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INDEPENDENT COMMISSION AGAINST CORRUPTION

STEPHEN RUSHTON SC
COMMISSIONER

PUBLIC HEARING

OPERATION ESTRY

Reference: Operation E17/0345

TRANSCRIPT OF PROCEEDINGS

AT SYDNEY

ON THURSDAY 31 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: Mr Peebles, are you going to take an oath or an affirmation?

MR PEEBLES: An affirmation, Commissioner.

MR MADDEN: He'll take an affirmation and he'll ask for a section 38 declaration, Commissioner.

THE COMMISSIONER: Of course.

THE COMMISSIONER: Mr Madden has probably explained to you already what I'm about to explain to you concerning your rights and obligations. As a witness you must answer all questions truthfully and you must produce any item described in your summons or required by me to be produced during the course of your evidence. The section 38 declaration that I'm about to make would have the effect that any answer you give or
10 any item you produce to me during the course of your evidence can't be used against you in any civil proceedings, or, subject to two exceptions, any criminal or disciplinary proceedings. The first exception that this protection does not prevent your evidence from being used against you in a prosecution for an offence under the ICAC Act, including an offence of giving false or misleading evidence. That's the most important point. The penalty for such an offence can be significant, it can be imprisonment for up to five years.

20 Are you a current serving corrections officer?---Yes, Commissioner.

The second exception applies to you also because you're a New South Wales public official. Evidence given by a New South Wales public official may be used in disciplinary proceedings against the public official if the Commission makes a finding that the public official engaged in or attempted to engage in corrupt conduct. Do you understand that?---Yes, Commissioner.

30 Pursuant to section 38 of the Independent Commission Against Corruption Act, 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, I DECLARE THAT ALL ANSWERS GIVEN BY THIS WITNESS AND ALL DOCUMENTS AND THINGS PRODUCED BY HIM DURING THE COURSE OF HIS EVIDENCE AT THIS PUBLIC INQUIRY ARE TO BE REGARDED AS HAVING BEEN GIVEN OR PRODUCED ON OBJECTION AND THERE IS NO NEED FOR THE WITNESS TO MAKE OBJECTION IN RESPECT OF ANY PARTICULAR ANSWER GIVEN OR DOCUMENT OR THING PRODUCED.**

THE COMMISSIONER: Yes, Mr Duggan.

MR DUGGAN: Thank you, Commissioner. Commissioner, before I ask any questions can I tender a document, please. I referred to it the other day in relation to another witness. It's an Assistant Commissioner's memorandum in relation to discovery and disposal of suspected prohibited substances.

THE COMMISSIONER: Yes.

10 MR DUGGAN: Mr Brasch had some concerns about the contact details on the second page, but I can indicate that they'll be redacted when the exhibit goes up on the public website.

THE COMMISSIONER: All right. Well then on that basis I mark that Exhibit 84.

20 **#EXH-084 – MEMORANDUM FROM ASSISTANT
COMMISSIONER WILSON TO CSNSW EXECUTIVE
COMMITTEE & OTHERS RE: CHANGE OF POLICY:
DISCOVERY & DISPOSAL OF SUSPECTED PROHIBITED
SUBSTANCES DATED 21 FEBRUARY 2013**

MR DUGGAN: Thank you, Commissioner.

30 THE COMMISSIONER: Something I should also raise generally with everyone, it looks as though we are going to go over into Monday. I would hope we finish then but if we don't, we're going to go into Tuesday. I can see some concern there but let's see how we go. If need be we might have to sit a bit later on Monday if there are problems, but we're just not going to finish today. We're not sitting tomorrow as I indicated initially.

MR MADDEN: I'm part heard at another Commission on Tuesday.

THE COMMISSIONER: Are you? All right.

MR MADDEN: I guess it depends where we ended up on Monday.

40 THE COMMISSIONER: Yes, it does. It really does, doesn't it?

MR MADDEN: Yeah.

THE COMMISSIONER: Does anyone else have problems on Tuesday apart from Mr Madden that they know of at this stage?

MR GREENHILL: I was going to drive to Goulburn for a matter on Wednesday but I could leave early Wednesday morning for that.

THE COMMISSIONER: Wednesday's no problem. I think we should finish on Tuesday. Mr Duggan, do you agree with that?

MR DUGGAN: Yes.

THE COMMISSIONER: If we don't finish Monday, we'll finish Tuesday?

MR DUGGAN: Yes, I hope so. Yes.

10 THE COMMISSIONER: Mr Madden, is your matter an all-day matter?

MR MADDEN: I don't think it will be, no.

THE COMMISSIONER: All right.

MR MADDEN: Well, you know what the commissions are like, I don't really know. I don't think it would be an all-day matter.

20 THE COMMISSIONER: Okay. Well, just have a think about it and we may be able to adjust the times to suit you. We'll leave it at that one for the moment. Yes, Mr Duggan.

MR DUGGAN: Mr Peebles, what's your current rank?---I'm governor.

Of - - - ?---Macquarie Correctional Centre.

Thank you. And in 2014?---I was a manager of security at Lithgow.

30 All right. And how long have you been in Corrective Services?---Thirty years.

All right. And in 2014, how long had you been at Lithgow?
---Approximately six months. I think I did about 10 or 11 months there all up.

All right. Had you previously done a stint at Lithgow or was that your first?---No, no.

40 In terms of your working life at Corrective Services, had you come across Mr O'Shea before?---Yes.

And did you know him well when you went to Lithgow?---Yeah, I knew him quite well.

All right. And what about Mr Kennedy?---Yeah. I knew Mark quite well as well.

All right. Mr McMurtrie?---No, I only really encountered Mr McMurtrie when I started at Lithgow.

All right. What about Mr Mick Watson of the security operations group? As I understand it, he's not limited to Lithgow and that group works in a number of centres. Had you come across him before?---I knew of him, yeah, I knew him very vaguely, just to say hello to.

10 All right. And in terms of the IAT, Mr Walker, did you know him before going to Lithgow?---I think I may have bumped into him at Bathurst. I really can't be sure.

But certainly not well.---No.

But you came to know him reasonably well, at least in a working capacity, once you got to Lithgow.---Yeah.

20 Yeah. All right. I want to take you to the Exhibit 45 please, at page 1 of the Exhibit. I'm going to take you to a few pages in this document. Would you prefer a hard copy or are you happy with the screen?---No, that's fine, I can see it.

All right. If you need one, one can be provided to you. So this is an email from yourself to numerous officers at Lithgow. A lot of the email addresses have been redacted out but if you can assume from me that there are a number of officers there, including Mr McMurtrie and Mr O'Shea. I think they're unredacted. Do you see that?---Yes.

30 And it's an email, 20 September, 2013, and it's a general email in relation to use-of-force packages and reporting. Do you accept that?---Yes.

And just at a high level, do you recall sending out this particular email? ---Yeah, vaguely, now that I've seen it, yeah.

And I think there were some issues about quality control and this was a reminder, if I'm summarising correctly, of people's responsibilities and obligations with these sorts of packages?---Yeah, I think that was the case.

40 On the first page it refers to, there's a number of bullet points there, it refers to "all involved officers' reports." And that's a reference to things that must be included within UOF packages. Is that, is my understanding correct? ---Yes.

And by all involved officers' reports, is that reference to witness statements?---Yeah, everyone that was actually involved in the use of force at the time.

When you say involved in use of force, do you mean someone who physically had a hand on an inmate or does it also include someone who for example might have seen another officer put their hands on an inmate?
---Yes, yeah, everyone.

So those who put their hands on the inmate and those who saw it.---Yes.

10 And I see there there's a reference to A4 colour photos of each involved inmate and that's another thing that needed to be included in these UOF packages.---Yes.

And I think you indicate there that there are two sides of that coin, you want them there if there are some injuries to document the injuries and you also want them there in case there's some allegation later that there were injuries to exonerate any officer. Is that a fair summary?---Yes, it is.

20 And also there's a reference, the last bullet there, any CCTV footage needs to be included in the UOF packages to be provided by Intel and IAT, so I can assume that that's, in terms of quality control it's another thing that needs to be included in the package?---Yes.

And just going over the page, this seems to be an earlier email, probably six weeks earlier, and most of these email addresses are, sorry, email names are unredacted. So you've sent this email to various people, including Mr McMurtrie and Mr O'Shea. Do you see that?---Yes, I can see that.

