

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

1013 WEDNESDAY 06 SEPTEMBER 2006
DAY 34

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.....  Date06/09/06.....(President)

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

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

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

WITNESS LIST

Name Of Witness	Page No.
ROBERT ANDREW JENSEN, sworn [1014].....	1680
EXAMINATION BY COL GRIFFIN	1680
WITNESS WITHDREW [1055].....	1693
SOLDIER 20, sworn [1138].....	1693
EXAMINATION BY COL GRIFFIN	1693
WITNESS WITHDREW [1157].....	1698
ROBERT ANDREW JENSEN, recalled [1157].....	1699
EXAMINATION BY LTCOL BERKLEY [1158].....	1699
EXAMINATION BY COL GRIFFIN [1237].....	1712
WITNESS WITHDREW [1239].....	1713
DETECTIVE INSPECTOR WAYNE GEORGE HAYES, recalled and resworn [1408].....	1718
EXAMINATION BY COL GRIFFIN	1718
WITNESS WITHDREW [1417].....	1722
COL PAUL JERRY PETERSON, sworn [1421].....	1723
EXAMINATION BY MAJ JOLLY	1723
WITNESS WITHDREW [1429].....	1726

NTS

EXHIBIT LIST

Number	Description	Page No.
	EXHIBIT 188 - STATEMENT OF ROBERT JENSEN	1681
	EXHIBIT C189 - US DOCTRINE FOR THE THEATRE MORTUARY OPERATIONS	1684
	EXHIBIT 190 - CLASSIFIED AND REDACTED VERSIONS OF KENYON'S STANDING OFFER WITH THE AUSTRALIAN GOVERNMENT AND DEFENCE DEPARTMENT	1685
	EXHIBIT 191 - PHOTOGRAPHS OF AL SABAH HOSPITAL MORTUARY	1687
	EXHIBIT 192 - CLASSIFIED AND REDACTED VERSIONS OF BINDER OF DOCUMENTS PRODUCED BY KENYON INTERNATIONAL.....	1692
	EXHIBIT 193 - VIDEO OF DEMONSTRATION CONDUCTED BY MAJ YOUNG OF PISTOL.....	1718
	EXHIBIT 194 - TIMELINE.....	1719
	EXHIBIT 195 - CORONER'S LETTER.....	1720
	EXHIBIT 196 - STATEMENT FROM DEFENCE MINISTER.....	1720
	EXHIBIT 197 - LTGEN LEAHY'S STATEMENT	1722
	EXHIBIT 198 - EMAIL SENT BY JTF 633	1723
	EXHIBIT 199 - STATEMENT OF COL PETERSON WITH ENCLOSURES	1725
	EXHIBIT 200 - PHOTOGRAPHS AND CDs SHOWN TO MR JENSEN	1727

RESUMED

[1013]

5 PRESIDENT: Good morning, Colonel.

COL GRIFFIN: Good morning Mr President, good morning Members. Mr President, just some housekeeping matters. You will recall that we have video link evidence to be taken today fro Baghdad and the Bridge is set up for 11 o'clock hearing. I propose to call the first witness now with
10 your leave and then interpose, if required, the video link at 1100 with an adjournment a couple of minutes before 1100 to facilitate that.

PRESIDENT: Certainly.

15 COL GRIFFIN: So if I may, sir, I call Robert Jensen.

PRESIDENT: Thank you.

20 <**ROBERT ANDREW JENSEN, sworn**

[1014]

<**EXAMINATION BY COL GRIFFIN**

25 COL GRIFFIN: Good morning, Mr Jensen. I'm COL Griffin, Counsel Assisting the Inquiry. Would you please state your full name for the record?---Yes. Robert Andrew Jensen.

30 Your occupation, sir?---I'm the president and chief executive officer of Kenyon International Emergency Services.

Have you travelled to assist the Board of Inquiry with evidence today?
---Yes.

35 Did you provide a statement for the assistance of the Board of Inquiry?
---Yes, I have.

40 I'll show you a document, do you recognise that as the original of your statement?---Yes, I do.

Mr President, this document is yet to be reproduced for the Board and all of the Counsel and we will do that during the course of the day, but I tender the document, sir.

45

PRESIDENT: Is there any opposition to the tender at this time?

LTCOL BERKLEY: No, sir. I've seen a copy.

5 PRESIDENT: Yes, it will marked then as Exhibit 188.

#EXHIBIT 188 - STATEMENT OF ROBERT JENSEN

10

COL GRIFFIN: Mr Jensen, is there anything in that document that you wish to change or amend?---No, sir.

15 Are you satisfied it's a true and correct record of your evidence for the Board about this matter?---I am.

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

20

Mr Jensen, in these proceedings the President is directed that the identities of Australian service personnel who are posted in the Middle East area of operations are to be protected. For that reason, there is a document on the table before you which sets out the identities of people and provides a number corresponding to the rank and name. Should you have occasion to refer to anybody by name who is in the Middle East area of operations, would you do so by reference to that callsign number, please?---Yes, sir.

25

30 It's also the President's intention, I understand, to protect the identity of coalition forces in theatre and for that reason we have been redacting, if you're familiar with that term, blocking out any documentation that relates to the identity of coalition forces and I know that you have produced in response to the President's request for documents, a bundle of documents that I will tender shortly and I just want to reassure you that the US material will also be redacted to protect identities?---Thank you.

35

Mr President, I won't tender yet the bundle of documents, but I'll do so in due course because it's the only bundle we have. Much of it appears in Exhibit 100 which is the - - -

40

PRESIDENT: Cosson report.

45 COL GRIFFIN: - - - Cosson report. There are just a couple of additional matters that Kenyon International have provided to us and I will raise those issues with Mr Jensen during the course of his evidence.

Do you have a copy of your statement before you, Mr Jensen?---Yes, I do.

5 I propose to lead your evidence by reference to that statement as a skeleton outline of what I want to cover with you. It may be - I notice that you have some notes that you will wish to refer to your notes. Mr President?

10 PRESIDENT: He certainly has my leave.

15 COL GRIFFIN: Mr Jensen, firstly, would you tell us the history of the company and then your own qualifications and experience?---Certainly. The history of Kenyon, Kenyon is a private company that is owned by a publicly traded company. It's been in business, officially, since 1929. It was formed in the United Kingdom when it responded to an unfortunate
20 aviation accident. Prior to that it had also done some other incidents with repatriation, train services. It started as a funeral service then progressed or developed into a forensic expertise assisting in the identification, recovery, repatriation of deceased, mostly from aviation incidents, train accidents, maritime disasters. Progressed further to providing family assistance which were the mechanisms dealing with the family members and friends, providing call centre services those telephone numbers that people can call into to get information about a major event. During its
25 history it's moved from an English company to a United States company to what I call an international company with offices in different parts of the world today comprising full-time staff and many part-time staff. The mission of the company is to provide clients who are usually private industries, governments, underwriters and some private families, with assistance in resolving the issues and recovering a loved one, identifying a loved one, returning a loved one, memorialisation, memorial services, investigations as needed, forensics as needed. We respond to not every
30 major incident in the world, but many major incidents, some that are summarised here, but most specifically or notably the bombing of the UN Headquarters in Baghdad, the first Bali bombing, the Asian tsunami, Hurricane Katrina. We have teams now deployed to the Middle East in support of various coalition forces in Afghanistan and Iraq and also for private clients in those theatres or in that theatre of operations. We've had a recent air crash as unfortunately as two weeks ago in Lexington, Kentucky, where a commuter aircraft with 50 people crashed during
40 takeoff. In doing those major incidents we also do quite a lot of individual incidents. Although the numbers are not as high, they're as significant because a single loss is significant.

45 The structure of the company in terms of its offshore operations, is that done through your own employees directly or do you engage contractors?

5 ---It is both. We have the head office located in Houston. We have subsidiary or charter offices in different areas and then in areas where we don't have a physical office we use a subcontractor or we use team members, depending on the situation. A subcontractor is another company, a team member is a person who has qualifications that we deem important to the company and we enter into a contract with them and they activate for us, some of whom are Defence members.

10 Do you have any quality assurance control methods to monitor the conduct of the people that you contract services to?---Yes, we do.

15 How do you do that?---We do a variety of means. For individuals we range from background investigations, depending on the country, the laws of the country that we're operating in, to questionnaires, to on-site visits by senior management like myself, to reputation reviews, to looking at who is available in country and is there an asset in country that we can use that's more familiar with the local authorities or is there an asset that may be familiar but standards are just not a minimum standard that we can accept and we then have to bring in our own people.

20 Your own history and qualifications in this area?---I have been CEO of Kenyon for over three years now. Prior to that I worked for Kenyon, and I'll go into some of that in a moment. And prior to that I served in the US Army after graduating from college. In college I was a Law Enforcement Officer doing forensics and death investigation. In the US Army we have one - or the US Army has one active duty mortuary affairs unit. I commanded that unit for over 18 months on operations in Bosnia Herzegovina and other military operations. Prior to commanding that unit I was chief of doctrine and policy for mortuary affairs which involved training of almost all the mortuary soldiers - there were only about 300 in the US Army at the time - before commanding the unit. Also responded on behalf of the US Army to the Oklahoma City bombing of the Murrah Building back in 1995 to military operations in Haiti during our intervention in 1993 or 1994, responded to the crash of senior protocol officials such as the crash that killed the Secretary of Commerce, Mr Ron Brown, in Croatia and Bosnia Herzegovina. I have responded to single sensitive events, as I would call them. As part of Kenyon I've responded to multiple events. Again I've been to the Middle East several times, looked at mass graves, advised people on mass graves. In the Military my primary job was the creation of the doctrine that is now used by the US Forces, the Joint Tactics Techniques and Procedures 4.06. I have written the only book that is currently available on managing mass fatalities, written and published that book, done numerous articles. I lecture, I'm a member of the American Academy of Forensic Sciences, a board member of the Virginia Institute of Forensic Science and Medicine and the

International Association Emergency Managers. I would not claim it as something that's significant, but the unfortunate reality is I've probably been personally involved in more mass fatality or sensitive fatality events than almost anyone else that I'm aware of. It's a small community very fortunately because there's not a great need of expertise on a wide scale.

I'll show you a document?---Thank you.

Mr Jensen, I understand you had the opportunity to look at this document this morning. It's, Mr President, US doctrine for the theatre mortuary operations. Mr Jensen, was issued effectively - can you see the date there?---Yes.

What is the date on that?---This one the effective date is 15 January 2006.

