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INDEPENDENT COMMISSION AGAINST CORRUPTION

STEPHEN RUSHTON SC
COMMISSIONER

PUBLIC HEARING

OPERATION ESTRY

Reference: Operation E17/0345

TRANSCRIPT OF PROCEEDINGS

AT SYDNEY

ON WEDNESDAY 30 MAY, 2018

AT 10.15AM

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

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

MR GREENHILL: Mr Commissioner, can I just announce or remind you that I'll be leaving early today to get - - -

THE COMMISSIONER: The needle in the eye.

MR GREENHILL: Tell me about it. And I'll just walk out if that's - - -

THE COMMISSIONER: That's okay, there's no problem at all.

10 MR GREENHILL: And my solicitor will remain here, but there's one thing I should point out. No doubt you'll read the transcript late at night like I do.

THE COMMISSIONER: Yeah.

MR GREENHILL: Can I just point out at the end of Mr Phillip Turton's at the end at page 574, you said this, "Motel Turton, you're released from", I didn't hear you call him "Motel", but that's obviously a mistake.

20 MR HARRIS: Commissioner, I note, I think it's spell check at work somehow. I'm sure it was Mr. Turton. I noted it also.

MR GREENHILL: I had to be updated and outdone.

THE COMMISSIONER: Mr Brasch.

MR BRASCH: Yes.

30 THE COMMISSIONER: On the 16th of May, I signed a notice to attend and produce a statement of information and documents to Assistant Commissioner Koulouris, and those, that material was supposed to be produced by 10.00am on the 23rd of May. I understand that an informal extension was granted until last Monday, the 28th of May, but we still haven't got it. Can you tell me what's going on?

MR BRASCH: I'm not sure. I'm, I'm personally aware of the notice that you, that you're referring to, Commissioner.

THE COMMISSIONER: Yes.

40 MR BRASCH: I'm sorry about that, I'm well aware of the one that was issued during the course of these proceedings.

THE COMMISSIONER: Yes.

MR BRASCH: But I'm not familiar with that.

THE COMMISSIONER: I'm not suggesting you are.

MR BRASCH: No.

THE COMMISSIONER: But can you follow it up?

MR BRASCH: Yes, I certainly will. I'll do that immediately. If I could be provided of a copy of the notice and I will - - -

THE COMMISSIONER: I'll make sure that's done.

10 MR BRASCH: And I will, I'll make inquiries immediately.

THE COMMISSIONER: Okay. I want the material today.

MR BRASCH: I'll, I'll, I'll get right onto it, Commissioner.

THE COMMISSIONER: Thank you.

MR MURPHY: Yes, good morning, Commissioner. My name is Murphy, I'm a solicitor and I seek leave to appear for Mark Kennedy.
20

THE COMMISSIONER: That leave is granted.

MR MURPHY: Thank you.

THE COMMISSIONER: Thank you very much. Now, Mr McMurtrie.

MR DUGGAN: Commissioner, just before we deal with Mr McMurtrie, can I tender three, four documents, rather?

30 THE COMMISSIONER: Yes.

MR DUGGAN: I might do it as two separate tenders if I may. The first is an email chain between Mr Taylor and Mr Turton on 19 February, 2014.

THE COMMISSIONER: Right. That will be marked Exhibit 79.

#EXH-079 – EMAIL CHAIN FROM STEPHEN TAYLOR TO PHILIP TURTON RE: IRM SECT 24 DATED 19 FEBRUARY 2014
40

MR DUGGAN: The relevance of this is that there's an email from Mr Turton to Mr Taylor saying, "Brad just told me not to do the use-of-force IRM as IAT is doing it."

THE COMMISSIONER: Right.

MR DUGGAN: And there are also three electronic diary entries of Mr Taylor from 19 and 20 February, 2014.

THE COMMISSIONER: And what do they go to?

MR DUGGAN: One in particular is Mr Taylor making a diary entry which one would assume is a reminder of the exhibit bag number in relation to Mr [REDACTED] drug find. Now, I put to Mr Taylor yesterday that there was no exhibit bag number in the exhibit book, but I can indicate that there appears to be a diary entry where he has recorded the exhibit bag number.

THE COMMISSIONER: Okay. Are you happy for those three documents to be marked as one exhibit?

MR DUGGAN: Yes, yes.

THE COMMISSIONER: The emails will be marked Exhibit 80.

MR HARRIS: They're not emails, they're I think, sorry, Commissioner I think they're electronic diary entries, aren't they?

THE COMMISSIONER: Are they?

MR DUGGAN: Yes. The first one's an email and the next three are electronic diary entries.

THE COMMISSIONER: All right. Well, I'll mark the three diary entries as Exhibit 80.

30

**#EXH-080 – 3 CALENDAR ENTRIES BY STEPHEN TAYLOR
DATED 19 FEBRUARY 2018 AT 13:00, 20 FEBRUARY 2018 AT
16:00 & 20 FEBRUARY 2018 AT 16:30**

THE COMMISSIONER: Yes, thank you.

MR DUNNE: Commissioner, my name is Dunne. I've been given authorisation to represent Mr McMurtrie. Mr McMurtrie will take an affirmation and I've explained to him the effect of a section 38 declaration which he wishes to take advantage of.

THE COMMISSIONER: All right. There's no problem with that. We'll have the witness affirmed.

THE COMMISSIONER: Now, Mr McMurtrie, Mr Dunne has sought a section 38 declaration and he has informed me that he's explained it to you. I might just repeat some matters, and I assume you've heard them before but I want to stress them.

10 As a witness you must answer all questions truthfully.---Yes.

And you must produce any item described in your summons or required by me to be produced, and I'm assuming there was nothing in your summons that you were required to produce?---No, Commissioner.

Right. The section 38 declaration gives you significant protection, but I should point out that there are two exceptions to the protection it gives to you. I take it you're still a serving Corrections officer?---No, Commissioner.

20 You're not?---No.

Well, there's only one exception I have to explain to you. Even though you get the protection given by section 38, and the effect of that is that your answers and anything you produce can't be used in any criminal or disciplinary proceedings, and disciplinary proceedings are obviously out of the question with you now, but it doesn't 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. To give false or misleading evidence to the Commission is a very serious matter and it can lead to the imposition of a penalty of imprisonment for up to five years. Do you understand that?---Yes.

Right. So in other words, it is very, very important that you tell the truth. Pursuant to section 38 of the Independent Commission Against Corruption Act 1988, I declare that all answers given by this witness and all documents and things produced by him during the course of his evidence at this public inquiry are to be regarded as having been given or produced on objection and there is no need for the witness to make objection in respect of any particular answer given or document or thing produced.

40

PURSUANT TO SECTION 38 OF THE INDEPENDENT COMMISSION AGAINST CORRUPTION ACT 1988, I DECLARE THAT ALL ANSWERS GIVEN BY THIS WITNESS AND ALL DOCUMENTS AND THINGS PRODUCED BY HIM DURING THE COURSE OF HIS EVIDENCE AT THIS PUBLIC INQUIRY ARE TO BE REGARDED AS HAVING BEEN GIVEN OR PRODUCED ON OBJECTION AND THERE IS NO NEED FOR THE WITNESS TO

MAKE OBJECTION IN RESPECT OF ANY PARTICULAR ANSWER GIVEN OR DOCUMENT OR THING PRODUCED.

THE COMMISSIONER: Mr Duggan.

MR DUGGAN: Thank you, Commissioner. Can you please state your full name for the Commission?---Brian Keith McMurtrie.

10 And Mr McMurtrie, in 2014 you were an Assistant Superintendent. Is that right?---Correct.

And that's a commissioned rank.---Yes.

How long, in 2014 how long had you been an Assistant Superintendent?
---Approximately 12 years.

All right. And how long were you with Correctives all up?---Twenty-four years.

20

All right. And were you mainly at Lithgow or did you serve in a number of centres?---Mainly Lithgow.

All right. So in 2014, how long had you been at Lithgow?---Twenty-two years.

All right. And you were, in 2014 you were the Intelligence manager. Is that right?---Yes.

30 And you would have had an office at the centre.---Yes.

Whereabouts was your office?---In L Block.

And where is, is that up towards the front of the centre? L Block?---L Block's underneath the tower area.

All right. So it's in the centre of the centre.---Closer to the gate area.

40 All right. Just in terms of the role and responsibilities of the Intelligence manager, what did that involve at a high level?---It involved quite a lot. I used to do the high security inmate reports, monitoring of phone calls, monitoring of footage recording and recommendations for the manager of security.

All right. And I assume intelligence gathering was part of the role.---Yeah, of course.

To state the obvious. And in terms of, did you say high risk offenders that you were interested in, what was the phrase? I just missed it.---Yeah, all of the extreme high risk and high risk inmates.

And would you, if a high risk inmate was to come into the centre would you review their file and that sort of thing to make an assessment?---Depending on the circumstance, usually, yes.

