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INDEPENDENT COMMISSION AGAINST CORRUPTION

STEPHEN RUSHTON SC
COMMISSIONER

PUBLIC HEARING

OPERATION ESTRY

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TRANSCRIPT OF PROCEEDINGS

AT SYDNEY

ON TUESDAY 29 MAY, 2018

AT 2.00PM

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THE COMMISSIONER: Mr Taylor, you're on your former oath.---Yes, Commissioner.

MR DUGGAN: Mr Taylor, can I take you to 20 February.---Yeah.

10 So the day after the incident on the 19th. You were still the manager of security on that day?---That's correct.

And did you become aware of a phone call that was intercepted between inmate [REDACTED] and his father?---I heard a rumour.

All right. And did you hear a rumour that there was a phone call where he'd said that he'd been flogged by the squad the day before?---I think so.

20 And that he suggested that if they come in again, "I'll have a blade," or something like that?---Correct.

Did the fact that he was suggesting in a phone call to his father that he'd been flogged by the squad, did that give you cause to revisit the use-of-force package?---No. Normally a lot of inmates say that to deflect, to mitigate their, their involvement in it. It's not unusual they lie to their family.

Right. Now, did you understand there to be a search operation in relation to the reference to the blade?---Yes.

30 And you're the manager of security, you would have been briefed?---No.

THE COMMISSIONER: You weren't briefed, you say?---I was summonsed and told to stay out of it.

40 MR DUGGAN: All right. Can you maybe talk us through what happened? ---Okay. After parade I was in the MOS's office. I received a phone call from John O'Shea. I went upstairs to his office. Present was John O'Shea and Brad Peebles. I was told there would be a search in 5 Unit, it'd be run by Mark Kennedy, Brian McMurtrie and Simon Graf, I was to have nothing to do with it. I said, "Fine, yep, no worries." Not unusual. And as I was leaving, Brad called me back, turned around and said, "You are not to be involved in this search." I said, "Fine." So I went back to my office.

All right. So the person who initially did the talking and said you weren't to be involved in the search, was that Mr O'Shea or - - -?---That was John O'Shea, yeah.

And Mr Peebles - - -?---Was present.

- - - confirmed that to you on the way out?---Yep.

Did you say anything in this conversation or were you just the recipient of this information?---I was just the recipient of the information. I mean it's not unusual back then 'cause we had multiple internal and external jobs going on, so it was just, okay.

But you're the second in charge, the manager of security?---Acting, yes.

10 You didn't think – and Mr Peebles as I understand it at the time was - - -?
---Offline.

- - - was looking for more beds in the centre?---Yep.

So you're the acting manager of security, you would surely expect to be briefed on an operation like that?---No, 'cause sometimes back then we had Task Force Raptor, all those sort of stuff going on, listening devices that I wasn't aware of, so it, it may have been not at my level, maybe it was just at John and Brad's level and Brian's level, so it didn't strike me as odd.

20

But is the acting manager of security, you're at a higher level than the Intel manager?---If you look at the intel sort of stuff, intel stuff, like that sort of stuff would go to John, John O'Shea or Brian McMurtrie, 'cause they have, Brian in particular has more access to certain things that I would never have access to, like the information reports, all that stuff on the system, I don't have access to that sort of stuff, so Brian would have all that sort of stuff, the PSB would normally liaise with either Brian or John in relation to who they want stuff done or the police, so yeah.

30 But this is a situation you've described as a bit different. It's not like you're kept out of the loop. As I understand your evidence, you're told that you are not to be part of the search operation.---Yeah.

Well, that's not being kept out of the loop, that's being directed to stay out of it, isn't it?---Yes, it is.

And that's how you understood it at the time?---Correct.

40 Were you concerned by the fact you were being told to proactively stay out of a search operation?---No.

Why did that not concern you?---As I previously stated, we had multiple jurisdictions having jobs in there and some stuff I didn't know about, some stuff I was privy to.

But to put it colloquially, it sounds as though what you're saying is that you were told don't stick your nose in it.---Yeah.

Is that how you understood it or - - -?---Yes, 'cause of my background within the department.

You background, sorry?---My background within the department. They probably, probably didn't trust me.

But you understand that that's different to it not falling within your purview in terms of your duties. You understand the difference?---No, I don't.

10 So, you initially said you thought you were being kept out of the loop because you might not have the same access to information that the Intel manager might have, for example.---That was in answer to your question, yeah.

Yeah. That's not the same reason as you've just agreed to, which is you're being told "Don't stick your nose in it", it's different.---I thought it was two different questions.

20 But I'm just trying to get to the bottom of the reason why you were told to stay out of it, to your understanding.---My understanding now or then?

Then.---I had no reason to qualify it or check it.

When you were acting up as the manager of security, you're responsible for all of the regular duties of a manager of security, aren't you?---Yes.

And one of those duties, I want to suggest, would be to receive a briefing in relation to a search operation in Unit 5.---No.

30 You disagree.---I wasn't briefed.

No, I understand that, but part of your duties - - - ?---Would you say normally, yes. Normally, I would dictate as MOS, I would coordinate the searching or where the search is going to be conducted. Yes.

Right. And who would you usually coordinate the search with?--Depending what type of search we were doing, normally through Intel and the IAT senior.

40 All right. So if you were searching, someone said they had a shiv or a weapon in a cell or something, would that be a fairly regular search? Not particularly out of the ordinary?---5 Unit, not unusual. Around probably other parts of the gaol, probably a little bit unusual. For 5 Unit, no, not really.

All right. And as manager of security, if you're acting in that position you would be part of the process of organising the search and liaising with IAT, or - - - ?---If I was aware of the search, yes.

Yes. And all things being equal, this intercepted phone call with [REDACTED] made a reference to having a blade in his cell. And so there was no, as far as you were concerned, there was nothing out of the ordinary in terms of the search operation.---No.

So you should have been involved.---Yes.

10 And who, to your understanding, was, sorry I withdraw that. And therefore it was unusual, wasn't it, for Mr O'Shea and Mr Peebles to be saying "Don't be involved".---Yes. But not, yes to that answer but as I said before, we had other stuff going on.

Do you think now you were sidelined in relation to this search, today?
---Today?

Yes.---I was definitely sidelined.

20 And did you get that feeling in February 2014?---No.

So did you have anything at all to do with the search?---No I did not.

And you were told to stay out of it but did you have an understanding of who was controlling it?---My impression was Mark Kennedy, Brian McMurtrie and Simon Graf.

All right. And that's because of what you were told - - - ?---That's what I was told.

30 - - - by Mr O'Shea.---Yeah.

And sorry, you said that Mr McMurtrie was in the office when Mr O'Shea was telling you this?---No. It was Mr Peebles.

Just Mr Peebles?---Yeah. Brian come to my office probably 20 minutes later, half an hour later, said "I'm going to do the search", I said "Fine".

He said, sorry, "I'm going to do the search"?---Yeah.

40 All right.---Because as I said Brian's office is up the hall, to go out into the main area of the gaol you've got to come past the MOS's office and he just said "I'm going for the search" so I would have just said "fine".

Sorry, did you say he came past your office or he wasn't, you were - - - ?
---It's like I suppose walking past that door, he just walk past and said, "I'm going for the search now" and I said "Fine, no worries".

All right. And when you piece that conversation with Mr O'Shea directing you not to participate in the search, when you piece that together with the review process you'd done in relation to the incident the day before, you didn't connect the two at all?---Well I wasn't told where they were going to search.

So you didn't know it was inmate [REDACTED] No. It was only when I got the phone call from Phil that I knew they were over in 5 Unit.

10 So you didn't even know in relation to which unit?---No.

And so when you say Phil, are you talking about Phil Turton?---Phil Turton, correct, yeah.

And he contacted you?---Yeah.

And what did he say when he contacted you?---Oh, something like Kenno was there and Brian were doing the search, excuse me, pardon me, they'll be doing the search and he'd been told to go back upstairs. I said, "Don't worry about it, mate," I said, "Kenno's in charge, just leave it at that."
20

All right. And so the effect of what he'd said to you was that he was told he was not to participate in the search either?---Yep.

