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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 29 MAY, 2018

AT 10.15AM

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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: Commissioner - - -

THE COMMISSIONER: Sorry.

MR SHAW: Commissioner, Mr Kennedy has withdrawn my instructions.

THE COMMISSIONER: Right.

10

MR SHAW: I would ask to be excused.

THE COMMISSIONER: Yes, you're excused.

MR SHAW: I understand that Mr Peter Murphy, solicitor, will be taking over carriage of his representation.

THE COMMISSIONER: All right. Thank you for telling us.

20

MR SHAW: Thank you.

THE COMMISSIONER: You're excused.

MR SHAW: Thank you.

THE COMMISSIONER: Now, Mr Taylor.

MR TAYLOR: Yes, sir, Commissioner.

30

THE COMMISSIONER: Can I just indicate that Mr Taylor's, is it the compulsory examination?

MR DUGGAN: Yes.

THE COMMISSIONER: Has only just gone up on the restricted website.

MR DUGGAN: Is about to go up I think.

40

THE COMMISSIONER: Is about to go up. Now, that may cause difficulties to some of you, and if it does, then I'm prepared to give you a couple of hours to go through it. I suspect that may affect you, Mr Madden, and Mr Willis.

MR WILLIS: Thank you, Commissioner.

MR MADDEN: Well, Commissioner, you know, I don't know why it's kept so late, you know, I was checking all last night and there was nothing there. With respect it's not fair to my client.

THE COMMISSIONER: What's not fair, two hours? You tell me how much - - -

MR MADDEN: Yeah, no, it's not fair. It's not fair.

THE COMMISSIONER: Well, Mr Madden, you tell me how much time you'd need and I'll give it to you.

10 MR MADDEN: Well, I'll wait till I have a look at it.

THE COMMISSIONER: Good, and then you can let me know.

MR MADDEN: Why couldn't it, why couldn't it go up last night? I could have read it last night. Wouldn't have to, wouldn't have to ask for time this morning.

THE COMMISSIONER: Well, you're not asking for time. I'm telling you you can have it.

20

MR MADDEN: No, well, if it had gone up last night - - -

THE COMMISSIONER: Well, it hasn't.

MR MADDEN: Well, I don't know why. With respect, in fairness to my client it should have gone up last night. These things shouldn't be kept until last minute. I know these are inquisitorial proceedings but there's still a requirement that people are treated fairly, and putting a, putting a compulsory examination up just as a client, just as a witness goes into the witness box that apparently affects my client is not treating my client fairly.

30

THE COMMISSIONER: Why not when you've got time to read it?

MR MADDEN: Well, with respect I'd suggest the answer's obvious, Commissioner.

THE COMMISSIONER: Sit down, Mr Madden, please.

MR MADDEN: Sorry?

40

THE COMMISSIONER: Sit down.

MR MADDEN: Well, I haven't finished.

THE COMMISSIONER: Sit down, Mr Madden.

MR MADDEN: Well, you won't hear from me?

THE COMMISSIONER: No, I won't. I've told you what the situation is. If you want all day you can have it.

MR MADDEN: Well, I might ask for all day.

THE COMMISSIONER: All right. Thank you.

10 MR HARRIS: Commissioner, for Mr Taylor, Harris. I'm wondering is it straining the resources that a copy of a printed could be circulated during the morning?

THE COMMISSIONER: Yes, certainly, certainly.

MR HARRIS: And I mean my client's not looking forward to spending any longer in Sydney than necessary.

THE COMMISSIONER: No, I understand that, and I understand that.

20 MR HARRIS: That might assist all - - -

THE COMMISSIONER: He will be inconvenienced.

MR HARRIS: It might assist all parties if that could be done.

THE COMMISSIONER: Yes, certainly. Thanks, thanks, Mr Harris. Now, you're seeking a section 38 declaration?

30 MR HARRIS: Thank you, yes, Mr Taylor does seek the declaration. I have explained it but I think it would be beneficial if the Commissioner could explain it to him again.

THE COMMISSIONER: All right. Let me tell you about your rights and obligations, Mr Taylor. We might swear you in first, though.

MR TAYLOR: Yes, Commissioner.

MR HARRIS: Yes, he'll take the oath.

40 THE COMMISSIONER: Will you take an oath or an affirmation?

MR TAYLOR: Oath, thank you.

THE COMMISSIONER: Mr Taylor, as a witness you must answer all questions truthfully and you must produce any item described in your summons or required by me to be produced. I assume you weren't required to produce anything?---No, Commissioner.

10 Right. Now, your solicitor asked me to make a section 38 order or declaration. The effect of that is that although you must still answer questions put to you or produce any item that I ask you to produce, 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. I take it you're still a serving officer?---Yes, Commissioner.

20 The first exception is that the protection granted by section 38 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 evidence, and as I've explained to other witnesses, the penalty for doing so, that is giving false or misleading evidence, can be quite severe. You can get a prison sentence for up to five years. The second exception applies to you because you're a New South Wales public official. Evidence given by a New South Wales public official may be used in disciplinary proceedings against the public official if, if the Commission makes a finding that the public official engaged in, or attempted to engage in, corrupt conduct. Now, I propose now to make the section 38 declaration.

30 Pursuant to section 38 of the Independent Commission Against Corruption Act 1988, I declare that all answers given by you and all documents and things produced by you during the course of your evidence at this public inquiry are to be regarded as having been given or produced on objection, and there's no need for you to make objection with respect of any particular answer given or document or thing produced.

40 **PURSUANT TO SECTION 38 OF THE INDEPENDENT COMMISSION AGAINST CORRUPTION ACT 1988, I DECLARE THAT ALL ANSWERS GIVEN BY YOU AND ALL DOCUMENTS AND THINGS PRODUCED BY YOU DURING THE COURSE OF YOUR EVIDENCE AT THIS PUBLIC INQUIRY ARE TO BE REGARDED AS HAVING BEEN GIVEN OR PRODUCED ON OBJECTION, AND THERE'S NO NEED FOR YOU TO MAKE OBJECTION WITH RESPECT OF ANY PARTICULAR ANSWER GIVEN OR DOCUMENT OR THING PRODUCED.**

THE COMMISSIONER: That's subject to the exceptions that I have mentioned to you, that declaration I've just made protects you.---Yes, Commissioner.

Thank you. Yes, Mr Duggan.

MR DUGGAN: Thank you, Commissioner. Can you please state your full name for the Commission?---Stephen Charles Taylor.

10 And what current rank are you, Mr Taylor?---Senior assistant superintendent.

And what rank were you in 2014?---Senior assistant superintendent.

All right. And occasionally you acted up?---That's correct, yes.

And do you recall on 19 February you were acting up as the acting manager of security?---That's correct. Yes.

20 Do you remember how long you did that for in that particular period?---I think off my recollection it was three or four days in a row, I think.

All right. And did that include the 19th and the 20th of February?---19th and 20th, yes, that's correct.

All right. Now, your office at Lithgow Correctional Centre, you had an office I assume?---Sorry, which one are you talking about, the OS or the area manager's?

30 Well, as the acting manager of security, what office would you be - - - ?---I think that's in J Block, I think they call it. So in the middle, basically.

All right. So not in Unit 5?---No.

Now, do you recall attending Unit 5 on 19 February?---Yes, I do.

And did you attend with Mr O'Shea and Mr Peebles?---What, together?

Yes.---No.

40

You don't need to speak right into the microphone.---Sorry.

No, that's all right.---My apologies. I wasn't sure.

So when did you first attend Unit 5, do you recall?---I went over there to drop paperwork off upstairs in 5.1 area, the area manager's office upstairs.

All right. So you were over in Unit 5 up in the office above the unit?
---Yeah, my recollection.

And is that the office next to the IAT office?---Yeah, that's, yeah, the one with the toilet in between. Yes. That's correct.

All right. So who were you dropping papers to?---I think at that stage either psychologists or one of the offenders in programs offices.

10 All right. And you were aware that there was a search operation going on that morning in Unit 3?---Are you talking about the 19th or the 20th?

On the 19th.---No.

So you weren't aware on the 19th there was a lockdown in the - - - ?---There was a lockdown, I knew that, they were mainly in - - -

3 Unit?---3 Unit. Yeah.

20 So you knew there was a search operation in 3 Unit?---Yes.

Were you part of the briefing or the parade that morning in relation to that? Do you recall?---I'd say probably, yes. I'd have to be because I was the manager of security so I probably would have gave a briefing that we either didn't have enough staff on or we were short so we were doing a lockdown day and we were probably just doing a search operation or particularly 3 Unit.

30 All right. And so you were over in 5.1 Unit delivering some papers to somebody. What happened next?---From my recollection I heard some yelling, which is not unusual in that unit. It usually settles down after five or 10 minutes. It seemed to settle down and start again, which I thought was a bit unusual, because normally when I used to work there I'd come in early and leave late, you'd hear the inmates bantering but then it would stop after they'd had a talk, and this one didn't seem to, it seemed to start up again. So I come downstairs.

All right. And so you came into the officer's station.---Yeah, 5.1. Yeah.

40 Did you go into the day room in 5.1?---Yes I did.

What did you see when you came into the officer's station, was anybody there?---I'm trying to recall. My recollection is either Ms Jane, Michael Small or Brian Dickson were there. I can't remember which one, there was only one in there but I can't remember which, I can't remember which person I spoke to.

So Ms Jane is Jane Lohse.---Jane Lohse, sorry, yes.

All right. You spoke to one of those staff, did you?---Yes.

And what did that person say?---That person's told me that Osh, John O'Shea had been abused over the knock-up system.

And so you weren't with Mr O'Shea when that happened?---No. Not to my recollection, no.

10 And you were having this conversation with the relevant area officer in the officer's station. You had a view into the day room, I suspect.---I then went into the day room, yeah.

But before you did that, you could see out into the day room?---Yes.

What could you see in the day room?---I basically could see over to the left hand, left hand side, or it would be that way towards where you are, probably cell, second last cell which I now think is 208. The door was open.

20

All right. So you could see down the day room and there was one cell door open.---Yes. That's correct.

Was there anyone in the day room?---When I first went out there I bumped into Mr Peebles, he was probably three or four feet into the day room.

But just, we'll just take this one step at a time.---Sorry.

So we'll just, you're in the officer's station.---Yeah.

30

You hadn't yet gone into the day room.---No.

And I'm just trying to find out what you could see through the glass into the day room.---I could probably see, probably directly straight out from the cell, probably John O'Shea, probably three or four, three out from the cell door into, towards the day room, I could see John standing there.

So you could see door open and Mr O'Shea in the day room.---Yes.

40 Was there anyone else in the day room?---I think Simon Graf had somebody up against the wall. I'm not 100 per cent sure on that.

Let me ask the question this way. Was it just one or two people, or was there a group in the day room?---I can't recall if there was a group in there.

Well, you've said Mr Graf had someone up against the wall.---Yeah.

So there was at least three people.---Yeah.

What about Mr Peebles?---Mr Peebles as far as my recollection was, was probably two or three feet from the 5.1 door going into the day room.

So he was in the, in the day room?---Yeah. Probably level with, I suppose the phone cage area, if you walked straight out in a straight line.

