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INDEPENDENT COMMISSION AGAINST CORRUPTION

STEPHEN RUSHTON SC  
COMMISSIONER

PUBLIC HEARING

OPERATION ESTRY

Reference: Operation E17/0345

TRANSCRIPT OF PROCEEDINGS

AT SYDNEY

ON MONDAY 21 MAY, 2018

AT 10.00AM

Any person who publishes any part of this transcript in any way and to any person contrary to a Commission direction against publication commits an offence against section 112(2) of the Independent Commission Against Corruption Act 1988.

This transcript has been prepared in accordance with conventions used in the Supreme Court.

THE COMMISSIONER: Now, Mr Duggan, you appear to assist, do you?

MR DUGGAN: I do, Commissioner.

THE COMMISSIONER: Thank you. I propose to announce the general scope and purpose of this inquiry. Is that better, Mr Green? I propose to announce the scope and purpose of this inquiry. First, whether on or about 19 February 2014, Corrective Services New South Wales officers including John O'Shea, Brad Peebles, Stephen Taylor, Brian McMurtrie, Terrence Walker, Elliott Duncan and Simon Graf dishonestly exercised their official functions in relation to an assault of a prisoner, including by subjecting the prisoner to the use of force which was unwarranted and inappropriate in the circumstances, colluding for the purpose of providing a false and misleading account of the reasons for attending the cell occupied by the prisoner, and subjecting him to the use of force.

Third, submitting, reviewing and approving a Use of Force Package including incident reports that contained false and misleading information in relation to the reason for attending the cell occupied by the prisoner and subjecting him to the use of force. Failing to record the use of force by way of video camera as required by the policies and procedures of Corrective Services New South Wales and destroying or not maintaining CCTV footage of the area immediately outside the cell occupied by the prisoner.

A second matter which falls within the general scope and purpose of this inquiry is whether on 20 February, 2014, Corrective Services New South Wales officers dishonestly exercised their official functions by falsely representing that 0.2 grams of buprenorphine was recovered during the search of the cell occupied by the prisoner from his personal belongings. The general scope and purpose of the public inquiry is to gather evidence relevant to the matters being investigated for the purpose of determining the matters referred to in section 13(2) of the ICAC Act.

Now, can I indicate that once Mr Duggan has opened I'll take applications for authorisation to appear, but I should say that in terms of sitting times and dates, the Commission will be sitting today until Thursday, 31 May and a further single day if it's necessary on Monday, 4 June. Sitting days will commence at 10.00am and finish at 4.00pm with breaks for morning tea and for lunch. I propose to give a non-publication direction in respect of two prisoners who, as I understand it, will be giving evidence during the course of this public hearing. They are [REDACTED] and [REDACTED]. I ask any media who are present today to take particular note of this direction.

Being satisfied that it is necessary and desirable in the public interest to do so, I direct pursuant to section 112 of the Independent Commission Against Corruption Act 1988, that any information that might enable inmates [REDACTED] and [REDACTED] to be identified shall not be published or otherwise communicated to anyone except by Commission officers for statutory

purposes or pursuant to further order of the Commission. That includes without limitation their names, physical appearance or other personal details and their place of incarceration.

**BEING SATISFIED THAT IT IS NECESSARY AND DESIRABLE IN THE PUBLIC INTEREST TO DO SO, I DIRECT PURSUANT TO SECTION 112 OF THE INDEPENDENT COMMISSION AGAINST CORRUPTION ACT 1988, THAT ANY INFORMATION THAT**  
10 **MIGHT ENABLE INMATES ██████████ AND ██████████ TO BE IDENTIFIED SHALL NOT BE PUBLISHED OR OTHERWISE COMMUNICATED TO ANYONE EXCEPT BY COMMISSION OFFICERS FOR STATUTORY PURPOSES OR PURSUANT TO FURTHER ORDER OF THE COMMISSION. THAT INCLUDES WITHOUT LIMITATION THEIR NAMES, PHYSICAL APPEARANCE OR OTHER PERSONAL DETAILS AND THEIR PLACE OF INCARCERATION.**

20 THE COMMISSIONER: Can I also remind Commission staff that any transcript which is published on the Commission's website will need to be edited, if it is easier to do so I am content if pseudonyms are used, although I don't insist on that happening within these hearings. Perhaps inmate A or inmate B, or whatever the case might be, and can I remind all others present here today, including New South Wales Correction staff, that the direction I have made extends to all of you. So that means, for example, Correction staff are not at liberty to communicate to other Correction staff who are not here today or to any inmate, the identity of the inmates I have referred to.  
30 To breach the direction I have just given involves a serious criminal offence which can lead to a fine of up to \$5500 or 12 months imprisonment or both, and I would ask those legal practitioners who are here today to explain what I've said to their clients if they consider it necessary to do so. I also propose to make a further non-publication direction in relation to personal information which might appear in exhibits tendered during the hearing or documents shown to the witnesses during their evidence.

Being satisfied that it is necessary and desirable in the public interest to do so, I direct pursuant to section 112 of the Independent Commission Against Corruption Act 1988, that other than publication to or by Commission  
40 officers, any private email addresses, private residential information, private phone numbers and like information appearing in exhibits or documents put before witnesses shall not be published or otherwise communicated.

**BEING SATISFIED THAT IT IS NECESSARY AND DESIRABLE IN THE PUBLIC INTEREST TO DO SO, I DIRECT PURSUANT TO SECTION 112 OF THE INDEPENDENT COMMISSION AGAINST CORRUPTION ACT 1988, THAT OTHER THAN PUBLICATION**

**TO OR BY COMMISSION OFFICERS, ANY PRIVATE EMAIL ADDRESSES, PRIVATE RESIDENTIAL INFORMATION, PRIVATE PHONE NUMBERS AND LIKE INFORMATION APPEARING IN EXHIBITS OR DOCUMENTS PUT BEFORE WITNESSES SHALL NOT BE PUBLISHED OR OTHERWISE COMMUNICATED.**

THE COMMISSIONER: Yes, Mr Duggan.

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MR DUGGAN: Thank you, Commissioner. Commissioner, this public inquiry is part of an investigation into events which occurred in Lithgow Correctional Centre in February 2014. The central inquiry is whether senior staff, including commissioned officers, have engaged in a cover up to hide the fact that an inmate was assaulted by one or more officers. In broad compass, the public inquiry will look at whether the officers who were involved gave false or misleading accounts of the incident, whether the reason for attending the inmate's cell was manufactured after the event, and whether a drug found on the inmate might've been planted. Importantly, it should not be assumed that the events which unfolded at Lithgow are necessarily isolated, they are not.

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Like all public authorities, Correctives New South Wales is required by section 11 of the ICAC Act to report to the Commission through its principal officer any matter that it suspects on reasonable grounds concerns or may concern corrupt conduct. A number of matters have been reported by Corrective Services to the Commission concerning allegations of similar misconduct by correctional staff in other correctional centres, including the alleged misreporting of use of force incidents at various correctional centres last year. Those other matters involved the unwarranted or excessive use of force against an inmate, followed by collusion between correctional staff to cover up the actions of correctional officers. Those cover-ups primarily occurred through the filing of false or misleading reports about the relevant events.

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With systemic corruption in mind, this public inquiry will investigate, at least in some way, the culture and mindset of correctional officers. That will include looking at whether any officers at Lithgow felt pressured to conceal the full extent of what actually happened. I anticipate some witnesses will give evidence with the expectation that if they reported incidents in a way which implicated other officers, they would be ostracised and referred to as "dogs". If this is true, it raises serious questions about the cultural environment in which correctional staff work, including whether a significant number of them feel obliged to protect their colleagues rather than report any wrongdoing, such as an assault on an inmate.

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I turn now to the events of Lithgow Correctional Centre. Lithgow Correctional Centre is one of 38 correctional centres administered by

Corrective Services in New South Wales. Lithgow is a maximum security prison for men. On occasion, prisoners are confined to a unit in the prison known as the segregation unit. You may hear it referred to by its nickname, segro. A prisoner may end up in segregation for a variety of reasons, including their own violent conduct or to provide them with protection from other inmates. The segregation wing houses STG or ETI prisoners, which stands for state threat group or extreme threat inmate.

10 In February 2014 [REDACTED] was on remand in Lithgow Correctional Centre. At the time he was awaiting determination of a charge for the supply of a prohibited drug in a large commercial quantity. He was ultimately convicted of that charge and sentenced to a lengthy term of imprisonment. He was an asthmatic, the relevance of which will become apparent. [REDACTED] was not considered to be a violent offender and did not pose any serious threat, however [REDACTED] identified as an associate of the [REDACTED] Outlaw Motorcycle Gang.

20 Lithgow Correctional Centre is known for housing a number of prisoners who are members of the rival [REDACTED] motorcycle gang. It is no secret that there is no love lost between the [REDACTED] and the [REDACTED]. Whilst he was on remand at Lithgow Prison, [REDACTED] was placed in segregation for his own protection.

[REDACTED] was by himself in cell 208 in Unit 5, in the segregation unit, for some time. In mid-February 2014, not long before the incident in question, he was joined by another prisoner, one [REDACTED]. On 19 February, 2014, the prison was in lockdown. The purpose of the lockdown was so that a routine search operation could be conducted of some of the cells in the prison. At 8.00am a new shift began. The officers who arrived for work were involved in a parade where they were briefed with information about the search. The search operation was conducted with the assistance of the Immediate Action Team, known by its acronym, IAT.

40 The IAT is a specially-trained unit within Corrective Services. They are easily recognisable because they wear vests, carry chemical munitions, handcuffs and other equipment. They are sometimes referred to by inmates as “the squad” or “the Ninja Turtles”. As their name suggests, the Immediate Action Team is often deployed in the event of an emergency response situation to assist in the removal of violent or non-compliant offenders from their cells, and similar situation requiring their assistance.

Also involved in the search operation was an officer of the Special Operations Group or SOG. This group has also been known as the State Emergency Unit or SEU. During the morning search, operations were under way in a different part of the prison from the segregation unit. Meanwhile, inmates [REDACTED] and [REDACTED] were confined to their cell in Unit 5.1.

Each cell in the prison has an intercom which allows the inmates to communicate with prison officers. It is known colloquially as the “knock-up” system. The knock-up system is really intended for emergencies. However, because of their confinement it is sometimes used for more routine communications by inmates in the segregation wing. When the knock-up button is pressed in cell 208 it rings on an intercom in the officers’ station located not far from the cell itself. On this particular morning, ██████ pressed the intercom button to make a complaint, in effect about the fact that there was no television in his cell.

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The most senior officer in the prison is the governor, also referred to as the general manager. The governor of Lithgow Correctional Centre in 2014 was John O’Shea. Mr O’Shea happened to be in Unit 5 when ██████ decided to use the knock-up system. When ██████ call came through, the governor was in the officers’ station. I expect there to be some evidence that ██████ was verbally abusive when he spoke on the intercom and made demands for a television, and that at some point Governor O’Shea activated the intercom and, in effect, told ██████ to shut up.

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At some point after that intercom conversation the Immediate Action Team were radioed by Senior Assistant Superintendent Taylor and asked to attend Unit 5. There was some sense of urgency conveyed in that radio call. The attending Immediate Action Team was led by Terrence Walker, a senior correctional officer, together with two first-class officers. One of the officers from SOG’s Dog Unit, Michael Watson, and his German shepherd also arrived.

30

When the IAT arrived in Unit 5, Senior Corrections Officer Walker was informed about the abusive call over the knock-up system and was instructed to, quote, “Sort it out.” The IAT officers proceeded to cell 208, other correctional staff were in attendance. Officer Walker entered the cell. What happened next sparked a chain of events which has led to this public inquiry. Whatever did occur, it is clear that ██████ sustained injuries including a black eye, bruising around his mouth and an injury to his rib area. He was transferred to the Lithgow Hospital and admitted to the Emergency Department for assessment.

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I understand that ██████ will say that members of the squad entered his cell and he was bashed. If that is true, it was not the way in which the incident was reported by the officers who were involved. Before referring to those reports, it is necessary to say something about Corrective Services. As one would expect, the day to day management of prisoners and inmates is governed by well-developed policies and procedures. They range from regulations limiting the size of a ladder used for maintenance, to a policy governing the way an inmate gets a haircut. Of particular relevance to this inquiry, however, are policies dealing with the reporting requirements in the event of a use of force against an inmate, the use and management of video and CCTV by correctional staff, policies relating to search procedures

generally, and procedures relating to the searching, confiscation and destruction of drugs found on inmates.

