

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

1041 THURSDAY 07 SEPTEMBER 2006
DAY 35

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.....  Date07/09/06.....(President)

Signed.....  Date 07/09/06.....(Recorder)

Signed.....  Date 07/09/06.....(Transcriber)

Signed.....  Date 07/09/06.....(Transcriber)

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5 PRESIDENT: Good morning, Colonel.

COL GRIFFIN: Mr President, Members, good morning. Mr President, I have no more witnesses to give evidence in person to the Inquiry. We have a considerable volume of documentary material yet to be tendered. I propose to put that which we currently have in evidence today. I also have further statements from the SIB Captain in respect of the time line and delays encountered in his investigation. We await statements from the senior officers, the two Colonels that were indicated in the direct liaison authority evidence. Those documents are being prepared on their return from operations and will be distributed to counsel in due course; I anticipate by close of business Monday.

20 I'm advised that CDF statement should be with us by close of business tomorrow. I will distribute all of those documents as they arrive to Counsel Representing. I propose that when we return formally tender the remaining documents that we are yet to receive. But in the meantime, sir, I'll now proceed to tender the series of documents that we have. Firstly, the statement of the SIB Captain.

25 PRESIDENT: Any objection to that document?

COUNSEL REPRESENTING: No, sir.

30 **#EXHIBIT 201 - CLASSIFIED AND REDACTED STATEMENT OF THE SIB CAPTAIN**

COL GRIFFIN: Next is PTE Kovco's medical records provided by Health Records Army. Sir, I ask that PTE Kovco's medical records be classified and be protected out of the interests of privacy. They do not relate at all to the circumstances surrounding his death. They've been made available to all Counsel Representing and the family, but in the interests of privacy I ask that you direct that the document be classified as part of the Board's records.

40 PRESIDENT: In particular, COL Young, are you comfortable with that approach?

45 COL YOUNG: Yes, that's appropriate.

PRESIDENT: Certainly nothing that's in them relates to the events of 21 April?

5 COL YOUNG: I haven't had an opportunity of perusing them myself. I understand that's the case and I accept that assurance from Counsel Assisting.

10 PRESIDENT: If it turns out that there's something in them that does relate to the events of 21 April we might have to revisit the matter. But subject to any comment, I would propose to classify them.

15 COL GRIFFIN: It may assist in that regard, sir, if I refresh memories that these documents were made available to Prof McFarlane and Prof Mitchell in the preparation of their expert medical evidence and that there was nothing that arose - - -

PRESIDENT: They of course didn't draw on them, did they?

20 COL GRIFFIN: No, they did not, sir, other than to refer to them as material provided to them for the purpose of their opinion.

PRESIDENT: Very well.

25 **#EXHIBIT C202 - PTE KOVCO'S MEDICAL RECORDS**

30 COL GRIFFIN: The next bundle of documents, sir, is the hospital report of death and the associated documents produced by the hospital.

PRESIDENT: Any comment about the tender of those documents?

COUNSEL REPRESENTING: No objection to that, sir.

35

#EXHIBIT 203 - HOSPITAL REPORT OF DEATH AND ASSOCIATED DOCUMENTS PRODUCED BY THE HOSPITAL

40 COL GRIFFIN: Sir, these documents relate to the immediate circumstances surrounding the death of PTE Kovco, and in that respect in my submission it's appropriate for them to be public records since they relate to the immediate circumstances of the death, not to his previous medical history.

45

PRESIDENT: I take your point and they'll remain open documents.

5 COL GRIFFIN: Thank you, sir. The next bundle of documents relate to the repatriation of PTE Kovco. It includes the airway bill, the various theatre mortuary evacuation point documents and the Kuwaiti certificates. Again, sir, other than the privacy aspects relating to the identity of the US service people involved, which should be redacted and will be, the document could be a - or the bundle could be public documents.

10 PRESIDENT: Is there any opposition to the reception of those documents with the deletion of the military - - -

COUNSEL REPRESENTING: No objection, sir.

