

ESTRYPUB00729  
30/05/2018

ESTRY  
pp 00729-00759

PUBLIC  
HEARING

COPYRIGHT

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 2.00PM

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

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

THE COMMISSIONER: Yes, Mr Duggan.

MR DUGGAN: Thank you, Commissioner. I just wanted to take you to a document in Exhibit 45 which is at page 289. Now, I want to ask you a question and it relates to February 2015, so about 12 months after the event, at 289. Do you remember an internal investigation in relation to this incident?---Oh, vaguely.

Do you remember providing some information to investigations branch?---I do now, yes.

All right. So you see there that that's an email chain and the subject of the bottom email is "[REDACTED] Do you see that?---Yes.

And it's an email from yourself to someone of investigations branch, and the subject of the email is, sorry, the body of the email says, "The folder on my desktop computer marked "[REDACTED] has the video and footage available." Do you see that?---Yes.

So that appears to describe two items, a video and some footage. Do you accept that?---Yes.

Do you have any recollection as to what the video and also what the footage are that you're referring to?---From the search on the 20<sup>th</sup>, I believe.

So you say there was, you're talking about handheld camera footage?---I can't recall to be honest. There was a folder with everything relevant to it in it.

Do you recall there being any CCTV footage in relation to the search on the 20<sup>th</sup>?---No.

So, if one of the references is to the handheld search video, which I've showed you some of this morning, what's the other reference to?---I'm not sure. Whatever was in that folder.

Okay. All right. Now I want to take you to, back to the search, and a period during the search. Do you recall having a conversation with Mr [REDACTED] with Mr Kennedy? The three of you had an interview of sorts.---Yes.

And did that take place in Unit 5 in a cell?---No.

Where do you recall that interview taking place?---The whole way in between 5, 5.1 and 5.2, I think.

So were you standing up?---There was a small office there. I believe that's where it was.

I see. There's a room off the hallway, is there?---Yes.

You were conducting a search on this day because of security concerns you had in relation to Mr [REDACTED] Yes.

10 I assume that not being a cell, this didn't have the sort of secure door that you would have in relation to a cell?---No.

So it just had a normal office door perhaps with a lock on it?---Yes.

And it was only you and Mr Kennedy and Mr [REDACTED] in the room?  
---I believe so.

Didn't you have some concerns about being alone with the inmate in those circumstances?---No.

20 Why was that?---Why was what?

Why did you feel safe sitting down with Mr [REDACTED] notwithstanding the threats he'd made on the phone call the day before and the reason for the search?---The IAT were standing in the hallway from memory.

30 Were they? All right. What do you recall being discussed in that interview?  
---The alleged incident was raised and whether he wanted any action taken on it and also as a remand inmate we would recommend him to return to a remand gaol in Sydney based on the potential conflict between him and staff at Lithgow.

All right. When you say alleged incident was raised, did he raise it, did you raise it, did Mr Kennedy raise it?---I believe it may have been me.

Him?---Me I think.

You, sorry?---Yeah.

40 How did you raise the alleged incident?---How?

Yes. What did you say about it?---I said to him that he'd been involved in an incident with staff there and there were allegations either way at that time and on the basis that he was a remand inmate the separation would probably be advisable.

You referred to conflict between him and staff.---Him and the IAT.

What was the conflict?---The previous event the cell that was mentioned on the 19<sup>th</sup>.

And what did you know about it at that time, at least what the allegation was, what did you think the allegation was?---Well, that he'd been injured during the course of them being in that cell and he had injuries at the time.

And that they'd bashed him. Is that your understanding of the allegation?  
---No, I didn't know that at that point of time, no.

10

Well, you said there's a conflict between him and staff?---Well, he's saying he was assaulted and they were saying differently, so there was definitely something had transpired.

All right. But he was saying that he was assaulted by officers.---Effectively.

Yes. Was this interview on camera?---I don't believe so.

20

No. Should it have been on camera?---In hindsight it probably would have been a good thing.

What I'm trying to understand is why you would be having an interview with an inmate halfway through a search operation, not in a cell but in an office, about an allegation that he's been assaulted by officers. Are you able to explain why that occurred, that interview?---The interview was in relation to it being prudent to have him transferred back to Sydney after the involvement in an incident.

30

It was also prudent to have that conversation recorded in some way, wasn't it?---In hindsight I would say yes.

He could have said anything about what occurred during that conversation, couldn't he?---He could.

Yes. And so you took a note of the conversation?---No.

THE COMMISSIONER: Was he suggesting that he was going to report the matter for example to police?---No.

40

What was your concern, was it that there might be repercussions to him if he stayed?---The concern is there would be repercussions either way, whether he was or they were, either way.

All right.---It's not advisable to not do anything.

MR DUGGAN: Now, as I understood your evidence, as I understand your evidence, you still thought that Mr [REDACTED] might've been involved in a trip and fall the day before. Is that - - - ?---Yeah.

Is that still your position as you were interviewing Mr [REDACTED] I was uncertain at the time I interviewed Mr [REDACTED]

So you saw he had sore ribs.---Yes.

And he had a bruise on his face.---Yes.

And he was pretty ginger, he wasn't walking easily.---Yes.

10

In fact, there seemed to be a bit of swelling to his face that was affecting his ability to speak. Do you accept that?---No.

You didn't see that on the video earlier?---He was able to speak okay.

No, but his speech appeared to be affected by the fact he seemed to have a bit of swelling around the mouth. Is that not a fair summary or comment?  
---It may be, yeah.

20

And you'd heard what he'd said on the phone the day before, sorry, the morning of.---Yes.

About being flogged by the squad, and now he wasn't just telling his dad about this, he was indicating to you that that's what had occurred. That's right, isn't it?---Yes.

And you would have no doubt reported that serious allegation to one of your superior officers.---The allegation was already reported by the content of the phone call.

30

Was the involvement of the governor reported to anybody?---I'm not certain.

I just want to take you to a version of that conversation, and this is Mr Kennedy's version. I'll just indicate what it is and ask you some questions about it. He says, and I think this is the same meeting you're talking about, and for the benefit of, actually, I might get it up on the screen, I might make it easier. It's Mr Kennedy's record of interview, page 12. Now, the portion is at the bottom of the page about line 33, and can you see the paragraph that start, "Well, it's, as I said it's 2014"?---Yeah.

