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INDEPENDENT COMMISSION AGAINST CORRUPTION

STEPHEN RUSHTON SC
COMMISSIONER

PUBLIC HEARING

OPERATION ESTRY

Reference: Operation E17/0345

TRANSCRIPT OF PROCEEDINGS

AT SYDNEY

ON THURSDAY 24 MAY, 2018

AT 2.00PM

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

THE COMMISSIONER: Yes, Mr Duggan.

MR DUGGAN: Thank you, Commissioner. Mr Graf is continuing his evidence from yesterday.

THE COMMISSIONER: I'd like him re-sworn if we can.

MR DUGGAN: Thank you.

THE COMMISSIONER: You recall, take a seat, yesterday I made a section 38 declaration?---Yes.

That continues to apply but of course it's subject to the limitations I mentioned yesterday, most importantly that you tell the truth.---Yes.

10

SECTION 38 ORDER MADE YESTERDAY REMAINS IN EFFECT, SUBJECT TO THE DECLARED LIMITATIONS.

THE COMMISSIONER: Thank you.

MR DUGGAN: Commissioner, before I ask any questions, can I tender some material in relation to Mr Graf? You may recall I tendered some investigations branch documents in relation to Mrs Duncan and Walker.
20 Can I hand up the equivalent from Mr Graf, and also a third document which is a transcript of Mr Graf's compulsory examination on 8 March 2018.

THE COMMISSIONER: Sorry, what was the first one?

MR DUGGAN: The first one?

THE COMMISSIONER: The first document you referred to.

30 MR DUGGAN: So there is an investigation's branch report, Mr Glasheen and a director's report as a cover note from Mr Hovey from March 2015.

THE COMMISSIONER: All right. That will be marked Exhibit 62.

#EXH-062 – DIRECTOR'S REPORT BY MICHAEL HOVEY DATED 20 MARCH 2015 & FORMAL INVESTIGATION REPORT BY JOHN GLASHEEN RE: SIMON GRAF DATED MARCH 2015

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MR DUGGAN: And then there is a letter from Assistant Commissioner Corcoran dated 19 February 2016.

THE COMMISSIONER: That's Exhibit 63.

#EXH-063 – LETTER FROM KEVIN CORCORAN TO SIMON GRAF RE: ISS CASE NO 14-0227 DATED 19 FEBRUARY 2016

MR DUGGAN: And a compulsory examination dated 8 March 2018.

THE COMMISSIONER: That's Exhibit 64.

**#EXH-064 – TRANSCRIPT OF OP ESTRY COMPULSORY
EXAMINATION OF SIMON GRAF HELD ON 8 MARCH 2018**

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THE COMMISSIONER: Yes. There was a suppression order I think that applied to the compulsory examination and I'll revoke that.

**VARIATION OF SUPPRESSION ORDER: SUPPRESSION ORDER
APPLIED TO THE COMPULSORY EXAMINATION IS REVOKED**

20 MR DUGGAN: Thank you, Commissioner. Mr Graf, you were giving some evidence at some point yesterday about what happened in Unit 5. Do you recall that?---Yes.

And then you left Unit 5 and you were heading up back towards Unit 3?
---Yes.

And Mr Duffy said, "Do we need to do reports?" Something along those lines.---Yes.

30 And Mr Walker said something to the effect of, "You were never there, you're not doing one."?---Yes.

And then I think you inquired of Mr Duffy what had happened and he indicated to you that Mr Walker had punched the inmate in the face. Is that fair summary?---Yes.

So then I assume you went back up to Unit 3 and completed whatever you'd been doing, or not?---I believe so, yes.

40 All right. And then at some stage, whatever you were doing was completed and you came back to the IAT room. Is that right?---Correct.

And the IAT room is, as I understand it, upstairs in Unit 5?---Correct.

And that was about lunch time, was it, do you recall?---I can't be sure of times, but it would've been around lunch, yes.

All right. And you recall your friend, Mr Duffy, being there?---Yes.

And Mr Duncan?---Yes.

And do you recall Mr Walker being on the phone at any point?---No I don't remember that part, no.

Did you have any discussion with him about a phone call that he had had with Mr McMurtrie?---I don't believe so, I don't recall that.

10 You don't recall.---No.

Now, I want to suggest that there was a point at which Mr Walker was not there and that you, Mr Duncan and Mr Duffy were waiting for him to come back. Is that a fair summary?---Yes, that's right.

And did you know where he'd gone at that point?---To the best of my recollection, I think he went to see the Intel officer, Mr McMurtrie.

20 All right. And did he say that to you, did he say that's where he was going?---I'm pretty sure that's what he said.

All right. Did he say anything else about why he was going to see Mr McMurtrie or anything like that?---No, no.

And was the reason you were waiting for him to come back was because you wanted to know what to put in your report?---Not necessarily because I think I wrote my report when he was not there.

30 Now, Mr Walker comes back at some point?---Correct.

I assume. And when he comes back into the IAT office, was Mr Duncan and Mr Duffy still there?---I believe so.

And was Mr Walker holding any report?---Yes.

Do you remember what he was holding?---I didn't, I didn't see but he told me it was an intel report.

40 To the best of your recollection can you tell me the substance of what he said?---He said, "I have an intel report about the cell from this morning," or something along those lines, that there was drugs in it.

There was drugs in it?---Supposed to have been drugs in the intel report, yeah.

Right. And did he say anything about the reports or what you had to put in the reports?---Yes.

What did he say about that?---He said, "You have to write down that's why, that's our reason for attending the cell."

All right. And you knew at that point that this was in effect a cover story for what actually had happened?---Yes.

You would have been concerned about that?---Absolutely.

Did you raise that concern with him?---Yes.

10

What did you say?---Well, I showed him my report that I'd written, it was in, I was just about finished writing, and he told me to change some parts of it.

All right. Is there a version in existence which is the original version before it was changed?---No.

Are you familiar with Microsoft Word?---Yes.

20

Was your report, your incident report drafted on Microsoft Word?---Yes.

And so edits were made on that document because of what Mr Walker was telling you. Is that your evidence?---Yes, yes.

Did your original report have Mr Duffy in the report?---Yes.

Do you recall what it said about Mr Duffy?---I believe it just said that he entered the cell in between Mr Walker and myself, or I entered behind Mr Duffy or something like that, along those lines.

30

Right. And to the best of your recollection do you remember other key parts that were taken out?---I had something along the lines of that IAT attended 5 Unit due to a radio call from Mr Taylor, something like that.

All right. And can I suggest that what was inserted in its place was a reference to a search?---Yeah, we attended to search the cell, attended to search the cell.

40

And that was inserted as a result of what Mr Walker had said to you?
---Correct.

Based on the intel report that he told you had come from Mr McMurtrie.
---Yes.

Is that right?---Yes.

Was Mr Duncan present during this process?---I believe so, yes.

Did he raise any concerns?---Not that I remember, no.

What about Mr Duffy, was he present during this process?---Yes.

Did he raise any concerns?---Yes.

Do you remember what he said?---I think he – oh, I can't remember what he said but I know he objected and left, left the area.

10 Right.

THE COMMISSIONER: Can you just keep your voice up just a little bit?
---Sorry, yeah.

Thanks so much.

MR DUGGAN: So this reporting process was quickly turning into a cover-up. You'd accept that?---That's when I realised what was happening, yes.

20 And was it at that point you realised the gravity of the situation?---Yes.

Is there a reason why you went along with it at that point?---Basically Mr Walker threatened me that if I didn't do it, he said, "We'll change all this or else."

All right. And that was during a meeting, during the preparation of the reports in the IAT room?---While I, it was while I was writing the report, yes.

30 All right. And was that threat made in the absence of any concern expressed by you or was it in response to something you said?---I believe I said I wasn't going to change my report at first.

Right.

MR GREENHILL: Sorry, I believe I wasn't or was?

MR DUGGAN: Wasn't going to change my report at first.

40 THE WITNESS: I wasn't going to.

THE COMMISSIONER: One of the things we heard from Mr Duffy is that he left and he went to speak to some other senior officers about what he should do.---Right.

Were you here when he gave that evidence?---Yes, sir.

Why didn't you do that?---I don't know.

Yes, Mr Duggan.