Was he close to Mr O'Shea, do you recall?---Well them or those individuals?

10

THE COMMISSIONER: Not the individuals, I think physically. ---Physically, no they weren't standing side by side. No.

MR DUGGAN: And I'm just, I'll take you to when you go into the day room in a minute.---Okay.

But at the moment we're still in the officer's station.---In the office looking out, yeah.

20

I know it was probably just a snapshot.---Yeah.

But I'm just trying to work out what the scene was that you were presented with when you went in. Do you understand?---Yeah.

All right.---No worries.

So, in the day room you've got Mr Graf, you've got an inmate I assume. ---Yeah.

30

Did you know the inmate?---I didn't know either of them.

All right. And Mr Peebles, Mr O'Shea, anyone else you can remember at that point?---No, I'd have to, I'd have to look at the CCTV.

All right. Well we'll get to that in a minute.---I can't recall.

All right. So you, did you hear anything occur over the knock-up system? ---No.

40

No. So you didn't hear anyone saying, "Do you know who you're speaking to? It's the pippet," or something like that on the - - - ?---No, I got that second hand.

All right. And who did you get that second hand from?---One of the wing officers. I'm not 100 per cent sure.

And is this either Jane Lohse or whoever else was in there?---Yes, it was Jane Lohse or whoever else was there.

And what did they say?---The just said the boss has been abused over the knock-up system from I think [REDACTED] cell or 208, he wasn't happy, and that was about it. I said, "What's going on?" They just told me he was out there talking to him so - - -

All right. And did you see any conversation occurring between Mr O'Shea and the inmate through the door?---No. Not when I got there, no.

10 So you didn't hear him say something along the lines of, "You think you're a tough cunt now, [REDACTED] you won't be in a minute?"---No, I didn't.

No. All right. And you say the door was open when you arrived?---My recollection is that the door was open, yep.

Right. Now, Mr Graf you would know is a member of the IAT.---Back then he was, yes.

20 Yes. And do you recall any other officers of the IAT in the area that you saw?---Am I allowed to progress now or - - -

Yes. So you saw, you saw others at some later point?---Okay. So when I left, when I came out of the office I just went up and stood next to John O'Shea and I looked into the cell and the people I could see was Tex Walker had the inmate up behind the toilet, had his hand around the throat area, I'd say I suppose like that, and I believe it was Duncan Elliott was next to him, and that's the only two people I could see in the cell at that time.

30 THE COMMISSIONER: And Walker had his hand up around the prisoner's throat, did he?---My recollection, Commissioner, he had his hand up around there, 'cause yeah, got not much room in the toilet area, it's like a corner like that, and he had him up against like that.

Yes, I've seen, I've seen photos of it, it's pretty small.---Yeah. And Tex had him up against that, like so, right, so okay.

MR DUGGAN: Do you know how IAT came to be in the day room and in the cell?---I do not.

40 Were you wearing a radio as part of your uniform on that day?---Ah, yes, I was.

Did you radio for IAT?---No, I did not.

Can you explain anyone thinking that you might have radioed for IAT? ---No, but I know I didn't make that radio call.

Did you make any radio call at any point?---What, during the day?

Well, in relation to this incident.---Maybe, I'm not, could have asked for the clinic officer to come over or could have asked Ms Jane or one of the staff to taken him round to the clinic.

Right. But prior entering the office station or the day room, you didn't make any radio call in relation to this incident. Is that your evidence?
---That's my evidence, yeah, no, I made no radio call.

10 But you had a radio on your shoulder?---On my hip, yeah.

On your hip.---Yeah, that's part of our, I suppose utilities, you've got to have a radio.

And so if a radio call was made for IAT to attend Unit 5, you would have heard that radio call if you didn't make it yourself?---Should have, yeah. Depends. Some staff turn their radios up, some staff turn their radios down a bit, but normally, yes, you would hear a call.

20 Well, you're the manager of security on the day, it would be pretty important to hear radio communications?---Yes.

Is your evidence you don't have any recollection of a radio call being made to get IAT down to Unit 5?---My recollection, yes.

Did you wonder why they were down there when they were supposed to be conducting a search operation up in Unit 3?---Not really, when you've got two senior managers there I didn't take any notice really. The bosses were there so I just assumed they must have called them.

30 Well, you made that call, didn't you?---No, I did not.

Right. But you're not able to say who did, if a call was made?---I'd be just making an assumption.

Right. So you walk into the day room and you've been told that the governor was being abused over the knock-up system.---That's correct.

40 And he wasn't happy about it.---That's correct.

And you've gone into the day room and could you see what Mr O'Shea was doing at that point?---Basically what you're doing now. He was just standing there, hands on hips like that with a red face, you know. He wasn't happy, if that's what you're asking.

Yes. And how did you know that, what was he displaying?---Oh, usually when Mr O'Shea or John gets upset he gets very red in the face, he gets like, so he was very red in the face, his normal, like, his upset or angry

demeanour, I've known him for probably then probably about five or six years, so I knew his, what do you call it, idiosyncrasies, characteristics I suppose. To me he just looked pissed.

Was he silent or was he making noise?---No, he was not making any noise at all but just the demeanour wasn't, it wasn't a good idea to speak to him.

10 All right. And he was watching what was going on in the cell, was he?---He was just looking straight ahead so I'm assuming he was watching what was going on, yeah.

But he was facing the cell?---Yes.

THE COMMISSIONER: And was he facing the cell when you saw Mr Walker up against the wall?---I believe so, Commissioner, because I was standing right next to him.

Okay. Thank you.

20 MR DUGGAN: If you're the manager of security on the day, how would you not know that IAT were in the day room?---I could have been speaking to staff upstairs, it could've been a conversation, I didn't hear the first call.

All right. So you've walked down the day room towards the cell I assume. ---Yeah.

Because you said you were standing next to Mr O'Shea at one point?---Yes.

30 And he's facing in the direction, unhappily, of the cell.---Yep.

And could you see Mr Peebles at that point?---I passed him so I'm assuming he's over my right hand shoulder.

And did you have any conversation with Mr Peebles on the way past?---I think I said, "What happened?" And I think he just said, "John Osh has been abused by a bloke in the cell."

40 And that was consistent with what you'd just been told by Ms Lohse or whoever else.---Yeah. Yeah. One of the staff members, I can't remember which one.

Was that it with the conversation of Mr Peebles, or was there more, do you recall?---No, it was basically, it, 'cause I just, I thought oh yeah, I'll just keep walking.

So you've walked down next to Mr O'Shea. Did you have any conversation with him?---Not to my recollection. No.

He didn't say anything about what was going on?---Not that I can recall.

Were you aware of any order having been given to sort the issue out, the issue being what was going on in the cell or the knock-up abuse?---What do you mean, a direction or order as in paperwork order?

I've asked the question badly and I apologise. Were you present for any instruction to IAT as to what to do or not?---No.

- 10 Did you have any conversation with anyone about what IAT was doing in the cell, what they'd been instructed to do?---No. I spoke to my staff afterwards but not IAT, no.

And were you told afterwards that, or what were you told afterwards?---I went to see my staff afterwards because I know there was a use of force. I said, "Make sure that either the clinic comes over or he goes to the clinic", that's a mandatory requirement. I said, "Make sure that's done and all the paperwork is done."

- 20 All right. But what were you told as to the reason?---At that time I was told no reason.

So you weren't told that Mr O'Shea had - - - ?---Other than being abused, that's it, that's all I knew.

All right. And you understood that's the reason - - - ?---Why they went in, yes.

- 30 Yeah. Do you have any knowledge of whether Mr O'Shea called IAT to attend the cell?---As I said before I'd be just making an assumption.

All right. And I assume from your evidence, but I need to ask you this question, you didn't provide any instruction to IAT to go into the cell?---To 208, no I did not.

Or to sort any issue out.---I don't speak like that.

- 40 All right. So you're down by the door with Mr O'Shea and you can see into the cell. What happened next?---Basically I saw what Terry had him against the wall, I thought okay there's been a use of force, I left, I went back to the wing office. I'm pretty sure I spoke to Ms Lohse and Michael Small, just to see what was happening with the rest of the wing, due to the type of inmates we had there and just advised them to make sure that any paperwork that they needed to do, was done.

All right. Now, you've seen Tex Walker with his hand around an inmate's throat.---Yeah.

Mr Duncan's there with him at the back of the cell.---I believe it was Mr Duncan, yeah.

Did you see Mr Duffy in the cell at all, do you recall?---No, I don't remember seeing Wes Duffy at all that day.

Did you go inside the cell?---No I did not.

10 Where were you when you could see these events?---Roughly in the middle of the day room, give or take.

All right. But you could see through to the back of the cell?---Yes.

Why did you leave at that point?---Well there were two senior managers there, IAT seemed to have everything under control, there was no need for me to be there so I did, I left.

Sorry, go on, have you finished your answer?---Yeah. Sorry, yeah.

20 Is Tex Walker having his hand around someone's throat, is that a situation under control in your view?---Well the inmate wasn't struggling so to me at that time it was under control.

All right.---He's restrained. I don't know what led up to that, I have no idea why he had his hand there but the inmate wasn't fighting, there was no yelling that I was aware of so as far as I was concerned, the incident was dealt with.

30 All right. Now when you left, did you walk past Mr Peebles in the day room?---I believe so.

And was Mr O'Shea still in the day room when you left?---At that time, I believe so.

Just excuse me for one moment. Did you see Mr Kennedy at all in the day room? Do you recall?---Which day, 19th or 20th?

40 Yes, we're still on the 19th. Was he in the day room while this was going on?---Not that I can recall. I saw him on parade but I didn't, I can't recall seeing him on the 19th.

All right. Do you recall Mick Watson being there with his dog?---Not that I recall.

If I can take you to Exhibit 45, yes, 45 please.---Mmm hmm. Excuse me.

At page 65, please.---Okay. Page 65. Yeah.

I'll just get it myself. All right. So was that your signature down the bottom?---Left hand corner, that's my signature.

And that's a section 24, that's a transfer, is it, for the hospital?---That's correct.

And so it says there "leave complex at 12.40." Do you see that?---Yeah.

10 So can I assume that you filled in this form some time before 12.40?---No. What usually happens is Khili Jenkins who's the deps clerk will usually fill it all out, and I just do the signature block on the left hand side, so that's usually filled out by our dep's clerk and she just brings it in and it's all ready to go, and we sign off on it and the escorting officers will go.

THE COMMISSIONER: That's before the inmate leaves the centre?---Yes, Commissioner. Yes. Yes. It has to be signed and the escort assessment has to be completed.

20 MR DUGGAN: He can't leave without your signature?---No. Or one of the managers, no.

But in this case, he can't leave without this signature on this page?---That's correct. Yes.

So if you see there it says "medical treatment hours at 12.55".---Yeah.

And he's to leave the complex at 12.40?---Yep.

30 So do I assume that you signed that at about 12.40 or sometime before that? ---That would be correct, yes.

And so you knew that he was going to hospital for assessment of some injury at that point?---That's correct, yeah.

Did you have any idea of what the injury was at that point?---My recollection, not really, but maybe the rib, ribs. I can't be 100 per cent sure.