40

So then if you go to the third line of that paragraph, he says, "I was asked by, it was Mr McMurtrie to assist in the cell search of an inmate." Just pausing there, do you recall asking Mr Kennedy to assist in this search?---I believe it was in the manager of security's office, yes.

Yes, okay. And then it says at the second last line, "I did my normal briefing to the guys, I think Mr McMurtrie had received information that he had a weapon in the cell", which you would presumably accept, "and so we

went and looked for the weapon, so we went to the cell. The video was ran during the operation, both of the inmates were removed from the cell and isolated. That cell, the subsequent cell search was done on the cell and I wasn't there, I don't think I was there during the find but they found a tablet." Now is there any part of that, that you disagree with?---Oh, I don't know about some of it, I've got no idea if he was there or not.

You don't know whether he was at the cell or not?---No.

10 No. Now, this is the bit that I want to ask you about. "Me and Mr McMurtrie talked to one of the inmates in relation to his visits and Mr McMurtrie on the day said that his visits were going to be terminated for some reason." Do you recall doing that? I think I asked you about it earlier and you said something in relation to his visits.---We did do it. I thought that was done in the cell.

Yes. And then he goes on to say, "We talked to him about the use of force the previous day I think and, yeah, he, he was talking about police charges." So just pausing there, does that accord with your recollection?---I, my  
20 recollection was he, he was asked and didn't want any police action.

But do you recall him in the context you're talking about the use of force the previous day, discussing the possibility of police charges?---I don't believe he was discussing the possibility, I think he was saying he didn't want any of it. I believe we offered that option to him.

Your evidence is you offered him the option of laying charges against an officer?---I believe so. They offered him the option to make a statement to police.

30 In relation to - - - ?---And contact police in relation to the incident.

All right. And what, at that time your understanding was what in relation to the allegation that he was making?---That it was an assault.

Did you, that's it, or was there any more detail?---I, I don't recall any other detail.

40 Is it possible that he told you more details about that?---I don't think so, no.

It says, "We talked him through that and let him know that it's his call and wants to pursue that line. Like, a lot of inmates over the years that I've spoken to and they, you know, when I talk about or pursue police charges, providing them with information, I did say they can be quite problematic for him, being honest, but ultimately it was his decision." Do you agree with that characterisation of the conversation of the interview?---I believe it was told it was his decision whether he wished for police action, yes.

All right. Now, it says there that Mr Kennedy said it would be quite problematic for him making a complaint to the police. Do you recall that?  
---No, I don't recall that being said.

And it wouldn't be necessary for Mr Kennedy to say that if he was indicating he didn't want to press charges, I suggest.---I don't know.

Well, you were there. Do you have any recollection?---But I don't recall that being said so I'm not sure what context you mean.

10

You don't recall it being said in the interview that it would be problematic for him if he wanted to go to police?---No, no I don't.

If that was said, you agree that that is not encouraging him to go to police, in fact, it could be taken as discouraging him?---If that was stated, yes.

And is it possible that it was stated?---I don't recall it being stated.

20

But is it, do you have a positive recollection that it wouldn't have been stated or is it possible?---It's something I would have remembered if it was stated, I believe.

And why would you remember it?---Because it's, the word "problematic" is a funny word to put in there.

You would be most concerned, I assume, if another commissioned officer was indicating to an inmate it would be problematic if he went to police about a matter.---Yes.

30

And if that was your understanding of what was being said, what would you do?---I would reaffirm the inmate that it was still his decision in relation to how he did it. The problematic part, I don't know how to explain what that was meant to be.

But if an inmate was indicating that they might want to speak to police about an allegation they'd been assaulted and a senior officer was suggesting to that inmate that such a complaint would be problematic - - -

40

MR MURPHY: I object to that, Commissioner. That's not what was suggested, that's not what was suggested. The words are, "I did say it can be quite problematic" and in my respectful submission, there's a distinction.

THE COMMISSIONER: Thank you.

MR DUGGAN: And that's fair enough. And it was being suggested by the senior officer that it could be or can be quite problematic to go to police. Would you leave that there or would you report that to someone else?  
---We'd revisit that with the inmate and tell him.

But you understand that inmates can be in a vulnerable position?---Yes.

And particularly so if they have actually been assaulted by a Correctives officer?---Yes.

And that was, in effect, the allegation that was being made, so there'd be a reluctance for this inmate to make a complaint?---I, I don't recall it being said so I can't answer that.

10

And I'm not suggesting otherwise, but I'm just trying to work out if that's the scenario that presented itself, what would you ordinarily do? Would you report it to the general manager, would you report it to professional standards? What, what do you do?---It would be put into a report and submitted through normal channels.

And what are the normal channels?---Oh, it would be placed, addressed to the general manager and given to the deputy's clerk.

20

What if there was some suggestion that the general manager was involved, would you then go outside the Lithgow Centre or what?---Well, that would be the next step, yes.

I asked you some questions earlier about whether you reviewed Mr [REDACTED] case management file. Do you recall that?---Yes.

Do you say that on 20 February, before you contacted the clinic, you didn't know that Mr [REDACTED] was an asthmatic?---I don't believe so.

30

Are you unsure about that?---I'm pretty sure I didn't know he was an asthmatic.

Right. I just want to show you an email. Sorry, has the witness got a copy? Thanks. This is an email from Mr Turton to a number of recipients. Do you see that?---Yes.

And you are one of those recipients. Do you see that?---Yes.

40

And there's an attachment, [REDACTED] doc, so a Word document is attached, and this email is dated 1 February, 2014. Do you see that?---Yep.

So this is just shy of three weeks before the incident.---Yes.

And Mr Turton is saying, "FYI, original application and risk assessment forwarded to MOS." And refers to risk assessment to be conducted. Then if you go over the page, and this is a report addressed to Mr O'Shea, but I want to suggest you would have read this report at the time, on 1 February? ---I may have.



Well, it's a risk assessment and you're the recipient on this email. Why would you not have reviewed this at the time?---I've reviewed lots of documents, it may not have been one that stuck out to me at all.

I'm not asking whether it stuck out.---I don't recall reading it. I actually don't recall reading it.

10 Is there any reason why you wouldn't have read it?---Depending on the workload at the time I may or may not have.

Now, the email, sorry, the attachment in the first paragraph refers to some concerns that Mr [REDACTED] had relating to his [REDACTED] if I can paraphrase, and if you go to the third paragraph, which is in bold, about halfway through that paragraph do you see, "Alerts" in capitals?---Yes.