Sir, I tender that as a classified document. It's been provided to the Board by the US authorities for assistance in understanding their processes. Mr Jensen, from your examination of it and from the history you've just described, are you satisfied that is consistent with the doctrine that the US Military applies in mortuary affairs?---Yes, I am.

I tender the document.

PRESIDENT: Any opposition to the tender of that document?

COUNSEL REPRESENTING: No, sir.

#EXHIBIT C189 - US DOCTRINE FOR THE THEATRE MORTUARY OPERATIONS

COL GRIFFIN: Could Mr Jensen be shown Exhibit 109, please. Mr President, Members, this is the letter from Dr Ralph King, the Australian Ambassador in Kuwait, where he informed the Board at our request that Gulf Agency and the personnel therein did not wish to be involved in providing evidence to this Board of Inquiry. Mr Jensen, that's the contractor that you used in the PTE Kovco matter. Is that right? ---Yes, the subcontractor. This would have been the agency that is commonly referred to as a freight forwarder in the business term; that's what their job - - -

It's that job that I want to talk to you about. You mentioned earlier quality assurance processes that you have for the broad-reaching global role of Kenyon and how you monitor performance. Could you assist the

5 Board with what quality assurance measures have been taken in respect of
this particular agency before the incident involving PTE Jacob Kovco?
---This agency has done a number of repatriations for Kenyon or a sister
company, Kenyon Christopher Henley, which is also involved in
10 international repatriations. They work more closely directly with Kenyon
Christopher Henley. Again they have a strong reputation for the number
of repatriations they've done. They're respected by the government, they
understand the government authorities and have never had any issues that
have been raised to us or that we're aware of on our review of them that
15 would give us reason not to want to use them or work with them.

20 Coming to this particular matter specifically, the incident involving the
tragic loss and mix-up of the body of PTE Jacob Kovco, the Board has
received evidence that Kenyon has a standing agreement with the
Australian Government and Defence Department. I show you a
document. Now, this is a document you've provided at the Board's
request for documentation, for want of a better description, a clean copy of
the standing offer that appears in Exhibit 100, sir, which you'll recall
many witnesses - well, two witnesses have indicated covered in
25 handwriting is the document held at HQJOC. Kenyon has provided this
clean copy. Again I tender the copy, but I tender it as a classified
document to be redacted in respect of commercial in-confidence matters
that are contained in it, as is in the document in the Cosson Report which
is also of limited distribution.

30 PRESIDENT: Any objection to that approach?

COUNSEL REPRESENTING: No, sir.

35 **#EXHIBIT 190 - CLASSIFIED AND REDACTED VERSIONS OF
KENYON'S STANDING OFFER WITH THE AUSTRALIAN
GOVERNMENT AND DEFENCE DEPARTMENT**

40 COL GRIFFIN: Now, the evidence is that - and the contract specifies -
that Kenyon can provide a range of services. Would you tell us about the
range of services and how they are triggered by the offer?---Yes. This is a
standard contract that Kenyon enters into with its clients. In this case we
break our services down into four retainer areas, one of which we
commonly refer to as disaster management. That's the area that this
contract refers to. In that service it is a menu, so to speak, and it can range
from a full-blown mortuary to include staffing of forensic experts, to
45 identification, to the search and recovery of deceased, to the search and
recovery of their personal effects or personal belongings, repatriation,

funeral-type services, memorials, and any of those combination that a client may wish to engage us for at that time.

5 The issue of identification of remains, where does that fit into the traditional services provided by Kenyon?---In reference to this case or in general?

10 Firstly, in general and then reduced back to this particular case?---In general, as an example, we are deploying teams - again in support of coalition forces in theatre last week and this week to some recent events. We send, for example, forensic specialists or forensic anthropologists or forensic odontologist or a law enforcement expert who is specialised in fingerprints. We send DNA specialists to collect DNA samples that can be then taken to a lab and compared. We try to do an identification if we
15 can in theatre, a positive identification. Again a client would ask for that and then we would discuss the make-up of the team based on whatever assets they were deploying. In this case some of their police services also deploy. So we don't send a fingerprint expert, they send their own. We send them an anthropologist or an odontologist. Specifically to this case,
20 we were not asked or instructed or allowed to do identification. We were very specifically instructed to do a repatriation.

25 What therefore is involved in that simple instruction of repatriation? What services does Kenyon provide as part of that function?---A repatriation very specifically in this case is to collect the various documents that are required. Documents are produced by the country of exit, in this case the Kingdom of Kuwait, the documents required by the country of entry, in this case Australia, which then can further add by the state of entry, which in this case would have been Victoria I understand or
30 New South Wales. In addition to that, there are the civilian regulations that commercial airlines throughout the world must adhere to based on the International Air Transport Association and many Military also adopts those same standards for the safe transport. In addition to that, it is the arrangement of receiving the sealed casket or shipping container - I prefer to use the word "casket" because we're talking about a deceased -
35 receiving the sealed casket from a facility, transporting it to the airport, ensuring that it is placed with dignity and respect aboard the correct flight and that that flight departs, and if the flight doesn't depart, make any arrangements for whatever reason to again retrieve the casket and put it on
40 another flight. In addition to that, there is making the flight arrangements for an escort, which is difficult at times because you have to match up the escort's flight schedule so that they can fly on the same aircraft as the deceased; straightforward repatriation.

45 I show you four photographs and a diagram. Are these documents you've

provided to the Board this morning?---Yes, sir.

5 Would you tell the Board what the photographs and the diagram are, please?---The photographs are the mortuary in the Al Sabah - I apologise for the pronunciation, hospital morgue. The diagram is just to give reference to the photos. Obviously the photos can't show the whole facility, so it's how they would fit together. It's a very standard Middle Eastern mortuary.

10 If that might be shown to Counsel Representing, I'll then tender them, sir.

PRESIDENT: Any opposition to the tender, gentleman?

15 COUNSEL REPRESENTING: No, sir.

PRESIDENT: Marked as Exhibit 191.

20 **#EXHIBIT 191 - PHOTOGRAPHS OF AL SABAH HOSPITAL MORTUARY**

25 COL GRIFFIN: Can you tell us, Mr Jensen, why this particular mortuary facility was used for this activity?---There are no other options, that is the facility the Kuwaiti Government requires any repatriation - international repatriation to be used.

30 Can you tell the Board why a civilian mortuary was needed to be used at all?---In this case, the deceased was moved from a theatre mortuary evacuation point, commonly referred to as TMEP from Camp Wolverine to the hospital morgue to allow for the viewing and the sealing of the casket and the completion of the documents prior to the movement to the civilian aircraft. Again, because of the Kuwaiti Government requirements, they move the deceased into their facility.

35 Had the deceased been going to a Military aircraft, would it be a requirement to go through that civilian mortuary or simply from the TMEP?---No, it could've gone - the deceased could've simply been moved from the TMEP right to a Military aircraft and then flown directly
40 to wherever the aircraft was going.

45 Are you aware of any private mortuary facilities that could've been utilised, but still complying with the Kuwaiti Government bureaucratic requirements?---No. Funeral homes which would be a private mortuary do not exist in the Middle East.

But that's the only facility that could be used if the deceased returns via civilian aircraft?---Yes.

5 The Board has received evidence from a number of Military personnel who visited the facility, but they were greatly disturbed by the conditions of that mortuary facility. Do you wish to say anything about your requirement to use that facility?---The mortuary isn't - if I was asked to use that mortuary in Sydney for example or in the United States, I would
10 decline. However, death is treated very differently throughout the world, there are many cultural aspects of it. I've been to many mortuaries to include the one the Military uses in Baghdad, Bahrain, Jordan, other countries in the Middle East because of other incidents. It is a typical Middle Eastern mortuary. It's not something that we think is the best
15 mortuary in the world, but it's unfortunately the only one that we can use.

Now, to turn to the specifics of what took place in that mortuary with the mix up of the body. First of all, would you tell the Board what the contractor or the subcontractor's role was?---Subcontractor's role was
20 simply to received a sealed casket from the mortuary at the time to transport the deceased to the flight home. They would've gone to the mortuary to collect the documentation that the consul would've needed to complete as well as other documentation to allow the deceased to leave country.

25 There is some evidence that the subcontractor actually attended at the TMEP to move the deceased from the TMEP to the civilian mortuary, why would that be the case?---To facilitate the movement and to start the process of collecting the documentation. The American hospital issued a
30 Death Certificate. The Death Certificate is probably one of the single most important documents required for the repatriation of the deceased.

When it comes to ensuring that the correct deceased who was taken from the TMEP into the civilian mortuary and then out of the civilian mortuary
35 onto the plane, what's the contractor's role in ensuring that continuity? ---In this case there was none.

Why is that?---Because of the system that's in place to be used with the ADF right now.

40 In respect of that system, am I right in saying that the US Military system and perhaps other systems, do not rely on visual identification or formal identification, but rather ascribe a particular number to the remains, the human remains and it's the number that follows through the process until
45 some point in time when it returns, perhaps to Dover or some other US

facility on the mainland or in German where the formal identification then takes place?---Here is where we get into one of the great challenges in managing fatalities and I use the phrase "It's not rocket science". It's harder than rocket science because you are mixing science with human emotion, you are mixing a business that does not necessarily have standards that are universal throughout the world. The fact is we, in the field, and I think mostly your coroners, police officers, death investigators use the term "identification" to mean positive identification which is established based on comparison of anti-mortem pre-death information with post-mortem information. The United State's system a positive identification is issued in Dover Delaware after the comparison of such records which can be fingerprints, dental charts, DNA. The American Government uses a DNA repository for all active duty members or service members, contractors are supposed to have it. In this case, I think identification was used to mean many things and was used by many people with different meanings. So the answer directly again in the US system a positive identification is issued at Dover Delaware or Lansthul which is another mortuary, are the most deceased from the theatre of operations go directly to Dover and that's where a positive identification is issued. Not a tentative, not a presumptive, not anything else. In the American system, the deceased, human remains pouch commonly referred to as a body bag, the transfer case which I think people sometimes refer to as a casket is - has an identification tag with it which will have an evacuation number which is a sequential number issued by the theatre mortuary evacuation point and the collection point which is different than the theatre mortuary evacuation point and it may include the term BTB, which is "believed to be" and it may include the name of the deceased. In large repatriations they don't include that because they don't want the aircrew or anyone else to know whose involved, because these identifications have not been confirmed and would not want a family member hearing something or somebody seeing something then calling a family member and saying I just saw Bob Jensen's name, I'm sorry and the family member may not have been notified.