10 In 2014, the procedure in Lithgow was for a use of force or an UOF package to be prepared in the event of a use of force on an inmate. These UOF packages were required to include at least incident reports from all involved officers, an injury questionnaire form and photos of any injuries. Further, it was the obligation of the IAT to ensure that a video camera was used to record all actual or potential use of force incidents. Such video footage together with any relevant CCTV would ordinarily be included in the UOF package. The practice at Lithgow was for the package to be submitted to the manager of security within 24 hours for his review. As a matter of course, the use of force is logged on an internal database. This entry is known as the incident reporting module, or IRM.

20 As previously stated, the most senior officer in the Lithgow Correctional Centre is the governor. The next most senior officer in Lithgow is the manager of security. You may hear his position referred to as the MOS. The appointed manager of security in Lithgow on 19 February 2014 was Brad Peebles, although it is likely he was not technically acting as the manager of security on that day. The acting manager of security on 19 February was Senior Assistant Superintendent Taylor. Both of those officers were present at some stage in Unit 5 on the day of the incident.

30 Each correctional centre has an intelligence officer. The Intel manager, as they are called, is ordinarily a senior officer within the prison. The Intel manager at Lithgow in 2014 was Assistant Superintendent Brian McMurtrie. I return to the morning of 19 February 2014. After ██████ had received his visit from IAT, at about 10.45am he was seen in Unit 5 by the nurse unit manager. She observed ██████ to have a lacerated and swollen lip, bruising to his left eye and cheekbone and tender ribs. About this time an officer was tasked to take ██████ through an inmate assault and injury questionnaire. In answering questions, ██████ said he had no comment to make as to the cause of the injury but did say that he considered himself responsible for the injury.

40 At 12.25pm, the Intel manager, Assistant Superintendent McMurtrie, sent an information report to Mr Peebles. That information report referred to intelligence from an informant of a, quote, "Large quantity of Suboxone in ██████ cell." Suboxone is a brand name for a composite drug of which buprenorphine is an active ingredient. Like methadone it is a medication prescribed to treat addiction to opioids such as heroin. It is illegal without a prescription. It is also commonly referred to as "bupe". The informant was said to be confident on the information and has previously been reliable. The information report suggests that ██████ cell was visited by IAT at the direction of the manager of security because of the tip off.

At 1.38pm, an IRM report was entered on the database. That report entry was as follows, and I quote at length, “During an intel-based search, IAT were detailed by the manager of security to search cell 208 in 5.1 Unit with directions to specifically look for buprenorphine. Inmates were spoken to at the cell door prior to entry and appeared compliant and reasonable. As officers entered the cell, ██████ ran without warning towards the back of the cell in the direction of the toilet. During the action, ██████ tripped over cell furniture and fell heavily on the toilet itself. IAT officers were unable to intervene in time to stop ██████ disposing of an unidentified article in the  
10 toilet. ██████ was handcuffed and did not resist. The cell was searched thoroughly with only nuisance items being found. ██████ was offered medical attention by Justice Health at Centre Clinic, reported as a technical use of force on the direction of the general manager”, end quote.

Obviously this report says nothing about any assault. It suggests that the injuries were sustained by the inmate in a slip and fall. It also suggests that the reason for entering the cell was to conduct a targeted search for drugs. The truth or otherwise of the matters stated in the IRM report and Assistant Superintendent McMurtrie’s information report is the focus of this inquiry.  
20 In particular, this inquiry will investigate whether both those reports were contrived to cover up the fact that an inmate had been assaulted. Other matters which will be inquired into include why was there no CCTV footage of the relevant incident? Has any footage been destroyed? Why did two officers file reports in relation to the use of force but say nothing at all about any injury? Why did a third officer prepare a report which was not included as part of the UOF package and why did the senior officer who reviewed the UOF package recommend that no further action be taken?

██████ was transported to Lithgow Hospital but was discharged and  
30 returned to Lithgow Prison the same day. The following morning, ██████ made a telephone call to his father in which he complained about being assaulted by the squad, and also said, “If they come in again I don’t give a fuck, I’m going to go on with it, I have a blade ready and all, fuck ‘em.” ██████ father also made a remark in the phone call about waiting outside the gate. ██████ phone call was recorded and came to the attention of correctional staff. A search operation was organised, headed by Deputy Superintendent Mark Kennedy. A short time later, correctional staff attended the cell and removed ██████ Both he and ██████ were strip searched. A search of the cell was also undertaken. No weapon was found  
40 in the cell.

At one point during the search operation, Deputy Superintendent Kennedy and Assistant Superintendent McMurtrie had a conversation with ██████ about the use of force the previous day. During that conversation, ██████ mentioned the possibility of police charges in relation to the use of force. The inquiry is interested in whether there was an attempt to talk ██████ out of going to the police. I mentioned earlier that ██████ was an asthmatic. During the search of his cell, correctional officers found an asthma puffer



which apparently contained a buprenorphine tablet. In a phone call to his father the following day, ██████ denied the drug was his. It was no question ██████ was not on any prescription for buprenorphine. Ordinarily, the find of such a drug would lead to an internal disciplinary charge against the inmate or criminal prosecution. No charge was ever laid against ██████ and there is no evidence the police were informed of the drug find. The drug was apparently disposed of by Assistant Superintendent McMurtrie on 3 May, 2014.

10 This inquiry is investigating the circumstances surrounding the search and the possibility that buprenorphine may have been planted in ██████ puffer. Corrective Services New South Wales is a part of the Department of Justice. Corrective Services has been particularly cooperative in providing assistance to the Commission in the course of its investigation and its preparation for this public inquiry. It is right to say that correctional staff have a difficult and probably thankless task. For most of the general public, what goes on in prisons is out of sight, out of mind. In performing their tasks, correctional staff are given power over inmates. That is a necessary incident with a need for prisoners to be controlled and disciplined.

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However, with those powers comes responsibility. That responsibility includes the use of force against an inmate only where it is necessary and not in a way which is excessive. That responsibility also requires the eradication of any culture which covers up situations where Correctives staff have overstepped the mark. It is important that such conduct does not erode the public confidence in the vast number of correctional staff who perform their functions honestly and without resorting to illegitimate means to enforce effective control. Commissioner, it is expected that this inquiry will run for approximately two weeks and the first witness will be Mr

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Walker.

THE COMMISSIONER: Thank you, Mr Duggan. Just before I adjourn for a short period of time, I notice that you mentioned two motorcycle gangs and ██████ association with at least one of them. Can you just have a discussion with whoever is going to seek leave to appear for Corrections. I'll be interested to know whether they consider that might be problematic and if it is, I'll be minded to make a non-publication order in relation to that detail. I can understand why it was relevant and had to be mentioned but if there is any risk of consequences to anyone as a result of that information

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being in public domain, I'm minded to make such an order.

MR DUGGAN: I'll have that discussion, thank you, Commissioner.

THE COMMISSIONER: All right, I'll adjourn.

**SHORT ADJOURNMENT**

**[10.36am]**

THE COMMISSIONER: Mr Duggan, were you able to discuss that matter I raised before we adjourned?

MR DUGGAN: I was, Commissioner. And, Commissioner, I think Mr Brasch and I are content for a suppression order to be made, if it suits the Commission, to name a motorcycle gang but not the specific motorcycle gangs, so not mention the [REDACTED] or the [REDACTED]. I understand that addresses Mr Brasch's concerns.

THE COMMISSIONER: Okay. Being satisfied that it is necessary and desirable in the public interest to do so, I direct pursuant to section 112 of the Independent Commission Against Corruption Act 1988 that any information that might enable the inmate, [REDACTED] any information suggesting that the inmate, [REDACTED] is associated in any way with the [REDACTED] Outlaw Motorcycle Gang shall not be published or otherwise communicated to anyone except by Commission officers for statutory purposes or pursuant to further order of the Commission.

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**BEING SATISFIED THAT IT IS NECESSARY AND DESIRABLE IN THE PUBLIC INTEREST TO DO SO, I DIRECT PURSUANT TO SECTION 112 OF THE INDEPENDENT COMMISSION AGAINST CORRUPTION ACT 1988 THAT ANY INFORMATION THAT MIGHT ENABLE THE INMATE, [REDACTED] ANY INFORMATION SUGGESTING THAT THE INMATE, [REDACTED] IS ASSOCIATED IN ANY WAY WITH THE [REDACTED] OUTLAW MOTORCYCLE GANG SHALL NOT BE PUBLISHED OR OTHERWISE COMMUNICATED TO ANYONE EXCEPT BY COMMISSION OFFICERS FOR STATUTORY PURPOSES OR PURSUANT TO FURTHER ORDER OF THE COMMISSION.**

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THE COMMISSIONER: I think that covers it, does it not?

MR DUGGAN: Yes, I think it does, Commissioner.

THE COMMISSIONER: All right. Well, I propose to take applications for authorisation to appear.

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MR GREENHILL: May it please you, Commissioner, my name is Greenhill. I seek your leave to appear for Mr Simon Graf. I am instructed by McNally Jones staff and I have my immediate instructing solicitor sitting on my left, Ms Hatzigeorgiou.

THE COMMISSIONER: Thank you, Mr Greenhill.

MR GREENHILL: And my client is in the back standing up, Your Honour.

THE COMMISSIONER: Leave is granted.

MR GREENHILL: Thank you.

MR GIBIAN: May it please, my name is Gibian, G-i-b-i-a-n, initial M. I seek to appear for Cameron Watson. I'm also instructed by McNally Jones staff solicitors and I'm not sure whether a particular application has to be made or when that should be, but in any event we're separate counsel. Mr Watson is due to give evidence on Friday as I understand it, and having heard the opening I was going to ask to be excused until then, if that's convenient.

THE COMMISSIONER: Well, I mean the firm of solicitors is well known and I assume that, how can I put this, that there will be some form of Chinese wall so that information is not passed from one in respect of one client about the other and vice versa.

MR GIBIAN: I'm sure there's, I'm assured that there is no issue in relation to that.

THE COMMISSIONER: Okay. Thank you. Yes, leave is granted.

MR GREENHILL: Mr Commissioner, can I indicate, I was originally brief for Mr Watson and I withdrew from it. I couldn't see any conflict between the solicitor would have in appearing for - - -

THE COMMISSIONER: No, I accept that. I'm just being overly cautious I suppose because quite often, as you'd be aware, Mr Greenhill, conflicts, if they do arise during the course of proceedings can cause all sorts of problems, including revocation of the leave previously granted to practitioners to appear on their behalf, on behalf of some witnesses.

MR GREENHILL: I appreciate that.

THE COMMISSIONER: So, but I accept what you say. Very good.

MR BRASCH: Commissioner, my name is Brasch, B-r-a-s-c-h, and I seek authority to appear on behalf of the Commissioner of Corrective Services, instructed by the Office of the General Counsel of the New South Wales Department of Justice.

THE COMMISSIONER: Yes, thank you, Mr Brasch. Leave is granted.

MR BRASCH: Okay.

MR SHAW: Yes. My name is Shaw, S-h-a-w. I seek leave to appear for Mark Kennedy.

THE COMMISSIONER: Thank you, Mr Shaw. Leave is granted.

MR SHAW: I'm instructed by the Office of the General Counsel Legal Representation Office.

THE COMMISSIONER: Thank you.

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MR MADDEN: Commissioner, Madden, solicitor. I seek authority to appear for Mr Brad Peebles.

THE COMMISSIONER: Thank you, Mr Madden. You're authorised to do so.

MR MADDEN: Thank you, Commissioner.

MR HARRIS: Commissioner, my name is Harris, I seek your authorisation to represent the interests of Stephen Taylor.

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THE COMMISSIONER: Yes, thank you. Leave is granted.

MR HARRIS: Thank you, Commissioner.

MS FISHBURN: Commissioner, my name is Fishburn, F-i-s-h-b-u-r-n. I seek authorisation to appear for Elliott Duncan and instructed by the Office of General Counsel.

30 THE COMMISSIONER: Yes, leave is granted.

MR WILLIS: Commissioner, my name is Willis. I seek your authorisation to appear for Mr John O'Shea.