Do you see "Asthma," next to the alert?---I do.

20 You would have been aware that Mr [REDACTED] was an asthmatic in February 2014, wouldn't you?---If, if I'd have read this, yes.

Well, there's no reason you can think of, other than particularly busy workload on 1 February, that you wouldn't have read it at that time? ---I don't recall reading it though.

Well, you would have got to it by 19 February I suggest.---I don't have a recall of that information even.

30 What I'm really indicating to you is you didn't need to contact the clinic to confirm that Mr [REDACTED] had been issued a puffer, did you?---(No Audible Reply)

MR DUNNE: I object.

THE COMMISSIONER: What's the objection?

MR DUNNE: Well, the objection is, it's been referred to that he's an asthmatic. There's nothing in what's been taken to Mr McMurtrie that refers to a puffer or the issuing of a puffer.

40

THE COMMISSIONER: No, but there's a reference to asthma.

MR DUNNE: Well, yes, but I'll do with it in re-examination I suppose.

MR DUGGAN: Well, you're -- no, I won't go down that path. You didn't need to contact the clinic to confirm that he had a puffer, did you?---Yes.

Yes, you did?---Yes.

Yes. I tender that document, Commissioner.

THE COMMISSIONER: That will be marked as Exhibit 82.

**#EXH-082 – EMAIL FROM PHILIP TURTON TO STEPHEN  
TAYLOR & OTHERS RE: INMATE A’S RISK ASSESSMENT  
DATED 1 FEBRUARY 2014 & ATTACHED LETTER FROM PHILIP  
10 TURTON TO JOHN O’SHEA ALSO DATED 1 FEBRUARY 2014**

MR DUGGAN: Commissioner, there are suppression orders that, as you know, that relate to references to Mr [REDACTED] and [REDACTED] Mr Brasch might want to consider this document before it goes up on any public website.

MR BRASCH: If I could, thank you.

20 MR DUGGAN: I’ve tried to avoid express references to problematic issues.

THE COMMISSIONER: I’ll still mark it, but you can come back to me on that.

MR DUGGAN: Thank you.

MR DUNNE: Excuse me Commissioner, what exhibit number was that?

30 THE COMMISSIONER: 82.

MR DUNNE: 82. Thank you.

MR DUGGAN: I asked you some questions earlier about a phone call that was intercepted between Mr [REDACTED] and his father that lead to the search operation.---Yes.

Do you recall intercepting a second phone call the next day, or listening to a phone call the next day?---No.

40 I want to take you to page 176 of the bundle. So this is a transcript of the phone call that I want to ask you about. You can see there that the call date and time is 21<sup>st</sup> of February, 2014 at 10.41. Do you see that?---Yes.

And it’s a phone call between Mr [REDACTED] and his father. Do you accept that?---Based on that, yes.

Yeah. And in this phone call, Mr [REDACTED] says various things on the first page I don’t need to go to. If I go to the second page, you see halfway down

the page he says to his father, "They raided the cell and found the fucken bupe in something, it wasn't mine, it was in an asthma puffer, so 14 days segro." Do you see that?---Yes.

It's a pretty clear denial that, from him to his father that the drugs were his that were found the previous day. You accept that?---That's what he states.

Do you remember listening to that phone call?---Not to my recollection.

10 Now, you'd fabricated a report in relation to Mr [REDACTED] only 48 hours before he made this phone call.---Yes.

So at that time you would have had some interest in Mr [REDACTED] I want to suggest?---No.

You had no interest in Mr [REDACTED] To be honest with you I just wanted everything to be done and move on.

20 You're distancing yourself from the situation?---Yes.

So would you have listened to Mr [REDACTED] phone call on the 21<sup>st</sup>?---I don't recall.

Can I take you to page 184 of Exhibit 45, please? Now the document in front of you, I want you to assume, is some call log information which refers to calls made by Mr [REDACTED] and persons who have logged in to listen to those calls.---Yes.

30 So if you see on the left hand side there's a MIN number. That's Mr [REDACTED] MIN number.---Yes.

And the next column is date and time someone's listened to the call, then there's their username or serial number, machine, description as to the amount of call listened to and then the date of the original call. Now, this document relates only to the one call as you can see from the second-last column which is the call on the 21<sup>st</sup> of February at 10.41am.---Yes.

40 So you accept that if you can assume from me that that's the transcript that I've just taken you to containing the denial from Mr [REDACTED] that the drug is his. Now, the first person to listen to that call was Jane Lohse at 12.53pm on the 21<sup>st</sup>. Do you know Jane Lohse?---I do.

And did you have frequent discussions with her whilst you worked in the correctional centre in February 2014?---Yes.

After she has listened to the call at 12.53, does she have any conversation with you telling you what was in the call?---I don't recall having a conversation with her.

Do you recall anyone saying to you, "Mr McMurtrie, you need to listen to this phone call because this guy [REDACTED] is denying the drug is his?"---Not to my recollection, no.

All right. And if you found out about that conversation would that trigger any need for anyone else to listen to the phone call?---It would normally be a report I would assume.

10 Would you be telling anyone else to listen to the phone call if you were aware of its contents?---I'd provide them with the information in a report.

So it would be irregular or unusual for you to inform - - -?---Yes.

Can I go to page 185, please. Do you see there that there's an email chain between yourself and Mr Mick Watson of, Michael Watson of SOG and the top email is from you to Mr Watson at 12.57pm - - -?---Yes.

20 - - - on 21 February, which is four minutes after Ms Lohse has listened to the call. Do you accept that?---Yes.

And you are saying to Mr Watson, "Listen to today's call." Do you see that?---Yep.

Well, why would you be doing something so irregular?---I have no idea. I don't recall it happening to be honest.

30 How would Mr Watson know what you are referring to when you sent a cryptic email like, "Listen to today's call?"---I'm not sure.

Well, can I suggest the reason. He knew what you were talking about because you'd been discussing Mr [REDACTED] since you fabricated your report. Is that a fair explanation?---It's possible.

And in fact this email chain originally contained an email that related to Mr [REDACTED] and you have sent him at 12.43 an information report reference. Do you see that?---Yes.

40 Sorry, I shouldn't say information report, intelligence report. And if you can assume from me, and for the benefit of your counsel it's at page 157, that's the intelligence report number of the formal report that you submitted to the Assistant Commissioner and others that I asked you about earlier today.---Yes.

