doing our work. That's why we
will commence the work shopping process this Friday around these
guidelines.

45

Can I take you to page 6 of your notes, please?---Yes.

5 You identify two forms of bereavement; a normal Defence bereavement and a high profile Defence bereavement. Firstly, what are the differences, and secondly, which one applies to the death of PTE Kovco?---I think in terms of the differences - first of all, I can say it's something that's common is that family have suffered the loss of a loved one and therefore experience the grief that goes with that. That's common whether it's a high profile or not case. In terms of the death of PTE Kovco, I think very
10 much a high profile bereavement, one that was - where there was considerable media coverage and a lot of speculation associated with it and also a Board of Inquiry that followed PTE Kovco's death, which also brings with it considerable media interest, public interest and speculation.

15 In terms of the media interest in this Inquiry, have you been able to make an assessment of how it compares with previous inquiries?---My sense is that the media coverage has been almost daily. I've had close involvement with the Sea King Board of Inquiry and I don't think the media coverage has been as intense throughout the whole process,
20 however, the Sea King Board of Inquiry has endured a much longer period than this Inquiry.

How well placed is your organisation at the moment to provide the support required of what you've identified as a high profile Defence bereavement?---Are you talking in terms of our staffing?
25

Yes. To put it bluntly, have you identified any areas where you need additional resources or identified structures that could be changed?---Our role in supporting boards of inquiry has increased significantly since the
30 commencement of the Sea King Board of Inquiry and actually the Department has recently allocated us some additional staff resources, noting that intense involvement that we now have in supporting families and other witnesses during the board of inquiry phase. In terms of responding to deaths, we of course go to wherever a family may live, and
35 they may not live near an ADF base, which is where our offices are based. So we go to Broken Hill, we go to Ballarat, we go to wherever that family is. It's very hard to be staffed in a way that is always going to - you're always going to be providing services from your least busy office. That doesn't necessarily happen. So I think we're a busy team, we're a
40 very focused team. Certainly our work in support of bereaved families is something that the Chief of the Defence Force and the Service Chiefs require us to undertake as a priority for them. So I think that we're resourced adequately to be able to respond in that regard.

45 On page 8 of your notes you identify one of the roles of DCO is to deal

with the negative experiences of people involved in a death within the ADF. Firstly, in terms of your organisation's management of that, do you have the ability to draw upon external agencies or is it something that you manage internally?---Do you mean other agencies within Defence or external to the Defence environment?

Both?---Certainly we work with many other agencies within Defence and in terms of the response to the crisis, advising family of a death, Defence is very keen that we and other parts of the system are closely involved in providing support to the family, if they so wish. We see that as our responsibility and that we're best placed to do that. We also work in with other agencies like Com Super and Veterans Affairs. Often families may be well linked in with their community and may actually prefer to get their support from their networks in the community, perhaps their local church or other groups. So we will certainly then work in with those other groups. Perhaps in that case we may take more of a watching brief rather than an intense hands-on role because it's really what best suits the needs and wishes of the family that guides the sort of interventions that we provide.

Am I right in saying from that answer that your boundaries as an organisation are not set in concrete?---No, that's correct.

Is it also fair to say that your role is responsive to the needs of the next of kin and other ADF members who have been - - -?---Absolutely.

In the process of redrafting your organisation's practice guidelines, are you going to include specific guidelines to deal with the running of boards of inquiry?---Not to deal with the running of the boards of inquiry but to deal with certainly our role in supporting the families who wish to attend the boards of inquiry and also other witnesses who are appearing before the board, yes.

Does the state of mind of the participants, whether they be next of kin or indeed any other person affected by the death within the ADF, does their response in terms of where they are in the bereaving process dictate different responses by your organisation?---I think that would be a fair comment about any intervention that we provide. We're constantly trying to make an assessment of what the person's needs are and what their vulnerabilities are, you know, how can we assist. So we're always - I don't think there is a template that we can put over the service that we provide. However, there are guidelines or frameworks, and I think that we will always - we're committed to having social work support for people at the board of inquiry, we're committed to having a Military Support Officer who can provide practical and other support to the family. So I

think there's those underlying commitments that we make to the program of support, but whether we might be driving a family to and from the board, whether we might be meeting each other afternoon or not with the family, those kind of issues are really dictated by what is going to be most supportive to the family, what they indicate to us is most supportive to them.

Could I get you to turn to page 16 of your notes on the guidelines. You identify on that page two types of grief; fractured grief and disenfranchised or ambiguous grief. Firstly, could you explain what you mean by "fractured grief"?--"Fractured grief" is a term that one of my colleagues in the DCO coined and it came about as we thought about how processes that our families are involved in such as the board of inquiry actually in some ways require them to put their grief or their lives on hold for a period. They often move away from where their home is, where their traditional supports are and get exposed to a process that families perhaps outside of the Defence environment would not be exposed to. So there's also other ceremonies that can be involved in high profile deaths in Defence that again perhaps involve some reflection of the national mourning and families feel a sense often of responsibility to participate in those kind of processes. That can impact how they may have moved through the grief process had they not been a part of a very high profile Defence death.

If it's not stating the obvious, is it the case that members of a family that are affected by a death will be at different stages of their grieving process notwithstanding that a board of inquiry may be running?--Absolutely.

You then talk about disenfranchised and ambiguous grief. Briefly, what does that mean?--I guess I'm less familiar with that area myself because I'm not in the practice of social work any more. But it's something that we were considering about the sort of grief that witnesses and potentially affected people experience and the grief that goes with public view about their performance and those sort of things and how that impacts on - on them.

Are you able to contact a wide range of chains of command within the ADF in order to be able to do your job and call upon the support as required?--Absolutely. We work with every level within Defence, depending on, I guess, our own level, but I - I certainly find myself in the headquarters environment, I have very good access from the Chief of Defence Force's Service Chiefs down and my people in the field similarly have very good access to Commanding Officers and their staff because we're actually delivering our services on behalf of the Navy, Army and Air Force so it's very important that they have a sense of what we're

doing and - and are able to actually support us and participate in that process when it's appropriate.

5 Are you able to proffer an opinion as to how receptive the uniformed members of the ADF are to your organisation and the services it provides in terms of firstly, their general awareness of how your organisation works?---I mean I'd be surprised if there was anyone who hadn't heard of the DCO, but I continued to be surprised. So I think there is good awareness, we certainly - we're out doing predeployment briefs, we do
10 induction briefs at the beginning of every year, we provide training in notifications, we do mental health training, we - so we're very active in our engagement with ADF members, not just with families. In terms of how well we're accepted, well we're certainly very heavily used, so I guess that - that suggests that we're well accepted. I think that we're the
15 sort of organisation where - you know, we're as good as the job we've done yesterday. You know, it's about our reputation, so if people use us, they find us reliable, that we have good integrity, that we provide a professional and competent service, then word spreads around. So I think we're well used and I think we are well accepted as a - as one of the
20 systems that are available to people to support them.

In your notes at page 35, you identify, if I'm right in saying, three distinct roles of support that you provide during a Board of Inquiry, firstly to the bereaved families, secondly to survivors and their families and then
25 thirdly to the witnesses and I note that you include within that potentially affected persons?---Yes.

It's that particular role I'd like you to expand upon if you could, please? ---As we establish a support team and support program for the families
30 attending the Board of Inquiry, we establish a parallel team to support potentially affected persons or other witnesses because often a process such as a Board of Inquiry is quite a traumatic process for them as well and our role is - is not one of judgment of anybody's performance, but rather to provide good care and support and information to ensure that
35 people can participate well and can function well throughout the process and after the process.