30 And here you refer to reviewing the quality reporting and review procedures and make reference to at some point being on the wrong end of an Ombudsman's recommendation. Do you see that?---Yes.

Is that what generated this quality control email or is this just an update reminder?---No, I think it was just an update reminder.

Right. So you didn't have a particular concern in either August or September 2013 about the quality of UOF packages?---Not that I remember. There might have been a general lack of quality at the time.

40 Right. And everybody's being reminded, I see particularly underlined there, "Please note the requirement for photos and please note the police are to be phoned and forms to be faxed." Do you see that?---Yes.

What's the reference to police being phoned?---Well, police have to be phoned on every occasion and advised that there's been a use of force.

Right. And is there a procedure where the details of that conversation are recorded or at least the name of the police officer?---I think at that stage we were using a, basically a fax that went to the police station and I think the police would generally return it with an event number.

Return an event number?---Yes.

So that's a, would that be a COPS - - -?---Yeah.

THE COMMISSIONER: Is that the police stationed within the local area command of the prison?---Yes, Commissioner.

10 MR DUGGAN: Just in terms of witness reports, I think you agreed a moment ago that a witness report would include someone who had seen a use of force. That requirement would apply to all officers in the centre?
---Yes.

So that would include everybody from a junior officer to the general manager?---Yes.

20 If, for example, a general manager saw a use of force, would that affect their reviewing function of the UOF package?---Yeah. They'd have to exclude themselves from it.

They would be conflicted, wouldn't they?---Yes.

Yeah. Have you ever come across that before where the general manager was conflicted from the review process?---Yes, I think I have. Yeah.

And does it stay within the centre or does it go outside the centre in those circumstances?---No, it goes outside the centre.

30 Who does it go to?---Well the general manager would generally request from the director, or others, to review it. I think, you know, I've seen it where the general manager may have been present at times, you know, where a fairly significant disturbance, for instance, you know, where they've made a proclamation and that type of thing.

Sorry, I missed that word.---A proclamation to inmates that are misbehaving, and that sort of thing.

40 All right. What if, we're talking about the review concept at the moment, what if some of these requirements are not met, for example photos are not there, CCTV is not there, there are some discrepancies and the general manager or whoever's reviewing it sees those discrepancies? Is there then some further investigation or is it referred off to PSB, or what's the process?---Well, in the first instance you'd seek out that, the missing pieces. Afterwards I guess it depends on the circumstances that may result in a referral to PSB, it may not, depending on what the circumstances are.

All right.

THE COMMISSIONER: What circumstances would have the effect that it wouldn't be referred? Can you give us an example?---With missing photos, I mean often it was the case there'd be video not taken with a, with a, you know, reasonable explanation, things like that.

What would be a reasonable explanation?---Say an unpredicted fight in the middle of the yard where officers respond and, you know, break up combatants, that type of thing.

10 Right. Yeah, I understand. Thanks.

MR DUGGAN: That may be a reasonable explanation for not having video footage. What about a reasonable explanation for not having still photos? ---Still photos should be taken on every occasion.

Because the spontaneity of the event doesn't affect the - - - ?---Yeah, the still photos are done later on down the track.

20 THE COMMISSIONER: And the same applies to CCTV?---CCTV, you know, if it's in the area.

Yeah.

MR DUGGAN: And with CCTV footage, the CCTV isn't in the cells as I understand it?---No, generally it's not. Only in certain cells, generally the observation type cells and some of the segregation cells.

Yes.---In more modern centres.

30 And often there might be a use of force inside a cell that's not captured on CCTV.---Yes.

But ordinarily there might be a relevant event that can be shown on CCTV in the vicinity, like who was at the cell at a particular time, for example, so would you ordinarily have CCTV even if it didn't capture the precise incident in these UOF packages?---Yes.

40 Just moving further through the attachments to this email you can see, or you maybe saw on the first page that there are seven or eight attachments, which is various precedents in the UOF package, so if you go to page 3, this is the first annexure to the email. So this is a checklist, is it, for officers to use in preparing a UOF package?---Yes, it is.

And so you've got the incident reports, which I assume is the witness reports we were talking about?---Yes.

And then obviously photos attached, you've got a checklist, and then report to police of alleged incident assault, and you've got the Lithgow Police

phone and fax number and the officer's name. So as I understood your evidence a moment ago, the usual practice would be to fax all reports of uses of force to the Lithgow Police?---Yeah. It may have evolved to reporting by phone and taking the event number off the police officer and adding it to the package.

10 All right. You may have said this earlier, but when you faxed it to Lithgow Local Area Command, did you say they faxed back a response with the COPS number, was - - -?---I think that was the practice for a while but I also remember things may have evolved into the fact, you know, it was just reported by phone and the police officer would give the event number over the phone.

All right. But either way, the checklist that you're providing to the officers provides for that process to take place and at least some detail to be recorded.---Yes.

20 And there's a reference also there obviously to IAT discs and CCTV footage, which is self-explanatory. Now, if I can just go to page 7, this is part of the annexures. This is a notification of desire for police not to conduct an investigation. In what circumstances would this form be filled out?---After the follow-up when an inmate's interviewed, if they state they don't want police action, this form would be filled in, signed and sent to the actual police station itself.

Was the procedure to have this signed by the inmate for every use of force? ---Yes.

30 So again if one was reviewing a use-of-force package and this was missing, would you investigate or would you contact, refer it on to PSB?---Well, I myself would just want the form to be completed.

Yes. All right. So you'd ensure compliance?---Yes.

And again the next page, that's a similar requirement, is it, just to enter the details of any actual report which is made?---Yeah, I think that's the form I was referring to as the form to be faxed.

40 Right. And who would, oh, I see, yes, and the details of the relevant officer at the bottom. So who would usually fill that form out?---Usually it's the officer that's compiling the package, say one of the commissioned officers looking after it.

Right. And this is part of a precedent that you have provided to officers, but is there something in the OIMS system which requires you to click yes or no in terms of complying with this process?---I, I think so, yeah.

The police reporting, yes. What's the policy in terms of who is responsible for preparing the use-of-force package?---I'm not sure there is an actual policy. I think it varies from centre to centre. Generally it's one of the commissioned officers looking after the area that would do it.

It's not necessarily the most senior officer present at the incident?---No.

No.---Not really.

10 THE COMMISSIONER: Have you finished with that document, Mr Duggan?

MR DUGGAN: I am, yes.

THE COMMISSIONER: Can I just take you back to page 1? You'll see the last bullet point at one of the items that must be included in the UOF package is a completed registered DVD copy of any CCTV footage, and then you've got bracket, Intel and IAT will provide this. Firstly, where was it registered?---I'm not sure I remember at Lithgow, this was a thing I'd
20 brought across from Wellington but I think it might've been a database kept by the Intel manager.

All right.---It may have been the IAT. Sorry, I just don't recall for Lithgow.

Well, what do, the reference to Intel, is a reference to who?---I'm sorry?

The reference to Intel is a reference to who?---The Intelligence manager.

30 And back in 2014, who was that?---Mr McMurtrie.

And was it your understanding that he was required to, download mightn't be the right word but in some way secure the CCTV footage and put it on the disc?---Yes.

Thank you. Thank you, Mr Duggan.

MR DUGGAN: Thank you. I asked you a moment ago about Mr Walker, Terry or Tex Walker. Did you, in February 2014, did you have any view about his operational style based on your observations?---He was
40 problematic, he was problematic. He, I'd had a couple of experiences with him when I'd be trying to de-escalate issues in the yards with larger groups of inmates, you know, where his comments had done just the opposite, had enflamed things. So I didn't feel he was a very good talker in terms of managing inmates.

All right. And you've referred to de-escalation and I think I've seen in some of the policies where use of force is the last resort.---Yes.

Did he have a habit of going to that last resort, first?---That's a difficult one to judge but he certainly, in his attempts to deescalate things, often made them worse.

THE COMMISSIONER: Was that generally known in the gaol? You made the comment he wasn't a good talker in relation to inmates, was that generally known within the prison?---I think it would've been, yeah.

Yeah.

10

MR DUGGAN: Was he a bit unpredictable?---At different times I think he was. I think, you know, we've already discussed the fact that he suffered from a mental illness which at sometimes was more under control than others, I guess.