How is the continuity of the custody preserved in that process?---There's two things that I think are important to address with that. In the system, there is the policy and there is the doctrine which consists of tactics, techniques and procedures and there are standing operating procedures or SOPs as Military commonly refers to them. Those alone are not sufficient, there is also a detailed and extensive training program that mortuary affairs soldiers go through in the United States, both at the entry and basic level and at the officer management level. On top of that, the NCOs who manage that process have unfortunately had extensive experience. So it's a combination of checklists, doctrine and training. Continuity is done through a series of forms ranging from a Department of

Defence form 1077 or 1075 convoy list of remains, which would have started at the 10th Combat Support Hospital where the deceased was taken, all the way through to the documents that are attached to the transfer case to where those documents are - to affixed to the case to the documents that are placed within the case to the concurrent casualty system which deals with the notification care of the family.

What is the simple mechanics of attaching the identification number to the human remains for continuity in the process? How is the tagging, for want of a better word, done?---Deceased can either have a simple tag, a tyvek tag, or if they're out of tyvek, which is a material which is more impervious to fluid disruption, or a cardboard tag with again the phrase "BTB" if it's known, believed to be in the name of the deceased and a - we would call it a service number, I think you call it a regimental number here. Then more importantly, the evacuation number. That's the single key data management number. The tag can be metal or paper, it can be a combination of metal and paper and the tag can be attached either to the feet or the zipper on the human remains pouch and again affixed to the transfer case.

So three places; on the body itself, on the pouch and on the transfer case?
---Yes, sir.

Now, I know from the bundle of documents that you've returned to the Board that after this particular incident you and your staff made your own inquiries and there are some emails in here. I won't take you to them in particular, they're in the document, but I'll ask you about the substance of them. You made your own inquiries through your staff and through the subcontractor as to what, if anything, went wrong here from your own processes?---Absolutely.

Based on those inquiries, what do you say went wrong or where was there a breakdown that resulted in this?---I would love and it would be easy to say so and so did this and so and so did that. But that would be unfair and it would be inaccurate, and most importantly, would be untruthful. This system, which is ubiquitous the term "system", failed in that the policy and doctrine created for ADF or by ADF was what everyone relied on and expected that individuals without training, without practical in-depth experience - and in my history going back to bombings, all the different events I've been to - is one of the crucial pieces here. There's not a university program you can take to become a mass fatality or expert in death investigation. It is learned through practical in-depth experience, which very fortunately your system does not have experience with; that's frankly a very good thing. It is unfortunate that others have to have that experience. I would further identify four specific factors, but I point those

out as the most important to me, is that this is not a simple task. People assume the identification, the search and recovery and the repatriation of loved ones can be done instantly. I call it the CSI effect from the TV show CSI Crime Scene Investigation, where everyone has an expectation that somebody can show up in an hour and identify a deceased and solve problems and bring them home. There are so many variables that I can't even begin to go into the number of variables that can happen. I would say there were four specific factors that I listed here. The first was that this process relied on visual recognition as the sole and primary means of identification. While coroners and medical examiners throughout the world will use the term "visual ID", they apply a very strict standard to it. The examination of pre-known injuries or tattoos or skeletal features done in combination with other things such as documents, other factors that they consider that a layperson would most likely not consider. Second, as I mentioned, the process relied on policy and doctrine as the sole means for providing instruction was a complex task. The US Government has probably 10 or 15 different documents checklists, procedurals for mortuary affairs. That alone is not enough to prevent errors in that system that occur almost every day that result in what we call congressionals, similar to your BOIs. We've had several in the US because errors do occur in the system. Thirdly, and again very important to me, is that the practical in-depth experience is not present within the Australian Defence Force, or DFAT for that matter, to do this. I know consulates certify or go to mortuaries all the time, but I consider the death of a soldier to be one of the most significant events any country can have because that soldier came to the country - pardon me, came to the Military with the expectation from the parents that they would care. When I was Commander parents gave me their sons and daughters to take care of them. The unfortunate reality is the world we live in today sometime we can't. So it's what I call a very sensitive event. Finally, the process is influenced by the unrealistic expectation that the management of deceased is simple and can be achieved in a minimum amount of time. It would be nice. I would love to be able to look at families - and I talk to families all the time - and say, "I can have your son or daughter here tomorrow." What we are talking about is a zero gain. We can't undo the event, we can't ever bring the loved one back. The best we as a system can do is hope to make the process as painless and easy as possible. The worst thing we do is we underestimate what's required in that process and we set unrealistic expectations or the families come with unrealistic expectations. In the British system it takes sometimes two weeks to go through the local, the international and the theatre procedures to return a loved one. In the US it can be from seven to eight days or longer to complete all the required documentation. Families don't like that, but better to be truthful, set the expectation upfront, deal with the anger upfront instead of setting an expectation that can't be met or is difficult to meet. In that process

5 families are told not to plan ceremonies. The US Army learned that lesson or still learns that lesson. You don't do ceremonies for the deceased. It's appropriate for units to remember them. It's appropriate to recognise the loss, but that comes after we've been able to positively identify the deceased and make sure they're back in country to comply with the wishes of the family.

10 What do you say to the proposition that the subcontractor had an obligation to ensure that the right body was transferred from the civilian mortuary onto the aircraft?---I would say that the subcontractor was treated as a vendor, a contractor, who had a very specific job and was not allowed to participate or do any of those events and also did not very specifically have an obligation to do that.

15 Mr President, I tender the binder of documents that have been returned by Kenyon International and I ask that it be classified at the moment until the document is able to be redacted and indeed reduced in substantial volume because much of it replicates the material already present in Exhibit 100.

20 PRESIDENT: Is everybody comfortable with that approach?

COUNSEL REPRESENTING: Yes.

25 PRESIDENT: So be it.

30 **#EXHIBIT 192 - CLASSIFIED AND REDACTED VERSIONS OF BINDER OF DOCUMENTS PRODUCED BY KENYON INTERNATIONAL**

35 COL GRIFFIN: Mr President, I note the time. I have completed my examination-in-chief of Mr Jensen. I ask that we adjourn to facilitate arrangements for the video-link hearing with the witness in Baghdad and return with Mr Jensen available for further examination by counsel after the Baghdad video-link.

40 PRESIDENT: Very well. I wonder whether during the adjournment if Mr Jensen's statement can be copied and made available both to the Board and to Counsel Representing.

COL GRIFFIN: Indeed, we will attend to that, sir.

45 PRESIDENT: Thank you.

<WITNESS WITHDREW [1055]

5 ADJOURNED [1055]

RESUMED [1137]

10 PRESIDENT: Yes, thank you Colonel. We you able to establish communications with our colleagues?

15 COL GRIFFIN: We had an image just a moment ago as you walked in, but it appears to have dropped away. I call Soldier 20 please.

<SOLDIER 20, sworn [1138]

20 <EXAMINATION BY COL GRIFFIN

25 COL GRIFFIN: Soldier 20, I'm COL Griffin, Counsel Assisting the Inquiry as I indicated to your earlier. We've learnt from experience that when witnesses are giving evidence by the video link, it helps if you limit the amount of movement that you make because that affects the image and the sound. It would also assist us if you speak a little more slowly than you normally do, do you understand?---Yes, sir.

30 Now, you'll be aware that for operational security reasons the identities of individuals in the area of operations are being protected and for that reason, there's a matrix before you that lists person's names and ranks and the number beside them. Firstly, would you confirm from that list, which is Exhibit 5 in these proceedings, that your name and rank appear next to Soldier 20 on the list?---They do, sir.

40 If you need to refer to anyone else in the theatre or recently moved out, if you would do so by reference to the list and the number, do you understand?---Yes, sir.

45 Also there are two matrixes that set out callsign numbers or names, I should say, for various positions and degrees of weapon readiness, do you understand?---Yes, sir.

Now, do you recall making a sworn statement on 6 July for your evidence to the Board of Inquiry?---I do, sir.

5 Do you recall that, as part of the process of preparing that statement, that you were shown and that you read a document setting out your rights and obligations as a witness before the Board of Inquiry?---Yes, sir.

Do you have a copy of the statement before you?---Yes, I do, sir.

10 This is Exhibit 119 in the Board's documents, Mr President and Members. I'm going to ask you some questions, Soldier 20, about what's contained in your statement, also with reference to the service police statement that you gave and also you may recall being questioned by an officer who conducted a quick assessment after the original incident that led to the death of PTE Kovco, do you recall being interviewed by that Quick Assessment Officer?---I do vaguely, sir.

20 You mention at paragraph 6 of your statement sworn on 6 July and again I'd ask you to refer to the matrix if you need to name a place or an individual or a degree of weapon readiness, that on the particular day, that is on 21 April, you were rotating through the positions in your duties in the position behind Jake Kovco, do you recall that?---Yes, sir.

25 Did you in fact have a pistol yourself at that time?---No, I didn't, sir.

Had you carried one beforehand in the other place where you'd been working?---Yes, I did, sir.

30 By reference to the matrix, can you indicate if, in your position as rotating one position behind Jake, if you rotated through callsign I and relieved him from duty at that point on that day?---No, sir, I was two positions behind PTE Kovco.

35 Two positions?---Yes, sir.

Where you say in paragraph 6:

I was the position behind Jake in terms of rotations.

40 Is that wrong?---Sir, with that, the rotation he was on, there's two positions at that - at that actual position and there was one soldier before me.

45 So for the other positions you were always two behind Jake?---two behind Jake?---Yes, sir.

But at the time he was at callsign I, where were you?---I would've been by that callsign D, sir.

5 Do you recall who you were at D with?---On that day, no I don't, sir.

Now, you say in paragraph 18 of the service police statement and I'll just read it to you at paragraph 18:

10 *That after the shot rang out I immediately jumped up and ran out of my room doorway and turned to the left and was standing in the doorway to room 8 within two seconds.*

15 Is that accurate?---I was there very fast, sir, but as to being exact on two seconds, no, I'm not.

Where was your room in relation to room 8 where the shot was fired?---I was next door, sir.

20 Was anyone accommodated with you in that room, and again if you would make reference to the callsign numbers, please, and tell us who was in that room with you?---Soldier 14 was in the room with me, sir.

25 Anyone else?---No, sir.

Now, at the time that the shot rang out was anyone in the room with you? ---Yes, sir, Soldier 14.

30 When you moved to the room next door, which on 30 April I believe it was when you gave the statement to the SIB, Special Investigation Branch, nine days after the incident, your recollection at that time was that you moved from your room to the doorway of room 8 within two seconds of the shot ringing out. Would you say that your recollection was better then than it is now?---Certainly, sir.

35 Your evidence today even though you can't be sure that it was two seconds, it was very quickly?---Yes, sir.

40 You told the quick assessment officer that you had heard:

Playing music, singing loudly, obnoxious digger shit, gibberish. I called to them to be quiet twice.