In terms of this Board of Inquiry, has the fact that it's been dealing with ADF members still in the area of operations, how has that affected your
40 organisation's ability to deliver its services?---Yes. We're fortunate in that there is chaplaincy services and psychology services in country and those professionals have been providing support since the accident and the death of Jake Kovco. Our social worker has maintained close contact with families that - that find that helpful to them and is also able to
45 communicate with the - with the Unit via the National Welfare

Coordination Centre so we get access through to be able to share information and provide feedback. But it is more challenging, yes.

5 In terms of that role, does your organisation, does it also act as a conduit to get, for example, witnesses or indeed potentially affected persons who are appearing before a Board that if they need additional services such as mental health counselling or indeed other forms of medical treatment, is that a role that your organisation plays in facilitating that?---Certainly that would be something that - a role that we do play if we have concern about
10 any member and are - fell that we don't have the skills or competencies to be able to provide the response, then we would talk with the member about the need to access other services.

15 Just on that point Ms Stodulka and your previous answer, I was wondering if you could proffer or give your organisation's perspective on the significance of the President's direction to protect the identities of those members of the ADF who are still currently serving over in Baghdad and if you're able to, in terms of the feedback you've received from your officers, how the direction to protect identities has affected the morale of
20 not only the members that your organisation is looking after but also their families as well?---I've not had specific feedback that I can recall from my social worker about any of the members having expressed a view. They may well have expressed that view to her, but I haven't had that feedback from her. My sense from her though is that families feel appreciative of that because it's - it gives them a sense that they're - that the member is
25 being protected it also gives them some protection as well. But I can't recall specific feedback from the social worker about it.

30 From your perspective as the DG and I suppose from that policy level, what would be your organisation's view on that approach? Is it a help or a hindrance to how you carry out your role?---It's certainly - it's certainly not a hindrance to us and I - I guess - you know, commonsense would say to me that - you know, that there are significant security issues involved and from a personal perspective I thought that it was an excellent direction
35 that - you know, that was - was going to operate in the interests of those members.

40 Ms Stodulka, if I could get you to now focus on - firstly, if you've had a chance to turn your mind in terms of the policy perspective of your organisation to identifying the indicia that signified that your organisation has met it's own goals in providing support during the Board of Inquiry. You touch upon these in page 41 of your notes, if I could take you to that.

45 PRESIDENT: Could I just butt in. We don't seem to have copies of these notes. Are they part of the tender or otherwise?

5 MAJ JOLLY: No, they're not, sir. My understanding is, and Ms Stodulka can correct me if I'm wrong, but these are her own dot points to provide, as the Director General, to provide, if you like, the talking points for her evidence.

PRESIDENT: I'm comfortable with that, it's just I've been looking for them and not finding them.

10 MAJ JOLLY: My apologies, sir. No, it was a means of trying to - - -

PRESIDENT: No, I can understand where you're going now - - -

15 MAJ JOLLY: Yes, thank you, sir.

PRESIDENT: - - - and I'm comfortable with that.

MAJ JOLLY: Thank you, sir.

20 Ms Stodulka, firstly - - -?---Sorry, which page were you - - -

Forty-one and Ms Stodulka, you heard my explanation of the status of those notes to the President, did I correctly - - -?---Yes, you did.

25 Thank you?---Thank you.

30 The question I had for you was whether you, at this point, have identified indicia of your organisation's ability to meet its goals in terms of supporting Boards of Inquiry and the specific mechanics of the support arrangements, if we could start with that?---The specific mechanics of the support arrangements are that we think that we need a good case management plan in place that outlines our understanding of the family's needs and how we might go about responding to those as well as other agencies might support us in that. It's about our availability to families.

35 It's about - when crises occur, how can we ramp up or how can we ensure other services are put in place and it's also about, as well as the hearings, the period when the hearings are occurring what other support needs to happen outside at the end of the day or the beginning of the day. Is that what you're referring to?

40

Yes. I understand that you're meeting this Friday, was it?---Yes.

45 With members of your organisation to, am I right in saying, do a lessons learnt of the outcomes of the support provided in this Inquiry?---It - it will be reflecting on lessons learned, not only around this Inquiry, but the Sea

King Inquiry, other inquiries that we've been involved in. It will also be looking at advice from our practitioners in the field who are not only involved in supporting as we talked about high profile deaths, but also responding to other bereavements of - that Defence families experience and trying to help us then pull these guidelines together into - into some principles that will ensure very good service is provided to all ADF families who lose a loved one.

Is that something that you intend to reduce to writing in terms of - - -?---It will be in writing, absolutely, yes.

Do you have a - I'm not wanting to hold you to it, do you have a timeframe for that process?---I would expect that it'd probably be about another month before we would have those guidelines circulated to all of our staff.

In terms of any preliminary documentation, are you intending to summarise it earlier than that? You can see where I'm going, can't you.

PRESIDENT: I think she's in front of you Major.

MAJ JOLLY: Yes, sir.

WITNESS: If it would be helpful, that would certainly be a process that we could do and that would be helpful to us anyway, so it would not be - - -

MAJ JOLLY: Without wanting to put you or your organisation to any extra work Ms Stodulka, I'm sure that the Board would be very grateful for visibility of those issues that you've been able to identify?---Yes, I'd be happy to do that.

Two things finally, Ms Stodulka, your organisation's role in terms of providing support to Boards of Inquiry doesn't end when the hearings end, am I right in saying that?---No, that's correct.

What role does your organisation have once the hearings have actually formally ended?---Our role is to continue to provide counselling as appropriate and support to the families for as long as they find that helpful. We're also able to - we'll work with the services and we're able to assist with facilitating communication about the progress of preparation of the Board's report - you know, announcement of the findings, that sort of process that we can assist with as well and we'll offer the same in terms of the potentially affected people and the witnesses.

45

Does that continue up and to and including the formal release of the Board's findings by the Minister?---Yes. We - and we may be involved with the family beyond that. It really depends on the family, if they're finding it helpful to have a contact with us. Some families may say well we'd like you to maintain contact with us just for the purposes of facilitating information and updates. Others may wish us to be involved to provide more intensive support, but it's the family who will give us that guide as to how intensively they want us to remain involved with them and we - sometimes we remain involved for a number of years with families.

Finally, Ms Stodulka, in the Board's Terms of Reference one of the directions to the Board - and, sir, this is at 7(a) - is to determine whether the next of kin of the deceased have been advised of their eligibility to submit claims for compensation in accordance with current guidelines. Am I right in saying that in your statement at paragraphs 18 through to 21 inclusively you deal with the issue of relevant payments to the next of kin and the actions taken by your organisation?---Yes.

The other Terms of Reference relevant to the Board in relation to that - and this is 7(b), sir - is that whether there's any outstanding action required of members or units to enable finalisation of any compensation issue or indeed any other issues arising out of the incident. Are you aware of any outstanding issues with respect to compensation that is currently outstanding in relation to the death of PTE Kovco?---No, I'm not aware of any outstanding issues.

In paragraph 21 of your statement you identify that your organisation has kept a record of the payments made to Mrs Shelley Kovco and, quite properly, that they're Mrs Kovco's personal information. Has a copy of those records been provided to Mrs Kovco and her counsel?---Of DCO's records?

Yes?---No, I haven't provided that, but I'm happy to do that.