40 Now, I want to take you to page 73 of that exhibit. This is an email from Mr Peebles to you. Do you see that?---Yes.

And you can see it's 19 February, 2014 at 12.54.---That's correct.

So that's about the same time that Mr [REDACTED] is being assessed at the hospital, according to the section 24 form.---That would be correct, yeah.

And not long after presumably you've signed the section 24 form.---Yeah, that would be correct, yeah.

And it's forwarding an email from Mr McMurtrie, attaching a document, and Mr Peebles says, "Steve, as I'm offline could you attend to this?"
---That's correct, yeah.

And then if you go to page 74, that's the attachment. Do you see that?
---Yep.

Do you recall seeing that at the time?---I do, but I've got two recollections, I wasn't sure if Brian approached me and told me verbally then I got that, or
10 got that and Brian come and seen me, so, but I guess - - -

So both occurred. Is that right?---I'm trying to think.

You're just not sure of the order.---I'm not sure of the order in my, I'm trying to recollect but yes, I have seen the document.

All right. So you recall the email?---Yeah.

Or the attachment rather?---Ah hmm.
20

And what was the conversation you had with Mr McMurtrie?---It was just about the document, he's either sent to me or that I'm getting. That was basically about it.

MR MADDEN: Sorry, I didn't hear that, I'm sorry.

MR DUGGAN: Yes, neither did I.

MR MADDEN: I apologise.
30

MR DUGGAN: Can you repeat that, please?---Oh, basically about the document I was going to receive. I think he came and told me he's going to send me a report of something, 'cause our offices weren't that far away.

All right. So he said there's a report - - -?---Coming.

Coming.---Or something like that in that regard.

Did he tell you the gist of it?---Yeah, basically, yes.
40

What was the gist that he gave you?---Oh, just said there was a report coming. That was it.

But did he give you the gist of what was in the report?---No, not at that time, no.

And did he say it was in relation to cell 208 or [REDACTED] or anything else?
---No.

Just - - -?---Just I'm sending you a report.

All right.---Which wasn't unusual back then.

All right. Now, if I can take you to the report.---Yeah.

The bottom of the report - - -?---Yep.

10 - - - refers to 13 January, 2014, but if you can assume that's probably a print error - - -?---Yeah.

- - - because the top, the body refers to, "Today, Wednesday, 19 February." Do you see that?---(No Audible Reply)

The first line of the - - -?---Oh, right at the top?

Yes.---Okay, yes.

20 So the emails received on the 19th and so this is about the 19th. And it refers to target searches at Lithgow Correctional Centre. Do you see that, just a general statement, the first sentence?---Yep.

"During the searching numerous inmates were questioned in regard to drug and weapon possession at the centre." Do you see that?---I do.

Did you understand that at the time to be in relation to searching operations up at Unit 3?---I did.

30 Right. It says, "During the informal interview an informant stated that there was a large quantity of Suboxone in a cell occupied by [REDACTED] Do you see that?---I do.

When you read that, was that the first time you'd heard that suggestion? ---It was.

And you'd expect to be told that information pretty quickly I assume, being the manager of security?---You're talking about Brian, are you?

40 No, I'm talking about you as manager of security, whether you'd expect to be told that information as part of your duties?---Yeah, but what I'm trying to, from this person?

Yes. Yes.---Not necessarily, no.

All right. Do I take from that, that, well why, perhaps you can tell me what, why with this particular person?---He tends to keep a lot of stuff to himself, he tends to only let out the information that he deems necessary to the right

people and sometimes Brian kept stuff to himself to, I don't know, big note himself or get the kudos for what was going on.

All right. Now it says "the manager of security was informed of the intel". Now, can I assume from what you've just said that you deny that, do you? ---That I was the acting manager of security, I'm not the manager of security. I was the acting one.

10 Well let's just deal with you for the moment.---Mmm hmm.

You say that you were not informed of that intel.---That's correct.

And it says "the manager of security was informed and instructed to have that information forwarded to the search teams and have [REDACTED] included in the target searches". Do you see that?---I do, but it wasn't me.

And do you say that you provided no instruction to have that information forwarded to the search teams?---Are we talking about the 19th still?

20 The 19th.---No.

And do you also say that you gave no instruction for [REDACTED] to be included in any searches?---I did not give any instructions, no.

Did you know, well you would have known at this point that cell 208 and possibly the inmate referred to in this note was the very same cell that you'd been to earlier in the morning?---I'd say so, yes. At that time of the day, yeah.

30 Well at that point you knew the reason for entering into the cell was because of an abusive knock-up with the governor?---That's correct.

And this intel, or this report, is not consistent with that reason, is it?---No it's not.

Because it suggests that the reason for attending the cell is as part of a routine, or a targeted search.---Yeah. The information I got from my staff was the MOS had got abused.

40 So quite inconsistent with this.---That's correct.

THE COMMISSIONER: Can I just ask you, can we just go back to the previous page, 73? And the email from Peebles to you says, "Steve, as I'm offline could you attend to this?". What did you understand that to mean? ---Whatever Brad wanted me to do because at that stage he was looking after the expansion of the gaol, so I just assumed whatever paperwork he was getting, he wanted me to complete because he's worrying about staffing issues, unit issues and all of that sort of stuff.

All right.---And as an MOS that's what you did.

Well, having received the report from Mr McMurtrie, what did you understand he had to do with it?---(not transcribable) just filed it. Gave it to Ms Jenkins to put on the file register.

Thank you.

10 MR DUGGAN: If Mr Peebles is offline, what would he be doing?---What, back then?

Well he wouldn't be setting up the search, or - - - ?---No. Back then I think he was, we were looking at expanding the inmate population by 110 I think offhand, so I think Brad was doing, working out where we could put the beds, what inmates we needed to move around. We had, I think, some industrial issues in relation to staffing numbers, so I think Brad was more like a project officer for that sort of stuff because at that time, the department's numbers were going up quite steeply so we needed to find
20 beds, so I think he was doing that, off the top of my head.

All right. But apart from your own knowledge that this memorandum isn't right in terms of the reason of going into the cell, you would have known that you didn't give the instruction.---Yes.

And you would have thought, well hang on a minute, Brad Peebles is offline. Why would he be issuing an instruction?---Well, we were basically a hierarchical system, so the boss is, John O'Shea is the governor, Brad is the substantive MOS, I'm the acting, so staff would have followed the
30 normal protocol. So if Brad told him to do something, he'd do something.

But it's just another question mark, isn't it, in your mind in terms of this memorandum?---It is now. Back then it wasn't.

All right. Did you have any further discussion with Mr McMurtrie about this memorandum?---On that day, I can't recall. No.

All right. What about when you read it and you thought, hang on a minute, that's not the reason they went in there, it wasn't a search operation. Did
40 you ring Mr Peebles and find out what this instruction was all about?---No.

You had no conversation with Mr Peebles that day about this?---Not that I recall, no.

Why would that be?---Because I had multiple other jobs to do so I, you know, I've got, I've got to run a gaol, staff, budgets, yeah, rostering. All that sort of stuff. So it might have passed my mind but it could have gone because I had another phone call or something, or, you know? You're

looking after 340 inmates and probably 130 staff, it's pretty hard to keep concentrating on everything, what's going on.

THE COMMISSIONER: Yes, sure.

MR DUGGAN: Do you see an inmate pushed up the back wall of a cell by IAT with a hand on a throat every day of the week?---Not every day of the week but it's not unusual.

10 It's usually a pretty significant event for the day if that happens, I suggest. ---No, not necessarily. No. Sometimes they don't want to be searched, sometimes you've just got to push them up against the wall and hold them there.

Well it's made more significant, isn't it, by the fact that you receive this memorandum from Mr McMurtrie which is inconsistent with your understanding of what actually occurred.---That's correct.

Now at page 79 - - -

20

THE COMMISSIONER: Just before we move off that, you said a moment ago, Mr Taylor, that you were asked whether you'd spoken to McMurtrie about the particular report. You said not on that day. Did you speak to him subsequently?---The next day I did.

And what was the substance of that conversation?---That was about the second search in the cell.

Okay. Yes. We'll come to that at some point.

30

MR DUGGAN: Yes.

THE COMMISSIONER: Sorry, Mr Duggan.

MR DUGGAN: No, that's all right. Now in terms of page 79, if we can have that up on the screen, please. Now this is part of the email chain, so you respond to Mr Peebles at 1.29pm, "Will do", in response to his request to attend to this. Do you see that?---Yeah, I do.

40 What did you understand attending to Mr McMurtrie's memorandum meant? What were you to do?---I don't know, I can't recall back that far, whatever I had, you know.

Was this in relation to the use-of-force package or something else that you were asked to attend to?---The use-of-force package, off the top of my head, I didn't get until late that afternoon so I'd probably assume it's the whole lot but I can't recall, to be perfectly honest with you.

All right. I just want to take you to a Corrective Services policy. And it's the policy in relation to use of force on inmates, and I understand that it was enforced in February 2014.---Yep.

You can just see up on the screen there it's got a TRIM reference and a publish date and it's got October 2013. Do you see that?---Yeah. Down the bottom, yeah, TRIM. Yeah, sorry.

10 Now, if you can assume from me, and I hope I'm right, that this was enforced a few months later in February 2014. Does that accord with your memory, or you're not able to - - - ?---We had a use-of-force policy back then, yeah.

So, if we can just go to page 3.

THE COMMISSIONER: I'll just remind those present that on the 21st of May, I made a suppression order in relation to these documents. At the end of the day, it may be varied but I want to speak to Mr Brasch about that.

20 MR DUGGAN: Now, it says there at the end of, just above the heading 1.1, it says, "A use-of-force incident must have an after-action review." So you see that?---Yep, I do.

Do you remember whether there was an after-action review in relation to this incident?---No, because most of the times we don't do an after-action review. That's only if we need any training exercises or we find there's a fault anywhere that's, it needs to be picked up, i.e. camera wasn't used or something like that.

30 Can I suggest that that statement, "A use-of-force incident must have an after-action review," refers to all use of forces, not just those with a particular problem?---It does but a majority of the time we don't do an after-action review. I think I've done one or two in the whole time I've done reviews.

And so, is it that that policy requirement is kind of in the breach, if I can put it that way?---You can put it that way generally but the majority that I know of, most people don't do an after-action review.

40 So, you don't cavil with the fact there's a policy requirement, it's just it doesn't happen, is that - - -?---I know, so what you're saying, I'm agreeing there but I'm, I'm saying, I suppose, on the ground we normally don't do an after-action review. It's there, we look at it, but the majority of the time we don't do it. So, yes, all right, I'm in breach of the policy.

If I can take you to clause 2.4, which is on page 5.---2.4, yep.

It says there, "When the use of force is planned or when there is a high potential for conflict, a video camera must be brought to the scene." Do you see that?---I do.

And it goes on to say, "This is a requirement even if the areas is subject to CCTV surveillance and recording." Do you see that?---I do.

10 So, you would have understood at the time that, that a handheld camera recording of an event was required if there was a potential for conflict?
---I do.

And given, although you didn't see the inception of the event, you walked in at some point during the event?---That's correct.

And you were told that the event started because the governor was abused on the knock-up system. Do you recall that evidence?---Yes, yep, that's correct.