MR DUGGAN: Thank you, Commissioner. You didn't see Mr Walker strike the inmate?---No.

Did you see the scuffle?---I, I just saw a movement at the back of the cell, I suppose that's the way I'd describe it.

10 Did you know there was a use of force? Sorry, I'll withdraw that question and ask a different one. Did you see a use of force?---No.

But you were told about the use of force shortly after by Mr Duffy.---Yes.

Was there a need for you to lie at all then in your report?---No, there wasn't.

Can I take you to your report please which is at Exhibit 45, page 46? Is that your signature at the bottom of that document?---Yes.

20 Can I take you to page 47 please? Is that your signature at the bottom of page 47?---I think so, yes.

Are you able to explain to me and your counsel, or senior counsel will be able to correct me if I'm wrong but they appear to me to be the same report.

MR GREENHILL: Sorry, is that on the screen?

MR DUGGAN: Yes. Sorry, I'll just, excuse me one moment,
30 Commissioner.---Is it the same, is there a difference? Can I see them both together, is there a difference in the report?

Yes.

THE COMMISSIONER: I think there's a difference in terms of signature.
---Is it?

Yes.

MR DUGGAN: Yes. I haven't been able to spot any difference in the body
40 of the report, and I hope I'm not misleading you there, but they seem to be the same, exactly the same but they seem to have two signatures and I was wondering whether you were able to clarify that for me. So, it's, take your time. The first one is page 46 and the second one is page 47.---Looks like it's half of it.

Sorry?---This looks like the first half of it.

The first half of - - -

THE COMMISSIONER: I don't think that's right. If you look at page 46, the top of the signature goes through the word submit and then curls back. And then if you - - - ?---Are you saying it's, sorry.

I think it's been signed twice.---Sorry, yeah. Yeah. That's two, yeah. I agree with that, sorry.

MR DUGGAN: They're different signatures?---Yes.

10

Are they both your signature?---I'd say the second one is more like my signature.

Is it possible that you simply signed two versions at the time?---I don't know. I couldn't, I wouldn't know.

You're not able to explain why there are two signatures.---The second one is more, a lot closer to my signature than the first one.

20 Is it possible that the first one is not yours at all?---It could be possible, yes.

We might go with page 47, if you've got it in front of you. So is your evidence that this is the final incident report after Mr Walker had directed you to make certain changes?---I believe so, yes.

And I see you're reading it on the screen. Please read it if you need to. ---Yeah, that's okay, yeah. Yep.

30 Now, in the large paragraph it says, "IAT attended cell 208 in 5.1 Unit, occupied by inmates known to me as [REDACTED] and [REDACTED] to search the inmates' cell." So the bit in there in relation to the search, that's not correct?---No, it's not correct.

And that was something that you'd been directed to put into your report? ---Yes.

Did you know the name of the inmate at that time when you did that report?---I don't think so.

40 Now, the next bit, "Senior Correctional Officer Walker entered the cell and I followed and saw [REDACTED] jump of the lower bunk and move towards the toilet and sink." Do you see that?---Yes.

Were you directed to put in that detail?---I believe so, yes.

And in particular were you directed to put in something about a movement towards the toilet and the sink?---I remember distinctly him saying something about putting toilet into it.

All right. And that was because, wasn't it, that the cover story was that Mr [REDACTED] had fallen by himself onto the toilet, injuring himself.---Yeah, that's what he told me later on, or not long after.

Right. Now, the next bit, "I ordered [REDACTED] to get off the top bunk and I then took hold of his wrists behind his back and we exited the cell." That's what actually happened, is it?---Yes, that's correct.

10 "I directed [REDACTED] to get onto his knees but [REDACTED] laid on the floor so I handcuffed him and then helped him to his knees and knelt him against the wall and ordered him to stay there." Do you say that that's what happened? ---Yes.

So those last two sentences that I've read out to you, is it likely that they were in your original report?---It would have been something very similar to that, yes. I think I may have had something, instead of laid on the floor I said he fell over or something along those, or tripped or something like that.

20 This is [REDACTED] Correct.

THE COMMISSIONER: [REDACTED] or [REDACTED]

MR DUGGAN: [REDACTED]

THE WITNESS: [REDACTED]

MR DUGGAN: And is that a reference to the moment where [REDACTED] was coming out of the door and he tripped over himself and the dog was not far away?---Correct. I think I fell over as well.

30

Yes.---We both - - -

Now, you signed this at a time when you knew that it was false?---Yes.

And your evidence is that you signed it on the direction of Mr Walker? ---That's correct.

40 And you were directed by him to insert the reference to the search so that it could be part of a cover story generated by Mr McMurtrie's intel report? ---I guess. I never saw the intel report, he just told me what was in it.

Right.

THE COMMISSIONER: But you knew it was from Mr McMurtrie? ---They all come from Mr McMurtrie so - - -

MR DUGGAN: At the time you signed this report were you aware of any injuries sustained by Mr [REDACTED] No, I was not, no.

There's no mention here of Mick Watson and his German shepherd.---No.

Was that in your initial report?---I couldn't be sure of that. I don't think so.

So you didn't, in your initial report, insert the details of every person who was - - - ?---No.

10

- - - in the day room when this incident occurred.---No.

But you would've seen who was in the day room.---Yes.

Now, did you see Mr Duffy's report at any time?---I had, yes, I saw it. Yes.

When was the first time you saw Mr Duffy's report?---I thought it was very, on the day or close to it but after hearing his evidence it was obviously a few days later. I did see it after the event.

20

And try not to be distracted by what he said and just try and remember what you recall. You knew Mr Duffy had a conflicting version, that's clear. ---Correct.

And you knew that he'd had some sort of disagreement with Mr Walker about that.---Yes.

And you're good friends with Mr Duffy?---Correct.

30 Did you discuss your incident report with him after you prepared it?---I think I told him what I put in it, yes.

What you'd put in it?---Yes.

Did you express your concerns of the fact that you'd been directed to put in a false report?---Yes.

What did you say about that?---I told him, what did I tell him?

40 Yes.---I told him that Mr Walker had threatened me if I didn't put the right stuff in there, something along those lines. I don't remember the exact words.

Is there a reason you didn't go above Mr Walker's head and complain up the chain of command?---Because Mr Walker insinuated it was, everyone was involved in it.

Did he say something to that effect?---Yeah, he just, he said something along the lines of, I don't know whether it was on the day or not long after, he said, "O'Shea would ruin you."

"O'Shea will ruin you"?---That's what he said, yes.

When did he say that to you, do you recall?---I don't remember if it was on the afternoon of it happening or not long after.

10 So have you signed your incident report by that stage?---Yes.

THE COMMISSIONER: Who was in the day room?---Who was in the day room?

Mmm.---Michael Watson and Cameron Watson.

Anyone else?---Before we went into the cell?

20 Yes.---I believe Mr Peebles, Mr O'Shea and Mr Taylor were there as well.

Thank you.

MR DUGGAN: Obviously in the ordinary course you'd follow a direction from a senior officer.---Yes.

But your understanding would've been at the time that that didn't extend to doing something unlawful.---Yes.

30 And it wouldn't extend to doing something like filing a false report.---No.

Did you ever watch the CCTV footage of the day room?---No. No.

No. Was there ever any discussion about it that you heard?---Not that I can recall, no. About watching it you mean?

Or just someone saying, "I've seen it, this is what's on it"?---No, I knew that, but I'd heard that it'd been deleted.

40 Who did you hear it had been deleted from?---It was a rumour going around the whole gaol, I could not tell you who I heard it off.

All right. Did you take any still photos of Mr [REDACTED] after the - - - ?---No, I did not.

Do you know whether anyone did?---I have no idea.

So, just in terms of the timing, you've signed your report. Did you then give it to Mr Walker?---I believe so.

And you understand that your incident report is part of an UOF package?
---Correct.

And part of the reporting procedure when there's a use of force is for an entry to be made on, as an IRM?---Correct.

And were you involved in that process?---No, I was not.

10 Did you attend M block and speak to Mr Peebles about the IRM at any stage?---No, not at all.

Did you see him typing up the IRM at any stage?---No, I did not.

Do you know, do you have any knowledge of whether he was involved in typing up the IRM?---First I heard of it was here.