Did you also observe him goading inmates, or anything like that?---Not so much goading them, no.

No. Now I want to ask you some questions about the 19th of February, 2014. You recall, I assume, a time in the morning where you attended Unit 5?---Yes.

And did you attend that unit with Mr O'Shea?---Yes I did.

Anyone else that you attended with?---I honestly don't recall.

All right. And what, why were you down in Unit 5? What caused you to go down there?---I don't recall that one either. I, whether it was just Mr O'Shea offering me a bit of a walk, I was doing a, the project job at the time, or whether I was down there on project business.

30

But by project, do you mean the search for more beds in the centre? Is that - - - ?---Yeah. Well I think by this stage I'd found the beds which was, you know, the inevitable double bunking. Lithgow was the first of the centres to go that way when the bed crisis hit and I'm not sure if it was the case on this day, Counsellor, I'm honestly not, but I know one of the contentious issues we had with 5 Unit, we were turning half the unit over to just a general protection type of unit, so rather than the inmates being held in segregation conditions there, they would mix a bit, you know, groups of protection inmates mixing but that led to the issue that there was insufficient yard space for the day. So, that was one of the issues I was dealing with in terms of the project with 5 Unit.

40

And is that why Governor O'Shea would have been there relating to that issue as well or you don't recall?---I can't recall specifics, I'm sorry.

That's all right. Do you recall whether you'd come from M block or you'd been up in Unit 3 or do you recall?---No, I don't. I think I, I, I was working

from the conference room over this period because there was a lot of negotiations with unions and different people from, from around the centre so I think I was working out the front.

All right. When you say out the front, what do you call that building, how do you refer to it?---I'm sorry, I've forgotten.

No, no, that's all right.---It's the gate area, the general office area.

10 Yes, okay, all right.---Yeah.

And had there been any issues in Unit 5 leading up to this point in time?
---Yeah, probably more than a dozen or so uses of force over the summer period. It was a very volatile area. It housed a program at that time referred to as the IVOIP [sic] which is the Individual Violent Offender Program. It wasn't a very successful program. To be quite honest it basically involved clustering a lot of very violent non-compliant offenders in the one area in segregation conditions and attempting to manage their behaviour by access to amenities. And you know, the problem is every time one of these guys
20 misbehaved, according to the program they'd lose something. Really counterproductive. And over that whole summer period there was a lot of, a lot of trouble, very serious trouble. The inmates actually, you know, organised coordinated issues in there to really tax the reserves of staff.

So it's fair to say, or it's probably understating to say there were tensions at the time in 5 Unit?---Look, I think the relevant concern was the fact that we experienced several situations where several affected inmates had stirred the others up as a big group and, you know, resulting in an entire unit basically misbehaving, for want of a better word.
30

You said there were a number of uses of force that summer. Did they involve IAT in particular or just generally?---Again the specifics are a bit hazy but I remember, you know, during the very worst of it we had the SOG there assisting, you know, for quite a few days.

Right. And were there any issues with Mr Walker's operational style during that period, do you recall?---I don't specifically recall anything during that period.

40 So you attended Unit 5. Do you recall a communication coming through on the knock-up system?---Yeah, I do, yeah.

Were you in the officers' station at the time?---Yeah.

Are you able to talk us through what happened there?---Basically it was a bit of a verbal abuse, you know, demands, stuff like that from one of the cells. Mr O'Shea attempted to reply on the knock-up system, I'm not sure if

he was successful. He fumbled it a little bit, and you know, basically what he, he said was, you know, "Shut up."

What do you mean by "fumbled it a little bit"?---I just have a recollection of him bumping the buttons, trying to make them, make them work, so - - -

As in he didn't metaphorically fumble the situation, he fumbled with the buttons.---He literally fumbled the buttons. Yeah.

10 THE COMMISSIONER: Because he was a bit agitated do you think?
---Yeah, probably that, but those that know Mr O'Shea know that's quite in character, trying to operate technology wasn't his forte.

MR DUGGAN: Do you recall him saying anything like, "You're talking to the piper" or something like that?---Look, I don't recall exactly what he said. It was harsh, there's no doubt about that, it was harsh both ways.

Yeah. All right. And was there any resolution to the communication, or it was terminated at some point?---On the knock-up system?

20

Yes. Yeah.---Yeah, it stopped at some stage.

Yeah. All right. And then what happened?---Look, I believe Mr O'Shea went into the day room area.

All right.---And I am really hazy on this because it was years ago, I, you know, I was asked by Mr Grainger and Mr Berry at the time for specific details and I've tried to remember them. Very difficult to know what is my own memories and what's a reconstruction from sitting here listening to the
30 evidence to be quite honest, but yeah, Mr O'Shea definitely went into the day room and I went I think, you know, part of the way in with him. He definitely spoke to the inmates through the, through the door but I don't remember, you know, whether that happened before other officers were there and, you know, I don't remember if there was anyone else there with us at the time when it first started.

So when you say spoke to the inmate, how did he know what cell to go to?
---I think it registers on the, on the knock-up button.

40 Right. Okay.---I think.

So he's gone down to a particular cell.---Yes.

Right. And at that point before anyone else arrives, I assume no one else had arrived at that point?---I honestly don't remember who was there then.

So you do have a recollection of him going down to the door, and you say - - -

MR WILLIS: Well, I object to that, that's not my understanding of his evidence.

MR DUGGAN: Sorry, and I apologise, I didn't mean to say that. You have a recollection of Mr O'Shea going down to the door and you - - -

MR WILLIS: Well, I object to that.

10 THE COMMISSIONER: I thought that was what he said.

MR DUGGAN: So you thought that's what he said?

THE COMMISSIONER: I thought that's the evidence but why don't we just clarify.

MR DUGGAN: I'm happy to clarify. There's some confusion. Did you see Mr O'Shea going down to the door?---Yeah, I did. I'm pretty sure I did.

20 All right. And I thought you said he was communicating to the inmate through the door or words to that effect?---Yeah, there was a bit of yelling being exchanged.

What I'm really trying to find out is whether the door was closed and he was talking through the grille above, or whether the door was open and he was talking through the grille door.---Yeah. Yeah. Look, I honestly don't remember.

30 Right. Mr O'Shea is not a shy and retiring type, is that a fair - - - ?---I'm sorry, Counsellor?

Mr O'Shea is not a shy and retiring type?---No, he's a very gregarious, outgoing personality.

40 And he shouts at inmates from time to time?---Look to be honest he actually had a, you know, in spite of all the evidence you've heard, he actually, he had a very good way with inmates, most of them called him Osh, most of them knew him but yes, he certainly would not hesitate to dress someone down very severely if the situation required it.

All right. And he was agitated, from your observation, after this knock-up call?---Yes.

And did you hear him, or do you recall what he said to the inmate?---I don't recall exact specifics, I'm sorry.

Is it fair to say it was harsh?---Yes.

Is it possible that he said, "You think you're a tough cunt now, you won't be in a minute"?---I don't remember him specifically saying that. I'm sure there were lots of swear words and back and forward between the inmate.

All right. Do you recall or have any recollection of what the inmate was saying?---Look, just a vague recollection of, and excuse my language for the ladies and everything, but the usual "Get fucks" and, you know, that type of thing.

10 All right. And do you have any recollection of IAT being called?---I actually don't recall them being called but I remember they came over.

You were in the day room at this point and so was Mr O'Shea. Do you have any recollection of Mr Taylor being there at this point?---I don't have a specific recollection of it other than, you know, what I've heard in evidence.

20 Yes.---So at that time, I mean I think I was actually in and out of the day room into the office, I think I took a few phone calls, you know, there was a lot going on at that time with the other stuff I was doing, so I just don't remember with Steve.

IAT arrived at some point I assume?---Yeah.

They usually have an office up above 5 Unit.---Mmm.

Do you recall whether they came from that direction or somewhere else?---I honestly don't recall from what direction they came.

30 Right.---Yeah, I don't, sorry.

But do you recall them arriving and being there at some point?---Yeah, yeah, I remember the IAT being there.

And you have a recollection I assume of Mr Walker being there?---Jeez, not specifically at the time. I mean obviously he was.

40 Any other, do you recall any other inmates, inmates, IAT officers, their identity?---I remember the, Mick Watson, the dog. I actually got bitten by one of those dogs once so I was always very careful to stay out of their way. You know, I've got a vague memory that it was Mr Duncan.