20 And you've described Mr O'Shea as being rather unhappy. Can I suggest that it was pretty obvious there's at least a potential for conflict before they went into the cell? Do you accept that?---I accept that, yes.

And that was your understanding at the time?---That was my understanding at the time.

If I can take you to clause 2.13, it just, sorry, just to finish off on that point, so, if that was your understanding at the time, you would expect there to be footage of what happened?---There was footage of what happened.

30 From a handheld camera?---No. From CCTV camera.

But you would expect there to be footage from a handheld camera?---Yes. And that, in that unit, yes.

Yes. And the policy, I think it says that at 2.4, the line I just took you to, "This is a requirement even if the area is subject to CCTV surveillance," at 2.4.---Yes, right down the bottom.

40 Yes. So, you need the handheld even if you do have the CCTV?---Normally yeah, but they, because, due to the type of inmates we had, excuse me, they were problematic so we always had a video camera there.

And one of the issues with CCTV is it doesn't record sound.---That's correct.

So, if you go to clause 2.13, please.---Yep.

It says, "The manager of security or another delegated senior manager must review use-of-force reports as soon as practicable." You would have been aware of that?---That's correct.

"Video recordings must also be reviewed." Can you see that?---That's correct.

10 And the third paragraph there it says, "It does not matter how minor the use of force, the reports and video must be reviewed. However, if the manager of security was involved in the use of force, a conflict of interest exists and the general manager must review the reports and video recordings." Firstly, did you consider yourself to have a conflict of interest?---No, I did not.

Did you ever file a witness report in relation to this event?---Not that I can recall, no.

You witnessed the use of at least some of – you witnessed a use of force, if I can put it that way?---No.

20 Well, a hand on a throat of an inmate, that's a use of force.---Yeah, but I didn't see it. It's already there.

Sorry, I - - ?---To me, what you're saying is a use of force, I've seen something, somebody grab somebody, put them up against a wall, then I've seen the use of force. All I saw was Tex having his hand there. I didn't see how he got there, whatever.

30 No, no, no. I understand that. I understand that. But as I understand your evidence, it's that you saw Tex Walker with his hand on the inmate's throat, holding him up against the back of the wall.---Behind the toilet, yeah.

That's a use of force, isn't it?---Yes, I, yeah.

So you would ordinarily need to file a witness report.---No.

Why not?---I wasn't involved in it.

40 But you witnessed it.---I can, I can witness it every day in a gaol as a supervisor. Doesn't necessarily mean I'm a witness.

Well, you certainly witnessed that event.---At the end, yes.

And what I'm suggesting to you is that's a use of force. Irrespective of whatever else happened, that's a use of force. Do you accept that?---No, I don't because I - - -

Why do you say that's not a use of force?---Because I'm not sure where you're going with it.

Well, what's your understanding of what a use of force is?---Basically if we use force on an inmate for any reason, put my hand on him, push him in a corner, that's a use of force. That's it. I've seen that. But as I'm trying to explain, I didn't, all I saw was Terry's hand out. I have no idea how it got there. It was just there when I looked in the cell. So normally I wouldn't be excluded from the review.

10 But that's the next step. I'm just asking you at the moment about having witnessed the use of force, and when I asked you your understanding of a use of force you were talking about putting your hand on someone.---All right. Going by that, yes, it's a use of force. He put his hand on an inmate.

And is it your understanding that all witnesses to a use of force must file a witness report or not?---That is correct.

And if you've seen Tex Walker put his hand on the throat of the inmate, then ordinarily you would be filing a witness report.---No, I would not.

20 THE COMMISSIONER: And why not?

MR DUGGAN: Why not?---Because it happens in the gaol all the time, Commissioner. Because we're managers, I might see somebody mucking up in the yard and the staff's gone around and pushed him up against the wall. I'm not, I didn't physically do it. I'm there, but I'm allowed to be the reviewing officer or the officer looking at it because I'm physically not involved in the use of force, if you understand what I mean.

30 THE COMMISSIONER: So your understanding is that those who are required to file an incident report are those who were actually involved?
---Yeah, the immediate officers. Like, if I jumped up at the barrister now and hit him, the people around – I'm just saying, trying to use that as an example, then - - -

MR GREENHILL: I'll put in a report.

40 THE WITNESS: Me, myself and I, we could review it. But if I physically hit him, yes, I have to put a report in. My understanding is because I saw it doesn't mean necessarily I have to put a report in. Because I stayed back out of it, as the manager I'm, we're allowed to review the footage because we weren't physically involved in the incident.

MR DUGGAN: So can I maybe ask the question this way. You see there I think 2.13 is still on the screen, and that third paragraph.---I have to go back a bit.

Where it says, "However, if the manager of security was involved in the use of force, then a conflict of interest exists."---Yeah.

So you understood that requirement to mean if you were – not the perpetrator of the use of force, that’s the wrong word, but you committed the use of force it would create a conflict, but if you witnessed it, it wouldn’t. Is that your understanding of - - -?---Yeah. And to me this is the first time you've had a manager of security and general manager there.

All right. And that’s - - -?---First time I've ever seen that.

10 That creates a problem, doesn't it?---It does.

In terms of reporting.---I've got my own opinions on that, but, yeah.

All right. Well, we’ll get to that. Now I think I took you to a policy requirement that requires you to review the video footage.---That's correct.

In fact, 2.13 says it in the second sentence, “Video recordings must also be reviewed”.---Mmm hmm.

20 So you reviewed the CCTV?---I did.

You did.---I did, yes.

And what - - - ?---With Brian McMurtrie.

With Brian McMurtrie.---Yeah.

All right. And when was that?---I think the 20th, off the top of my head.

30 All right. And whereabouts?---It would’ve been the manager of security’s office.

So in your office?---Yeah.

40 And how was it viewed, what format?---That’s, back then we started doing, putting everything on CD like police do now to solicitors. You know where you’ve got the video footage, report, so you just watch one thing. Well I can’t recall on the day if I had that and everything, or Brian gave me the disc and the reports. That’s what I can’t get clear in my head, because back then we were trying this new system. But I did review it and I did review all the reports.

So you think you might have been given a disc?---Yes.

Where would you have put the disc?---Once I review it I make my comments in the reviewing officer’s stuff. I used to put it in a plastic sleeve and all the reports, the disc, the disc was numbered. I’d then take it up to the general manager’s office, tell his PA there’s a use-of-force package here

in relation to whatever inmate it is, because we'd have the inmate's MIN, use of force, and then I'd either put it on John's in-tray if he wasn't there and just tell the PA it's there, and then from there my recollection would go back to Brian because we were putting up, I think it was a cabinet in his office that we were putting all the uses of force in there. So, that was the last I saw of it.

But, I see, so you have a recollection of this particular disc? You said that's the last you saw of it?---Yeah. There was a disc there.

10

Yeah, okay. So, I think you said the disc went to Mr O'Shea?---Yeah.

With the package?---Yeah, I'm pretty sure I took it upstairs.

Yeah. Did you hand it to Mr O'Shea? Or I think you might've even said in-tray, do you recall?---I can't recall. It could be his in-tray, I could have handed it to John O'Shea personally but I, again I would be making an assumption, but I definitely took it upstairs.

20

Did you, were you there when he signed off on the use-of-force package? ---What, his comments?

Yes.---No.

No.---Normally not because it's, like, each bit is independent, because he might see something I don't see, I might see something he doesn't see, so no, normally we don't sit the governor and go through the review.

30

Okay. But the package was provided to him with the disc?---Yes.

But then I think you also said that the package with the disc went back to the Intel manager.---I think so, because I think we were trying to put everything on disc then.

But how do you know that the package went from the governor to the Intel manager?---I'm just assuming.

40

Right. So you don't have any personal knowledge of that, you're just assuming because that's what usually occurs.---Well that's what we were trying to make back then, we were trying to get everything on disc, so Brian was the expert at doing all that sort of stuff.

All right. Well I just want to be very clear about what you know or what you've assumed because there's an important difference.---Okay. So, I saw the disc. The disc had the inmate's name on it and use of force, I packaged it up with my comments on it, put it in a plastic sleeve which I used to do back then, and I took it upstairs.

To?---John O'Shea's office. Then I can't recall if I gave it to John or put it in his in-tray, but I definitely took it upstairs.

All right. And is that the last time you saw the disc?---Yep, because I was quite surprised on your website that it wasn't there, your restricted one.

THE COMMISSIONER: Yes. Yes.---Because that would say that I wasn't there.

10 MR DUGGAN: Do you know if the CCTV was downloaded at all or just, there was just a copy made on the disc?---It'd be downloaded.

And so it would be downloaded onto a hard drive, would it, or do you not know?---I'm not sure back then if they had one of them little one-giggy box things.

All right.---Could have. Could have been put on a stick. That was the Intel officers' area so - - -

20 All right. So, but you didn't download it to the disc?---No. Back then I haven't got the expertise.

MR HARRIS: Commissioner, I wonder if there might be some clarification about just what downloading we're talking about. It would help the witness. Whether it's download to disc or whatever.

THE COMMISSIONER: Yes, no, I agree, I agree.

30 MR HARRIS: I appreciate Counsel Assisting is endeavouring to do just that, but thank you.

MR DUGGAN: We're talking about the CCTV footage.---Oh, so you're talking about the use-of-force footage? No, I did not download that.

Right. But you were provided with a disc with the CCTV footage on it?
---Yes.

40 And just to confirm, I think you gave this evidence earlier, but who originally gave you that disc?---Brian McMurtrie.

Right. And that's the disc that was part of the use-of-force package that you - - -?---Yep.

- - - delivered to Mr O'Shea's office?---'Cause they usually, yeah, they say, give us a disc.

THE COMMISSIONER: Did you actually view what was on the disc?

---Yes, I did, Commissioner, yep, a thing like this, put it on the old CPU and I watched the whole thing and then looked at the reports and that, and that, and what everybody what happened, happened, so I just said okay, yep, and I signed it off.

MR DUGGAN: So I assume the disc was consistent with the evidence you've given in terms of who was present, so Mr O'Shea was on the disc I assume?---My recollection, yes.

10 And Mr Peebles?---Yep.

And you entering and leaving I assume you noticed, was that on the disc?
---I'm pretty sure, 'cause back then I'd like to go 10 minutes or 15 minutes prior and 15 minutes after - - -

Yeah.--- - - - because I like to get the whole spectrum so - - -

Well, particularly given they were the bits you weren't there for.
---Yeah, but that's what I normally did anyway on any use of force so - - -

20

Yes. And did you see the point at which Mr O'Shea and Mr Peebles left the room, do you recall?---I think I was still in the wing office when they left, I think. I can't recall but I think they walked behind us and went out down the hallway.

But your evidence earlier was that you left the day room before they did.
---Yeah, but I went into the office.

30

Oh, so you could still see what was going on from the officers' station?
---No, 'cause I went into the office, we were looking at the IVOP site Individual Violent Offenders site, which is the problematic side of the wing, the other side, so I was talking to Ms Jane about those 'cause usually if something happens in that unit, it's normally that side of the unit where we have the fires and all that sort of stuff, it's usually on that side, so I was talking about them, how are they behaving, had they fed them, had their garbage gone out, that sort of stuff, the normal routine in the wing 'cause we've still got to run a wing.