45 Is that correct?---Yes, sir.

Then you went on to say, according to his notes in the quick assessment:

Then Soldier 14 and I both yelled simultaneously and then the gunshot rang out.

5

Is that correct?---That's correct, sir.

It's your evidence that Soldier 14 was with you in your room at the time the shot fired?---Yes, sir.

10

Within two seconds you were at the doorway to the room next door where PTE Kovco was shot. Is that right?---Yes, sir.

What did you see in the room?---PTE Kovco was laying down and Soldiers 17 and 19 were administering first aid. He'd taken a wound to the head and they were trying to stop the blood flow.

15

From the time that you finished duty that day until the shot rang out, where were you?---I was in my room, sir.

20

Did you leave the room during that period for any reason?---Not that I recollect, sir.

Was anyone in the room with you during that period?---Soldier 14 was, sir.

25

Did he leave the room during that period?---No, sir.

Are you certain of that?---To the best of my knowledge, sir, he did not leave the room.

30

Am I right in saying that your evidence is that you were attempting to sleep during that time?---I was attempting to, yes, sir.

As a consequence, could he have left the room without your knowledge? ---I hadn't actually gone to sleep yet, sir, and with those rooms, if you move around it's very easy to notice. Soldier 14 was at his computer.

35

After the shot fired you say at paragraph 7 of your 6 July statement you went to find Soldier 4 as he's a combat first aider. Then you went to assist with a gator. Did you actually go into the room at that period in the immediate aftermath of the shot?---No, sir, I stood at the doorway. There was already enough people attempting first aid and I went to get Soldier 4.

40

You say you went to assist with a gator. What do you mean by that?---Sir,

45

5 with the - I'm just going to check if there's a matrix on the - where the hospital is located they use a six-wheel vehicle commonly known as a gator. It's what's used to move patients around on stretchers. I ran down to the hospital, which is about 300 metres, to make sure they knew what had happened so we can get the gator as quickly as possible to get him to the hospital as fast as we could so more advanced first aid and medical treatment could be given to him.

10 In the paragraph before that at paragraph 6 you mention that you recall seeing Jake come down from the particular place he was at the end of the shift and you stopped to say hi. Where did that short conversation take place?---Sir, I was at location C and he was moving past my post and we usually said hello or passed pleasantries as we moved on.

15 Do you recall if he was with anyone at that time?---I can't recall, sir.

At paragraph 8 of your statement you refer to going to the hospital and then returning to the room to get Soldier 19's gear. Why did you do that? ---At the time that soldier wasn't present and I was helping with - to move his - obviously his combat equipment.

20

Did you do it alone?---No, sir, Soldier 2 was there as well.

25 Anyone else?---Not that I recall, sir.

Were you under supervision at all?---Yes, sir, by Soldier 2.

30 What did you take from the room?---I took his body armour and his webbing, sir.

Did you see the pistol?---Yes, I did, sir.

Did you touch the pistol?---No, I didn't, sir.

35 I notice in that paragraph you say that you saw PTE Kovco put on the helicopter. So what time of the evening was it that you went to the room to retrieve Soldier 19's equipment?---I'm not sure of the time, sir.

40 Was it after PTE Kovco was taken from the hospital area to another place by helicopter?---I can't recollect, sir, exactly what time it was. It was fairly hectic at the time.

45 Was it immediately after the death or was it some time such as hours later?---It was after the event, sir. As to the time that day, I'm not really sure.

When you went back to the room after PTE Kovco had died - and I mean your room - did you have any conversations with Soldier 14?---Not that I recollect, sir.

5

Did you have any conversations with anyone about the retrieval of the equipment, who told you to do that?---Soldier 2, sir.

10

Thank you, Mr President. I have no further questions for Soldier 20. Thank you, Soldier 20, just stand by, please.

PRESIDENT: LTCOL Wilkinson, have you any questions?

LTCOL WILKINSON: No questions, sir.

15

PRESIDENT: LTCOL Green.

LTCOL GREEN: No, thank you, sir.

20

PRESIDENT: LTCOL Berkley.

LTCOL BERKLEY: No, I've got no questions for the witness, sir.

PRESIDENT: Soldier 20, it's the President speaking?---Yes, sir.

25

Are you aware of any spare combat body armour or Styre rifles or anything of that nature held at the embassy? In other words, other than the issue - - -?---No, sir.

30

Can you say to me positively that there's no spare Styres or body armour held at the embassy?---No, they're not, sir. They're held in another location.

Anything arising out of that, gentlemen?

35

COL GRIFFIN: No, sir, thank you.

PRESIDENT: Anything else, Colonel, you want from the - - -

40

COL GRIFFIN: No, sir, thank you. If we can stand the witness down, sir.

PRESIDENT: Yes. Thank you, Soldier 20, you may now stand down.

45

<WITNESS WITHDREW **[1157]**

PRESIDENT: Do we require 663 any more?

5 COL GRIFFIN: No, sir.

PRESIDENT: Thank you, 663, you may now stand down.

10 COL GRIFFIN: May it please you, sir. We can return with Mr Jensen at this stage.

PRESIDENT: Indeed.

15 COL GRIFFIN: I recall Mr Jensen.

<ROBERT ANDREW JENSEN, recalled [1157]

20 COL GRIFFIN: Sir, I'm not sure if that document has been reproduced and provided to the Board and Members.

25 PRESIDENT: We've certainly got a copy of it. I trust that Counsel Representing likewise.

LTCOL WILKINSON: Yes, sir.

PRESIDENT: Thank you, Colonel.

30 COL GRIFFIN: Thank you, sir. I have no further questions at this stage for Mr Jensen.

PRESIDENT: LTCOL Wilkinson.

35 LTCOL WILKINSON: No, sir, no questions.

PRESIDENT: LTCOL Green.

40 LTCOL GREEN: No, thank you, sir.

PRESIDENT: LTCOL Berkley.

45 LTCOL BERKLEY: Yes, thank you.

5 LTCOL BERKLEY: Mr Jensen, I'm LTCOL Tom Berkley and I
represent Shelley Kovco, the widow of the deceased. Of course, as you
know, the failed repatriation was a rather gut-wrenching experience for
Shelley and the family. So of course she has some questions that I've got
to go through with you. As I understand it, on 22 April a Kenyon
10 International Emergency Services Inc work authorisation agreement was
raised and signed by WGCDR Guerin in Sydney here on 22 April 2006.
That's the day after Jake was shot. Was that your understanding as when
your company was first engaged to repatriate Jake's body?---The work
authorisation is a mechanism that is initiated to begin the process. We
often will work on just a telephone call till we can get that document
15 signed. In other words, we don't wait for the document. As to the dates, I
don't have the calendar in front of me. I would trust what you have.

The work authorisation agreement says this. This is the specification:

20 *Fatality of PTE Jacob Bruce Kovco, fatal shooting 21 April '06.*

It says "reatriation" and it's obviously meant to be:

25 *Repatriation of the remains of PTE Kovco back to Australia.*

Did you understand that to be your company's task?---Yes.

30 Implicit in the repatriation of the remains of PTE Kovco back to Australia
is that it's PTE Kovco. Would you agree with that?---I would agree that a
repatriation is to repatriate the individual that is identified and given to us
to repatriate.

35 Kenyon I take it doesn't have its own mortuary facilities in Kuwait or any
other place in the Middle East?---Kenyon has portable mortuaries, we
don't have any established at this time.

40 Certainly you weren't going to establish a portable mortuary for the
repatriation of one soldier, were you?---Unless directed by the client, but I
don't envisage a client - it doesn't make sense.

45 It doesn't make sense of course. So you knew that you would be using -
for the repatriation did you know say as at the date that you were
requested to perform some work that you would be using a subcontractor
or did you know that prior to the request that you were going to use a
subcontractor?---Given that we had done a previous repatriation for the

ADF, it's possible that it could be done the same way; in other words, using the same facilities. Or that the client, in this case the ADF, could at that point say, "Look, there is an interest to bring in a military aircraft. There is an interest to do a charter aircraft directly from the military facility." So when the work authorisation is done we don't often know the specific details because it's a fluid situation. Reasonably you would expect that this would be done like the previous repat, but in our business we don't treat people as numbers and we don't treat people as because we've done it one way before we'll do it the same way again; it's dependent on the situation. That's what I meant earlier about all the variables.

I think what you're saying is that when the contract was activated, if I could use that word, for the purposes of repatriating Jake to Australia, it is then that you took the decision or your company took the decision to use a subcontractor for that repatriation?---The decision would have been taken jointly with the needs of the client. In other words, ADF saying, "We'd like to do this." Yes, okay, we'll do it this way.

But I suppose what I'm just trying to tie you down to is that was taken for this particular case, that decision was taken for this particular case, and it would have been taken post-mortem; in other words, just after Jake had died, because at least we've got 22 April being the date of the formal activation?---Yes, it would not have been a decision made before.

Why GAC World, that's the contractor, isn't it, Gulf Agency World?
---Yes. Again because that's the company we've used previously. It's the company that was involved in the previous repatriation. That's the company that has a reputation that's suitable to us and it's one that's performed well in any review we've done.

We know that Jake's body when it was handled with dignity and respect throughout the - when the United States Military had Jake's body and it was moved to the theatre mortuary evacuation point; we know that. The soldiers who have given evidence to this Inquiry concerning this issue were impressed by the efforts of the American Military to show Jake some dignity and respect. So Jake gets to this theatre military evacuation point and we know that's Jake. Pursuant to your contract it appears that the subcontractors then picks Jake up at the theatre mortuary evacuation point and takes him to the Kuwait mortuary. Would you agree with that?---I would not. Our subcontractor in coordination with your Defence Forces arranges transportation to move the deceased that your escorts have identified as him and transports him to that facility so we can complete the paperwork to get him on a plane and get him home.

45

Who picked Jake up, do you know?---Yes, a private ambulance.

A private ambulance?---Arranged for by our subcontractor.

5 So that your subcontractor arranged a private ambulance who picks Jake up from the theatre mortuary evacuation point and takes Jake to the Al Sabah mortuary?---Yes.

10 At that stage Jake is put into the mortuary where his remains are to be stored there until I take it a suitable flight can be organised. Is that how you understood it?---Yes, that's correct.

15 Who was organising the flights, Kenyon International or the subcontractor?---The subcontractor organises the flights in coordination with the ADF because again of the need to keep the escort on the same aircraft.

20 Does Kenyon International or the subcontractor have any business relationship with the Al Sabah morgue?---No, other than that's the facility they have to use.