Am I right in saying that she would have her own - she would receive as part of the payment process copies of the relevant financial documents? ---She does. The payments that we make are from DCO headquarters, or that we facilitate. My staff prepare a letter for me that outlines what the payment is for, why, what dates payment would be made into the bank account, and that is formally provided to the dependents.

Thank you, Ms Stodulka. Thank you, Mr President.

PRESIDENT: Thank you. LTCOL Wilkinson.

LTCOL WILKINSON: Just one matter.

5 <EXAMINATION BY LTCOL WILKINSON [1422]

LTCOL WILKINSON: Ms Stodulka, I actually represent a potentially affected person, Soldier 2?---Yes.

10

I just have the one question, and that is, once these practice guidelines relating to boards of inquiry are prepared and finalised how will they be promulgated?---They're internal guidelines for the Defence Community Organisation. So they're actually for my staff guiding our practices. We also have Defence Instructions that give the policy guidance as to our role and our work. But these guidelines are quite specific and detailed guidelines to my staff to ensure that they understand their responsibilities and are given support in fulfilling their responsibilities.

15

20

You're expanding that to include the potentially affected people. But I'm just wondering how they are going to get to know about it. The potentially affected people in boards of inquiry, how will they find out whether they can get assistance?---I beg your pardon.

25

That's what I meant?---Actually we're also redrafting the Defence Instruction on our response to bereavement and also our support to boards of inquiry, because this is quite a new thing. Since the Sea King Board of Inquiry is the first time we've stood up as a support team and it was through our experience with that that we recognised how important it was that we provide support to potentially affected people and their families. So it will be promulgated through our policy guidance.

30

35

Again without wishing to put you on the spot, when is that DI(G) expected?---That will be a longer process actually than our guidelines because that's policy that the services need to sign off with. But I think it would be fair to say that in principle it's a matter from the Chief down that they want us to provide good support to the potentially affected people and their families and are keen that we do that work around understanding what that involves and how best can we achieve that support.

40

Or as soon as possible?---Certainly.

Thank you. No further questions.

45

PRESIDENT: Thank you. LTCOL Berkley.

5
LTCOL BERKLEY: Yes, thank you, sir. Mrs Stodulka, as you know, I
act for Shelley Kovco, Jake's widow. I just want to start by saying that
she's very grateful for the support given by MAJ Neville Paine and
Marine Argyle(?) from your Victorian offices and of course by Anne
10 McLeod here during this Board of Inquiry. Particularly in that regard I'm
joined by Mr and Mrs Small, Shelley's parents. But Shelley will make a
statement to the Board and she will thank them personally in that; so I just
outline it. But it does raise this issue: how far do you say next of kin goes
in the support? This is one of the areas that of course traditionally is
15 defined as say the widow of a married man - it generally is his widow and
his children. But of course there's other people who care as well and have
to care for that next of kin. Is there something in the instruction you can
point to or how far do you feel that this next of kin to support the families
goes?---Yes. In terms of our services that are what I'd call non-financial
20 services, say counselling and information, those kind of services across
the board in terms of DCO's work, Defence allows us to take a very broad
definition of "family". We really look at who's significant to the member
and who actually would like to access our services or participate in our
social functions, receive our community newsletters. Defence allows us a
25 very broad definition of "family". In terms of services like our education
programs or spouse employment programs that have a financial basis to
them, then we're really looking at a spouse or recognised partner, children
or other recognised dependents. In the case of supporting response to
bereavement, again we take a broad definition. Sometimes people can be
30 incredibly significant to the family and to the deceased member who may
not be a blood relative but a very - it's important to provide support to
them and for them to be part of a process and they in turn support the
family as well. But there's work to be done around - for us to do around
then who is supported at commonwealth expense, for example, to attend a
35 board of inquiry and what should that financial support involve in terms of
accommodation and travel and so on, because really we've been creating
distinct packages for each board of inquiry and it would be helpful to
everybody I think if there was clear guidance on who is eligible.

40 Are you the principal decision-maker when it comes to that?---No I'll be
one of the people who will contribute to the discussion and the
development of the guidance, but again Navy, Army and Air Force are
very key stakeholders to that and a sister branch to mine, which is called
Personnel Policy and Employment Conditions, they will also be very
45 important to that development.

So in any particular case there is a number of people that might not normally fall within the definition of “next of kin”?---Yes.

5 But clearly are players for the purposes of a particular board of inquiry. Does it depend on what service the deceased was in as to who makes a decision as to how much money will be afforded for DCO support to those people, say an extended family arrangement?---I may have misled you a little bit in saying money. We don't actually pay money to the family as
10 such.

I understand that?---Sorry.

15 But your service is cost in government accounting?---Yes.

I was just asking who's the primary decision-maker? Does it relate to the deceased's service as to who says how much money will be afforded for the welfare side of the house?---I guess ultimately it always comes back to the service Chief in a sense. My experience is that they will rely on
20 advice from us because we're the ones that have become closely involved with the family. Also the unit will provide advice. My overwhelming experience is that the service Chief is concerned for the wellbeing of the family and are happy to take guidance on what might best support the family. That's been my experience, yes.

25 Thank you very much. Nothing further, sir.

PRESIDENT: Thank you. Looking outside Defence, are you aware of any other organisation who would provide the level of welfare support
30 that Defence supplies in a situation that we're finding ourselves in today? ---I'm not aware of any other organisation.

That potentially opens Pandora's Box, which I'm not going to go further.
Major.

35 MAJ JOLLY: Nothing further; thank you, sir.

PRESIDENT: Thank you, madam, you may stand down. We're grateful
40 to you.

<WITNESS WITHDREW

[1431]

45 PRESIDENT: At a later time, LTCOL Berkley, I'll be inviting you to

address us on whether Shelley has been paid all her entitlements, whether there's any entitlements outstanding, what we need to do to fix any outstanding entitlements, along those lines. No doubt you've already turned your mind to it.

5

LTCOL BERKLEY: I have, sir.

PRESIDENT: Also I think you've alluded to it already, what I might call the effectiveness of the support that she's been given from DCO and indeed Defence Community General.

10

LTCOL BERKLEY: Yes, sir, and in her statement for the Board she has addressed that and that will be read to the Board by her personally.

PRESIDENT: Thank you. Major.

15

MAJ JOLLY: Sir, we have a series of items to be tendered and then I'd ask for a brief adjournment. COL Griffin will be taking the next witness. Turning to those matters that we seek to tender by consent with Counsel Representing, approximately two weeks ago Counsel Representing were given a copy of Ms Sonia Richards' statement. She is an electronic evidence specialist attached to the New South Wales Police Force. She performed analysis of the laptop that was in PTE Kovco's possession at the time of his death and in her statement she describes that analysis.

20

25

Sir, you'll see that her statement deals with the failure of the original hard drive on the laptop. She goes on in her statement to say that notwithstanding that failure of the hard disk on the laptop, she was able to make a complete copy of all of the data on it. Then she sets out what she then did. In effect, a new hard drive was installed into the laptop and the image that she obtained of all of the data was then downloaded onto the laptop. The laptop will be dealt with before you at a later date, but I needed to advise you of that to explain why we're tendering what we're tendering.

30

35

Attached to that statement - and I propose to tender both copies - are 18 DVD discs which represent - she describes it in her statement at paragraph 16. But the 18 DVD discs represent the entirety of the data on PTE Kovco's laptop.

40

PRESIDENT: So it duplicates the hard drive.