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#EXHIBIT 204 - REDACTED VERSION OF BUNDLE OF DOCUMENTS RELATING TO PTE KOVCO'S REPATRIATION

20 COL GRIFFIN: The next bundle, sir, is the unit medical record for PTE Kovco, which should of course correspond to the central medical record, but in practical experience often does not. So for the sake of completeness, I tender that document, but again I ask that it be protected given its personal privacy nature and that it's unrelated to the
25 circumstances of the death.

PRESIDENT: I take it, COL Young, on the same condition.

30 COL YOUNG: That's marking is appropriate, yes, sir, and on the same conditions.

#EXHIBIT C205 - PTE KOVCO'S UNIT MEDICAL RECORD

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COL GRIFFIN: The next bundle contains the medical documents relating to PTE Kovco which were provided to the SIB by the Victorian Coroner's office. These documents relate again to the immediate circumstances of the death and on that basis they would be public documents.

40

PRESIDENT: Any comment?

COUNSEL REPRESENTING: No objection.

45

#EXHIBIT C206 - PTE KOVCO'S MEDICAL DOCUMENTS PROVIDED TO THE SIB BY THE VICTORIAN CORONER'S OFFICE

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COL GRIFFIN: The next bundle of documents, sir, are PTE Kovco's dental records. Again the privacy aspect of an individual's dental record in my submission, although different to the medical history, it's a matter for you, sir, whether or not you think this is something that should be kept in privacy.

10

PRESIDENT: I'll hear from COL Young.

15

COL YOUNG: Mr President, I'd regard dental records as part of medical records and I would - - -

PRESIDENT: It's hardly likely to cause anybody any excitement though.

20

COL YOUNG: Well, one doesn't know. I would regard it as part of medical records, as part of one's overall - - -

PRESIDENT: But doesn't it form part of the chain ultimately of identification of your client? The dental records were used in part by the Coroner to identify him.

25

COL YOUNG: That's evidence before the Board, sir, I accept that. I wonder if you might give me some time to just consider that.

30

PRESIDENT: Yes, by all means. I'll mark them 207. At this stage as to whether they're open or classified will remain an unanswered question.

COL YOUNG: Thank you.

35

PRESIDENT: We'll come back to that before the end of the day.

#EXHIBIT 207 - PTE KOVCO'S DENTAL RECORDS

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COL GRIFFIN: Mr President, I apologise. I've just been informed that Exhibit 206, which I'd indicated to you were documents relating only to the death in fact contain PTE Kovco's entire medical history which was apparently provided to the Victorian Coroner's office and has then come back to - - -

45

PRESIDENT: So we're in fact duplicating 202 and 205 perhaps.

COL GRIFFIN: Correct. It would need to be classified given it's got the full history of it or an attempt we can make to separate the two.

5

PRESIDENT: I think they should be separated because I think people are entitled to see what I will call a Coroner's version.

COL GRIFFIN: Yes, and if the others are a duplicate of 202 or 205, then they're already in evidence; so we can simply withdraw them. Sir, if you'll allow me, I'll attend to that and we can resubmit that still holding that exhibit number but I'll subtract from it the duplicated material.

10

PRESIDENT: Are you comfortable with that approach, Colonel?

15

COL YOUNG: Yes.

PRESIDENT: Any other comment? So be it.

COL GRIFFIN: The next document, sir, is titled "Dental X-ray of an Unknown Soldier". This has been provided to the Board by the Military Police. The Military Police indicate it was provided to the Victorian Coroner by the Victoria Barracks contractor that provides dental services here. The probative value of it therefore is - - -

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25

PRESIDENT: Where does it take us?

COL GRIFFIN: Nowhere. I simply offer it for the sake of completeness as part of the trail of material that's been provided to the Board.

30

PRESIDENT: I don't think it's going to be the end of the world if we don't see it and it won't be the end of the world if we do.

COL GRIFFIN: Very well, sir; thank you. I have no reason to put it into evidence before you.