40

THE COMMISSIONER: Yeah, sure.---So I think I was more talking about what's going to happen next 'cause that other side with [REDACTED] wasn't my problematic area.

MR DUGGAN: All right. And that was, unbeknownst to you, that was going on behind your back and you were looking into the other pod?
---I'm looking, yeah, I'm looking that way with I think Jane and Mick Small I think, or Ms Lohse, talking about normal, normal business.

All right.---As I recall.

And you were sitting there talking about the violent offenders' pod and - - -
?---No, I was standing, I wasn't sitting.

Standing, sorry. And then I think you said a moment ago, and correct me if
I'm wrong, but then Mr O'Shea and Mr Peebles walked past you?
---I believe so.

10 Right. When you say I believe, does that mean that that's your best
recollection of what happened?---That is my best recollection, yeah, they
walked past us, yeah.

Was anything said, or did they just go straight through?---Not that I can
recall. I don't think they said anything to me.

All right. Commissioner, I'm about to go to another document, is that a
convenient time? I mean, I'm happy to keep going.

20 THE COMMISSIONER: Yes. Can I just ask whether Mr Taylor's
interview has been copied?

MR DUGGAN: We have copies, so - - -

THE COMMISSIONER: We'll distribute them, and I'd like those present
to the extent that they can, to let us know when we resume, how much time
they think they might need to consider what is in there and obtain
instructions. Is that okay? No.

30 MR DUGGAN: I'm not sure how long they would need, it's a bit difficult
for me to estimate that.

THE COMMISSIONER: No, that's okay. I mean, I'll adjourn for a little
longer if you like, but when I come back I'd like to know just how much
time we need and as I said to Mr Madden, I'm happy to give as much time
as people do need to consider what's in the interview.

MR DUGGAN: All right. And can I ask that the suppression order be
lifted in relation to this compulsory examination?

40 THE COMMISSIONER: Yes. Yes. The suppression order is revoked.

**VARIATION OF SUPPRESSION ORDER: SECTION 112
DIRECTION IS REVOKED IN RELATION TO STEPHEN
TAYLOR'S COMPULSORY EXAMINATION**

THE COMMISSIONER: Thank you. I'll adjourn now.

SHORT ADJOURNMENT

[11.30am]

THE COMMISSIONER: I think, Mr Greenhill, you told us yesterday that you've got a junior now. Is that - - -

10 MR GREENHILL: Yes. Ms Kovacs, sitting on my right.

THE COMMISSIONER: Thank you. Welcome.

MS KOVACS: Thank you very much.

MR GREENHILL: Thank you, Commissioner. First day, and she was against the learned counsel's reader in the case that - - -

MR DUGGAN: Saturday's motion.

20 MR GREENHILL: Saturday's case, motion or whatever it was.

THE COMMISSIONER: Okay. Is anyone in a position to tell me how long they'll need in relation to this witness's compulsory examination?

MR GREENHILL: I've read it. I've read enough of it to say I'm ready to cross-examine today, and I won't be very long with him.

THE COMMISSIONER: Okay.

30 MR HARRIS: And, Commissioner, I'm content to use my notes. I was present during that compulsory examination, and if they're imperfect then we can correct them accordingly but I don't need any further time.

THE COMMISSIONER: All right. Mr Duggan, you continue.

MR DUGGAN: Thank you, Commissioner. Mr Taylor, I was asking you some questions before the break about the CCTV.---Yeah.

40 And you understood when I was asking you those questions that what I was talking about was the CCTV footage of the day room.---That's correct. Yes.

And I can take you to a photograph if you need me to but in the top corner near the officer's station is a CCTV camera, which records what happens in the day room. Are you familiar with the camera?---I think so, yeah.

I might show you actually for the avoidance of doubt.---Because there's a few cameras in there.

That's Exhibit 51.---Is that page 51, or - - -

That's, sorry, I'll bring it up on screen for you.---Okay.

So page 6, perhaps. So does that look a picture of the day room to you in Unit 5?---Yes it is, yeah.

And see that black box?---The camera.

10 That's the CCTV camera you're talking about?---For the footage of that day?

Yes.---I would assume so, yeah.

Yeah.---I'm not sure, we might have had another camera in there, I'm not sure.

I'll show you, so if you look at page 5, that's looking down the day room into the compound door.---Yeah. That's correct.
20

There doesn't appear to be any camera in there.---That should be right then.

So if you go to page 8, that's looking - - - ?---Down.

- - - the other way. Yeah.---That'd be right. We had a submission for new cameras, so, back then.

I understand. So these photographs were taken in 2018.---Yeah. Because that green stuff, I think it's soundproofing, wasn't there. We'd asked for that a few years prior.
30

All right.---So, that - - -

But see that camera there?---Yeah, that would have been there. Yes.

And that was there in 2014?---My recollection, yes.

And is that, when you talk about CCTV footage downloaded onto a disc by Mr McMurtrie and forming part of the UOF package, is it footage from that camera?---It would have been that camera, yes.
40

And in terms of cell 208, there wasn't any CCTV camera in that cell? ---There's none in any of the cells.

Is there any in observation cells?---The, you've got assessment cells and observation cells so back then we called them RIT cells. Yeah, there would be in the RIT cell, yes. The stepdown cell, that self-harm, yes, because staff have to watch.

Yes. So, in some cells you're concerned about self-harming inmates, you might put them in a cell with a CCTV camera but that's pretty unusual?
---Yes. Can I clarify?

Of course.---There was one down in 5.2, RIT cell, observation cell and the other side of that, the first cell on the right I believe we had an observation cell because of the IVO, we used to put the guys that self-harm there into that one, I'm pretty sure they had a camera so it's two in that whole unit.

10 All right. But there wasn't one in cell 208?---No.

All right. Were you aware of Mr [REDACTED] being put in cell 203 at any point?
---No.

No. All right. If I can move to a different topic, can I take you to page 84 of the bundle that you have?---Yeah.

20 Do you have that document?---I do.

And you've got the hard copy. If you, can I suggest to you that the pages 84 to 103 - - - ?---Yeah.

- - - in front of you, that's the use-of-force package. Is that your understanding? And please, have a look.---So, 84 to 100?

One hundred and three.---That would be correct.

30 That's the use-of-force package in relation to [REDACTED] Yeah.

Right. So, minus the disc obviously. The disc isn't there, obviously.---I've got no idea why.

No, no, no, but I'm just saying, I've asked you whether it's the use-of-force package, but obviously - - - ?---Yes.

- - - a disc is not in this bundle.---Okay.

40 Now, page 84 has a number of, or it's a checklist, isn't it?---That's correct. Yeah.

And who fills out this checklist?---That would normally be me or the person in that position.

So the person reviewing the use-of-force package.---Mmm hmm.

And do you recall doing that in relation to this package?---Yeah. Because I just saw there my signature is halfway along there somewhere.

All right. So you've identified the questions in the checklist.---Yeah.

And put a cross in a box for yes, and left it empty for no. Is that right?
---That's correct. Yeah.

And this is done mechanically or electronically on the OIMS database. Is that right?---No.

- 10 This isn't done on the Offender Integrated Management System?---Not at all. It's just a standalone document you print off, or you can print off, on the cops system how you can click in there and mark yes or no, but in fact then it wasn't on OIMS, no.

But these aren't handwritten crosses, are they?---No. I think, I'm trying to remember, it's a document you can go in but you can just, you can't save it, not on a typical term but you can put your marks in and you just print it off, but you can't save the document like Steve Taylor's document, or whatever.

- 20 Sounds like a pdf. Is that - - -?---Yeah, probably, I'm - - -

All right. But you put these crosses on electronically on a computer?---Yes.

Right. And do you see there it has, the third question, "All reports reviewed prior to making recommendations." You've got, "Yes."---Yeah.

Then about six down, "Incident captured on CCTV/HHC," that's hand-held camera?---That's correct.

- 30 And it hasn't been checked, that box, so I assume that's a no?---No, 'cause maybe at that time I didn't have it, might have got it later. I've got no answer for that.

All right. But you see there that it says, "CCTV/hand-held camera," so it's really asking two questions?---Yeah.

Was there any hand-held footage, to your understanding?---No, there's only CCTV footage.

- 40 Were you aware at the time that you filled out this checklist that there was CCTV, or do you not recall?---I'm assuming there would 'cause there's a camera down there.

There had to be CCTV?---Yeah, 'cause we've got, back then I think we had 120 cameras in there I think off the top of me head. Like, the whole gaol I mean, not just one area.

It record continuously, doesn't it?---Yes, but back then I wasn't sure if it was seven-day cycle or it had gone to a 21-day cycle.

Right. And "Officer reports are consistent with recorded footage?" And you've checked, "Yes." Do you see that?---Yep.

10 Do I take it from that, that you were indicated there the officer reports that you reviewed were consistent with CCTV?---Them going in, they all said he tripped, spoke to the staff, they said he tripped, so there was - - -

So does that suggest you'd seen the CCTV at the time you'd filled out this form or do you not recall?---Are you talking about the incident?

Yes.---I viewed the CCTV footage so - - -

You have?---I did, yeah, there, yes.

20 Yes, yes, but you see there that the item you're being asked, "Officer reports are consistent with recorded footage?"---Yep.

So I assume from that, that to mark "Yes," you've reviewed the footage, you've reviewed the reports and you form a view that they're consistent. Is that right?---That's correct, yes.

"If the incident wasn't captured on video is there an appropriate explanation as to why this didn't occur?" And that was checked, "Yes."---Yeah.

30 So that would be referring I assume to the fact there was no hand-held camera. Is that why you've checked that box?---Yeah, 'cause I was told it was spontaneous.

All right. And just a few questions later it says, "After action review required." Do you see that?---Yep.

And you've checked, "Yes."---Yep.

40 But I think you indicated earlier that that just doesn't happen as a matter of practice.---Not that regularly, no. No, just saw it then, I've got no idea why I ticked it because the majority of us don't do an after-action review.

All right. So you're not able to explain why that's checked "yes?"---No.

And given your evidence earlier, if you were engaging in the usual practice you would have actually not checked that box, it would have been a no? ---What, do you mean me generally?

Well - - -?---They normally ticked that box if we needed training or something else needed to be looked at or procedure-wise, policy-wise, that

they didn't do. I normally do (not transcribable) but as I said, I think I've only ever done two.

All right. But is there a reason you can think of as to - - -?---Why I ticked it?

Yeah.---I don't know.

10 Would there have been some sort of education reason or policy reason you thought needed to be looked into?---I can't recall. I mean I'd be just assuming, no.

All right. So if we can go forward two pages to page 86.

THE COMMISSIONER: Just before we do that, there's also a question, "Do you have footage document complete and attached?" Sorry, I withdraw that. I withdraw that. It's covered by a previous answer. Thank you.

20 MR DUGGAN: So page 86.---Yep.

This is the use of force manager of security review form. Do you see that? ---I do.

So at least in relation to the top half you would have filled this out? ---That's, yeah, that's my signature on the right-hand box.

Yes. Okay. So it's Stephen Taylor and to the right-hand, that's your signature?---That's correct, yeah.