THE COMMISSIONER: Thank you, Mr Willis. Authorisation is granted.

MR TAYLOR: Commissioner, Taylor, solicitor. I'm seeking authorisation to appear on behalf of the witness Terry Walker.

40 THE COMMISSIONER: Thank you, authorisation is granted.

MR TAYLOR: Thank you.

MR EKSTEIN: Commissioner, my name is Ekstein, E-k-s-t-e-i-n. I seek your authorisation to appear for Dale Ashcroft.

THE COMMISSIONER: Thank you, Mr Ekstein. You're authorised.

MR STEWART: Yes. Good morning, Commissioner. Stewart, solicitor, I seek leave to appear on behalf of Mr Turton.

THE COMMISSIONER: Yes, Mr Stewart, authorisation is granted.

MR DUNNE: Commissioner, my name is Dunne, I seek authorisation to appear on behalf of Brian McMurtrie.

10 THE COMMISSIONER: Thank you, Mr Dunne. Authorisation is granted. Is that it? Yes, Mr Duggan.

MR DUGGAN: Thank you, Commissioner. Commissioner, can I tender some documents if I may?

THE COMMISSIONER: Yes.

20 MR DUGGAN: The first bundle of documents will be Exhibit 45 continuing on from the previous exhibits. It's been prepared electronically, if I can tender a USB if that assists with the index.

THE COMMISSIONER: That's Exhibit 45. How do we describe that, Mr Duggan?

MR DUGGAN: I think Lithgow Bundle of Documents.

THE COMMISSIONER: All right.

30 MR DUGGAN: And I can indicate that this is up on the restricted website already, this is effectively the brief on the website.

THE COMMISSIONER: Thank you. All right. The Lithgow Bundle of Documents will be marked Exhibit 45.

#### **#EXH-045 – LITHGOW BUNDLE OF DOCUMENTS**

40 MR DUGGAN: Now, I understand that there is a particular roster which inadvertently hasn't been redacted which is in that, and perhaps I can make the tender of various exhibits, and then Mr Brasch, I think, wants to deal with some issues in relation to that. Can I next tender exhibit in relation to the statements and the interviews provided by various witnesses? Can I indicate it's various statements and records of interview in relation to various witnesses, all of which are already up on the restricted website.

THE COMMISSIONER: All right, thank you. They'll be marked Exhibit 46.

**#EXH-046 – RECORDS OF INTERVIEWS & WITNESS STATEMENTS**

MR DUGGAN: Can I next tender some Corrective Services New South Wales policies? There are four of them and perhaps I might read them on to the record. One is the Use of Force Policy, next is the Drug Handling and Disposal of Unauthorised Drugs Policy, third is the IAT procedures and fourth is the Recording and Managing of Video Evidence Policy, and these are already on the restricted website.

THE COMMISSIONER: They will be marked Exhibit 47.

**#EXH-047 – CSNSW POLICIES & PROCEDURES**

MR DUGGAN: Thank you, Commissioner. Can I next tender the search video from 20 February 2014? This contains three video, sorry, four video clips, three of which are already on the restricted website. There is a fourth which is a very short video, effectively the conclusion of the search and Mr Kennedy says some things on that video, so this is the tender of those four search videos.

THE COMMISSIONER: Thank you, they will be marked Exhibit 48.

**#EXH-048 – 4 SEGMENTS OF CELL SEARCH VIDEO CONDUCTED ON 20 FEBRUARY 2014**

MR DUGGAN: Now I understand Mr Brasch has an application to make in relation to some of these exhibits.

THE COMMISSIONER: Certainly. Mr Brasch.

MR BRASCH: Thank you. Thank you, Commissioner. The Commissioner has received on Friday the application, or an amended application, for some directions in relation to restrict the publication of certain material.

THE COMMISSIONER: Yes.

MR BRASCH: If Your Honour has that, if the Commissioner has that document, I think matter number one, two, three and four have been covered already by orders made by Commissioner earlier today.

THE COMMISSIONER: That's one, two, three and four under paragraph B, is it?

MR BRASCH: Under paragraph B, yes. They seem to have been covered by the order that you've already made, Commissioner.

THE COMMISSIONER: Yes.

10 MR BRASCH: Number five is, relates to the names and numbers of other inmates which may be mentioned, we seek an order that those not be published.

THE COMMISSIONER: I don't think there'll be, there's no problem with that is there, Mr Duggan?

MR DUGGAN: No, there's no difficulty.

THE COMMISSIONER: Yes.

20 MR BRASCH: In relation to number six, Commissioner, I think having spoken to Mr Duggan, we will take the position that in, that the material becomes before the Commission that concerns us that there's matters that we will raise as time goes on. In relation to number seven, Mr Duggan has already indicated that there is an unredacted document which I understand we, we believe there's an unredacted document which was provided to the parties in terms of rosters of staff and I think that's going to be removed or redacted.

30 THE COMMISSIONER: It's on the restricted access website only, isn't it?

MR DUGGAN: Commissioner, can I indicate that this has already been raised with Commission staff and my understanding is that it was actually redacted, so if there is a page that has been missed, perhaps that page can be identified and I don't think there'd be any difficulty redacting it.

THE COMMISSIONER: All right. But at the moment it would only be legal representatives who have access?

40 MR DUGGAN: Yes, although it's part of the tender of Exhibit 45. If there's something in Exhibit 45 that my friend says should be redacted, well perhaps we can do that, rather than make submissions.

THE COMMISSIONER: All right. Let's come back to that one.

MR BRASCH: We'll deal with it.

THE COMMISSIONER: Yes.

MR BRASCH: Number eight would be covered by the orders which Commissioner has already made this morning, dealing with other people.

THE COMMISSIONER: Yes.

MR BRASCH: Number nine, which covers policy and procedure documents of the department, we seek an order that, a general order that those policies and procedures not be published, although we accept that during the course of the inquiry, there may be mention of them. But we  
10 don't, but we're asking that they not be published.

THE COMMISSIONER: Am I right in assuming that there be certain parts of those policies and procedures which would be regarded as more sensitive than others?

MR BRASCH: Yes. It is. But they are, it is difficult to identify them, to do it bit by bit and go through each of those policies and do so. Rather, I think having spoken to Mr Duggan, the view is that we can have a general order covering all the policies, but if there are particular parts which are  
20 appropriate to be published then they can be dealt with at the time.

THE COMMISSIONER: I'm a little concerned by the use of the word memoranda, because that could have far greater implications than your policies and procedures. I'm prepared to make an order at the moment covering policy and procedure documents.

MR BRASCH: Thank you.

THE COMMISSIONER: Or other highly sensitive information revealing  
30 strategies or policies, but I would anticipate at some stage that there will be an application to vary that order, at least to some extent, as the matter proceeds where certain aspects of these policies and procedures may become relevant.

MR BRASCH: Thank you. Number 10 deals with the photographs of correctional officers.

THE COMMISSIONER: Yes.

MR BRASCH: We understand that there's some material which identifies  
40 by way of photographs correctional officers. We ask that they not be published.

THE COMMISSIONER: Yes. So you're talking about photographs that are within the brief of evidence?

MR BRASCH: Yes.



THE COMMISSIONER: I don't think I've got – did you also have in mind that the media should be prohibited from publishing photographs that might be taken by them?

MR BRASCH: Well, that's been raised, and - - -

THE COMMISSIONER: The problem is I don't really have power to tell the media not to take photos.

10 MR BRASCH: No. I understand the difficulty. In those circumstances I understand that difficulty, Commissioner.

THE COMMISSIONER: All right. I will make an order to the extent, sorry, that will apply to the photographs if any that are included within the brief of evidence. Are you happy with that, Mr Duggan?

MR DUGGAN: Yes, I am. Photographs or the identity in the search videos and the like.

20 MR BRASCH: Number 11 is not pressed.

THE COMMISSIONER: Thank you.

MR BRASCH: Number 12 which deals with the publication of the video. We ask if that issue can be deferred until the time that the video is played to the Commission.

THE COMMISSIONER: All right.

30 MR BRASCH: We'd want to review it. I understand there's some orders that have just been made.

MR DUGGAN: Commissioner, it has been tendered.

MR BRASCH: Yes.

MR DUGGAN: So there may be an access application as I understand it from the media for that video, so if there needs to be an order submitted it needs to be made now rather than at some later time.

40

MR BRASCH: Well, we would seek an order that it not be published.

THE COMMISSIONER: Mr Duggan, is there any mechanism, for example pixelating the people who are of concern?

MR DUGGAN: I'm sure that if an order was tailored in that fashion the media would be able to do that, and I don't have any difficulty with it and in fact it's probably covered by an order you'd make in relation to correctional

staff anyway. It's more a question of whether or not there should be a non-publication order in relation to the whole video for security reasons or whatever else. If that's what Mr Brasch is seeking then in my submission he needs to justify that by reference to the video.

THE COMMISSIONER: So you're referring to the last bullet point in paragraph 12?

MR DUGGAN: Yes.

10

THE COMMISSIONER: Right. Why should I make that order, Mr Brasch?

MR BRASCH: The only, the concern as outlined in the submissions is the layout and the like of the prison and the area around the cells. I appreciate it's probably not – if the, if the parties that indulge in the, were depicted are pixelated then that will address most of the concerns.

THE COMMISSIONER: Yes. Okay. I can accept that.

20

MR DUGGAN: I should indicate too there is an issue with the second bullet point as well. Once there's an order made covering the identities of the officers and of the two inmates, then the media will need to pixelate that or not reveal that identity and that should cover any concerns in my submission.

THE COMMISSIONER: The order that I've, the direction I've previously given should cover that in relation to the inmates, and if I make some form of direction in relation to, well, I wasn't proposing to make a - - -

30

MR DUGGAN: Can I put it this way? If there's no justification for making order 10 in relation to photographs, there'd be no justification in relation to search videos and vice versa if there was a justification for the photographs being covered up, and I'm sure the media could cover up videos as well.

THE COMMISSIONER: Okay. Well then I'll come back to that. Now Mr Brasch, I think the matters that are covered in the first paragraph after paragraph 12 have already been addressed, haven't they?

40

MR BRASCH: I understand that's the case, Commissioner.

THE COMMISSIONER: Thank you.

MR BRASCH: Commissioner, can I just also point out just so that there's no confusion, although Commissioner may be aware, when the parties announce their appearances, I indicated I appear for General Counsel Department of Justice as did other representatives, I understand that others, strictly speaking, are instructed by their legal representation, they're not

instructed by the same department or the Office of General Counsel, although that office, I think, facilitates their positions.

THE COMMISSIONER: Certainly, so you're on your own?

MR BRASCH: I'm on my own, and so that there's not suggested to be any cross representation.

10 THE COMMISSIONER: No, thank you for that. Being satisfied that it is necessary and desirable in the public interest to do so, I direct pursuant to section 112 of the Independent Commission Against Corruption Act 1988 that the names and MIN numbers of all inmates mentioned in documents shall not be published or otherwise communicated to anyone except by Commission officers for statutory purposes or pursuant to further order of the Commission.

20 **BEING SATISFIED THAT IT IS NECESSARY AND DESIRABLE IN THE PUBLIC INTEREST TO DO SO, I DIRECT PURSUANT TO SECTION 112 OF THE INDEPENDENT COMMISSION AGAINST CORRUPTION ACT 1988 THAT THE NAMES AND MIN NUMBERS OF ALL INMATES MENTIONED IN DOCUMENTS SHALL NOT BE PUBLISHED OR OTHERWISE COMMUNICATED TO ANYONE EXCEPT BY COMMISSION OFFICERS FOR STATUTORY PURPOSES OR PURSUANT TO FURTHER ORDER OF THE COMMISSION.**

30 THE COMMISSIONER: I also order or direct, being satisfied that it is necessary and desirable in the public interest to do so, that at least for the present policy and procedure documents or other highly sensitive information revealing strategies or policies of Corrective Services New South Wales shall not be published or otherwise communicated to anyone except by Commission officers for statutory purposes or pursuant to further order.