And that additional piece of information, did that cause some concern in your mind?---No. I go back to my previous answer before, we had other jurisdictional operations going on in the gaol, I didn't have a clue what it related to. To me it could have been anybody.

30 But it's one thing not to be briefed, not to be asked to participate in something, it's quite a different thing I want to suggest to be directed not to participate. Do you accept that?---Yes.

And what Mr Turton was saying to you was that he was told not to participate.---Correct.

And it's his area, he was the area manager, wasn't he?---Between the two of us, yeah.

40 Well, you were the acting MOS on the day?---Correct.

And - - ?---He was the SAS for sector 2.

2 or 5?---2. Two sectors, you've got sector 1 which is basically 1, 2 and 3 Unit.

Oh, I see.---4, 5 and 6 back then I think were sector 2, so Phil had 5 Unit.

Right. And you didn't think that was unusual that he was being sidelined, if I can use that phrase, in relation to a search in his own sector?---I don't know how to explain this, but we had different police there, we had different organisations had taps on different people, so we weren't always included in the conversation with the powers to be [sic] who was being looked at, who was being monitored, who was being watched, so no, it wasn't unusual.

But you used the word included there, and you suggested that it wasn't unusual not to be included.---Mmm.

10

Here what I'm suggesting to you is, this is unusual because you are being positively excluded.---Yeah, but there might be a reason I'm not privy to.

No, and I'm not suggesting you were, but the fact that you were both positively excluded, so the acting MOS, so second in charge of the gaol on the day, and the sector manager for the unit in which the search is going to take place, you're both positively excluded.---Yep.

I want to suggest that that would give cause for some concern.---No.

20

Now, are you familiar with the drug, buprenorphine?---What do you mean, taking it?

No, no, no, familiar with - - -?---Bupe?

- - - what I'm talking about when I talk about buprenorphine?---Yeah, got a rough idea, yeah.

30

Right. Well, have you come across it in searches and in prisons you've worked in?---Yeah, probably 10 years ago, 15 years ago. I see it regularly when it comes in exhibit bags but not, not finding it.

Yes. Okay. But you're - - -?---It's not my role.

Right. Okay. But you're familiar with the fact that sometimes it comes in tablets and sometimes it comes in sublingual strips?---You're talking about wafers?

40

Yes, that you put under your tongue.---The orange stuff, yeah, wafers, yeah.

So wafers that you put under your tongue?---Yeah, they call them wafers, yeah.

And tablets?---Yeah, correct.

Yes. And they're smuggled into correctional centres in various ways.---Ah, yes.

Yes. And is it fair to say that sometimes when you have a contraband find of a tablet, that there might be some deterioration of the tablet?---Yeah, I'd say so, assume so, yeah.

Yes. So it might be broken up or crushed up or - - -?---Yeah.

But is that your experience, that sometimes it might be a bit powdery?
---Sometimes powdery, yes, yeah, sometimes, yeah, (not transcribable) pieces.

10

In terms of a drug find, would you ordinarily expect still photographs to be taken of the find itself?---No. Some gaols do, some gaols don't.

What about at Lithgow in 2014?---Not that I can recollect, no.

All right. And I just want to take you to a policy document if I may.
---Ah hmm.

20 It's a letter from Assistant Commissioner [REDACTED] dated 21 February, 2013, or a memorandum rather.---Yeah.

Do you have that in front of you?---Yeah.

Now, I might just go to the second page if I can, just to identify the author. So you can see there that it's - - - ?---Mr [REDACTED] signature, yeah.

- - - from the assistant commissioner in February 2013.---Yeah.

30 And it's a policy in relation to discovery and disposal of suspected prohibited substances.---Yeah.

And it says there in the first paragraph that section 19.19 of the operations procedures manual has been revoked and it says it's been placed, but that's presumably a typo, it's "been replaced", in section 13.11 of the OPM. Do you see that?---I do.

Are you familiar with 13.11?---Roughly, yeah. I mean - - -

40 But you know what this is talking about?---Yeah. I mean, COPS is a big document, the OPM is quite a substantial document. I don't read it every day, but I am aware of it. Yes.

It's not a test. I'm just trying to orientate you to what we're talking about.
---Yeah.

So, then there's a background, certain legal advice and then what's changed, and do you see there it says the policy significantly changes the way

Correctives personnel manage suspected prohibited substances?---Mmm
hmm.

And it refers to the fact that the general manager must order its confiscation.
Do you see that?---Yeah.

And then the police must be informed. So were you aware in 2014 that the
general manager needed to order the confiscation of a contraband find?
---100 per cent, no, but probably.

10

Do you recall instances in which an order was given or recorded?
---Occasionally, workers, back then we, we used to go to the police a fair bit
but they wouldn't like it under a certain amount because it wasn't classed as
a criminal matter, and usually if we burnt it or that sort of stuff, put it in a
bonfire, so to speak, you'd have to get the boss to sign off and have a couple
witnesses.

20

All right. And so was it the practice as you understood it to offer it to the
police first, and if they didn't want it - - - ?---Yeah. We normally did, but as
I said I think it's, I'm trying to remember now. I think under five grams or
something, it wasn't an indictable offence or something, so they wouldn't
look at it, they wouldn't bother coming out. They'd just say "you deal with
it".

Okay.---Yeah.

And would the details of that conversation be recorded?---With the police?

30

Yes.---No.

And I asked you a moment ago about a general manager ordering
confiscation.---Yeah.

How would that be recorded, that order?---Order of confiscation, it should
be like a direction with the boss saying, "I want these items disposed of,
what they were, the description, when and where" and then we go,
whoever's involved in it will go and do it, they countersign it and it comes
back to the dep secretary and she registers it.

40

So that would be registered with the deputy's clerk.---Should do, yeah.

And if you wanted to see it on a particular system would it be on OIMS?
---No.

Where would you, if you wanted to have a look at it, where would you - - -
?---Normally I think Khili Jenkins, you've got (not transcribable) so you've
got, you can put down comments, like, hidden comments and comments. I
think she used to put it in there – so disposed of, what date, who was

involved – and then hide the comment. That’s the only place you’d find it that I’m, my recollection.

All right. But the order, confiscating the drug - - - ?---Yeah.

- - - or the contraband, where would I find the page? Where would the document be?---Dep’s clerk.

10 With the dep’s clerk.---I’m assuming, yeah. I mean, it’s not on OIMS that I’m aware of.

All right. So we’re going through this policy. It says there, that last sentence, “In addition, the destruction must take place as soon as possible if not immediately”. Do you see that?---Yep.

And that was your understanding at the time, was it?---Yes.

20 And then over the page, is the reason that the policy exists, it sets out further control, other controls to reduce the risk of a substance being lost, stolen or misplaced until the police take it or it is destroyed. And that was your understanding at the time?---Correct.

All right. Now if I can just go to OPM 13.11, so you see there that that’s part of the manual. If you need some water, please, take a break.---That’s all right.

THE COMMISSIONER: You okay?---Yeah. Fine thank you, Commissioner. Yeah, I do.

30 MR DUGGAN: So, that’s part of the OPM. And then if we can just go to page 3 of this document, so it’s about the third paragraph is the obligation to inform the police as soon as possible, which I think you’ve agreed with.---Yeah.

And then two paragraphs down, “Corrective Services New South Wales officers will promptly destroy the substance” - - - ?---Yeah.

40 - - - “but only when New South Wales police decline to take possession of it.” Do you see that?---(No Audible Reply)

And then at the bottom of the page, it sets out what’s to happen if you discover a prohibited substance.---Mmm hmm.

And the fourth bullet point, “Take charge of the substance until you give it to the most senior officer on duty or a police officer”.---Mmm hmm.

“The most senior officer on duty must weigh the substance, write a description of it, place it in an exhibit bag and record the details at the exhibits register.” Do you see that?---Yeah. Yeah.

And so the exhibit register, that would be the register kept in the office of the MOS.---Correct.