10 And so you would have a fairly good idea in terms of who was in Unit 5 and what their security risks were and that sort of thing?---The ones that were on program in 5, yes.

And also those who might have non-association markers and that sort of thing?---To lesser a degree.

All right. Would you be, have an understanding of who had been placed in segregation for reasons of their own protection?---Not necessarily.

20 Why would that be if you're the Intelligence manager, you'd be aware of those sorts of things, wouldn't you?---Depending on the, the timings in the role, it's not necessarily part of the intel if they're protected inmates or not.

So in terms of your security function, does that mean you're only interested in the security of the officers but not the security of the inmates? Is that a - - - ?
---No.

30 - - - fair summary? So you were interested in the security of inmates as well - - - ?---Yes.

- - - as part of your function? Now you understand you're here today to be asked some questions about the 19th and the 20th of February, 2014?---Yes.

And there was an incident which occurred in Unit 5 in relation to inmate [REDACTED] on the 19th of February. How did that come to your attention?
---Phone call from Mr Walker.

40 All right. And what did Mr Walker say in that phone call?---They'd had an incident that went pear shaped in 5 Unit, or words to that effect.

All right. And did he elaborate on what pear shaped meant?---He stated they'd gone to see an inmate in a cell there and inadvertently, the inmate had been injured and that he had to try and clean up the mess as per management.

All right. And so in broad terms it indicated that the inmate was injured and it was a problem?---Yes.

What else did he say, if anything?---He actually read a report to me that he'd done in relation to it and sent me a copy.

All right. And what did that report say, do you recall?---Roughly that they'd entered the cell and the inmate had jumped off his bunk and run to the back of the cell and fallen over and injured himself on the toilet.

All right. Didn't say anything about buprenorphine, I take it?---No.

10 No. And it didn't say anything about being at [REDACTED] cell for a targeted search?---No.

No.

THE COMMISSIONER: What did you understand him to mean when he said it's got to be cleaned up, I think was the words?---I understood it to mean that they'd gone there and it hadn't gone to plan with an inmate being injured.

20 Right. Why would they need to clean it up?---Oh, due to the fact there was an inmate injury.

Right. Did you interpret that as that it would have to be covered up in some way?---In hindsight, yes.

Right. Thank you, Mr Duggan.

MR DUGGAN: Thank you, Commissioner.

30 You've been in the intelligence game for a long time. Did you ask any probing questions about what happened?---No.

You didn't ask for example about who was there and whether he was following some sort of order?---No.

Was there any discussion about Mr O'Shea and Mr Peebles for example being there?---No.

40 So you were unaware of that fact at that time?---Yes, I was unaware.

Now, in this telephone conversation that you had with Mr Walker, did you suggest to him to put down in his report that he was at the cell searching for buprenorphine?---Yes.

And why did you do that?---They were seeking for a reason to be in the cell when the incident happened.

All right. And did Mr Walker expressly say that he needed a reason or you just gathered that from what he told you?---No, he expressed that they needed a reason to be in there.

All right. Well, it's pretty clear that there was a problem and it needed to be fixed.---Yes.

And you said – what were the words you used, do you recall?---No, I don't recall the exact words, no.

10

THE COMMISSIONER: What about the substance of what was said?
---Oh, effectively that there was information, to put down there was information in relation to some buprenorphine being in that cell.

Right.

MR DUGGAN: All right. And I assume that you knew that information was false at the time?---Yes.

20

And I think you said a moment ago, "They needed a reason." Who are "they?"---Well, the they was Mr Walker stated he needed a reason.

He needed a reason.---Yes.

Yes. All right. And did you also mention to Mr Walker that this inmate had a drug history?---Not that I recall.

All right. Were you aware at the time that Mr [REDACTED] was on remand facing drug charges?---I don't believe so.

30

All right. Now, you've suggested that he put that he was looking for buprenorphine in the report. Did you say to him, "Make it look like he fell?"---No.

Do you say that it was Mr Walker's idea to explain the injuries - - -?
---Yeah.

- - - to put that he fell? All right. Did he say anything to that effect to you?
---He did.

40

Right. And what do you recall he said?---That the inmate jumped off the bunk and run to the back of the cell and fell onto the toilet area trying to flush something.

But the way you say that makes it sound as though he's saying what actually happened. Did you know that that was a false account?---No, not at that time.

Right. So what was the problem that needed to be fixed then if he'd just tripped over and fallen onto the toilet?---An injury to an inmate with a cell injury I guess, it didn't look good so - - -

THE COMMISSIONER: Were you aware that the inmate had gone to hospital?---Not at that point, no.

Not at that point. Okay, thanks.

10 MR DUGGAN: Did you have an understanding at that point or at some later time that the fact he went to hospital meant that there needed to be reports?---Yes.

And how did you come to that understanding?---There was an injury to an inmate, hospitalisation reports had to be done.

But did you have a conversation with anyone about that?---No. Only the previous one with Mr Walker.

20 All right. So, it wasn't your understanding at that point of time that it would have gone unreported but for the fact that he had to go to hospital?---No. I think that it was earlier that I spoke to Mr Walker and a report was going to be done.

All right.---Either way.

Now, did you subsequently receive a report from Mr Walker that had a reference to being at the cell to search for bupe?---No. I received one from him that said what had happened in the cell and I, I added the initial part to
30 the front of it, so - - -

On a Word document, or - - - ?---Yeah, I believe so.

So he emailed you a version without that on it and you edited that and sent it back to him. Is that how it occurred?---I think I put the edit on it and then forwarded it off to managers, I believe.

All right. Can I just take you to page 76, please?---Of - - -

40 Of, sorry, Exhibit 45.---Thank you.

That would help. Now this, actually I might go to 75 if I may. So you can see here that this is an email from Mr Walker to Mr Peebles and yourself. Do you see that?---Yes.

And then over the page, page 76, it has the main, first main paragraph. "Sir, during the course of the search operation today at Lithgow I attended cell 208 in 5 Unit occupied by inmate [REDACTED] as information from another

inmate during searches in 3 Unit had implicated [REDACTED] as having a large amount of tablets of buprenorphine.” Is it fair to assume that you inserted that whole paragraph?---Yes.

And the second paragraph, did you have any involvement in the drafting of the second paragraph?---No.

But that was what Mr Walker wrote.---Mr Walker.

10 And I assume the balance of the document is Mr Walker’s.---Yes.

MR HARRIS: Commissioner, I apologise for interrupting but the redacted version that we have of page 75 blocks out names. I wonder could we briefly see page 75 again? I missed it as a, thank you very much. To see the recipients.

THE COMMISSIONER: It’s up on the screen now.

MR HARRIS: Yes. Thank you.

20

MR DUGGAN: Yeah. I can just indicate the only redactions that should be there will be the email addresses, so if you can bear that in mind.

MR HARRIS: Thank you, Commissioner.

MR DUGGAN: All right. Now, just in relation to that document, why, to your understanding, is Mr Walker emailing that document to Mr Peebles? ---As part of the use-of-force notification.

30 Mr Walker’s clearly come to you with an issue he needs to sort out.---Yes.

Did you have any discussions at that time with Mr Peebles about the fact there was a problem?---No.

Mr Peebles was offline that day, wasn't he, as manager of security?---I believe so.

Do you have any understanding as to why Mr Walker might be sending his report to him rather than to Mr Taylor?---I'm not sure.

40

All right. Can I go to page 71, please. Now you’ve obviously seen that document before.---Yeah. Yes.

And it’s, it’s got 13th of January, 2014 but it obviously wasn't created on that date.---No.

It was created on the 19th of February.---Yes.

And am I right in assuming that this was created after your phone conversation with Mr Walker?---Yes.

And I just want to go through it. It states there that “On the 19th of February, the centre was attended by SOG to assist the local IAT with target searches”, et cetera. Well that’s true?---Yes.

10 That sentence. “During the searching, numerous inmates were questioned in regards to drug and weapon possession at the centre.” Well, that’s probably also true?---Yes.

“During the informal interviews, an informant stated that there was a large quantity of Suboxone in a cell occupied by [REDACTED] cell 208 5.1.1 Unit.” That was false.---False.

“And the informant was confident in the information and had previously been reliable.” Well there obviously was no informant.---False.

20 And it states there at the end of the paragraph, “The manager of security was informed and instructed to have this information forwarded.” Is that false or was there some conversation with the manager of security?---I don’t actually recall.

Well the intelligence is false, the source is false.---Yes.

But was the false account, I assume the false account wasn't given to the manager of security at any point because it wouldn't have happened.---No.

30 No. So that, that also is, the fact that “The manager of security was informed and instructed to have the information forwarded to search teams to have [REDACTED] included in the target searches”, well that also would be false.
---Yes.