25 I think you gave in evidence, sir, that it's the only morgue in Kuwait. Is that what you said?---I said it's the only mortuary that is used for international repatriations, not military. I would not equate that to the TMEP but it is the mortuary that we are required to use for civilian repatriations out of Kuwait City.

30 That requirement comes from the Kuwaiti government you said?---Yes, that's my understanding.

35 Do you know of any Kuwait law that requires the remains of a serviceman to go through that particular mortuary if it's going to go by civil air?---I don't know if there's a specific law that requires service members to go through that morgue. I know that the government regulations as they are told to us require that we use that facility. They may use that facility. In fact it's a facility that all the contractors use.

40 Can I just get MAJ Jolly to flash up some photos. These were provided to my client by members of the press. These are photos taken about the time of the successful repatriation of Jake. If it assists you, sir, I have a printed copy of these that I can show you. If you can just dwell on that one, please, MAJ Jolly. That should be the first photo in the set of photos I've given you, sir, that has the sign out the front of the mortuary. Do you know from your knowledge whether that mortuary is run as a commercial organisation or a state-run facility?---I have no knowledge of this

45

mortuary.

5 It says here a special price is ready to send all kind of coffin out of Kuwait. I don't mean to make anything of that. It just appears to be an advertising sign, but you can't tell us who the advertiser is?---No, again I have no knowledge of this mortuary.

10 But you expect that your company would have in its quality assessment of the subcontractor checked the place like the mortuary itself, wouldn't you?---I would expect that again our subcontractors after we've reviewed them and reviewed the relationships with the governments and the experience they have yes, that they have taken to the standard as applicable to the location they are in.

15 Something you said earlier which makes commonsense, that the treatment of the deceased is very much a cultural thing and it changes throughout the world; we're all aware of that. But you would have expected - I think you'd expect that the Australian people would want its servicemen treated in the same way as perhaps the American people want their servicemen
20 treated after they've fallen in a war zone. Do you accept that?---Without a doubt.

25 You have here a situation in which you say that you've got to in the repatriation process provide the movement of Jake back to Australia with dignity and respect. But this facility may not have been suitable to achieve that purpose. Would you concede that?---No, I would not, because the facility is again the one that, to my understanding, we are limited to use. When treating with dignity and respect that would allow us ahead of time to have other assets in place, to have more dignified coffins
30 and shipping materials, to do things to be ready for what is expected so that when these events occur we can adjust the local facilities to provide better equipment inside the facilities, better materials, to ensure a more dignified manner than perhaps the materials that are used.

35 Do you say that these coffins are appropriate?---As I said, if we were allowed to ahead of time preposition transfer cases or caskets that are more familiar to families, that are more appropriate to the region of entry, that would be of course a much better answer.

40 But it didn't happen in this case. There was no thought from your subcontractor obviously that that may have been required?---I'm sorry?

45 Obviously your subcontractor didn't think that that sort of thing - - -?--- We cannot preposition assets without the direction of the client because it's something that has to be purchased and agreed to. These types of

coffins are appropriate for the Middle East and other parts of the region. That's what they use. A family there would consider that most appropriate. It's not something I think a family here or a family in the US would consider appropriate.

5

Thank you for that, sir. This is something that obviously interests my client as well. Do you know what your representative in the Middle East was told by the Australian command structure or whether they even had a clue of how Jake was to be treated?---From the emails that went back and forth between the various members of ADF and our staff, they were told very specifically to repatriate the deceased, to make the arrangements, that the ADF, consulate would take care of the identification and the ADF would take care of any of the escort duties.

10

15

Jake's body after he left the theatre mortuary evacuation point was in the hands of your subcontractor; you would agree with that?---I would say he was in the hands of our subcontractor and the escort, sir. I'm not trying to be difficult, I'm trying to be specific.

20

But an escort is simply that, isn't it, an escort. The escort can't control the movement of the body, only the subcontractor can. Would you agree with that?---Can't control movement of the body to the facility that they have - yes.

25

It's the responsibility of the subcontractor to actually get Jake from the morgue and put him on the plane back to Australia?---I must be specific here. It is the responsibility of the subcontractor who was given a sealed casket with an identified individual to transport that casket.

30

But we know and you know that there was insufficient markings on the casket, transfer case, that caused a mix-up when the wrong body was presented for - - -?---I don't know that, sir.

35

Do you know a Dr Ramsey or a Dr Ali?---No, not personally.

They're at Al Sabah Hospital in Kuwait City. I just wanted to read to you some communications between these doctors and BRIG Cosson who did an inquiry on behalf of the Australian Military into the failed repatriation of Jake?---Yes, sir.

40

It says this. BRIG Cosson wrote to these doctors and asked them about the misidentification. What's happened is that she's written a long message. It's obviously in electronic form and the doctors have inserted answers to her questions. One of the doctors said this:

45

No examinations takes place of bodies. The staff do not examine bodies. The officials did not ask the labourers at the morgue to search the body or even touch it. They also did not touch, search it or look for the ID labels.

5

That you would expect to be normal procedure of the morgue being simply a holding facility?---If I understand your question you're asking would I expect what the doctor is saying to be normal for a mortuary as a holding facility.

10

Yes?---It again is not a standard we would expect in many countries. It is a standard when you treat death as it is treated in that facility or that area of the world.

15

Are you saying to us that although you would expect, and the Australian Government might expect, Jake to be repatriated with some dignity and respect, that was just not possible?---I would say that the dignity and respect that's afforded is afforded to the maximum extent as possible using the facilities and the system that's in place. It would be nice to have, having been a Military Commander, to have a TMEP type setup throughout the theatre. Compare the TMEP to the Baghdad International Airport facility, it's very different. TMEP has been established, it would be nice to have that type theatre. It's not practical given that very fortunately you don't have need for that service everyday, is a good thing. Therefore you use the facility you can. You apply dignity and respect not only in the manner in which you do things, but the sense in the way they are done or the intent that they are done.

20

25

30

Sir, to be clear on this, if there's criticism to be levelled at the government or the Military, I'm quite happy to do and I'll get on to that, but I'd like you to just be clear on this that I represent Shelley?---Yes, sir.

And if there has been failings on any side, I simply want to ask questions about them?---Most certainly.

35

The Doctor said:

40

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. He works under the Manual Workers Hospital Administration, he does not work under doctors. The morgue maintenance is under the responsibility of the engineering department. Only two labourers are employed by the hospital are present at a time, including the

45

foreman. The remainder are from a private cleaning company from Bangladesh, they also have their company supervisor.

5 Would your company have been aware of the staffing structures at the Al Sabah morgue?---No.

BRIG Cosson said:

10 *In addition, I propose to find that a number of environmental factors peculiar to the Al Sabah mortuary contributed to incorrect identification by the Australian officials. Those factors included poor illumination in the mortuary and the tendency of people to crowd within the limited confines of the mortuary.*

15 The doctor replied as follows:

20 *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 representative of a rich country or persons like Australians the morgue workers usually try to impress the relatives and clear the place for them. You remember when you and I entered the morgue, the relatives of the dead Indian, poor man, were shoved off. Dr Ali told them to stay only for your sake.*

30 It appears from that passage that the mortuary is indeed a busy place at time in Kuwait. Is that the sort of place that you think is appropriate for a western serviceman or particularly an Australian serviceman to be stored?---I think it is consistent with many of the mortuaries that we have been involved in from the Bali bombing to the Middle East. Do I think it's appropriate to store human remains? If I had my way we would get him directly from Baghdad to Australia without having any stops enroute.

35 This is something that surprises me as well. Was it possible or was there any discussion, and if there's a criticism to be made about the command structure, please make it, but was it possible of course for Kenyon International to move Jake's body from the theatre mortuary evacuation point directly to an aircraft?---From the TMEP at Camp Wolverine in Kuwait?

40 Yes?---Is it possible to move him directly to the airport? Given if we were able to use what we now know of the Status of Forces Agreement which GEN Cosson pointed out to us in her report, it would be worth trying.

5 Would the Kuwaiti Government adhere to it, would the commercial airline actually accept that, I don't know because there are times that the governments, even though they have agreements can be a challenge to work with. It certainly would be something to consider now that we're aware of the SOFA.

We'll get to that. LTCOL Mazur, an American serviceman and doctor certified that Jake was dead?---He issued the first Death Certificate.

10 That's it and that's really what is required?---No, there are additional documents required, but as I mentioned earlier, that's a primary document. There are additional documents that must be issued to transport a deceased.

15 So no one from the Australian side of the house, those that were informing you or contracting you or asking you to provide a service, informed you of the provisions of the Status of Forces Agreement?---No, we weren't aware of the SOFA.

20 Did you expect, and yes or no, did you expect that the Australian Forces may have had one in Kuwait?---No, I did not expect one for Kuwait.

25 So no one mentioned the Status of Forces Agreement to you?---Not that I'm aware of.

30 But you accept now that if applied in its tenor that it would've been possible with the documents that were with Jake's body, to move him from the TMEP straight onto an aircraft?---No, not with the documents produced by the Americans. There would need to be additional documents procured, there would also need to be the sealing or the placement of the deceased into a sealer - sealed or an appropriate transfer vessel for the commercial aircraft to take. You still, when you are flying commercial aircraft, need to comply with commercial shipping documents that the airlines require or they will refuse to accept the deceased.

35 When Mr Sinanovic was returned to Australia, what sort of container was he in?---He was in the original container that was sealed at the morgue by the consulate.

40 You should have one of the ones that is shown in this set of photos? ---Yes, that would've been the sealed casket, as people use it, there are many different terms that are used, which should've been placed on a - on an air train cover aboard the aircraft. I believe that is the case that was actually received and opened by the Victorian or New South Wales State Coroner.

45

5 So when your company bought Mr Sinanovic back, the requirements as far as the transfer container or casket or however you want to put it, those objects that we see, those brown wooden objects, they were obviously sufficient?---Yes, because within that is contained a - a aluminium or zinc lined inner container that is sealed.

10 Now, do you accept responsibility for the failure of your contractor - your subcontractor?---Sir, I don't believe the subcontractor failed. I believe the subcontractor took a casket which was sealed and identified to him to contain the deceased and returned that casket to the area he was told to. That's what he was asked to do, that's what we were asked to do and that's what we did. I would be happy to accept responsibility if there was one, but in this case unfortunately isn't.

15 All right, sir, so what you say is this, that because - your subcontractor had no responsibility for the safe conduct of Jake through the Al Sabah morgue?---Our subcontractor, sir, to answer your question, had the responsibility receive the sealed casket that contained the identified body of the deceased. Unfortunately the body was wrongly identified, not by our subcontractor.