With the safe.---Correct.

10 On top of the safe or in the safe. Do you recall?---In the safe.

In the safe.---There's two, there's a key on your keyring, the key for the drug safe is inside the safe on a hook, so you have to get into the first safe to get the key for the second safe.

All right. And is the exhibit register - - - ?---In the safe.

- - - in the first safe?---No, it should be in the second safe.

20 The drug safe.---It should be in the drug safe.

All right. And that contains important details in relation to the contraband find, including perhaps the inmate's name?---On the exhibit form?

Yes.---Yes, it's got to have their name.

And the other important detail that it would have would be the exhibit bag number.---Well that's on the bag, yep.

30 But I know it's on the bag, but you'd put it in the register wouldn't you, because you want to marry up the two?---Should do, yeah.

Yeah. Can I take you to Exhibit 68, please? That's an IRM in front of you. Do you accept that?---Correct. Yeah, I do.

And please feel free to read the details if you need to, but that's in relation to a contraband find relating to someone in Unit 3.---Okay. Yeah.

40 You accept that from the details?---Yeah. Yeah. From the details, yeah.

And you can see that the date of the find is the 19th of February, 2014. Do you see that?---Correct. I do.

So that's obviously the day where I was asking you about this morning, the same day.---Okay. I concur, yeah.

And this appears to be reported by Cameron Watson who you recall is an officer from Lithgow.---Yep, that's correct.

And if you can see about halfway down the page, you can see a reference to buprenorphine, 0.2 grams. Do you see that?---I do.

And then it says “Where is the contraband now?”, and there’s a reference to the MOS. Do you see that?---Yep.

Do you have any recollection of this particular contraband find?---No I do not.

10

And further down the page at the bottom, you see “outcome” and it says “OIC pending”. Do you see that?---Correct. Yeah.

And that refers to offence in custody.---I see it does there, that's correct.

And one would expect some sort of internal charge and disciplinary punishment for that sort of find.---You do, but if they move on, it’s hard to chase them.

20

You're not suggesting, and I – why have you suggested that?---Because it’s got OIC pending, all right, so sometimes you do it the next day, the inmate might’ve got on the truck, so the area manager hasn't had a chance to charge them so you send it to the on forwarding gaol. Most times you give them a ring and say “Mate, I’ve got such and such coming down, but we’ve got a charge here for them, can you do it for us when he gets down the other end?” “Yeah, no worries.”

Mr [REDACTED] wasn't moved on, was he?---I’ve got no idea. I don't know who Mr [REDACTED] is.

30

Is there any other reason why you’ve volunteered that information about someone moving on?---That’s what normally happens. I done, I done 32 charges the other day and eight of them had moved on to another gaol.

But for a contraband find it would still form part of their disciplinary record, even if there wasn't a punishment?---If you got charged. Sometimes they miss it.

40

THE COMMISSIONER: I think with Mr [REDACTED] he was dealt with on the 19th and he lost buy up rights for 14 days, he - - - ?---That’s the first time I’ve ever seen it, that person’s name.

Yes. Go on.---Forty-eight days for two other things, I think, from memory.

MR DUGGAN: Yes. There certainly was a penalty issued in relation to Mr [REDACTED] Okay, yeah. I’ve got no idea.

Now I want to take you to Exhibit 45 at page 146 which you may still have in front of you. Now, do you see there that this appears to be an IRM prepared by Simon Graf?---Correct.

Do you have any understanding or knowledge as to whether he in fact prepared this IRM?---Simon Graf.

10 Now, if you have a look at the summary and read as much detail as you need to, but this is in relation to a find on the 20th of February, 2014, relating to Mr [REDACTED] Yeah.

Do you understand that?---I do.

And you said a moment ago that Mr Graf was to be included in the search operation. Was that your evidence, in terms of what Mr O'Shea said on the - - - ?---On the 20th?

Yeah.---Yes.

20 Do you have any knowledge as to whether he actually participated in that search?---No. Because I never went down there.

All right. Now this refers to the fact that there was a search conducted of cell 208 and refers to an asthma puffer and a contraband find being made in it.---Mmm hmm.

And then the last couple of lines, third last line at the end, "The contraband was then secured in evidence bag number" and it states the number.---Yep.

30 "And submitted to the deputy governor for placement in the drug exhibit safe". Do you see that?---Yes, I do.

Is the acting MOS considered to be the deputy governor?---Yes he is.

Yeah. And it refers further down the page to "Was the incident videoed?" And it says "Yes and disc given to MOS." Do you see that?---Yep.

40 Do you have a recollection of being provided with the exhibit bag and the disc on this day?---The exhibit bag I do but I'm not 100 per cent sure about the disc.

All right. And just the last line of this document, "Offender, [REDACTED] [REDACTED] in possession of, offence in custody pending". Do you see that?---I do.

And one would expect that if admissions had been made, this would appear on his disciplinary record.---You would think so, yes.

THE COMMISSIONER: Who gave you the exhibit bag? Do you recall?
---Mr McMurtrie.

Thank you.

MR DUGGAN: Was there a discussion when he gave you the bag?---No. He just come down with the exhibit bag, said there's some drugs been found, we need to put it in the safe so I said yeah, no worries.

10 All right.---So I done the exhibit book and logged it all in there and then put it in the safe.

Were you aware at this stage that they were searching for a weapon?---Nah.

That the search operation had been in relation to a weapon?---No.

When he provided you with the exhibit bag, did you know it related to inmate [REDACTED] Not until I put it on the book.

20 All right. And did you think to yourself that was the guy I was filling out the IRM for earlier today, reviewing the IRM for?---Yeah. I suppose, yeah.

What was the thought process you had?---Well sometimes they do go do a secondary search after they've had a use of force, because there may be more information.

But did you think this is a bit too convenient or this is a bit of a coincidence or anything like that?---No.

30 No. All right. So he provided, Mr McMurtrie provided to you, was this in the MOS office, in your office?---MOS's office, MOS's office, yes.

Can I show you a document, please. I want to show you an entry in the exhibit book, and it's in relation to Mr [REDACTED] who was the Cameron Watson contraband find on 19 February.---Okay.

So if you can have a look at that.---Yeah.

40 Just the writing up the top, Lithgow, the MIN number and the name, is that your handwriting?---Yes.

And the particulars, the date, is that your handwriting?---Yes.

And the description?---That looks like my handwriting, yes.

All right. And then the bottom left under "Receipt," is that all your handwriting?---Yep.

And then under "Disposal Details," is that your handwriting or someone else's?---The right-hand side?

Yes.---No, none of that's mine.

None of that's yours. All right.---No.

10 Now, you can see, and I should indicate that under "Receipt," it's "S Taylor, Lithgow." Do you accept that that's what it says?---On the left-hand side, yeah.

Yeah.---I accept that.

And you've, I think it's a bit blacked out before the word, "Personally," but I think it's, "Handed personally."---Yeah, I think it is, yes.

And that's ticket. So that would be handed personally from Mr McMurtrie? ---Yeah.

20 Right. And this is – sorry, I may have inadvertently misled you there. When I was asking you before about the [REDACTED] find, that was Mr McMurtrie, but this is in relation to [REDACTED] so that may or may not have been Mr McMurtrie.---Oh, I would have no idea.

Yeah. Okay. And then you've got the date, and then under "Description," you've got, "Point two grams of bupe." Do you see that?---Yep.

30 Now, would you usually test that amount of bupe or would that be based on an admission that's made, the fact that it's bupe.---He'd made an admission. We don't test. We've only just started testing now, so the drugs.

All right. So it says, "Concealed in packaging, a small folded yellow package, IRM number."---Yep.

And then the key detail, "Exhibit bag number," and it looks like 6-0-0-5-3-6.---That's correct.

40 Right. And when I asked you earlier about the particulars that you would include in the description you agreed that you would usually include that exhibit number?---Yes, I would.

Can I take you to Exhibit - - -

THE COMMISSIONER: Just before we move on, can I just draw your attention to the disposal details.---Yep.