Yeah. And just for completeness, the next paragraph, the fact you informed Mr Walker of the information and instruction from the manager of security, that, that is false?---False.

40 All right. And am I correct in assuming that Mr Walker, this is the chronology, Mr Walker rings you, he tells you there’s a problem, you have a conversation about it, he sends you his report, you add in the first paragraph of his report to refer to the fact that they were at the cell to search for buprenorphine based on intel. Is that correct?---I think so.

And then you create this document to, as support for that paragraph?---Yes.

All right.

THE COMMISSIONER: Why did you do it?---It's a question I still ask myself to be honest.

Yes.---There were questions to be asked and I thought if it gave them a reason to be in the cell, the rest of it they would be able to work through.

Okay. Thank you.

10 MR DUGGAN: I assume that the need to create these false documents was to cover up an assault on an inmate.---I wasn't aware of that necessarily, no.

Not at that point?---No.

What about subsequently?---Some time after, yes.

When did you become aware that it was to cover up the assault?---I'm not certain but it was a considerable time after.

20 All right. So 2015 perhaps?---Oh, earlier than that, probably from rumour.

All right. And did you become aware at some stage that the incident was sparked by some knock-up abuse of the governor?---Not till 2015.

All right. And did you subsequently learn that the governor, Mr O'Shea, and Mr Peebles were in the day room at least in the morning of the assault? ---That was in some reports, yes.

All right. Did you have any discussions with anyone about that?---No.

30 How long had you worked with Mr O'Shea in 2015?---Oh, a number of years, I'm not sure how many number of years.

You had a pretty close working relationship with him?---Yes.

And you've created some false reports in relation to this incident obviously, did you want to have a discussion with him about what had actually occurred?---No.

40 Why not?---By that time I'd realised that I'd put myself in a stupid position I think.

Well, Mr Walker was certainly aware of your involvement. Did you have some discussions with him?---Not that I recall.

Can I take you to an email of 10 March, 2014, please, which is not currently an exhibit. Now, this being an email chain starts from the bottom up. Do you see there there's an email from Rebecca Edwards of the Security and Intelligence Division?---Yes.

Dated 7 March, 2014. "Hi, Brian." It refers to an intelligence report of yours in relation to [REDACTED] and asks you who was the human source. Do you see that?---Yes.

Do you recall receiving that email?---No.

10 You weren't concerned? I mean this is probably only a couple of weeks after you created the false report, you weren't concerned that S&I were inquiring into the source?---Yes.

But do you recall, that doesn't refresh your memory as to receiving the email?---No.

All right. But do you recall S&I inquiring into the matter at this time? ---Yes.

All right.---I'm not sure at that time, but at some point they did.

20 All right. And you would have been a bit worried about that, knowing the source didn't exist?---Yes.

Now, you reply on 10 March, "The info was third-hand via one of the cell boys. We reacted because there was enough time with the search staff we had at the centre, it was not expected to be valid info." Do you see that? ---Yes.

30 And is it a fair summary to say you're trying to downplay the source so that it doesn't get inquired into further?---Yes.

And sure enough, at least with this email, the response is, "Okay. Cool. Thanks, Brian." And it seems to be satisfied with the response.---Yes.

I tender that document, Commissioner

THE COMMISSIONER: Thank you. That will be Exhibit 81.

40 **#EXH-081 – EMAIL CHAIN FROM REBECCA EDWARDS TO BRIAN MCMURTRIE RE: IR-14-0366 DATED 10 MARCH 2014**

MR DUGGAN: Can I take you to page 86, please, of Exhibit 45. Now, if you can assume from me that this is the second page of the use-of-force package.---Yes.

And in the large box there about a third of the way down the page, Mr Taylor writes, "Reviewed UOF, 20 February 2014 by acting manager of security and Intel manager." Do you see that?---Yes.

What role did you have in reviewing the use-of-force package?---I was a signatory on it.

What did you look at, what was the process? Do you recall?---I believe I just signed it, I don't believe I actually read them.

10

Can I take you to page 100 please, and if you need hard copies that can be made available.

THE COMMISSIONER: Are you happy to look at the stuff on the screen? ---No, it's fine on the screen. Thanks, Commissioner.

MR DUGGAN: So this is an incident report that's part of the use-of-force package from an Elliott Duncan.---Yes.

20

Who you would know as part of the IAT.---Yes.

Did you look at this as part of reviewing the use-of-force package?---I don't believe I reviewed any of them.

Leaving the review aside, were you aware that Mr Duncan had prepared this report?---I was aware reports were prepared, yes.

All right. And this refers to the fact that the IAT was called to search the cell. Do you see that?---Yes.

30

And that is obviously incorrect. Did you know that Mr Duncan was going to put in his report a false reason for attending the cell?---No.

You had conversations with Mr Walker about fixing the problem. You would have been aware that other reports would be filed in relation to the incident.---Yes.

Was there some discussion about how to ensure everybody was singing off the same song sheet?---Mr Walker said he'd sort the reports out.

40

Right. He said that to you, all right.---Yeah.

So did you assume from that, that he would speak to IAT, the other two IAT members about what was to go in their reports?---Yeah.

Yes. Did you have any conversations with Mr Duncan and Graf about this incident?---No.

What about subsequently?---Not that I recall.

And at page 89 of the use-of-force package, is the, that's the summary entry and you can see this in another form as part of the IRM, the summary. Do you understand that?---Yes.

Yeah. Did you have any involvement in drafting that summary?---No.

10 Do you know who drafted that summary?---No.

It has T. Walker down the bottom. You don't have any understanding about whether Mr Peebles was involved in drafting that?---Well if it's got Mr Walker there it was probably Mr Walker, I would suggest.

You never heard anything about Mr Walker providing Mr Peebles with his login details?---At the beginning of last week, yes.

20 That was the first time you'd heard that suggestion. Right. Do you recall when you reviewed the UOF package that you had a look at this summary? ---No.

Were you, you've prepared a fabricated report. Weren't you interested in how it was going to be reported in the IRM?---No.

Why not?---Because it was at that point that I had some regrets about even involving myself.

30 Right. It seems to be a very, very strange reason to fabricate a report that an inmate might have tripped and fallen onto a toilet. Why is it that you felt the need to fabricate a report in relation to an incident that didn't seem to have any problem with it?---I assume that they were supposed to be somewhere else searching when it occurred.

It wasn't just a, do you mean were supposed to be somewhere else or were supposed to be doing something else, other than what they'd been doing in the cell?---Oh, somewhere else I think.

40 And is that to protect Mr Walker and the IAT or whoever called them down there?---Oh, all those concerned.

THE COMMISSIONER: They were supposed to be searching 3 Unit, weren't they, I think?---I believe so.

MR DUGGAN: And you say that you weren't aware on the day of who was in the day room when this incident occurred. You have access to CCTV in the centre?---Yes.

And you would have looked at the CCTV I assume to see what happened?--
-No.

Have you ever seen the CCTV of the day room from 19 February?---No.

Have you ever downloaded the CCTV?---No.

10 If I were to suggest to you that you downloaded it on a disc to form part of
the UOF package and gave it to Mr Taylor, that doesn't accord with your
recollection?---No, I don't recall that.

Do you deny it, do you have a positive recollection that it didn't take place?
---I'm fairly confident that it was never downloaded.

All right. Have you ever heard that other people have seen the CCTV of
what happened on that day?---From last week, yes.

20 You didn't hear that at the time that people were talking about this incident
and the fact they'd seen it on CCTV?---No.

Never heard about a dog getting too close to an inmate?---No.

No. Did you ever indicate to Mr Walker that if anyone went looking for the
CCTV footage it wouldn't be found?---No.

THE COMMISSIONER: So was it part of your responsibilities though to
review CCTV footage from time to time?---As, as requested, yes.

30 Okay. And in what sort of circumstances would you do that?---If there was
a critical incident the footage that showed it would be reviewed and, at the
direction of the managers, downloaded.

Does that mean in the usual course you wouldn't have reviewed it unless
you were instructed to?---Oh, no, not usually.

Right. Thank you.

40 MR DUGGAN: Can I take you to page 77, please, Exhibit 45. That's the
IRM of the incident on 19 February. Do you see that?---Yes.

And the summary that I've taken you to in a different form is there and also
is the reviewing reference of Mr Taylor. Did you have any discussions with
Mr Taylor about the review process?---Not to my recollection.

Did he ever express concerns about things not adding up with this incident?
---No.

Can I take you to the questions and the commentary? About halfway down the questions it says, "If not fully recorded, were photos of inmates taken?" Do you see that?---Yes.

And it says, "Yes, they were." And it says, "Still photos as part of standard centre procedure." Do you see that?---Yes.

Are you aware of any photos ever being taken?---No.

- 10 Did Mr Walker express to you at any stage a concern that photos had not been taken and the fact that this suggested they were might mean that someone would come looking for them?---No.