So why are you telling Mr Watson to listen to today's call?---I'm not sure.

It's because of the denial of the drug find, isn't it, by Mr [REDACTED] That's what you wanted him to listen to, isn't it?---It's possible. I don't recall this event but it's possible.

What explanation would you have for why you were telling Mr Watson about that?---I don't have one.

10 Now, you hadn't logged on to listen to the call at this stage when you sent this email. Were you there when Ms Lohse listened to it?---I'm not sure. I don't believe so.

Well, is it likely that she told you about it?---It's possible.

And why would she have been telling you about it?---It was a follow up to the event.

If I can go back to page 184, so, at 1.04pm you listened to the phone call. Do you see that?---Yes.

20 You've only listened to 14 per cent of that call. Do you see that?---Yes.

Well there's an eight-page transcript I think of the call and the denial of the drug, the drug possession, was made halfway through the second page, so can I assume from that, that was the bit you were interested in? Is that a fair assumption?---I don't recall.

But is that a fair assumption?---It's a reasonable assumption.

30 Now you've listened to it 11 minutes after Ms Lohse's listened to it and Mr Watson listens to it at 1.08pm, presumably because you've given him the heads-up in an email. Did you tell anyone else about the phone call?---I don't, I don't recall, to be honest.

What about Mr O'Shea, for example?---I'm not sure. I don't know.

Well he listens to the call at 1.09pm, which is five minutes after you listen to the call. How would he know about this phone call?---I'm not sure.

40 Did you tell him?---I don't recall doing it.

Is it possible you told him?---It's possible.

Why are you speaking to Mr O'Shea so quickly about this denial of the drug find?---I don't know that I did, but I'm not sure.

But it's possible.---It's possible.

But you would accept that it's, that there must have been some conversation perhaps not involving yourself, but likely, between yourself, Ms Lohse, Mr Watson and Mr O'Shea because you've all listened to it, this phone call, within the space of 18 minutes. So there must've been some discussion about it.---It's possible.

I mean, you're not sitting in the same office together?---No.

10 Why were you all so remarkably interested in a contraband find of 0.2 grams of, what was so remarkable?---I don't actually recall this happening so I'm not sure what the context of the conversation may or may not have been.

Well are you able to explain why a wing officer like Ms Lohse, yourself, someone from SOG and the general manager, are you able to explain why you would all be listening to this phone call within the space of 18 minutes?---No.

20 Well one explanation would be because you all had an intense interest in the fact that he was denying the contraband was his. Do you accept that?---I accept that's a theory you have, yes.

THE COMMISSIONER: What's your theory?---I, I don't recall that happening so I'm not sure what the conversation or anything else, interest, would be.

MR DUGGAN: But you accept that it did happen, that you're all listening to this call within a short space of time?---The transcript says that.

30 Do you deny that this is correct?---No.

So what's your explanation for it?---I, I don't actually recall it transpiring, so I can't offer you one.

Do you have any knowledge or understanding of this contraband being planted on Mr [REDACTED] No.

40 Do you accept that the contraband appears to be found in suspicious circumstances?---No.

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

You don't think it's suspicious that you had officers searching for a weapon and that contraband was found in a puffer?---No.

And that when the inmate calls his father about point two grams of bupe, which would be a fairly common occurrence in a correctional centre I suggest?---Yeah.

When he's telling his father about that you have the Intel manager, an SOG officer, a wing officer and the general manager of the centre listening to the call about it within 18 minutes. That's suspicious, isn't it?---I don't have an explanation for it.

No.

10 THE COMMISSIONER: I tell you, Mr McMurtrie, what's concerning me, and might we just have a look at page 9 of Exhibit 45. Now, that's a report you've been shown a little earlier which falsely claimed that during an informal interview an informant stated that there was a large quantity of Suboxone in a cell occupied by [REDACTED]. And you've told us that that report was false. I asked you a little earlier today how concerned were you by the evening of 19 February 2014 in relation to what you had done and I suggested a scale of 1 to 10, and as I recall your evidence you said you were very concerned. Do you recall that?---Yes.

20 Can I suggest that your concern was that it might be discovered at some point a little later that you had not received information that you have referred to in your report and that there would be or there could be a large quantity of Suboxone in [REDACTED] cell. That was a concern, wasn't it - - -? ---Yeah.

- - - that they might find out later that you'd been fibbing?---Yes.

30 One thing which might suggest that your report was truthful, do you agree, was if Suboxone was in fact discovered in Mr [REDACTED] cell, it would lend credibility to your report, wouldn't it?---I don't believe so, no.

Well, it would suggest wouldn't it that the information that you say you received on 19 February, 2014, was credible because Suboxone was actually found in the cell. Do you agree with that?---The day of the search if they'd have found a weapon would have substantiated what we were there for.

I'm talking about your report - - -?---It can be seen that way.

Yes, it can be seen that way, can't it.---It can.

40 And indeed can I take you to what you said in your intelligence report, which is Exhibit 45 at page 160, you've got that heading there, Local Analysis, and you were taken to parts of that, but in the last sentence under that heading it says, "The information indicating that [REDACTED] had possession of Suboxone is confirmed."---Yes.

So what you were doing there, can I suggest, was stressing the fact that what had been disclosed in your report of 19 February was obviously true? ---That's what that indicates, yes.

And you were endeavouring, weren't you, to add credibility to the report that you knew was false?---Yes.

Bearing in mind your obligation to tell the whole truth, did you, or anyone to your knowledge, plant that tablet in Mr [REDACTED] puffer?---No.

10 So I suppose you'd say that it was just complete coincidence that you had falsified a report suggesting that Suboxone might be found in his cell on the 19<sup>th</sup>, and in fact it was found on the 20<sup>th</sup>, it was just coincidence?---Yes.

How did you know it was Suboxone at the day of this report, which I think from memory was dated 21 February. How did you know it was Suboxone?---It was the tablet style, it was common.

Had it been tested?---No.

20 It could have been a Panadol, couldn't it?---It wasn't a Panadol, but yes, it could have been other - - -

Yes. But certainly, you couldn't have known, can I suggest, as at the 21<sup>st</sup> of February, 2014 that the substance in his possession was Suboxone.---No.

Why did you put it in there?---Because by all accounts it looked like Suboxone.

30 Yes. But one reason you put it in there was to invest your report on the 19<sup>th</sup> of February with credibility so that it was less likely that anyone would question what you had said on that day.---Yes.