He's a pretty big fellow?---He is. I have a memory of Mr Graf, but again, you know, I don't know whether that's a reconstruction from hearing evidence, but yeah.

What about Cameron Watson?---I don't remember Cameron being there at all.

Wes Duffy?---I don't remember Wes.

Whilst the identities may be a little unclear, do you have a recollection of a large group of people being in the room?---Yeah, I do, yeah.

10 Is it fair to say that that's fairly heavy artillery for an incident? You've got three IAT officers, Cameron Watson and Wes Duffy who are IAT-trained, Mick Watson and a dog?---There were a lot of staff there. This is 5 Unit that we're talking about though so, you know, to be quite honest, I think staff were quite hypersensitive about anything that was happening in that unit.

Right.---It was a very, very long summer with the inmates.

Yes. Okay. So would that be a possible explanation for those people attending very quickly from 3 Unit down to 5 Unit if they heard a radio call? ---Yeah, I imagine so, yeah.

20 THE COMMISSIONER: The inmates in cell 208 weren't known to be extremely violent offenders, were they?---I don't think so, Commissioner.

Right. Well, I can understand why you might have, I think you used the word heavy artillery, in circumstances where you've got particularly violent offenders, but if you've got two blokes, two inmates I should say, that aren't known to be violent, why would you have such a big team?---Well, to be honest, I think one of the other witnesses might have actually alluded to it. There was a bit of a tendency to over-use the IAT.

30 Right.---For quite a few years, you know, from the time that they were established. And I'm just trying to think of an example that I can give you, Commissioner, to explain it. You know, in ordinary times before IATs became so prominent, you know, there was generally quite a good skillset amongst staff in dealing with, you know, inmates who are angry, inmates who are demanding, that type of stuff and, you know, and that was the job of the regular wing officer, and we had gotten into a little bit of a pattern, you know, that if someone said boo or, or raised their voice, that type of stuff, you know, the tendency was to, to get IAT over, which was never, you know, what they were really designed for.

40 But here we have a German shepherd as well, don't we?---Yes. Yeah.

That's heavy, heavy artillery, isn't it?---Yeah. And I guess that was just a function of them all being in the gaol and, you know, there was probably a little bit of rubbernecking and stickybeaking and that type of stuff going on.

MR DUGGAN: Do you have any recollection of Mr O'Shea suggesting IAT be called?---I don't, sorry.

You didn't call for IAT to be down there I assume?---I have no recollection of doing that, I'm pretty sure I wouldn't have.

Particularly given your views of overuse of IAT just expressed?---Yeah, they were my views at the time, so - - -

The picture you're painting at the moment is that there's a bit of forceful abuse back and forth between the inmate and Mr O'Shea with some colourful language.---Yes.

10

Both on the intercom and through the grille.---Yeah.

But the door was shut, wasn't it?---Look, I think it was, I just don't remember exactly at that time.

And even if the solid door wasn't shut, the grille was certainly shut.---Yeah, certainly. Yeah.

20 So if you wanted to you could just shut the solid door?---Yeah, yeah. I guess so.

And walk away.---Yes.

So in that sense there wasn't a security threat?---No. Well, only in terms, you know, of the, of the risk of a couple of inmates yelling out and carrying on like pork chops, stirring the others up.

30 Would IAT necessarily help that scenario?---Yeah, look, the presence of the IAT and other officers, yeah, often would pull things up.

What about getting IAT to pull an abusive, verbally abusive inmate out of the day room and give him a dressing down? Would that assist?---What would assist in a situation like this would be to separate the inmates, move them to two different areas, give them time to cool off, then have a talk about it later.

40 Was your understanding, or is your recollection, that there were two inmates yelling out from inside the cell, or just the one?---I have a general notion it was two inmates.

All right. And in terms of the purpose of IAT being there, was it your understanding that it was to get one or two of the inmates out and give them a dressing down?---Yeah, pretty much.

And is that something that you'd seen Mr O'Shea do before?---I don't think so. I could be wrong. Generally, Mr O'Shea would have no hesitation to do that himself. You know, perhaps it's the fact that this was in 5 Unit.

Well the other inmates in 5 Unit, would they have been aware that this inmate was abusing the governor?---I imagine they'd have been aware there was some exchanges going on between staff and inmates. I'm not sure, you know, if they would have known it was the governor.

10 Was it your understanding that the governor wanted the inmates out to effectively teach them a lesson?---I'm not sure what his motive was but, you know, I believe it was just, you know, simply get them out, break the continuum of behaviour, you know, if they were feeding off each other and calm the situation down.

THE COMMISSIONER: Did he say that he wanted these officers to sort it out?---I don't remember the exact words, but yeah it was something to that effect.

MR DUGGAN: IAT certainly weren't there for any search operation?
---Not as far as I'm aware.

20 Is it fair to say that once IAT were in the room and before they went into the cell, is there a fairly high potential for a use of force?---Look that's a subjective judgment and I've thought about it quite a bit. I don't know. Like, often these things as, as far as they go, they deescalate very quickly. You know, when inmates are aware that there's a, you know, a professional team, you know what they call squad officers there, so that's a subjective call. I'm not sure.

What did you think at the time?---I thought that I would like to go and make a few phone calls and get on with my project job, to be quite honest.

30 All right. I can understand that, but did you see them forming up by the cell door? This is IAT.---Yeah. I, I vaguely remember that I stuck around, you know, until they were down at the cell door.

Did it occur to you, I mean I know that you were on detached duty that day but you're usually the manager of security from a compliance perspective. Did it occur to you that nobody had seemed to pull the video camera out?
---Look, at the time I probably didn't think about it that much because I pretty much left. Suffice it to say, though, you know, if I was running a situation like that I would've done it differently I think.

40 But given your rank and position within the centre, and given the fact that you're aware of Mr Walker's operational style and the interaction you've seen between the inmate and the governor, or inmates and the governor, it's clearly a situation where there's a high potential for a use of force. You'd accept that?---Sitting here and looking at it now, yes I accept that.

And what, but not just in hindsight. You were aware of those factors at the time weren't you?---I was broadly aware of the factors. Yeah.

And those factors, if you look at the policy it talks about where there's a high potential of a use of force, those factors equated to a high potential, didn't they?---Look I can't really say yes to that, to me at the time I think it, it registered, you know, as just the inmates being gotten out and spoken to. I didn't really think, you know, it would lead to what it actually led to at all.

10 THE COMMISSIONER: You said a moment ago that you would have done things differently. What would you have done?---I probably would've left it, sorry Commissioner. Yeah. I'm just trying to think what I would have done. I probably would have left it for a while, probably would've went and spoken to them calmly myself, see if, you know, we could, I don't know, apparently it was over a TV or something, I'd have given them a bloody TV if it shut them up to be quite honest.

One of the things I find a bit odd is that if you're going to go and separate two prisoners, the grilles are such that they can be handcuffed before you go anywhere near them.---Yeah.

20 Before going through the door. Is that the usual practice if you're going to separate some prisoners, you get them in cuffs and then you lead them away to wherever you want to take them?---Yeah. With segregation inmates, there was a set protocol for that type of thing.

30 What was it?---Yeah. Yeah. There was, you know, even just for opening the back of the yards to their cells there was a set procedure, yeah, they'd be cuffed, the officer would open, the officer would leave, they'd be uncuffed to have access and these guys on the day weren't segregation inmates so I suppose, you know, then there's another judgment call that has to be made and human fallibility comes into it.

Well that might be, but if you're going to go and essentially pull one of the inmates out, which is the evidence we've heard, there's a potential for trouble isn't there, if they're not cuffed?---Yeah. I guess there's always a potential for trouble, Commissioner.

40 Yeah. And one of the reasons why you have that hole in the grille, one reason is so they can be cuffed.---Yeah. And, you know, for allowing food and things like that to be passed through. Yeah.

Okay. Thanks.

MR DUGGAN: Was another technique to ask them to go to the back of the cell and get on their knees?---Yeah, the, yeah, I think that was standard practice at that time, you know, particularly with segregation inmates.

Yes. But these two inmates, as you say, weren't segregation inmates. ---I don't think they were, no.

So you'd accept that the response at least appears to be fairly heavy-handed?---It's a bit of overkill, yeah.