This two grams of bupe was seized on 19 February.---Yep.

It says 12 but I assume that's 14 or should be 14. And the disposal date is 3 May, 2014. Why would it have been kept so long?---They usually are.

Are they?---Then policy says you're supposed to get rid of them but nobody gets rid of them straightway.

10 Right.---You just haven't got the time or the luxury, to be perfectly honest, to do it. A lot of gaols probably leave it a month, six weeks. It's great having a policy in black and white but on the ground it doesn't happen that easy and it's not that easy to dispose of stuff 'cause of what the gear is or how much you've got or where you're going to do it or - - -

Okay.---And you can't light a fire in a gaol.

Okay.

MR DUGGAN: You understand, I think I asked you the reason behind the policy was so that you don't get these items lost or misplaced or stolen?
---Yeah.

20

And the longer you don't destroy it, obviously the greater the risk of that event occurring?---Yeah. Well, I'll be honest with you, a lot of this stuff's written by people who are academics and never been worked in a gaol and don't know the day-to-day stuff. They're great in head office, they're great at doing stuff on computer, but you've got to look at the reality of it on the ground.

Right.---Yeah, we all read this and we try to abide by as much as we can. Sometimes it's not humanly possible to do it. That's what I'm saying.

30

THE COMMISSIONER: And we see that it was destroyed by McMurtrie, and then it's got "witness" - - - ?---Yeah.

- - - "Brad Peebles". Is that meant to represent the fact that he witnessed - - - ?---The destruction. There should always be two people.

So he's witnessed the destruction of it.---The destruction of it. So, he was there, whatever they did with it.

40 Flushed it.---That's not unusual, Commissioner.

No.---It's a small amount.

Yeah.---I mean the police don't want it, nobody of us wants it, the boss doesn't want it.

Thank you.

MR DUGGAN: Would you usually video the destruction of a drug?---I've never videoed the destruction of a drug.

All right. And you say flushing is an accepted method of destruction, do you?---For small amounts, people do it.

Did you know whether, do you have any knowledge of whether that was Mr McMurtrie and or Mr Peebles practice at the time?---No, but it's not unusual.

10

All right. Can I tender that document, Commissioner?

THE COMMISSIONER: Yes, sorry about that. That will be Exhibit 75.

**#EXH-075 – COPY OF EXHIBIT BOOK ENTRY DATED 19
FEBRUARY 2014**

20 MR DUGGAN: Can I go to Exhibit 73, please? So, that's another exhibit book entry but this one relates to Mr [REDACTED] Do you see that?---Yes.

And so the bottom left corner, the 20th of February, 2014, so this is the find on that day. Do you accept that?---I do, that's my signature on it.

And your signature and details?---On the left hand side, yeah.

So you've receipted it.---I did.

30 It was handed personally to you from Mr McMurtrie?---To my recollection, yes.

All right. And there's a particulars column there and it says "photographed, yes or no". Do you see that?---On the left hand side?

Yes.---Yeah.

40 But you say, do you, that you wouldn't usually photograph a contraband find?---I don't know many, I mean, it says there you photograph it, I don't know many people that do it to be perfectly honest.

All right. Now, I was asking you before about one of the key details being the exhibit bag number.---Yeah.

Can you identify what the exhibit bag number is on this exhibit book entry? ---No I can't because I probably forgot it, going by that. Because I've got a contraband find, his MIN number, the date, the IT disc and the thing so I've, I'm assuming I, for some reason, I forgot to write it down.

It's the most important detail, isn't it?---In your case, yeah, but I, I don't know, I can't give you an explanation.

Well I've taken you to Mr [REDACTED] entry.---Yeah. And I had the exhibit number in, put number in there.

Exactly. And you had all of the other details, the inmate name, the IRM number.---Yeah.

10

And a description of the find.---Mmm hmm.

And the exhibit bag number, but mysteriously you don't have one in relation to Mr [REDACTED] I could have answered the phone, multiple things could have been going on in the gaol, I may have just forgot it. I can't give you an answer because I don't know, but it's not my normal case to miss out that number but I don't, I can't give you an answer. If you ask me for one, I can't give you one.

20

Did you put this drug into the safe?---Yes I did.

THE COMMISSIONER: Who gave it to you? Do you recall?---The [REDACTED] one, Mr McMurtrie.

What, so that was destroyed on the same day as [REDACTED]---So the 5th?

Yes. Also by flushing.

30

MR DUGGAN: Is that a coincidence?---What, flushing?

No. The fact that the drug found on the 19th of February and the drug found on the 20th of February were flushed on the same day. Is that a coincidence?---No, but if you go back to the policy they said as soon as possible, so that might be as soon as possible. I don't know.

Yes, but that's not my question. My question to you is this. You have a point two gram find of bupe on the 19th - - -?---Yep.

40

- - - relating to Mr [REDACTED] and you have a point two gram find of bupe or a point two gram find of a drug on the 20th - - -?---Yeah.

- - - of February - - -?---Yeah.

- - - and a few weeks later by some happenstance they're both destroyed at the same time by the same people. Is that a coincidence?---Possibly. I don't, I don't really understand your question but that's got nothing to do with me.

Well, you're supposed to destroy drugs immediately or promptly. Do you understand that, according to the policy?---According to the policy, yes, I do understand that.

And sometimes you don't get around to it, as I understand your evidence
- - -?---Ah hmm.

- - - till possibly weeks or months later.---Yep.

10 And I'm suggesting that it's a coincidence that just happened to be 3 May that both the drugs found on the 19th and the 20th were destroyed at the same time or on the same day.---Yeah, could be coincidence, yeah, and there could be other stuff destroyed that day, I don't know.

But you're not able to explain that coincidence?---No.

THE COMMISSIONER: Can I ask you, in the description - - -?---Ah
hmm.

20 - - - on this document it's got, it looks as though it's 12M and then there's a number 9-2-7-8-6. Do you know what that number is?---IRM, incident report module, 92, it should be 9, I think it's 986, that's the IRM number.

Oh, okay. Thank you.---So I can relate it back to the incident.

Thank you.

MR DUGGAN: Did you ever have a concern, and I'm not talking about on
30 20 February, but did you at some later stage have a concern that this drug might have been planted on Mr [REDACTED] After March 2015, yes.

And do you have any knowledge or understanding as to why it might have been planted?---To cover up the original search.

And what information do you have that gives rise to that?---Oh, just hearsay, second-hand information, people talking, people telling me stuff.

Have you spoken to Mr McMurtrie about that fact?---No.

40 Or Mr O'Shea?---No.

Now, remind me again, which correctional centre did you go to after Lithgow?---After this incident?

After you left Lithgow.---Ah, I think I went to Wellington - - -

All right.--- - - - and back to Lithgow.

And so when you were in Wellington, what position did you hold there?
---Acting manager of security.

Who was the governor?---To start with it was Mr Scott Brideoake.

And after?---And then Brad Peebles.

10 All right. So when were you Mr Peebles' 2IC?---I think after March to
October, I think, or maybe May to October.

2015?---2015, yeah.

And did you have any discussions with him about - - -?---About this?

- - - your suspicions?---No.

Why not?---Why would I?

20 Well, you had some suspicions as I understand it that a drug might have
been planted on an inmate.---Yeah. All unsubstantiated. It's just gaol
gossip.

Just wait, just wait for my question.---Oh, sorry.

So you've got these suspicions.---Yeah.

30 And you had, I'm not suggesting you had a role in the plant but you were
involved in the events in that you receipted the drug and put it in the safe?
---Correct.

So you would have been curious, to say the least, about what had happened,
given your suspicions?---Correct.

And this was a drug find that related to a search that you were positively
directed not to participate in?---Correct.

40 Well, you'd have alarm bells going, surely, and Mr Peebles was one of the
people who directed you not to participate in the search. Do you recall that
evidence?---Correct.

And you're now 12 or 15 months later, you're his 2IC in Wellington.---Ah
hmm.

Would you say, Brad, what happened?---No.

Why not?---Because I was trying to find out what was true, what was
factual and what wasn't, 'cause I was getting, I was getting different stories
from different people.