40 **I ALSO ORDER OR DIRECT, BEING SATISFIED THAT IT IS NECESSARY AND DESIRABLE IN THE PUBLIC INTEREST TO DO SO, THAT AT LEAST FOR THE PRESENT POLICY AND PROCEDURE DOCUMENTS OR OTHER HIGHLY SENSITIVE INFORMATION REVEALING STRATEGIES OR POLICIES OF CORRECTIVE SERVICES NEW SOUTH WALES SHALL NOT BE PUBLISHED OR OTHERWISE COMMUNICATED TO ANYONE EXCEPT BY COMMISSION OFFICERS FOR STATUTORY PURPOSES OR PURSUANT TO FURTHER ORDER.**

THE COMMISSIONER: I also direct it, being satisfied that it is necessary and desirable in the public interest to do so, that photographs and video of correctional officers contained within the brief of evidence shall not be published or otherwise communicated to anyone except by Commission officers for statutory purpose or pursuant to further order of the Commission.

10 **I ALSO DIRECT IT, BEING SATISFIED THAT IT IS NECESSARY  
AND DESIRABLE IN THE PUBLIC INTEREST TO DO SO, THAT  
PHOTOGRAPHS AND VIDEO OF CORRECTIONAL OFFICERS  
CONTAINED WITHIN THE BRIEF OF EVIDENCE SHALL NOT  
BE PUBLISHED OR OTHERWISE COMMUNICATED TO  
ANYONE EXCEPT BY COMMISSION OFFICERS FOR  
STATUTORY PURPOSE OR PURSUANT TO FURTHER ORDER  
OF THE COMMISSION.**

20 THE COMMISSIONER: Is that what we were intending to achieve, I think?

MR DUGGAN: Sorry, I missed that, I was just speaking to my instructor.

THE COMMISSIONER: That's okay. I made a direction that photographs and videos identifying correctional officers within the brief of evidence shall not be published or otherwise communicated.

MR DUGGAN: Yes, that covers it.

30 MR BRASCH: Yes. Thank you, Commissioner.

THE COMMISSIONER: All right. Where do we go?

MR DUGGAN: I call Mr Walker.

THE COMMISSIONER: Thank you. Mr Walker, come forward, please. I take it, Mr Taylor, you're seeking a section 38 declaration, are you?

40 MR TAYLOR: Yes, I am, and he will take an oath on the Bible.

THE COMMISSIONER: Thank you.

MR TAYLOR: Thank you.

THE COMMISSIONER: Come forward Mr Walker and take a seat. We might have that administered now.

THE COMMISSIONER: Now Mr Walker, your solicitor has asked that I make a section 38 declaration in relation to your evidence and no doubt he's given you an explanation as to the effect of that, has he not?---He has, Your Honour.

10 I'm probably going to repeat what he's already said to you, but I want to explain to you what your right sand your obligations are as a witness before the Commission. As a witness you must answer all questions truthfully and you must produce any item which was described in your summons or is required by me to be produced by you. The effect of the section 38 declaration is that you don't have to keep objecting to questions and even if you did, you're still required to answer them. But the protection is that your evidence and any document you produce or to which you're referred can't be used against you in any criminal or civil proceedings. There is a very important exception and that is the evidence you give can be used to prosecute you for an offence under the ICAC Act, most importantly an  
20 effect of giving false or misleading evidence for which the penalty can be imprisonment for up to five years. So it's very, very important that you, for your own protection, tell the truth. Do you understand that?---I do.

Thank you very much. Pursuant to section 38 of the Independent Commission Against Corruption Act, I declare that all answers given by this witness and all documents and things produced by him during the course of the witness's evidence at this public inquiry are to be regarded as having been given or produced on objection and there is no need for the witness to make objection in respect of any particular answer given or document or  
30 thing produced.

**PURSUANT TO SECTION 38 OF THE INDEPENDENT COMMISSION AGAINST CORRUPTION ACT, I DECLARE THAT ALL ANSWERS GIVEN BY THIS WITNESS AND ALL DOCUMENTS AND THINGS PRODUCED BY HIM DURING THE COURSE OF THE WITNESS'S EVIDENCE AT THIS PUBLIC INQUIRY ARE TO BE REGARDED AS HAVING BEEN GIVEN OR PRODUCED ON OBJECTION AND THERE IS NO NEED FOR THE  
40 WITNESS TO MAKE OBJECTION IN RESPECT OF ANY PARTICULAR ANSWER GIVEN OR DOCUMENT OR THING PRODUCED.**

THE COMMISSIONER: Mr Duggan.

MR DUGGAN: Thank you, Commissioner. Mr Walker, can you please state your full name for the Commissioner?---Terrence Bernard Walker.

And are you sometimes known as Tex?---That is correct.

And your current occupation, you're self-employed. Is that right?---Self-employed.

And you were previously with Corrective Services New South Wales?  
---That is true.

10 And what did you do with Corrective Services New South Wales?---I worked in several correctional centres as a correctional officer and made my way through the ranking structure to senior correctional officer.

When did you finish with Corrective Services?---Mid last year.

And so you finished with a rank of senior correctional officer?---Yes, I resigned totally from Corrections.

20 And you were with the Immediate Action Team, or IAT. Is that right?  
---That's correct.

And how long were you with the IAT?---In that role at Lithgow I would believe probably two to two and a half years.

All right. And so that was, what was the period that you were with IAT at Lithgow?---I couldn't give you the exact dates. I think it was about 12 months before I finished up, I stopped doing IAT.

30 All right. But you, in 2014, you were with IAT?---2014 I was, yes.

And how many years were you at Lithgow all up?---Approximately eight and a half years.

And I assume you had previous experience with Correctives before Lithgow as well at other correctional centres?---Yes, that's true.

40 Are you able to describe for the Commission the usual day to day responsibilities of someone in IAT?---Day to day responsibilities is to work under direction of the manager of security or the senior managers to maintain good order and discipline in the centre. That role involved inmate searches and dealing with other areas as directed by the manager of security or his delegated officer.

All right. Now, is someone in IAT, do they receive special training?---Yes, they do.

And as I understand it, someone in IAT is taken from the pool of correctional service officers. Is that right?---Yes.

So what additional training do you receive?---There's a standard course which I believe now is five days, which is run by Corrections and it goes through all the processes of what's required of you in your roles and your competencies and exams and training.

All right. So are they things like cell removal?---Correct.

Emergency responses?---Yes.

10

What other things like that might it include?---Use of chemical munitions, search techniques, communication techniques.

What about reporting, is there much education - - -?---Reporting, there's education reporting too.

All right. Now, in terms of the uniform, does someone with IAT have the same uniform as a correctives officer or is it different?---Shirt's the same, pants are basically the same, it's just the, the equipment, the equipment vest that you wear during the day.

20

Right.---Which is a black vest, carrying the other equipment in a duty belt.

And what sort of equipment does an IAT officer carry?---An extendable baton, handcuffs, chemical munitions and a gas, a gas mask.

Chemical munitions, is that tear gas?---Yes.

And capsicum spray or not?---I wouldn't call it capsicum spray, it's an encapsulated spray.

30

All right. And that's what the gas mask is for, is it, if you use - - -?  
---That's correct.

- - - the gear gas? Right. And what about a hand-held video camera, is that part of the vest?---It's part of the kit, yes.

And the IAT, the team itself, do people usually be involved in teams of three or more or is that - - -?---A team of three is standard at Lithgow.

40

All right. And is there a justification for that in the sense that if there's a prisoner who's a problem, two IAT officers might give you the upper hand but three puts it on doubt. Is that the reason?---No, you need three officers. You can – depends on the deployment of the staff and what the situation is.

Three makes more sense?---Three makes a lot more sense.

Do you ever have two teams of three that are required?---We can form secondary teams if they are required. They're generally, is something requires that larger team there is a process where normal staff gear up as well.

All right. And as I understand it there are some correctional officers who are not rostered on as part of an IAT team on a particular day but they might be trained in IAT?---Yes, there is.

10 Now, the hand-held camera, the video camera, that's something that fits in the palm of your hand. Is that right?---Correct.

And in terms of the vest where it's kept, does every IAT officer, and we're talking about 2014, does every IAT officer have a video camera in their vest?---No, they don't.

Is it one or two of the three?---There's only one, at the time there was one camera for the team.

20 And in terms of the team of three, there's usually a senior and two junior officers. Is that right?---Yes.

Is there any protocol as to who carries the hand-held camera?---No, there was no technical protocol to it. Generally held by one of the first class or the senior on the day, it just depended who put it in the vest.

All right. Is there any difficulty in the sense that you have a team of three and you need to video an event, perhaps a use of force, is there any difficulty that the person holding the camera is really taken out of the equation in terms of assisting?---Generally you would get a, if a situation was to escalate you would get a fourth person as the camera operator.

All right. Just as a matter of interest, in your opinion would body cameras be a more effective way to record incidents?---They would be.

Now, as I understand it, some corrective officers carry duress buttons. Is that right?---All staff are issued with a duress button.

All staff, including IAT?---Yes, but the IAT quite often don't wear them because it impacts on the gear that we wear.

I should say, you mentioned a belt earlier.---Yeah.

What does the belt contain?---A duty belt, it carries your expandable baton, handcuffs, keys and attachments to that belt.

So if someone presses a duress button, what happens? Does an alarm go off, is someone called, what - - - ?---The procedure is at Lithgow is if a



duress alarm button goes off, if someone activates their alarm, it goes to the control room where it initialises up there. The control room have a set way of calling it, they call the alarm, they identify the area and the staff member.

And does an IAT officer have a radio?---Yes.

And that's located on your shoulder. Is that right?---Yeah, it's attached to the vest.

10 Attached to the vest. And do all Correctives officers have radios?---All officers at Lithgow were issued with a radio.

Thank you. And I should indicate we're talking about 2014 so if there's any difference that you're aware of, please let me know. When you, I'll go back a step. I now want to take you to the events of 19 February 2014. You recall that date?---Yes.

20 You started work on that day at what time, Mr Walker?---I would've been there about half past 7.00, official start time was 8 o'clock.

All right. And is that called the A watch?---It is.

And early in the morning there's usually a headcount at Lithgow. Is that right?---The, yeah, the staff do a head count, especially – on a lockdown day it's different to a normal day.

Would IAT be involved in the head count usually?---No.

30 No. So, was 19 February a lockdown day?---It was.

Are you able to describe what a lockdown day is?---Lockdown day is used to search areas, quite often used by the management to also facilitate short staffing and they use that for anything from removing excess linen and hazards to targeted searches.

Do you recall why there was a lockdown on 19 February 2014?---I don't recall exactly, no.

40 Do you recall that there was any search in operation on that morning?---Yes, there was a search operation conducted up in 3 Unit.

All right. And were you briefed on that searching operation that morning? ---I would've been with the rest of the staff.

All right. And who would you be briefed by usually?---It would've been generally the manager of security.

All right. And was this a fairly routine search or a targeted search, from your recollection?---I think it may have been partially targeted because there'd been a fair bit of disruption up in that unit at the time.

This is Unit 3 we're talking about?---Unit 3, yes.

And in terms of the search operation, does IAT usually carry out the searches, or what's IAT's role in that scenario?---We were tasked that day with just being a backup for the other teams in case something happened.  
10 There was designated search teams which staff were undertaking and I believe at that stage, from the State Security Unit, their staff were also in attendance conducting searches.

So is that sometimes known as SOG?---That is correct.

And were you attached to a particular search team?---No.

All right. Do you remember who you were with in Unit 3 by any chance?  
---Well I would've been with the two IAT officers, Graf and Duncan.  
20

So that's Simon Graf and Elliott Duncan.---Yes.

And do you recall whether you were with a particular person from SOG in Unit 3?---No.

Do you recall whether or not you needed the hand held camera in Unit 3 for any reason that morning?---Hand-held unit camera would've been possibly used while I was strip searching. SOG or, they have in their policy, you have to have a camera running for every search they do.  
30

All right. But in terms of IAT, you don't specifically recall whether the camera was required in the searches in Unit 3?---No, I don't.

Do you recall who had the camera, which of the three of you had the camera that day?---No.

So you're up in Unit 3 assisting with some searches. I assume you left Unit 3 at some point?---Yes.

40 And why did you leave Unit 3?---Received a radio call to attend 5 Unit.

Do you recall who made the call?---I believe it was Mr Taylor.

All right. And that's Assistant Superintendent Taylor?---Correct.

And do you recall what information was conveyed in the radio call?  
---No, we were just directed to make our way immediately down to 5 Unit.

