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INDEPENDENT COMMISSION AGAINST CORRUPTION

STEPHEN RUSHTON SC
COMMISSIONER

PUBLIC HEARING

OPERATION ESTRY

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TRANSCRIPT OF PROCEEDINGS

AT SYDNEY

ON TUESDAY 22 MAY, 2018

AT 2.00PM

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THE COMMISSIONER: Yes, Mr Greenhill.

MR GREENHILL: Thank you. Mr Walker, you and Officer Duncan and Officer Graf had to submit incident reports. Correct?---We did.

10 And I'd better put my, excuse me while I put my ears on. And I'm not interested where that was done, but it was in a room somewhere, wasn't it?
---Yes.

And when, and the incident reports were being prepared on a computer?
---Yes.

Which had a screen attached to it?---Yes.

20 And when my client, Mr Graf, was writing his incident report on the computer, you told him to state that the three of you were in [REDACTED] cell for a cell search, didn't you?---Yes.

And, and you said you had an IR on an intel report from that morning stating their were drugs in the cell. Correct?---Yes.

And you could see what Graf was typing on the computer because of what was on the screen. Correct?---Correct.

30 And you told Mr Graf to remove Duffy's name from his report, didn't you?
---I don't remember.

And see I suggest to you, you told him to remove, you saw Duffy's name on the report that he was typing and you told him to remove it as Duffy had nothing to do with it, meaning the incident in the, in the cell room.---That would be correct.

And Mr Graf said to you these words or words like them, did he not, "No, he was there, I'll put his name in it." Correct?---Possibly. Correct. Maybe.

40 And, pardon me, and I suggest to you that when he said that to you, you became very aggressive and angry towards him.---No.

You deny that. And you've threatened Mr Graf that he had better take Duffy's name out of the report or else, didn't you?---No.

And I suggest to you that Mr Graf then removed Duffy's name from the report on the screen. What do you say about that?---Nothing to say.

Well, did you see him do that?---I don't recall.

And that was how Mr Walker, I suggest to you, that you were successful in sidelining Mr Duffy out of the action.---That would be correct.

And at lunchtime on that day, you went into the IAT office and spoke to Mr Graf, didn't you?---Well, I would've. We all worked in there.

And you said that you had an intel report regarding the cell and the inmate. Correct?---Correct.

10

And that the use of force had occurred. Correct?---I don't recall the exact words, but yes.

You didn't show that report to Mr Graf, did you?---I didn't have that report.

And from that day onwards I suggest that from time, from time to time you threatened Mr Graf to keep his mouth shut.---No.

What do you say about that?---I didn't threaten him.

20

And to stick to his story regarding the incident that he'd typed up?---Yes.

Which was typed up at your dictation, wasn't it?---Not fully, no.

In, in the main it was typed up at your - - - ?---Partially.

And at that point of time when you, that I'm speaking of, you hadn't seen Mr Duffy's report, had you?---No.

30 I have no further questions.

THE COMMISSIONER: Thank you, Mr Greenhill. Mr Harris, you appear on behalf of Steven Taylor?

MR HARRIS: I do, Commissioner, and with your leave I would seek to ask a few questions.

THE COMMISSIONER: Thank you.

40 MR HARRIS: Thank you, Commissioner. All right. Mr Walker, I'm appearing for Steven Taylor. Could I just take you briefly to that radio call on 19 February that alerted you as one of the IAT officers to come to 5 Unit. Do you know, are those calls logged or recorded anywhere?---Not that I know of.

All right. Would it have been made from any particular location that you're aware of, that call?---It was made from where he was standing.

It could be made from anywhere?---I suppose, possibly, yes.

Because it's, all right, thank you. You said in your evidence at transcript page 26 yesterday, "I believe it was, Mr Taylor made the call." Is that voice recognition that you were relying on?---That was what, all I would be relying on.

All right. Thank you.

10

THE COMMISSIONER: How long had you known Mr Taylor?---Ten years.

MR HARRIS: Thanks, Commissioner. At transcript page 29 of yesterday, you said words to the effect that, "I believe it was Mr Taylor who told me to go and sort it out." And you said, "Mr Taylor, I think, told me that a prisoner had abused the general manager." Would it be fair to say that that is one aspect you've never been particularly clear on, namely, was it Mr Taylor who said that the IAT was to go in and sort it out?---It's very clear, I believe it was Mr Taylor who called us down.

20

Yes. On the radio - - - ?---I attended there, and then - - -

Could I interrupt? On the radio?---Yes, on the radio.

Thank you.---And I entered the cell and I believe it was Mr Taylor that spoke to me.

30

Yeah. But it's always only been a belief or that's what you think, isn't it? ---Yes.

Thank you. Did, do you know if up to six officers got into that cell?---No.

Not room for that?---It could, but I, at the time I believed there was only myself and Officer Duncan that entered the cell.

I thought there were about six officers in the vicinity of the cell but not going in then. Is that right?---That would be correct.

40

So to the best of your knowledge or belief, some of those officers probably stayed at or near the door?---Yeah, in the day room itself.

Or in the day room. And they would be, they're both officers Watson, Duffy, Duncan and Graf and yourself in that six. Correct?---Correct.

Thank you. At the point in time that's around pages 34 and 35 of the transcript, the point in time where you had the inmate restrained against the

back wall, is it correct that at that time there was no more scuffling or punching?---That was correct.

Thank you. Could I just take you to the draft report that was discussed yesterday, and it's at page 49 of the transcript, and you said I think something along the lines of, "I believe I was told to send it to Brad Peebles and not Mr Taylor." Do you remember that evidence?---Yes.

10 All right, thank you. Could one conclude that this was effectively keeping Mr Taylor out of the loop, so to speak, in relation to that draft report?
---Correct.

All right. Thank you. There's an item of evidence that we looked at yesterday, it's Exhibit 45 page 48 and it's Wesley Duffy's incident report, and in that report, and I, I think this is the report that wasn't submitted, isn't it?---Yes.

20 Thank you. In that report of Mr Duffy's, it says words to the effect that Mr O'Dea, I'm sorry, "Mr O'Shea directed us to cell 208 and asked us to remove the inmate." Does that cause you again to be, I'm sorry, I withdraw that. Does that cause you any uncertainty as to - - - ?---Yes, it does.

Yes, as to precisely who gave that direction?---Yes, it does.

30 Thank you. Also in Officer Duffy's incident report, that's Exhibit 45 page 48, there are words to this effect, that in the office, and I think we're talking about the office down there in 5 Unit if I can call it that, "In the office was General Manager Mr John O'Shea and Manager of Security, Mr Brad Peebles."?---Yes.

He doesn't refer to Mr Taylor being there at that time, does he?---I haven't got the report.

All right. What I'm suggesting is, is it possible in fact that your recollection's sufficiently imperfect so that in fact Mr Taylor wasn't down there at the office at the time you as a member of the IAT arrived in 5 Unit?
---Mr Taylor was there.

40 He was there, I'm sorry?---Mr Taylor was there.

All right. Thank you. And I think it may have been after lunch yesterday, I don't have a reference to the transcript, Commissioner, you asked a question I think to this effect, did you have any discussions with Mr Taylor about the cover-up, and you said, "None at all."---That's correct.

And you stand by that still?---I do.

All right. And although you seem quite firm that Mr Taylor was in the office when you as a member of IAT arrived, do you agree then that there is certain ambiguity about precisely who gave the direction to go to 208?
---Yes, there is.

All right. Thank you, Commissioner, thank you, Mr Walker.

10 THE COMMISSIONER: Thank you, Mr Harris.

Now, Mr Stewart, you have been authorised to appear for Mr Turton. He's not here today?

MR HARRIS: He's not, Commissioner.

THE COMMISSIONER: No, that's all right. Does anyone have any questions of Mr Walker, apart from Ms Fishburn?

20 MR SHAW: Yes. I appear for Mark [REDACTED] [sic]. I have some short questions to ask.

THE COMMISSIONER: Go ahead, go ahead.

MR SHAW: Thank you. You've suggested that you had some health difficulties and that caused a problem with your memory and your recollection. Do you agree with that?---I agree with that.

When did those health difficulties commence?---Couldn't tell you exactly.

30 Can you give us your best shot? I withdraw the question. Did those health difficulties commence before 19 February, 2014?---Yes.

Okay. Are you able to say, now focussing on 19 February as a focus date, 2014, are you able to give us an indication how long before the 14th, 19 February '14 it would have been?---After speaking with my mental health nurse they believe I've had it for an extensive period of time. Depression that is.

40 Yeah. Okay. So you're talking about – I'm not, I don't really want to go into the details.---Yeah, it's all right, I'm quite open.

But you're talking about depression. Is there any other issues that related to your either physical or emotional, psychological health?---I've been through bankruptcy, a divorce, a very sour divorce.

Okay.---And two recorded suicide attempts.

Okay. And they, they caused difficulties with your memory and your recollection.---I believe so.

Okay. Do the difficulties with your memory and your recollection still exist as of today?---I have partial memory loss on some things. Some things are clearer than others.

10 All right. You understand that I'm the counsel appearing for Mark Kennedy, do you?---Yes, I do.

Okay. Thank you. As at 19 February, 2014, how long had you known Mark Kennedy for?---I worked under Mr Kennedy at Bathurst Correctional Centre, I'd say I would have known him for about five years at the time.

Okay.---Maybe longer.

20 Was your association with Mr Kennedy purely limited to the workplace?
---Yes, it's just been a professional thing with Mr Kennedy.

Yes. So you never associated with him professionally?---No.

Socially I meant to say, not professionally.---Yes, no.

You understand I - - -?---No, just professionally.

30 When you were working with him in the confines of the prison, how often would you see and meet each other?---I worked with Mr Kennedy at Bathurst in the Acute Crisis Management Unit for probably six to 12 months. I'd see him maybe three to four days a week.

Yeah. What about at the prison here, we're talking about?---Mr Kennedy had been there for three or four months I would think at that time.