All right. Yes, Mr Duggan.

MR DUGGAN: Thank you, Commissioner. Do you know what became of the contraband that was found in Mr [REDACTED] puffer?---It would've been placed into an exhibit bag and into the MOS's drug safe, or it should have been.

40 And you would have known at the time that there was a policy for contraband finds to be destroyed promptly or as soon as possible?---No.

You weren't aware of that?---(No Audible Reply)

Did you, were you ever a witness or a person who was responsible for destroying contraband?---Yes.

Was that part of your duties?---The manager of security and an executive officer had to be there to witness, so I did it quite often, yes.



Usually with a contraband find, I think you said that, and I'm paraphrasing now, that if there was a large quantity it might be a criminal offence, or if it was a smaller quantity it was a contravention. I think you might've given some sort of evidence like that?---Depending on what was found. The police generally didn't have interest in small amounts of tablet items.

All right. But were you aware that there was a policy of contacting police to see if they were interested?---No.

10 You weren't aware of that policy?---No.

Can I take you to, I want to take you to an exhibit book entry. You're aware that there was an exhibit book kept in relation to exhibits that went into the MOS safe?---Yeah.

And that if there was a drug find, that's where you would record the exhibit?---Yes.

20 This relates to a contraband find on an inmate [REDACTED] in Unit 3 on the 19<sup>th</sup> of February, 2012. Do you see those details?---Yes.

And it says "0.2 grams of bupe concealed in packaging, small yellow package." There's an IRM number and an exhibit bag number. Do you see that?---Yes.

And this appears to be receipted by Mr Taylor on the 19<sup>th</sup> of February. ---Yes.

30 And then you seem to be disposing of it on the bottom right corner in the disposal details. Do you see that?---Yes.

Is that your, that bottom right box, is that your handwriting?---Yes.

And there's your initials next to McMurtrie?---Yes.

And is that to your understanding Mr Peebles' initials below your name? ---Yes.

40 Do you have any recollection of Mr [REDACTED] bupe find?---No.

I see it was point two grams. Is that a common-sized find for buprenorphine?---They vary.

Is point two grams common?---Oh, without going back through all the exhibits I wouldn't be able to tell you.

They're usually not sizeable finds I'd expect?---No, not usually.

And at that time was it common for finds to be in tablet form as opposed to wafer form?---Yes.

And sometimes the tablets would be partly or wholly crushed up?---Yes.

I just want to take you to the next exhibit book entry. You see there that that's an entry in relation to Mr [REDACTED] on 20 February, 2014. Do you see that?---Yes.

10 And again it's point two grams. Do you see that?---Yep.

And you appear to have disposed of this item as well.---Yes.

And this item appears to be disposed on 3 May, 2014, which I can take you back to it if you need to, but that's the same date that Mr [REDACTED] drug was disposed of. Is it common for buprenorphine to be disposed of by flushing?---Yes.

20 And by flush, do I assume we're talking about flushing down the toilet?  
---Hot water flushing was the advice we got from pharmacy on disposal.

All right. And so where would the flushing take place at Lithgow?  
---Usually a toilet area in L Block.

In a toilet area in the bathroom are you talking about?---Yes.

Do you recall attending the bathroom with Mr Peebles to dispose of this on 3 May, 2014?---Oh, not that particular one but I can remember doing it a number of times, yeah.

30 Now, is your evidence that point two grams was particularly common or was not particularly common?---I don't know what's common and not without going through it all.

I want to suggest to you that there's a policy that contraband finds be destroyed promptly and almost immediately. Do you accept that?  
---I wasn't aware of that, no.

40 THE COMMISSIONER: I think you can assume that there was such a policy, whether or not you knew about it, there was.

MR DUGGAN: I can take you to the policy if you need me to. Can you assume that there was that policy. Are you able to explain why two finds of point two grams of bupe, one on the 19<sup>th</sup> and one on the 20<sup>th</sup>, would have been disposed on [sic] by yourself and Mr Peebles on the very same day many weeks later?---No, and I don't know how many others were on that day either.

Does that strike you as a coincidence that those two finds were disposed on that same day?---No.

If I was to suggest to you that Mr [REDACTED] was never charged in relation to this find, that would strike you as irregular?---Yes.

10 And particularly in circumstances where Mr [REDACTED] who was found with the same amount of bupe allegedly, was disciplined for that offence. You'd stand by your evidence I assume. Now, I think you've said a number of times that after you fabricated your report you really wanted to distance yourself from Mr [REDACTED]. Is that a fair summary?---From the whole event, yes.

Yes. And you wanted to, putting it colloquially, bury your head in the sand and hope that it didn't come back to bite you, if I can put it that way?---Yes.

And were you aware that Mr [REDACTED] left Lithgow not long after the event? ---No.

20 You weren't aware that he left Lithgow on 22 February?---The compulsory examination I become aware that he, the day that he left.

THE COMMISSIONER: He left on the 22<sup>nd</sup>, didn't he?

MR DUGGAN: 22 February.

THE COMMISSIONER: Yeah, I think so.

30 MR DUGGAN: So, only a matter of days after you fabricated your report, he was moved out of the centre?---Yes.

THE COMMISSIONER: Do you know what the expression "Shanghaied" means?---Yes.

What is it?---Well, it wasn't a Shanghai. As I explained before, it was a common sense decision to have the separation there.

40 MR DUGGAN: I just want to take you to your intelligence report. And just before I do that, so can I assume from the fact you weren't aware that Mr [REDACTED] had or had not been moved out of Lithgow, you just didn't have any further concern about him after 21 February?---I knew he'd been moved but I wasn't aware of any timing because I wasn't tracking it for timings or didn't know when that was transpiring.

And you didn't know where, I assume?---No.

But as I understand your evidence, you want to distance yourself from Mr [REDACTED] and this event, and so I assume from that that you made no further

enquiries or surveillance or had anything to do with Mr [REDACTED] after that point?---Not that I recall.

Can I take you to your intelligence report which is at page 157, and it's page 162 that I want to take you to. I just want you to clarify something for me. I'd assumed earlier that you were responsible for this assessment information but I think you said Corrections Intelligence was? Or is that - - -?---Yes.

10 And so, just so I understand the process, you file your report, it's assessed and then is it sent back to you or do you become aware of the assessment? How does it work?---You can look it up.