All right. So you've got the radio on your vest, if someone makes a call on the radio system is that a one-to-one call to you individually or does it - - -?  
---No, it goes to everyone.

All right. So everybody issued with a radio that day will hear the call. Is that right?---Yes.

And so Mr Taylor has said come down to Unit - - -?---5.1

10 5.1. And did you do that?---I did.

Did he say come at 1.00pm or a time or - - -?---No. We were just told to get down there and I think the tone of voice might have sounded a bit urgent, so we attended straightway.

Right. And so you're coming from Unit 3, do you recall which door you entered Unit 5 from?---The front door to the unit, because the inmates were all locked away.

20 All right. So there are two doors at least to Unit 5 on that side as I understand it?---Yes.

There's a door that goes in between Unit 5.1 and 5.2. Is that right?---Yes.

And that's the door that you might ordinarily use if the inmates were around. Is that right?---Yes.

But you used another door. Is that right?---That's correct.

30 And so that goes from, I should say, so Unit 3 is a standalone building. Is that right?---Yes.

So if you come out of Unit 3 you come into the prison compound. Is that correct?---Yes.

And so you re-enter Unit 5 through a door that you said you went through?  
---Yes.

40 What room do you then enter?---Entered 5.1.1.

All right. And is that a hallway, is it an office, what are you - - -?---It's an open area like a day room with the cells on the sides.

All right. And is there anything in the day room?---A fridge and sometimes there was a toaster and there was a microwave.

All right. And where did you go, you went into the day room from the compound and I think you said a cell was on either sides. Is that right?

---Yes.

Were any of the cell doors open or were they closed?---No, they were all secured.

Right. And was there anyone in the day room when you walked into the day room?---No.

10 And so where did you – sorry, I’ll go back a step. You entered the day room. Were you with anyone else?---Yeah, I had Officers Graf and Duncan with me and I think Officer Duffy came down, Officer Watson, or actually two Officer Watsons, we brought one from the SOG as well.

So the one from SOG, what’s his first name?---Michael Watson.

All right. And the regular officer, what’s his name?---Cameron Watson.

20 Thank you. And they entered the day room with you, did they?---I believe Mr Watson, Cameron Watson, may have been in the unit, I’m unsure of that. Mr Duffy and the other Mr Watson came with me.

All right. So you’d received a radio call, come down to Unit 5.1. You entered the day room. Where did you go next?---Moved our way up through the centre of the day room to the office which is in the middle of the unit.

All right.

30 THE COMMISSIONER: Am I right in thinking that the day room is like a corridor?---A wide corridor, Mr Commissioner.

A wide corridor. Yes, thank you.

MR DUGGAN: All right. You referred to an Officer Duffy. What’s his first name?---Wes.

Thank you. Or, Wesley?---Wesley.

40 Thank you. So there’s, you come through the door, you go through the day room and there’s an office at the end of the day room, is there?---There’s an office in the middle of, there’s a, the building has an office in the middle and two separate areas, 5.1.1 and 5.1.2.

Right.---So it basically separates the cell areas.

So to walk from 5.1 to 5.2, you would walk through the office, would you?  
---Yes, that's correct.

So you went into the office?---Went up to the office, yeah.

And who was in the office?---I believe it was Mr Taylor, Mr Peebles, Mr O'Shea and I think Mr Kennedy.

All right. And did you find out anything more about the radio call?---Yeah. I was advised that an inmate had abused the general manager.

10 And who advised you of that?---I can't remember exactly. I think it was Mr Taylor.

All right. And the general manager at the time, is that position also known as the governor?---Yes.

And who was that at the time, do you recall?---Mr O'Shea.

All right. So he was in the room when you were told this. Is that right? ---Yes.

20 And were you told any more about the abuse of the general manager?---I wasn't told the exact facts, no.

All right. So you think it might've been Mr Taylor who said that the general manager had been abused?---Yes.

And what else was said? Do you recall?---They just want us to go down and sort him out.

30 And do you recall who said that?---Not exactly, no. I believe it was Mr Taylor.

All right. And did you consider that to be an instruction from the superior officer?---I did. Yes, I did.

And just to confirm, you think Mr Taylor said it. Were Mr O'Shea and Mr Peebles there when that instruction was issued?---Yes.

40 And is it possible that Mr Kennedy was there as well?---Mr Kennedy was in the room, yes.

All right. At the time of that instruction?---I believe so.

All right. So you've been told that the general manager has been abused and you are to sort it out. Were you given any more information?---No, only the cell number.

And do you recall what the cell number was?---No, I don't.

And so what did you do next?---I moved down toward the cell, opened the other door.

All right. Well I'll just go back a step. When the instruction was issued, were you, you were told about the general manager being abused and you were to sort it out. Was there anyone else in the office when that was said? ---I was standing at the door of the office, the IAT guys were in the vicinity. I couldn't tell you exactly who was in or out, I believe only the senior staff were inside the office. We were standing at the door.

10

Perhaps I can ask it this way, would officers Duncan and Graf have heard the instruction?---I believe so.

Do you recall discussing the instruction with them?---No, just would've been, "Come on, we've got a job to do."

And what did you understand that job to be?---Go down and have words with the inmate and put him in his place, make him behave, let him know that what he did wasn't acceptable.

20

And did you understand that something physical might be required?---Yes.

And when you say that you were going to indicate that what he'd done wasn't acceptable, that was abusing the general manager, was it?---Yes.

Did you know anything more about the abuse, or you were just told he had abused?---Knew nothing about it.

30 All right. Did you assume that it was verbal abuse, or were you told?---I just got told that he'd abused him over the knock-up system.

And when you refer to the knock-up system, that's an intercom system, is it?---Intercom system between the cell and the staff office.

All right. So a prisoner can press a button on the intercom and speak with an officer.---That's correct. It was designed as an, a communication in case of medical needs but in that area they used it all the time.

40 And when you're talking about "that area", Unit 5 is a segregation wing. Is that right?---It was a unit that maintained inmates with violent tendencies, some that had issues with other inmates and also the state threat group which was mainly at the other end I think at the time, which were inmates who were identified as extremely high violence.

All right. And are they kept in, confined to their cells longer than ordinary inmates?---They are.

And how many hours a day would be fairly usual for a segregation inmate to be in their cell?---Well, they're entitled to two hours a day exercise but those in those units were let out of a morning into their day room yards which are attached to the back of the cell, and some of them spent time in an education area.

So is that why they might use the intercom system a bit more often?---That's correct.

10 All right. So you said that you were given an instruction. Did you take that to be an instruction to you personally or to the IAT team, or something else?---To the team, I took it.

All right. And so what happened next? You've left the officer's station. Where did you go?---Went down to the cell.

So you went back into the day room. Is that right?---Yeah. I was still in the day room, I just turned and walked back down to the cell.

20 All right. And so you knew which cell to go to?---Yes.

Is that because you were told or - - - ?---Yes.

Were you told anything about the inmates?---No.

Did you know how many inmates were in the cell?---I knew there was two.

All right. And did you know which one had abused the governor?---No.

30 So you went back into the day room towards the cell. Did anyone follow you out of the officer's station?---I'm unaware of that.

So you go to the cell. How long does it take you to get to the cell from the officer's station?---Fifteen seconds I suppose, 20 seconds.

All right. And can you see the cell door from the officer's station?---Yes.

40 And so do you have to look through a door, or how do you see the cell door?---You can look through a screen in the door and open that door and then there's an internal grille, a secondary grille in that area.

All right. So you walked down to the cell door, Duncan and Graf are with you.---Yes.

And who else is standing at the door when you get there?---I couldn't tell you. The other boys were there but I don't know their exact positions.

All right. So when you're talking about other boys are you talking about - - - ?---Officers Watson and Duffy.

All right. And that's Cameron Watson?---Yeah. And Mick Watson.

And he's an SOG, is that right?---Yeah. He had a shepherd with him.

All right. So he's with the Dog Unit?---He is.

10 All right. So you went to the door and was there any discussion or conversation with the inmates through the door, do you recall?---There would've been, it would be along the lines of, you know, "get out of your beds, get out."

Do you have a recollection, or are you - - - ?---No.

And if you wanted to speak to an inmate through the door, is it a solid door or is it a barred door, or - - - ?---No, it's an internal grille, a grille door once the outside door was open.

20

Right. But the outside door, is that a solid door?---It is solid, yes.

And can you speak to an inmate through the solid door?---Very hard.

Is there a flap or a window or - - - ?---There's a viewing flap but the door is very thick and the viewing material is very thick too.

30

So usually if you wanted to speak to an inmate without opening both doors, you've open the solid door and speak to then through the grille?---That would be correct.

So, when you got to the cell, was the solid door open or closed?---Closed.

Do you remember who opened it?---I may have, I think. I couldn't be sure.

And would you have also opened the grille door?---I believe I did open the grille door, yes.

40

And you think there might have been some conversation with the inmates before you went in, or not?---Yes, there would have been.

So, I'm assuming that you didn't know the names of the inmates?---Only when I got down there, off the card that's on the side of the door that identifies who's in the cell.

So you had a look at that?---Yes.



And that card, I assume would have a photograph and a name of the inmate?---Photograph and name and their MIN.

And so, you think you, or your evidence is that you opened the grille door. Were you the point man, the first name in?---Yes.

So, you had your back to whoever followed?---Yes.

Did you go in the cell?---I did.

10

What happened?---I went in. Officers Graf and Elliott Duncan took one inmate out and the other inmate was still in his bed.

Are you able to describe what is actually physically in the cell?---From memory, open the cell, there's two beds on the left, double bunks. Behind them, there is a shower and then there's a toilet. On the right hand side there is a bench, it runs down approximately two metres on the right hand side, and there'd be a couple of chairs in there generally, and a cupboard for the, an opened front cupboard for the inmates to store their personal property.

20

You mentioned a toilet and shower. Where are they located?---The shower's on the left hand side, near the read of the cell. The toilet is at the back wall.

And so, you said that you entered the cell and Graf and Duncan took out one of the inmates and the other inmate was on his bunk, is that right?---Yes

30

And so, what happened next? Was there a conversation or - - -?---I told him to get down.

And did he?---Eventually.

Do you remember what he was wearing?---No.

And what happened after he eventually got down?---After he got down, I had words with him in relation to the abuse on the knock-up. Things got a bit heated, I was yelling at him, he lunged towards me. I thought he was going to hit me and I struck him with a palm strike.

40

Now, when you gave evidence a second ago about saying to him, something about abusing the governor on the knock-up. Did he say anything about that?---I can't remember. He did reply but I can't remember the exact words.

Did he admit it or deny it or say something else?---I think he denied it.

And so you've, you've hit him with a palm strike, did you say?---That's correct.

Where did you connect with the palm strike?---On the inmate's, I think it was the left hand side of his face, lower jaw area.

THE COMMISSIONER: Can I just ask, what's a palm strike?---It's use of this part of the hand, motioning forward, Mr Commissioner.

Thank you.

10 MR DUGGAN: So, an unclosed hand?---That's correct.

And how soon after he got down off the bunk, did you deliver the palm strike? Do you remember?---Oh, it would be within 25 to 30 seconds. It just escalated.

So, do you remember where he was standing when you struck him?---He was standing facing me, about the middle of the cell with his back to the toilet area. Sort of facing the door.

20 All right. So is that around the end of the bunkbed where that - - - ?---It would be, yeah, near the end of the bunkbed.

All right. And what happened after you struck him?---Scuffled and shield, he threw some punches and we ended up taking him down and pushed him into the back wall of the, the building where, down near the back window and just jammed him down there to contain him.

All right. Now, you said "we took him down".---Oh, later, I didn't realise at the time, Mr Duffy had assisted me, because it's a very reactive situation.  
30 Mr Duffy jumped in and assisted me and the inmate was forced to the back of the cell, and then Mr Duncan also came in and the inmate was restrained and then removed from the cell.

Now you said the inmate threw some punches. Is that your evidence?  
---Yes, he did.

Did he connect with any?---I can't remember, I don't believe so. If he did, it didn't affect me.

40 Did you, you said you initially delivered a palm strike. Did you strike him more than once?---Yes, I did.

Did you throw or did you deliver some more palm strikes or throw some punches, or what happened?---I couldn't be sure at the time what I threw but yes, I did strike him more than once.

And is it possible that that was with a closed fist?---It is possible, yes.