30 On 20 February, 2014.---Ah hmm.

So is that the day you reviewed this package?---Yeah, 'cause I usually put the date, so yes, it would be the 20th.

Yeah. All right.--- My usual thing.

And the bit in the large box above that is, is your review commentary, is it? ---The wording you mean?

40 Yes.---Yes, that's my wording.

Now, it says, "Reviewed UOF 20 February, 2014 by AMOS. So that's you? ---Acting MOS, yeah, that's me.

And Intel manager. Do you see that?---Yep.

So the Intel manager is Mr McMurtrie?---Yep.

Did he have any input in relation to what's in this box?---No. I like to have two people there when I review these things. Some people don't, some people do it by themselves.

So when you say have them there, was there some sort of joint review in relation to this package, was there?---The comments, no, just like somebody else to look at it and to have maybe a different perspective.

All right. So - - -?---But those are all my comments.

10

All right. But when it says reviewed by, by you and the Intel manager - - -? ---Yeah.

- - - can you describe to me exactly what that process was and how Mr McMurtrie assisted you?---Right. Brian would have brought me the disc, he would have put, we put the disc in the computer from my recollection, we had a look at the disc, maybe had a discussion, and after that I look at the IRM, Brian's not there, I look at all the reports and then come up and make my assumption or assessment of what's happened and then I complete that. I don't have any third-party involvement.

20

All right. Did Mr McMurtrie see the witness reports or the incident reports? ---That's what I said before, I can't remember if it come on the disc with it.

But as part of this review process did you have any discussion with him about the incident reports?---Not that I recollect, no.

Right.---'Cause he wasn't, he was there for the video bit but he wasn't there when I was looking through the reports and - - -

30

So you watched the CCTV with Mr McMurtrie?---Yes. In the MOS office, yep.

Is there any other part of the UOF package that you recall discussing with him?---No.

Did you have discussion about the CCTV footage?---Not that I can recollect.

40

All right. So is that the extent of his involvement, where it says, "Reviewed by the Intel manager," is that just reviewing the CCTV footage is it? ---That's it.

Sorry for that.---You're right.

Now, just focussing further on this box, so it says, "All staff reports consistent with IRM." Do you see that?---Yep.

And so that was your opinion at the time when you reviewed the form?
---That's correct.

Is it still your opinion today?---No.

No. And, all right. We might go to the reports in a minute. So UOF policy, sorry, "UOF within policy and appropriate to level of resistance of inmate." Do you see that?---I do.

10 And then, "Spontaneous reaction resolved before camera could be turned on."---Yep.

Is that still your position today?---What I, what I know of now?

Yes.---No, it's not.

All right. And you recommended NFA, which is no further action?---That's correct.

20 All right. And then there's a box there for the general manager's determination.---Yep.

His determination was agree with the acting manager of security, which is you.---Yep.

Were you there when he signed that or - - -?---No, I was not.

30 All right. And that was, I think you gave some evidence earlier about the fact that you didn't like to be sitting there while that process was undertaken, so it was provided to his office?---Normally don't. I think maybe once out of 100 maybe that I've ever sat with the governors or general managers when they've done that. We normally just don't, we hand it over and go away, only discuss something if we think something's amiss or if we need training or something needs to be looked at.

All right. Did you, before or after he put his signature on this, did you have discussions with him about the use of force?---No.

40 Or the package, rather?---No.

Did you find out that he'd said no issue and agreed with your recommendation?---Not that I recollect, no.

Can I take you to page 88, please? So this is completed by, or it appears to be completed by, Mr Walker. Do you see that?---Yeah.

Do you have any understanding as to whether this was completed by him or by someone else?---I would have no idea because it's normally done in their office.

Sorry, we've got, can I maybe, I'm confused. So it says, "IRM completed by Mr Walker".---Yeah.

But did you check the boxes in this form?---No.

10 Who filled out this?---It's signed the supervising officer, which would be the LIC which would be Tex Walker.

All right. And it says there at about question 5 or 6, "Did all staff that were involved or witnessed the incident complete an incident/witness report?"
---Yeah.

And it has "yes".---Yeah.

20 Do you see that? And I was asking you some questions earlier about if you witnessed a use of force, you should provide a witness report.---Yeah.

And the only witness reports were from Mr Graf, Mr Duncan and Mr Walker.---That's correct.

Do you recall that?---The ones I know of, yeah.

All right. Do you accept that there should have been one from Mr O'Shea?
---In hindsight, yes.

30 And Mr Peebles?---Yeah. As I said before it's, it's a very unique situation.

I understand that. Why do you say it was unique?---Because I've never, in my career with the department, had a general manager or an MOS be in there at the same time a use of force has gone down, so it's very unusual, I can't recall it and that's just being upfront, it's not a normal day occurrence.

To have such a senior hierarchy to have the governor, the usual manager of security and the acting manager of security all there at the same time.
---Well, I wasn't there at the same time.

40

But at some point.---I was there at some point, yeah. But it's not unusual for those people to walk in that area either.

So you said it is unusual, or - - - ?---It's not unusual for the boss to go down there due to the type of inmates we had, so they'd go and chat with them or see them if they want to see them about any issue.

All right. Can I take you to page 89, please? Now, this is the summary that is entered into the IRM. Is that correct?---Yeah, I believe so. Yeah.

So sometimes you'd see it in a different format but this is the same summary as you understand it?---Sometimes, yeah, most of the time it's the same, they usually just cut and paste.

All right. And down the bottom it says T. Walker - - - ?---Yeah.

10 - - - appears to be the author of the document. Do you usually have a signature at the bottom of the page?---Some staff do, some staff don't. We tell them to put signatures in it and you spend half your day chasing up paperwork, but you're supposed to, yes.

Are you aware that, or would you ever give out your login for the purposes of filling out IRMs?---You mean, OIMS?

Yes.---No way in the world.

20 And why is that?---Because of the background I've had in the department, no way in the world I'd give out my login to anybody.

And have you heard of that occurring with other people?---Happens regularly.

Regularly.---Yep. Because a lack of computers, time, the lot. Sometimes it's just easier if you walk past somebody's computer they're on, "Can you give me information", "Get on there, mate", and it's not unusual.

30 Right. And because of that common practice, that's why it might be important to have a signature box as well as an author note. Do you accept that?---Yeah. Yeah. I accept that.

Because if someone else jumped on, it says T. Walker but you wouldn't know from this.---Yeah. But sometimes you, you're chasing it, but they go on days off so you look three or four days down the track, you're still waiting for paperwork for a week.

40 But I understand that, my question is so you could look at that and see T. Walker - - - ?---It should have been signed, yes, if that's your question.

Well my question is, if there's a bit of a practice for other people to use others' logins, you're not guaranteed that Mr Walker has entered those details?---That's correct.

And a signature is not - - - ?---Would help.

- - - a complete guarantee, but if you knew the person's signature it might help.---Yeah.

Now just in terms of the summary that you reviewed, well I assume you reviewed this as part of your process.---Yep. It would've come as a whole package.

10 And it says "During an intel-based search, IAT were detailed by the MOS to search cell 208", and I think you accepted earlier that that's not correct.
---Not correct.

And you were aware of that at the time you reviewed this package?---Yeah. I thought it was an MOS that directed them.

MR MADDEN: Sorry, I didn't hear the answer.---I thought it was the MOS that directed them.

20 MR DUGGAN: I'm just asking you just to be clear about this. There's a reference there to an intel-based search.---Correct.

And I took you earlier to a document and I suggested that the input of that document was that the reason for attending the cell was for a search.
---Correct.

My understanding of your evidence was that you knew that wasn't the reason and you knew the reason was because of some knock-up abuse of the governor.---Correct.

30 And you knew that before reviewing this form on the 20th of, this package on the 20th of February.---Yeah.

You've nodded yes.---Yes, yeah, yeah.

So when you see "summary" - - - ?---Yeah.

- - - it suggests there in this summary that the reason for attending cell 208, [REDACTED] cell, was to search the cell.---Correct.

40 And you were aware at the time that that wasn't the reason for attending the cell. The reason for attending the cell was because of the knock-up abuse of the governor. Do you accept that?---Correct.

Now I just want to take you a bit further down and please, if you need to read all of this to put it in context, please do.

THE COMMISSIONER: Is there a reason why you recorded the summary in that way?

MR DUGGAN: Sorry, this witness didn't record this summary.---I didn't do that.

Commissioner, he reviewed it.

THE COMMISSIONER: Of course. Sorry, I apologise.

MR DUGGAN: Just to clarify, my understanding is that this box is identical to the summary on the IRM. All right. So, a third paragraph I want to direct your attention to, it says "During the action, [REDACTED] tripped over cell furniture and fell heavily onto the toilet itself." Do you see that? ---I do.

And it says, "IAT officers were unable to intervene in time to stop [REDACTED] disposing of an unidentified article in the toilet". Do you see that?---I do.

And then it goes on, it says, "[REDACTED] was handcuffed and did not resist." So, and then it, in the second last paragraph it refers to the fact that [REDACTED] was offered medical attention, which you were obviously aware of at the time.---That's correct.

What's the use of force in that document as you understood it at the time? ---Can you explain, I don't understand the question, sorry.

So, you're reviewing a use-of-force package.---Yeah.

And this is the summary of the use-of-force incident.---Yeah.

So when you read this, what did you think was the use of force?---My assumption was that he was trying to flush drugs down the toilet so they were trying to grab him to stop him putting his hand down the toilet and that was the use of force, and he fell over, so - - -

There's no mention of Mr Walker having his hand on the throat of the inmate.---No.

And that's clearly a use-of-force.---Technically, yes.

Well, not technically, actually, I want to suggest.---Well, it's like if I put my hand on your shoulder, that's technically a use of force.

You're not disputing that a hand on a throat of an inmate is a use of force, are you?---No I'm not.

And I want to suggest to you that when you reviewed this, you knew or were aware that tripping over on the cell furniture was not what had occurred in the cell. Do you accept that?---No, I do not.

So is it your evidence that you genuinely believed that tripping over cell furniture and falling heavily onto the toilet was how the inmate sustained his injuries?---Yeah. If you've been in the cell and seen how much room is in there, it's highly likely.

But you accept when you reviewed this you knew that the reason for entering the cell given here is incorrect.---Correct.

10 If you knew it was incorrect from your own personal knowledge, why did you recommend no further action be taken?---Because they had two senior managers there.

So there were question marks raised in your mind when you reviewed?
---Yeah. But I had no, what do you call it, proof, substantiation, other than they said the boss got abused, that's all I knew.

20 No, I understand that, but you obviously knew that this wasn't the full truth when you reviewed it.---Yes. But I didn't know everything, so I've got to make, I suppose, a conscious decision of what I got supplied or what I received so that's what I did.

But you obviously had some concerns about the review process given your knowledge.---To be perfectly honest, I didn't have any concerns until March 2015 when the investigators come and seen me.

All right. You mentioned there that there were two senior officers.---Yeah.

30 Did you feel some pressure because of that fact?---Not really, they both said it was spontaneous so, because I'm a bit of a trusting person I suppose, you've got to trust your bosses so I just assumed, they both said it was spontaneous, everyone else said it was spontaneous so as far as I was concerned, it was spontaneous. Yes. It's, it wasn't but I'm going with what everybody else told me.