Did you leave because you thought it was all going to go pretty badly?
---Look, to be honest I'm not exactly sure what my thought processes were at the time. I didn't think it was going to end badly. I was very, very preoccupied with the other job that I was doing and, you know, this had no part of it, so you know, basically there were plenty of other staff there so I left to get back to work.

Did Mr O'Shea leave with you?---I don't remember exactly. I have an idea that he, he, he did.

Isn't it the case that you either beckoned to him to leave or the other way round and then you left together?---Look, I heard that evidence. I don't remember.

But it's possible that that happened?---It's possible. I can't discount it, I just don't recall.

Well, that suggests, doesn't it, that one of the two of you thought that perhaps things were getting out of hand so it was a good time to leave?
---Look, not on my part, Counsellor, to be honest. As I said, I know I had several phone calls and everything there on the day, it may have been something as simple, you know, as needing to attend to some other business.

Was it necessary for you to leave together?---No, I don't think it was necessary for us to leave together.

Do you have any explanation as to why one of you might be beckoning for the other to leave?---No, I'd be speculating. I don't recall it.

Have you seen the CCTV footage of the day room?---From this incident?

Yes.---No, I haven't.

Would you have had access in 2014 to the CCTV footage in your office?
---I know there was a computer station installed in the MOS office at one stage that gave them, you know, a camera view from around the centre. I don't know if it had been installed at that stage. I didn't actually have access to the system of burning things and all that sort of stuff though, no.

No, but if you, there's obviously a difference between watching a live feed of CCTV and being able to watch a replay of something that's happened earlier.---Yeah.

In 2014 did you have the ability to view the CCTV from earlier in your office?---I don't remember whether I had the ability to. I certainly wouldn't have known how to.

Have you ever seen the CCTV footage of 19 February?---No, I haven't, Counsellor.

Have you ever heard any discussions about what was on that footage?
---No, I haven't, to be quite honest.

10

Have you heard the suggestion that the CCTV footage shows you leaving about halfway through the incident in the cell?---Yeah, I remember Mr Duffy's evidence.

Yes. Does that accord with your recollection?---My recollection is I, I left before officers went into the cell.

So it doesn't accord with your recollection?---No.

20

But you said before that you don't have a particularly clear recollection of the event?---No, I don't.

So it's possible isn't it that you left halfway through the incident in the cell?
---Well, the recollection that I do have, whilst it is very scant, is that as the officers were there around the front of the cell, I left.

Do you have any recollection of – I understand that answer, but do you have any recollection of hearing anything going on inside the cell that sounded like a scuffle?---No, I don't, Counsellor.

30

Is that something you would recall?---Well, I would think I would recall it.

In terms of your evidence earlier about use-of-force packages, you'd accept, well, I think it was your evidence earlier that a governor shouldn't sign off on a use-of-force package without the CCTV footage?---Well, look sometimes you don't have a choice. If there's no footage available for certain reasons, I mean you can't do anything about that. The, in this case, no, the CCTV footage should have been there.

40

And I know I asked you earlier about whether you need a CCTV footage of the actual incident and I think you agreed that the CCTV, the surrounding area would also be required.---Yeah, well, even if it shows nothing.

Exactly. And the CCTV footage of this event should have been included in the use-of-force package?---Yes, it should have been.

And if you were the governor reviewing this use-of-force package, what would you have done?---I'd have asked for the footage.

And I assume the footage would have been available within the short period of time for reviewing a use-of-force package?---It, it would have been.

Because I think, is it 24 or 48 hours that you have to review them within?
---Look, I honestly can't remember the exact policy. But, yeah, they've got to be done timely.

10 Yes. And certainly within the time frame that the CCTV would have been written over?---Yes. Yeah, well I mean, the footage has to be burnt on to a CD before that happens.

Yes. And is your understanding that that's seven days or 14 days to something like that?---I really don't remember what the system at Lithgow is. My most recent experience is at Macquarie where it's actually 30 days.

20 THE COMMISSIONER: Yes, but in this case, we had the event on the 19th. The reports are, or the package was put together very shortly thereafter. I think it was signed off on the 20th or the 21st. There should have been CCTV footage, shouldn't there?---Yes, Commissioner.

Yes.

MR DUGGAN: When you walked away from this event, do you recall having a conversation with Mr O'Shea about it?---I don't recall.

30 Given the events that were occurring, is it likely that you had a conversation about what had just happened?---Just, I honestly don't recall. I have a bit of a sense that I had something that I had to do quite quickly and to be honest I don't have a specific recollection of leaving with Mr O'Shea or, you know, at least walking back to the office area. I just don't remember, I'm sorry.

Just going back to the day room for a second. When IAT were forming up near the cell door, where was Mr O'Shea?---I, I think he was down in that area.

And am I correct in assuming looking towards the cell door?---I'm making assumptions. I mean, my memory's very hazy of the actual event.

40 Does that mean, can I suggest that that leaves open the possibility that you left after IAT went into the cell? So, can - - -?---I'm sorry, I'm not following your reasoning.

Yes. You say your memory's particularly hazy?---Yes.

And I'm suggesting that that leaves open the possibility that you were there when IAT went into the cell but you just don't remember it?---Counsel, I'm not being rude but I've already answered that, I, I, I have some recollections

and the, the memory picture that I have of it is that I, I left while the officers were in front of the cell but they hadn't entered it yet.

And what I'm suggesting you to you is that whilst you have that recollection, it's not a particularly strong recollection and it leaves open the possibility that IAT went into the cell when you were there. Do you reject that or not?---Well, I, I can't reject anything on the basis that I don't remember it, so - - -

10 All right, I understand. Now can I also suggest that shortly after this event you asked SAS Turton to prepare an injury questionnaire. Does that accord with your memory?---I've got absolutely no recollection of talking to Mr Turton at all about this event. None whatsoever.

At this point, and I'm talking about 20 minutes or half an hour after the incident, at this point it would've been fairly routine for an injury questionnaire to be filled out.---Yeah. I mean, it's just done as a matter of course.

20 So if you were to ask SAS Turton at the time it may be something that didn't particularly stick in your mind?---If I had asked him?

Yes.---Yeah, well no that's right, I, I just don't remember doing it.

But it's possible that you did?---I can't discount anything because I don't remember.

All right. And if you did, it would be fairly routine?---Well I would think so.

30 Yeah. Can I take you to page 49 of Exhibit 45, please? You have in front of you an incident injury notification form. Do you see that?---Yep. Yes.

And that is filled out by Mr Turton which you can see in the following page. It appears to be filled out at 10.15am, and then if we just go to page 51 there's also an injury, assault injury questionnaire form. Did you see those documents at the time?---No. I don't recall having seen them at all.

40 Do you recall Mr Turton suggesting to you that he would prepare the IRM? ---No I don't remember him telling me that.

Well I want to suggest to you that he did say that to you and that your response was, "There was no use of force, there will be no IRM." Are you in a position to respond to that?---I've heard Mr Turton's evidence. I don't remember having any such conversation with him at any time.

Is it possible that you said that?---I don't believe so.

Why is it not possible?

MR MADDEN: Commissioner, I know it's a question that's often asked but if someone says, "I don't remember", and someone says, "Is it possible?" it really doesn't help you one way or the other, Commissioner.

THE COMMISSIONER: Anything's possible.

MR MADDEN: Well, that's right.

10

THE COMMISSIONER: Yeah. Press him on his recollection. If he can't remember, he can't remember, and he if he can't remember then there's always the possibility.

MR DUGGAN: Did you find out at some point that the inmate that had been visited by IAT had been injured?---Yeah I did, yeah I heard about it.

When did you find out about that?---I can't recall specifics of the exact time, I'm sorry.

20

You've heard Mr Turton's evidence.---Yes.

And he says that [REDACTED] went off to the clinic.---Yes.

And that he rang you from the clinic and said again, this is the second time, "We're going to have to do an IRM" and at this point you said to him, "There is no fucking use of force", and you may have seen his evidence, he indicated that you were getting more agitated at this point compared with the first conversation, and his response was, "No problems, Brad, but he's currently on his way to hospital with suspected broken ribs." And you said, "Oh fuck, well you're not doing the IRM. Tex will." Do you recall the conversation to that effect?---No I don't.

30

Do you deny that that occurred?---I have no recollection of it whatsoever and I just cannot imagine any circumstances where I would say no IRM.