And he was one of the, he was in Mr O'Shea's office - - -?---Yep.

- - - when Mr O'Shea said stay out of it, or whatever the words were, and he said the same thing to you. Well, he would have been able to shed light on the position.---As I said, he could have been involved in other, other jurisdictions so no, I never approached him about it.

10 Is it the case that you didn't have that relationship with him, to be able to talk openly about a matter like that?---I thought, I thought I had a pretty good relationship with him.

I'm not suggesting you didn't. You considered you had a good relationship with Mr Peebles?---Yeah, I, yeah, I'm pretty much my own person. I'm a bit of a loner. I stay to myself. So if I've got something to say, I'll say it, but if I've got nothing to say, I won't. It's not something I bring up in conversation.

20 But you had a suspicion about this, so you would have had something to say?---Look, I do but I've learnt over the years, you've got to have factual information if you want to take it anywhere. If it's just people's innuendo or people saying stuff, I'm not going to walk up to the bloke and say, "You've done this." I'd probably get a cop in the mouth.

But I'm not suggesting that you would have directed blame his way but you would have been concerned that someone might make enquiries of you because you've put the exhibit bag in the safe.---Possibly.

30 Were you concerned about that, or - - -?---No because I've done nothing wrong.

So, you never had any concern about the events of the 19th and 20th in that respect?---No.

THE COMMISSIONER: Did anyone who was involved in research that day suggest to you that that's what might have happened?---No.

Thank you.

40 MR DUGGAN: Commissioner, I have no further questions for this witness.

THE COMMISSIONER: I've got a couple. I might bring up page 90 of Exhibit, it's the note from McMurtrie about the information he had received on 19 February. Now, I think when you were asked questions about that particular document you said that you didn't have any discussion with him about it – that is, McMurtrie – about it on the 19th, but I may have got this wrong. I had the impression that you may have had a discussion with him about that document some stage later?---Oh, look, I can remember speaking

on the 20th about going for the search because he just said, "I'm going for a search." But I can't remember speaking to Brian on the 19th.

All right.---Sorry.

That's okay. And can we access Mr Taylor's compulsory examination on the screen? Can we go to page to 159? This is when you were examined in December last year and I think the Chief Commissioner, Mr Hall, was presiding then. And you'll see at about line 25, the words of the
10 Commissioner?---Yes, Commissioner.

He asked you this, "Would you have expected a disciplinary charge or an internal charge to have been raised on the basis that the search finding this pill they found?" And you said, "Yes, Commissioner. There should have been charge on that due to the," and then he said, asking this question, "You'd normally expect one?" "Yeah. For the drug find, yes." Question, "Trying to work out why one was brought in this case."

20 MR GREENHILL: "Not brought."

THE COMMISSIONER: "Was not brought in this case." You said, "I'm not sure if they charged him." And then Ms Clifton said, "No, they didn't." And you said, "That's unusual because normally we do. Any gaol I've been in, and I've been to a few now, you charge them for any small finds."---Yep.

And then the Commissioner said, "Well, I suppose drugs in gaol has always been a problem and if you don't charge them that's," and you said, "Yeah, it's an ongoing issue, you know?" Question, "You've got to take action." And you said, "That's one of your biggest things we're fighting but we
30 charge them for everything we find. That's what our dogs are trained for, the minute amount. So everything's because, and that, yeah, if I don't charge that one, then the rest of the wing know they can get away with it." And was that truthful evidence?---Yes, Commissioner.

Thank you. That's all I've got. Thank you. So, Mr Madden, do you want to go first?

40 MR MADDEN: Yes. Thank you, Commissioner. Mr Taylor, as you know I act for Mr Peebles. You don't dispute that on the 19th and the 20th of February you were the manager of security?---No, I don't dispute that at all.

No. And you were responsible for all the duties of the manager of security. ---That's correct.

And that included completing the use-of-force package and your evidence is that you delivered that to Mr O'Shea.---That's correct.

All right. Thank you. You did have a pretty good relationship with Mr Peebles, didn't you?---As far as I was concerned I had a very good relationship.

Yeah. Yeah. Yeah. And when you, when you were at Wellington he was transferred to Wellington and then after some time you were transferred out of Wellington.---That's correct.

10 That transfer had nothing to do with Mr Peebles, did it?---From what I heard on the grapevine from other governors, it did.

All right. Well if I suggest to you that in fact it did not, you're not in a position to dispute that one way or another?---Only from what other governors have told me in the last couple of years.

Right, okie doke. Only from what you've been told second hand, third hand or whatever.---Yeah. Second hand, I agree with you on that.

20 Rightio, okie doke. Likewise, you only heard second hand or third hand or whatever that, I think this is your evidence, that you thought Mr Peebles and others, we'll just deal with Mr Peebles. Mr Peebles suspected that you were someone who had put in a public interest disclosure.---That's correct.

Rightio. If I suggest to you that Mr Peebles knows nothing about you putting in one or not putting in one, you're in no position to dispute that one way or the other.---Not at all, no.

30 Yeah. Thank you. When the IAT officers went into [REDACTED] and [REDACTED] cell, Mr Peebles, where was he then? Do you say he was up near the door at the end of the day room or in his office?---I didn't see the IAT go in. When I first went in?

Yeah.---He was near the door near the 5.1 office, probably two or three feet inside the door.

40 Rightio, okie doke, thanks for that. And dealing with the search on the 20th of February where you were told that you were to have no part of it, is it your evidence that at some time, Mr Peebles said to you, "You're not to take any part of this search"?---That's correct.

Rightio. Where did he have that discussion with you?---In John O'Shea's office.

In John O'Shea's office. And who else was present?---Just John and, John O'Shea and Brad Peebles.

Rightio. And there's no doubt in your mind about that at all?---No. None at all.

What did Mr Peebles say to you? See if you can give it to us word for word.---Word for word from four years ago?

Yeah.---Basically, I think he just reiterated what John said, "You're not to be involved in the search".

10

Right.---So I just took it as, okay, I'm not going to be involved in the search. I didn't take anything out of it, I just said okay, no worries.

And that conversation is burnt in your brain as if it were yesterday?
---(not transcribable) just a little bit different.

Yeah.---But I, it wasn't unusual but I just said okay, no worries.

20

Okie doke. See, Mr Taylor, on the 20th of February, Mr Peebles wasn't even at the gaol. What do you say about that?---Can't recall. My recollection is he was but I might be wrong.

Well you must be wrong. If he wasn't there on the 20th of February, and I can assure you if he wasn't, if I'm wrong about what I'm putting to you, someone will, I'm sure, correct me. Do you agree that your memory is just completely wrong about this conversation that you allege Mr Peebles had with you? If he wasn't at the gaol, he couldn't have had it with you.---My recollection he was but if you're saying, stating something else, then - - -

30

Right. Yes, thank you Commissioner.

THE COMMISSIONER: Mr Willis.

MR WILLIS: Thank you, Commissioner. Mr Taylor, just taking up from some questions that you were just asked by Mr Madden, do you know at what time of the day it might have been that you say you were called up to Mr O'Shea's office?---Some time in the morning. It was after parade. I've gone back to the office, so - - -

40

And that conversation, did you document that anywhere, did you make any notes about that?---No, I did not.

And you said that you didn't think that there was anything unusual about that at the time. Is that right?---That's correct.

Yeah. See, Mr Taylor, I have to put to you that, in fact, there was no conversation that you had with Mr O'Shea where Mr O'Shea directed you not to be involved in any search. What do you say about that?---I disagree.

All right. Can I just take you through some things about the 19th of February? As I, I just need to clarify this with you. I understood you to say, first of all, that you were in an office upstairs above Unit 5. Is that right?
---That's correct. Yeah.

And you heard some, some shouting. Yes?---Yes. That's correct.

10 And was it that that prompted you to go downstairs?---It's probably the second lot of shouting, yeah. The first lot didn't worry me.

Okay. And when you went downstairs, was it, did you notice whether it was very noisy in the unit?---Normally down there it is quite noisy.