MAJ JOLLY: It does indeed, sir, bearing in mind that the laptop no longer has its original hard disk and she describes the process of that. We are awaiting confirmation by HQJOC as to the status of material on the

45

5 laptop because it contains classified material. On that basis, I'd ask that
Sonia Richards' statement be classified because she has attached various
annexures and some of them is imagery that contains classified material.
I'd also ask that both copies of the 18 DVD discs also be marked as
classified. The format of these DVD discs is in what is called raw format;
that is, it is unable to be accessible by simply someone picking up one of
the DVD discs, putting it into a computer and opening it. It in effect
needs to be reassembled. It has been reassembled on the new hard disk on
PTE Kovco's laptop, but again we're waiting from HQJOC to finally
10 dispose of that matter.

15 So, firstly, sir, I tender as a classified exhibit the statement of Ms Sonia
Richards. That has, as I said, various annexures on it which require that
classification.

PRESIDENT: Is Counsel Representing comfortable with that approach?

COUNSEL REPRESENTING: Yes, sir.

20

#EXHIBIT C184 - STATEMENT OF MS SONIA RICHARDS

25 MAJ JOLLY: Secondly, sir - and the reason for two copies is just out of
an abundance of caution in case - well, just simply out of an abundance of
caution, if I can put it that way.

PRESIDENT: I understand where you're going.

30 MAJ JOLLY: So there are two copies. Each copy contains 18 DVDs
which are an image of PTE Kovco's laptop. I ask that they also be
marked as classified as well, sir.

35 PRESIDENT: Indeed. Again is everybody comfortable with that
approach?

COUNSEL REPRESENTING: Yes, sir.

40 MAJ JOLLY: I should indicate, sir, that Counsel Representing haven't
seen the DVDs. As I said, they're unable to be accessible. But
LTCOL Berkley has had opportunity to view selected parts of the data
that are still contained on the laptop and he'll be involved in that process
that we're currently underway with HQJOC to deal with the final
disposition of the laptop.
45

PRESIDENT: I take it, LTCOL Berkley, you're comfortable with the process?

LTCOL BERKLEY: Yes, sir, I am.

5

MAJ JOLLY: Thank you, sir. I hand up those two copies of the discs.

PRESIDENT: Thank you.

10 **#EXHIBIT C185 - 18 DVDS WHICH ARE AN IMAGE OF PTE KOVCO'S LAPTOP**

MAJ JOLLY: Sir, if we could now adjourn briefly, please.

15

PRESIDENT: Yes, certainly. We'll take 10 minutes.

MAJ JOLLY: Thank you, sir.

20

ADJOURNED [1437]

RESUMED [1453]

25

PRESIDENT: Yes, thank you, Colonel.

COL GRIFFIN: Thank you, sir. I call GRCAPT Dines.

30

<GRCAPT AMANDA JANE DINES, sworn [1454]

35

<EXAMINATION BY COL GRIFFIN

COL GRIFFIN: GRCAPT Dines, would you state your full service particulars please?---I'm GRCAPT Amanda Jane Imry Dines L324456.

40

Your current posting?---I'm the Chief Staff Officer Health at HQJOC.

How long have you been in that position?---12 months.

Have you been shown a document and had the opportunity to read it today which sets out the rights and obligations of a witness appearing in a Board of Inquiry?---I have.

5 What are your qualifications and experience in your profession, please?
---I'm a medical doctor, I have a Bachelor of Medicine and Surgery from Monash University, a Master of Public Health from Harvard University and a Fellow for the Royal Australian College of General Practitioners and a trainee in the Royal Australian College of Medical Administrators.

10 Now, were you in your current position on 21 April when PTE Jacob Kovco sustained a gunshot injury to the head?---Yes, I was.

15 Subsequent to that day, did you provide a statement for BRIG Cosson in her investigation?---I did.

Could the witness be shown Exhibit 100 flag I, please? Do you recognise that as being the first statement that you gave to BRIG Cosson?---I do.

20 Is it the case that you presented to me today a second statement that you had prepared and provided to BRIG Cosson for the purposes of her investigation?---That's correct.

25 Could that document be shown to GRCAPT Dines, please? Is that the later second statement that you prepared and provided to BRIG Cosson?
---Yes, it is.

30 Mr President, as indicated by the witness, we've only become aware of this today, so what I propose to do is to tender the later statement as a second and separate exhibit and I do so now.

PRESIDENT: Is everybody comfortable with that?

35 COUNSEL REPRESENTING?---Yes, sir.

PRESIDENT: It will be marked as Exhibit 186.

40 **#EXHIBIT 186 - STATEMENT OF GRCAPT DINES**

COL GRIFFIN: If you would keep both documents before you, please GRCAPT Dines while I ask you about the content, principally of the second one, but where necessary, with reference to the first statement.
45 The difference between the documents relates principally, as I understand

it, to additional information that you provided to BRIG Cosson in the second statement and some changes in phraseology in the first part of the statement essentially. Would you describe to the Board the circumstances in which you were involved in the incident involving PTE Kovco, how you came to be involved in your position and the subsequent steps that you took, please?---In my position as the Chief Staff Officer Health or the J07. I receive a - a clinical summary on - from the medical officer responsible in theatre on any serious casualty or fatality, the purpose of which is to provide information directly into our headquarters regarding the clinical issues, either of someone whose injured or somebody whose been injured and subsequently died. That occurred on the evening the Jake Kovco was - was killed. Subsequently another responsibility that I have is to attend any autopsy that is conducted on a member who returns from overseas following a fatality whilst on operational service. And so to that end, I attended the autopsy for Jake Kovco on the Sunday, 30 April.

Was your first notification of a fatality or of an injury?---My first notification was at approximately 2300 on the evening that Jake Kovco was injured and it was of an injury that we had a member who had had a gunshot wound to the head and that he had been evacuated immediately to the combat support hospital and that he was being resuscitated and an assessment was being made, particularly by a - a CT scan of his head to clarify the severity of the injuries.

Were the clinical decisions being made solely at the scene of the incident, or did you have any involvement in clinical decisions in the treatment?---I had absolutely no involvement in clinic decisions, they were all being made in theatre.

Now, I understand from the statement that you have produced, the second one I'm referring to now, that you attended in Victoria with the Victorian coroner when the body which was subsequently determined to be that of a Bosnian national was returned incorrectly, initially as the remains of PTE Jacob Kovco. Would you tell the Board how you came to be attending at that?---Well I guess in the morning after the autopsy and identification was - identification and then autopsy was conducted on PTE Kovco, we had a morning brief and at that brief it became clear that the Victorian coroner was going to conduct an identification in the first instance of the body that had been delivered to Victoria and a decision was made by, I think it was the Chief of Staff in the absence of DCJOPS that somebody from our - who had seen PTE Kovco's body should be - should also attend the identification of the body that was in Victoria and so I was detailed of to - to fly to Victoria to attend that afternoon.

45

5 So the order in which they appear in your statement, that is that you follow through the first reference is to the Victorian coroner and the examination of the Bosnian national and then to PTE Kovco's autopsy is in fact the reverse as the chronology. So you attended the autopsy of PTE Kovco here in Sydney with the New South Wales authorities first and then you went to Victoria to be present with the Victorian coroner's examination of the Bosnian national, is that right?---Exactly.

10 Given that sequence, in any event I propose to follow the structure of your statement. You indicate there that you were present with the Victorian coroner and that was at the direction of, you think the Chief of Staff HQJOC to travel to Victoria and to be present for that and you then describe in your statement that on the outside of the casket there was texta writing with PTE Kovco's details, in English, I take it?---Yes.