Do you have any recollection as to whether – let me go back a step. Did you have any discussion with anybody about whether there should be an IRM on the morning of 19 February?---No, not that I recall at all.

40

And did you give any consideration as to whether one was necessary at all? ---It, it was patently obvious that an IRM was necessary, if someone had been injured or there had been a use of force it's, it's not even a question that I'd enter into.

So, sorry, at what point did you become aware that there was an injury?

---I don't remember the exact time of day I'm sorry.

And how did you become aware that there was an injury?---Once again I don't remember exactly how I became aware and I think, you know, when I was first interviewed I probably nominated a couple of possibilities, it could have been a radio call, I honestly don't remember how I became aware. As I said, I was very entrenched in another job.

THE COMMISSIONER: It's the case isn't it that upon hearing that the inmate had had his ribs broken you thought to yourself, oh, shit?---Yeah, I wouldn't have been happy to have heard that, Commissioner.

10

Did you say to anybody that this has got to be cleaned up?---No, I don't remember using those terms at all.

Sorry, Mr Duggan.

MR DUGGAN: That's all right.

Just to clarify, you don't have any memory of telling Turton that Walker was to complete the IRM?---No, I have no memory of that at all.

20

I just want to show you an exhibit, and I won't mislead you because there is an email about this. It's Exhibit 79. Now, you're not on this email chain, it's to Mr Taylor, or between Mr Taylor and Mr Turton. And the bottom email you can see it's sent at 1.29. "Steve, IRM, complete for [REDACTED] escort to hospital." So that's a section 24 IRM as I understand it. "Brad just told me not to do use-of-force IRM as IAT's doing it." Do you have any recollection of a conversation along those lines?---No, I don't, Counsellor.

30

Can I take you to page 70 of Exhibit 45, please. That's an email from Mr McMurtrie to Mr Peebles, sorry, to you. Do you see that?---Yes.

Too many names in my head this week. And it's 19 February at 12.25pm. Do you see that?---Yes.

And it has [REDACTED] doc. Just from that cover email would you have known who that related to at the time?---I don't remember what my level of awareness was regarding the inmates' names and that sort of stuff at that stage.

40

All right. So I assume you would have opened that document to see what it was?---I don't remember doing so but I imagine I would have.

And if I can take you to the document itself, do you have any recollection of seeing that document on the 19th of February?---I don't recall the document from the 19th of February, I recall it from when Mr Grainger showed it to me, I think February this year.

All right.

THE COMMISSIONER: I think you were of the view then, I assume now, that that document is inconsistent with the reason why you thought there was entry into [REDACTED] cell.---Yes, Commissioner.

Thank you.

10 MR DUGGAN: And that's the reason stated at the end of that first paragraph, the manager of security was informed and instructed to have this information forwarded to the search teams and have [REDACTED] included in target searches. That suggests that the reason for attending the cell was for a targeted search.---According to this report, yes.

And that's obviously inconsistent with your - - - ?---With what actually happened, yes it is.

20 So you recall being concerned about such an inconsistency on the 19th of February when you emailed this document?---Not at the time, Counsellor, no, I don't.

Is it fair to assume that you would be concerned and you've just forgotten? ---Well, Counsellor, believe me I've thought about this quite a lot because I understand what the implication is or the inference here is and I can only say that it just didn't really register with me at the time or, you know, I assumed it was possibly additional information regarding, you know, an intended search that had nothing to do with the events that transpired but I certainly didn't give it very much thought at all, as I said, I was mired down in another job, a lot of time pressures on me, so yeah.

30 THE COMMISSIONER: Just pausing there, were you here when Mr McMurtrie gave his evidence?---Yes I was Commissioner.

And the effect of his evidence really was that this was false and it was really to provide, and I'm paraphrasing what he said, but it was to provide cover to Mr Walker.---Yes. I remember him saying that.

40 And here it's being sent to you. Why would it be sent to you?---Well I imagine because I, at the end of the day, was the substantive mossy, do those types of things regularly I was, you know, wheelbarrows full of emails are sent, you know, as a courtesy thing.

But it might suggest, do you agree, that you were part of the joke as well? ---Part of the - - -

The joke, that is that you were part of this endeavour to cover up what had really happened.---I can assure you, Commissioner, I wasn't.

Thank you.

MR DUGGAN: Can I take you to page 73, please? Not long after receiving the email at 12.26 from Mr McMurtrie, you forward it on to Mr Taylor. Do you see that?---Yes I do.

And you say, "as I'm offline could you attend to this?"---Yes, I see the email.

10 What was Mr Taylor to do with the information?---Well he was the manager of security on the day and dealing with the package.

But presumably you were aware of the inconsistency within the document and your understanding at the time?---Well I think I already explained that if I was aware of the inconsistency it was only a very cursory thing and it hadn't really registered to me. Like I said I was very busy doing another job, I think that at the end of the day it just appeared to me to be a document that would've been part of the round up for that incident.

20 And so Mr Taylor was the acting manager of security on the day?---Yes.

What was he to do with that document?---Well, he would have had to have dealt with the entire package.

So did you think that this was part of the use-of-force package?---I'm not sure what I actually thought of it. I think I had to explain that I felt it was a document that Steve needed to deal with, so I was doing other jobs.

30 And if he wasn't, if it wasn't for using a use-of-force package, what would, is that the only purpose you can think of for Mr Taylor to be seeing this document?---Well, I, I assumed it would be for him to use as part of the finalisation of all the matters, yeah.

But you didn't understand him to be preparing the use-of-force package, did you?---No, but he had to review it and if it's intel, intelligence, then the manager of security just gets it by course.

40 But why wouldn't you be sending it to the person who's in charge of putting the package together?---I wasn't aware who was in charge of putting the package together to be quite honest. I think it was quite reasonable just to forward something like this into the manager of security.

You weren't really offline from other normal duties, were you?---I'm sorry?

You weren't completely offline from other normal duties, were you?---Oh, I was completely offline. Yeah, I had, it was a very, very big job what I was doing.

THE COMMISSIONER: Well, why were you down in Unit 5.1?---Well, as I said, Commissioner, I don't remember whether I was asked to go down there for just, you know, something as basic as a bit of a walk to clear my head or whether I actually had business down there on the day relating to the, to the bed increase.

10 MR DUGGAN: So, dealing with unions, finding beds and matters relating to that project, they were consuming all of your time?---Absolutely. There was huge time pressure, Counsellor, where this was the start of the bed crisis. The Assistant Commissioner was – I've got to be careful what I say here, he'll probably read this transcript – but the Assistant Commissioner at the time was basically on my back to get it happening. They needed the beds and they needed them very quickly. So, that was the focus of what I was doing.

I want to suggest to you that you were doing things outside that project at this time. Do you accept that or reject that?---No, I reject it other than, you know, making a couple of calls.

20 Can I go to page 79, please? Sorry, 80. So, this is a report from a Robbie Potter of SOG. Do you know Robbie Potter?---Yes, I know Robbie.

And you are one of the recipients of this report. Do you see that on the top right?---Yes.

And you can see from the preamble that it related to activities of the SCU, or otherwise known as the SOG, on 19 February, 2014. Do you see that? ---Yes.

30 And it states that that unit was at Lithgow conducting various searches and security related duties. Do you see that?---Yes.

And just go, we'll go over the page. There's an operational result, there was a find of some contraband and then it lists Mr Potter's duties or SCU's duties. First bullet point, "Attend SOG base, Lithgow." Second point, "Liaise with MOS B Peebles regarding operation parameters." Do you see that?---Yeah, I see that.

40 That doesn't have anything to do with finding beds, does it?---These reports were, were, a regular thing. They were done off a template. They were done every time SOG come to the centre, mainly for the SOG managers. I didn't liaise with Robbie Potter at all on that day about anything.

You say that this report is incorrect, do you?---I didn't liaise with, with Robbie. I assume it's just a template thing where he's left my name in it and he maybe wasn't aware that I was even not working as the manager of security on that day.

Well, you're a recipient of this document, this report.---Yes.

And you would have seen your name in there and be very concerned, given your seniority, that you're not mentioned in a report where you didn't have any involvement.---Counsellor, I wouldn't have even read this report.

Why would you not have read this report?---Because they were one of the reports that, you know, I would have considered (not transcribable) throughout the course of the day. These were a regular thing that SOG sent.
10 I never read any of them because, you know, really they were more, more directed at the, the senior SOG managers to, for the local SOG staff to account for their day.