You don't recall a conversation to that effect?---No.

The summary entry refers to the last sentence of the summary, it states, "Reported as a technical use-of-force on direction of the general manager." What involvement do you understand the general manager had in relation to this?---I don't know.

20

The phrase "technical use-of-force", are you familiar with that phrase? ---Somewhat, yes.

Is that a phrase that you had any input with in respect to this summary entry?---No.

Do you know who may have?---No.

- 30 What does a technical use-of-force mean to you?---To me? If you took an inmate's arm without actually applying any force to discourage him from an action.

At what point does a technical use-of-force become an actual, or a non-technical use-of-force?---When there's resistance and a level of compliance is enforced.

All right. Now, on the 20th of February, Mr [REDACTED] made a phone call to his father.---Yes.

- 40 Do you recall listening to that phone call?---Yes.

And I want to suggest there a couple of things that would have triggered your interest. The first one was the report of being "flogged by the squad". ---Yes.

And the other one, in your security role, would be the reference to having a blade.---Yes.

And an intention to use it that was expressed.---Yes.

And I just want to take you to a transcript of the phone call which is at page 104. So, the key part starts at about two thirds of the way down this page. This is inmate [REDACTED] he says, "Yeah, I fucken got, got fucken ogflayed by the squad and they fucken put me in this cage and I wanted to ring and they, it was a full day lock in, they said, "You're not allowed to fucken make a call". And then at the bottom of the page he says, "Me celly buzzes up, he's been, we've been, I've been in here for fucken 20 days, we've been nice", et cetera, and then he says, "And I've said, "Don't say that", and I was half asleep, he said it to the governor. The governor's come up to the fucken door, "You were talking to me, cunt [REDACTED] I go, "It wasn't me", fuck, boom, the squad comes in and flogged the fuck out of me." Do you see that?---Yes.

Now, as I understand your evidence you thought at this point the only reason you'd provided this fabricated story was perhaps because the IAT were in the wrong place at the wrong time. This would have suggested to you that something far more serious had occurred. Do you accept that?---Yes.

And this was suggesting to you that he had been bashed by the squad, which is the IAT?---Oh, that was his version, yes.

I understand that, but he was saying to his dad on the phone, "I've been bashed by the squad."---Yes.

That's how you understood it. But not only that, he's placed the governor there. That would have piqued your interest I suggest?---Well, they say a lot of things on the phone that aren't necessarily right.

That's true, and they're criminals at the end of the day, aren't they.---Well, inmates with rights, yes.

Yes. But they don't always tell the truth.---No.

I accept that. But you have fabricated a version of events to protect Mr Walker and the IAT in relation to something that's happened in this cell. ---Yes.

And so you might pay more attention to a complaint by an inmate made over the phone to his father the next day.---Yes.

And you had no reason to doubt that he'd sustained some injuries?---No.

And he puts the governor there.---Yes.

Didn't you think at that stage, oh my god, this is bigger than Ben Hur?

---If Ben Hur's big, yes.

Yes. And you've got a close working relationship with Mr O'Shea?---Yes.

You would have contacted him and said, what happened yesterday?---No.

Why not?---Um, that was put into, some part of that, saying he was flogged was put into an IR which would have disseminated to Mr O'Shea anyway.

10 But that's not my question. My question is not do you know whether Mr O'Shea found out about this, my question is, didn't you want to know from Mr O'Shea what had happened?---No.

Didn't you want to know whether this inmate was telling the truth to his father?---No.

I mean, as you say, sometimes inmates lie, they don't always tell the truth. Didn't you want to ring up the governor and say, this guy's making very serious allegations against you?---No.

20

Didn't interest you?---(No Audible Reply)

Did you doubt when you listened to this phone call that the governor was in fact there?---Yes.

Well, what investigations did you make as the Intelligence manager to determine whether that was true or not?---I made none.

30 And you reviewed the IRM?---I'm not sure, yeah, no, I'm not sure.

Well, I think you said you were a signatory on the – sorry, the UOF package?---I was a signatory on it, yes.

And you would have seen from the IRM summary that apart from a reference to a technical use of force being directed by the governor, there wasn't any reference to an involvement of the governor, was there?

---I didn't actually read the stuff in the use of force, I was a signatory.

40 Well, let me take you to a document that you prepared. I think you said that you prepared a report that was distributed to Mr O'Shea, was that your evidence a moment ago?---An intelligence report on the phone call.

Yes. Can I go to page 157, please. Is that the intelligence report you're referring to? And if you need the full document, I can provide it to you.---It appears to be.

I'm going to go to page 159, please. Actually, I might start at 158, if I may. So under the heading Information, is this the substance of the intelligence report? Do you accept that?---Yes.

And have you entered this part of the report?---Yes.

And so it refers to the fabricated intelligence in relation to the Suboxone?
---Yes.

10 And then over the page it refers to the inmate appearing to throw an item towards the toilet, and he tripped over on a plastic chair. Do you see that?
---Yes.

And then it says, it refers to the intercepted telephone call and it refers to Mr [REDACTED] saying he was flogged by the squad, references to some [REDACTED] and a reference to the blade. Do you see that?---Yes.

I don't want to mislead you because I haven't reviewed this for this particular question, but there doesn't appear to be any reference to the
20 governor in that summary. Am I correct in that assumption?---That's correct.

Why wouldn't you mention the governor?---The report was aimed at the risk to staff is why that one was compiled.

Well, one of the staff would be the governor, wouldn't it?---Yes.

And there was a remark made by Mr [REDACTED] father about waiting outside the gate.---Yes.
30

And the inmate has specifically referred to the governor being at the door when this goes down. You understand that?---Yes.

So one may take that to be a threat directed towards the governor, not just the squad. Do you accept that?---Not without the full context of the phone call.

But that's the issue, isn't it? You haven't provided the full context in this report, have you?---No.
40

And an important detail that has been omitted is a reference to the governor. Do you accept that?---Yes.

So who would you submit this report to? Is this submitted to Security and Intelligence?---Yes.

Wouldn't you be wanting to let them know that there was a threat made in relation to the governor of the centre?---If proved to be credible, yes.

But this is intelligence gathering. You didn't have any, any – you're just providing the level of the threat, aren't you, in this intelligence report?
---Yes.

And you would expect that if someone makes a threat which implicitly includes a threat against the governor, that that's something that you would let S&I know. That's pretty serious, isn't it?---If it was taken that way, yes.

10 But I've just taken you to the phone call and I can go back to it. So, it's 105. "The governor's come up to the fucking door, 'You were talking to me, cunt ██████ I go, 'It wasn't me, fuck,' but then the squad comes in and flogged the fuck out of me." Well, the governor's clearly involved on this account. I think you accepted that a moment ago.---Yes.

And then if we go to page 107 about three quarters of the way down the page, there's a large paragraph there and at the end of it he says, "It was me, like, the security, they know that I didn't ring up." He's talking about the knock-up abuse at that point. "But they don't give a fuck, you know, I'm
20 green, they're blue, like, they probably think", and if you can assume from me that the next words are, "I'm fucking with some new governor." So again he's mentioned the governor. And then over the page, sorry, two pages at 109, and you go halfway down the page, he says something which can't be heard and then he says, time the governor, he said, "Went off at the governor, like the guv, you don't go off at him, he's pissed off, he's probably out of his chair, yeah. If they come in again, I don't give a fuck, I'm gonna go on, I have a blade ready and all. Fuck 'em." So again he's made that threat specifically in the context of mentioning the governor, and then over the page at 110, you can see there under the words "inaudible"
30 about a third of the way down the page, "Yeah, we'll wait outside the, I'll wait outside the gate." Do you see that?---Yeah.

So why didn't you include in your intelligence report that you had concerns there was a threat made against individuals including the governor?---That actual report was to get a search conducted and get that part done, and I took that threat to be against the IAT.

You didn't ring up Mr O'Shea and say "this bloke's not too happy with you, you better be careful"?---Not that I recall.
40

You knew he had ██████ ---Yes.

And you knew his father had said he was going to wait outside the gate.
---Yes.

Didn't think to tell Mr O'Shea that?---I sent it to security investigations and I believe they omitted ██████ possibly.

All right. Now, an information report, the one that I took you to earlier that you discussed with Mr Walker and included buprenorphine, you know the document I'm talking about?---Yes.

Now that was prepared fairly quickly to cover up the problem at the time.
---Yes.

And perhaps you didn't give much thought in relation to doing that? It happened pretty quickly.---Not enough.

10

No. But this intelligence report, that's a more considered document, isn't it?---It is.

And you knew that it was going to have wider circulation.---Yes.

And it would be reviewed by Security and Intelligence in Sydney?---Yes.

And circulated to people including an Assistant Commissioner.---Yes.

20 Why did you include the fabricated intelligence in this document?---I'd dug myself a hole deep enough it was too late to get out of I thought.