And do you recall where you might've connected?---It would've been the upper body or the head.

And is this before officers Duffy and Duncan have come in?---Yeah, yes it would be, or as they were coming in.

Right. Am I right in saying that it would've been difficult for you to see the exact moment they came in because you were focused on the prisoner?  
---Yeah, I couldn't see them at all.

10

And you had your back to the door, did you?---I did.

Yes. And was there anything said by you as this is going on, or said by the inmate?---I couldn't tell you what was said.

Is it likely to have all been physical at this point?---It was, it was physical at that point.

20

All right. So, I think you've said Duffy and Duncan have come in.---Yeah, I believe Mr Duffy come in first to try and assist and then Mr Duncan came in as well.

All right. And what happened when they came in?---Couldn't tell you exactly what happened, they assisted in restraining the inmate and getting to the back wall on the ground and I couldn't exactly tell you what their role was but they handcuffed the inmate and removed him from the cell.

30

Did you see or did the inmate stay standing when you struck him, or did he - - - ?---Yeah, initially. Yes.

All right. And so did he go down at some point?---No, he was actually forced to the ground.

All right. So I think you indicated that when Duncan and Duffy came in he was forced to the back of the cell. Is that right?---That's correct.

And so what was he up against?---The concrete wall and a window.

40

And so how was he taken down? Do you recall?---Just forced to the ground with physical force.

All right. And I think you said he was handcuffed. Is that right?---He was handcuffed once he was restrained on the ground, then he was placed in the handcuffs to remove him from the cell.

Now when he was taken down, do you recall how that was down?---He was just forced into the wall and pushed down on the back wall adjacent to

where the toilet and the window is at the back of the cell. There's a small area.

And did he receive any more blows on the way down from you?---I don't believe so.

And in terms of being taken down, were there any officers on top of him or were they, did he - - - ?---They would've been on top of him to force him down and restrain, yes.

10

And did you hear the inmate mention at any point that he had asthma?---No, never.

And that he couldn't breathe?---I've never heard that till today.

Is that something you'd remember?---Not necessarily, they all say they can't breathe, they can't breathe, it's just a standard ploy to get people off them.

And did you hear anyone say at any point, "No, that's enough?"---No.

20

Did you see at any point Officer Duncan driving his knees into the ribs of the inmate?---No, I didn't.

Or pole-driving him into the ground?---That didn't happen.

Did not happen?---No. He was just forced to the back of the cell and then down onto the ground.

30

And is it possible that Officer Duncan had his knees on the inmate but you wouldn't have seen it because you were doing other things?---It is possible because it's a restraint move, you can put your knee over to, to keep physical force and pressure.

Did you say to the inmate at any time, "Stop resisting?"---I would have.

But you don't have a recollection of it?---No.

Was he resisting?---He was.

40

Mr Walker, did you see the inmate try and throw something in the toilet at any stage?---No, that was a fabricated lie.

And did he, did you see him at any point trip over himself or cell furniture onto the cell toilet?---No.

To your understanding and recollection, did you attend that cell to search for drugs?---No.

Was there ever any search of the cell?---No.

Was there ever any search of [REDACTED] and [REDACTED] No, not that I saw.

I think you might have mentioned the word scuffle at some point. While this was going on in the cell was there any shouting or conversation?  
---There would have been.

10 Do you remember what was said?---No, I don't.

Did you hear the dog at any point?---No.

Are you aware as to how Officers Duncan and Duffy knew to come into the cell?---Well, they would have been behind me I presume when I went into the cell. I believe when Mr Graf and Duncan would have taken the first one out, Mr Duffy, I would believe would have been stepped up to make a second man at the door.

20 All right.

THE COMMISSIONER: Can I just ask you something about that. Why was it necessary to remove the other inmate from the cell?---Generally talk to them one at a time, Mr Commissioner, take them, separate them and then have words with them.

Is it possible that he was taken out so that he wouldn't see what was going on?---No, that was never the intention.

30 Okay. Thank you.

MR DUGGAN: I should ask you, do you recall roughly what time this would have happened?---Ah, mid-morning.

Do you recall, and you may have answered this, but do you recall who handcuffed the inmate?---No, I don't. It would be either Officer Duffy or Office Duncan.

40 All right. And would Officer Duffy, he's not in the IAT, is he?---No, but he was also, well, not on that day but he was a regular officer that worked on that team as a reserve.

All right. So he was IAT-trained and sometimes rostered on but not that day.---Yes, that's correct.

Would he have had handcuffs?---I don't believe so, but it is possible, on search days extras are issued.

All right. And so was the inmate removed from the cell?---He was.

Who was he removed, was he assisted?---He was.

Who was he assisted by?---Mr Duffy and Mr Elliott Duncan I believe.

All right. And were you, did you leave the cell earlier or did you follow behind?---No, I went after them.

10 All right. And followed them immediately after or did you stay in the cell?  
---No, I stood in the cell for a bit to get my breath back.

All right. And so eventually you came out of the cell, I assume?---I did.

And are you able to describe who was in the day room when you came out of the cell?---Cameron Watson, Michael Watson and I couldn't tell you who else was in the day room at that time. The other officers had just finished locking the inmate in the other cell on the other side.

20 So, he was taken across to the day room to another cell, was he?---That's correct.

And what about Governor O'Shea and Mr Taylor and Mr Peebles and Mr Kennedy? Did you see them at any point?---I believe once we came out of the cell they had all left the area.

All right. So you went into the cell. Did you see them or were you aware that they were there at any point after that?---No, we had, no, none at all, no vision.

30 And just to be clear, do you say that they came out into the day room at some point after the instruction was issued, or stayed in the office, or - - - ?  
---I couldn't tell you. I believe they were in the office, but when I turned and walked to the cell they were in the office area.

And so did you have a conversation after the, you came out of the cell, you saw that the inmate was locked in a cell across the way. Was the other inmate in the day room at that time?---No, he'd been secured in the cell, too.

40 The same cell or a different cell?---I believe same cell.

All right. And did you have a conversation with the officers there about what had just happened?---I would've, but I couldn't recall what was said.

All right. Just in terms of this instruction to sort the inmate out, was that instruction explained to you in some detail or you just had an understanding as to what - - - ?---No, I just had an understanding.

Had you received an instruction like that before?---Yes.

Who had you received that type of instruction from?---It would've been a manager of some time.

THE COMMISSIONER: A manager, do you say?---Yeah, it would've been a manager or someone, a ranking officer.

MR DUGGAN: Is this something that happened often in your time at Lithgow?---No.

10

Do you recall it happening on another occasion or occasions at Lithgow? ---Not directly, no.

But am I correct in saying that you were instructed previously by someone to perform this type of instruction?---Yes.

And do you recall whether Graf or Duncan would've been part of that instruction?---I couldn't tell you.

20

You've described going into a cell and striking an inmate. Is that what you understood "sorting him out" meant?---Yeah, I believed going in there and speaking with him and, if required, and became belligerent, yeah.

Would you do that sort of thing without an instruction from the superior officer?---I possibly have done, but on that occasion we were told to go and sort him out.

Have you ever heard the term "cell therapy" used in relation to inmates?--- Yes, I have.

30

What does that mean?---It can come from a yelling or, yelling abuse to completely trashing the cell and sometimes further.

And why would an inmate - - -

THE COMMISSIONER: When you say sometimes further, do you mean using physical force?---Yes.

40

What's it called, therapy is it?---It's called cell therapy, yes.

Cell therapy. Thank you.

MR DUGGAN: And why would you use cell therapy?---Belligerent inmates, inmates causing trouble, known trouble makers, once that abuse staff or target certain staff members or female staff. It's purely to teach them a lesson.

THE COMMISSIONER: Teach them a lesson. And just explain to me in as much detail as you can, if you're walking into a cell to do some cell therapy, what would you do?---Generally handcuff the inmate. Remove him from the cell initially and just pull the whole cell apart.

And throw things on the floor, and - - - ?---Just tear everything apart. Empty everything out, go through every container, go through everything. A staff member would be, one of the guys would be telling him, "Why?" That he needed to stop carrying on, and - - -

10

And presumably not packing it all away when you finish.---Definitely not.

Yes.---They all normally got searched and just thrown to the back of the cell.

Yes. Okay, thanks.

MR DUGGAN: Now, the inmate was taken over to the other cell. Did you go into that other cell at all?---No, I didn't.

20

Do you know whether anything further happened to either of the inmates in that cell?---The boys never said anything to me. The officers that put them in there never said anything. I don't believe anything happened to them in there.

Okay.

THE COMMISSIONER: Can I ask you this, Mr Walker? You said there are two doors and one is a grille. Is it possible to handcuff a prisoner before opening that grille?---It quite often is used in that method, Mr Commissioner.

30

So is there a little gap where they can put their hands through and be cuffed?---There is, and there's also vertical bars where they can put their hands through like that or you can use them to handcuff around.

So using [REDACTED] as an example, on the assumption if we assume just for the moment he would've been cooperative, he could've been handcuffed and just led out?---That's correct.

40

And similarly, on the assumption that [REDACTED] was prepared to be cooperative, he could've been handcuffed too before he went in the cell? ---That's correct.

Is there any reason why that wasn't done?---My call, I just went in there.

All right, okay. Thanks.



MR DUGGAN: So you can put your hands through the grille and be cuffed?---Can.

And perhaps if it's a particularly violent offender that you're concerned about, you might ask them to put their hands behind their back and cuff them. Is that right?---That is correct.

10 And is another method of controlling that inmate to ask them before you open the grille to move to the back of the cell and get down on their knees?  
---That is correct.

You've given evidence that you stayed in the cell for a minute to compose yourself, if I can put it that way.---Yes.

And when you came out, I think you indicated that the inmate was being closed into the cell across the way?---Yeah, I believe the door was secured.

It was secured?---Yes, he'd been secured in cell.

20 Are you aware of whether the inmate was put in a phone cage at any point?  
---No, I never saw that occur.

And there's a phone that inmates use in the day room. Is that right?---That's correct.

And it's surrounded by a cage that can be locked?---That is correct.

30 And are you aware as to whether inmate [REDACTED] might've at any point tried to make a phone call in that cage?---No, I wasn't aware of anything of that until later.

What do you understand the phrase "use-of-force" to mean?---Use-of-force under the policy is force that needs to be used as, it can be only necessary and justifiable to restrain the inmate and contain the situation.

Is putting handcuffs on an inmate a use-of-force?---In some situations, yes. Other situations it's just a control move, where if the inmate is compliant I wouldn't call it a use of force in any way.

40 All right. So incidental hand on an inmate is not a use-of-force. Is that your understanding?---No.

What, to your understanding, takes it from being an incidental hand or a handcuff, to being a use of force?---The inmate's compliance.

So, it's the aspect of resistance and forcing them to do something.---That's correct.

What you've described in the cell, that was clearly use of force?---Yes.

And as I understand it there's a policy, Corrective Services policy, that where a use of force is used all relevant witnesses need to file, effectively, a witness statement?---That's correct.

And that witness statement is usually addressed to the governor, is that right?---Yeah, it would be addressed to the governor. All formal reports are addressed to the governor of the centre.

10

Was there any discussion about who had to prepare a witness report after this event?---Not at the time, no.

Am I correct in saying that you're required to file reports about use of force quickly?---We are.

Did you continue your searching in Unit 3 and go back there, or what did you go after that?---Yeah. We just returned to 3 Unit.

20 And completed some searches?---I believe so.

And so at some later point, did you have a discussion about having to prepare reports?---Yeah. I received a call, I can't remember exactly who from, saying we had to do a use-of-force package.

And a use-of-force package would include your witness report, witness statement?---Correct.

30 Did you have any discussion with anyone about what you might include in that?---Yes, we did.

When you say, "We," who are you referring to?---The two other IAT officers.

So that's Duncan and Graf?---That's correct.

And so, are you able to tell me about that communication?---Yeah. We just, well, we'd spoke. I believe that Mr Peebles and Mr McMurtrie and, colluded to what was going to be written.

40

So, the three of you spoke to McMurtrie and Peebles?---I believe so. Well, I did at least.

And was that over the phone or was that in person, or - - -?---Over the phone.

And did you speak to those two individuals separately or was it part of the same conversation?---Yes.

So, you've referred to McMurtrie. He was the Intel manager at the time, is that right?---Yes.