25 So you're saying that your subcontractor's responsibility started from the presentation of the body of Jake or Mr Sinanovic from the presentation at the morgue and only for that transport to the aircraft, is that what you're saying?---Our responsibility was to move the deceased from the TMEP to the Al Sabah mortuary, to then take the deceased when he was identified and the documents completed in accordance with the regulations and sealed and then taken him and move him to Melbourne. So it was not a continuous chain of custody or continuous operation.

30 That's what I'm getting at. In your view, your subcontractor wasn't responsible for the deceased whilst the deceased was in the morgue? ---Was not responsible - - -

35 Or in the mortuary facility?---Was not responsible to identify the deceased.

40 No, I'm not talking about identification, I'm talking about the physical custody of Jake's body that your subcontractor got from the TMEP, but failed to put on the plane to Australia. I'm not talking about the process of identification, sir?---I understand your questions, sir, I wouldn't agree.

45 You don't agree?---No, sir.

5 So it's implicit in that that you don't think that your subcontractor is responsible for the safe conduct of Jake through the morgue?---I think our subcontractor, along with other individuals, have the responsibility to ensure that the process is completed. They have individual areas they're responsible for.

10 Could your subcontractor - would you expect - your company seems to have a lot of experience in this, would you expect that anything that Kenyon's or their subcontractors took into their custody, such as Jake's remains at the theatre mortuary evacuation point, would have a distinctive Kenyon's or subcontractor's mark on it so that there could be no mistake in this morgue in Kuwait?---One of the great frustrations I have as a private individual is the fact that we do have extensive experience and knowledge. The unfortunate reality is, we don't get to make decisions, we advise, we provide counsel and we make the decisions. We have some clients to say that it's a client that we cannot help because they will not allow us to help them or it's a client we can help, but we would like to improve their abilities and knowledge over time and we take those jobs and make the decision to do what we can. In this case, I would argue, from my experience, that that does not in fact make a difference. This was a systematic failure based on those points I make earlier.

25 It's a system that's made up of people and the failure has to be attributed to a person?---I do not agree, sir.

30 Yes, you say that a system just produces the wrong body?---I would say that one of the greatest challenges is when you're asked and the coroners will say whose in charge in an incident. When you are dealing with death there is not often a single person. In fact there is no circumstance that I'm aware of where there's a single person involved that's in charge. It's a truly perfect example of the need for communication and coordination among many individuals who have very specific identified responsibilities. As I mentioned earlier, I would like to be able for the Kovco family, for anyone, to say this person made a mistake, it is their fault, they are the person that's responsible, but that's not practical or truthful here.

40 Would you say it's a lesson learnt that if you are going to go through a mortuary of the standard at Al Sabah, that you might put in future a distinctive mark or sign on the bodies that you're responsible for?---I would suggest that in that case, I don't know of the difference that would make because both bodies - the body of the individual who was wrongly identified was clearly tagged and marked, he had a name tag.

45 It was a simple proposition, big Kenyon sign, whack it on it, paint it on.

You wouldn't expect there'd be many others in the mortuary at the time as at that time, that might - and then your subcontractor could say, yes, that's the one?---I wouldn't want my subcontractor to depend on a simple tag, because people can then make mistakes and place the tag on the wrong
5 body. I know it's a point, sir, I'm not - again, I'm not trying to be argumentative, but I'm trying to tell you from years of experience of seeing this and going through mortuaries and procedures throughout the world that you cannot create a process - you cannot idiot proof a process and create a checklist for every variable. What you have to do is you have
10 to train individuals, you have to create a system that minimises that, not ruled by the exception.

Document control and matching number control - matching documents and numbers, particularly those that are on the casket, the transfer case,
15 that would be very important to you to avoid error, wouldn't it?---It in combination with all the other things I've mentioned are absolutely critical.

All right, but you've got a subcontractor over there. You know from
20 Kenyon International's point of view what's required. Your own experience as having been very experienced in mortuary affairs, you know what a safe system would be, an accurate system for the repatriation of the remains of servicemen would be and you also knew, didn't you, or you should've known that GAC World or Gulf World or whatever they're
25 called, the subcontractor didn't apply that system?---Sorry, again we're going around, I don't agree.

You don't agree. What system did they apply to distinguish Jake's coffin from that of Mr Sinanovic?---They didn't apply a system, they accepted
30 that the sealed casket that they were given contained the body of the person they were told it contained as attested to by his escorts and the fixture of a consulate seal.

Indeed, and there's some criticism to be raised about that. But that means
35 that all right, that's presented to us, that's what we're going to move. We are not responsible for any further checking?---I think that's over-simplification, but yes.

Mr Nasser, do you know of him or who he is?---I don't know the
40 individuals at GAC personally. I believe he works with Alan Almeida.

Mr Almeida is from GAC World, is he?---From GAC.

Mr Nasser told some of the escorts that were asked to escort Jake to - they
45 knew what they were doing because there was a concern expressed by the

escorts that this very thing could happen, that Jake could be lost in this mortuary. Prophetic, unfortunately, the concerns of the soldiers when Mr Nasser said they knew what they were doing. I suppose you can't answer that, you weren't there. But would you in this - have you had any discussions with the Australian Government or any contracting authority from the ADF about future repatriations of our soldiers from an active zone, a theatre of war?---I myself have talked to the Defence Minister immediately following this incident. He advised me that this would be a contract they'd have to review. I fully understood that and I told him this would be a contract we would have to review.

Really from what you've said it's very, very difficult because the assets aren't in place to repatriate the body of an Australian serviceman from the Middle East along that route through Kuwait with the dignity and respect that the Australian people might require. Would you agree with that proposition?---Yes, the unfortunate reality is you do not have, like many countries, the assets for an effective full-time mortuary staff. And if you did, I would caution that you would be at risk unless you were able to provide them practical training. You have an officer in your ADF that I think has been identified as a mortuary subject matter expert. We in fact asked her to deploy with us to different incidents to try to give her some practical on ground experience.

We're aware of that. Obviously we need to contract because we don't have the inherent facility or capability. So we contract. But you as the contractor say this: that along that route from that theatre of operations, even if it was Jake's successful repatriation in the first instance, that if people knew the conditions of the mortuary that they would be happy with the standard that could be provided. That's not looking at your company, that's just saying that there is as a matter of fact nothing of the Western standard available?---No, and "happy" is a relative term, sir. During the response to the Bali bombing the mortuary again is not one I would want any of my family in. This is not a mortuary I want my family in. If I have my family there I don't have much of an opportunity. What I'd like in the discussion of the contract is the understanding - or sir, for you is that with the contract with Kenyon it's not a one-stop deal, so to speak, in that you cannot just say, "Do this." There has to be that training and cooperation between all the different parties that are involved.

In your contract, which could be for mass casualty evacuation - sorry, mass death - - -?---Mass fatality.

Mass fatalities, you could go to their identification, you could deploy - your company has the ability to deploy obviously the forensic odontologists. You can go from that right down to returning one

soldier?---Absolutely.

Of course all you were asked to do, you say, is to repatriate Jake to Australia?---That's correct.

5

Inherent in that is still the obligation to repatriate Jake and not someone else. You'd agree with that?---I think that question has been asked and answered. I would go back, sir, to say that inherent in that is the responsibility to take the casket that was given to us and sealed to contain

10

the deceased and return him.

But one of the things that has upset my client is that when the evidence has been presented to this Inquiry about the bungled repatriation of Jake no-one seems to want to take responsibility for it. I'm sure you or your counsel have known of the proceedings that's gone on in this Inquiry. No-one seems to want to say, "Look, we failed," either contractually, morally. I take it that on behalf of Kenyon's you're saying, "We didn't fail either"?---I go back to my initial statement, sir. It would be easy to say that there is a person that you could put your finger on and say this person made a mistake that caused this horrible incident. That's not the reality in this operation when you're dealing with fatalities. It's not a simple, easy process. It is a complex process. To answer your question directly, no, I don't believe or claim responsibility for that on Kenyon. We are part of the system and for that I accept that part of the responsibility, but not here, not direct responsibility; no, sir.

15

20

25

Can we say this: that Kenyon and the ADF and the Al Sabah mortuary in combination failed to repatriate Jake?---I would not agree to that, sir. I would not say that's accurate.

30

You accept no responsibility?---I accept no responsibility, sir.

Thank you. Nothing further, sir.

35

PRESIDENT: Thank you. Colonel.

<EXAMINATION BY COL GRIFFIN

[1237]

40

COL GRIFFIN: Mr Jensen, the Board has authority to make recommendations arising from its findings and the facts it discovers. Are there any matters that you wish to draw to the attention of the Board? ---My only comments would be in closing, sir, are again having been involved in so many different systems and processes there is a danger

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when people convene to look at what happened at one incident to then create a system based on that whole incident, which will then further cause problems down the road when other deaths occur because they've addressed the peculiarities or the specifics of that unique incident, not the overall process of mortuary affairs. I very much am willing, Kenyon is willing, to participate and to help with our experience, providing documents, providing advice; that's all we can do. We are willing to do it and it is up to others to say whether they would like that assistance or not.

10 Thank you, Mr Jensen. Nothing further, sir.

PRESIDENT: Thank you, sir, you may stand down. You may now leave us.

15

<WITNESS WITHDREW

[1239]

20 COL GRIFFIN: Sir, I note the time. Would it be convenient to take the afternoon adjournment at this stage?

PRESIDENT: Yes. Returning at a quarter to 2.

25 COL GRIFFIN: Thank you, sir.

LUNCHEON ADJOURNMENT

[1239]

30 **RESUMED**

[1357]

PRESIDENT: Thank you, Colonel.

35 COL GRIFFIN: Mr President, LTCOL Green wishes to conduct a demonstration with the assistance of MAJ Young for the Board in the use of the 9 mm pistol.

PRESIDENT: Certainly.

40

COL GRIFFIN: I'm advised that this is a process related to the silent cocking process and as such is not consistent with training manuals as we understand them to be. But in any event, it's for the Board and MAJ Young is assisting the Board and protected in that regard with anything that he does with the weapon to assist you that is contrary to

45

doctrine.

LTCOL GREEN: MAJ Young, would you come forward please.

5 COL GRIFFIN: SGT McLane will video it so that it's a record.

PRESIDENT: Thank you. That was going to be next question actually.

10 LTCOL GREEN: MAJ Young, would you just clear the weapon before we start.

MAJ YOUNG: The weapon is clear, sir.

15 LTCOL GREEN: Thank you, Major. Now, I also think you brought three or four drill rounds with you.

MAJ YOUNG: I just brought one, sir.