Right. Well on this particular day there was, you've told us that you heard some shouting. Is that right?---That's correct.

20 And was there also noise being made by the prisoners or by the inmates, I probably should say, kicking the cell doors and making a general ruckus?---
In that unit it's not unusual, in 5.1, 5.1.2.

But do you have any recollection of that on that particular day or not?---Not that particular day but that's not an unusual occurrence in that unit, particularly on the right hand side of the unit.

Right. And did I understand you to say that you, in the officer's station, you had a conversation with Jane Lohse and you thought another officer who, I think a name you couldn't recall at that time.---I think so, yes.

30 And did I understand you to say that you were talking to Jane Lohse about something that was going on or how things were going on at the, in the violent offenders pod? Is that right?---That's correct.

And did you say that Mr O'Shea and Mr Peebles walked past you?---I believe so, yes.

Was that in the officer's station?---I believe so, yes.

40 Did you see where Mr O'Shea went?---As far as I knew they went up the hallway towards 5.2.

Okay. Was that before you saw, you say you saw Mr O'Shea in the day room area, and you noticed the cell door to cell 208 open?---So you're asking me when I went out did I see John out there?

Yeah. I'm sorry. Look, I'll try in another way.---Yeah.

You said you saw Mr O'Shea walk past you.---Yes.

And you thought that he went in the direction of the hallway to Unit 5.2?
---Yeah.

Is that right?---That's correct. Yeah.

Right. Was that before you saw him in the day room area outside cell 208?
---It would've been after.

10 After. Okay. So, as I understand what you say is that you, firstly you didn't, you yourself didn't hear or see Mr O'Shea using the knock-up system. Is that right?---That's correct. No I did not see him at all.

And you didn't hear any abuse of Mr O'Shea over that system?---No I did not.

Just in relation to that, it's not uncommon for inmates to use the knock-up system to abuse staff, is it?---No, it's quite regular.

20 Quite regular.---Yeah.

And it's something that unfortunately, it's something that in the course of your work you would experience on a day to day basis, wouldn't you?
---Yes. Particularly that unit, yes.

Right. And so, in any event, I just need to understand this from you, you were in the officer's station area and was it from that point that you first looked out into the day room outside cell 208?---That's correct.

30 And you went out into the day room area?---Correct.

And when you went out into the day room area, you saw Mr O'Shea there, did you?---That's correct.

And, thank you, when you saw, where was Mr O'Shea when you saw him?
---I believe the middle of the common area.

In the middle of the common area?---Yeah. Oh, straight out from cell 208, roughly in the middle.

40

So, when you're talking about in the middle of the day room, are you talking about the middle of its length or the middle of its width? Because it's a rectangular shape, isn't it?---To me, it's middle, halfway, I - - -

What, halfway between the door from the officer's station to the door of, to cell 208?---I'd go from the officer's station to the external door. It'd probably be about three quarters of the way up towards 208.

And what did you do when you went out there?---I walked up to where John was, stopped beside him and looked in the cell and that was basically it.

THE COMMISSIONER: And you were standing next to Mr O'Shea?
---Yeah, basically, yeah.

And when you looked into the cell, is that when you saw - - -?---Terry had [REDACTED] up in the back right hand corner.

10 Thank you. With his hand on his throat?---Hand was up around here.

MR WILLIS: So, I'm sorry, Commissioner.

THE COMMISSIONER: No, that's okay.

MR WILLIS: So, Mr Taylor, do you say that where you were standing, alongside Mr O'Shea, you could see inside the cell and you saw what you've told the Commission about in terms of Mr Walker having hold of inmate [REDACTED] is that right?---That's correct.

20

And did you stay standing in that position alongside Mr O'Shea?---Not for long, no.

I beg your pardon?---Not for long.

What did you do?---I went back to the 5.1 office.

And was it from that office that you, on that occasion, that you saw Mr O'Shea walk past you and in the direction of unit 5.1?---I believe so, yes.

30

So, did you stay very long in the day room area?---Not that I can recall. 30 seconds maybe.

Pardon me, Commissioner.

THE COMMISSIONER: No, take your time. Fine.

MR WILLIS: Mr Taylor, about this radio call. You say that you didn't make any radio call for IAT to attend that unit on the day, is that right?

40

---That's correct. Yep.

And not only did you not make that call but you didn't hear any call to that effect, is that right?---That's correct.

MR HARRIS: Commissioner, I just rise there. My client's, he has a slight medical condition. I wonder if he could go to a bathroom and - - -

THE COMMISSIONER: Oh, certainly. Yes. Certainly. No problem with that whatever. I'll just adjourn.

SHORT ADJOURNMENT

[3.09pm]

MR HARRIS: Thank you, Commissioner. I think I can say that on behalf of not only my client.

10

THE COMMISSIONER: Okay.

MR WILLIS: Mr Taylor, just in relation to the knock-up and the use of the knock-up, I gather that when a, that if it was the case that Mr [REDACTED] or Mr [REDACTED] were using the knock-up to abuse staff and it was answered by Mr O'Shea, there's no way that an inmate could know that it was the governor on the other end, would there be?---Not without announcing yourself, no, they would just see it was one of the staff members.

20

And you generally wouldn't announce yourselves, would you, if you responded to the knock-up?---Generally most staff don't, they just answer it, "What's your problem, what's your issue?"

Yeah. All right. And so you say that you walked into the dayroom area, you stood alongside Mr O'Shea. Is that right?---That's correct.

And it was from that position that you could see what was happening in the cell. Is that right?---That's correct.

30

You see, I put it to you, Mr Taylor, that from where Mr O'Shea was standing in the day room area, you could not see inside the cell.---I disagree.

Do you agree with that or not?---No, I don't agree with that at all.

Okay. So you stood alongside Mr O'Shea for a period, I think you said of probably what, about 30 seconds?---Yeah, I did. Yeah, give or take.

And then you left, and then you left the day room area?---That's correct.

40

And you didn't go any closer to the cell than that?---Not that I can recall, no.

Okay. You do recall giving evidence here and you've been taken to it on the 5th of December last year, don't you? Do you remember giving evidence here before?---Sorry, yeah.

Okay. And can I ask you just firstly in relation to this, going back to that radio call, you see, I put it to you that it was you who made the radio call for IAT to attend that unit.---Not correct.

All right. And that you made that radio call because Mr O'Shea had said to you in relation to the noise that was going on from cell 208, "Sort it out. Get some people and sort it out", or words to that effect.---That's not correct.

All right. And as a response to that, I put it to you, you used the radio to call for the IAT to attend that unit.---That's not correct.

10 Okay. I want to ask you about this in relation to your evidence that you gave on the last occasion that you were here, and Commissioner, I'm taking you to page 122 at about line 25.

THE COMMISSIONER: Do you want it on the screen, Mr - - -

MR WILLIS: No, it's not necessary, Commissioner, unless it assists you and others. But I'll just read this to you, Mr Taylor, and I'll read the question before, and you were asked the question, "When you say you were
20 upstairs, where were you?" And you say, "So, the building. My normal office was upstairs." And the question is, "Yes?" and you say, "So in that, in that, in that building there's a second tier above 5.1/5.2 at Lithgow. I was upstairs when the first call come and then I saw the IAT were going to go in, so I probably made the radio call from that." Do you remember giving that evidence?---I do.

Do you remember that, I'm sorry, I withdraw that. The evidence that you gave on that day, was that truthful?---To my recollection.

30 Right. Did you see the IAT arrive at Unit 5.1?---No.

Well what did you mean when you said in your evidence, in that answer that I read to you, "Then I saw that the IAT were going to go in"?---I don't know, I don't have an answer to that.

Because you say today, don't you, that you didn't know that the IAT were in that unit until you went downstairs to the officer's station and you were told that, probably by Jane Lohse. Is that right?---Jane or somebody else. That's correct.

40 Yeah. And then you, in that answer, you went on to say, and I'll read that part back to you again, "I was upstairs when the first call come." What call were you referring to there?---Got no idea.