All right. And did you ever see the IRM?---No.

20 At the time?---Not at the time, no.

When was the first time that you saw the IRM entry?---Only from you, you guys told me at my compulsory hearing that I saw it on my initial interview.

So this year is the first time you've seen the IRM?---Say that again, sorry.

I'll take you to the document.

30 THE COMMISSIONER: I think he might've suggested he saw it, were you the subject of an - - -

The internal investigation I believe was the first time I saw it.

All right. All right.

MR DUGGAN: If I can just go to page 95, please. So you see there's an IRM up on the screen?---Yes.

40 And feel free to read it. Are you saying that the first time you saw that document was probably the 2015 investigation?---First time I recall seeing it.

You had signed an incident report that you knew was false. Were you interested in how this had been entered into the IRM?---No. I believe by then Mr Walker had told me what they'd written about the toilet.

And when you say told you what had been written - - -

THE COMMISSIONER: "What they had written."

MR DUGGAN: "What they had written", this is written in the IRM?---
Yeah. He told me that they were going to put into the IRM.

And who was they?---Mr Walker, I don't know who 'they' were.

But Mr Walker said 'they' at the time?---I don't know whether he said
"they", when they did the IRM anyway.

10

You gave Mr Walker your incident report in the IAT room. Is that right?---I
can't be sure of that.

Usually these reports need to be done as quickly as possible. Is that right?
---Yes. Yes.

And that includes the IRM aspect of it?---Yes.

You say you didn't see Mr Walker type up the IRM?---No.

20

Do you expect that he would type that up as soon as he saw your reports?---I
would think so, yes.

Did you wonder why you didn't see him typing it up?---No, but I may not
have taken any notice of him doing it or not.

But you say that you had no knowledge of whether or not he went to see Mr
Peebles - - - ?---No.

30 - - - to type it up elsewhere.---No.

It would not be the usual course to type up an IAT, IRM in M block, would
it?---No, not at all.

Or with someone like Mr Peebles?---Definitely not.

THE COMMISSIONER: Can we take it then that the IRM wasn't typed up
in your presence?---Not in my presence. No, sir.

40 It wasn't typed up as far as you know within the IAT office.---As far as I
know. That's right.

But at some time did Mr Walker come back into the IAT office with a copy
of the IRM?---I don't know. I remember him coming with the intel report
but that was it.

Okay.

MR DUGGAN: You don't regularly file false reports, I assume.---Never.

So can I suggest you might've lost a bit of sleep over filing this one?---
Absolutely.

Did you make inquiries with Mr Walker or Mr Duncan about the IRM and what had become of the UOF package?---No, I didn't want to talk about it with them.

- 10 Did you want to find out some other way about whether this would come back to haunt you?---How do you mean, sorry, I don't - - -

Did you have any discussions with anyone else about the fact that you'd filed a false report for example?---Maybe just Mr Duffy, that's all I can think of.

All right. And did you make any inquiries of anyone else as to what might have been reported in the IRM?---I can't be sure, sorry.

- 20 In your experience Mr Walker could be heavy-handed in dealing with inmates. Is that a fair statement?---That was a, that was his reputation, yes.

And you were aware of that reputation at the time?---Yes.

Given what was happening in the day room before the cell door was opened, did you think a use of force might be likely?---Not at the time, no.

Even given your knowledge of Mr Walker?---Yes.

- 30 Can I show you an exhibit, please. Sorry, I don't think it's an exhibit yet. Sorry, it's not an exhibit but it's up on screen. Just to orientate you, I might take you to the last page. So it doesn't appear to be signed but your name is on the bottom of this letter. Do you see that?---Yes.

And I'll take you back to the first page. This is a letter dated 29 October, 2015. Did you write this letter?---Yes.

Were these your words or did you receive some assistance?---No, I had some help writing it.

- 40 And I don't want to know about the contents of any legal advice, but was it a lawyer who assisted you or a friend or - - -?---A friend.

Who was that?---Mr Dippel.

I understand. Is there a reason you asked Mr Dippel to assist you in writing this letter?---Because I can't write letters like this. I wanted it to sound good.

All right. I just want to take you to the second-last paragraph on the first page. "Sir, in accordance with departmental policy my only reporting contribution was in the form of an incident witness report form. I submitted an incident witness report form detailing truthfully my actions and observations during the cell search of cell 208 on 19 February, 2014." Do you see that?---Yes.

10 There was no cell search on that day, was there?---No, there wasn't.

So where you say that you submitted an incident report detailing truthfully your actions and observations, that's misleading, isn't it?---Yes, it is.

I tender that letter, Commissioner.

THE COMMISSIONER: Is there a second page?

MR DUGGAN: Yes, there is.

20 THE COMMISSIONER: Can I just have a quick look at that, please.

MR DUGGAN: Commissioner, I'll hand up a hard copy if that assists.

THE COMMISSIONER: That can be marked, I'll mark it as Exhibit 65. I just want to see the second page.

30 **#EXH-065 – LETTER FROM SIMON GRAF TO KEVIN
CORCORAN RE: IIS CASE NUMBER 14-0227 DATED 29
OCTOBER 2015**

THE COMMISSIONER: Did you have a video camera on the day?---I don't believe so.

And just remind me why did you think you were going to cell 208?---I was just told that we were going to move them.

40 Going to move them.---Going to move them.

Who told you that?---Mr Walker.

Yes, thank you.

MR DUGGAN: The Mr Dippel that you're referring to, that's Mr Troy Dippel, is it?---That's correct.

Did he know that your incident report was false when he drafted the letter for you?---No.

Or, assisted you?---No.

You were fined in relation to an investigation by the Investigations Branch?
---That's correct.

10 You were quite annoyed by that.---Yes.

And you were annoyed because you never went into the cell.---Yes.

And you were having to cover up for someone else.---Yes.

And you were doing it at their direction.---Yes.

Did you pay the fine?---I believe so.

20 Apart from the threat that Mr Walker made, the "or else", and the reference to Mr O'Shea's comment - - - ?---Yes.

- - - is there any other reason why you had filed this report?---I don't follow, sir.

Did you feel any need to cover up for your mates?---No.

Can I move from 19 February to 20 February.---Yeah.

30 You were rostered on on the 20th?---That's correct.

And there was, in fact, a search on the 20th?---Yes.

Were you involved in any way in that search?---No.

Now standard IAT procedure, as I understand it, for the reporting of an incident is for the OIC or the senior officer to fill out the IRM. Is that right?---No, that's not usually correct.

40 Who usually fills out the IRM?---I don't, it doesn't really matter as long as somebody does it.

THE COMMISSIONER: Somebody who's present?---Yeah. Well, sometimes their own manager will even do it, as long as they have everything, the information and they fill it in.

MR DUGGAN: So are you saying that you don't even have to be involved in the incident to fill out the incident report?---I don't know about policy but

as long as they've got all the information there, I wouldn't imagine, I'd imagine anyone can fill out the IRM.

So you don't know what the policy is?---No, I don't.

Or, was at that time?---No.

But your understanding at the time was anyone could fill out the IRM.

---Most, it'd be someone involved or was with presently that - - -

10

Fine. Can I take you to page 144 of Exhibit 45, please? Now, that's an email or a cover email from yourself to Mr Dippel. Do you see that?---Yes.

And it's on 20 February at 2.58pm. Do you see that?---Yes.

And it has an attachment which is IR.doc.doc?---Yeah, I see that.

And if you go over the page can I suggest to you that that template was the attachment?---If you say so, yes, yep.

20

Do you recall sending that to Mr Dippel at - - -?---No.

- - - 2.58 on the 20th?---No.

Can I take you to page 146, please. That's an incident report, isn't it?

---Yes, that's correct.

And it's reported by you on 20 February, do you see that?---It's reported by me, yes.

30

And the summary details say that at 3.11pm you've entered the summary information. Do you accept that?---No, I didn't fill this out, no.

So is your evidence that you weren't responsible for making that entry?

---That's correct.

Do you know who was responsible for making that entry?---Yes, Mr Dippel did.

40

And how did Mr Dippel come to make an entry in this report under your name?---I'm pretty sure I was just logged on the computer upstairs in the IT office and there was only two so he just used mine because it was all open.