20 LTCOL GREEN: It might just be appropriate to inspect that drill round now. MAJ Young, as discussed outside, would you be kind enough to strip the SLP, please. Would you now be kind enough to reassemble the SLP but placing a drill round into the chamber before you reassemble it.

25 MAJ YOUNG: Sir, would you like me to assemble it in the way that I demonstrated outside?

LTCOL GREEN: Yes. Just stopping very briefly there. What I think you've done is just placed the drill round into the barrel, placed the barrel into the slide.

30 MAJ YOUNG: Yes, sir. Would you like me to describe what I'm doing at the time?

LTCOL GREEN: If you'd be so kind, yes.

35 MAJ YOUNG: I've placed the drill round into the barrel of the weapon. I've then placed the barrel back into the weapon but I have been careful to ensure that the rear of the round is going into the ejection lever and base of the slide. I've made sure that it's clicked home and that it is home. I'm
40 now placing the spring back into the weapon in the correct manner. I'm placing the barrel back onto the slide. At this point I can put the locking lever back in, however, it will not fully drive home.

45 LTCOL GREEN: If you just might walk and show the Board and what I think you're describing to the Board is that the rear lug, the side locking

lever cannot be taken and placed or reinserted back into the housing of the slide. Just before you fire the action, could I ask you just to rotate the slide locking lever so that it's 90 degrees to the slide itself and push it right in. It's firmly secured and seated in that position.

5

MAJ YOUNG: Yes, sir, but not fully locked home though.

LTCOL GREEN: What you could do at that point is fire the action. If that was a live round it would discharge and the weapon would re-port.

10

MAJ YOUNG: Yes, sir.

LTCOL GREEN: Thank you. Would you unload the weapon, please.

15

MAJ YOUNG: Do you want me to reassemble it, sir?

LTCOL GREEN: Yes, please. Thanks, MAJ Young, I'm sure I couldn't have done it as smoothly as you did. Sir, unless you've got any questions, that simply completes the demonstration for these purposes.

20

PRESIDENT: The question I do have is, it's not possible to put the slide lever fully in, it won't go fully in.

MAJ YOUNG: No, sir.

25

PRESIDENT: You accept that?

LTCOL GREEN: Yes, I accept that.

30

COL GRIFFIN: Does it follow from that that if the slide lever is not fully in, there's no question of allowing the working parts to go forward.

MAJ YOUNG: The working parts would operate, sir. It would if there was a magazine on continue to pick up rounds. However, eventually the slide locking lever is not locked, it would work itself out and the weapon would disintegrate on the firer. It's quite a dangerous procedure.

35

COL GRIFFIN: Was the weapon reassembled at any time?

40

MAJ YOUNG: I reassembled the weapon with the round in to place the locking lever in. However, in that state without withdrawing the slide fully to the rear enabling the extractor to extract the round that was in the barrel, I wasn't able to lock the locking lever home. So the weapon was not fully assembled.

45

COL GRIFFIN: The weapon was not assembled.

5 MAJ YOUNG: The weapon was in an unsafe state and unassembled at that point. As per our doctrine, it therefore was not cocked because it was not assembled.

10 COL GRIFFIN: What I'm interested in knowing is there was no way of you - the slide wasn't back. You never at any time released the slide to go forward.

MAJ YOUNG: No, sir.

COL GRIFFIN: Thank you, no questions.

15 PRESIDENT: Anything arising out of that, LTCOL Wilkinson?

LTCOL WILKINSON: No, sir.

20 LTCOL GREEN: I think COL Griffin might be under a misapprehension as to what he's just been told. If I could just ask MAJ Young a few more questions. MAJ Young, the weapon as you've just assembled with the slide locking lever inserted but not fully recessed, the gun would operate and function normally, except for after a few rounds the slide locking lever would start to work its way out.

25 MAJ YOUNG: Sir, I'm not ballistically qualified, however to answer your question in its entirety, with the slide locking lever in I do not know whether that round initially firing would be enough to make the weapon disassemble or it would be two or three rounds or perhaps more.

30 LTCOL GREEN: Just with the slide locking lever at 90 degrees to the slide you could understand how a firer could hold the pin in and fire at the same time without the slide locking lever working its way out.

35 MAJ YOUNG: Personally, you're asking me a personal question, that would not be able - I would not be able to adopt a good firing position with that.

40 LTCOL GREEN: But you would be able to use one finger or one hand to hold the slide locking lever in so it wouldn't work its way out.

MAJ YOUNG: It's possible.

45 PRESIDENT: LTCOL Berkley.

LTCOL BERKLEY: No, sir, thank you.

5 COL GRIFFIN: Perhaps from your experience, MAJ Young, which you've been asked about, can you think of any purpose to do what you've just demonstrated?

10 MAJ YOUNG: No, sir, the only purpose that it would be - that you would have from that would be to allow yourself to have 14 rounds on the weapon instead of 13, which you would have in the magazine. There is absolutely no reason why you would want to silently cock a weapon like this, which is a secondary arm. There is no purpose that we normally use this weapon as a primary arm. In that situation you would not have any need to silently cock because your primary weapon would have already been engaging the target or enemy per se and they'd know definitely
15 where you are. So there's no need to be quiet.

COL GRIFFIN: Could you get it into a holster with the slide locking lever at 90 degrees to the slide?

20 MAJ YOUNG: At 90 degrees possibly not, but in the parallel position definitely.

COL GRIFFIN: Thank you.

25 PRESIDENT: Anything arising out of that?

LTCOL GREEN: No, sir.

30 PRESIDENT: Thank you, Major, the Board is grateful to you.

LTCOL GREEN: Thank you, sir.

PRESIDENT: Yes, Colonel.

35 COL GRIFFIN: We might tender the film that was just made, sir, of the demonstration.

PRESIDENT: I take it there's no objection to the video - - -

40 COUNSEL REPRESENTING: No, sir.

#EXHIBIT 193 - VIDEO OF DEMONSTRATION CONDUCTED BY MAJ YOUNG OF PISTOL

45

COL GRIFFIN: Sir, I call Detective Inspector Hayes.

5 <DETECTIVE INSPECTOR WAYNE GEORGE HAYES, recalled
and resworn [1408]

10 <EXAMINATION BY COL GRIFFIN

COL GRIFFIN: Good afternoon, Detective Inspector Hayes. I'll show you a time line document. Did you produce that at my request for the Board?---I actually caused it to be produced, yes.

15 You've set out in there your involvement from your first notification or the first notification of the death or in fact the injury at around 1600 hours to PTE Kovco and subsequent involvement of yourself in the proceedings. Are there any matters contained in there that you wish to draw particularly to the attention of the Board? You've set it out helpfully in both a diagrammatic form as well as a typewritten time line. Are there any areas of particular delay that affected you in the conduct of your activities? ---There were probably two areas, but I believe that they are necessary. They refer to what I term pre-deployment training before we went to Iraq. It was escalated for us in Sydney and then when we arrived in Kuwait we had other pre-deployment training before we could actually enter Baghdad. So we lost time there.

20 Are you able to quantify the period of time that you lost?---In round figures, two days, I would suggest. However, I must say that the ADF offered to get us in earlier and there was some delay, time lag with their organisation going through with the procedures to get us in as well.

30 That is as well as the Defence Force requirements to undertake certain activities your own New South Wales Police Authorities had some matters that they needed to deal with before a decision was taken to formally deploy you, is that right?---Yes, risk assessment protocols about our deployment, yes.

40 Are you able to quantify that period of time that you were awaiting decision making process within your own organisation?---Three days, round figures.

45 PRESIDENT: Does that make it five days in total, or were they running at the same time?---Running at the same time, sir.

Are you able to say whether or not the matters that the Defence Force required you to participate in as part of your deployment process was of value to you or that you think was an unnecessary delay in your process?
5 ---From my point of view I think it was probably unnecessary because the ADF looked after us very well, we had no concerns for our personal safety while we were there. But it's their protocol, so we complied with them.

10 Within your own organisation's delay, were they matters that unnecessarily interfered with your own processes?---It certainly - I think it probably could've been a done a little bit quicker, but they are our processes again.

15 So from both organisations' viewpoint there were matters that did cause some delay, but they were necessary within both organisations to your understanding?---Yes.

But they did slow you down?---Yes.

20 I tender the timeline, sir.

PRESIDENT: Any opposition to that document?

25 COUNSEL REPRESENTING: No, sir.

PRESIDENT: Marked as Exhibit 194.

30 **#EXHIBIT 194 - TIMELINE**

COL GRIFFIN: I show you a document. Do you recognise it, Inspector?
---I do.

35 Is it a document that you obtained at the Board's request?---It is.

It's a letter dated 22 August from the New South Wales State Coroner to GRCAPT Cook, the President of the Board?---Yes.

40 It has attached to it, again, a timeline and a history of events that the coroner has referred to resulting from my request to you to provide such information?---Yes.

45 I tender the document, sir.

PRESIDENT: Any opposition to the Coroner's letter being tendered?

COUNSEL REPRESENTING: No, sir.

5 PRESIDENT: That will be marked as Exhibit 195.

#EXHIBIT 195 - CORONER'S LETTER

10

COL GRIFFIN: I show you a statement. Do you recognise it, Inspector?
---I do.

15 Would you tell the Board what it is, please?---It's a statement that I
obtained from the Defence Minister, Dr Brendan Nelson in relation to
comments made by him to the media and it also has an attachment, a
transcript of a media release - a media conversation between he and the
media. It also contains a photostat of handwritten notes made by
Dr Nelson.

20

You personally took that statement from Dr Nelson?---No. I attended, I
interviewed him. The statement was taken in long hand, converted to type
and sent to him and he signed it and returned it, yes.

25 I tender the document, sir.

PRESIDENT: Any opposition to that document?

COUNSEL REPRESENTING: No, sir.

30

PRESIDENT: Marked as Exhibit 196.

#EXHIBIT 196 - STATEMENT FROM DEFENCE MINISTER

35

COL GRIFFIN: Inspector, were you present for the evidence of the DNA
specialist Ms Franco and the gunshot residue specialist Ms Hales?---Not
all of the DNA specialist, only part of it, but all of Ms Hales, yes.

40

Are there any matters arising from that evidence that you wish to
comment on for the Board in any way?---No, there isn't.

Sir, I have no further questions for Inspector Hayes.

45

PRESIDENT: Yes, thank you. LTCOL Wilkinson?

LTCOL WILKINSON: No, sir.

5 PRESIDENT: LTCOL Green?

LTCOL GREEN: No, thank you, sir.

10 PRESIDENT: LTCOL Berkley?

LTCOL BERKLEY: No, sir.