No, but my question is, so, okay. So, when you - - - ?---So I would've seen him when I was rostered on. I didn't - - -

40 So how often, how often would you see him a month?---Twelve, 15 days I suppose.

Okay. So you would see him - - - ?---Depending on my days off.

You'd be seeing him close to every second day?---As I say, I generally had worked one weekend off, the rest of the weekends I worked and Mr Kennedy was off on weekends, so the other days we would cross paths.

The office which is being described in these proceedings as the office at the end of the day room, you know the office I'm - - - ?---Yes.

- - - talking about, in this period of three to four months when you had an association with him at Lithgow because of your employment, how often would you see him in the office?---In that office?

Yeah.---Very rarely.

And how often would you see him in the day room?---Very rarely, I never saw him in that area a great deal at all.

10

Okay. Yesterday by the learned counsel that assists the Commission, Mr Duggan, at the top of page 29, you were asked this question, “So you went into the office, went up to the office?” “Yeah.” “And who was in the office?” And you said, “I believe it was Mr Taylor, Mr Peebles, Mr O’Shea and I think it, and I think Mr Kennedy.” When you uttered the words, “I believe it was Mr Taylor, Mr Peebles and Mr O’Shea”, did you say the word “believe” because you were kind of giving evidence from a conclusion that you had drawn rather than your specific recollection?---My specific recollection.

20

And then you say in response to this question, I'm just moving on from your response, you say, “And I think Mr Kennedy”?---Yeah, I think Mr Kennedy was there, but I - - -

Were – sorry, I interrupted you. I'm sorry.---I have the feeling Mr Kennedy left just after the discussion or during the discussion with Mr Taylor.

But you used the words in evidence, “I think Mr Kennedy.”---That can be confirmed by the cameras in the hallway.

30

But I'm asking you about your specific recollection, sir.---Sorry.

So when you used the expression, I'm sorry, when you said in evidence yesterday, you used the words, “I think Mr Kennedy”?---Yeah, I believed he was there at the time.

Right. Now when you say you “believe” he was there at the time, is that your specific recollection as you sit in the witness box today, or is that a conclusion - - - ?---Yes, yes it is.

40

- - - that you have drawn?---No.

I want to suggest to you that your memory in regards to my client being in that office at the time may in fact be incorrect. I'm not saying that you're deliberately telling lies to this tribunal, but I want to suggest to you that there's a chance that what you're saying is incorrect because of your failing memory.---No, I don't believe so.

Okay. Now you talk about there was a conversation in which it was suggested that, that people had to go down and sort out [REDACTED] Yeah.

You recall that evidence you gave yesterday about that?---Yes.

Okay. And you suggested at line 21 on page 30, there's this question asked of you, "And did you understand that something physical might be required?" and your answer was, "Yes." That's what you said yesterday. ---Yes.

10

So when you said "yes" to that question, something physical, what did you actually mean by the expression of something physical?---We're going to enter the cell and just see what happens, I'm just going to do what - - -

Or is it the case that your plan was - - - ?---I did not.

I'm sorry, I interrupted you.---I did not go there with the intentions of having a physical altercation with the inmate.

20

Right. But you agree that there was this conversation that I think Mr Taylor had suggested to you about sorting him out?---Yes.

And so the expression "sorting him out", didn't that basically relate and refer to, or allude to, roughing the prisoner up in a physical sense, basically assaulting him?---Yes.

Sorry?---Basically, yes, but the intention was to go down there and that would be dictated by the inmate's behaviour.

30

THE COMMISSIONER: That was your intention.---That was my intention.

But as I understand your evidence, having heard to go and sort it out, it was your understanding that it wouldn't be disapproved of if you punched him. ---No.

Is that right?---That's correct.

Thank you.

40

MR SHAW: And would it be fair to say that you were part and parcel of the plan to rough him up to assault him?---I was following the direction I was given.

That's not answering the question. The question is, were you part of that plan to rough him up or assault him?---I did not make the plan.

But you knew that there was a plan in place?---Yeah, I was told what to do.

Sorry. You knew that there was a plan in place to rough him up and assault him?---Yes.

You've got to answer orally.---Yes.

Okay. And were you part and parcel of that plan?---Well I was sent there as a team leader, yes.

10 So you were part and parcel of the plan?---I didn't plan it.

No, but you joined into the plan after the plan had been hatched, so to speak. Would that be fair to say?---Yes.

Okay. Because when you gave evidence earlier on this morning, I think it was in response to learned questions asked by the counsel assisting the Commissioner, Mr Duggan. I think you said you never went there with an intention to assault, or words along those lines. That's my note.---That's correct.

20 When you were in the office attached to the day room, is it the case that one of your fellow employees used the word "sort him out"?---Yes.

Do you recollect today who that person was?---I believe at the time it had come from Mr Taylor. It came from a commissioned officer.

And when he said – I'm sorry, sorry, I interrupted you.---It came from a commissioned officer.

30 Was it Taylor or your memory fails you?---I believed it had come from Mr Taylor.

When you say it was, you believe it was Mr Taylor, is that your specific recollection as you sit in the witness box at this very point in time?---No, it's not.

Your memory fails you. Yep?---(No Audible Reply)

40 Okay. And do you agree that you were asked a leading question from the learned Counsel assisting the Commissioner yesterday, Mr Duggan, you were asked this question, "And is it possible that Mr Kennedy was there as well?"---I don't recall the question, however - - -

You don't recall that question. Okay. Well, let me ask you the same question.---Yeah.

Not quite the same question but almost the same question. Is it possible that Mr Kennedy was there at the time for this conversation when it was said by someone the words, "Sort him out?"---Yes, it is.

Okay. Are you saying that it was, are you saying that it was possible that he was there but are you equally saying it's a reasonable possibility – when I say reasonable possibility I don't mean pie in the sky, I mean reasonable possibility, are you saying to this court that it's a reasonable possibility that Mr Kennedy was not there?---No.

10 Right. I want to suggest to you that there is a reasonable possibility, if I can use those words yet again, I want to suggest to you that your memory is mistaken, your memory perhaps does not do you justice. I want to suggest to you that there's a reasonable possibility that your memory is mistaken in this regard. I'm not saying you, I'm not saying necessarily that you are being dishonest, I'm not saying - - -?---I'd agree.

- - - necessarily that you are not being dishonest, I'm keeping it open.---Yes.

20 But what I'm suggesting to you is that there is a reasonable possibility that your memory is flawed and you've, you've, you've either done one of two things, you've either deliberately told a falsehood to this Tribunal or your memory defeats you. What do you say about that?

THE COMMISSIONER: That's in relation to Mr Kennedy, is it?

MR SHAW: In relation to Mr Kennedy.

MR DUGGAN: Is the proposition being put that Mr Kennedy was not there?

30 THE COMMISSIONER: I assume so.

MR SHAW: No, I am not – the instructions that I have, I am not specifically putting anything. Your Honour would have, Commissioner, you would have noted that I have been only suggesting.

THE COMMISSIONER: Why are you suggesting things if you've got no instruction?

40 MR SHAW: Well, as I understand, to put things you can, you can put things when you have specific instructions, when your instructions are such that they are not specific to the point, you're allowed to suggest alternative scenarios and that is what I'm doing in my cross-examination.

THE COMMISSIONER: Are you telling me that you don't have instructions one way or the other as to whether Mr Kennedy was there?

MR SHAW: Do I have to tell Your Honour that?

THE COMMISSIONER: No, you don't have to tell me - - -

MR SHAW: Sorry, Commissioner, I'm sorry.

THE COMMISSIONER: Well, I'm having difficulty with the question.

MR SHAW: Well, I've been suggesting - - -

THE COMMISSIONER: No, just let me finish, please.

10 MR SHAW: Sorry, I'm sorry.

THE COMMISSIONER: I'm having difficulty with the question unless you are putting to this witness that he's mistaken or he's being deliberately untrue, and I don't think that can be put unless you actually know what the position is from your client's point of view.

MR SHAW: I am not putting that to the witness.

20 THE COMMISSIONER: Or suggesting it to him then.

MR SHAW: I am suggesting it to him, I'm giving the opportunity to reply to the suggestions that I'm putting him. That's as far as I'm going.

THE COMMISSIONER: What do you say, Mr Duggan?

30 MR DUGGAN: The only reason I raise it is that I had some recollection perhaps in some evidence that Mr Kennedy had given in a record of interview that suggested that Mr Kennedy said he was either there or couldn't remember whether he was there, but it certainly wasn't a positive denial, and I don't want to say any more about that because I'm just trying to find the reference now, but that's why I raise the issue as to whether or not it's being put as a positive assertion. This witness - - -

MR SHAW: I want this to be quite clear. I am not putting this as a positive insertion. I'm precluding to do so by virtue of what I am doing in these proceedings.

THE COMMISSIONER: That's all a bit elliptical, but okay, you go ahead.

40 MR SHAW: That's my cross-examination.

THE COMMISSIONER: Thank you, Mr Shaw. Now, I'm not sure whether Corrective Services wants to ask some questions but before you do, I was going to deal with you, Mr Brasch, second last if I can say that. Ms Fishburn, are you in a position to proceed?

MS FISHBURN: Commissioner, I have no questions of this witness.

THE COMMISSIONER: Thank you.

MR MADDEN: Commissioner, I'm going to seek leave just to ask one question, and only one. It's to do with the issue that you allowed me to speak to the client this morning. I only got it half right.

THE COMMISSIONER: Okay. Okay.

10 MR MADDEN: All right. Mr Walker, you've given two bits of evidence about a discussion you say you had with Mr Peebles. One is you say he said, "This will come back to bite us", I haven't asked you anything about that. You also said that he said, "We've got to clean this mess up." Well I put to you as a fact that he didn't say that second sentence.---Words to that effect are correct.

Words to that effect.---Yes.

20 Well, what, what may those words be?---I could not state that word for word but I do clearly recall being told, "I believe this one's gonna come back to bite us on the ass."