Now I asked you earlier about conversations, whether you had any conversations with Mr Peebles. Did you have any conversations with him about the incident after the intercepted phone call?---Not that I can recall.

By the time you had to submit your intelligence report, things were getting a little bit out of hand, weren't they?---Yes.

30 You would have been extremely worried.---Yes.

Who did you talk to?---Nobody.

Commissioner, I know it's a little early for the morning break but I'm about to go to another topic. Is that a convenient time for a break?

40 THE COMMISSIONER: Yes. Certainly. We're going to take a break for about 15 minutes. Can I just ask you during that time not to speak to anyone about your evidence and Mr Dunne no doubt will tell you why. I'm happy for you to do that, Mr Dunne.

MR DUNNE: I've already forewarned him of that possibility.

THE COMMISSIONER: Okay. We'll take an adjournment.

SHORT ADJOURNMENT

[11.25am]

THE COMMISSIONER: I'll just remind you, Mr McMurtrie, you're on your former oath.---Yes.

Affirmation I mean. Thanks.

Yes, Mr Duggan.

10 MR DUGGAN: Mr McMurtrie, the impression I got before the break when you were talking about your initial phone call with Mr Walker and the fact that you then fabricated a report to cover up whatever had happened, the impression I got was that you did that very willingly. Is that a fair summary?---Reluctantly I would say.

But did you question Mr Walker about why it was necessary to go so far or were you willing to help him?---There was some small amount of questioning, not a lot though.

20 The fact that some intelligence had been fabricated to protect another officer and to cover up whatever had happened, is that something that occurred before in your experience?---No.

You'd never done that before?---No.

So on this occasion you gave some evidence before about your information, the initial information report, which was the short two or three-paragraph document, and that was clearly fabricated?---Yes.

30 And you knew that at the time.---Yes.

And then you've prepared the intelligence report that was submitted to various people, including the Assistant Commissioner, and that contained the same fabricated intel?---Yes.

And you knew that at the time as well.---Yes.

And you also reviewed the UOF package, so you would have known that fabricated intel made it into the reporting process there.

40 MR DUNNE: Can I just object to that question? On several occasions Mr McMurtrie has answered questions about reviewing the UOF package and said that he didn't look at documents.

MR DUGGAN: Well, I'll put it to him that he signed off on it if that assists. You signed off on the UOF package?---Yes.

Did you either know or assume that the false intelligence had made it into that reporting process?---Yes.

And that was reviewed with Mr Taylor as well, he signed off on it?---Yes.

Did he know to your understanding that that intelligence was false?---I don't know.

You never had any discussion with him about it?---No.

10 And the package was ultimately signed off on by the general manager.---I believe so.

Was he aware that false, fabricated intelligence had made it into the reporting of that UOF?---I, I have no knowledge.

I want to move to a different topic on a different day, Mr McMurtrie.

20 THE COMMISSIONER: Can I just, I think I know where Counsel Assisting is going and can I just remind you that you are obliged to answer all questions truthfully and the section 38 declaration only protects you to the extent that you do, and to give us half-truths, for example, is not good enough. So just keep in mind that you must answer all questions truthfully. Do you understand that?---Yes, Commissioner.

Thank you.

MR DUGGAN: Now I think as I heard your evidence before the break, you made reference to your intelligent report, the longer report, to being created for the purposes of the search. Was that how I - - - ?---Yes.

30 What did you mean by that?---There was a stated risk value and a search needed to be conducted.

All right. And the stated risk was the reference to the blade in the phone call.---Yes.

And the comment about waiting outside the gate.---Yes.

40 So I assume from that, that the threat was taken seriously.---It required reviewing.

And a search.---And a search, yes.

Who organised the search?---Mr Taylor.

Mr Taylor wasn't involved in the search, was he?---No.

But you say he organised it?---Yes.

Have you ever heard any suggestion that he was told not to participate in the search in any way?---No.

That's news to you, is it?---Yes.

What involvement did you understand him to have?---From my recollection, him and Mr Kennedy and the manager of security office, when the information was disseminated.

10 So a briefing discussion.---Yes.

Yes. All right. Do you recall SOG being involved?---No.

You're familiar with a Mick Watson of SOG, the dog unit?---Yes.

Did you have quite a lot of dealings with Mr Watson?---I had some dealings with him, yes.

20 I assume there's some overlap between SOG's operations and what you did as the manager of Intel.---Yes.

And do you have any recollection as to whether he was involved in the search?---On reviewing reports, yes.

Why was he involved?---From my recollection, they actually alerted me to the phone call.

30 But that doesn't necessarily mean he needed to participate in the actual search. Is there a reason why Mr Watson of the dog unit would be participating in that search without his canine?---Yeah. I don't know.

Does that strike you as irregular?---Not if they were available and on the centre during that period, no.

Do you know who asked Mr Watson to be involved in the search?---No.

Do you have any recollection of anyone from IAT being directed not to participate in the search?---Yes.

40 And who, what knowledge do you have of that?---It was my suggestion they not participate.

And who did you make that suggestion to?---Mr Kennedy and Mr Taylor.

All right. And did you provide a reason why they shouldn't participate?
---Yes.

And what was the stated reason?---The stated reason was based on the fact that they were involved in the alleged use-of-force on the inmate the day before.

All right. Do you have any recollection, I withdraw that. You know Mr Turton?---Yes.

And he was the sector manager at the time of the sector that included Unit 5.---Yes.

10

So ordinarily one would expect him to be involved in briefings about a search in his unit?---Oh, that would be a manager of security decision.

All right. Do you recall a conversation which I think took place in Unit 5, walking down the hallway from the officers' station and Mr Turton came down the stairs from the office above Unit 5 and Mr Kennedy told him to go back upstairs?---No.

You don't recall that?---No.

20

And I want to suggest to you that Mr Turton was effectively sidelined from the search operation. Does that accord with your understanding of what occurred?---Not to my knowledge, no.

So apart from the actual words that were spoken, do you recall Mr Turton coming downstairs from the Unit 5 office and on the way to the day room, do you remember running into him?---No.

30

Is it possible that Mr Kennedy told him that he wasn't to be involved in the search?---It's possible.

Or said, "Go back upstairs," I think are the words that are suggested he used. Well, I want to suggest to you that that also is, if that occurred, is highly irregular for the sector manager to be told not to have anything to do with the search. Would you agree with that proposition?---Depending on the circumstance.

40

Well, are there any circumstances you can think of that would make this regular and understandable, if it occurred?---If a team was dedicated to conduct the search and manager of security had directed that, then that would be the case, that's the team that would do it.

But there would not be any difficulty of Mr Turton being around in that circumstance I presume?---No.

No. So he wouldn't need to be told to get back upstairs in that circumstance?---No.

Are there any other circumstances you can think of in which it would be appropriate to tell Mr Turton to go back upstairs?---Eminent use of chemical munitions perhaps.

Was there any suggestion of that?---No.

I want to take you to some video footage of the search operation on the day. Are you, have you seen this footage in recent times?---No.

10 Have you ever seen it?---Of the search day?

Of the search.---Yeah, I believe so.

We might just play some for you. Can I have – I might just ask a question first. Do you have any recollection of seeing the introduction to the search on video and people introducing themselves as participants?---Vaguely, yes.

20 And we can play it if necessary, but Mr Kennedy introduces himself, Mr Dippel of IAT, Mr Murdoch of IAT, he's the cameraman, and Mr Mick Watson who you know from SOG, but you didn't introduce yourself on the video. Is there any reason for that?---I wasn't part of the actual search team itself.

All right. But you certainly were in the vicinity of the search?---Yes.

And you spoke to Mr [REDACTED] as I understand it during the search operation? ---Yes.

30 Right. Can I play or ask to be played video 2 at about four minutes, please.

VIDEO RECORDING PLAYED

[12.09pm]

MR DUGGAN: If we could stop it there. Do you see yourself at the beginning of that?---Yes.

40 Now, Mr [REDACTED] taken out of the cell, Mr [REDACTED] is taken out of the cell. You know the inmates I'm referring to - - - ?---Yeah.

- - - by name? Mr [REDACTED] is put in the phone cage.---Yes.

And Mr [REDACTED] is taken away to another area to be strip searched.---Yes.

And you can see on that video, Mick Watson, Mr [REDACTED] I think, Mr Dippel leaving the day room with the inmate [REDACTED] Yeah.

But you can't see you leaving the day room, and you don't appear to have been involved at all in the strip search. Is that your recollection of what happened?---No. I followed them up to the other end, I believe.

So is it your evidence that you were present for the whole of the strip search for Mr [REDACTED] I was close behind them.

10 But when you say close behind them, are you saying you followed into the area within 30 seconds or was it more like five, 10 minutes?---Seconds, not minutes.