You received notification of an assessment, is that - - -?---It's submitted and if you go back and check you can actually find the assessment part of it.

So, you'd have to check? You don't get an alert. Is that - - -?---Yeah.

20 Yes. All right. So you see the second last paragraph here, it says, "[REDACTED] has now been moved from Lithgow Correctional Centre to the MRRC." You see that?---Yes.

With an alert placed on OIMS indicating he is not to be housed at Lithgow. Do you see that?---Yes.

30 Now, I don't need to go into the reasons for that, but if we go to page 165 there's a review date and a verification date, 10 March and 11 March. Is 10 March when you would have been able to view the assessment?---I believe so.

Now, I just want to take you to some, to another call log. Now, again, there's a MIN number on the left hand side and you can assume from me that that's Mr [REDACTED] MIN number. Again, date and time listened to call, serial number of the person logging in, description of a time listened and the date of the original call. And then, now, the parameters that have been entered is such that this is only printing out the calls that you have listened to of Mr [REDACTED] Do you understand what I'm talking about?---Yes.

40 So, for example, on 20 February you've listened to Mr [REDACTED] call being made on that day, which was saying, "I've been flogged by the squad," et cetera. That's 20 February call, so you've listened to that six/seven times perhaps and I assume you had, within a quick space of time, I assume you had some interest in listening to that call for the purposes of reporting, is that an accurate - - -?---Yes.

Do you recall why you would have been listening six or seven times to that call on the 20<sup>th</sup> of February?---No.

And then the next one, at about line 7, if you look at the second last column, the 21<sup>st</sup> of February in 2014 at 10.41am, now that is the denial of the drug charge, and on the 21<sup>st</sup> of February, I took you a moment ago to that, listening to that call at 1.04. And then if you go down a couple of lines, there are two calls on the 12<sup>th</sup> of March, 2014 which you've listened to on the 23<sup>rd</sup> of March. Are you able to explain why you'd be listening to Mr [REDACTED] calls from the MRRC?---No.

You have no explanation for that?---No.

10

And, in fact, it's not just the two calls on the 12<sup>th</sup> of March that you've listened to. On the 23<sup>rd</sup> of March, you also listened to a call on the 10<sup>th</sup> of March and then again on the 23<sup>rd</sup> of March and 23<sup>rd</sup> of April, you're listening to other calls that he made. You're taking a substantial interest in Mr [REDACTED] telephone calls, aren't you?---Yes.

THE COMMISSIONER: What's the reason for that, Mr McMurtrie?---I'm not sure, I don't know.

20

It's a bit unusual, isn't it?---It is.

MR DUGGAN: The only explanation I can think of is that you're monitoring his calls to see if he's going to make a formal complaint about the assault or the drug plant or both. Is that a fair explanation?---I'd say that's a reasonable assumption looking at that.

Is that why you were monitoring his calls?---I'm not sure. I don't, I don't remember but it's a reasonable assumption.

30

And why would you be monitoring his calls to see if he was going to be making formal complaints about those two matters, including the drug find?---The initial one because I'd provided the false report in relation to it.

Did you have discussions with anyone else about the fact you were listening to his calls at MRRC?---I don't believe so.

Did you have any discussion with anyone else about your concerns about whether a formal complaint would be made?---No.

40

What about with, are you sure about that?---Not to my recollection.

What about any conversation with Mr Turton?---Definitely not.

Definitely not, you didn't get along with Mr Turton?---Not at all.

Can I suggest that around 2015 you had a conversation with him in the MOS office, a wide ranging conversation about all sorts of things, and I think it's fair to summarise Mr Turton's evidence to suggest that you were

very unhappy during the conversation, not with him but a range of matters, and you said to him, "That fucking O'Shea, after all I've done for that cunt with [REDACTED] everything I've done and he wants to dump me."?---No.

You didn't say that to Mr Turton?---No.

Are you sure about that?---A hundred per cent.

10 Where would Mr Turton get this idea from?---I don't know.

But that's a conversation you'd remember, surely.---If I would have made it I would have, yes.

So you deny that, do you?---I deny that.

20 The thing I'm having difficulty with, Mr McMurtrie, is that you seem to have put yourself in a position where you're fabricating a report to protect someone in circumstances where they didn't really seem to need protection. A slip and fall, they didn't need protection. You're not protecting anyone else, are you?---No.

You're not, you weren't directed by anyone else to fabricate this report?---No.

You had a compulsory examination with the Commission. Do you recall that?---Yes.

30 And it was made very clear to you, wasn't it, that you had an obligation to tell the truth and if you didn't you'd be in trouble?---Yes.

And there are a lot of things you've told us today, in particular the fabrication of your information report and your intelligence report, that you obviously didn't disclose in that compulsory examination.---Yes.

Why now?---I've got to a point where I dug myself a hole that big to get out of and at that point I thought hopefully it would go away, if the other stuff stood up it would just go away and not impact me, would be the honest answer.

40 You're no longer with Correctives.---No.

Has that made it easier?---It's made it a lot easier.

Why is that?---Because I don't have to go in after giving evidence, in that workplace or be, have any involvement with that at all now.

And is that, what would happen if you did go into the workplace and, after having given evidence, the evidence that you have today?---Things may or may not be said but you'd certainly be ostracised.

THE COMMISSIONER: Put on the dog?---Possibly.

MR DUGGAN: You accept that it wasn't just you who conspired with Mr Walker to fabricate these reports?---Yes. Yes.

10 I just want to take you back, I think I did and I won't be much longer, I did ask you about this earlier I think but I just want to revisit it. Page 70, so this email contained your information report that, the fabricated report.---Yes.

And it's been sent to Mr Peebles at 12.25pm. And just to orientate you with the timing, Mr Walker doesn't email his incident report back to you until 12.59pm. Why are you, and as I understand it you had an involvement with Mr Walker or with his fabricated report, why are you sending it to Mr Peebles at 12.25pm?---Because they were going to compile their reports from the IAT and I put that forward so that that would, I guess, collaborate  
20 their story.

But Mr Peebles isn't with the IAT.---No.

THE COMMISSIONER: He wasn't on duty, was he?

MR DUGGAN: He was on the 19<sup>th</sup>.

THE COMMISSIONER: He was on the 19<sup>th</sup>, yeah.

30 MR DUGGAN: He was acting, sorry, he was the manager of security but he was on detached duty that day and Mr Taylor was acting up. Is that your recollection?---I believe so.