Did he tell you that's what he was doing?---I would imagine so, I can't be sure.

Were you sitting next to him at the time?---I think I was somewhere in the office, yes, not next to him.

Do you see that in the top right of this document the time reported is 15.02, which means that the report started being typed up at 3.02pm?---Yes.

And the email that I took you to a moment ago with the template is at 2.58pm, four minutes earlier?---Okay.

That's at page 144. So you're sending him the template - - -?---Yeah, yeah.

10 - - - from your email address to him - - -?---Yeah.

- - - and four minutes later he fills out the incident report. Do you see that?
---Yes.

Does that refresh your memory about whether you sent him the incident report?---No, I don't, sorry, I can't.

20 Can I take you to page 142, please. And before I ask you a question about that, if you want to make an entry on an IRM, do you need to log in to do it?
---Yes.

And you put in a number or a name and password or something like that?
---Yes.

If you want to send an email - - -?---Yeah.

- - - do you send it from Outlook or - - -?---No, I don't think it's through Outlook. It might be. I can't be sure of that.

30 If you want to send an email do you have to put in a password to get into the email system?---No.

If you want to send an email from a computer that is used by a number of officers, do you have to somehow log into the system to access your emails or do you do it on the internet?---If the computer's open anyone can use the email.

40 But how does the system know who is sending the email?---Whoever is logged in originally, their emails will open.

All right. And so page 142 - - - ?---Yeah.

- - - there's an email sent from your email - - - ?---Yes.

- - - to Michael Watson. Do you see that?---Yes.

Now, Michael Watson, you'd be aware, is with SOG?---Correct.

And were you aware that he was involved in the searches that took place on 20 February?---I didn't remember until I saw the video this morning.

So, the body of the email says, "Here Mick, just doing the IRM now". Did you send that email?---I don't recall sending it, no.

Is it possible that you sent that email?---I doubt it because I've never called him Mick before.

10 That matter aside, you doubt that you sent that email to Mr Watson?---Yes, I don't think I did.

Why don't you think you did?---Because I would've had nothing to do with that whole, the whole search thing.

Did you know the searches were taking place at this time?---Yes.

And how did you know that?---Because we were told to sit out.

20 Who were you told to sit out by?---Mr Kennedy.

Right.

THE COMMISSIONER: Did he tell you why?---Yes, he said because "You were involved in the incident yesterday."

30 What difference did that make? What difference did that make as you understood it?---That's quite common practice with IAT, if you were involved with something with a particular inmate the next day, it just saves any angst the next day.

Thank you.

MR DUGGAN: Do you recall being present when you say Mr Dippel made an IRM entry on your account?---I believe I was up in the office, yes, or at some stage I was.

Are you good friends with Mr Dippel?---Yes.

40 And you were in 2014?---Yes.

Did you have a discussion with him about the searches?---I don't think so.

Well, you filed a false report the day before in relation to what had happened on the 19th.---Yeah.

In Mr [REDACTED] cell.---Yes.

To Mr [REDACTED] Yes.

And you weren't comfortable about that at all.---No.

And the following day, Mr Kennedy tells you to sit out of a cell search and a strip search involving Mr [REDACTED] If there was, if you're telling me there was a strip search, there was, yeah.

But a search operation.---Yes, correct.

10

And you were told that you were to sit out because you were involved the previous day.---Correct.

But you didn't feel particularly comfortable about that either, can I suggest?
---Honestly about that part it was, like I said it was common practice for that to happen.

20

But no doubt you would have been curious about what was happening with Mr [REDACTED] because of what had occurred the day before?---Maybe, I don't, I don't recall that, sorry.

Well isn't it human nature that you've, you're losing sleep over a false report, you're told to sit out of a search operation, you note Troy Dippel is filling out a report under your login, you'd say to Mr Dippel, well, what's happening? Wouldn't you?---Well, I, I'm sure he would've told me because we were down in the office of 5 Unit so we would've known that they'd found something.

30

So, you were aware about the drug find, the alleged drug find, were you?
---Yes, I'm pretty sure.

Did that concern you at all?---Not at the time, no, it didn't.

But since?---Yes.

Has there been any discussion that you've been involved in about that?---
Yes.

40

Who with?---Again, that was another rumour going around the whole gaol that it was planted not long after.

Right. Apart from rumours is there any discussion you've had with anyone who seemed to have any knowledge of what happened?---Yeah. I believe Mr Duffy told Mr Dippel and myself that he'd heard rumours it was planted.

But do you say you had no involvement in any search operation?---No.

And no involvement at all in the preparation of the IRM relating to the cell search?---I don't believe so, no.

Well, is it possible?---I doubt it.

Well, do you have any recollection at all?---No, I just remember them being up in the office when they did it, they went up to do the reports and I was part of IAT that day so I would have gone back upstairs.

10 The search aside, have you had discussions with others about what happened on 19 February at any time since the incident?---Probably, probably plenty of people.

What about Mr O'Shea, did you ever speak to him about it?---No.

Mr Peebles?---No.

Mr Taylor?---No.

20 Can I take you to your compulsory examination which is Exhibit 64.

THE COMMISSIONER: Did this witness I understand have an interview with Corrective Services? Were you interviewed by Corrective Services? ---Yes, sir.

And you told lies?---Yes, sir.

30 Did you have a discussion with any Corrective Service officer before you participated in that interview in relation to what you should say?---Yes.

And who was that?---Mr Walker.

Thank you. Sorry, you go on.

MR DUGGAN: That's all right.

What did - - -

40 THE COMMISSIONER: What did he say to you, I should have asked? ---He told me to keep my mouth shut and stick to my story.

Keep your mouth shut and stick to your story?---Yes, sir.

MR DUGGAN: There were a few moving parts to the story and a number of people involved, did Mr Walker mention those other people to you at any point?---No, only that he insinuated that Mr O'Shea was involved.

THE COMMISSIONER: What did he say?---Just when he said he'll ruin my career, he'll make sure he ruins my career, or something like that.

My understanding of your evidence was that he said that at the time you were preparing your incident report.---And many times after it too.

And many times after it too.---Yes.

Thank you.

10

MR DUGGAN: Was that threat that you'd be ruined by Mr O'Shea, was that something that you were concerned about?---Somewhat, yes.

THE COMMISSIONER: Is there a reason why you didn't go and see Mr O'Shea and tell him all about it?---No, no, I don't know why.

MR DUGGAN: Thank you.

20

Can I take you to page 397 of Exhibit 64, 397. It's at about line 35 that I want to direct your attention to. Do you see you were asked by Ms Clifton, "Did Mr Duncan ever say to you that your career was going places but it is no longer?" Do you see that?---Yes.

You said, "Yes."---Yeah.

30

"And what was it in relation to?" "A different, nothing to do with this." "All right." "Something to do with Mr Turton." And then you were asked a couple of questions later to explain that and you say, "Mr Turton and I, he's got a history with you guys, I assume youse know about that."---Yep, I said that.

Yes. "And I'm friends with him and they don't like him, basically." Who's the reference to "they"?---Mr Duncan and Mr Walker.

40

All right. And then over the page, "So is Mr Duncan's reference to your career going nowhere because you were friends with Mr Turton?" "I believe he meant that, yes." And why would your career be going nowhere if you were friends with Mr Turton?---Because he was involved in another incident with Mr McMurtrie and Mr McMurtrie got moved from the gaol.

This is another incident where ICAC was involved?---No. That was from many years ago, this one was, I think it was an internal one.

Now, it goes on to say where the Commissioner - - -

THE COMMISSIONER: Did it involve an assault?---No, no.

And would it be fair to say that Mr Turton was put on the dog?

---Absolutely.

Thank you.---The initial, are you talking about the assault, sorry?

No, I'm just talking about the earlier incident involving Mr Turton and you were told, basically, if you, as I understand what you were saying that if you had dealings with him, your career was going to go nowhere.---Correct.

And at that point in time, had Mr Turton been put on the dog?---Yes. Yes.

10

Thank you. And can I take it that another concern you would've had at the time of preparing your incident report in relation to the incident on 19 February that if you told the truth, you'd be put on the dog, too?---Yes.

Thank you.