Rightio. But you don't recall "We've got to clean this mess up"?---I don't recall the exact words but that was the intention.

Rightio. All right. Thank you. Thank you, Commissioner.

MR DUNNE: I won't keep the Commission long.

30 THE COMMISSIONER: That's okay, you go ahead.

MR DUNNE: The Commission will recall I was given leave just to - - -

THE COMMISSIONER: Yes.

MR DUNNE: - - - touch on some questions arising from an investigation report that is found in Exhibit 45 on page 99, if that could be shown to the witness. Mr Walker, my name's Dunne, I represent Mr McMurtrie.---Yes.

40 THE COMMISSIONER: Just hang on until we get that up on the screen. What page was that?

MR DUNNE: Ninety-nine, sorry, yes, 99 is the number at the bottom of the page.

THE COMMISSIONER: Thank you.

MR DUNNE: It's the Lithgow documents.

THE COMMISSIONER: Is that the one you're referring to?

MR DUNNE: Yes it is.

THE COMMISSIONER: Okay.

MR DUNNE: I asked you some broad questions about that this morning. Do you recall that, yes, Mr Walker? Just confirming that the first conversation you had with Mr McMurtrie was a telephone call after the incident in [REDACTED] cell. Do you agree with that?---Yes.

And at the time of that phone call, you had prepared a draft of your investigation report. Do you agree with that?---Yes, I had started a rough draft.

Right. And so it was not Mr McMurtrie who asked you to complete this report. Would you agree with that?---I'd agree with that.

20 And in fact you were contacting Mr McMurtrie to seek assistance in preparing that report. Is that correct?---Yes.

Do you recall now who actually asked you to prepare the report?---No I don't.

I see. Now, what part of, sorry, can you tell the Commission, I think you dispute that the first paragraph you prepared. Do you agree with that?---The start of it.

30 The paragraph that starts "Sir, during the course of the search operation", and concluding with, that paragraph there? You have told the Commissioner it was prepared with the assistance of Mr McMurtrie. Is that right?---That's correct.

And do you agree that the following three paragraphs are your handy work?---Most of that, yes.

Yes. Mr McMurtrie had no part to play in the last three paragraphs. That's your evidence?---Yes.

40 Okay. Yes, thank you.

THE COMMISSIONER: Thank you. So, is there anyone left apart from Mr Brasch, Mr Taylor and any questions counsel assisting wants to ask? Is that it? I think that is, isn't it? How about you, Mr Brasch?

MR BRASCH: I don't have any questions, Commissioner.

THE COMMISSIONER: Thank you. Mr Taylor, do you have any?

MR TAYLOR: I'm not going to ask any questions at this stage. Thank you, Commissioner.

THE COMMISSIONER: Do you?

10 MR DUGGAN: I have a couple. Thank you, Commissioner. Mr Walker, I just want to ask you about preparing IRMs generally, so not 19 February, just generally.---Yes.

Where would they usually be prepared by members of the IAT?---Generally in the IAT area.

So is that the room above Unit 5?---The office above 5, yeah.

20 And is it usually the senior officer that would prepare the IRM?---It's supposed to be but often the other officers are far more computer literate than I would so they could also prepare them at the time.

All right. Is it usually a member of the IAT - - - ?---Yes.

- - - that does the IRM?---Yes.

In fact, it's IAT's responsibility to do that?---It is our responsibility in that role.

30 And would someone like the manager of security ever be involved in the drafting of an IRM?---No.

You've given some evidence that Mr Peebles typed up the IRM on 19 February. Other than that occasion, can you think of an occasion where the manager of security had typed up an IRM?---No, not typed it up.

Can I show you a document please, which is an aerial photograph of the correctional centre, and there's a copy for the Commissioner as well.

40 THE COMMISSIONER: Thank you.

MR DUGGAN: If I can indicate for the rest of the room, I'm just going to ask Mr Walker to mark something on this and then I'll have it passed around the room. You may need a Sharpie, I might get a Sharpie, it might be a bit better with the photograph. Thank you. I see, it's on the screen as well. Thank you, Commissioner, but please don't mark the screen Mr Walker. Can you please mark the document. Can you put a number 1 in the area where the IAT room is above Unit 5? And you gave some evidence

that you went to an office where Mr Peebles typed up the IRM which I think you might've even said was outside the perimeter.---Yes.

Is that correct?---Yes.

Could you please mark with the number 2 the office or the general area where the office was that the IRM was typed up? You've done that.---Done that.

10 Thank you. That might be collected and if anyone wants - - -

THE COMMISSIONER: We'll pass it around, and then are you proposing to tender it?

MR DUGGAN: Yes.

THE COMMISSIONER: Mr Duggan, I have in the back of my mind, and I may be wrong but it may be in that intelligence report which was prepared in respect of what appeared in the first paragraph of the document most
20 recently – I won't beat around the bush. Was there an intelligence report prepared by McMurtrie?

MR DUGGAN: Yes, and it's at page 90.

THE COMMISSIONER: And has that been shown to this witness yet?

MR DUGGAN: Yes, and his recollection is, as I understand it, that he didn't see the document.

30 THE COMMISSIONER: I see. That was put yesterday, was it?

MR DUGGAN: Yes, I'm pretty sure I did.

THE COMMISSIONER: Can we just check that, just to make sure, because I notice Mr Dunne's up the back there and we'd better just make sure that that's happened.

MR DUGGAN: Thank you, Commissioner. Perhaps if someone can check the transcript while I ask the next question and see if they can't find it.
40

THE COMMISSIONER: Yes, you go ahead.

MR DUGGAN: If I can take you please to your compulsory examination in March of this year at page 517. And it's down near line 40 that I want to direct your attention to. Higher up the page you've been asked some questions about the CCTV footage - - -?---Yes.

- - - and whether or not it might have been deleted, and at line 40 you were asked that he'd gone up and deleted it on the 19th, and I think that was a reference to Mr McMurtrie, but I don't want to ask you about that, and your answer is, "Because when, when, I forget, I spoke to Peebles, I said, 'What about the day room footage?' And he, I believe he along the lines of, 'Yeah, McMurtrie's taken care of that.'" Is that your recollection of the conversation - - -?---Yes, it is.

- - - that you had with Mr Peebles?---Yes, it is.

10

And it continues, "All right." That's a question from Ms Clifton, and you answer, or you continue, rather, "And McMurtrie told me later because I was off the next few days, I said, 'What about the footage for this?' Because I was really concerned at that point after the injuries had come out. And he said, 'No, it's all right,' he said, 'There's no footage of it.' He said, 'They'll never get it, don't worry about it, it's all good.'" Is that your recollection of a conversation you had?---Yes, it is.

20

And then just for completeness over the page, Ms Clifton says, "All right." And you continue, "I was told the same when the first investigation, the same morning that the investigators come in I was called into O'Shea's office when we were called up to be interviewed. He said to me," – so that's O'Shea I assume?---Yeah.

"'Don't worry about it, it's all good,' he said, 'I've spoken to them. They've got nothing.'" Is that your recollection of a conversation you had with Mr O'Shea in 2015?---Yes, words to that effect.

30

Excuse me one moment, Commissioner.

Commissioner, I'm told that it may not be in the transcript from yesterday so I will, I will ask - - -

THE COMMISSIONER: I think you should, yes.

MR DUGGAN: - - - Mr Walker about that document at page 90.

40

Mr Walker, I'll give you a chance to read that document.---Yeah, I saw this document yesterday.

All right. And I think I may have even asked you about for clarification, you've put in your report, your witness report, a reference to attending cell 208 because of drug intelligence.---That was what I was told to write.

You were told to write that. And you see from this information report that it contains intelligence in relation to [REDACTED] being in possession of a large quantity of Suboxone. Do you see that?---Yes.

When was the first time that you saw this document?---When you showed it to me yesterday. I've never seen it.

Is it possible that you saw this at the time but have forgotten about it?---No. I've never seen it. It's dated wrong as well.

Yes. Are the contents of it, in effect, the communication that was made to you about what you were to include in your report?---Yes, they are.

10

Commissioner, I have no further questions for this witness.

THE COMMISSIONER: All right.

MR DUGGAN: Oh, and I tender the - - -

MR MADDEN: Commissioner, could I just ask, oh sorry. I'm sorry. Can I just ask something arising from that re-examination by Counsel Assisting?

20 THE COMMISSIONER: Of course.

MR MADDEN: Thank you.

MR DUGGAN: I'm happy to tender that document at some point.

THE COMMISSIONER: Yes. Let Mr Madden finish and we'll do that.

MR MADDEN: No, I'm sorry. I thought my friend had finished.

30 MR DUGGAN: No, that's all right.

THE COMMISSIONER: Well, tender it now, then.

MR DUGGAN: I'm not sure where it is in the room. That's the only issue, Commissioner.

THE COMMISSIONER: Wait till it comes back and we'll let Mr Madden finish.

40 MR MADDEN: Mr Walker, Mr Peebles had never had any discussion with you about the CCTV being removed, scrubbed or whatever?---Yes.

Thank you, Commissioner.

THE COMMISSIONER: When you said, "Yes."---Well, I never got to finish.

Finish.---Yes, I discussed it with him.

Thank you. Now, is there any reason why Mr Walker shouldn't be released from his summons?

MR DUGGAN: No. I can't think of any, Commissioner.

THE COMMISSIONER: Is anyone of a different view?

MR GREENHILL: Not me. No, Commissioner.

10

THE COMMISSIONER: Thank you, Mr Walker for your evidence. You've been of great assistance and you are released from your summons. ---Thank you, Commissioner.

Thank you.

20

MR TAYLOR: Commissioner, can we just tidy up one matter? You'll recall this morning, Counsel Assisting tendered Exhibits 54 and 55, which are these transcripts of Mr Walker's record of interview on 9 August, 2017 and the compulsory examination on 9 March, 2018.

THE COMMISSIONER: Yes.

MR TAYLOR: I'm instructed not to seek any extensive variation of the suppression order.