So why not send it to Mr Taylor?---Because Mr Walker said that they were going to send their reports through and send them to Mr Peebles.

So Mr Walker said you need to send this to Mr Peebles?---Yes.

40 Why did Mr Walker say send this to Peebles?---I don't know.

Do you have any knowledge or understanding as to whether Mr Peebles was aware of the fabricated, the fact that the report was fabricated?---Not to my knowledge.

I have no further questions.

THE COMMISSIONER: Just one matter I wanted to raise.

MR DUGGAN: Yes.

THE COMMISSIONER: Can we go to page 221 from Exhibit 45? I just want to ask you some questions about the process.

Now, that's described as a misconduct report and it seems to have been prepared by Alan Murdoch. Do you agree?---Yes.

10 What's the purpose of these documents, misconduct reports?---Misconduct is when there's a breach of the rules, or - - -

Okay. And do they normally form the basis of an internal charge?---They do.

20 And this one says, "I, Alan Murdoch, correctional officer, inform the general manager that inmate [REDACTED] has, in my view, committed the following correctional centre offence." Now, was that standard practice for the general manager, in this case Mr O'Shea would receive these misconduct reports?---No. It's the general addressing of it, the process was, well at Lithgow that they'd go to manager of security.

Yeah.---And he'd have his dep clerk put a package together with the misconduct report in it for the charge to be read.

And would that go to the general manager?---No. It would go to an executive officer to go and conduct the misconduct.

All right.---Make a recommendation and then it would be signed off.

30 All right. Now, you'll see there's a little bit further down, it says the inmate has not been locked in his cell pending adjudication. Why wouldn't he have been locked in his cell pending adjudication, do you think?---Because that term of reference is if you've locked them up for a security reason in the interim until the misconduct is read.

40 Right, okay. And when you say it would go to an executive officer for adjudication, what level are you talking about?---Each centre should have an instrumented delegation, where the general manager actually nominates staff with authority to read these on behalf of the centre, and that would normally be senior assistant superintendent.

And can you remember at Lithgow who that would have been in 2014? ---Mr Taylor, Mr Turton and Mr Ashcroft and other staff that acted into that position, AS's were, I think, also included.

So if they were acting up they could do it?---Correct.

Okay, thank you. Now, Mr Madden, have you got - - -



MR MADDEN: I have no questions, Commissioner.

THE COMMISSIONER: No questions.

MR WILLIS: I have no questions, Commissioner.

THE COMMISSIONER: Does anyone have any questions?

10 MR HARRIS: Just one please, Mr McMurtrie. My name is Harris for Mr Taylor. Earlier today in your evidence you said that in relation to this search on the 20<sup>th</sup>, this is the second day of the subject of this inquiry, 20<sup>th</sup> of February, 2014, you've indicated Mr Taylor organised the search. Do you remember being, given evidence to that effect?---Yes.

Yeah. Where do you get that information from?---My recollection is that it was myself in Mr Taylor's office and Mr Kennedy, and the contents - - -

20 I'm sorry. He was acting manager of security that day, wasn't he? Sorry to interrupt you.---Yes.

Okay. Isn't it the case, in fact, that Mr Taylor had been excluded from the search that day specifically?---Not to my recollection, no.

There was evidence given to the effect that Mr Turton was effectively sidelined. Do you remember that earlier today?---Yes.

30 Yes. Is it the case that that was the position in relation to Mr Taylor as well?---No.

All right, thank you.

THE COMMISSIONER: Mr Taylor.

MR TAYLOR: Thank you, Commissioner. Mr McMurtrie, my name is Taylor, I appear on behalf of Mr Walker. Would it be fair to say in summary your creation of this fabricated information report was done for the benefit of Mr Walker?---Yes.

40 Were you a particularly close friend of Mr Walker as at February 2014? ---We were work colleagues.

But you weren't a particularly close friend of his, were you?---No.

And after the 19<sup>th</sup> of February, 2014 when you say you had a telephone conversation with him, I think was the first contact with him on that day? Is that correct?---What date was that, sorry?

19 February, 2014.---Yes.

After that date, did you have any other conversations with Mr Walker about this incident, that is the incident involving Mr [REDACTED] Not to my recollection.

Are you absolutely sure of that?---Not that I can recall.

10 When you say you don't recall, does that mean that it's possible that you had one or more conversations with Mr Walker after 19 February about the [REDACTED] incident?---Oh, it's possible but I don't remember.

Well, is that truthful evidence?---It is.

You just have no recollection at all of speaking to Mr Walker about fabricating a report for his benefit after the event?---No.

20 I want to suggest to you that's just incorrect. Would you agree with that or not?---Disagree.

Did you have a conversation with Mr Walker about who he should obtain reports from about the 19 February incident?---No.

You didn't tell him just to get statements from the IAT officers?---No.

30 Did you have a subsequent conversation with Mr Walker in 2015, when the internal investigation was under way, in respect of the location of the CCTV footage from the day room on 19 February, 2014?---I believe he asked about the CCTV.

He asked you?---Yes.

You had a conversation with him about that?---Yes.

Why didn't you recall that a short time ago when I asked you about any conversations you had with him?---I thought you were meaning in relation to the particular time, the date.

40 So, you had at least one other conversation with him after 19 February?---Yes.

What was the content of that conversation?---He asked about the CCTV.

And what did you say?---I said, "It wouldn't be available because it would have written over itself."

Was that the first time that you had mentioned to him that the CCTV footage would not be available to the investigative team?---Yes.

Or someone looking into the incident?---Yes.

You have a specific recollection of that?---Yes.

10 Did you have a conversation with Mr Walker about the still photographs? You remember being asked questions about the IRM making reference to still photographs?---No.

You have no recollection of any such conversation?---No.

Now, did you at any stage have a heated discussion with Mr Walker about this incident after 19 February, 2014?---No.

So, the conversation you do recall in 2014 wasn't a heated discussion? ---No.

20 He wasn't concerned about that investigation going forward?---Not with me, no.

You didn't say to him at some stage, this is, sorry, he didn't say to you at some stage during that conversation, "This is going to blow up and I'm the one who's going get sunk"?---No.

Do you recall words to that effect being said to you by Mr Walker, sometime in 2015?---No.

30 I want to suggest to you that he did say that and you replied, "Oh, it's all right, mate, don't worry it. They're not going to get the footage from the day room either." Do you remember any such conversation along those lines?---No.