35

PRESIDENT: Does anybody see any purpose of the exercise?

COL YOUNG: I just wonder if it ought to be tendered at all. It seems to me it's not relevant, it should not be tendered.

40

PRESIDENT: That's what's going through my mind.

COL GRIFFIN: In that case I withdraw it from the list of documents for tender, sir.

45

PRESIDENT: Thank you.

5 COL GRIFFIN: Next bundle of documents, sir, is a bundle of medical documents regarding the attempts of resuscitation of PTE Kovco which were raised by the 10th Combat Support Hospital at the time of the incident.

10 PRESIDENT: Any comment as to that, COL Young?

COL YOUNG: No objection.

15 **#EXHIBIT 208 - BUNDLE OF DOCUMENTS REGARDING ATTEMPTS AT RESUSCITATION OF PTE KOVCO**

20 COL GRIFFIN: Thank you, sir. There's a considerable quantity of that material which counsel will need to consider in due course, sir. But other than that, that is all the evidence I have for you at the moment. I have no further oral witnesses to appear before the Board. We await the provision of some further documentary evidence which will be distributed to counsel. On that basis, sir, I ask that we adjourn now and that we return not before Monday, 18 September, at which time I will tender to you any final material that is obtained. During that process we will conduct an audit of the Terms of Reference and the material that we have presently in evidence so that I can advise you that I have formally completed the entirety of the evidence and then with your leave commence to make my closing address to you and the Members followed by submissions and addresses from Counsel Representing affected persons.

30 PRESIDENT: Does that accord with everybody's timetable?

35 LTCOL GREEN: Thank you, sir, yes.

COL YOUNG: Yes, it does. COL Griffin has indicated there's sufficient material to keep us busy for the next week or so until the 18th.

40 PRESIDENT: Do we need to come back for the question of the dental records that we didn't mark whether they were classified or otherwise? I'd obviously like to leave that tidy before we adjourn.

45 COL YOUNG: If you would just give me perhaps a short time this morning.

PRESIDENT: We might leave for five or 10 minutes and then come back and conclude that point. Having done that, we'll adjourn.

COL GRIFFIN: Very well, sir; thank you.

PRESIDENT: Thank you.

ADJOURNED [1055]

RESUMED [1221]

PRESIDENT: Yes, thank you, Colonel.

COL GRIFFIN: Thank you, sir. Sir, the short adjournment was in fact fortuitous because during that time I've received the statement from the Chief of the Defence Force, which has now been copied and distributed to Counsel and it's before the Board. It did contain reference to one person whose name has been redacted. As a consequence, I've produced for the Board a classified version and a redacted version and I tender the CDF statement, sir.

PRESIDENT: Any opposition to that document.

COUNSEL REPRESENTING: No, sir.

PRESIDENT: It will be marked as Exhibit 209 in both a classified and redacted version.

#EXHIBIT 209 - CLASSIFIED AND REDACTED VERSION OF CDF STATEMENT

COL GRIFFIN: The redaction is just to one name which appears at paragraph 15 and it in fact refers to Soldier ... who is in theatre. Sir, I now seek to correct some of the material that went before you this morning and to clarify the issue in respect of the dental records. COL Young has considered the documents and the dental records that are contained in Exhibit 207, I understand he's happy for them now to be a public record.

COL YOUNG: That's the case, Mr President.

PRESIDENT: All right, make it so.

5 COL GRIFFIN: Thank you, sir. In respect of exhibit 201, which I tendered, being the timeline provided by the SIB Officer, that will need to be both classified and redacted as there are some identities disclosed in there, specifically his own and some other people.

10 PRESIDENT: He is still in theatre, of course. I take there's no problem with a classified and redacted version?

COUNSEL REPRESENTING: No, objection, sir.

15 PRESIDENT: So be it.

COL GRIFFIN: In Exhibit 204, sir, Soldier 2's name appears and will require redaction and I intend, subject to your approval, to only have the redacted exhibit, that is we will remove Soldier 2's name and have just the redacted Exhibit 204 being the documents to affect the repatriation of PTE Kovco.