So when you say "they" told you, that's Mr O'Shea, is it?---Yeah, John O'Shea and Brad Peebles.

40 Did they file a witness report in relation to this event, did they?---No they did not.

So when did you have conversations with them about what had happened in the cell?---Not sure if it was that afternoon or the next morning. I think that afternoon, because I was, I asked everybody, my own staff and they all said the same thing.

Well, let's take them one at a time. What did Mr O'Shea say to you about this incident?---He said it was a spontaneous incident, when he went in, he fell over. That's it.

So Mr O'Shea said he fell over?---Yep.

And was that the extent of the conversation?---Basically, yeah.

All right. Was there any issue in your mind about whether Mr O'Shea should be reviewing the use-of-force package after you did?---Now or then?

10 At the time.---No, because then it goes from the MOS to the governor.

But you can see the difficulty now I assume of - - - ?---I have my own views of it now, yeah, of course.

THE COMMISSIONER: What are they?---I think if the general manager or MOS is involved in any use of force then it should go external like the police do, another area of command, PSB or anybody like that should review it so it would be looked at from above board, but back then there was no process, protocol, structure, so we just normally did the thing. Yeah, in

20 hindsight now, yeah, I've got a few ideas.

Yes, okay.---But not then, no.

MR DUGGAN: Security and intelligence, would they be an appropriate review body?---Yes. I mean there's a number of areas, but yeah. I think it all should be central, once the use of force is done it should go to a central point and be stored.

30 And is that because of the potential for officers with reviewing duties to be involved in the incident, or is it some other reason?---My, my thing is you'd need, because people save, sometimes save things, you need to take it outside your own jurisdiction and put it somewhere else so it's for safekeeping, so if there's a complaint made down the track or four or five years down the track, you can pull out the disc and say this is what we've got, we may differ from the gaol, or maybe lost from the gaol. Because at the moment, most gaols either put it in the OS's safe and they just leave it there, and I just think it should go to a central data point where it's kept and then if it needs to be brought back up, you can bring it back out.

40 When Mr O'Shea told you that the inmate had tripped over and fallen on the toilet, did you feel some pressure to accept that as a truthful account of the events?---Yeah. There's no use disagreeing with him because I wasn't there, so - - -

THE COMMISSIONER: Did he mention being abused on the knock-up system?---No, not to me, no, that was to junior staff.

MR DUGGAN: All right. Now you referred to “they” earlier, what about Mr Peebles? Did you have any conversation with Mr Peebles about this incident?---I think Brad just, Brad Peebles just said he fell.

So, Mr Peebles has confirmed that information with you as well.---That’s all I think, yeah, he just fell, that was it because Brad wasn’t at the door, he was only, I think, two, three feet inside the 5.1 office.

10 The last sentence of this summary is curious, it says, “Reported as a technical use of force on direction of the general manager.” Do you see that?---Yes.

What did you understand that to mean at the time?---There was no such thing as a technical use of force, I disregarded the technical bit.

20 All right. But putting the technical use of force aside for a minute, what do you understand “on the direction of the general manager” to mean?---Well, I’d say he’s got a direction from the boss, John O’Shea reported it as a technical use of force, but we don’t have technical uses of force.

But do you understand, and did you understand at the time, that to mean the general manager had issued a direction as to how this would be reported? ---Going by the wording, yes.

But do you recall that’s what you understood at the time?---Back then, I can’t honestly say.

Now when you spoke to Mr Peebles - - - ?---Mmm hmm.

30 - - - was that before or after he sent you Mr McMurtrie’s note asking you to deal with it? Do you recall?---I don’t know. I think after. I couldn’t be 100 per cent sure.

But before you signed off on the review on the 20th, I assume?---Yeah, because I done it on the 20th. Yeah.

Can I just take you to page 93, please. This is part of the package.---Yes.

40 It’s the incident assault form from Justice Health.---Yeah.

And it appears to be filled in by the NUM or the nurse unit manager. Is that correct?---Yeah. NUM, yeah, Anne Sinclair. Yeah.

And do you see there the injuries are noted?---Yeah.

And I assume that, did you understand at the time that this would have been filled out before he went to hospital, before your section 24?---Could’ve been.

Could've been.---Because there's two different forms. There's a form that says "immediate response within two hours, within six hours".

All right.---So - - -

And so this identifies the injuries as contusion to the left eye.---Yeah.

Do you see that?---Yeah.

10

Did you know at the time that a contusion was a bruise?---Yes.

Yeah. So you knew there was bruising to the left eye?---Mmm hmm.

Cheek, lip, bruising to the right side of the torso and the ribs. Do you see that?---I do.

And did that raise any alarm bells or question marks in your mind as to the story or the account of tripping over onto the toilet?---No.

20

So, in your mind at the time, you thought that those injuries could have all been occasioned by slip and fall?---Yep. Like, the toilet and that, back then I think it was steel. I don't think we had porcelain back then.

That includes bruising to the left side of the face and bruising to the right side of the ribs.---It's not unusual in a use of force to have injuries.

But according to the summary form in the IRM, there was no actual hands on the inmate, was there?---Well, there was, well, when I got there Terry had his hands on his throat.

30

No, no, no, but, but that's the point. Let me take you back to the summary at page 89.---89, yep. Yep.

Where does it say there that there are hands on the inmate?---It doesn't.

Well, isn't that a problem when you were the reviewing officer and there are injuries which appear inconsistent with the summary?---No, because they didn't report, there's no, well, there's nothing there to say there was any injuries, no.

40

But you're reviewing this package?---Yep.

And you acknowledge there was a hand being on a throat.---Yep.

You're looking at injuries which, I want to suggest to you, are not consistent with a slip and fall, and all this is suggesting in terms of the use of force is a slip and fall.---That's correct.

So, a question mark surely in your mind?---No, because usually with a use of force a staff member may get hurt, an inmate may get hurt, it's - - -

But that's other uses of force.---It's not unusual.

Where hands are placed on an inmate.---Yep.

10 You're reviewing this particular use of force.---Yeah. Where the bloke fell over.

Bloke fell over.---He's tripped over a toilet or a cell furniture. That's not unusual to get bruising.

To the right side of the ribs and to the left eye and cheek and lip?---I don't know how he fell when I wasn't there.

20 That's part of your duty to review this and to work out if there's any query you might have or any possibility that this might be a false account.---But why would I have any queries? All the report said he tripped and fell so I'm going off he tripped and fell. Everybody told me he tripped and fell.

So, you're just assuming the summary is true and correct?---Correct. Well, I wasn't there so I've got to go off what people supply me. There's no handheld camera footage so I've got to go off the CCTV footage.

And you've got to go off injury reports like this one?---Yeah, which says he's got bruising and lacerations.

30 So, do you not accept that that injury report is inconsistent with a trip and fall?---No.

Is that your evidence?---Because I, you see them all the time.

40 Trip and falls where people - - ?---Well, people fall over, trip over. As I said, that, in that cell there's bugger-all room. So, to me, he could have fell, fell on the corner, hit, hit the bunk going down, then hit the toilet. Whatever, because there's two bunks in there. There used to be, I think a, on the side of the bunk, there was a step, he could have hit the step.

So, you thought he had to go to hospital because of what he did to himself, a trip and fall?---That's my recollection, yes.

It's the equivalent of someone saying they got a black eye from walking into the door, isn't it?

MR HARRIS: I object to that. It's not, Commissioner.

MR DUGGAN: I'll withdraw it. Excuse me one moment. Now, can I take you back to page 86, please?---Yep.

Now, I asked you whether you still agreed with that assessment?---My assessment, yep.

Yes. And my understanding of your evidence was that you no longer agree with the review outcome, is that right?---Now?

10 Yes.---No, I don't agree with the outcome, no.

And why is that?---What I've heard, what I've found out since, what people have told me since.

All right. Can you be more specific?---Well, up to probably, to when I got interviewed in 2015, I think it was around March, I thought what was presented to me was factual. After that I started making a few enquiries off me own back. I was, I had heard rumours and from that, the rumours seemed to be quite true that what was presented to me was not quite factual
20 on the day or the next day.

And what were the departures or what was the new information that meant that this was incorrect?---Well, the investigator told me that people higher in the department were trying to squash this, after he interviewed me he said there's other people in the department trying to push it away, so this is the third time it's gone around.

All right. Well, don't worry about what an investigator told you, what about people who might have been there at the time, did anyone who was there at
30 the time tell you anything about what had happened?---Not, no, I got it second-hand, third-hand.

Right. You would have been a bit concerned about this I assume?---Yes.

Particularly when 2015 rolls around and there's the investigation.---Ah
hmm.

Did you speak to Mr O'Shea?---No.

40 Why not?---'Cause I was out at, acting manager of security at Wellington at that time, after the investigators come, a couple of months later, I was moved out of Wellington by Mr Peebles, I went back to Lithgow, within a week I moved again to another gaol in his cluster, Mr O'Shea's cluster, so I thought, no, I don't trust anybody.

THE COMMISSIONER: What inference did you draw from that or what conclusion did you - - -?---I thought they were moving me, 'cause back then they thought, John O'Shea and Brad Peebles, three managers, they'd put a

protected disclosure in, so they thought it was myself, Phil Turton and another manager, Andrew Child, so I'd been approached by them and they thought it was one of us three had put the protected disclosure in and I thought that was part of it, so I thought I was getting moved 'cause of those reasons, so I just, I didn't trust anybody above them so I didn't go to anybody.

No. Okay.

- 10 MR DUGGAN: Can I ask you this question. If Mr O'Shea and Mr Peebles were not in the day room and it had have been an office more junior to you who was abused on the knock-up system, would that have changed the review process at all?---Normally they abuse us quite a fair bit down there and the staff are pretty good down there, we usually don't take it personal, we let 'em go for a while, come back, try again, then go back, try again.

That's not quite my question though.---I'm just, no, I'm just trying to get it through my head.

- 20 So did the fact that the most senior officer in the centre and the usual manager of security, the fact that both of those people were to some extent involved in this incident, did that affect the review process at all?
---My review process?

Yes.---No.

- If it wasn't Mr O'Shea and Mr Peebles who were present in the day room and it was two junior officers in their stead, would you have inquired more as part of your review process or the same amount?---I would have done the
30 same amount like I normally do.

You wouldn't have said to Mr Walker for example, I saw a hand on a throat, and that's not there?---No, 'cause I said at the end, to me that was finished, so - - -

- THE COMMISSIONER: As I understand your evidence, one thing that you knew was untrue was that the MOS had instructed that there be a search of the cell with directions to specifically look for buprenorphine. That wasn't consistent with your understanding of what happened?---That wasn't
40 me, Commissioner, no. I didn't - - -

Is there any reason why that didn't affect the way you reviewed it?---My understanding that was the MOS, the substantive MOS was Mr Peebles gave that direction - - -

Right.--- - - - so I just assumed the boss gave it, so - - -

All right.---I mean he's the substantial one so staff would have followed his direction.

Yes, I understand that. Yes, thank you.

MR DUGGAN: And if you did look at this, perhaps knowing now what you did then, and you had some concerns about the accuracy of the summary - - - ?---Yeah.