I want to suggest to you that that actually took place. Would you agree with that or not?---No.

40 Were you aware on 19 February, 2014, that Mr Walker prepared a draft report, which he sent through to you?---Yes.

Which was unsigned?---Yes.

And then you received a subsequent report that was signed by Mr Walker? ---I believe so, yes.

Did you have any conversation with Mr Walker in between receipt of the draft unsigned report and the signed report?---I believe we had a conversation and asked if his, that report was okay.

And did you have any idea why he was asking you if the report was okay, if you knew nothing about what had gone on?---Because I had to put the header part on it to justify the entry.

That's the first paragraph of that document?---Yes.

Yes, thank you, Commissioner.

10 THE COMMISSIONER: Yes.

MR EURELL: Sir, my name is Eurell. I represent Mr Duncan, Elliott Duncan.---Yes.

Just following on from something Mr Taylor asked you, just clarify, when you say IAT, when you refer to IAT are you referring to Mr Graf, Mr Duffy, Mr Duncan and Mr Walker?---No.

20 Who are you referring to?---Mr Walker, Mr Duncan and Mr Graf.

I'm sorry, I couldn't hear you, sir.---Mr Walker, Mr Duncan and Mr Graf.

Okay. Just following on from something you were asked by Counsel Assisting, is it your position that you had no conversations with Mr Graf and Mr Duncan prior to them entering the cell on the 19<sup>th</sup>?---Correct.

That is to say they weren't told why they were going in by you?---No.

30 And you've had no conversations with them after the 19<sup>th</sup> after they came out of the cell as to what occurred?---No.

And just finally, do I understand correctly that the report chain here would be you to Walker, Walker to Duncan, Graf and Duffy?---Yes.

Thank you, sir, thank you.

THE COMMISSIONER: Is there anyone else apart from Mr Dunne who wants to ask questions? No.

40 Can I just raise something with you which I should have raised earlier. When one prepares a use-of-force package, is there a requirement that any CCTV footage goes with it?---It's ah, if there's any evidence in there it's an element of it.

All right. And when you say evidence, what do you mean by that?---Well, if there's a use of force inside a cell you wouldn't need the day room, it wouldn't depict anything that would be useful in that particular use of force.

But did you look at the CCTV footage to see whether in the day room there was anything in it?---I don't believe I did.

Okay. And I think it's your evidence that you didn't – sorry, whose role is it to look at it, is it yours?---If directed to they would usually throw it to me to peruse, yeah.

10 And was your practice to download it and burn it onto a disc?---If that was what they requested, yes.

Okay. Thank you. Mr Dunne?

MR DUNNE: No questions.

THE COMMISSIONER: No questions.

MR DUGGAN: Commissioner, in my submission Mr McMurtrie shouldn't be released from his summons at this point, but I don't have anything  
20 further for him at the moment.

THE COMMISSIONER: He should not be released.

MR DUGGAN: Should not be released.

THE COMMISSIONER: Okay. That means that you're free to go but you may be required to come back, hopefully not, and as soon as a decision is made one way or the other you'll be notified.---Yes.

30 So the summons that you've been served with continues to apply, but you don't have to come back unless and until somebody says you do.---Okay.

And I would hope that decision can be made pretty soon so that you know where you stand.

Now, there's no further witnesses today?

MR DUGGAN: No further witnesses, but can I tender – and Mr McMurtrie can be released.

40

THE COMMISSIONER: You can stand down if you like, Mr McMurtrie.

THE WITNESS: Thank you.

**THE WITNESS STOOD DOWN**

**[3.28pm]**

MR DUGGAN: I asked some questions about a second call log and I tender that document. It's a call log in relation to calls between Mr – sorry, listened to by Mr McMurtrie and Mr [REDACTED]

THE COMMISSIONER: We'll mark that as Exhibit 83.

10 **#EXH-083 – LOG OF CALLS LISTENED TO BY BRIAN  
MCMURTRIE FROM 20 FEBRUARY 2014 TO 23 APRIL 2014**

THE COMMISSIONER: Now, who's being called tomorrow?

MR DUGGAN: Mr Kennedy and Mr Peebles.

THE COMMISSIONER: Okay. And is there any material that should be on the restricted website that's not there as yet?

20

MR DUGGAN: Nothing springs to mind, but in the next 10 minutes I'll give it some thought and if there is I'll make sure that an email goes out in the next half an hour, but nothing springs to mind.

THE COMMISSIONER: Okay. All right. Thank you. I'll adjourn. No I won't, not yet.

MR BRASCH: Just briefly, Commissioner. Commissioner, you raised with me this morning the issue and your Commission may be aware already, but that material was provided to Commission staff during the morning adjournment this morning.

30

THE COMMISSIONER: Thank you.

MR BRASCH: On a USB disc, drive. Yesterday also I indicated I wanted to get some instructions for a document which Counsel Assisting tendered. I can't remember the exhibit number but there's no objection to that being tendered, although there is, I think at the bottom, at the second page some personal details and personal phone numbers of a particular officer, maybe they can be redacted.

40

THE COMMISSIONER: Do you know what document we're referring to, Mr Duggan?

MR DUGGAN: No sorry, I was having a conversation with Mr Dunne and so I missed the beginning of that.

MR BRASCH: It was an internal memo, it was a memo regarding policy to do with the searches, I think.

MR DUGGAN: The Assistant Commissioner's memo?

MR BRASCH: Yes.

MR DUGGAN: There's no need to have the personal details - - -

10 THE COMMISSIONER: Well, perhaps you can have a discussion with Mr Brasch and just isolate the document and make sure that any necessary redactions are made. It hasn't been tendered yet, of course.

MR DUGGAN: Well perhaps we can tender a redacted copy and that will solve the suppression issues.

THE COMMISSIONER: Okay. Mr Willis?

20 MR WILLIS: Commissioner, I might be just unavoidably five minutes late tomorrow morning, would you excuse me for that?

THE COMMISSIONER: Of course, yes, not a problem at all. Thank you.

MR EURELL: Mr Commissioner, I should indicate further to what Mr Willis just said, Ms Fishburn will be back in my stead tomorrow for Mr Duncan.

30 THE COMMISSIONER: Okay. Just give me one moment, that's fine. We'll adjourn.

**AT 3.32PM THE MATTER WAS ADJOURNED ACCORDINGLY  
[3.32pm]**