All right. I just want to take you to move forward to 10 and a half minutes which is about five minutes after the portion that has just been played. And I want to suggest to you that in the interim when Mr [REDACTED] is strip searched, that you're not seen or heard on the video footage.

VIDEO RECORDING PLAYED

[12.12pm]

20

MR DUGGAN: We might just stop it there. So that's your voice I assume on the - - - ?---Yeah.

And that's the first time that you appear to be seen or heard on that video after Mr [REDACTED] leaves the day room. If undercover officer an assume that. ---All right, I'll assume that.

30 And if you need to watch the footage in the interim that can be played for you. Is it possible that you stayed in the day room area in that break and didn't in fact witness the strip search of Mr [REDACTED] I don't believe so.

What's your recollection of what happened?---My recollection is as they were leaving, there were inmates yelling out to me at the other end, different things, and then I followed up the whole way behind them.

40 And so you were present for the whole of the strip search. Is that your evidence?---I don't remember the whole of the strip search, I don't remember that part of it to be honest except for the reminder of the video being played, but I followed them up there.

Well, it's possible you weren't there for the strip search?---I don't believe so.

You don't believe you were there?---No. I don't believe it's possible I wasn't there for the strip search. That was the key part of what we were there for.

But you weren't introduced on the video as being a participant in the search.---No.

So why is it necessary for you to watch the strip search?---To see if the information up there was correct or not, of the phone call.

But I'm sure if Mr Watson found a blade secreted on the inmate he would let you know about it pretty quickly.---I would've thought so, yes.

10 So you didn't have to, you didn't have to supervise the search, the personal search.---No.

And you don't appear to have any recollection of seeing what occurred during the search.---No.

So I want to suggest to you that it's possible you weren't in fact there for the search, the strip search. Do you accept that?---No.

20 And when you start talking on the video, you say something and then Mr [REDACTED] says, "Please, sir, enough, officer." Did you hear that?---Yeah.

He seemed quite terrified at that point. Do you accept that? I can play it again if you need me to.---I don't need it to be played again, that's what he was saying.

But did he seem quite terrified at that point?---I don't know that's "terrified" I'd use is the term.

30 What term would you use?---It could be anything with that situation, it could have been a manipulative tactic for all I could tell.

Are you suggesting that he was trying to manipulate you at that point?---I think it may have been a play for the video perhaps.

Do you think he was feigning his injuries, do you?---No, I don't believe he was feigning injuries.

40 Why would he be saying "Please, sir, enough, officer", for the video?---I don't know. Because nothing was actually happening to him.

But you had prepared a fabricated report the day before in relation to a use of force in his cell.---Yes.

MR DUNNE: Can I just object? Whilst that's the case - - -

THE COMMISSIONER: I beg your pardon?

MR DUNNE: - - - the evidence, sorry, whilst that's strictly the case, the evidence is that he manipulated the reason for being in the cell, not that he, not that Mr McMurtrie was responsible in relation to the actual falseness of the use of force in that report.

MR DUGGAN: Yeah, and I'm not suggesting that.

THE COMMISSIONER: No, okay.

10 MR DUGGAN: Mr McMurtrie, you, my understanding of your evidence is that you fabricated the reason that the IAT attended Mr [REDACTED] cell on the 19th.---Yes.

And you did that because Mr Walker had identified that there was a particular problem.---Yes.

And your evidence is that you thought that problem could've been they were in the wrong place at the wrong time.---Yes.

20 And you say you weren't aware that Mr [REDACTED] had sustained injuries when you fabricated your report.---No.

But here you're obviously present at the search on the 20th.---Yes.

And he's, I want to suggest to you, he's clearly sustained some injury.---Yes.

30 And you must have been thinking, "is this why I fabricated my report yesterday, is this what it's all about, this injury?"---Yes.

Yeah. And so when he said to you, and you knew that there was a use of force in relation to Mr [REDACTED] Yes.

And in fact by this stage you'd reviewed the use-of-force package and signed off on it.---I've signed it, yes.

Yeah. So you knew there was a use-of-force package that related to this inmate - - -?---Yes.

40 - - - at this point. So, you didn't think that he was malingering when he said to you, "Please, sir, enough, officer", surely.---There was nothing happening to him to be, at that point in time, when the statement was made.

No, but you must have been thinking what is the event that I have covered up and which occurred the day before?---Yes.

And when he said to you, "Please, sir, enough, officer," surely that gave rise to some thought process in your mind of him being assaulted by officers?

---No.

No?---I believed he was talking about his current situation.

He was in a fair bit of pain, wasn't he?---He appeared to be, yes.

Yes. And he wasn't malingering, I want to suggest.---No.

10 No. And I want to suggest that when he said, "Please, sir, enough, officer," that was genuine?---Again his statement at that time I thought was relating to what was happening to him at that point in time.

He appeared to be particularly terrified when you started talking to him. Do you accept that?---No.

You don't think he appeared terrified?---No.

Would you like to see it again?---Yes.

20

VIDEO RECORDING PLAYED

[12.21pm]

MR DUGGAN: So the first thing he says is, "I wouldn't threaten officers after what's happened to me." Do you recall that comment?---Oh, I do now.

But do you recall hearing it at the time?---Oh, I don't recall at the time but that, I can see it now, yeah.

30 All right. And so you say he wasn't afraid when he said, "Please, sir, enough, officer?"---I'm suggesting that I took that as him saying his current situation right there and then with the search that was currently going on.

Can I take you forward, or I might put this to you rather than playing it. About a minute after this piece of footage you're heard to say on the video, "We're leaving here to conduct the cell search and I'll inform you of the outcome."---Yes.

40 And Mr [REDACTED] stays where he is and presumably the various officers leave and go and do the searching. Now, I want to show you Exhibit 71, please. This is a screenshot of part of a video at 17 minutes and 47 seconds, and if you can assume that that is footage of the day room back wall, the wall that adjoins the compound?---Yep.

And I think that might be Mr Walker of the Dog Unit in shot. And it's quite blurry, but can you see two plastic bags at the back of the day room?---Yes.

Do you have any recollection of how they got there?---No.

Do you recall seeing them on the day?---No.

Do you recall items being put out into the day room as part of the search process?---No.

No, you don't?---No.

10 What do you recall about the search of the cell?---That they attended the cell to conduct the search and I was notified at one point that they'd found some contraband in a puffer.

Who conducted the search of the cell?---Mr Dippel, Mr Murdoch, Mr Watson I think.

Did you see them inside the cell at any point?---I saw Mr Murdoch in the cell.

20 Did you see them searching items in the day room area on the floor?---I don't actually recall.

All right. Can I take you to Exhibit 72, please? Do you have any, that's again a screenshot of items that have been searched and that's the floor of the day room. Do you recall that plastic bag being searched?---No.

Do you recall the puffer in which the contraband was found being in that plastic bag at any point?---No.

30 Is it possible that that plastic bag open on the day room floor is the one that was at the back of the day room?---I don't know.

You have no knowledge of that?---No.

THE COMMISSIONER: Did you ask, did you ask any of the officers present in that search to look in the puffer?---No.

Did anyone in your presence, do you recall, ask for that to be done?---No.

40 MR DUGGAN: Did you see Mr Kennedy searching any items inside the cell?---No, not to my recollection.

Did you see him inside the cell at all during the search?---I don't recall seeing him in there, no.

Do you know whether the door to the cell was secured at all times when there wasn't an officer in there?---I'm not sure, I don't know.

That would be standard procedure, I assume.---Possibly on a lockdown, there's no one there so it may not have been.

But wouldn't you be concerned to ensure the integrity of the search and make sure that if officers are actively conducting the search that the door be secured, for example, whilst Mr [REDACTED] is being strip searched?---If there was nobody out it may not have been, I don't, I don't recall, but - - -

So it's possible the door wasn't secured?---It's possible.

10

And do you recall the IAT members involved in the search, Mr Dippel and Mr Murdoch, do you recall them wearing stab vests?---No, not to my recollection. No.

Would it surprise you to learn that they were wearing Kevlar vests as was Mr Watson because of the intel about the blade?---No it wouldn't.

And your understanding of the search was that it was a search for a weapon. Is that - - - ?---Yes.

20

And were you present when the contraband was found?---No, not directly.

How did you find out that contraband was found?---I can't remember who but somebody came up and told me they had found something in the puffer.

So does that, if someone told Murdoch, Mr Murdoch specifically to look inside that plastic bag on screen, and not only that but to look at the puffer on screen, sorry, in the bag, you'd say that wasn't you?---No, it wasn't me.

30

Do you have any knowledge of who it would have been?---No.

Where were you when somebody came up and told you about the contraband find?---I believe, from memory, I was in the unit office.

Now, your understanding is that a weapon was being searched for, or a blade.---Yes.

Would it strike you as surprising to be searching in a puffer for a blade? ---It's up to the searching officers how they search.