MR DUGGAN: At page 398 at line 11, you were asked whether Mr Duncan ever told you to stick with your version and not tell the truth, and you said you didn't think you did. But then the Commissioner asked
20 whether somebody else did you and you said that Mr Walker may have said something along those lines about not changing anything, "not to roll on anybody." And you're asked about that, and there's some discussion about you telling the truth, "I've not lied to you guys once, I've corrected things but I made a mistake", et cetera. "And I wish to put Mr Duffy in the reports. I'm just wondering about Mr Walker's comment to you, I don't, it wouldn't have been not to roll, it would've been, I don't remember what it was regarding, it was just, I can't remember the exact words he used but it was just, you know, like the boys' club thing, not to give anyone up."
30 What's that reference to the boys' club, not giving anyone up?---Just the culture of the gaols.

THE COMMISSIONER: Can you explain that to us?---Just to basically keep your mouth shut all the time. Not say anything.

MR DUGGAN: You were asked at line 40, "Does that boys' club still exist?" And you say, "Absolutely". Do you see that?---I think it does, yes.

And this was in March. Why do you say that boys' club still exists?---I think it does and it always will.

40

Do you have personal concerns that the evidence you've given today will have consequences for you?---It probably will, yes.

And what are those concerns?---Just the same, I'll be ostracised and - - -

And is that because you've told the truth in a way that might implicate other Corrective Services officers?---Correct.

THE COMMISSIONER: How long were you at Lithgow?---Now, I think I only got there in about 2011.

And were you in other prisons before that?---Yes, I was in NRRC at Silverwater.

Is that the only other one?---Since 2005.

10 And the boys' club exists there as well?---Not that I know of.

All right.---Yeah.

And was it more prevalent in officers who had been there for long periods of time? That is, within the system.---Yes. Well, yes.

MR DUGGAN: In relation to this incident of February, 2014, did you feel that you could go and speak to commissioned officers and discuss your problem?---Not really. No.

20 Is that a cultural thing at Lithgow would you say? Or have you experienced that elsewhere?---I think it's right across the board.

THE COMMISSIONER: And why is that?---Just the impression that I have. I can't give any example of it but - - -

30 But what do you, no, no. I'm not asking you that, but what would the concern be in speaking to superior officers that, for example, you'd observed something, if you regard it as wrong?---It's only if you speak to them, you, you, I suppose you're a dog for speaking to the commissioned officers.

MR DUGGAN: And is it your impression that being honest and truthful, in a way that might implicate another officer, can be career limiting?---Is it my opinion or what?

Your opinion and experience.---Oh, not experience, yes, I think it would be.

40 Well, have you seen some officers who might have been held back because they had a reputation for being - - -?---No, I haven't.

If we can just go over the page, to 399, and I think you're describing how the boys' club operates and you're asked, "So, you don't do in?" And you say, "Don't snitch and, yeah, you don't snitch, you don't roll, absolutely." And your response is, "Otherwise you're mud."---Yeah.

"But your ethical and moral compass in terms of doing the job is, you do it right?" "Absolutely it is." "You do it fairly?" "Yes." "And so, if you saw somebody who wasn't doing it right or fairly, does the boys' club demand of

you that you don't snitch?" And you say, "I suppose so, yes." So would stand by that evidence, I assume?---As a rule, yes, that's what would happen.

But am I right in saying that generally speaking that's not a theory that you subscribe to?---No.

10 Which is why you were made to feel somewhat uncomfortable on 19 February, putting in those false reports?---Can I just say it wasn't, this wasn't a boys' club, this was solely Terry Walker doing this, not anyone else.

THE COMMISSIONER: How do you know that?---Because no one else ever said anything to me besides him.

MR DUGGAN: Did you have any discussions with Mr Duncan about the position you'd been put in?---No.

20 And why was that?---Because he's friends with Mr Walker so there's no point.

THE COMMISSIONER: It's pretty awful, though, isn't it, when you think about it? I mean prisoners are in there for all sorts of reasons and some of them for terrible, terrible crimes, but do you accept that because they're confined within that system they're somewhat vulnerable?---I'd agree with that. Yes.

30 Yes. And so if you have a prisoner who says, "Well, a prison officer bashed me," there would be a good prospect that they wouldn't be believed?
---Yeah, probably. Yes.

Yes. And do you accept that prison officers have a duty of care in relation to these people?---Absolutely.

Whatever their crimes might be, they're vulnerable?---Yes. I agree.

Yes. And they'd be particularly vulnerable in relation to the creation of false reports where officers have colluded?---Yes.

40 Yes. Thank you.

MR DUGGAN: You were put in a difficult position on 19 February. You didn't even go into the cell and didn't go into the cell on the 19th. Oh, sorry, you were not in the cell at the, at the time the - - -?---Correct. Yes.

- - - the incident occurred, is that your evidence?---Yes.

And can I suggest that you wouldn't have been put in that position if you had body cameras? Would that have assisted?---Absolutely would have assisted.

And is that because the camera doesn't lie and you can't fudge what's on the tape?---Correct.

THE COMMISSIONER: Unless it's lost or deleted. Correct?---Correct.

10 MR DUGGAN: But I assume that there are less excuses in terms of turning on cameras if they're body cameras.---Absolutely.

You seem to grasp that suggestion with some enthusiasm. Is there a reason for that?---I've always been an advocate of them, I think they'd be great for IAT.

And not only to avoid this situation, I assume, but to protect officers as well from - - - ?---Yes.

20 - - - accusations.---Stops people being put in the wrong spot, too.

Now, Mr Graf, the effect of your evidence is that you included certain things and omitted others from your incident report because you were directed by Mr Walker.---That's correct.

That's not something you mentioned to investigations branch in 2015?---No.

30 Or in a record of interview with the Commission?---No.

Or in your compulsory examination?---No.

This, your evidence today and yesterday is that it is the first time you've given evidence about that. Are you able to explain why?---Just the threats made by Mr Walker and concern for me and my family.

THE COMMISSIONER: When you say "threats made by Mr Walker", what are you talking about recent threats?---No, just at the time, up until the, I suppose up until I left the gaol, the threat was always there.

40 Okay.

MR DUGGAN: I have no further questions for this witness at this point.

THE COMMISSIONER: Thank you.

MR MADDEN: I have no other questions, Commissioner.

MS JOHNSON: Commissioner, I ask that the cross-examination of this witness on behalf of Mr O'Shea be reserved until tomorrow.

THE COMMISSIONER: I didn't quite hear that, I'm sorry.

MS JOHNSON: I ask that the cross examination of this witness on behalf of Mr O'Shea be reserved until tomorrow when Mr Willis is here.

10 THE COMMISSIONER: Yes, I think that's best. Mr Willis is at a funeral, isn't he?

MS JOHNSON: That's correct.

THE COMMISSIONER: That's, I think that's okay.---I'm staying anyway.

Is that okay?

MR DUGGAN: Sorry, I apologise. Yes.

20

THE COMMISSIONER: Yes. I think we've indicated that. Who else would like to ask this witness any questions, apart from Corrective Services?

MR PATTERSON: Commissioner, my name is Patterson and I seek leave to appear on behalf of Mr Watson.

THE COMMISSIONER: Yes. Leave is granted.

30 MR PATTERSON: Thank you, Commissioner. Mr Graf, you were taken to two separate documents numbered pages 46 and 47, which were your reports of what occurred on 19 February. Do you recall that?---Yes.

Can you explain, I withdraw that. You agreed with learned Counsel Assisting that there was no mention of Mr Watson in that report. Do you agree with that?---I agree, yes.

And why was there no mention of Mr Watson?---Because he had no real involvement in the, in the incident.

40

He wasn't present in the cell.---No, he was not present in the cell. No.

THE COMMISSIONER: Mr Harris.

MR HARRIS: Look, I've reconsidered it, thank you Commissioner. No questions.

THE COMMISSIONER: All right. Mr Brasch.

MR BRASCH: No questions, Commissioner.

THE COMMISSIONER: No questions. I think that leaves you, Mr Greenhill.

MR GREENHILL: Well, I'd rather wait till Mr, until Mr Willis has his go.

10 THE COMMISSIONER: Okay, yeah, that's fair enough. That's fair enough. All right. Well, does that mean there's another witness today?

MR DUGGAN: Yes. Is he here? Michael, Allan Michael Watson, Commissioner.