THE COMMISSIONER: You're instructed not to?

30

MR TAYLOR: Not to.

THE COMMISSIONER: Thank you very much for letting me know. Thank you, Mr Walker. You're free to go.

THE WITNESS EXCUSED

[2.52pm]

MR DUGGAN: Commissioner, I might tender that image, if I may.

40

THE COMMISSIONER: Thank you. That's Exhibit 56.

#EXH-056 – AERIAL MAP OF LITHGOW CORRECTIONAL CENTRE MARKED BY TERRENCE WALKER TO IDENTIFY IAT OFFICE WITH A 1 AND OFFICE IN WHICH IRM WAS COMPLETED WITH A 2

MR DUGGAN: I'm not sure whether Mr Walker's solicitor has left. I was going to tender that document at the, sorry, I was going to ask for the suppression order to be released in relation to the compulsory examination of Mr Walker.

THE COMMISSIONER: I thought that was what was being referred to, sorry, he referred to both, didn't he?

10 MR DUGGAN: Yes. He doesn't oppose it but there may need to be a direction lifting the suppression order.

THE COMMISSIONER: I'll just revoke it.

MR DUGGAN: Yes.

THE COMMISSIONER: Yes. I revoke the section 112 order that was made in respect of that material.

20 **VARIATION OF SUPPRESSION ORDER: I REVOKE THE SECTION 112 ORDER THAT WAS MADE IN RESPECT OF THAT MATERIAL.**

MR DUGGAN: Thank you, Commissioner. The next witness is Mr Duffy.

THE COMMISSIONER: All right. Come forward, Mr Duffy. Mr Duffy, come forward and you can take a seat. I understand you're unrepresented? ---That's correct.

30 Thank you. I'm going to have you sworn. Do you want to take an oath or an affirmation?---Yeah, I'll do the Bible.

You'll do the Bible. We'll do that now and then I'll let you know some of your rights and obligations.

THE COMMISSIONER: Now, Mr Duffy, let me just explain what your obligations are as a witness here and what your rights are. As a witness you must answer all questions truthfully and you must produce any item which has been described in your summons, and I don't know whether you were asked to produce documents or not, but if you were, or I require you to produce a document during the course of your evidence then you must do
10 so. You may object to answering a question or producing an item. The effect of any objection is that although you must still answer the question or produce the item, your answer or the item produced cannot be used against you in any civil proceedings or subject to two exceptions in any criminal or disciplinary proceedings. Are you still employed as an officer with Corrective Services?---Yes, I am.

All right. The first exception is that the protection does not prevent your evidence from being used against you in a prosecution for an offence under the ICAC Act, most importantly an offence of giving false or misleading
20 evidence. So, although an objection will protect you from any evidence being used in any criminal offence such as an assault for example or a robbery or what have you, it won't protect you if you don't tell us the truth. And the penalty for telling us untruths or giving false or misleading evidence is significant. It can involve imprisonment for up to five years, so it is important you tell the truth. The second exception applies to you because you're a public official. Evidence given by you, because you're a public official, may be used in disciplinary proceedings against you if the Commission makes a finding that you engaged in, or attempted to engage in, corrupt conduct. Do you understand that?---(No Audible Reply)
30

Now rather than you objecting as each question is asked to get that protection, I can make a declaration that all the answers you give will be protected in the way that I've described. Would you like me to make such a declaration?---Yes, please.

Thank you.

Pursuant to section 38 of the Independent Commission Against Corruption Act 1988, I declare that all answers given by this witness and all documents
40 and things produced by him during the course of his 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 thing produced.

PURSUANT TO SECTION 38 OF THE INDEPENDENT COMMISSION AGAINST CORRUPTION ACT 1988, I DECLARE THAT ALL ANSWERS GIVEN BY THIS WITNESS AND ALL

DOCUMENTS AND THINGS PRODUCED BY HIM DURING THE COURSE OF HIS 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 THING PRODUCED.

10 THE COMMISSIONER: So, you have that protection now but keep in mind it's not going to help you a great deal if you tell us untruths.---Okay.

Yes, Mr Duggan.

MR DUGGAN: Thank you, Commissioner. Mr Duffy, can you please state your full name for the Commission?---It's Wesley John Duffy.

Thank you. And what's your current rank with Correctives?---I'm currently a senior correctional officer.

20 And in 2014 what was your rank?---I was a first class correctional officer.

All right. And as I understand it, you are trained or received IAT training. Is that right?---That's correct, I've worked on IAT for currently 13 years.

You worked in IAT for 13 years.---Thirteen years I've been doing it, yeah.

Right, okay. So you're, you still are rostered on occasionally with IAT? ---Yeah. Yeah.

30 Are you often, or in about 2014, were you often rostered on with Mr Walker?---When Mr Walker took IAT on and Mr Elliott was involved, sorry, Mr Duncan was involved, at that point in time I actually asked Mr Peebles to relieve me from IAT so that I wasn't on there.

Right. There was a period there where you asked not to be rostered on for IAT duties.---That's right. That's correct.

And how long was that period?---Pretty much the whole time they did it.

40 All right. And are you able to give me the years or the period, or - - - ?---It was about 18 months, I think Mr Walker said it was two years but it was somewhere between 18 months to two years that I didn't really have much to do with it.

Right.---It's not that I never worked it but if they were there, I generally didn't. They were higher up the order of the roster, I suppose, to do it.

Right. And you expressed a preference, did you, not to be rostered on with them?---That's correct.

And are you able to explain why you expressed that preference?---I didn't, we, we had very different methods of operation I suppose you would say. I didn't particularly like the way they operated, no.

10 THE COMMISSIONER: What does that mean?---They tended to be too ready to be heavy handed, I suppose. You know, too ready to go down the path of using force when they didn't need to.

Okay.

MR DUGGAN: As I understand the policies in relation to the use of force and the like, and correct me if I'm wrong, use of force is a method of last resort. Is that correct?---Most definitely. Physical force, yeah.

20 And one of the important principles is de-escalation as an IAT officer?
---That's correct.

And are you suggesting that Mr Walker and perhaps Mr Duncan would not put de-escalation first and would often escalate matters with inmates?---Not necessarily. I'm not saying they did that. They would, it just seemed that they were more ready to go down, or perhaps got to that point quicker than I would have.

All right. In terms of 19 February 2014, and you know the date I'm talking about?---Yes.

30 You were rostered on for A watch.---That's correct.

And you weren't rostered on for IAT that day.---I wasn't.

But you were attached to a search team?---I was with them on that, yeah. I joined myself or I'm pretty sure I was put with a group that were on IAT on that search day. Yeah.

40 Who determines which group?---Usually there's an area manager or sector managers as they call it now. Sometimes it's the actual IAT senior, like I've done it myself, like it will depend when they decide to do it. If it's a late decision in the day then often when you get there, they'll go, "We're locked down today, here's the staff list, make three teams."

Right. And did you have a direct report on that day or a senior officer?---If I was on Mr Walker's team it would've been him, but generally I mean you're reportable to the area manager or sector manager.

All right. And is there a, who is the sector manager for Unit 3, do you recall?---I don't remember, no.

Okay. All right. So, the prison or at least Unit 3 was in lockdown that day?---Sorry?

Unit 3 was in lockdown?---That's right, yeah.

10 And there was a search operation underway in Unit 3?---Yeah.

And you were tasked to participate in that search operation?---That's right.

And were you attached to Mr Walker's IAT team or other correctional officers who were searching?---I don't really remember. I was with them. So far as to say, yeah, I didn't get rostered with them but, like, we were still a core group and we work together.

Right. Now, do you remember a radio call?---I do.

20 And do you remember what was conveyed in the radio call?---Yes. IAT were requested by Mr Taylor to attend 5 Unit and bring extra staff. That call was under duress in, it, there was a level of urgency in his voice as if there was something significant taking place in that unit.

All right. And if IAT was going to assist a searching operation, would they usually be organised over the radio system or some other way?---If it was, no, it wouldn't have been over the radio for a search, no.

30 Would it have been part of a morning briefing, or - - - ?---That's correct.

All right. So, just getting back to the radio call, so you, as part of your uniform, you had a radio?---I had a radio, yeah.

On your shirt?---Mine would've been on my belt though on the day, I wasn't on, I didn't have my vest so it would've just been - - -

All right. And so do you remember if the radio call was answered, or - - - ?
---I don't know. No, I don't really.

40 But you said that Mr Taylor made the radio call. Is that because you recognised his voice?---Yeah, definitely.

Did he, did he identify himself?---No he didn't, but Mr Taylor's got a fairly unique sort of voice, just, I knew it was him, there's no question about it that Mr Taylor made that call.

And was it a fairly short radio call, was it?---Yeah.

And it was "Get down to Unit 5"?---Yeah.

And I assume it wasn't, because of the urgency, you didn't assume it was lunch time that you were needed down there?---No, of course not.

All right. So did you go down to Unit 5 with the IAT?---Yeah.

10 And was anyone else with you when you went down?---I, well, at some point Mr Watson came down with a dog because he was on, he was up in the unit, too.

So that's Michael Watson.---Yeah.

And so he was part of the search operation in Unit 3, was he?---Yeah.

20 All right. So he came down at some point, maybe not with you but - - - ?
---Not with me, no. I, like I said I can't, he was on, I'm pretty sure that he was in 3 Unit with the rest of the SOG guys, I think part of the search day, and he ended up down there with us.

THE COMMISSIONER: I think you said a little earlier that Mr Taylor had called for IAT and any other staff?---And bring some extra staff.

What did that convey to you?---I've never, initially I thought something fairly serious must have taken place because that's not something that would normally be called.

Thank you.

30 MR DUGGAN: So you attended Unit 5. Do you remember how you entered Unit 5?---Through the day room.

Through the door that goes from the compound into the day room.---That's right.

40 And when you went into the day room, who else was in the day room, if anyone?---When I went in there, I follow, because I was following IAT I had already gotten to a gate that's halfway down before them, and then I proceeded after them. So Mr Walker and Mr Duncan and Mr Graf had already gone into the day room, I followed them in.