15 Then Arabic script also inscribed on the outside of the casket and you've made an assumption that they were PTE Kovco's details, yes and then you set out what was attached to the casket, being an A4 paper with PTE Kovco's name and flight details. So that's the particular civilian airline that he travelled on?---Yes. Which is like this, printed in large - large print off a normal printer. It wasn't - it wasn't a form, it was just a A4 piece of paper that had come off a regular printer.

25 Then you say that the wooden casket was sealed with two metal bands. You go on to describe the opening of the coffin, that there were no labels on the body bag, but there was a piece of string on the zip with a little bit of paper on the string. Would you tell the Board about that, please? ---Well, the - the body bag is a black - sort of thick plastic and it has a zip that opens up so - to reveal I guess the top part of the torso. The zip is a normal zip and it has a little hole on it and attached to that was a piece of string and the piece of paper appeared to be one end of an old fashioned buff coloured tag, approximately 10 centimetres in length and about 6 centimetres in width and it - so that that was there, just the little bit of paper, but no evidence of - of the rest of the presumed tag or any writing as such.

40 Then you say that underneath the body bag there was a label, would you tell the Board about that label, please?---Okay. Under - as they roll back the body bag it was possible to see that there was a label and that label was the shape of a buff coloured paper luggage tag and it matched exactly the - the little torn piece of paper that was attached to the piece of string.

45 I might ask the Secretary, I don't have a note of the exhibit number, but it was a document that went in yesterday from the US authorities which contained the blue binder with an example tag contained.

SECRETARY: 181.

5 COL GRIFFIN: Would you show that to the witness, please, Madam
Secretary? What we're going to show is a document that has been
produced by the American authorities as a typical example of a tag that
they would use and see if you recognise it or not. Is that document or that
tag bear any resemblance to the tag that you're describing or the label that
you describe?---It bears considerable resemblance to the label that I'm
10 describing in that it's a buff coloured piece of paper and that is exactly
what I described. My recollection is that the - this little hole punch - hole
area on the tag on the Bosnian body was - it was the same colour as the
paper and that perhaps there was a slightly different shape at the corner.
So it's extremely similar, but as I recall it, some months later, slightly
15 different.

The string that that has, similar?---The string is similar.

20 Now, as I understand it from your statement, the tag that you observed
under the body bag and am I right in saying that it was lying loose?---Yes.

That it was marked with the Bosnian gentleman's name, passport number
and approximately a 15 digit alpha-numeric code which also matched the
medical documents that were present for the Bosnian?---That's correct.
25

You go on to say in your statement that a comparison of the differences
between your observation of PTE Kovco's body that you observed at the
New South Wales post-mortem and the Bosnian national that you
observed when the Victorian coroner opened the casket and they're set out
30 in dot points at the next part of your statement there. Now, I want to show
you a document which is a document, Mr President and Members, it has
been with Counsel Representing for some time. It's some notes of the
post-mortem examination conducted by the New South Wales forensic
pathologist Dr Duflou. You have his complete report in evidence, but this
35 particular document refers, if you would look at that please GRCAPT
Dines, on the second page, under the heading Post-Mortem Notes, you'll
see a reference to yourself. They're your details that are there?---They
are.

40 You attended with Dr Duflou as indicated on that form for the
examination?---Yes, I did.

Now, you mention in your statement that the physical indicia that you
observed as the differences between PTE Kovco and the Bosnian
45 gentleman. You say that PTE Kovco's eyes were dark purple as a result

of the gunshot wound and each had a cut at the outside edge. That's information that is somewhat different or an expansion from the original statement in the Cosson report, do you agree with that?---Yes.

5 You go on to say that the Bosnian had a thick dark moustache and facial stubble, that Kovco's upper lip was obscured by a plastic plate holding the endotracheal tube in place and that again is a further piece of information not in the first Cosson statement. You indicate that the Bosnian was born in 1959 and was approximately 20 years older than PTE Kovco and
10 looked 20 years older, that's your professional observation as a medical practitioner?---Yes as much as medical practitioners are qualified to observe people's age.

Yes, thank you. You indicated the hairiness of the body in respect of the
15 Bosnian gentleman and the absence of hair on PTE Kovco. On the next page you describe, and this is not in the first Cosson statement, you say:

I was told there was a label toward the foot of the Kovco body bag. There was no label on the foot of the Bosnian body bag.

20 Could you expand on that please? Firstly, who told you that and what you were told?---Okay. One of the Military Police who also attended the autopsy of PTE Kovco made the comment to me when we were standing around during the autopsy proceedings. I guess the difference in my
25 experience at attending PTE Kovco's autopsy and attending the identification of the Bosnian man was that I did not see PTE Kovco in the coffin or in the body bag. When I entered the - the autopsy room, he was already on the trolley and he had been brought into the room and was - we were at the point where we were ready to start the physical identification.
30 Whereas when I attended the Victorian coroner as outlined in my statement, I was there from the very beginning and sort of worked my way in from the - from the coffin. So my statements about the label on the bag were relayed to me by - by one of the service police and I'm uncertain as to which one it was.

35 Are you able to say what you were told?---But I am able to say with certainty there was no label on the foot of the Bosnian's body bag.

40 What did the policeman tell you about a label on the PTE Kovco body bag?---He didn't make any - that really is the substance of his statement.

You don't have an independent recollection of that conversation now?
---Not now, no.

45 Did you draw from it that the label toward the foot of the PTE Kovco

body bag was fixed and external or unfixed and internal?---I drew the - I drew the conclusion that it was fixed and external and I - I suppose that is why I've referred to it when making my comparison. But on reflection, really that conclusion was a result of - of just a conversation and I don't
5 have any fixed evidence about whether my conclusion was - was accurate or not.

Now, again there's further information in the second statement, in the next dot point which says that both, that is both bodies:

10 *had hospital ID tags. PTE Kovco on the right wrist and then (15 May '06 confirmed with forensic pathologist that hospital ID tag was on the right wrist). The paper insert had the number 100.00 handwritten in pen.*

15 Is that all the confirmation with the forensic pathologist, that is all that information came in that conversation?---Yes, it is.

Now, if I could draw your attention again to the handwritten notes of Dr
20 Duflou in that document I've provided to you. If you look down at the subheading Observations, about three-quarters of the way down the page, you'll see mention there, firstly as I read the document:

25 *Red ID tag, left wrist.*

Do you see that?---I do.

Can you offer any information about that red ID tag?---The statement that
30 was made by the coronial staff, and I think in particular Jo Duflou, was that the red ID tag was the coronial office's tag that they had put on the body after they'd receipted it into the morgue.

As you go down two lines below, ID tag right wrist "100.00.." That
35 corresponds with the information contained in your statement about the hospital or about the number that - the hospital ID tag. Is it your understanding that was a hospital ID tag placed on PTE Kovco's right wrist?---I guess I had - my initial statement noted that there was a hospital-style ID tag on his right wrist and that was - my recollection is not only was it a typical hospital ID tag, but it had a piece of paper in it. I
40 sought confirmation from Jo Duflou about the tag and got the additional information about the number that was apparently written on it after BRIG Cosson sent me an email requesting confirmation that I was certain about that aspect of - or she had been correct in recording that aspect of my statement. I went back to her and said, "Basically yes, you are
45 correct," and I confirmed with Jo Duflou that he too had a record of the

5 tag and that it had that specific - and then he gave me that specific number
which I hadn't made any record of. I guess my assumption that it was a
hospital tag relates to its appearance. I guess given that the morgue in
New South Wales puts a similar type of tag on used for identification
10 purposes for their bodies, it may not have been put on - I'd have to then
sort of step back and say, "Well, maybe that's false assumption. It may
not have been put on when he was in hospital." But certainly my
assumption when I made the statement was that the tag on his right wrist
has been put on when he was initially hospitalized and that the one on his
left wrist was one that had been put on him when he'd been receipted into
the morgue in New South Wales.