So just to clarify your evidence, do you deny having any operational involvement whatsoever in searches conducted in Unit 3 and Unit 4 on this day?---Yes, I do. I wasn't involved with any of that. Oh, other, other than there were some, at around about this time I did have a meeting with the Assistant Commissioner, Mark Wilson, because part of the operational
20 change to the centre involved moving all the 3 Unit inmates down to Unit 6 and, vice versa, moving all the Unit 6 inmates up to where Unit 3 is. When the inmates became aware of that, they had actually threatened to, to refuse to, to move and there was a bit of a concern that that would result in a fairly major incident. So at some stage around about this time that was discussed with Commissioner, Assistant Commissioner Wilson.

But you would deny any liaising with SOG or Mr Potter on the 19th of - - -?--I don't recall talking to any of those guys about it. I mean, I suppose that's possible. Robbie may have dropped in and said hello or whatever, you know, I knew him quite well but certainly that wasn't my operational
30 direction on the day. I was working on the, on the project.

Well, that seems to be backtracking a little bit from your evidence a moment ago that you deny having any operational contact with Mr Potter on this day.---Operational contact, no.

But are you leaving open the possibility that you discussed operation parameters with him?---I don't recall talking to Robbie at all on the day.

Did you have any contact with Mick Watson on 19 February, 2014.---Not
40 that I recall.

Did you have any – this is going back a step – you were describing before your role in relation to this project. During that project would you have had any need to contact Mick Watson?---Not that I recall. Mick was a junior man in SOG, in any case, and, you know, I was actually talking to, to SOG at the Assistant Commissioner level.

Just going back to Mr Walker. Did you have a conversation with him at some stage where you've said to him, "Only get witness reports from the two IAT boys and not any others"?---I have no recollection of having any such conversation.

Did you have any conversation with him about witness reports from 19 February?---Not that I recall. Not at all.

10 Is your memory particularly hazy in relation to this period?---As much as you would expect for something that happened over four years ago, that at the time wasn't the focus of what I was doing.

Can I suggest, though, that this would have been the subject of some discussion afterwards?---In terms of myself?

Yeah, just generally, discussion within the centre.---If I remember, I followed up a little bit as to the injuries but no other than that, my focus was on the, on the project that day.

20 Who did you follow up the injuries with?---I don't recall, I think I probably just rang the IAT office and I have a vague recollection that it was Mr Duncan that I spoke to.

And what did he say?---Basically that the day's events had led to a use of force and that the inmate had had injured ribs.

30 And is that level of injury common with uses of force or does that put it into a more serious category?---Look, injuries during uses of force aren't that common so yeah, the fact that there was an injury, yeah, certainly probably put it outside the absolute routine.

And were you aware that that required the inmate to go to hospital?---At some point yes, I was aware that he went to hospital.

Where was your office at the time? Where were you operating?---The substantive MOS office or the office I was operating out of?

40 On the 19th of February.---On the 19th of February I do believe I was operating out of the area at the front of the gaol in the conference room.

I just want to take you to Exhibit 50, if I may. No, it's not 50. Sorry, it's Exhibit 56. So you see there you've got a birds eye view of the centre and you can just see the front of the centre, just outside the perimeter there's a building with a red roof and on the left hand side there's a texter marked 2. Do you see that?---Yes.

Is that the general location of the office you were operating out of?---Yeah, that's roughly the area, the conference room area.

And is that the building that also houses the usual MOS office?---No. No. The usual MOS office is, I don't remember the actual building designations for Lithgow, sorry, but the MOS's offices are pretty much inside the gaol.

10 All right. So would it be one of those buildings on the left or the right after you enter through the perimeter close to where the hand is? Is that where you're referring to?---Yeah. It's called L block, I think, where you've got the pointers, what they call the tower. So, yeah, it was just basically underneath that area.

20 Now I want to suggest to you that on the 19th of February in the middle of the day roughly, you had a conversation with Mr Walker and, sorry I want to go back a step. So Mr Walker has attended upon you in that office where the number 2 is, and he said, he had a discussion with you about the IRM that he needed to do for this incident and he said, "I don't know what to put in the report to make it match up." And he was referring to the fact that the report was fabricated, and you said to him, "I will do the IRM. What is your password?"---Yeah, I heard his evidence. I have no recollection of anything even remotely like that, at all.

And his evidence is you said to him, "We need to clean this one up," or "Tidy this one up. This one might come back to bite us on the arse."---Once again I don't have any recollection of any conversation of the sort with Mr Walker.

Have you ever used or made an entry on anyone else's login?---No.

30 And that would obviously be quite problematic from a policy perspective? ---Well, and stupid, yes.

You had discussions on this day with Mr Walker about this event, didn't you?---I don't recall discussing it with Mr Walker.

Do you recall discussing it with Mr McMurtrie?---I may have discussed it with Mr McMurtrie.

40 And did Mr McMurtrie tell you that he'd fabricated some intelligence about Buprenorphine?---Absolutely not.

And did Mr Walker say anything to you that gave you the impression that there were going to be falsified reports in relation to the use of force in the cell?---No.

Can I take you please to page 95 of Exhibit 45. Do you recognise that as an IRM in relation to 19 February?---Yes.

I want to suggest to you that the summary entry, whilst it says Terrence Walker, was typed in by you.---It was not.

And in particular I want to draw your attention to the last line which refers to, "Reported as a technical use of force on direction of the general manager." Do you see that?---Yes.

10 I want to suggest that the phrase, "Technical use of force," was not one that Mr Walker had used before, that that was one you inserted. Do you accept that?---Well, that's just not true.

THE COMMISSIONER: You agree though that the first sentence, "During an intel-based cell search IAT were detailed by the MOS to search cell 208 in 5.1 Unit with directions to specifically look for Buprenorphine." That's consistent with the report which Mr McMurtrie created and which we now know, because of his admissions, was false. Do you agree that that's consistent with that false report which was sent to you?---Yes, it is, Commissioner.

20 MR DUGGAN: It's also inconsistent with your observations of what happened at the cell.---Yes, it is, Counsellor, yeah.

I also want to suggest that when you typed this up for Mr Walker you were aware of that inconsistency.

MR MADDEN: Well, I object, I object to that question in that form. It assumes he's agreed he typed it up.

30 MR DUGGAN: Well, I just, as a matter of fairness to this witness I want to put this to him so that he has an opportunity to respond to it. Now, I understand that he says he didn't type it, but I do want to put it so that - - -

THE COMMISSIONER: Well, you put it to him that he did and he says he didn't, so what is it you want to put to him now?

MR DUGGAN: That he knew when he typed it in that there was an inconsistency between his observations and what he's typed in the first - - -

40 MR MADDEN: Well, I object because - - -

THE COMMISSIONER: Why?

MR MADDEN: It's the same, it assumes that he's agreed he typed it and he hasn't.

THE COMMISSIONER: Well, that can be tested surely.

MR MADDEN: Well, the question assumes something that not agreed with.

THE COMMISSIONER: But he can be pressed on it, surely.

MR DUGGAN: For the benefit of Mr Madden, if I put in an ultimate submission that something occurred, Mr Madden would quite rightly complain that that specific wasn't put to the witness. So, I'm really trying to give the witness an opportunity to explain. Would you like me to put it again, or do - - - ?---Yeah, I'm not sure. I'm a bit confused at this point, sorry.

No that's all right.---Unless I've already answered.

All right. Let me put it this way. As I understand your evidence, you say you never had this meeting with Mr Walker in your office on the 19th of February and you never typed up any IRM using his login.---That's correct.

And so you would deny, I assume, that, well let me go back a step. You would accept that the first line of this summary is inconsistent with your observation of what actually occurred?---Yes.

But you would, having denied typing it up, you would deny that you were aware of that inconsistency at the time simply because you never typed it up.---Yes.

Yeah. And what I'm suggesting to you is you did type it up for Mr Walker and you were aware of that inconsistency. Do you deny that?---Yes.

Yeah. Would there be any other reason for Mr Walker to be in that area visiting you at this time?---It was very well advertised to the staff amongst many whom this restructure was not popular, that I was available to discuss any concerns that they had with the restructure and to come up and participate in it. So there were a number of staff that would have seen me, you know, over the course of the time that I was working on it up there, whether Mr Walker was one or not, I do not remember.