Were you immediately behind them, or - - - ?---Yeah, pretty much. Like it would've been, you know, maybe 30, 40 seconds behind them. Like I said, I got a gate on the way. When I've entered that room, the day room, Mr Walker was up at the office where Mr Peebles and Mr O'Shea and Mr Taylor were, and we pretty much met them at the cell I guess. They were making their way down to the cell as we, I've come in the door.

Right. So they, did you see Mr O'Shea, Peebles or Taylor in the office itself?---They were coming out of there as I came in.

Right. So you're effectively walking into the day room at the same time as they - - - ?---Yeah, as they were coming down. Yeah.

10 All right. And so Mr Walker was coming out of the office, was he?---I don't think he event went in the office. He met them pretty much at the door. As I said, they were heading, they were, no, they were coming out of the office so he was in the vicinity of that office with them coming back down the day room as I've come in.

Right. And so I think you said O'Shea, Peebles and Taylor. Was there anyone else?---Not that I can remember.

All right. Do you have any recollection of Mr Kennedy being - - - ?---I never saw Mr Kennedy.

20 Not on that morning?---No.

I didn't even know, honestly, I didn't even know Mr Kennedy was on that day.

Right. And was Cameron Watson there at the time?---I didn't know that Mr Watson, Cameron Watson was present at all. I don't recall him being there at all. Obviously he was because he said he was but I don't specifically remember him being there, I never did.

30 All right. And is there anyone else you remember being there apart from your IAT guys and Mr Watson, Cameron Watson?---No. Not initially, no.

Right. Is there someone who turned up later, or - - - ?---I believe Jane Lohse was there, I, I believe she was in the office. I found that out later though, and I did, I looked at the footage after the event and Mr Turton and Ms Lacey came through the day room at one point.

All right, okay. We'll try and do it in sequence.---Yeah.

40 All right. So, did you know, did you overhear any conversation between Mr O'Shea, Peebles, Taylor and the IAT?---No, no. I recall going in there, Mr O'Shea was at the door of the cell yelling at the, yelling at the inmate.

So just pausing there, so does that mean he walked down from the office - - - ?---Yeah.

- - - to the cell?---Yeah.

And he's at the cell door. Is the solid door open or closed?---The solid door was open.

Was the grille - - -?---I don't know who opened the solid door. I'm not even sure whether it was or wasn't open when I walked in there. I recall Mr O'Shea yelling at the inmate, the inmate yelling back at him. Mr Taylor was standing at the door and Mr Walker was at the door at that point as well.

10 Right. And do you recall what Mr O'Shea and the inmate were yelling at each other?---No. At that point, I didn't find out till after that, about the whole knock up and all of that. At that point I was under the impression we were just removing the inmate so that Mr O'Shea could keep yelling at him, because that's happened from time to time.

THE COMMISSIONER: Was that so he could keep yelling at him?
---Yeah.

20 Why couldn't he keep yelling at him from the door?---Well, just to move him from the other guy. It's not something -- like they've talked about cell therapy or whatever - - -

That an expression you've heard?---Not really.

No?---Therapy, yes, I've never really heard of cell therapy as such, no. So I was under the impression that all we were going to do was take him out so that Mr O'Shea could continue his conversation away from the other guy.

30 MR DUGGAN: All right.

THE COMMISSIONER: Where was Mr Peebles?---He was in the day room as well.

Sorry, Mr Duggan.

MR DUGGAN: That's all right.

40 You said that you were under the impression that you would take the inmate or inmates out.---I'm pretty sure someone, it was stated by, and I think it was Mr Taylor, to get him out of there or to remove him from the cell, along those lines.

And did you know whether that was a reference to one or other of the inmates?---Not really, no, because I was the fourth, I wasn't on IAT, I was just there to back them up if they, if they needed any extra help.

All right. And was Mr O'Shea yelling at the inmate for long or - - -?---Not really, no.

And then what happened next?---Then basically we went into the cell. I, I think Mr Taylor opened the grille and then as we've gone in, Mr Graf and Mr Duncan got the guy off the top bunk, took him outside.

10 All right. So was there any, when you enter a cell like that, do you need to make sure that everybody's ready to go in or that everybody's ready for the door to be opened?---It's a little bit hard when it just happens in front of you. I probably would have organised it a little differently if it was me doing it. I wouldn't have gone into the cell till the inmates were kneeling down at the back of the cell and compliant. That's just what I would have done.

THE COMMISSIONER: And cuffed?---No, I would have cuffed them when I got in there, but if they weren't complying with what I wanted them to do I wouldn't have gone in there in the first place.

Right.---But once, I mean I have a duty of care to staff and inmates.

20 Sure.---Once they've decided to do that, out of duty I'm in there, I've got to be there to help them.

Sure.---So that's how we ended up in there.

30 MR DUGGAN: The technique that you've described, asking an inmate to go to the back of the cell and get on his knees, that's obviously a disarming technique?---It's a compliance technique. Basically there's several ways and different seniors do it different ways. That's the way I've always done it. I mean you've seen the length of the cell, it's not that long, if an inmate is going to get up and, and try and do anything to you, you can pretty much get there before he gets off his feet.

All right.---You don't have this situation where you're standing toe-to-toe with someone that may or may not want to punch you in the face.

40 When you were in that day room and you had the governor of the correctional centre and you had the manager of security who's the second in charge and you had the acting manager of security on the day, did that strike you as unusual in any way?---Not really. That sort of thing does happen. I mean they could have, they could have been there for any purpose. They could have been here on a charge, they could have been serving a warrant, they could have been there for any number of reasons. Yeah, no, I didn't think it unusual that they were all there, no.

Now, I think you said that the door was opened by Mr Taylor, is your recollection?---The door, I'm pretty sure it was Mr Taylor at opened the grille door, yeah.

And who was first in the cell?---Mr Walker.

And can you describe what happened next?---He's gone in, then Mr Graf and Mr Duncan have gone in and basically removed the guy off the top bunk or the other bunk – I'm pretty sure it was the top bunk – taken him out, which left me tucked straight in behind, obviously, Mr Walker.

10 So, just pausing there. Did you go into the cell before they got the inmate out or after?---It would have happened simultaneously. We would have all been going in there. Yeah, I, I really don't remember the, initially I would have been behind them as the fourth because, like I said, I wasn't an IAT. But at some point fairly quickly I ended up behind Mr Walker while the other guys removed the other guy from the cell.

And do you remember anything about the removal of the first inmate out of the cell?---Not really, no, because he, they kind of, like I said, he was on the top bunk, he brushed past me. I'm kind of tucked in behind to be there with Mr Walker.

20 Did it happen quickly or - - -?---Oh, yeah. The whole thing happened every quickly.

Do you remember where the dog was when you first - - -?---Well, the dog was outside, outside the cell. The dog never went in the cell.

But was the dog close to the door, do you recall?---I don't know because he was behind me and I don't know.

30 So, your focus in that situation, I assume, is you've seen the two officers pulling one inmate out and I assume you see Mr Walker's one-out with the inmate.---That's right.

And so you're looking forward ready to go in?---Yes.

Is that a fair summary?---(No Audible Reply)

40 And so, what did you see when you went into the cell?---Well, as we progressed into the cell, the inmate was backing up towards the back of the cell. He had his hands up in front of him or he did raise his hands up in front of him and at that point is when Mr Walker struck the inmate. After that, I basically at that point, took, got, and took the inmate to the ground by his waist to restrain the inmate on the ground. That was - - -

Did you see where Mr Walker struck the inmate?---He got him on the face, yeah.

And was that while the inmate was moving backwards to the back of the cell?---Yes.

You've referred to shouting between the inmate and the governor. Did you see any conversation or shouting between Mr Walker and the inmate?
---Yeah, yeah. He was shouting too.

Do you remember what they were shouting about?---No. Not really, no. The inmate was having his fair of shouting as well.

10 Did you hear Mr Walker yelling, "Stop resisting"?---I don't recall that, no.

Did you hear the inmate, "I didn't do it," or anything like that?---Not that I really remember, no.

So, you've seen Mr Walker strike him once. Is it possible that he struck him more than once?---I, I only, I only saw him do it once but it is possible, yeah, that he got him more than once.

20 And did you move towards the two of them, or what happened next?
---Yeah.

Are you able to describe - - -?---Well, then at that point my decision was to basically get the inmate to the ground and get him restrained.

And did you do that?---Yes. I did.

30 And are you able to describe how you did that?---Basically just tackled him around the waist and dropped him. I usually get a, no one can see my foot. I usually get a foot behind them and pretty much just topple them over themselves. It was that sort of thing. It's kind of like playing football really.

So am I summarising correctly if I say you took the legs from under him, is that - - -?---Yeah, yeah. Put him off balance and tipped him on to the ground.

So a leg sweep, is that what you're conveying?---Yeah. Yep.

40 I don't want to put words in your mouth.---I've never really called it that but it's that type of a technique. Yeah, you basically take the inmate's legs from under him so he has no balance so he falls on the ground.

And you had your arms around his waist, did you?---Around his waist, that's right.

And so he was on the ground?---Well, his torso, around his waist, torso, wherever. It's, it's all happening fairly quickly and fairly crowded as you saw.

Yes. And is he up against the back of the wall at this point or is he - - -?
---He kind of, well he hit the back of the wall as I took him down yeah.

What part of his body hit the back of the wall? Do you remember?---Well,
it would have been his back.

Right.---Yeah, he would've backed onto the wall and down over.

10 So your momentum took him into the wall to support Mr Walker.---Yeah. I
don't know if he was already there because of what Tex was doing to him.
I'm not really, I can't really be 100 per cent clear on that, but - - -

All right. And so was it just you and Mr Walker at this point?---That's right.

All right. So then was he on the ground, or what?---Yes.