15 Would you please page through in the large document that is before you to
side flag N1. Do you see that as a certificate of death overseas?---Yes, I
do.

Do you see that it's produced about four-fifths of the way down the page:

20 *Place of death, 10th Combat Support Hospital.*

Then it has the medical officer identified and the installation or address,
again being 10th Combat Support Hospital?---Yes.

25 Would you page over and see - continuation of that document and then
another page "hospital report of death". Do you see that document?---I
do.

30 Again the same medical officer about the middle of the page?
---Absolutely.

Now, if you go back to the first of the pages I've just shown you, N1, in
the top right-hand corner do you identify a social security number?---I do.

35 Would you read out the digits that you see there, please?---100-00-8624.

Would you agree with me that that number in its first five digits
corresponds with the five digits in Dr Duflou's forensic notes
examination, the 100-00..?---Yes, it does, I would agree.

40 Would you agree that the same number appears on the hospital report of
death under the first subsection "patient data" at the top left-hand side of
the page?---Yes, I would agree.

45 Does that factual evidence assist any further in your conclusion that the
number given and the bracelet that you observed on the wrist of

5 PTE Kovco in fact was a hospital ID tag placed on him at the time he was
in the 10th Combat Support Hospital in Baghdad?---I guess it makes me
feel that there is some corroborating evidence. It would be nice if the
other four digits were there, but it seems to put it more closely towards -
or it seems like it may be more likely that we've got some other evidence
that it was put on him in the hospital.

10 Unfortunately we don't have the tag. Are you able to recall from your
observation of it whether or not there was sufficient space to continue with
all the numbers or if that was not so?---I'm not able to recall.

15 Sir, I might tender Dr Duflou's handwritten notes of the post-mortem
examination, that document that GRCAPT Dines has indicated she cross-
referenced by the telephone call with Dr Duflou for the content of the
material.

PRESIDENT: Is there any opposition to the tender of that document?

20 COUNSEL REPRESENTING: No, sir.

PRESIDENT: Marked as 187.

25 **#EXHIBIT 187 - DR DUFLOU'S HANDWRITTEN NOTES OF
POST-MORTEM**

COL GRIFFIN: You describe in your dot point:

30 *PTE Kovco's hospital tag was a normal one with a piece of paper
in it and a number.*

But you differentiate that the Bosnian's gentleman's tag:

35 *was different and written in China graph with a totally different
number.*

40 How as it different?---My recollection is that it was - it's not substantially
different in appearance, it was the fact that - principally the fact that the
number was written on the outside in what looked like a China graph pen
which is just unusual in an Australian hospital setting. Those tags are
specifically designed so that you can slip in the patient identification
details and so it sort of - it was unusual to see it. My recollection is it may
45 have been a slightly different colour, a sort of a more yellowy colour
rather than a whitey colour, but it - there wasn't substantially different.

The next point in your statement says that:

5 *The Bosnian also had a tag on the right wrist was the same as the tag found under the body bag in the casket.*

In what way was it the same?---Well it was the same colour, the same size, the same shape, it had the same written details on it and two my recollection, the written details appeared to be written in the same hand.

10 In English?---Yes.

The Bosnian gentleman had a tag on his right wrist that indicated his name in English?---Well, yes. It wasn't in like Arabic script, it was in - it was in our script.

15 PRESIDENT: English or Roman?---Roman, that's the one, thank you.

COL GRIFFIN: So that you were able to make out on that, if I give you his name if you don't already have it, Mr Sinanovic, was that name clear to you on the tag?---The letters of his name were clear - was clear to me.

In your dot point you then set out some theories which I won't trouble you with, but finally you conclude with the comment:

25 *Neither body bag were well labelled.*

What do you mean by that?---Well, the - neither - it wasn't obvious by looking at the Bosnian's body bag, nor from what I was told about PTE Kovco's body bag that you could tell who was inside without opening the body bag up. So neither of them were - were labelled in a manner that would allow you to make a determination about who was inside from just looking at the bag.

30 The information that you were aware of was limited to the report to you that there was a label toward the foot of the Kovco body bag and that there was a label underneath the Bosnian's gentleman's body bag?---But if you took the lid off both the coffins, from the information I have, they look pretty much the same.

35 However, on the Bosnian gentleman, attached to his wrist was a tag with his name on it. You go on to offer in your comment:

40 *However, it was difficult to understand how identification could be confused if the escort had visualised the body.*

45

5 What do you mean by that?---Well, what I mean is that quite facial to
have actually seeing a label on a wrist, if the body bag had been opened
the bandages were actually on the head. They both had bandaged heads,
but the bandages were different and - and then moving down, the eyes
looked different. PTE Kovco had bruising to his eyes and the cuts, the
10 other guy didn't have, his eyes were quite normal. Moving further down,
PTE Kovco had a tube in his mouth and although it obscured the top lip,
the Bosnian gentleman had a very full moustache. So that was quite
different. As I say, the Bosnian's face was swarthy, PTE Kovco's was
not. The Bosnian's body was different sort of habatus, he had intravenous
15 tubes in different places, there was the issue of Jake having a tattoo and
the Bosnian man not having it. So, you know, before we even get really
past the mid-torso there were, I felt, an abundance of differences between
the two bodies. For someone I guess who was used to observing bodies
and had the ability to - to make the differentiation and then just to add on
to that, there was the issue that the Bosnian gentleman did have a tag with
his name on it.

20 Now, GRCAPT Dines, there's been some evidence about PTE Kovco's
body being washed and issues concerning the forensic value or otherwise
of interference with him post the gunshot. Are you able to say whether or
not standard first-aide response to somebody who has suffered a gunshot
25 injury but is still alive would necessarily involve, at a hospital, in the
course of rendering immediate first-aide and assistance, washing or
interfering with the clothing or the body in any way whilst the person was
still alive?---Certainly the standard primary emergency response would
involve removal of clothing for the purpose of having access to the body
to insert intravenous lines, to - you know, replace fluid that might have
30 been lost following the injury, to facilitate putting on heart monitors, to -
so there's - the standard response would be to remove all clothing from
the body, that would be my expectations. I'm not aware that a standard
response would be - would involve actually washing the body, except I
guess if there were - there was dirt or tissue or fluids that were impeding
35 the ability to assess the - the body. So you perhaps would wipe fluids and
- from around the - the mouth so that you could insert the tube
successfully and then monitor the patient appropriately.

40 What about if there was massive bleeding from the head wound, would
you expect that to be removed in some way in part of the treatment?
---Certainly, you know a lot of blood over the face as a result of the head
wound, that blood would need to be sort of washed away so that you could
- the assessments on the patients, their skin colour for instance, would be
able to be made and I suppose it's - you just don't leave people covered in
45 blood - you know, if - when you're part of the active resuscitation process,

you wipe it off so that you can see their face and their features and how they're responding to the management.