THE COMMISSIONER: Thank you. Come forward, Mr Watson.

We'll let you go, sorry. You'll have to come back tomorrow, though. I do apologise for that but it's unavoidable.

20

THE WITNESS STOOD DOWN **[3.15pm]**

THE COMMISSIONER: Take a seat, Mr Watson.

MR PATTERSON: Thank you, Commissioner. And Mr Watson will take an oath and would ask that you make a declaration.

30 THE COMMISSIONER: Certainly. We might have the witness sworn now, thanks.

THE COMMISSIONER: Let me just say a couple of things to you, Mr Watson, about your rights and your obligations as a witness. You must answer all questions truthfully and you must produce any item which has been described in your summons, and I'm not sure whether there have been any, or that are required by me to be produced.

10 Now, because of the declaration I'm proposing to make, it will give you a level of protection. It means that any answer you give or item you produce cannot be used against you in any civil proceedings, subject to two exceptions – sorry, can't be used in any civil or criminal proceedings, but there are two exceptions. Are you currently a serving officer?---Yes.

Then both these apply to you. 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, including an offence of giving false or misleading evidence. And that's the most important one to remember. If
20 you don't tell the truth then the section 38 declaration which I'm going to make will not protect you. If you are convicted of an offence of giving false or misleading evidence it's a serious matter and there can be a penalty of imprisonment of up to five years. Do you understand that?---Yes.

Now, the second exception I should draw your attention to where the section 38 declaration won't apply arises because you're a New South Wales public official. Evidence given by a New South Wales public official such as yourself may be used in disciplinary proceedings against you if the
30 Commission makes a finding that you have engaged in or attempted to engage in corrupt conduct. So the effect of that is the section 38 declaration will not protect you in relation to disciplinary proceedings if this Commission makes a finding of corrupt conduct or that you attempted to engage in corrupt conduct. So that's the position.

Now, I make the declaration sought by your solicitor. 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
40 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.**

THE COMMISSIONER: Yes, Mr Duggan.

MR DUGGAN: Thank you, Commissioner.

10

Mr Watson, can you please state your full name.---Allan Michael Watson.

And you're sometimes referred to as Mick Watson. Is that right?---Yeah, nobody knows me as Allan.

Right. Now, Mr Watson, you're with the Dog Unit of SOG. Is that right?
---Not anymore.

20

In 2014 you were?---That's correct.

What does SOG stand for?---Security Operations Group.

And who are you with now?---I'm just a prison officer at Wellington Correctional Centre.

All right. Has SOG been known by another acronym at some point in time?---No. There was a unit called contage years and years ago, and people still refer us to that, as to that.

30

What about SEU, is that anything to do with SOG?---We've had many a name over the years so SEU was the State Emergency Unit, that was prior to SOG to a couple of others.

And that's just a name change, is it?---Yes.

All right. So in 2014, you were with the Dog Unit?---That's correct.

40

And did you have the same dog all the time, or different dogs?---2014 I was on my second dog, I think. I had four over my career, so - - -

And in 2014 you had a German shepherd?---Yes.

And do you recall on 19 February being involved in a search operation in Unit 3?---I was on duty at Lithgow, yeah, to help out.

All right. Do you remember being up in Unit 3 helping out IAT and other officers?---Yeah. I was just, I was generally there as security because I think I was on my own at the time.

All right. What, was your dog being used to assist in the searching?---I would've, depending on, depending on the search. If it was a security based search for weapons or if there was unrest I'd be there as security, primarily it was security, but I like to get in and search, so - - -

And your dog was trained to do both?---That's correct.

10 What about searching inmates? Was your dog - - - ?---No. My dog, German shepherds are active alerts so they scratch and bite to the odour, so he can't do people.

All right. Now, do you recall any radio call coming out which made you leave Unit 3 on 19 February?---No.

Do you recall going down to Unit 5 at any point?---I do now.

20 And you went down with Mr Walker of the IAT. Is that right?---I don't know if I went with him but he was there.

Do you remember being in the day room in the compound and the IAT were there?---Yes.

But you don't recall whether you got there first or you went with them?---No.

30 All right. And in terms of being in the day room before anything happened with the cell, who was in the day room that you can recall?---I don't. Only from what I've just heard today, so - - -

THE COMMISSIONER: Is it that you've got no independent recollection? ---Only from what I've heard and, like, yeah, what I've been reading, so - - -

MR DUGGAN: What happened on 19 was a reasonably significant event I want to suggest?---No.

40 You didn't consider it to be significant?---Well I didn't see, what I, what I saw or what happened, or what I saw happen, no, it's an everyday occurrence in my job.

Are you referring there to an inmate being injured?---Sorry?

Are you referring to an inmate being injured?---No, I'm referring to a search, a targeted search or a search at the spur of a moment.

But you don't have any recollection of being told that's why the reason you were down in Unit 5, do you?---For?

You're not suggesting that you were told you were in Unit 5 for a targeted search, are you?---I would've gone down there to search something.

Well, you weren't, you don't remember the radio call?---No.

Who told you that you were down there for a targeted search?---Sorry?

10 Who told you, you were down there for a targeted search?---I presumed there was a search, there was gonna be a search down there because we'd nearly finished in 3 Unit and I saw people moving down there.

So it was not because of anything anyone said, just the movement of people down to Unit 5 made you think it was a search?---I'd finished, I believed I'd finished in 3 Unit and I just followed down to keep going.

So can I suggest this, that you were just tagging along to assist whatever was going on and you had no idea whether it was a search or not. Is that a fair summary?---Yes, possible. Yeah.

20 Well, you don't have any recollection otherwise I assume?---No.

Do you recall visiting the officers station between Unit 5.1 and 5.2?---No. But there's only two ways in, one through the officers' station and one through the back door.

30 Do you have a recollection as to whether you went in through the back door to the compound or whether you went through the officers' station?---No, I don't. I would have gone with somebody because I, I can't open doors and go through on own with the dog.

THE COMMISSIONER: Why is that, just as a matter of interest?---Just security reasons. If I open a door and somebody comes running out, generally they don't bite officers, but if they're startled they will and sometimes there's inmates walking around everywhere, so we keep a distance.

Okay, thanks.

40 MR DUGGAN: I assume it's considered a bad day at the office if your dog bites someone?---There hasn't been an operational bite for 15 years, so we're, we're very, well, we're careful.

In February 2015, was your boss effectively Mr O'Shea or are you in a different structure with SOG?---No, I, I report to Sydney, so if I go into the centre, I work for the, for the boss of the day or, and my reports or whatever I do, I conclude the report at the end of the day generally and it's forwarded off to Sydney.

And was that someone called Mr White at the time?---Sorry?

Was that someone called Mr White at the time?---Mr White was my boss out the back, yeah.

And when you say, "Out the back," the SOG was located at the back of the Lithgow centre, is that right?---That's correct.

But within the perimeter?---Yes.

10

But were you working on a day-to-day basis with people like Mr O'Shea and the other commissioned officers?---I, I'd come in and I suppose, if they were there, I'd put my head up and just ask if they needed anything before I went and saw IAT.

And what about the Intelligence manager? You would have had a relationship with him, I assume, given your role?---We do have relationships with Intel managers in each centre, yes.

20

So, what about Mr McMurtrie? Did you have regular dealings with him?---Not me myself.

Why not you yourself?---Didn't see eye to eye with him.

And why is that?---It was just my personal opinion on it, I didn't see, we're on different paths.

30

THE COMMISSIONER: What does that mean?---Oh, it tends to be a competition. We like to, we like to share information with the centres and Centre Intel and it was my belief he didn't like to share. So, I just stayed away from him and didn't share out information.

Sounds a bit dysfunctional.---Can be.

MR DUGGAN: Now, in terms of being the day room, I assume that you were keeping the dog back?---That's correct.

Do you recall the cell door being opened?---No.

40

Do you recall any yelling?---No.

So you recall Mr O'Shea at the cell door at any point?---No. And I don't even remember him being there but that's my, that's me.

Who do you remember being there?---I remember, when I tried to remember the first time, I remember Simon was there and Ms Jane, or Jane, as we call her, Ms Jane. I imagine there would have been other IAT

members but I didn't know who they are. I go to different gaols every day, so I mean, I forget what I did yesterday, sort of thing.