20 And what happened next?---We sort of wrestled around a bit, then Mr
Duncan came in from behind over the top of us and pretty much landed on
the lot of us. And that pretty much stopped any more struggling. There was
a little bit of wrestling and then Mr Duncan actually told me, I, I, I, I think I
stated that "that's enough" at that point because I thought the wrestling was
still going on really more than it needed to be.

So you said "that's enough" or words to that effect?---I said "that's
enough", yeah.

And were you saying that to the inmate, or - - - ?---No.

30 Who were you saying that to?---To Mr Walker and Mr Duncan.

All right. And was that because, perhaps you can explain why that was,
why did you say that's enough.---Because I felt that they needed to put
handcuffs on him and remove him, they didn't need to be wrestling with him
anymore. I felt he was compliant enough.

And so he's on the ground at this point.---That's correct.

Is he on his back or his front?---He was on his front.

40 And where are his arms, do you remember?---They're behind him now.

And was anyone on top of him?---Mr Duncan was on top of him to start
with, yeah.

And Mr Walker, was he on top of him as well?---I don't really think so, he
was sort of beside me. I was on his legs, I had what we sort of call a figure
4 on his legs, which, and that, I mean, a small guy like me, I can pretty

much restrain most guys with that technique, so you don't need anyone else to be on them.

All right. What do you weigh, Mr Duffy?---Eighty-four at the moment.

At 2014, about the same, or - - - ?---Yeah, about the same. A little less.

What about Mr Duncan, what would he weigh do you think in 2014?---I don't know, he'd have to be 120 plus, he's a big guy.

10

All right. And Mr Walker?---I think he'd be 90, a hundred kilos. Or he would've been at the time, yeah.

All right.

THE COMMISSIONER: Gee, that's a lot of kilos on - - - ?---It certainly is.

- - - on the fellow down the bottom.---It certainly is.

20

MR DUGGAN: Did you hear the inmate say at any point, "I can't breathe, I've got asthma"?---I do believe he did say, I don't know about asthma, I do believe at one point, and that was around when I said "that's enough", he said he couldn't breathe.

All right. And you said "that's enough" to Mr Duncan. Did he reply?---Mr Duncan said something along the lines of "if you don't like what's going on, get out of the cell".

30

All right. And was there further discussion about that, or that was the end of it?---Nope. I said to him, "Just put the handcuffs on him and get him out of here", and that's what happened.

All right. And when Mr Duncan said "if you don't like what's going on in here, get out of the cell", is there something in particular he was referring to?---Look, they knew full well that I didn't approve of the heavy handed techniques.

40

Do you know whether the inmate had suffered any injury at this point?---At that point, no. I obviously, I knew he'd been struck to the face. When we left I was under the impression that Ms Lohse, the wing staff, were going to get him to the clinic or get the clinic over to see him.

All right. Now in terms of physically what was going on before he was on the ground and stopped resisting, was, you'd described I think wrestling. What does that mean, was there punching or kicking, or - - - ?---No. There was no more punching after the initial blows to the face or blow that I saw. Allegedly, Mr Walker said there was more than one.

All right.---But that was, that was stopped by me taking him to the ground.

And in terms of Mr Duncan coming in, did you see him when he made first contact with the inmate?---Not really, because I was trying to restrain the inmate. By, at that point we were on the ground.

Did you see him at any point putting his knee on or driving it into him?
---No, not really, not really, but then I mean by all accounts there's a probable, he probably landed on, I know now that the inmate had broken ribs. That's probably how he got them is when he's come over and landed on us, I would say.

Can you describe how Mr Duncan came into the cell and landed on - - - ?
---Not really, because I wasn't even watching.

Right.---He's come from behind me so I'm focused on what I'm doing with the inmate at the time. I didn't even know he had come in until the noise, as I said the end report, there's a lot of crap in the cells and he's come tumbling over all of that, and I actually, I actually assumed that he'd fallen over when he landed on us.

All right. So, did he land, were you on top of the inmate at the time trying to restrain him?---I was never actually on top of the inmate as such. Once he was on the ground I was working with his legs to get his arms behind him so that he could be cuffed.

All right. So when, when you say, "Mr Duncan came in and landed on us", the inmate is lying on his stomach at this point?---He could, he could've been, I could've been rolling him over at that point. I'm really not sure.

All right. But he's lying on the ground.---He's on the ground, he's definitely on the ground because as I said I've gone in there and taken him to the ground and was in the process of trying to restrain him when Mr Duncan's come back in.

All right. And when you say "landed on us", did - - - ?---He landed on me, too.

So he landed on the three of you down on the floor.---Yeah, yeah.

And so did that mean that the pressure from the three of you was then placed on the inmate?---I, I suppose yeah, we're all on top so yeah, I guess to some degree.

All right. So you were all on top of the inmate at some point.---It's possible we were, yeah. I don't think Mr Walker was on top of him. He was at the side of me. I don't think he was actually on top of him. He was trying to get his arms out when I had his legs.

All right.

THE COMMISSIONER: If as you understood, the intent of the exercise was to get [REDACTED] out of the cell so he'd get a further dressing down by the governor, couldn't that have been readily achieved by just asking the inmate either to put his hands through - - -?---Most definitely it could've been, yes.

- - - put his cuffs on him, open the door and take him out?---Yeah.

10

That's how it'd normally be done?---Yeah. Well, again it depends who is doing it.

Is it your view that that's how it should be done?---Most definitely.

Thank you.

MR DUGGAN: Thank you, Commissioner. So who eventually secured handcuffs on the inmate?---I'm pretty sure that was Mr Duncan that put the handcuffs on him.

20

It wasn't you?---It wasn't, I didn't have the handcuffs on the day.

And so what happened next?---Then he was, well, after I said "Just handcuff him and get him out" they handcuffed him and they walked him over to the other cell.

Right. And did anyone else enter the cell during that incident and after the other cellmate was taken out, other than yourself, Mr Walker and Mr Duncan?---No, not that I'm aware of. No.

30

And so, sorry, you said that the inmate who was on, do you know that his name is Mr [REDACTED] Yeah. Yeah.

So Mr [REDACTED] is escorted out of the cell?---That's right.

Who's he escorted out by?---I was pretty sure that it was, that it was Mr Duncan and Mr Walker that escorted him out and secured him in the office itself.

40

Right. Was it you?---I walked out with him.

Right.---But again it wasn't actually my role to do that because that's, I wasn't on IAT that day, I was there just to help them and obviously after the words that had been said in the cell I didn't really want any more to do with it either, but - - -

So did you leave before the inmate was escorted out?---No. I left with everybody, I left when all the rest of the guys left. Is that what you mean, did I leave 5 Unit?

10 No, no, no. I mean did you come out of the cell before the inmate did?---I may have, I'm not sure. I may have walked out in front of them because I'm pretty sure at that point they were on, I was on the door side when the handcuffs were being applied. So there's a fair chance I walked out first and then they've come, they've lifted him up and escorted him to the other cell.

And I assume you say there's a fair chance because there's not a lot of room in the cell - - - ?---No, no, there's not a lot, no.

- - - so you probably had to get out. So when you walked out into the day room, who was in the day room?---To my knowledge, Mr Graf and the dog handler were the only ones there. I still don't remember seeing Mr Cameron Watson there but apparently he was there.

20 Was Governor O'Shea still there?---No.

Did you see Governor O'Shea leave?---Not while I was in the cell, but I did when I looked at the footage.

Right. Look, we will get to that.---Yeah.

Did you see the inmate try and flush anything down a toilet?---No.

30 To your knowledge was either inmate searched at any time?---No.

To your knowledge was there any search of the cell?---No.

Do you recall seeing or being aware that the German shepherd that was with Mr Watson nearly bit one of the inmates?---Yeah, I do believe, that's part of the reason I keep referring to the footage 'cause that's why I was looking at the footage.

Right. And did you see that initially or were you told that?---No, told.

40 All right.---Yeah. Because Mr Graf was outside with the other inmate the whole time and the dog was very close to him as well.

So were you told by Mr Graf that the dog was - - -?---Yeah, we went and had a look at the footage after that to see how close it was.

THE COMMISSIONER: Was the dog making a bit of a racket?---The dog does make a lot of racket, yeah.

MR DUGGAN: Is it common for a German shepherd of the SOG Dog Unit to be used to attend that sort of procedure or emergency situation?---Oh, yeah, yeah, really, realistically though, like, because the German shepherds are a more aggressive dog, they very often get to be operational in that sort of manner anyway, because we don't have, I mean we have a lot of disturbances in the gaol but you know, that's what that dog's trained for, so yeah, that's what they bring it down to do.

10 And when you say that's what that dog is trained for, what do you mean?
---They're an aggressive dog. Like, you wouldn't let them, the handler won't let them get too close to the inmates because it will bit. We don't get too close, they bite us too.

So are they there to control inmates?---Most definitely.

That dog was not there to participate in a drug search or anything like that?
---It may have been, 'cause I think, I actually – I'm sorry – no, it wasn't on that occasion.

20 Right.---It would be capable of doing that.

Thank you. Is it common to see that, to have a German shepherd dog outside an inmate's cell, barking?---Yeah, depending on what sort of operation they're doing, yeah, that sort of thing does happen.

30 THE COMMISSIONER: I assume it might happen when you have an inmate that you have to remove who you knew was very violent?---Yeah, yeah, yeah. Even if, even if you've got staff searching an inmate that has a potential to be extremely violent, you may have the dog there as a deterrent so that he won't. The inmates hate the dogs, especially the German shepherds.

MR DUGGAN: You said you had an understanding earlier as to what therapy meant. Do you recall that evidence?---Yeah.

40 What's your understanding of therapy?---That can mean anything from, you know, tip an inmate's cell over when you search it, make it a mess, you know, I mean people will have their buy-up sheets go missing and, you know, just silly stuff, yeah, so the inmate knows maybe I shouldn't be such an arse next time and that won't happen. But not physical, that physical sort of therapy is something that went out a long, long time ago.

All right. Now, you said that I think there was a discussion between yourself and Mr Graf about the CCTV or about the dog?---Yep.