40

Well, if that's, if, if your interest is security and you're looking for a gaol made weapon, it would be unusual for someone to, someone's attention, a searching officer's attention to be directed towards a puffer. Do you accept that?---To be directed towards one?

Yes.---That would be unusual, yes.

Yes. So if someone said, "Look in that puffer over there, Murdoch", that would be irregular for the search?---It would be, yeah.

Yes. Are you aware that the search of the cell was not actually recorded on video?---The compulsory examination, I just gathered that.

All right. You weren't aware at the time?---No.

10 What do you say you were doing during the search of the cell?---I was in the vicinity, in the officer's station and around in the day room area.

And you would have seen that there were various items on the day room floor after the search.---I don't actually recall the event to be honest with you.

Did you look at the CCTV footage of the day room?---I, I don't recall but it's quite possible.

20 Were you surprised at all that you were looking for a weapon but came across a contraband, some contraband?---I'm not surprised, no.

Did you have any concerns that there'd been a rather peculiar chain of events where you'd fabricated a report the day before and then during this search you can see that Mr [REDACTED] clearly injured and then lo and behold there's some bupe in his puffer? Did that strike you as somewhat coincidental?---Did it strike me as coincidental?

Yes.---No.

30 That didn't cause you any concerns at that point?---None at all.

That someone might have planted this contraband on Mr [REDACTED] I had no reason to suspect anyone in that team would have.

But you'd covered up the day before in relation to a particular incident in Mr [REDACTED] cell.---Yes.

40 I'm not suggesting that Mr Murdoch or Mr Dippel planted anything on Mr [REDACTED] but you said the cell door may not have been secured the whole way through the search.---It may not have been. I just don't have a recollection of it.

Well, you've got your finger on the pulse in this correctional centre, that would be a fair statement, wouldn't it?---In some people's view.

You've had a lot of experience, not just in correctional centres but at Lithgow.---Yes.

And you would have been paying particular attention to inmate [REDACTED] after you had been asked to fabricate a report in relation to a use of force involving him. Is that a fair statement?---No.

So you prepared a fabricated report about [REDACTED] and he was just another inmate after that. Is that your evidence?---Yes.

I want to suggest to you that, is that because you often fabricated reports?
---No.

10

It's a pretty significant event, fabricating an intelligence report, isn't it?
---Yes, it is.

And you like to know what's going on as the Intelligence officer and you would have wanted to know, I suggest, everything about this inmate after fabricating a report that related to him.---No.

Why not?---After the report was done and then the extent of the injury was observed, I realised I'd made a mistake and to be honest was distancing
20 myself from it all so I deliberately distanced.

THE COMMISSIONER: On a scale of one to 10, how concerned were you by the evening of the 19th of February, the 14th, sorry, the 19th of February, by what you had done?---Very concerned.

Yes. And – yeah.

MR DUGGAN: Sorry, Commissioner. Are you - - -

30 THE COMMISSIONER: You go on, yeah.

MR DUGGAN: I'm just trying to remember the last answer. I think you said you were very concerned, that's right, you said you wanted to distance yourself.---Yes.

Why were you involved in the search operation?---The, the risk to staff, it, it wasn't to be left, it had to be looked at.

40 No, but you as the intelligence manager didn't have to be involved in the search operation, you could have delegated that function.---Oh, the staff safety part, I thought was important to find out if he in fact did have a weapon in there.

Well, Mr Kennedy was supervising the search, he was a deputy superintendent.---Yes.

So why did you need to be there?---Didn't have to be I don't suppose.

No. So if you wanted to distance yourself from the inmate and the situation, you wouldn't have been there. Do you accept that?---No.

Why don't you accept that?---Because the gravity of an inmate with a weapon was something that was concerning and I, I went over in case there was a discovery of a weapon and by that time I, I'd got to the point where I thought hopefully there's not, but - - -

10 Yes. If the situation was so grave, you must have had a conversation with the general manager about it.---The?

The general manager, Mr O'Shea.---About the weapon?

Yes.---I don't recall having a conversation. I know the weapon part was reported but I don't actually recall having a conversation with him.

20 Your conversation that you've given evidence about earlier this morning with Mr Walker appears quite clear in your mind?---Oh, the general gist of it, yeah.

Yes. You don't seem to be able to remember as well the general gist of any conversation with Mr O'Shea. Is there a reason for that?---I don't believe I had one at that time with him.

30 What I want to suggest to you is that that seems quite remarkable, given as you say, the gravity of the situation in the correctional centre of which he's the governor. Does it strike you as irregular or are you able to explain that? ---Matters of security go to a manager of security and that's where I'd taken that discussion.

But this was a threat in relation to an inmate who was talking about him in the phone call. You don't think you had a conversation with Mr O'Shea about that?---Not that I recall.

Can I suggest you would have had a conversation. Are you in a position to deny that?---I don't recall having one.

40 Can I play a little bit more of the video. This is video number 3 and just to orientate you with the chronology, Mr [REDACTED] has been strip-searched, he stays where he is in the other part of the unit, the officers attend to search, Mr Mick Watson of the Dog Squad turns around to Murdoch who's the cameraman and says, "Video ceased." The camera goes off for approximately 10 minutes and then it's turned back on.

THE COMMISSIONER: So are we at the point when it's turned on?

MR DUGGAN: Yes.

VIDEO RECORDING PLAYED

[12.38pm]

MR DUGGAN: So do you hear that, recognise that voice?---Yes.

“I think it was verified by the clinic [REDACTED] on a puffer.”---Yes.

And that was you who said that?---Yes.

10

Now, it's quite soon after this contraband find. Do you have a recollection, do you know the person in the video? Do you know him as Mr Dippel?
---Mr Dippel, yeah.

Do you know whether Mr Dippel made this find or whether someone else did?---I do now after this, this last week but I didn't prior to that, no, prior to the compulsory.

20

You weren't aware that Mr Murdoch - - - ?---At the compulsory examination I found that out.

All right. And so you've come into the room, have you, and seen Mr Dippel with the puffer and assumed that he made the find?---I, I was notified that there was a find and went down there to my recollection, and Mr Dippel had it out there and did the (not transcribable) and uncovered it on there, so it was my impression he was the discovering officer.

Understandable. And were you told what was found?---No.

30

Did you think it might've been a knife or a weapon?---I was told there was something in a puffer, I didn't know what was in there.

But you knew no more than that?---No more than that.

Did you think it wouldn't be a weapon, or you were just going down to have a look?---It was contraband, I went to have a look.

40

All right. So you knew it as contraband?---Well I assumed it was contraband hidden in a puffer.

Yeah. And we're at about 1.28 minutes of this section of video and you've already confirmed that the puffer is Mr [REDACTED] Did you check whether Mr [REDACTED] was on a puffer?---I, I would've, I believe. I don't recall but yeah.

If I suggested to you he was in fact on a puffer, do you recall contacting the clinic and them confirming that with you?---No.

And the only thing that you can be heard on camera saying is that the clinic has confirmed that Mr [REDACTED] was on a puffer. Did you contact them on telephone, radio? How did you contact the clinic to find out?---Telephone.

Telephone. And when in relation to this part of the video do you say you telephoned?---Prior to it when, when I got told that there was something in a puffer.

10 So where did you make the telephone call? The officer's station, or where?
---Yeah, the, I was in the officer's station.

Can I suggest that that is almost, that the speed at which you contacted the clinic is quite remarkable. Do you accept that?---No.

You don't?---No.

20 Who told you to come down, who told you that there'd been a contraband find and to come downstairs?---I'm not sure. I wasn't, I wasn't coming downstairs, I was in the officer's station in the day room.

You were in the officer's station so you could see down in the day room.
---Yeah.

Were you watching the search?---On and off, not constantly.

Were you in the officer's station the whole time during the search?---No.

30 I want to show you the annexure to a statement of Mr Dudley of 8 May 2018, if I may. It's annexure A and can I indicate, Commissioner, that this is inmate [REDACTED] case management file. It contains all sorts of personal information and sensitive information and I would ask for a suppression order in relation to this case management file. The parts of it that I'm going to cross examine on are unlikely to be sensitive but the file certainly is.

THE COMMISSIONER: Is any part of it on the restricted website?

MR DUGGAN: I don't believe so.

40 THE COMMISSIONER: Being satisfied that it is necessary and desirable in the public interest to do so, I direct pursuant to section 112 of the Independent Commission Against Corruption Act 1988 that Mr [REDACTED] case management file and any information in it shall not be published or otherwise communicated to anyone except by Commission officers for statutory purposes or pursuant to further order of the Commission.