COL GRIFFIN: Sir, can I indicate that from the outset Counsel Assisting
15 has received an excellent standard of cooperation and assistance from the
New South Wales State Authorities from the Coroner's Office, from the
New South Wales Police Force, from the Forensic Services Group.
Without fail, request for assistance have been met willingly and with great
cooperation and in particular, Detective Inspector Hayes has been of great
20 assistance to the Board with his production of evidence and material. I
wish to place that on the record.

PRESIDENT: Thank you. And is the Inspector likely to be joining us at
some later time while the Board is still sitting?

25 COL GRIFFIN: No, not as we understand it, sir.

PRESIDENT: Before you stand down, Inspector, even though the Board
has not yet concluded its business, I am still to hear submissions from
interested parties and what have you, I think it would be remiss of me if I
30 didn't say this and say it out very loudly; the Board is very, very, very
grateful for the assistance of the Homicide Squad, yourself and your
troops, if I can use that phrase. The forensic people have been superb and
I'm conscious, because of a previous occupation, of some of the delays
that occur in DNA and things like this and I'm very conscious of the
35 speed with which things were done. The Board is very, very grateful for
that.

We are also equally grateful to the coroner who, in many ways, behind the
scenes, has made a lot of things happen that might not have otherwise
40 happened. I'm very grateful to him and I'd be grateful if you could
convey that to him.

WITNESS: It shall be done, sir.

45 PRESIDENT: Can you simply say, thank you.

WITNESS: Thank you, sir.

PRESIDENT: Thank you, Inspector, you might stand down.

5

<WITNESS WITHDREW

[1417]

10 COL GRIFFIN: Now, sir, I have some documents to tender. You will recall that there was some members of the United States Defence Force in the mortuary affairs system whose statements were tendered. I now have the redacted versions of those statements. Unfortunately they're not numbered in respect of the exhibit numbers.

15

PRESIDENT: Well they can married up at a later time.

COL GRIFFIN: I can't tell you which ones they are. We might simply place the redacted version with the classified version on that basis.

20

PRESIDENT: If you'd be so good.

COL GRIFFIN: The next document, sir, is a statement by LTGEN Peter Leahy, the Chief of the Army, I tender that, sir.

25

PRESIDENT: Any opposition to LTGEN Leahy's statement?

COUNSEL REPRESENTING: No, sir.

30

PRESIDENT: Exhibit 197.

#EXHIBIT 197 - LTGEN LEAHY'S STATEMENT

35

COL GRIFFIN: The next document, sir, is the email referred to by Soldier 39 in his evidence in respect of the conversation with the SIB Major which he described as being issued on 22 April and I've now received a copy of that email sent by JTF 633. It's a five page email relating to the central document, being the email sent by Soldier 39 on 22 April 2006 at 2309 hours. It's a classified document, sir, which will need to be redacted in due course.

40

PRESIDENT: It will be redacted in the fullness of time, it will be marked as - anybody got objection to that?

45

COUNSEL REPRESENTING: No, sir.

PRESIDENT: And there will be a redacted and classified version of it.

5

#EXHIBIT 198 - EMAIL SENT BY JTF 633

10 COL GRIFFIN: Sir, we await two more documents to be tendered in due
course. The Chief of the Defence Force also has a statement for the
Board. That matter has been delayed due to the operational issues that
have occurred. I'm advised that it's likely to be with us tomorrow or
15 Friday, but it's on its way, sir, and it will be tendered in due course and
made available.

The next step is to deal with one of the outstanding terms of reference, sir.
We have a witness and I'll now hand over to MAJ Jolly.

20 PRESIDENT: Thank you.

MAJ JOLLY: Good afternoon, sir. Sir, I call COL Peterson.

25 <COL PAUL JERRY PETERSON, sworn [1421]

<EXAMINATION BY MAJ JOLLY

30

MAJ JOLLY: Sir, your full name and current posting, please?
---COL Paul Jerry Peterson. I'm posted as Colonel training support at
Headquarters Training Command Army, Victoria Barracks Sydney.

35 Sir, very briefly, could you describe your role and then your
organisation's role?---I'm responsible for coordination and management
of all issues of training support for the conduct of individual training
within the Army. That includes issues such as personnel management,
40 legal, health and safety, and logistic support, and Training Command
Army delivers individual training to the soldiers, NCOs and officers of the
Army.

45 Is part of your role to incorporate changes recommended by boards of
inquiry?---I have an oversight role in that regard to make sure that
recommendations from boards of inquiry and other inquiries, where

they're relevant to Training Command Army, are implemented.

5 As part of the process of preparing to attend today, did you have cause to review an incident that occurred in 1994 at Greenbank in Queensland?---I did.

That's the PTE Watson Board of Inquiry?---Yes, it is.

10 That involved an incident with a self-loading pistol?---Yes, it did.

Do you have a copy of your statement in front of you, sir?---I do.

15 As part of that statement have you made a number of enclosures to it that deal with the findings of the PTE Watson Board of Inquiry and other related documents?---There are a number of enclosures which have been submitted to this Board.

20 Thank you. Sir, I tender the statement. That needs no classification, but I would ask that the enclosures have a classified prefix, please.

PRESIDENT: Is everybody comfortable with that approach?

COUNSEL REPRESENTING: Yes, sir.

25 MAJ JOLLY: I should also indicate, sir that Counsel Representing have had a copy of COL Peterson's statement but have not yet had the ability to view the enclosures. It is quite a large document and we are - reprographics is attending to that. So Counsel Representing will have a copy of those enclosures a bit later on.

30 PRESIDENT: Do Counsel Representing feel at a disadvantage at this time? Do they need some more time to consider?

COUNSEL REPRESENTING: No, sir.

35 MAJ JOLLY: I can say, sir, that COL Peterson's statement is very comprehensive and quite clear and it is quite possible to read that without the need to refer to the enclosures, save for specific detail.

40 PRESIDENT: Very well.

#EXHIBIT 199 - STATEMENT OF COL PETERSON WITH ENCLOSURES

45

MAJ JOLLY: COL Peterson, I don't intend to take you through your statement, but arising from it I just have a number of general questions that I would seek your assistance in helping the Board. When a board of inquiry recommends changes to training, is it your organisation that has the sole responsibility to incorporate them into doctrine changes?---If the changes relate to the conduct of training within the Army, yes, and those changes would be directed out to the appropriate parts of the organisation. I note that sometimes those recommendations might spill outside the Army, however, and we would then liaise with Navy, Air Force or other parties appropriately.

Sir, you indicate in paragraph 38 of your statement that there is a validation cycle that occurs every five years whereby documents are reviewed or, I should say, publications are reviewed. Are there any other reviews that your organisation conducts outside that validation cycle? ---Yes, there are. The validation cycle is designed as a standard process of review to make sure that doctrine doesn't become stale or outdated. But if particular issues arise from operations from inquiries such as this one or other special events, then wherever possible and appropriate we look to incorporate the lessons learned into doctrine and training as appropriate.

Sir, one of the terms of reference that this Board of Inquiry is charged with discharging is to determine whether there is any outstanding action required of members or units to enable finalisation of previous incidents. In terms of your analysis of the PTE Watson Board of Inquiry, firstly, is that the only relevant inquiry to a single self-loading pistol that you're aware of in terms of Army?---This is the only other incident involving a death in training or in service, an accidental death arising from use of a self-loading pistol that I am aware of.

Arising from your analysis of the PTE Watson Board of Inquiry, are you able to say whether all of the recommendations made by the PTE Watson Board of Inquiry specific to the issue of training, your bailiwick, as it were, have been incorporated into extant publications?---Yes, I am. The Board of Inquiry into the death of PTE Jacinta Watson made 20 recommendations. Recommendations 6 through 13 related specifically to the conduct of training or the content of doctrine and those recommendations have all been implemented.

Sir, following from that answer, are you able to assist the Board, given that you've done that analysis of the Watson recommendations, what types of recommendations are most useful to your organisation in terms of the task of converting them from a raw recommendation, as it were, into doctrinal changes? By that I mean say a generic recommendation as

5 opposed to a recommendation that is quite specifically targeted?---I would suggest that recommendations which are generic in nature can sometimes be problematic to implement. It depends of course on the content of that recommendation. Generally the most helpful ones will be those which are specific and which have tangible outcomes and which can lend themselves to implementation or changes to training or changes to doctrine.

Thank you, sir. Nothing further.

10 PRESIDENT: Thank you. LTCOL Wilkinson, have you any questions?

LTCOL WILKINSON: No sir.

LTCOL GREEN: No, sir.

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LTCOL BERKLEY: No, sir.

MAJ JOLLY: Thank you. I've got no further questions.

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

<WITNESS WITHDREW

[1429]

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MAJ JOLLY: Sir, that concludes the evidence for today. As COL Griffin indicated, there are still a number of outstanding documents that we hope to have to hand and will tender accordingly.

30 PRESIDENT: Very well.

LTCOL BERKLEY: Just before you go this afternoon, sir, I showed Mr Jensen some CDs and some photograph material. That hasn't been tendered. I just seek to have it tendered now. There's two bundles of photos and the CDs that they're drawn from.

35

PRESIDENT: Is there any opposition to the tender of those documents that were shown to Mr Jensen earlier today?

40 COUNSEL REPRESENTING: No, sir.

MAJ JOLLY: Sir, I take it, LTCOL Berkley, you want it in hard copy and electronic copy.

45 LTCOL BERKLEY: Yes.

MAJ JOLLY: There's no opposition.

5 **#EXHIBIT 200 - PHOTOGRAPHS AND CDs SHOWN TO
MR JENSEN**

10 PRESIDENT: Any other business we can complete this afternoon?

MAJ JOLLY: Not at this point, sir. MAJ Belkin has just drawn to my attention that there are a number of additional documents simply in terms of closing the loop, things like medical documents and other things, other documents that have been returned under summons issued by the Board.
15 We can deal with them tomorrow. I know that it is proposed that notices will be formally issued on the record tomorrow. Perhaps to that end, sir, a later than normal starting time, perhaps around the 10 o'clock or 1030 hours. I'm in your hands, sir.

20 PRESIDENT: Is everybody comfortable with say 10.30?

COUNSEL REPRESENTING: Yes, sir.

25 PRESIDENT: If we can actually make it 10.30 rather than 10.30-ish.

MAJ JOLLY: Yes, indeed, sir.

PRESIDENT: Very well then, 10.30 tomorrow.

30 **MATTER ADJOURNED AT 1431 UNTIL
THURSDAY 7 SEPTEMBER 2006 AT 1030**