When was that discussion?---Oh, it was probably, I'm pretty sure it was on the day. I'm pretty sure we went up there later in that afternoon.

All right. And - - -?---It may have been the next day, we might have looked at it the next day, I think he was on the next day.

But what was said about the dog or the CCTV?---Oh, just that it was close, that it, that it, and we just wanted to see how close it actually was.

So Mr Graf said that the dog was close or - - -?---Yeah. We discussed that the dog was fairly close to the inmate and we just wanted to have a look at the footage to see.

10

Right. Was there any suggestion that he got close to biting him or just - - -? ---Not really, no, no.

And so you went to see the CCTV footage. Where did you view that? ---In the control room.

And is that the only place that you can - - -?---No, Intel office can do it.

20 All right.---And, well, actually not then but the manager of security can do it in his office now as well, but I don't think they had that facility back then.

So, you went to see the CCTV that day or the day after, is that correct? ---Yeah.

And who was in the control room when you watched the CCTV?---Oh, honestly on the, I don't remember. I, I looked at the footage more than once. I, I've said that before. I'm not the only one that looked at it. Quite a few people looked at it.

30 THE COMMISSIONER: Who are they?---Oh, just staff in general that wanted to see what happened. It's not something that, effectively we're not supposed to be looking at the footage but anybody that's rostered in the control room has the ability to review the footage because they may have to do that for some specific reason. So, it's, there's not a lot of harm in looking at it just to see what happened in the day room.

No, of course. I'm not suggesting there is.---But yeah, so, like I said, quite a few of us looked at the footage.

40 Giving us as much detail as you can, what did you see?---On the footage?

Yes.---Well, everything that happened. Basically as far as us coming in, Mr Walker going to the office, Mr Peebles, Mr O'Shea and Mr Taylor coming out of the office. You see all of us at the door, you see us go in. Whilst we're in there, Mr Turton and Ms Lohse walk through the day room and go up to the office and then, before we come out, you actually see Mr O'Shea and Mr Peebles leave, leave the day room.

Do they leave before or after Mr Walker and yourself enter the cell?---After we were in there.

All right how - - -?---But before we came out.

10 After how long, do you think?---I don't really know because we weren't really in there that long. I don't think we would have been in there more than a minute and a half, really. But at some point there they left and, I can't remember, one of them was calling the other one and I can't remember whether it was Mr O'Shea calling Mr Peebles and I don't know if they had a phone call to be somewhere else or, I don't know, but they left.

MR DUGGAN: So, the CCTV doesn't have sound, I assume?---No.

20 So, you've just gestured there. Sorry, we've got to try and record this on the transcript. You just made a hand movement there that one was saying to the other - - -?---Oh, yeah. You can actually see on the footage that, like, because I'm not sure if it was Mr Peebles or Mr O'Shea calling the other one with a hand gesturing motion to come to the office, and then they left.

Did the video footage show Mr [REDACTED] coming out the cell, I assume?
---Yes.

Did it show whether he walked out and assisted or that the - - -?---It showed him being escorted across, yeah. Like, just walked across in handcuffs after like any other segregated move would have been performed. There was, there was nothing that I thought was unjust about the way that was done, no.

30 But obviously he'd at least been punched and there had been someone on top of him and some things that you weren't particularly pleased about.
---Yep.

Did he look uncomfortable? Did he - - -?---I don't really recall that. I, like I said, he, he got escorted across, put in the other, I think 203 or something like that was the other cell. And then we all left. Basically, like I said, I was under the impression that Ms Lohse was going to get the clinic to see him. I can't remember who said that but I'm, I, somebody said that as we were leaving.

40 Somebody said, sorry, that he needed to go to the clinic?---That the wing staff, being Ms Lohse would have, would arrange for him to go to the clinic.

And did you see him in the phone cage at all, at any- - -?---No.

And what about Mr [REDACTED] the other inmate?---He was put back in his cell.

In 208?---Back in his cell that he came out of, yeah.

He didn't go into the cell?---No, he never went into the other cell.

So, were you told by the wing officer that she'd arranged for Mr [REDACTED] to go to the clinic- - -?---No, not, no it wasn't her. Someone else had said, Ms Lohse would, the wing staff would organise to get the clinic over.

And then did you then leave Unit 5?---We all left Unit 5.

The IAT?---Yep. We all went back to 3 I think.

10

And continued your searches there?---Yeah. I think that's what he did.

And when you finished those searches, what, what did you do then, do you remember?---Well, as we were leaving there, the, my issue was, and something I brought up with Mr Graf was, "Are we doing these reports now?" And it was at that point that Mr Walker told me I didn't need to write a report, that I was never there.

20

All right. And was this, where was this?---Just outside the day room of 5 Unit when we were on our way back to 3 Unit.

I see. So immediately after the - - - ?---Straightaway.

And sorry, what did Mr Walker say?---That I didn't need to write a report because we were never there.

Did you respond to that comment?---I do believe I probably said some things that weren't really pleasant, yeah. I didn't agree with that, no.

30

THE COMMISSIONER: Doing your best, what do you think you said?
---Sorry?

Doing your best, what do you think you said?---It would've been, "that's not fucken happening" or something like that is what I would've said.

MR DUGGAN: All right. I think you've just given some evidence that you said "we weren't there", was Mr Walker directing others not to write a report, or - - - ?---I would assume so.

40

But when you say "we" - - - ?---Yes, I believe as a collective we were never supposed to be there, I kind of think that that's what he was getting at.

So, am I understanding you correctly if I summarise it this way, that Mr Walker was saying "none of us are going to write a report, we weren't here, it didn't happen"?---It could've been that, or it could've just been the fact that he didn't want one from me.

Right.---I, I'm not sure, I don't know what exactly was going on in his head at the time but yeah, that, I got, I was told, you know, "I don't want a report from you."

THE COMMISSIONER: Was that in the time after you had made it clear that you didn't want to be on their team?---Yeah, yeah, most definitely.

10 And had you at any time made it clear to them before this incident on 14 February that the reason, or perhaps one reason why you didn't want to be on their team, is because you didn't approve of their methods?---No. I never told them that.

Okay, thank you.---No.

15 MR DUGGAN: So you went back to Unit 3.---I'm pretty sure we did. Obviously I had other things going on in my mind after that for the rest of the day but, yeah, we did go back there for a period of time and then we went upstairs basically for, well, I don't know if we went to lunch early. I don't really recall exactly what I did between the time when we left there
20 and the time we went upstairs to start having lunch, and, well, allegedly doing the reports.

All right. And so what was exercising your mind?---Well, when something like that happens I like to write the reports as soon as possible. Like, if you had some other specific tasks to do then you'd go and do it but I mean we weren't really required to be anywhere else, so we should've been writing the reports straight away.

30 So you felt uncomfortable about what had happened and the fact that there wasn't an immediate report and you'd been told not to write one.---Yeah.

Now, did you see [REDACTED] at all for the rest of the day?---I saw him getting taken over to the clinic by Mr Turton and Mr Bowman around lunch time, I suppose. As a matter of fact, I did, somewhere between when I left 5 Unit and when I went upstairs for lunch, I did go over to L lock which is another part of the gaol and when I was coming back from there to go to lunch is when I saw them taking him over to the clinic.

40 All right. And did you visit him in the clinic at all, or - - - ?---No. No.

And do you know if he had an issue about, do you know he's an asthmatic? I think I mentioned that earlier.---At that point in time I didn't know that, no.

All right. When did you find that out?---When he came back from hospital. He was put in an observation cell and myself and Ms Williams were asked to go and get his puffer because by that time it was now afternoon time, the C watch had started and I was over with her. We went to the, his initial cell and inmate [REDACTED] was in there. We asked him for a puffer that he, that he

required and that's when we were told that it wasn't there, that staff had already taken it.

All right. So - - - ?---We went back to the clinic, got a puffer for him and gave him the puffer.

All right. So, [REDACTED] in the observation cell, and how did you find out that he needed a puffer?---He would've knocked up control room.

10 And when you're talking about C watch? C watch means - - -?---Afternoon shift.

Begins at 2 o'clock?---It then did, yeah. So half past 1.00 would have been around when they would have come in then, I think.

So your recollection is [REDACTED] knocks up and asks for a puffer, is that right?---That's what I was told, yeah.

20 Oh, I see.---Yeah. So I was just asked to go and get it.

Who by?---Not really sure. Maybe the night senior. Probably the night senior.

And you and someone else?---Me and Amanda Williams.

And you went to the cell?---We went to the cell where [REDACTED] [REDACTED] was?

30 And what was the conversation with [REDACTED] [REDACTED] That his puffer had already been taken by staff.

So did you say something or did Ms Williams, Officer Williams, say something?---Well, no, we didn't. We just didn't know who'd taken it, so we just went and got another one.

But did you say something to [REDACTED] [REDACTED] like, "Where's the puffer?" or - - - ?---Yeah, yeah, we asked him can we get his puffer. And he said, "No, the other guys have already taken it, chief."

40 THE COMMISSIONER: He identified who they were?---No. No. Screws is what he said.

MR DUGGAN: And so did you then check to see if he had then received it?---No, because he was in the camera cell now and he, I knew he didn't have one, so we just went to the clinic and got another one.

So you, I assume, went to cell 208 and opened the solid door and asked Mr [REDACTED] for the puffer?---That's correct.

And the other cell – sorry, what's the name of the other cell?---The observation cell.

The observation cell.---But that, so it's actually up the other end of 5 Unit.

Oh, I see.---It's in 5.2. It's not in 5.1

But you'd come immediately from there.---Straight.

10 It's not very far away.---Yeah.

And so you knew that he wouldn't have had his puffer?---Yeah. Well, he wouldn't have knocked up asking for one if he had it.

No, I understand.---Yeah.

And so you then went to the clinic, did you say?---And got one, yeah.