Were you not at the time based in Lithgow?---Our unit's in Lithgow but we cover everywhere from Lithgow to Broken Hill, all the gaols in between.

How many correctional centres would you have covered at that point?
---Lithgow, Oberon, Kirkconnell, Bathurst, Wellington, Ivanhoe, Bre and Broken Hill plus we travel in different regions too, when needed.

10

And you mentioned Simon a moment ago, who's Simon?---Simon Graf.

Thank you. Now, do you remember seeing anything once the cell door was open?---I only recall from my report from the last time I spoke, is an inmate and an officer came falling out the door and the dog, it startled me and the dog.

And did you have a concern that the dog might've got too close to the inmate?---I'm pretty safe with that, I'd make sure they don't.

20

Was your dog barking a lot? Do you recall?---Not that dog, he doesn't, he didn't bark that much unless there was a threat, so I don't believe he would've been barking unless they were bashing on the doors or yelling.

Well I want to suggest to you there was some yelling so it's possible that he was barking.---It's possible.

Now, you're standing in the day room. Were you able to see inside the cell when people entered the cell?---No. But you can see the first foot or metre.

30

And could you hear any yelling coming from inside the cell?---I don't recall I could.

What do you recall?---I recall standing out there with the dog and then the last thing, the next thing I knew, two people came falling out of the door.

Can I, is it the case that everything happened pretty quickly once the cell door was opened?---I was just, probably wasn't paying attention. I know around that time we had a lot on, I'd done a lot of hours and I should've been, I suppose I might've been, I should've been paying more attention but at that time I wanted to get out of there, so - - -

40

When you say you were startled and your dog was startled, that suggests that things were perhaps happening quickly and not in a very orderly way. Is that a fair summary?---You could say that.

Is that your recollection?---You could, yeah.

So, the people who came tumbling out the door, one of them was an inmate, was it?---Yeah, I think it was an inmate and an officer, yeah.

All right. Were you aware that two inmates were in the cell?---No.

Did you see the second inmate at any point?---If I did, I don't remember seeing him.

10 Your concern at that point when people were inside the cell was really a security concern?---Yeah. If there was enough people inside the cell, my job's done. The three officers and two inmate, I think it's pretty controlled. The only, yeah.

So your job really is to stand back and keep your dog back and just watch that nobody really came too close and make sure that it was all under control?---Yeah, I probably didn't have much of a role in that one, I was just there. Yeah.

20 Yeah. You were just there standing back watching.---Mmm.

So you would've seen the second inmate come out of the cell?---If I, if I hadn't have taken off I probably would've, yeah, I don't know if I did or not.

You're not suggesting you took off as soon as the cell door was opened, are you?---No.

So you would've seen the second inmate come out of the cell?---Not necessarily, no.

30 Well the day room is not a very large room, is it?---It's, yeah, about four metres wide by about 10 metres long I suppose.

And the first inmate to come out of the cell, I want to suggest, was Mr [REDACTED] and that's the one that your dog got very close to.---Mmm hmm.

The first one that came out, you remember that?---Yeah.

40 And your ears would've been up at that point because you'd be thinking, well, I wasn't expecting that one, you would've been watching for what else was going on. Do you accept that?---It all depends if they fell out or would've come running out, it could've been a funny situation.

This was funny, was it?---I said it could've been a funny situation.

THE COMMISSIONER: I think that was the evidence.

MR DUGGAN: Yes, my apologies. (not transcribable)

THE COMMISSIONER: You're being offered something from behind.

MR DUGGAN: Yeah. Now, are you suggesting that you weren't watching what was going on in the day room?---That's correct.

Well what were you doing?---Probably nothing.

10 But you're standing in the day room with your dog and your main concern is at this point that it doesn't bite anybody. You're watching where people are moving and what they're doing, aren't you?---I was supposed to, most of the time it's controlled, all their movements are controlled so for somebody to come falling out, trip over out of a cell or fall down, it's very rare, so the situation I believed was under control so I had no reason, I had my dog controlled, I had no reason to be concerned or sticky beak, so as to say.

You weren't concerned because someone, because an inmate came flying out of the cell?---Then I was, yeah, that he tripped over or if they fell over.

20 Did you see the second inmate being carried across the day room?
---I don't recall.

So no - - -?---Sorry?

Didn't see the second inmate being put into a cell across the way?---I don't remember seeing it.

There's nothing really in the day room, is there?---I'm just trying to remember because I've been in a lot of day rooms.

30 Can I take you to Exhibit 51, please, at page 5.---There's a phone cage I believe in the day room.

THE COMMISSIONER: Sorry, I missed that?---There's a phone cage.

We've had some evidence that there had been some trouble in 3 Block.
---Yes.

Were you aware of that?---Yes.

40 And was that one of the reasons why you were there?---I believe so, yes.

All right. Can I ask you this then, why was it necessary for you to follow on down into 5 Block?---We would have been finished up at, I would have been finished my, my, my part up there I'd imagine.

Right.---My biggest downfall is I don't monitor the radios as much as I should.

Right. But was there any suggestion to you that there had been a lot of trouble down in 5 Block?---There's always trouble in 5 Unit.

Is there?---Yeah.

Why is that?---It's just the, it's the seg unit, they're down there for, they've been troublemakers.

Okay. Sorry.

10

MR DUGGAN: That's all right, Commissioner.

Page 5 is a picture of the day room, you'd agree?---Yep, it's the back door, yeah.

And that's the back door out to the compound?---Ah hmm.

And can I suggest to you that the cell with the open door is Mr [REDACTED] cell?---Okay.

20

You don't have anything to suggest that that's not right?---You're telling me, I don't remember.

THE COMMISSIONER: I think you can assume that it is right.---Yeah.

MR DUGGAN: So where were you standing after the door was opened? ---Well, if, if I was standing in the right position where I should have been I would have either been right on the back of that door, like with my back onto that exit door, or right down, down here. I believe I may have been standing with my back at that exit door.

30

So you would have had a perfect view down the day room.---Down the day room.

Yes. And certainly would have seen people moving from a cell on one side to the other side.---If I stayed there after the first person left, yes.

Well, again, you're not suggesting that you left halfway through this incident, are you?---I don't know if I did or not. It wasn't, as far as I was concerned it wasn't much of a deal so I might have taken off.

40

Did you have any discussions with anyone else about what had happened on 19 February?---No, I didn't, no.

What about on 20 February, did you have any discussions with anyone on the 20th?---20 February was the other search I believe.

Yes, when you searched Mr [REDACTED] Yes. Oh, I would have had a discussion, we probably would have had a briefing beforehand I suppose.

Do you remember Mr [REDACTED] having some injuries when you searched him on the 20th?---Only when I saw the video this morning.

10 Is it standard procedure to touch or make any contact with an inmate when you're strip searching them?---Prior to strip searching, if they place their hands on their head or you're doing a controlled move from one position, one point to the other, yes.

But during the strip search itself is it standard procedure to put your hands on an inmate?---Could you explain a bit more?

Are you allowed to put your hands on an inmate in the ordinary course when there's a strip search?---If they go to secrete something or if they move their hands in a direction where you don't want, you can stop them, yes.

20 All right. But usually you wouldn't need to put your hands on an inmate? ---If they follow all the directions to the letter, no.

Well, they wouldn't need to put their hands on you?---Sorry?

They wouldn't need to put their hands on you for any reason?---Unless they're becoming aggressive, yeah, they do.

What about if they're injured?---If they're?

30 Injured.---They'd - - -

Would they need to perhaps put their hands on you because they couldn't take their socks off, for example?---I've let them to hold themselves up, yeah.

All right. Do you remember that happening on the 20?---No.

40 No recollection of Mr [REDACTED] being injured on the 20?---Of him being injured?

Yes.---After I saw the video, yes.

But you needed the video to refresh your memory about Mr [REDACTED] being injured on that day?---That's correct.

Commissioner, I did want to play the search video. There was only a small snippet that was played today. It's probably about 18 minutes, I think. I'm

in the Commission's hands, perhaps it could be played now in full if that is convenient to - - -

THE COMMISSIONER: That's all right, yes.