No idea. Because you didn't hear any radio call, you've told us, to do with the IAT coming to, or being required at that unit, did you?---That's correct.

Well, all right then. So you don't know what the, what the first call was that you refer to there. Is that right?---Not, no. Yeah, I can't recall. No.

And when you said in your answer, "So I probably made the radio call from that", what did you mean by that?---I don't know, I could have made any radio call. I don't know.

Well, what radio call were you referring to?---I could've made a radio call downstairs to Ms Lohse, I could've made a radio call to 5.2, I don't know. I honestly don't know.

10 But you were specifically referring to the IAT and that they were going to go in, but what radio call were you referring to relative to that?---I don't know.

No idea.---Not my recollection, no.

No. Have you got a good recollection of this?---I believe so, yes.

20 All right. So, you've told us where you thought, I'm sorry, I withdraw that. You told us where Mr O'Shea was when you went down and stood next to him in the day room area, haven't you?---I have.

All right. And I just want to take you to this evidence that you gave on the last occasion. At page 123 at about, it starts at about line 7, you're asked this question. "So when you came downstairs, what happened next when you got downstairs?" Answer, "When I got downstairs, I asked what was going on. My staff around the office, my staff around the office block. Mr O'Shea was halfway between the office block and the cell." Do you remember giving that evidence?---I do.

30 All right. So, was he halfway between the office block and the cell, or was he in a position where he was able to, according to you, see inside the cell? ---As I said before, halfway.

But you say from halfway between the office block and the cell you could see inside to the back of the cell, could you?---As far as I'm concerned you could, yeah.

40 Okay. And the observations that you made that you told the Commissioner about, and you made from that position, didn't you? That's as I understand your evidence, isn't it?---I don't understand the question.

Okay. From where you say you were standing alongside Mr O'Shea - - - ? ---Yeah.

- - - you saw, you say, Walker with inmate ██████ against the back wall with his hand to his, to his neck. Is that right?---That's correct.

Okay. Now, you didn't have to walk any further either into the day room area or towards the cell to see that, did you?---That's, that's correct.

You could see that from where you were?---Where I was, yeah, where I was, yeah.

Okay.---Excuse me.

10 I just want to take you to this. On the same page, page 123 at about line 28, the question is, "All right. And was Mr O'Shea walking towards the cell or walking away from the cell at that point?" And your answer is, "No, just standing in the middle." Is that right?---That's correct.

Is that right? Was that truthful evidence that you gave?---Was standing in the middle, yeah.

Okay. And the IAT so far as you were aware had already gone into the cell. Is that right?---Well, there was one inside, yeah, possibly two, yeah.

20 Hmm. And then at page 124 at line 46 or so you're asked this question, and this refers again to what was going on in the day room area. You're asked the question, "What did you see or hear next?" And you said, "I walked past Mr O'Shea and I just said, 'What's going on?' He said, 'IAT has gone into the cell.' I went in there. IAT had [REDACTED] up against the back right-hand corner of the cell near the toilet or toilet area and the other inmate was on the top bunk just sitting there virtually like I am now, just looking straight ahead, not saying anything.'" Do you remember giving that evidence?---I do.

30 Was that truthful?---At that time, yeah.

What do you mean at that time?---Well, reflection from there, I thought about it, and I had thought about this a lot, that wasn't quite right, 'cause at the time they had him outside.

Oh, okay. So the part of that that you think was not quite right was that Mr [REDACTED] apparently was not sitting on the bunk and that he was outside the cell with Mr Graf. Is that right?---That's my recollection, yeah.

40 All right. Is your recollection that the rest of that answer is the truth and is accurate?---That's what I can remember and thinking back to that date and time, yes, I believe so.

Well, what did you mean by, "I went in there?"---No idea 'cause I didn't go in there.

But you didn't go in the cell?---That I can recollect – have I been in that cell before? More than likely, yes, I have.

I'm sorry, I didn't, I either didn't hear it properly or I didn't catch it or - - -
?---If you're asking me have I ever been in 208 or 209 or 2010 [sic], yes, I
have.

No, I'm not. You know what I'm talking about, Mr Taylor.---Yeah, on that
day?

Yes.---My recollection, no, I did not go in there.

10

Right. Well, why would you say that?---I have no idea.

"I went in there." No idea. And you don't recall seeing, I think you've told
the Commission you don't recall seeing the officer Mick Watson - - -?---Not
that I can - - -

- - - with his dog - - -?---No.

- - - in the day room area? Don't remember that?---Not that I can recall.

20

Okay.---They didn't always bring a dog in.

And then at page 126 at about line 29 you're asked the question, "And then
you've entered the cell and you've seen prisoner [REDACTED] up near the
toilets?" Answer, "Yep."---He was up the - - -

Do you remember being asked that question and agreeing with it?---I do.

But you say today that you didn't go in the cell?---That's correct.

30

And you didn't go any closer to the cell than where you say you were
standing alongside Mr O'Shea. Is that right?---That's correct.

And then the next question on the same page, Mr Taylor, you're asked a
question, "Had he entered the cell or did you or were you still outside?"
This is a question from the Commissioner, then. And you say, "I stood at
the door because there were too many people in there anyway." Was that
true?---I would say yes.

40

And you stood at the door, that's true, is it?---No but I could have said that.

You could have said that?---Yep.

Why would you say that if it wasn't true?---To be at the door, at the door, I
was pretty close to the door.

Oh, I see. So halfway between the office block and the cell door and being
at the cell door, so far as you're concerned it's all the same thing, is it?---No,

halfway there, but if I'm at the cell door I'll just say, "I'm at the cell door." I don't say I'm halfway across or two feet, I'll just say, "I'm at the cell door."

Look, Mr O'Shea wasn't standing alongside you at the cell door at any stage, was he?---Not that I can recollect.

No. All right. And then you're asked the question, the next question, the question reads in its entirety, "All right. Thank you for that, Commissioner. When you were standing at the cell door, could you see Mr [REDACTED] at the rear near the toilet?" Answer, "Yes." Can you recall giving that answer?
10 ---Yes. Correct.

And you, I take it, that your explanation for that – I'm sorry, I withdraw that. What is your explanation for that?---For what?

How do you explain what you've said to the Commission today about, do you see any difference between what you said about standing alongside Mr O'Shea about halfway between the office block and the cell door and you standing at the cell door?---I do, but if you have the CCTV footage it
20 showed what happened. I'm giving my best recollection of what happened on the day. I've gone over it that many times through my head and that's to my best recollection, that's what happened.

Yes. And so when you left the area, you say you only stood there for a reasonably short period of time and then you left and went to the officer's station. Is that right?---That's my recollection, yep.

When you left the area, do you say that Mr O'Shea was still there?---Are you still talking about 5.1 office or the - - -
30

When you left the day cell area, Mr Taylor, in the vicinity of cell 208 - - -

MR HARRIS: I just might clarify, day cell - - -?---Two different things.

MR WILLIS: Oh, I'm sorry. If I've mixed it up, I apologise.---That's why I'm confused.

THE COMMISSIONER: The day area.---The day room's the big area.

40 MR WILLIS: Yes. I'll have another go, Mr Taylor.---Okay.

When you left the day room area outside cell 208 or near cell 208, was Mr O'Shea still in that area?---I believe so.

Well, you believe so?---When I turned, when I turned around to go back to the office, he was there, but I didn't turn around and get a look and see if he was there again.

So you went back to the officer's station and I take it you spoke to, did you speak to Jane Lohse or - -?---I think it was Jane Lohse, Michael Shaw and I'm not sure if Brian Dickson was there. He may have been.

And where did you go then?---I think I went down to 5.2, signed the books and then back towards my office, I think.

Did you have any more to do with what was going at cell 208 or Mr [REDACTED] inside that cell on that day?---No. Not at all.