5 Speaking of leaving people covered in blood, as a Defence Force Medical Officer, what would be your view on those who had been with the injured and then deceased soldier who were covered in blood, both their clothing and their bodies, what would you advise should be done for them in that circumstance?---Taking a medical view of it, I mean people who are covered in blood need to wash themselves very - you know, carefully to
10 remove the - the blood contaminated clothes. You know we are aware these days that blood needs to be treated as a potentially infectious agent and so I guess from my medical perspective, it would be inappropriate for people to stand around in blood covered clothing and - and not take proper arrangements to - to get rid of blood on their body.

15

Thank you, GRCAPT Dines. No further questions at this stage, sir.

PRESIDENT: Thank you. LTCOL Wilkinson?

20

LTCOL WILKINSON: Yes, just a couple of matters.

<EXAMINATION BY LTCOL WILKINSON

[1531]

25

LTCOL WILKINSON: GRCAPT Dines, I appear for Soldier 2. Did you say that you attended the autopsy of the Bosnian as well?---No, there was no autopsy of the Bosnian. The New South Wales - the Victorian coroner sought to identify the body and once he was satisfied an autopsy was not
30 done.

30

You were present during that?---I was present during the identification.

And was he removed from the body bag?---Yes, he was.

35

You were there present for that?---Yes.

How many other people were present, apart from yourself and the coroner?---Well, inside the actual autopsy room, because the coroner - - -

40

I was just going to ask you, where do you have autopsies, in an autopsy room, how many people are in that room?---In the room, there was the pathologist, he had several assistants, there was the coronial photographer and there was a photographer and a - an investigator from the ADF.

45

- Five or six people?---Eight.
- Any other autopsies going on at the same time?---I've got no idea. Not in that room, it was - - -
- 5 No, in that room?---No, it was - - -
- Just that room?---Yes.
- 10 Well lit?---Yes.
- And the body was naked obviously while it was being identified?---Yes. It was naked, (indistinct) to have his clothes off
- 15 PTE Kovco - well there were no clothes on the body?---There were no clothes on the body.
- PTE Kovco was in New South Wales in an autopsy room?---Yes.
- 20 How many people were present?---A similar number.
- And was it well lit?---Yes.
- That body too had no clothes?---Yes.
- 25 Was there any noise?---I'd say in both instances there was a fair degree of noise.
- 30 What sort of noise?---Well, the noise of a number of people in a room that's not carpeted and it's got fairly sort of hard walls. There was the noise in the case of the Bosnian of them attempting to get into the - the coffin through the solder seal.
- 35 But while the autopsy is being undertaken, does the pathologist describe what he's doing into a microphone, or is that something that is just on television?---Yes, they usually do - unlike sort of the headsets on CSI, they - in these two circumstances they - they do a bit and then they stop and they talk into a tape.
- 40 But the noise, any noise was associated with the actual moving of the body?---Activity.
- 45 Yes, the activity itself, yes, okay, thank you. And just finally in your comment you say that it was difficult to understand how identification could be confused. Would you agree with me that it might be less

difficult to understand if, as you say in your theory 1 at dot point 1, that the escort was psychologically - didn't want to look at the body?---Well, I suppose that is the way that I understand it.

5 Thank you. No further questions.

PRESIDENT: Yes, thank you.

10 <EXAMINATION BY LTCOL BERKLEY [1535]

LTCOL BERKLEY: I'm LTCOL Tom Berkley, I represent Shelley Kovco, Jake's widow. You'd agree with me, I think, that as far as
15 identification goes, scientific methods are the best as opposed to say mere visual observation?---Yes.

Now, as I understood what you've said to both Counsel Assisting and
20 LTCOL Wilkinson that when you went down - the procedure in Melbourne was basically not to identify Mr Sinanovic, but actually to identify that it wasn't Jake?---No, that - that's not the case because the Victorian coroner's concern was to identify what body he had in his jurisdiction and that's my understanding and so that's what was - so that
25 the whole focus of the identification was to - to make such analysis as was necessary to get to the point that he could be satisfied of that and although I - you know, I made the comment that the scientific rather than the visual identification is better, I think that we have to realise that there are layers of identification so that - you know, if I were to drop dead here and now
30 with all you present, it would not be unreasonable to make the assumption based just on my visual appearance of who I was. It's in cases where the body is, I suppose "lost", moves out of a control that you have to resort to more and more complex and more scientific levels of identification.

35 Yes, thanks for that, but - - -?---So in - - -

- - - are you aware what - - -?--- - - - and obviously the coroner in this case didn't - - -

40 Where you aware what the Victorian coroner - what aids the Victorian coroner had to assist in, as you say, identifying Mr Sinanovic?---The information I was aware that he had was the medical documentation relating to the treatment of the patient.

45 Was Mr Sinanovic's dental records there?---I'm uncertain of to that - to that. My recollection is that he didn't have a dental examination to

identify. I believe - my recollection is the coroner was satisfied prior to that level of examination.

5 Jake in Sydney was ultimately identified by his dental records, wasn't he?---That's correct.

10 So what I'm getting at is that Mr Sinanovic, the late Mr Sinanovic and he has a wrist band that says that he is Mr Sinanovic and he looks different from Jake, so logically what the coroner could assert without - just by the observation was that it was Mr Sinanovic, but that it wasn't Jake, would you agree with that?---That's true.

15 But in Sydney of course with those facilities, with actually Jake's remains, the coroner here was able to ascertain that it was actually Jake because he had access to dental records and I suppose the people to read and interpret those records, would you agree with that?---Yes.

20 Now, yesterday we had some evidence in relation to mortuary affairs and the evidence was that the ADF doesn't have inherent - with that inherent ability to identify the remains of the deceased, in other words we don't carry that capability. What do you say to that?---What I would say is that in the Specialist Health Reserve we have experts in forensic dentistry which can - and indeed in the permanent force, we have some dental officers who are trained in the use of dental records to identify deceased individuals, but - so we do have that, both to a limited extent in the permanent and the reserve force. I - we do not however have any expertise in the more scientific evidence, particularly in DNA analysis.

30 Look I can tell you, save giving evidence from the Bar table personally I know forensic pathologists who are members of the Reserve and the evidence - I'll still with the evidence from yesterday that there is such in our Reserve forces, forensic dentologists, a number of forensic pathologists or people that are qualified and do daily conduct autopsies in the civilian world. Are you aware of their existence?---Yes, indeed, Dr Duflou is one of them.

Indeed he is?---As is Professor Griffith who conducted the dental analysis.

40 Indeed and those - now, do you give advice to the Commander of the JOC in relation to mortuary affairs matters?---No.

45 All right. Would the Commander be aware or his staff be aware of the presence of these people and their willingness perhaps to deploy to another location outside Australia for the purpose of positively identifying the body of a fallen service man or woman?---I'm - I have to say that I am

5 certainly aware of it because although I don't give the Commander advice on - strictly on mortuary affairs issues, when it comes to the issue of forensic pathology and identification, those specialists come into the - they are health specialists and so I have some - I have some involvement in them. Now, I'm certainly aware of their readiness and ability to deploy, but I'd have to admit that I'm uncertain as to whether my Commander is.

10 What it comes down to is of course if we - in Jake's case you'd be aware that of course where Jake died in the 10 Combat Support Hospital, the hospital would have the ability, one would expect, to positively identify him and in fact there was no risk with the identification until he left Military hands?---It did.