MR DUGGAN: So just to indicate, Mr Watson, there are four search videos. The first search video is effectively Mr Kennedy introducing who is involved in the search operation and you may recall that you introduced yourself on the camera. Mr Dippel introduced himself on the camera and then Mr Murdoch was the cameraman, and someone else took the camera and he introduced himself onto the video.---Okay.

And then this is the second part of the search tape.

VIDEO RECORDING PLAYED

[3.42pm]

THE COMMISSIONER: Does that suggest to you that the inmate was putting his hands behind his back and being cuffed?---Through the bars, yes.

Through the bars, yes. Thank you.

MR DUGGAN: And just to seize that opportunity, did you see the person who opened the door of the cell, the solid door?---The officer?

Yes.---The first one?

Yes.---Yes.

That was Mr McMurtrie?---That's correct. He's not introduced as part of the search team at the beginning, in the first video.

Do you know why that is?---I have no reason why.

No reason why he's not?---Yeah.

Should he have been?---Each gaol has different protocol, so are you asking would I or should he or - - -

There's a search video of the search operation using a camera and officers are introducing themselves on camera. You'd expect every officer involved in any way to introduce themselves, wouldn't you?---If he was going to do anything other than open the door, that would, it would be beneficial if he was to introduce himself, yes, being the Intel officer.

What if he was to speak to the inmate during the search operation?---Intel officers do. They're a bit different.

Do you have any understanding as to why Deputy Superintendent Kennedy was leading this search?---Only because I, I saw what happened today and I've seen, we've got stab vests on, so that would have been after the phone call that he said he had a weapon in the cell, 'cause I don't usually wear that.

You're referring to the vest?---That's correct. They're stab vests, so they're.

All right. Thank you.

10

VIDEO RECORDING PLAYED

[3.46pm]

MR DUGGAN: Commissioner, I notice the time. I wouldn't mind asking a few questions about what we've seen now so that we don't lose the thread tomorrow if we need to.

THE COMMISSIONER: Of course, that's fine.

20

MR DUGGAN: If that is suitable. Mr Watson, I asked you earlier about attending he cell on the 19th, the day before this search operation and it seemed from your evidence that you didn't think that there was anything particularly significant that happened at that time?---Not that I remember, no.

And you were obviously involved in this search operation on the 20th and you searched Mr [REDACTED] Ah hmm.

30 And he's clearly in pain?---Yes.

And there's mention of ribs?---Yes.

And he has to be assisted to take his socks off, so he's obviously suffered an injury?---Yes.

40 And he says to you during that video footage, when he's being asked about the intel, about the, whether there's a knife in his cell, he says, "I wouldn't threaten officers after what's happened to me." He said that to you.---Ah hmm.

Given all those things, you would ask him about how he got his injuries, wouldn't you?---It's none of my business. I'm there to search for weapons.

Given that you attended the cell the day before and didn't think anything had happened but then you visited the cell the next day and assisted of a search of an inmate who had been quite obviously injured, you didn't think to ask any questions as to his wellbeing?---I would have asked officers what

happened to him but I wasn't, didn't have enough time to talk to him. I was tasked with, I was tasked with leading a search or a, a weapon, so I - - -

But he said, "I wouldn't threaten officers after what's happened to me." That suggests that his injuries are as a result the officers have done, doesn't it?---That suggests that he's claiming that.

10 THE COMMISSIONER: He had a black eye, didn't he?---Yes. Yes. They, they get black eyes, they box themselves in the cell, they shadowbox all the time (not transcribable)

MR DUGGAN: Are you suggesting these injuries might have occurred shadowboxing?---No. I'm just saying, you said I should believe what he says. I didn't have to me to investigate that.

I'm not suggesting you should believe what he says. I'm suggesting that perhaps you should have asked him about his injuries.---That happened the day before, is that correct?

20 Well you, the incident was the day before, yes.---That's correct. So, he would have been looked after by then.

But weren't you concerned that an inmate is effectively expressing to you that his injuries had occurred as a result of something officers had done? ---My concern was getting the search done properly with all due care for him and then going to find the weapon.

30 So you were just shutting your eyes to this, were you?---No, I was tasked with a job and I wanted to complete that job.

And you were shutting your eyes to Mr [REDACTED] injuries and their cause, weren't you?---Are you telling me I am or I don't understand?

Well, I'm suggesting that you are. Are you disputing that?---That I'm?

Shutting your eyes to the fact that he's trying to tell you that he was assaulted by an officer the day before.---That would have been dealt with before so yeah, it was none of my concern.

40 THE COMMISSIONER: What would have been dealt with?---Oh, if the, if an inmate was injured to that extent there would have been something, he would have been looked after prior to me getting there, unless it happened when I was in front of him, then I would have dealt with it.

I think you mentioned a little while ago that you asked other officers what had happened to him?---That's correct, yeah.

Who did you ask?---The person on, it probably would have been on the briefing before the search, so it would have been, possibly would have been informed of something had happened.

Do you have a recollection of that?---No, sir, sorry.

MR DUGGAN: And you heard Mr McMurtrie's voice on that video, didn't you?---That's correct.

10 You're not a great fan of Mr McMurtrie's, are you?---We have differences, yes.

Did you hear the inmate say to you on the video after Mr McMurtrie started speaking to the inmate, "Please, sir, enough, officer?"---I didn't hear, it was muffled, if he said that.

You had listened to the phone call in which Mr [REDACTED] had said that he was going to, he had a knife and was going to go on with it, hadn't you, you'd listened to that phone call?---Did I?

20 Before this search?---I could have.

Well, you did, didn't you.---I could have, but I've got no recollection of it.

Well, I want to suggest to you that you listened to the phone call. Are you in a position to deny that?---No.

And in that phone call Mr [REDACTED] alleges that he was bashed by the officers. Do you recall that?---No, but we heard it today though too so - - -

30 So you're in the unit and you're attending the cell on the 19th?---Ah hmm.

On the 20th you're listening to the call in which Mr [REDACTED] says he was bashed.

THE COMMISSIONER: Flogged by the squad.

MR DUGGAN: Flogged by the squad. And he's telling you, "I wouldn't threaten officers after what's happened to me," and he's very clearly injured.---I looked after him 'cause he was injured, yes.

40 Well, didn't you have a concern that officers might cover this up because they were the ones who'd bashed him?---If I'm not involved in something I don't stick my nose in it. If he, if he pleaded with me to help him, please help me, I need help, I would, I would have helped him, but other than that I stick to my job.

Well, he did say to Mr McMurtrie as soon as he walked into the room, "Please, sir, enough."---He said that to Mr McMurtrie, not to myself.

Well, that's a cry for help, isn't it?---That's to Mr McMurtrie, not to me.

Perhaps that's a convenient time, Commissioner.

THE COMMISSIONER: Yes. What Correctional Centre are you located in at the moment?---Wellington now, sir.

10

Unfortunately you're going to have to come back tomorrow morning. ---That's no problem.

THE WITNESS STOOD DOWN

[4.03pm]

20

MR DUGGAN: Commissioner, can I indicate that Mr [REDACTED] [REDACTED] will be the first witness tomorrow. We're going to have to interpose him for obvious reasons.

THE COMMISSIONER: That's okay. I think everyone understands the reasons for that.

MR DUGGAN: Commissioner, can I indicate that Mr Turton's record of interview is up on the restricted website.

THE COMMISSIONER: Okay.

30

MR DUGGAN: And also Mr [REDACTED] evidence is up on the restricted website.

THE COMMISSIONER: When you say his evidence, his compulsory examination?

MR DUGGAN: Both his interview with Corrective Services and his compulsory examination.

40

THE COMMISSIONER: Okay.

MR MADDEN: Well, it's not up there yet, Commissioner.

THE COMMISSIONER: Sorry?

MR MADDEN: It's not up there yet.

THE COMMISSIONER: It will be, it's only 4 o'clock.

MR MADDEN: Oh, well, my friend said it's on there.

MR DUGGAN: Well, it's coming.

THE COMMISSIONER: It's on its way.

MR MADDEN: The cheque's in the mail.

THE COMMISSIONER: All right. I'll adjourn then, thank you.

10

**AT 4.05PM THE MATTER WAS ADJOURNED ACCORDINGLY
[4.05pm]**