SUPPRESSION ORDER: BEING SATISFIED THAT IT IS NECESSARY AND DESIRABLE IN THE PUBLIC INTEREST TO

DO SO, I DIRECT PURSUANT TO SECTION 112 OF THE INDEPENDENT COMMISSION AGAINST CORRUPTION ACT 1988 THAT MR [REDACTED] CASE MANAGEMENT FILE AND ANY INFORMATION IN IT SHALL NOT BE PUBLISHED OR OTHERWISE COMMUNICATED TO ANYONE EXCEPT BY COMMISSION OFFICERS FOR STATUTORY PURPOSES OR PURSUANT TO FURTHER ORDER OF THE COMMISSION.

10 THE COMMISSIONER: That order is not intended to restrict you or any other counsel or solicitor asking questions. We may have to revisit it, depending what those questions are. But at the moment the intent of that order is to ensure it doesn't get out into the public domain, but I accept what you say that you will be asking questions on it and then we can revisit the situation.

MR DUGGAN: Thank you, Commissioner.

20 Now, you see from the front page of this document, you can see this is Mr [REDACTED] case management file?---Yes.

And you as the Intelligence manager would have had access to this file?---If I needed to, yes.

And Mr [REDACTED] was in the segregation unit in February 2014?---I don't recall.

Well, Unit 5's the segregation unit, isn't it?---Oh, parts of it are.

30 Well, are you suggesting that you didn't know that Mr [REDACTED] was in the segregation unit or on a non-association order?---I don't believe he was in a segregation unit, no.

So in cell 208, that wasn't part of segregation, is that - - ?---No.

What did you understand Mr [REDACTED] to be doing there in February 2014? ---I think that was a non-association area. Segregation's at the other end of the unit.

40 Right. So you knew he was on a non-association order for his OMCG links?---I don't think so. That was also a waiting placement at the time so - - -

You knew there was OMCG intel in relation to Mr [REDACTED] Yes.

And did you understand there to be a non-association order in relation to Mr [REDACTED] at the time?---I vaguely remember him being moved there for something and it may have been the OMCG, yes.

And in fact those aspects are set out in some detail in your intelligence report, aren't they?---That he had OMCG links?

Yes.---Based on the phone calls where I chased that down, yes.

Well, not just based on the phone call, I think there was some more extensive intelligence. Do you need me to take you to it or - - -?---Yeah, that would be helpful.

10

All right. Sorry, Commissioner, I'm just - - -

THE COMMISSIONER: It's okay.

MR DUGGAN: - - - working out what is suppressed in relation to this. So there's a number of redactions in this document on the restricted website, but if we can go to the intelligence report at page 157. So you can see there that that's the intelligence report I'm talking about?---Yes.

20

And if you go to page 160, I don't want to read too much of this onto the transcript but you can see the local analysis there, the paragraph under that, that was intelligence that you'd gathered.---Yes.

And if you go to page 162, that's some more extensive intelligence you've gathered in relation to Mr [REDACTED] No.

Well where did this intelligence come from?---Corrections Intel.

30

So who is Corrections Intel?---Corrections Intelligence Group. Silverwater.

Is this your report?---Yes.

So you would have been aware of this information, even if you hadn't gathered it?---This was a response to my report that they evaluated to send back.

So are you suggesting that you weren't aware of that information on the 20th of February?---No. Not that extensive information, no.

40

But you were aware of, you were aware at least of the fact that he identified himself as being linked to this particular OMCG?---Yes.

And his father was also linked to an OMCG?---From the phone call, yes.

And it was his father who made the threat about waiting outside the gate. ---Yes.

And so you being an Intelligence manager, you would have before the search wanted to find out how dangerous this inmate was and how dangerous his father was. Do you accept that?---No.

You don't accept that.---No.

I thought you were suggesting that you were taking this threat seriously.
---Yes.

10 Well to evaluate the threat, wouldn't you want to find out who this bloke was?---I think to initiate the search with the allegation of the shiv was the first thing to do while the rest of that was being looked at.

So you wouldn't want to know, for example, whether this guy was extremely dangerous even without a weapon, and you just sent your officers in there to find out if he had a weapon. Is that your evidence?---Well, the search needed to be conducted as a matter of urgency because that information may not have returned in a timely manner.

20 But you didn't have to open the door immediately, you could have found out how dangerous this guy was, surely.---That's one opinion.

Are you suggesting you didn't make any inquiries about how dangerous Mr [REDACTED] was before a search team went into that cell?---That's correct.

I want to suggest to you that you would have reviewed Mr [REDACTED] case management file. You deny that.---Yes.

30 Well part of your job is to be aware of alerts in relation to inmates, isn't it?
---That's part of my job, yes.

I just want to take you back to the case management file. Unhelpfully this doesn't have page numbers.

THE COMMISSIONER: When you were down at 5.1 and you became aware that they made a find, did you go down and have a look at what it was that they'd found?---Yes, I walked down there.

40 And what did you see?---Mr Dippel had a puffer and was unwrapping the contents he'd found inside it.

And did you actually see the contents?---I, I was standing there when they were videoing it.

Okay, thanks.

MR DUGGAN: All right. So do you see there that there's an initial classification document in relation to Mr [REDACTED] Yes.

Well, you would have reviewed that document, I want to suggest, before the 20th.---No.

And if you go over the page, the second page, you see that classification? So this is the second page of that classification document and you can see, I'm going to put the proposition to you without taking you to the document. If you can assume from me that this classification, initial classification document states that Mr [REDACTED] uses the puffer as a coping mechanism, I want to suggest to you that you would have seen that before the 20th. Do you reject that?---I reject it.

And I want to take you to the alerts section of Mr [REDACTED] report that you would have been particularly interested, given a number of factors, your role as the Intelligence manager, the fact that Mr [REDACTED] was a non-associate inmate and further, the fact that he'd made this threat in this phone call. So that's just to orientate you, that's the section I'm taking you to. So this document is a protective custody placement risk assessment, and you would have been aware of this at the time I want to suggest.---No.

And I want to suggest that you would have been aware of the fact that it stated "Health issues, asthma", on this document.---No.

And over the page it's blacked out but there are, there's various intel blacked out in relation to OMCG links that this inmate had and it's part of your role to be aware of this information, isn't it?---When an inmate comes into custody, he's received by a reception committee, and he's seen within two days with the reception induction committee. They go through all of the alerts, all of the stuff and they notify the relevant areas of anything that needs to be known.

This inmate hadn't just arrived at Lithgow, had he?---I'm not sure.

He'd been a non-associate inmate in Unit 5 for about three weeks. Is that your recollection, or do you not recall that?---I don't recall how long he was there.

And this case management file is littered with references to his OMCG links, which would have triggered your interest, I want to suggest, and it's also littered with references to Mr [REDACTED] asthma. I want to suggest to you that you would have taken note of both of those things. Do you accept that?---No.

I want to show you this inmate profile document. Do you see that this is Mr [REDACTED] inmate profile and you can see there is an alert in relation to Mr [REDACTED] Do you see that down the bottom of the page?---Yes.

And the alert is an active alert in relation to his asthma. And I want to suggest that as the Intel manager you would surely have been aware of that alert. Do you accept that?---No.

And I want to suggest that there was no need, no need whatsoever, for you to check with the clinic as to whether Mr [REDACTED] was on a puffer because you already knew, didn't you?---No.

10 And that your comment on that video, whether you contacted the clinic or not, was purely for show. Do you accept that?---No.

Commissioner, is that a convenient time?

THE COMMISSIONER: Yes. I've just got one question. It arises out of what I asked you a little while ago about what you observed the find to be. Did you have any understanding or belief as to what the tablet was at that time?---When it was uncovered?

20 Yes.---Suspected to be bupe.

Right. Yes. Thank you .

MR DUGGAN: Just, sorry, while we've got that answer I might ask a couple more questions. So was Mr [REDACTED] urine-tested I assume?---Oh, not to my knowledge. I don't know.

Well, if there wouldn't have been one could you provide any explanation as to why he wouldn't have been urine-tested?---No.

30 Would that strike you as highly irregular, not to urine-test an inmate who'd been found with contraband on them?---I would be irregular, yes.

Thank you, Commissioner.

THE COMMISSIONER: And it would be pretty irregular too, wouldn't it, if he wasn't charged with an internal disciplinary offence?---Either an internal or if there was sufficient evidence it would be an external.

40 As in police?---Police.

But if he wasn't charged either way, that's highly unusual, isn't it?---Very irregular.

Yes. So I think actually in the report you prepared you noted that [REDACTED] visits were suspended for the current weekend, but the reason you give is, "For staff safety reasons."---Correct.

So the suspension of visits as far as you were concerned had nothing to do with what had been found.---No, none at all.

Thank you.

MR DUGGAN: Usually to suspend someone's visits or withdraw other privileges, that would be as a result of an internal charge?---Or a security-related issue.

- 10 I want to suggest to you that you withdrew his visits because you didn't want anyone to see his injuries.---I disagree.

Thank you, Commissioner.

THE COMMISSIONER: All right. We'll adjourn till 2 o'clock.

LUNCHEON ADJOURNMENT

[1.03pm]