So you had a telephone conversation with him, did you?---Yes.

And are you able to tell me the effect of that phone conversation?---We just discussed what my report, I think I read it off the computer and then I believe I sent it to him electronically.

10

THE COMMISSIONER: What did he say to you? Do you recall? What did he say to you, McMurtrie?---I can't tell you exactly what he said but I just said, "I want to run this by you," I believe, or something like that. I sent it down to him, I said, "How does that look?" And then it was, "Yeah, that's okay." And that was it.

MR DUGGAN: I might take you to your witness statement. It's at page 99 of Exhibit 45. So you see that document in front of you, Mr Walker?---I do.

20 Now, I'm calling that a witness statement. How would you describe it?  
---Well, it is a, it's a witness statement, yes.

All right.---It's a report from me.

And is that your signature at the bottom of the page?---It is.

And there's a date there, 19 February, 2004. That was the day it was drafted, is that right?---2014, yes.

30 Sorry, 2014. And did you draft that document?---I did.

If I can take you to the subject. It says, "Minor use of force, inmate [REDACTED] Is that a correct description of what happened inside the cell?  
---No. That report is all lies.

When you say, it was all lies, why would you put something in a report that was all lies?---Fabricated to make things look good and clean the mess up. We'd been advised that the inmate had been injured.

40 So were you advised before doing this report that the inmate had to go to hospital?---I didn't know he'd gone to hospital but I knew he was injured.

All right. And so if he wasn't injured, does that mean there would have been no reports?---At that stage, yes.

And is that your understanding or was there a discussion that that was to occur until you found out he had an injury?---No, that was not discussion but it was just left that way.

All right. So it wasn't as though you left the cell and were talking to the others and saying we need to do our reports, there was just no discussion about reports being necessary.---No, it was clear what we'd done was wrong.

All right.

10 THE COMMISSIONER: Who told you that he'd been injured?---I believe either Mr McMurtrie or Mr Peebles at the time. I could not be sure.

One of them?---One of them, yes.

MR DUGGAN: And is that the conversation in which you were told that reports would now be necessary?---Yes, it was.

20 Just going back to this document which is addressed to the general manager, Mr O'Shea, the first paragraph, "Sir, during the course of the search operation today at Lithgow I attended cell 208." So that reference to search operation, that's just a reference generally to searches that day?---It's just a fabricated report.

All right.---I had no intentions of searching in that unit.

Right. What is MPU?---Multi-purpose unit, which was another name for the same area, 5.1, 5.2.2, because of the varying grades of inmates. It's had about six or seven name changes.

30 All right. Now, the second part of that sentence says, "As information from inmate during searches in 3 Unit had implicated [REDACTED] having a large amount of tablets of buprenorphine." Do you see that?---Yeah.

Was that information true?---No.

So that was made up and went into your report?---Told to write it in there.

40 Who were you told to write it in there by?---I believe Mr McMurtrie said put down bupe because he was going to write a report saying he had information received that, that would fix it.

Now, when you say you believe, do you have a recollection that you had a conversation with Mr McMurtrie, do you?---Yes, I did have a conversation with him.

And are you able to repeat for me what Mr McMurtrie said to you in that conversation?---Not word-for-word, no.

THE COMMISSIONER: Just the substance, just the substance of it?---The substance was he would put it down as information received and that's why we went there to search the cell.

MR DUGGAN: All right. So when - - -?---There was drugs in the cell and he nominated buprenorphine.

10 So McMurtrie said to you, I, McMurtrie, am going to put this down as an intel search?---He said to me he'd put down an intel report that would fix it up.

All right. And did he tell you what to put in your report?---No, but we went through it with the information we had, I wrote it and I sent it to him to have it proofread before I submitted it.

All right. So the idea that there was a large amount of buprenorphine in [REDACTED] cell or that there was at least intel, was that McMurtrie's idea or yours?---It wasn't my idea.

20 It was Mr McMurtrie's?---I believe so.

Now, the next paragraph, "As I entered the cell, the inmate now known to me as [REDACTED] jumped up from the lower bunk where he was seated and appeared to throw an item towards the toilet at the rear of the cell."  
---It's all lies.

That's lies. And I assume you attempting to retrieve the item from him is also a lie?---The whole - - -

30 The whole thing?---The whole thing's lies. None of it's true.

All right. So I just need to go through it. So in terms of moving towards the toilet and reaching out to flush it, that's made up?---Made up.

And tripping over the plastic chair and torso landing on the rim of the cellar toilet?---I do believe he may have struck the toilet when he was being forced to the ground, but the rest of it, no. It is a limited space at the back of the cell.

40 THE COMMISSIONER: Mmm.

MR DUGGAN: So he may have hit something on the way down.---Yeah. He was forced into that back area where the toilet was and I do believe his torso hit the toilet.

Now, next paragraph, "[REDACTED] was placed in restraints". Well, that's right?  
---Yeah.

I assume, and “removed from the cell and placed into an empty cell.”?  
---Well, that's correct.

So that's correct, what about the next bit, “as [REDACTED] was searched”. Is that true?---No.

No. The inmate was compliant during the move and apologised for his actions. Is that correct?---He was compliant when he was being moved, but I presume because there was no further struggle, but no, the rest was lies.

10

All right. So, the information in the first paragraph about the buprenorphine intel, as I understand your evidence, that acme from Mr McMurtrie.---Yeah.

What about the story about tripping and falling and - - - ?---He just had to make something up to make it suit.

And is that you who made it up or someone else?---Yeah, me probably.

20 You don't have a recollection of being told at that level, “you need to say this is how he injured himself”?---I think the term that was given to me at the time was we had to clean this up, “Because this one will come back to bite us on the ass.”

THE COMMISSIONER: Who said that?---Mr Peebles.

30 MR DUGGAN: All right. So is there anything else in Mr McMurtrie's conversation that you recall about this incident?---No. As I said, I said in my report, this one here before I submitted it. He looked at it, said, “Yeah, it'll be right”, put one in the intel report to match it and that was the last I saw of it, that was the last that was discussed.

All right. So you sent this to him before you signed it, did you?---Yeah.

Now when you had this conversation over the telephone, where were you?  
---In the IAT office which was above 5 Unit.

All right. And was anyone else party to that conversation in the IAT room?  
---Well, officers Duncan and Graf were in the room at the time.

40 Would it have been on speaker phone?---No.

Would they have heard your conversation?---They would have possibly heard my side of the conversation, yeah.

Would they have heard what Mr McMurtrie was saying?---No.

Did you discuss with them your conversation with McMurtrie after you got off the phone?---Yes, I did.

And did that include saying to them, "McMurtrie said we've got to put this intel in there about the buprenorphine search"?---Yeah, I would've possibly said, I can't remember the exact wording but, yeah, that's, I said, "This is what we're coming up with and this is what we're gonna run with".

10 All right. And do you recall communicating that that had come from McMurtrie?---I would've, because I think from memory, I think I told the boys that I'd send it through to him to get him to have a look at it first before we submitted it.

Sorry, can you repeat that? I didn't hear it.---I would've said the boys, I've sent it through to him before we, before it was actually submitted.

All right. Did you show them your draft report before it was submitted? ---Well, they would've seen it.

MR GREENHILL: I object. Could he answer the question, please?

20 THE COMMISSIONER: Sorry, I didn't hear you? I did hear you but I wasn't following. I was reading something. So, what was the question?

MR DUGGAN: Sure. Do you have a recollection as opposed to an assumption about what might've happened, do you have a recollection as to whether you showed Duncan and Graf what your report was going to be before you signed it?---Yes, I would've showed them my report.

30 When you say "would have" does that mean you have a recollection of doing it?---I recall doing it, yes.

When you answer a question "would have" it implies that - - - ?---My apologies.

That's all right. The obvious inference from this report is that drug search is being put forward as the reason why you were there in the cell. Do you understand that?---Yeah.

40 Is there any reason you're aware of as to why a drug search was chosen as the reason?---No.

Did you know why the particular inmate who was injured was in prison? ---No. I did not.

Now, I assume that you signed that and it formed part of the package at some point?---Yes.

Can I take you now to page 75 of this exhibit?

THE COMMISSIONER: Just before we get to that, can I ask you this, Mr Walker? Just remind me, how long had you been at Lithgow at this point in time, roughly?---About six years.

And no doubt you would have been involved in some ways with searches for drugs over that period of time?---Yes, sir.

Was it common to find drugs within the segregation unit?---At different stages you would find drugs in there, yes.

10

Yes. Thank you.

MR DUGGAN: And you've told us about your conversation with McMurtrie, but I think you also indicated that there was a conversation that you had with Mr Peebles as well.---Yeah.

What was the conversation in relation to?---to going up there to get him to write the, to help out with the IRM to make it all right.

20

So that related to the drafting of the IRM, did it?---(No Audible Reply)

Can I just ask you about this document, at page 75? This is an email from you to Mr Peebles and Mr McMurtrie. Do you accept that?---Well, I can only see McMurtrie on my copy.

THE COMMISSIONER: Perhaps the witness can be shown mine but there seems to be a redaction there but - - -

30

MR DUGGAN: I think that might have been an overzealous redaction, Commissioner.

THE COMMISSIONER: I think it was, too. So, have a look at mine.

MR DUGGAN: Can I indicate, for the benefit of the room, that the bit in white before the redaction, and it says, "Peebles, Brad."

MR MADDEN: Sorry, I didn't hear that. What it is?

40

MR DUGGAN: So, this email was addressed, in the unredacted copy, to Brad Peebles and Brian McMurtrie.

MR MADDEN: Do you have a copy I could have a look at?

THE COMMISSIONER: You can have look at mine, Mr Madden, as long I get it back.

MR MADDEN: Oh, I'll give it back to you, Commissioner. Thank you, thank you.



MR DUGGAN: I'm going to ask a question about this now. Now, you have in front of you, on the screen at least.--I did have, I saw it there.

Or in hard copy of the exhibit. So, if you can accept from me that this is an email from you to Brad Peebles and Brian McMurtrie.--Yes.

On 19 February at 12.59 pm. Do you see that?--Yes.

10 And it says, "The attachment UOF [REDACTED] doc". And the next page, page 76, do you recall that being the document that was attached to that email?  
--Yes.

And I'll be corrected if I'm wrong but that is effectively an unsigned version of the document I've just taken you to?--That's correct.

Why are you sending that draft report to Mr Peebles and Mr McMurtrie?  
--Initially, to be proofread, secondly for a copy. It wasn't uncommon to send copies electronically and then just take the hard copies up to attach to  
20 the package.

And I think earlier you gave evidence that, that you had sent this to McMurtrie. Was this after the phone call that you had with him?--Yeah.

And why were you sending it to Mr Peebles?--Because he was the manager of security on the day and I believe I was told to send it to Brad and not to Mr Taylor.

All right. And so it's your recollection that Mr Peebles was the manager of  
30 security on the day?--No, he wasn't the manager of security, but he dealt with it.

Right, okay. And was there any discussion with either of those two individuals, Peebles and McMurtrie after you sent them the draft?--I don't know, I wasn't there with them together.

No, but I mean you've sent it, you've emailed it to them. Did they respond?--I read it to Mr McMurtrie then I just sent it on and then we took our reports up to Mr Peebles upstairs in the general office.  
40

All right. And just to clarify, what was his response, if any, when you told him what you were going to say, or read it out to him?--I, I think he, that was when he made the term, "This one's gonna come back to bite us on the ass, we've got to cover our bases", or to that effect.

All right.

THE COMMISSIONER: Sorry, was that McMurtrie?--No, Mr Peebles.

Mr Peebles, thank you.

MR DUGGAN: Did he say anything else about whether it should or shouldn't be signed or anything to that effect?---Nope. I would've had the hard copy with me, it would've been signed at the time.

10 All right. Sorry, you would have had the hard copy with you when you spoke to McMurtrie?---No, when I took that up to Mr Peebles. I would've had the hard copy of the report with me that was signed, a printed off copy.

When did you take that hard copy up to Mr Peebles?---Pretty well straight away after we finished writing the reports.

20 And what conversation did you have with Mr Peebles about it?---We took it up and saw him in his office and he said, "Well, have you done the IRM?" or something to that effect. I said, "No", so then I, he was on the computer doing something, I gave him my password, he asked for my password and login and he logged into the computer under my login and password and wrote the report.