15 They did positively identify him, I'm saying. We'll get to how we lost him later, but this - the evidence is that there might be times that we won't have that coalition support. I'll start firstly, do you advise, as part of the planning process for operations do you advise your Commander and say, look we will need the mortuary affairs capacity, we will need to have these sorts of health professionals available to us and whether they're going to fly them in or we need to access them through the coalition forces. That's not in your bailiwick?---It's a grey area, but in general terms, it's not in my bailiwick, no.

25 Do you know whose bailiwick it is?---Strictly speaking it's in the PERS bailiwick.

30 Would you expect though that a Personnel Officer who might have been a combatant in the basis of their training, they're doing a personnel job would necessarily think of those sorts of things?---I wouldn't expect that, but I may be selling them short.

35 So in other words we haven't got a situation in which someone is likely to address this very important aspect of what - sorry, I got tongue-tied, of what services or what health professionals we would have access to outside our own force?---No, I - I'm certain that - that the issues surround mortuary affairs are considered completely on all our operations and we do identify how we're going to access those services just as in my specialist area of health - you know, we don't provide a lot of our own health services on an operation, but our planning process makes sure that we identify where we're going to get them from and I guess although it's not my specialist area of responsibility, I'm involved in the ADMINPERS area - support area and I'm confident that those things are considered and outlined. I think that the - the view in Defence has been that our ability to deploy a forensic identification teams at short notice around - it has been somewhat constrained and so that the preference has been to look at - at

other - at support from other services.

5 Can you tell how they were constrained?---Well, although we have these
as we've discussed, we have a very limited capability - a limited number
of people and a limited amount of equipment and I'm not even confident
that we have the necessary equipment to set up our own facilities. So I
guess there's steps that we considered would we send our own people to
do it in someone else's facility or would we create our own facility with
our own people. Certainly we have a limited number of people and I think
10 that constrains our ability to cover all the operational theatres that we have
and then there's also equipment issues behind that.

15 Do we have an inherent surgical capability for the members of SECDET
to be deployed on?---No.

So as part of the training process that we would be using the American
facilities - American surgery facilities?---And it was part of the process
that we would use the American mortuary affairs facility.

20 Were you part and Counsel Assisting asked you and you said that you
weren't asked about the repatriation per se, would you have thought, just
as a matter of commonsense that if a person - we've got one of our fallen
in the American mortuary affairs system which seems to be a large and
professional organisation, would you have thought that it would've been
25 simpler to leave that person there and return that body via service means
to Australia?---I - that's not my opinion, no. But I think that there are - I
believed and that there are other organisations in the world that are
competent at managing the transport of human remains, but that's my
opinion. That's my opinion, not anything to do with my specialist
30 knowledge.

35 So in any event, we do have available to us in the Reserve, people of the
requisite learning skills and experience to be able to deploy, but we don't
consider using them for that purpose?---The circumstances where we've
discussed using them, if I can just expand, is in a mass casualty situation
where there is, at the point of - of the disaster, some doubt as to the - you
know, the identification of members who may - people who may be
members of the Australian Defence Force.

40 But of course we've got a contractor who also specialises in mass casualty
evacuation - sorry, mass casualty identification and repatriation?---It's not
my understanding that the contractor is responsible for identifying the
remains, that may be a fault in my understanding of the contract, but I
thought that the contractor was the shipping agent and our responsibility
45 or those people that we partner with in the coalition are the people that are

responsible for identifying the human remains.

5 You can understand how Jake's widow, Shelley is interested in the decision making process that took Jake out of the hands of the Military when it was definitely Jake in their hands and that's - so you weren't part of any decision making process about the timing of the return of Jake to Australia?---No I wasn't.

10 Did you have a counterpart on the JTF 633?---I do, yes.

15 Did that Officer confer with you at all about either the incident causing Jake's death or his repatriation?---He was the Officer that called me with some of the clinical detail of Jake's medical resuscitation and then the subsequent medical information that indicated that his injury was not survivable and that he had passed away. He also called me to notify me that they believed that Jake's body was in Kuwait when - and that another body was in the air, being transported to Australia.

20 When you deployed to Melbourne to attend upon the identification of Mr Sinanovic or at least the non-identification of Jake, was that at the direct orders of your Commander, how did that happen, why were you sent down there to do that?---Well it happened, as I say, there was a briefing on the Monday morning to get an operational update and at that time it was presented that the autopsy was - would be scheduled for that afternoon and I guess discussion ensued amongst the senior staff advisers at the headquarters that it might be prudent - or there might be some benefit in having somebody who could make a human comparison, not a scientific one, but just a human one, what does he look like, what does he look like.

30 Yes, so the headquarters was obviously interested in how the mix-up had occurred in the first place?---Indeed.

35 Well that's what we want to get to because you wouldn't have just wondered down there, obviously someone would've said Jake's - obviously we want you to be here to tell us that - is that how it happened? ---I mean as I say, given that it was my responsibility to attend Jake's identification and the autopsy, then I was just a person who could then attend the other one and I guess whether my background means that I'm - whilst I don't relish the task, I'm comfortable with that sort of task and I -
40 I see it as my responsibility to step up and do those sorts of things so that others don't have to face something that they're not prepared to face.

Indeed, far more comfortable than most people. Thank you very much. No further questions, thank you.

45

PRESIDENT: Thank you. Colonel?

<EXAMINATION BY COL GRIFFIN

[1552]

5

COL GRIFFIN: Only to point out GRCAPT Dines that the Board has
10 authorisation to make recommendations arising out their findings and the
evidence they receive, are there any matters that you consider relevant that
you wish to draw to the Board's attention about this particular matter?---A
question without notice, clearly. I suppose that there's one issue that I
15 think, our current processes does leave it open for the - you know, the
final identification, examination of human remains to be done outside
Australia and for then that not to happen once it comes back into Australia
and whilst it's a most distressing thing for families, I think there's a great
benefit in - for the coroner down the road and the - and the mortuary
20 specialists that are within Australia and can provide - or thus give the
inquiry process the information, but also engage with the family. I see
there's a great benefit in that activity taking place back here in Australia.
My opinion is that if it's all done overseas, the access that this forum
would have and families would have to the people responsible for it would
25 be impaired and that is not to say that if Defence - Australian Defence
Force experts undertook that activity and then came back to Australia and
could provide the support that that wouldn't meet what I see is the
requirement. But certainly any decision to sort of have autopsies and
inquiries done overseas I think would be a retrograde step. So, yes, I'm
30 pleased that despite the problems in this case, at least we're here and our
coroner is down the road and that we have access to the information and
the people.

PRESIDENT: So in short form you're endorsing the idea of the
jurisdiction of the civilian coroner?---Yes.

35 COL GRIFFIN: Thank you, sir. Nothing further.

PRESIDENT: Thank you, you may stand down.

40 **<WITNESS WITHDREW**

[1554]

COL GRIFFIN: Mr President, that completes the evidence for today. We
45 have the Australian representative of Kenyon International attending
tomorrow, we have Soldier 20 by video link from Baghdad and we also

have, at the request of LTCOL Green, he proposes to conduct a demonstration with the use of a 9 mm pistol and that will be conducted sometime during the course of tomorrow. As a consequence, sir, I'd ask that we adjourn and return not before 10 o'clock tomorrow.

5

PRESIDENT: Is everybody comfortable with that?

COUNSEL REPRESENTING: Yes, sir.

10 PRESIDENT: 10 am tomorrow.

**MATTER ADJOURNED AT 1555 UNTIL
WEDNESDAY 6 SEPTEMBER 2006 AT 1000**

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