And is it likely that Mr Walker would've been talking to you about cell set ups and bed formations and that sort of thing?---It was a very big topic in the, in the centre. As I said it was very unpopular, I don't have any specific memory of talking to Mr Walker about it.

THE COMMISSIONER: It was unpopular with staff, was it?---Yeah it was, Commissioner. It involved basically a change of start times which predominantly 6.00 to 2.00 to an 8.00 to 4.00 type of arrangement, it also involved using the overseer staff, they're the industrial staff, in a role that wasn't all that traditional for them, so there was actually a lot of resistance and the matter of how many staff to be added to the establishment was

appropriate and justified was a, you know, a very, very big topic that just went on industrially back and forth. You know, the union would sight safety issues, you know, we'd then have to do risk assessments, it was a very big and complicated job.

A major drama.---It was, Commissioner. And you know, here we are four years down the track and we're still doing the same thing, creating beds, it's quite extraordinary.

10 I think I heard and you may not know the answer to this but over recent years that prison population has increased from about 9000 to 13,000. Is that - - - ?---That's correct, it's nudging closer to 14,000.

Right. And no doubt that puts a significant drain on resources.---It certainly does. Prisons are very expensive things and it was on the back of several closures too. I'm not sure if you remember, in around about 2011 the government actually closed quite a few centres because the numbers were declining, and then just out of the blue the increase was incredible and, yeah, Lithgow was basically the first centre to increase capacity and, you
20 know, many others followed after that. So because it was the first centre there was no real template on how to go about doing it so it was just, it was an all-consuming job, it was quite extraordinary at the time.

Okay, thank you.

MR DUGGAN: Thank you, Commissioner. Can I just take you to page 86, please? This is the review form for the use-of-force package. You'd be familiar with the template at least?---Yes, I am, Counsellor.

30 And you can see here that it appears to have been reviewed by Mr Taylor and then there's a final review to determination by Mr O'Shea. Do you see that?---Yes, I do.

Firstly, in relation to the fact that it states up the top, "Review by acting MOS and Intel manager." Does that strike you as unusual that it would, there would be some review input from the Intel manager?---Yeah, I don't recall that being a regular thing at all. It was generally just the MOS.

40 Have you see this review form before?---This specific one?

Yes.---Yeah, Mr Grainger showed it to me.

So, only in relation to an investigation, as part of this?---Yeah.

Do I understand from your evidence before that Mr O'Shea shouldn't have been reviewing this because he had some involvement in the use of force, at least in the sense that he gave an initial instruction to IAT to sort the matter

out?---In my opinion Mr O'Shea would have been much more prudent to have another reviewer do it, yep.

Have you got any explanation as to why he might have reviewed this one?
---No, I don't, Counsellor.

No. You've never had any discussions with him AVO his review of this package?---No, I haven't.

- 10 You understand, obviously following this inquiry, that Mr McMurtrie's evidence is that he fabricated this intelligence?---Yes.

And that was done together with Mr Walker and then came up with a fabricated story to run with to hide this use of force?---Yes.

Or to cover up what had actually happened. To your understanding, did Mr McMurtrie and Mr Walker get on well?---I thought they didn't actually, but having heard the evidence here it would seem that they appeared to get on quite well.

20

They might have been good at coming up with a story but Mr McMurtrie hated Mr Walker, didn't he?---I thought there was a little bit of antipathy between them but it was just an impression. But as I said, after hearing the evidence, it seems like they obviously got on well.

Have you got any explanation as to why Mr McMurtrie might have been so quick to fabricate a report in the way he did?---I can't explain it. It just appears insane.

- 30 Is there a possibly that he wasn't just protecting Mr Walker, that he was protecting someone else?---I don't think so.

You see, your evidence in your record of interview is that McMurtrie hated Mr Walker, and you confirmed that at least that appeared to be your impression. So I want to suggest to you that it just doesn't make sense that Mr McMurtrie would do this, fabricate a report the way he did just to protect Mr Walker. So it seems as though he might have been protecting someone else. Is that fair - - -?---I can, I can see where you're going with it, but in, in my mind, the real reasons that that cell entry happened were just as valid as the, the fake one to explain it.

40

I think I know what you mean but can you explain - - -?---Like, I don't understand why this story would need to be created to justify the cell entry. The governor told them to go to, go into the cell and that's as valid reason as any from their perspective.

And have you ever seen Mr Duffy's report?---I, I might have seen it here during evidence, but no, I hadn't other than that, no.

There had never been any discussion with you about Mr Duffy's report and what it said in it?---No. I wasn't aware he was even involved.

Because that suggests that Mr Walker struck the inmate perhaps in retaliation or self-defence.---Yes.

Which again makes the cover-up all the more curious.---Yeah, I can't make any sense of it, counsellor.

10

Commissioner, I don't have a great deal to go but I certainly won't finish anytime soon I'm afraid. We'll have to continue on Monday.

THE COMMISSIONER: We're going to have to get you back unfortunately, Mr Peebles, but - - -?---I was just going to volunteer to stay back now, Commissioner, if you'd like me to.

I can't personally because I've got another thing I've got to do.---Okay.

20

Where do you come from? Don't tell me if you think there's concern about it, but - - -?---No, no, I hope it won't be published in the papers. [REDACTED]

Okay. Well, I ask that it not be, or I direct that it not be published in the papers. So you have to come down. Did you fly down?---No, I drove down and stayed at my sister's. That's fine. If I've got to come back Monday I'll - - -

Yes. I think you'll have to.---Mmm.

30

Can I just ask before we do adjourn though, just draw your attention to some things you said in your interview. You were asked, "Who was present at the time? I'm talking about down in the day room near the cell." And you said, "There was a whole heap of staff there at the time, either in that unit or the one next door. The area was quite heavily-staffed." And then you were asked this question, "Do you recall what they were asked to do?" And you said, "I just remember John telling them to go down and sort the inmates out, so that's generally meant to be, well, I mean this sort of thing happens very often, generally when inmates are carrying on like that the officers will give them a search, segregate them if necessary, just so they don't feed on each other, so you know, from memory it was just a general instruction to go down there and sort it out. Often, you know, inmates like that will pull their heads in pretty immediately in the presence of officers." Then you were asked this question, "So what does 'sort it out' mean exactly?" And you said, "See what their problem was and take some action to basically stop the screaming, yelling abuse and the stirring up." Does that include physical force?---No, Commissioner, that's not an answer to anything.

40

From your point of view.---Yeah, absolutely not.

All right. In fairness to you I'll read what else was said. You said, "All right." So it was put to you, "All right. So what would the action be?" And the answer was, "Well, generally what happens is, inmates would be searched, spoken to and usually separated if there's two of them in a cell that are feeding each other in that sort of way." Now, you've been sitting here for most of the evidence haven't you?---I have.

10 Does a search sometimes include what's been described as "cell therapy?"
---I've never actually heard the term "cell therapy."

Right.---I've heard the term "therapy."

Right. And therapy was a thing, there's no doubt about it, it was generally something that was carried out by junior staff, wing officers and such. And if someone was receiving therapy it was pretty much as had already been explained, you know, it would be losing letters, losing buy-ups - - -

20 Having their cell trashed?---Not so much having your cell trashed because you know, for junior officers in a wing that would probably end up getting you a smack in the mouth off the inmates, so it wasn't anything as overt as that, but just losing buy-ups, letters, there was even one notable example which was the cause of a bit of humour when I was fairly young around whereby one of the officers had swapped letters to an inmate or from an inmate, one to his girlfriend, one to his wife, and had actually swapped them in the envelopes and sent them out, so it was all that sort of low-level stuff. But trashing cells and, and, and violence, the reality of life in a correctional centre, you know you've got two officers with up to 80 inmates, you know, you can't be heavy-handed and trash cells and do things like that .

30 Are you telling me that it doesn't happen?---I'm not saying it doesn't happen, Commissioner, but it's something that's not as easy to do, you know, as the general public might perceive.

Yes.---Because it is two officers with 90 inmates. You know, it's, the amount of dramas it would cause if it was a regular thing would be incredible. I just, yeah, don't see it as being as prevalent as that.

40 All right. I'll adjourn until Monday at 10 o'clock.

THE WITNESS STOOD DOWN [4.05pm]

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