PRESIDENT: Is everybody comfortable with that?

25 COUNSEL REPRESENTING: Yes, sir.

PRESIDENT: Make it so.

COL GRIFFIN: In respect of Exhibit 206, we indicated that some pages may need to be classified. In fact the entirety is the history of PTE Kovco's medical records and thus would need to be classified. These are the records that were provided to the SIB by the Victorian Coroner's office and the three bundles that we now have in the Board of medical documents for PTE Kovco, at the moment, require an audit because there seems to be some difference in the records, as I foreshadowed earlier that sometimes the Unit record doesn't match - - -

PRESIDENT: Yes, more up to date, hopefully.

40 COL GRIFFIN: - - - the more up to date central medical record. As a consequence of that, all the medical records which would in any event, in my submission to you, be protected as to his medical history for privacy reasons, but I do propose to continue with the tender of this because it's the material that was considered by the Victorian Coroner's Court.

45

PRESIDENT: Yes, very well.

COL GRIFFIN: So that Exhibit 206 be classified.

5 PRESIDENT: Any difficulty with that?

COUNSEL REPRESENTING: No, sir.

10 PRESIDENT: Yes, make it so.

COL GRIFFIN: And finally, sir, I mentioned to you this morning that the dental X-ray for an unknown soldier, on further examination of the material, the dental X-ray appears to the untutored eye to match one of the dental X-rays in PTE Kovco's record and in any event, on further
15 examination of the documents contained with it, it was provided to the Victorian Coroner by Army Health Records through the SIB and on the SIB tag it indicates that it was obtained by the SIB from Army Health Records and described as "One original dental X-ray pertaining to 8229393 PTE J Kovco".

20 The "Unknown Soldier" tag comes from the medical records receipt of the State Coroner of Victoria and you, sir, would appreciate, that is the classification given for documents coming in until such time as the formal identification. We know that those documents, on the balance of
25 probabilities are - or that X-ray is of PTE Kovco, so I put it in for completeness as a separate exhibit then, sir. Again, showing the material that has gone to the Victorian Coroner for the sake of completeness of the record and ask that it be given an open classification, that is a public record and an exhibit number in its own right.

30 PRESIDENT: Are you comfortable with that, gentlemen?

COL YOUNG: Yes, I've considered that and discussed that with Counsel.

35 PRESIDENT: Any other difficulties with that?

COUNSEL REPRESENTING: No, sir.

40 PRESIDENT: It will be marked as Exhibit 210 and of course it's part of the public record.

45 **#EXHIBIT 210 - DENTAL X-RAY**

COL GRIFFIN: Thank you, Mr President. That completes the entirety of the documentary material, other than the statements that I indicated to you we are waiting on from the two senior officers at Land Headquarters in respect of the direct liaison issue for the Military Police. We anticipate receiving them either tomorrow or early next week. So I propose that we adjourn, to return on Monday 18 September to complete the audit of evidence at that time and subject to it being a satisfactory completion of audited evidence for me to embark on a closing address to you at that stage.

PRESIDENT: Yes, very well. Would anybody be bold enough to predict how long peoples' addresses will be, without wishing to limit them or hold them to it?

COL GRIFFIN: Sir, I would indicate that I think we would need three days to complete the entirety of the final tendering of any documentary material, for my closing address and for addresses of Counsel, but I shouldn't think there'd be much more than three days.

PRESIDENT: Is everybody comfortable with that estimate?

LTCOL: Yes.

COL YOUNG: I would think three days should be allowed at least.

PRESIDENT: Very well.

COL GRIFFIN: Thank you, sir.

PRESIDENT: We will adjourn then until the 18th at 10 am.

COL GRIFFIN: Thank you, sir.

**MATTER ADJOURNED AT 1228 UNTIL
MONDAY 18 SEPTEMBER 2006 AT 1000**