All right. Well, we're - - -

THE COMMISSIONER: That's the IRM?---That's the IRM.

Yes, sorry.

30 MR DUGGAN: I'll get to the IRM in a minute. But in terms of this witness report, can I take you to page 73? Now I don't want to mislead you here because this is an email that you were not addressed on.---No. Never saw it.

So it's an email from Peebles to Taylor. But I just want to take you to the attachment which is at page 74. So you see there, this is an information report from B McMurtrie to Sir, which I assume is the general manager, and I might just give you a chance to read that before I ask you a question on it. ---I've read it.

40 You've read it?---Yeah.

So, the first paragraph refers to 19 February, the centre was attended by SOG to assist the local IAT with target searches of cell inmates in Lithgow. So, that bit is right, I assume?---Well - - -

The general searches?---It was a general search targeted at 3 Unit.

During the searches, numerous inmates were questioned in regards to drug and weapon possession at the centre. Do you see that?---Yeah, I can see that.

And then the next paragraph, next sentence, “During the informal interviews an informant stated that there was a large quantity of Suboxone in a cell occupied by [REDACTED] cell 208, 5.1.1 Unit.” Are you aware of whether that's correct or not?---Couldn't say.

- 10 Did anyone tell you or to your knowledge, any member of IAT or SOG, that information?---No.

It goes on to say, “The informant was confident the information has previously been reliable, this is consistent with the current drug of choice in Lithgow. The manager of security was informed and instructed to have the information forwarded to the search teams and have [REDACTED] included in the target searches.” Now as I understand your evidence, that wasn't the reason [REDACTED] was - - - ?---I was never given a list of target searches.

- 20 Now the next paragraph I'm interested in, “I informed the search 2IC, Mr T. Walker, of the information and instruction from the manager of security.” Now, before going into [REDACTED] cell, did Mr McMurtrie tell you about this drug intelligence relating to [REDACTED] and buprenorphine?---No.

And did he inform you of an instruction from the manager of security to include [REDACTED] in target searches?---No.

- 30 The reference to the manager of security, do you understand that to mean Mr Taylor, who was the acting manager on the day, or Mr Peebles?---Mr Taylor.

All right. But in any event, you're not aware of this ever happening?---No.

And were you ever shown a copy of that document at the time?---No.

- 40 Okay. And when Mr McMurtrie told you, and I can't recall your exact words from a moment ago, but when he told you that they're going to, the story was going to include the reason for the search being a targeted drug search, did he refer to this report at all or any report?---Don't believe so.

No. Is this report consistent with your understanding of what McMurtrie had told you the version was going to be?---Yes, over the phone.

All right.

THE COMMISSIONER: Mr Duggan, am I correct in assuming from page 73 that whoever was the manager of security on that day, both Mr Peebles and Mr Taylor got that document?

MR DUGGAN: Yes.

THE COMMISSIONER: Thank you.

MR DUGGAN: So it was initially sent by McMurtrie to Peebles who was the usual manager of security.

THE COMMISSIONER: Yes.

10

MR DUGGAN: He then forwards it to Taylor saying, "Steve, as I'm offline could you attend to this?" That being to Mr Taylor who was the acting boss on the day.

THE COMMISSIONER: And offline means not on duty as manager of security

MR DUGGAN: I would assume.---That would be correct.

20 THE COMMISSIONER: Good on you, thanks.

MR DUGGAN: And can only one manager of security be rostered on for any day?---Yes, there's generally only one manager of security.

Now after you found out that he was going, that the inmate was injured, did you at that point discuss your reports with Duncan and Graf?---Yeah. When I, I was actually, I believe I was called and told we'd have to do reports on it, and then I said to them, "This is what we'll have to do".

30 All right. And what about others who were there, like Officer Duffy? Did you have any discussion about his report?---I was told just to get them off the two IAT boys and myself and not put any others in.

So when you say "get them", you're talking about these witness statements? ---That's correct.

Who were you told, who told you that you were only to get them off the two IAT officers?---I believe it come from Mr Peebles and Mr McMurtrie.

40 All right. And so when you say "I believe", your recollection is that both of them told you?---Yeah, I was told not to use his report.

And did you speak to Officer Duffy about whether his report would be required?---I can't remember. I think he may have spoken to me about it but I can't clearly remember that. I think I told him it wasn't needed.

Sorry, I missed that last bit.---I think I told Mr Duffy it wasn't needed.

Can I take you to page 100, please. It's headed Incident Report, Elliott Duncan, 19 February, 2014. Do you see that?---Yeah.

Have you seen that document before?---Yes, I have.

Did you see it on 19 February?---Yeah.

10 Did you see it before Mr Duncan submitted it?---Yes, I did. He actually gave it to me and I put it with a package with my report and the other officer's report.

Was there discussion about what should go in that report?---There was.

And who was that discussion between?---Between the three of us.

And are you talking about yourself, Mr Duncan - - -?---And the two IAT.

- - - and Mr Graf?---Correct.

20 And what was the effect of that conversation, if you recall?---The effect of the conversation, we've got to clean this up. The inmate's been injured and we need to get a use-of-force package done.

All right. But what about the specifics about what was to be said in witness reports? Was there anything said about that?---It was, it would have been.

30 But the effect of the conversation that you had with them made it pretty clear that what really went on in the cell had to be covered up. Is that a fair summary?---That's correct.

So does that mean that they were also aware that the inmate had been injured, to your knowledge?---Yes. I told them the inmate had been injured when I was advised of it and we had to get the reports done.

Was there any discussion in which you told them that you'd struck the inmate or anything like that?---I would have.

40 Do you have a recollection?---Not clearly of what was said, no, but I would have told them. I definitely told them.

Now, in terms of this report, the second sentence, "The IAT was called to search cell 208," well, that's clearly not true, you accept that?---Yes.

And it refers there to entering the cell behind senior correctional officer (IAT), Mr Walker, and Officer Graf. There's no mention there of Mr Duffy, is there in that report.---No.

Is there a reason why there's no mention of Mr Duffy?---At the time I didn't realise Mr Duffy had assisted. However, I think it was generally believed that Mr Duffy would have only wrote the truth and that would not have matched up with the fabrication that we wrote.

And so can I put it this way, Mr Duffy was understood at the time – by you at least – to be someone who wouldn't go along with this sort of cover-up?  
---Correct.

10 And so the best thing to do was to minimise his role in reporting?---That's correct.

That was your understanding. Did you have a discussion with anyone else about that apart from the references earlier to people saying to you don't include Duffy?---Yeah, no, not with anyone else I don't believe.

Did you discuss with Duncan whether Duffy should be included?---Possibly did. I couldn't recollect clearly.

20 And did you read that – and I'm talking about the page on the screen, page 100 – did you read that incident report at the time to make sure that everybody was singing from the same song sheet?---Yes, I would have.

Do you recall you did?---Yeah, yes.

Can I take you to page 101, please. Now, this is the incident report of Mr Graf from 19 February, 2014. Similarly did you see this at the time?  
---Yes, that is correct.

30 And did you have any specific discussion with Mr Graf about what was to go into this incident report?---I would have had specific thing but that is not a fabrication, that part.

All right. Well, let's go through it. So the paragraph which starts, "IAT attended cell 208 in 5.1 Unit," and refers to [REDACTED] and [REDACTED] and it says, "To search the inmates and the cell."---Yeah, well - - -

Well, that's false, isn't it?---No, that's, they weren't there to search the inmate.

40 Right. And how did Mr Graf know, if you're aware, how did Mr Graf know that that should be put in as the reason?---I would have told him.

Do you recall telling him?---I told him what to write in it, yes, as per the instruction I'd received.

So you're talking about an instruction you received from Mr McMurtrie?  
---Yes.

He's your superior officer?---Yes.

And you are communicating that instruction down the train, down the chain to Officer Graf. Is that a fair summary?---Yes.

To include in his report the reason for entering the cell as being to search the inmates and the cell?---That's correct.

10 The paragraph continues, "SCO Walker entered the cell and I followed and saw [REDACTED] jump off the lower bunk and move towards the toilet and sink." Was there any discussion about whether that part should be included?  
---Yes.

What was the discussion?---Couldn't tell you exactly. We'd sat down and based a scenario on what would occur and the reports were written to reflect that.

20 All right. So there might not have been a discussion about that very sentence.---Each individual piece, no.

Yes. And you're referring to a discussion between yourself and Mr Graf, are you?---And Mr Duncan.

It was a three-way discussion at the time?---We were all together when we were doing the reports.

30 Right. Okay. So you're sitting up in the IAT office above Unit 5?  
---Correct.

And you're sitting along a long desk and you've got three computers in front of you. Is that - - -?---Ah, two computers.

Two.---An L-shaped office area in the middle.

All right. But the three of you were there at the time while you were doing the reports?---Yes, we were.

40 All right. Just in relation to that, it refers to the jumping off the lower bunk and moving towards the toilet and sink. These are pretty small cells I assume?---Yes, they are.

And if an inmate jumped off their bunk they could only go towards you coming in the door or backwards towards the toilet and the sink. Is that right?---The ah, I would have been coming in from the door end of the bunks, run down the wall and he'd jump off into a space probably just over a metre wide.

Right. But it's not as though he could walk across the cell, he had to either go forward or back?---That would be correct.

Now, it goes on there to refer to [REDACTED] getting off the top bunk and he exited the cell with Graf. "I directed [REDACTED] to get on his knees but [REDACTED] laid on the floor so I handcuffed him." Well, that I assume is happening out in the dayroom perhaps or did you see any of that?---Didn't see any of it.

10 "And then helped him to his knees and knelt him against the wall and ordered him to stay there." Now, the next paragraph, "SCO Walker escorted [REDACTED] to cell 203." Now, is it possible that you did that or - - -?  
---No. I didn't do that. I did not escort either inmate out of the cell.

You say you were composing yourself in cell 208 at the time?---I was.

"And I returned [REDACTED] to cell 208 with no further incident." Do you see that?---Yeah, I see that.

20 Now, this incident report has been prepared in relation to a use of force. Is that right?---That's right.

But there's not actually a use of force identified anywhere in this report, is there?---No, there's not.

Now, you've referred to Officer Duffy as being sidelined because he was honest, if I can put it that way.---Yes.

30 Was there any discussion about whether anyone else needed to prepare a witness report?---No.

Would people like Officer Mick Watson from the Dog Unit, would he usually do a report for something like this?---All staff members that were there should have submitted a report that should have went through as part of the package.

So, that would include Officer Cameron Watson as well?---Yes.

40 And what about people like the manager of security, the acting manager on the day, Mr Taylor? Should he have prepared a report for something like this?---Yes, it would. Generally that is the person that deals with the package.

But he reviews the package, as I understand it, the manager of security, is that right?---That's correct.

But would an individual, and I'm not talking about any manager of security but if a superior officer issues an instruction as to the entry into a cell and then there is a use of force, would the officer who issues that instruction



usually prepare a witness statement for a UOF package?---You would have to check but I believe if the staff member is involved in any way or form to the use of force, someone else is supposed to do the review.

Can I take you to page 48, please, and that's an incident report from Wesley Duffy, and it's dated 7 December, 2016, but if you assume that that's a print date and an error and it refers to an event on 19 February, 2014. Have you seen that document before or did you see it in 2014?---No, I didn't see it in 2014.

10

Were you aware that Officer Duffy had written a report in relation to the incident on that day?---Yes, I was.

And how did you become aware of that fact?---Mr Duffy went to hand it to me but we'd already been up and seen Mr Peebles and the package had been completed.

So, is this on the afternoon of the 19<sup>th</sup>?---Yes.

20

And so Officer Duffy came to see you, did he, to give you his report?---Yes. I believe we were on the bottom compound or near 5.2 Unit. He came across and said, "I've got a report." I think I went along the lines of, "The package has already been done, mate, we don't need it."

Commissioner, I note the time. Is that convenient?

THE COMMISSIONER: Yes, I'll adjourn. Mr Walker, we're going to adjourn for lunch and come back at 2 o'clock. Just don't talk to anyone about your evidence over that hour. Your solicitor can explain why.

30

MR TAYLOR: Yes, Commissioner.

THE COMMISSIONER: I'll adjourn.

**LUNCHEON ADJOURNMENT**

**[1.00pm]**