10 - - - what is the process? What would you do about that?---So, if I thought it was fabricated, it was supposed to go to the general manager. That's the protocol. If I think I was getting sidelined or not I'd go to the director, if I thought I was getting sidelined then I could either go to the AC or make a protected disclosure.

All right. And you understood that at the time?---Yeah.

Yeah. Did you have any concerns that you were being sidelined at the time?---With this?

20

Yes.---The second day, yes, not the first day, no.

But the second day is when you reviewed the package.---Yeah. But that's, yeah.

Later in the second day you're referring to?---Yeah, later in the second day in relation to the search on the inmate, I was sidelined.

30 We'll get to that in a minute, but did your sidelining give you reason to reflect on the package that you'd just reviewed?---No.

You didn't connect to the two events.---No, I did not.

Can I take you to page 91, please?---I've got a different one.

Sorry?---Is it 99 or 91?

Ninety-one.---Okay.

40 You should have an inmate assault injury questionnaire. Do you see that? ---That's right. Yeah. I had the wrong one there.

And it says towards the end of the page, "What was the cause of the injury?" "No comment." Do you see that?---Yeah. Third last one, yeah.

Did that answer, when you reviewed that, cause you any concern?---No. They usually say that, "No comment", bugger off, other words if they don't

want to talk to you. Most of the time, most inmates will say “no comment”, “no” or “eff off”, so you just put “no comment” to the form.

All right.---It’s not unusual.

Can I take you to page 103, please? And this is a checklist - - - ?---Yeah.

- - - in relation to the injury itself.---Mmm hmm.

10 And do you see there it has, it’s ticked “bruise and swelling”, and then “mechanism of injury”. Do you see that?---Hang on. Yeah, third one down, yeah.

Yes, third one down. And you see “Use of force” is ticked?---I do.

Is there any reason why the box at about number 8, “fall from same level, slip/trip” would not have been ticked?---No. It depends what the officer that did it was told.

20 That didn't give rise to any question marks in your mind at the time?---No.

If I can take you to page 95, please. This is the IRM itself, and I, in effect, asked you this earlier but it’s reported by Mr Walker according to this.---Yeah.

Did you have any knowledge about it being typed up by Mr Peebles?---No, not at all.

30 Have you had conversation with anyone indicating that since?---No.

No.---Never.

And you’ve got the summary. In the summary, I understand it would be the same as the box I was taking you to earlier.---Mmm hmm.

But then there’s a series of questions and comments, do you see that?---I do.

40 And it refers to still photos as part of standard centre procedure. Do you see that?---I do, yeah.

Were there still photos as part of the UOF package?---I never got still photos, I only got CCTV footage.

So when you saw that comment, did it raise a question mark in your mind as to where the photos were?---No. Not really because they still could be on the camera, may have been downloaded. Back then only two or three people knew how to download the camera, so - - -

But you're reviewing this package, you see that, you'd ask for the photos wouldn't you?---You can but you don't always get them in there and then. Most people don't know how to do it. Most people don't know how to download stuff, be it CCTV footage or video camera footage.

Are you talking about IAT officers?---Yep.

10 They'd be taught that in training, wouldn't they?---Some do but some of them, they're not there for their brains, they're there for their brawn.

I understand that but it's not particularly difficult to - - - ?---For those three, it was.

But that's part of their duties.---It could be part of their duties, it doesn't necessarily mean they're good at it.

But you're the acting manager of security on this particular day.---Yep.

20 And you're reviewing this.---Mmm hmm.

And it says there are actual photos.---Yep.

You would go and ask them for the photos, first step, and if the response was "they're on the camera but I don't know how to get them off", there would be someone at Lithgow Correctional Centre who would get the photos off.---Probably.

30 What do you mean probably? I mean - - - ?---You're talking about four years ago.

This suggests photos existed.---It does, yeah.

Did you ask for them?---I'm not disputing that.

Did you ask for them?---I'd say I would have, yes.

Do you have a recollection of asking for them?---No I don't.

40 Do you have a recollection of being provided with any?---No I do not.

Do you have a positive recollection that you didn't get them?---I have a positive recollection I didn't get 'em, I got CCTV footage only of the incident.

That's another question mark, isn't it, in reviewing this package?---In your regard, yes.

What about in your mind in 2014?---No.

Why is it not a question mark when it says there are still photos but you didn't get them? Why is that not a question mark?---Because it wasn't supplied then, as I said it's there, I maybe asked for it, may not have, I didn't receive them.

Now again, the commentary here says "no force anticipated" and in caps lock, "offender fell without any physical contact from officers". Do you see that?---Okay. Yeah.

10

Now, when you read that together with the summary, it gives the impression that no officer laid a hand on the inmate. Do you accept that?---Yep.

And you knew at the time of reviewing that that was not correct, didn't you?---No.

Can I ask you again why you recommended no further action?---Because as far as I was concerned it was a trip and fall incident, there was no further matters arising out of it, all the reports said the same thing.

20

Were you in any way directed to cover up this incident?---No I was not.

Did you at any point consider referring this incident or the reporting of it to professional standards or some other body?---What, then or now?

Then.---No.

And before 2015?---No.

30 No.---Because I had no cause for, as far as I was concerned he tripped and fell, everybody said he tripped and fell, so, all the reports said the same thing so I had no reason to look at it any further.

Can I take you to page 99, please?

Now, again, consistent with the summary at least, there's no suggestion in here of any hands being laid on the inmate.---Yeah, that is down the bottom, the second last paragraph.

40 Well, you say the placing of restraints was - - -?---That's putting your hands on them.

All right. Would you consider that to be a use of force?---No. That's usually going to be classed as a controlled movement.

All right. So, what do you say the use of force is in this document?---The second paragraph where he says, "I attempted to retrieve the item." So, I

would expect when he says he attempts to retrieve the item, he's placed his hand on him.

That's the assumption you made at the time, is it?---Yep.

It certainly doesn't tell the full picture of events, at least as you understood them at the time?---That's correct.

10 Page 100, if I can take you to that, do you recall reviewing the report of Mr Duncan?---I would have, yes.

It refers to, "The IAT was called to search cell 208."---Yep.

You understood at the time they were attending the cell for a different reason?---Yep, oh, hang on. Yep.

Do you agree with that?---I do, yes, I do. Yep.

20 That didn't cause you any concern when you were reviewing Mr Duncan's report?---No, because he's basically just saying what he did.

Yes. But he refers to IAT being called to search the cell. And I understand your evidence, Ms Lohse or some other officer, wing officer, told you that they were being called in relation to knock-up abuse.---Yep.

So the two are inconsistent, you'd agree?---Yep.

30 Did that cause you a concern with you reviewed this?---No. From what I can read of that, it looks like Duncan's just telling what he did. He got called, Terry got a call to come down and he's just gone to the cell.

I understand that, but I'm focusing on the suggestion that IAT was called to search the cell, and your understanding at the time that the reason they were called to the cell was quite different?---That's correct, yep.

Well, surely that would have raised at least a question mark and possibly an alarm bell in your mind?---No, it didn't.

40 Are you able to explain why it didn't?---No, I can't.

Given the inconsistency.---It didn't, I didn't put two and two together.

A possible explanation is that you knew search wasn't the real reason and you were asked to overlook that fact.---No, I was not.

What do you say the use of force is in this report if any is identified?---What I can understand of that, to resist the control of movement,

Well, that's the point isn't it? You're reviewing a use of force and this doesn't appear to relate to one.---They didn't use force.

Well, that's the point, isn't it? So, why are you reviewing a use of force if there was no force used according to this?---No, they're pre-reporting something what they did. All right, so they're telling me there, they've moved [REDACTED] outside, which was a controlled movement, so they didn't use force.

10 So, it didn't concern you at all that this didn't refer to the alleged used of force, the slip and trip?---No, because that's like a witness statement. Different people see different things.

Did you ever see a report of Mr Duffy in relation to this incident?---I have never seen a report in relation to Mr Duffy in relation to this incident. Sorry, last hearing I was here I saw it. I think Ms Clifton showed me it.

20 And do you have an understanding about that report being registered with the deputy's clerk?---They should have, yes.

But can you assume that happened?---Well, that's the normal course of action back then, what we did.

And would it concern you to learn that Mr Duffy had filed a report in relation to this incident which had been registered with the deputy's clerk but you weren't provided with it to review your use-of-force package?---(not transcribable) sorry. Yes, it would have.

30 And that would have been particularly relevant if Mr Duffy had referred to a striking of the inmate, for example.---Would have changed the whole dynamics of the, my recommendations.

What would you have recommended?---I would have recommended PSB.

Just to confirm, I'll take you to Mr Duffy's report. It was at page 48. ---Yeah, 48.

40 And you've been shown this as part of some investigation process, I assume.---Part of ICAC, yeah.

And review it if you need to.---I've got to, yeah, hang on, find it first.

But that's obviously very different to what was reported in the IRM and the incident reports?---It's not even close.

So what would you have done if that was part of the package?---I would have made a determination that further action be taken. I would have

probably put down my recommendations to go to the PSB for further investigations.

THE COMMISSIONER: Is that the Professional Standards Branch?
---Sorry, Commissioner. Yeah, Professional Standards Branch, yeah.

Thank you.

10 MR DUGGAN: And do you have any understanding or knowledge as to why you never saw that report?---I've got no idea.

You've never had any discussions with anyone about why you didn't receive it?---I haven't discussed this whole matter with anybody else, to be honest.

20 Just quickly before the break, would you endorse a recommendation that body cameras be used for IAT?---I think yes, and I think staff on the ground should have body cameras similar to police in the UK. So much happens in gaols that people don't see. The cameras would be great. I'm currently in a country gaol. We don't have IAT, so what are we supposed to do? I think it should be mandatory for all staff, then it will waylay a lot of these complaints. Because we don't have it and I don't have IAT, so we've got to talk to the inmates, we've got to get in and talk them down. It's great in the bigger gaols, but country gaols, a lot of the little country gaols don't have it.

Can you currently, maybe not in your correctional centre, but in Lithgow as the manager of security can you view CCTV?---I'm not sure on my desk back then we could have. I normally would have gone to the Intel officer's office.

30 But what about now? Do you have any understanding as to whether you can do it now?---I haven't been there since, hang on, I think October 2014 is the last time I was there.

Would you endorse a recommendation that Security and Intelligence have access to CCTV in the centres?---Remotely, yeah.

40 Remotely?---Yeah. A hundred per cent agree with it, especially if you've got a serious incident. They should be able to go live from, say, the Commissioner's office here in town to see what's happening on the ground. But we don't, we don't have that. Again, it's all, it's usually about money to be perfectly honest with you, same as this unit. We ask for things to be put into 5.1. It's always about money.

Commissioner, is that a convenient time?

THE COMMISSIONER: Mr Willis, how much time do you think you'll need to review the material?

MR WILLIS: I should be ready at 2 o'clock, Commissioner.

THE COMMISSIONER: And, Mr Madden, what about you?

MR MADDEN: I'll be ready at 2 o'clock.

THE COMMISSIONER: Thank you. I'll adjourn.

10 **LUNCHEON ADJOURNMENT**

[1.04pm]