20 And did Ms Williams accompany you to the clinic to get one?---I believe so, yeah.

And do you recall who you asked?---No, no. It was fairly much a non-event that whole puffer incident, really, to start with. Like, it wasn't something that I thought was at all significant.

You didn't have any concerns about the fact that [REDACTED] [REDACTED] said someone else had taken the puffer?---Not at that point in time, no.

30 And so when you got a puffer from the clinic, did you need to sign for that or - - -?---No. They've just given us.

And would there be any record of the fact that you were given a puffer?
---No.

Did you have concerns at some later point about the fact that the puffer was not - - -?---Yes.

40 - - - in his cell? And when did you have the concern?---A few days later when I was informed that drugs had been found in the cell.

And why were you concerned?---Because I spoke to the guys that did the search and they told me that they found it in the puffer.

And is that Mr Dippel?---That's correct.

And Mr Murdoch?---Yeah.

THE COMMISSIONER: And you're saying that you had some concern that his puffer had been removed by screws and one or more of them arranged to put something in the puffer?---Well, it kind of looked that way, yeah.

Thank you.

MR DUGGAN: Now, sorry, I've taken you out of sequence, so we'll go back a bit earlier to the report writing. So I assume at around lunchtime you headed up to the IAT office, is that right?---Yeah, that's right.

10

So what happened when you got up there?---Well, when I got up there, Mr Walker wasn't there and I was talking to Mr Graf about, you know, "What are we doing?" and he said, "We haven't started yet. We're waiting for Tex to come back." "What's he doing?" "We don't know but he told us to wait till we come back, till he came back, so that's what we're doing."

20

So wait for what?---To wait for Mr Walker to come back. So he told the other guys – Mr Graf and obviously Mr Duncan – to wait till he came back before they did anything with reports. So I'm up there. We're waiting for that.

And who told you that, by the way?---Mr Graf.

Mr Graf.---Yeah, yeah. So at that point he said, he said to me, "No, we haven't started them yet 'cause we're waiting for Tex to come back." Then after a period of time Mr Walker – he was gone for quite some time – he came back and that's when he had the intel IR.

30

The intel - - -?---The IR that was just up this morning.

Oh, okay. The - - -?---Yeah. That's when he had that.

40

Can I take you to page 74, please? Is that the document you're referring to? ---As I said to Paul earlier, I thought it was in a different format to that, I don't remember it actually being on the letterhead, but basically he came up with that waving it going, "right, I've got this, put it on the table." I'm not sure whether he read it or not and I've actually said, I'm not sure if he actually read it to us or if I looked at it. I'm actually thinking it was more that I looked at it because there's bits of this that I wasn't aware of. The bit that I had in my head was the fact that inmate [REDACTED] was to be a subject of a search day, that's the, what I got from it when I saw it and at that point I left.

And why did you leave?---Because I wanted no more to do with whatever the hell they were doing.

And when you say that, did you believe this document to contain truthful information?---Absolutely not.

And what made you think that it was not truthful information?---Because we weren't there to search a cell, and this is an IR that's turned up after they've been there. There's just too many things about it that say no, that's not right, and there's no way I was going to be part of that.

All right. And was there anything said about that by you or anyone else?
---I, I don't know that I said anything. I know that I left because I was pissed off. I wanted nothing to do with it.

10

And why is Mr Walker, to your understanding, walking into the IAT room with this document? What role is he playing?---Obviously because he knew he did something that he shouldn't have done if they're going down this path. I really didn't know that this was what the, it was actually, that it was this extreme. My, the only thing from my point of view on the day that wasn't acceptable was what, with the cell entry was the fact that he punched the inmate in the face. That was my issue with it, and as far as I was aware that was the only issue but quite obviously there was a whole lot more that they're trying to do. I don't know, I don't know why they came up with this story.

20

All right. So, is it possible, though, that, was there any discussion about the date? I notice the date is 13 January.---I didn't even see that, so, as I said I only, I had thought that he'd read it but I could be wrong, I could've just looked at it because like I said there's stuff on there that I don't really recall. I, I think I've, when I, I got that information that they were going to go down this path from it and that's when I decided I wanted nothing more to do with it.

30 THE COMMISSIONER: Are we sure that, the witness has used the expression, "IR". That wouldn't be a reference to the IRM, would it?---No that's a different system.

Different, okay.---It's an intel report system that only Intel managers and Intel officers have access to. So that's why I believe it would've been in a different format to that.

40 MR DUGGAN: And IR is short for information report?---That's right. Or intel report. Intel, information, I'm not actually, I thought it was intel, but, an is what the Intel staff use for those sort of reports.

All right. And have you seen larger, more detailed intelligence reports before?---Yeah. They're not something I've seen a lot of because I don't really have a lot to do with intel. I just get told to act on intel if I've got to go and do a job, but - - -

And so are you aware of whether or not an IR would be on a database or is it just - - - ?---I would've thought it would've been.

So you had some concerns, I assume, at this point when you left?---Very much. Once they, once they came, once Mr Walker came back with that, I knew that what he was going to try and do was not something that I wanted to be part of.

And did you have discussions with Mr Graf about those concerns?---Yeah, I did.

10 At the time or sometime after?---At the time I think, yeah. At the time I said that, and Mr Graf was of the same opinion, he wouldn't have wanted to be part of this either.

So what was the discussion that you had with Mr Graf at the time?---I, I don't really remember the details of that.

20 THE COMMISSIONER: Just the substance of it. We're not asking the exact wording.---Basically that something, Mr Graf didn't know what took place in the cell because he wasn't there. I did tell him what had taken place, that he was too heavy handed and that he'd actually struck the inmate.

MR DUGGAN: When did you tell him that?---I actually told him that on, on our way back up to 3 Wing. But that's, you know, he didn't, he was never in the cell to know, so, and that's why I said to him, "I'm not comfortable with this."

All right.

30 THE COMMISSIONER: And what did he say?---He was, at the time agreed with me.

MR DUGGAN: And was Mr Duncan present for that conversation?
---Probably not.

You don't recall either way?---I, as I said, I distance myself from those two guys and it's not the sort of, no, I wouldn't have included him in my, in my opinions of what they'd done, I wouldn't have really conveyed that to him at the time, no.

40 All right. And does that apply to Mr Walker as well I assume?---Oh, not so much Mr Walker but, yeah, he didn't really know either, well, he did know that I didn't approve, I guess I wouldn't, I didn't see Mr Walker as, for me as such to be, how do I put it, as much of a threat I guess.

As Mr Duncan?---Yeah.

And was it, you didn't want to get into a physical tussle with Mr Duncan, is that what you're referring to?---Definitely not.

But was that your concern as to why you wouldn't - - -?---Not at the time really, but yeah, not over that, but he's not the kind of guy that you'd want to get on the wrong side of, put it that way.

10 So can I maybe put it this way. You can speak your mind freely to Mr Walker but not Mr Duncan?---Oh, I probably wouldn't do it with Mr Walker either but less with Mr Duncan. You know, like, we were good friends at one point, we were all good friends at one point, but unfortunately we've got very different points of view morally about what work practices should be.

So you spoke to Mr Graf about your concerns and he expressed concerns to you. Did you speak with anyone else about your concerns?---No, I don't think so. No, not at the time, no.

What about other people that you might have respected within - - -?---I did seek advice on my report, yeah. I spoke to Mr De Costa.

20 All right.---He's a senior correctional officer. And Mr Young, who's another senior correctional officer, both of which have worked IAT at Lithgow for 20 years plus.

Right. And do you recall when you spoke – I assume you spoke to them separately?---Yeah.

So do you recall when you spoke to Mr De Costa?---Yeah.

30 When was that?---It would have been that day. He was the night senior on the C watch.

And what was your conversation with Mr De Costa?---Well, we talked about the situation I was in, where I've been witness to officer doing something they shouldn't have done.

So he wouldn't have known anything about this, I assume, about the incident?---No, no. He wasn't even on the day shift. He was on the afternoon shift.

40 So, to the best of your recollection, how did you bring him up to speed?---I just told him what had taken place in the cell.

But are you able to give us the substance of what, what you said to him?
---Well, I explained exactly what happened, that he's gone in there, that he's told me not to write a report, he's struck the inmate, what should I do. And he said, "You've got to report it." And he said, "You've got no choice, you have to report it." Which is what I knew anyway but it's one of those things

that you kind of I guess, look for a little of support as we've already sort of discussed. You can you know, you do get labelled very easily.

And by - - -

THE COMMISSIONER: As a dog?---Yeah, if you want to, yeah. I don't like to use that term.

No. Thank you.

10

MR DUGGAN: But it has a very pejorative meaning, I assume.---The inmates use it and I try not to really put myself quite down to that level. They have a big enough effect on us as it is. Yeah.

And so, by the report it, I assume you mean file a report?---Yep.

20

And so, Mr Young, when did you have a conversation with him?---I'm not sure. Around the same, I can't recall when. It would have been at work, wherever I'd seen him. I don't remember. Because I, I see Mr Young all the time. I have a lot to do with him out of work as well, so we talk all the time. I don't recall exactly where that took place, no.

What was the effect of the conversation?---Same thing. Same thing, you know, "This is what's happened, what do you reckon I should do?" He said, "You've got to do the right thing. You've got to report it."

And what about Officer Turton, did you have any discussions with him?
---At a later point, yeah, I did. Yeah.

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When was that?---The problem, I don't think I spoke to Phil about it on the day. Yeah, I don't think I spoke to him about it on the day but I did speak to him about it, yeah.

Commissioner, is that a convenient time?

THE COMMISSIONER: Yes. Certainly. I'm sorry, Mr Duffy, you're going to have to come back tomorrow.---That's okay.

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But I would hope that your evidence would finish tomorrow. In fact, I'm pretty confident it will.---No, it's all right.

Good on you. Thanks. I'll adjourn.

MR DUGGAN: Thank you, Commissioner.

THE WITNESS STOOD DOWN

[4.01pm]

AT 4.01PM THE MATTER WAS ADJOURNED ACCORDINGLY
[4.01pm]