10

Well, can I just ask you about this? At page 127 of the transcript of your previous evidence, at about line 18, you were asked the question, "And so after you witnessed that," and by "that" can I just say that you're referring to what you'd seen inside the cell with Mr [REDACTED] and Mr Walker, and you're asked a question, "And so after you witnessed that, what happened next that you saw?" And you say, "After that, we called the nurses over I believe or we took him to the clinic, which is the normal process." Question, "So you took Mr [REDACTED] to the clinic?" Answer, "I believe he went to the clinic or the nurses come to him. I just can't recall that." Did you take Mr [REDACTED] to the clinic?---Who, me personally?

20

Yes.---No.

Did you arrange for him to be taken to the clinic?---Yes, I did.

How did that come about?---When I went back into the office, I said to Jane, because there'd been a use of force, to make sure the packages are done, reports are done, make sure you either get a nurse to come over or we go over, because it's harder to get our inmates over to the clinic because they have to be handcuffed, there has to be three officers. So, it's not that easy to get them to the clinic, so it's usually easier to get the nurses to us.

30

All right. Did you, were you in a position to see Mr [REDACTED] to make any observations about him after this incident in this cell?---No.

So, you just didn't see him to make any observations about injuries, you didn't see him again on that day after you'd seen him in the cell with Mr Walker?---No.

40

Is that right?---That's correct, yeah. No.

Okay. All right. So, you're asked the question at the same page, at about line 35, "Did you, were you close enough, did you look at him front on?" And "him" is Mr [REDACTED] I can assure you.---Mmm hmm.

And your answer is, "Not front on, side on. I saw his face, but not front on, no." Did you see him or not?---I did see him, he was in the corner of the cell behind the toilet.

I don't expect that you would have been able to see whether he had any injuries while he's being held by the neck Mr Walker, Mr Watson, but later on - - - ?---I'm not Mr Watson.

I'm sorry.

THE COMMISSIONER: I think in fairness, Mr Willis, I think you should ask him or draw his attention to the next question and answer.

10

MR WILLIS: All right. Yes. I was going to come to that in fact, Commissioner. I'll read, I'll read the next question to you and your answer. The next question reads, "And I understand, it's a very small cell, but did it look like there had been any struggle within that cell?" And your answer is, "Probably a little bit, yes, because there was stuff on the floor because they would've gone straight in, they knocked off the bench, like, what was on the floor because you've got the bunk, the hallway like that, the walkway and you've got a bench here. So I think there was some stuff on the floor." And what I wanted to know from you, Mr Taylor, was whether you saw Mr
20 ██████ Mr ██████ face, to make any observations about whether he was injured or not.---I saw his face but I wasn't close enough to see if he had any injuries, no.

Yeah. All right. So you weren't in the day room area when Mr ██████ was brought outside. Is that right?---That's correct.

At page 128 at about line 25, you're asked a question, "After you looked into the cell, Mr ██████ is brought outside. Is that right? And then taken to the clinic. Is there policy or procedure on taking somebody to the clinic?"
30 And you say, "Yep, it's normally by IAT or the staff member who's involved." So, did you see Mr ██████ brought out of the cell or not?---No I didn't.

And then at page 129, at about line 10, you're asked the question, "And so was the last you saw of Mr ██████ on that day," that day being 19 February, 2014, "as he was being taken off to the clinic?" And you said, "No, I thought I saw him when he come back. They put him back into his cell with the other, the other inmate." Do you remember saying that?---I do.

40 Pardon me, Commissioner. Yes, I've nothing further, thank you. Oh, I'm sorry, there is. Just in relation to use of force, Mr ██████ was handcuffed on this occasion, wasn't he?---Afterwards, I believe so.

After Mr ██████ was restrained in the cell by Mr Walker and whoever else was in there assisting him, he was handcuffed, wasn't he? Is that your understanding?---That's correct, yeah.

The fact that he was handcuffed in those circumstances, would that not amount to a use of force?---No.

Well - - ?---It could be, could be classed as a controlled movement.

Well, it's controlled movement if handcuffs are put on a prisoner simply for the purpose of moving that prisoner from one cell to another or from one location in the gaol to another. That's controlled movement, isn't it?

10 ---Yeah.

And that's quite different to what happened on this day, isn't it?---If they're moving from one cell to another in 5 Unit, no, it's just controlled movement.

So the fact that there was, apparently, let's call it a struggle in the cell - - -?
---A use of force, yeah.

Use of force?---Yeah.

20

And the fact that he was handcuffed following that struggle, that's a use of force, isn't it?---No, the use of force is completed when restrain him. That's it.

And, look, you were asked about the process of your reviewing of this report, the use-of-force report, and I just suggest to you, you've never spoken to Mr O'Shea - I withdraw that. At the time of you completing the review of the use-of-force package, you'd never spoken to Mr O'Shea about it, had you.---Not that I can recollect, no.

30

And I think you told the Commissioner on the last occasion that you were here that you'd done hundreds of them, is that right?---I've done a fair few, yeah, that's correct.

And it's the case, isn't it, that you told the Commissioner on the last occasion that no-one put any pressure on you to sign off on that use-of-force package, did they?---No. That's correct. Nobody - - -

Yes, thank you, Commissioner.

40

THE COMMISSIONER: Thank you, Mr Willis. Mr Dunne?

MR DUNNE: Thank you, Commissioner.

THE COMMISSIONER: Mr Dunne appears for Mr McMurtrie.---Oh, okay.

MR DUNNE: My name is Dunne, Mr Taylor.

THE COMMISSIONER: Sorry, that's the second time I've done that.

MR DUNNE: I'm in the Commissioner's hands.

THE COMMISSIONER: I don't know why I pick you, but - - -

MR DUNNE: Mr Taylor, when you conducted the review – do you have
trouble hearing me? Are you – I just noticed you're leaning forward a bit.
10 Are you uncomfortable or - - -?---I've got 10 per cent deafness in one ear.

I see. I'll do my best to (not transcribable).---That's all right.

MR GREENHILL: Only 10 per cent?

MR DUNNE: Part of your review of the use-of-force package involved,
you've told the Commission, reviewing CCTV footage with Mr McMurtrie.
---That's correct.

20 Okay. And the CCTV footage, and you were shown photos earlier, is of the
day area, the day - - -?---Day room?

Day room?---That's correct.

And do you have a recollection of what that footage showed?---Not really.
I've done a few. I remember staff going in, if you asked me who went in, I
can't - - -

30 So you have some sort of recollection?---Yeah.

If I can put it that way. Can I ask you whether that recollection includes
being able to say whether you were able to see any matters, the actual use of
force that occurred in the cell?---No.

So it was footage of just the day - - -?---It was just footage of the day room.
I can recall the door getting opened, the grille getting opened and staff going
in. You can't see in there.

40 And so the CCTV footage that you viewed, could I suggest was not relevant
to the use of force or the question of whether there was a use of force?
---Because I didn't have any hand-held cameras I needed that just to see
what happened.

No, I understand there's no hand-held, and the hand-held cameras would
certainly have provided you with great information, correct?---Correct.

But the CCTV footage that you saw didn't either show there was a use of
force or show there was no use of force, it was neutral. Would that be fair?

---That's correct, yeah.

And therefore not very relevant. Would that be fair?---To me it's all relevant.

Well, when I say not relevant - - -?---Because if I didn't have any - - -

10 Sorry, go on.---If I didn't have any footage I've only got the paperwork to go off and people's word, that was just I suppose clarifying my mind what went on.

I see. Now, it would also be fair to say that your memory's a little bit patchy about the events that took place on 19 and 20 February, 2014, some time ago?---It's a fair while ago, yeah.

20 And when you commenced giving evidence or answering questions for Counsel Assisting in relation to viewing the CCTV footage, you started off by saying you reviewed the CCTV footage with Brian McMurtrie.---That's correct.

Do you remember saying that?---Yep.

And then you used words to the effect of you were uncertain whether you saw it on a disc or whether you saw it at a computer. Do you remember saying words to that effect?---Yeah. Can I explain that?

No.---Oh, sorry.

30 Could you just answer that question? Do you remember - - -

THE COMMISSIONER: No, no, I'd prefer him to explain it. We're not having a court case here.

MR DUNNE: Well, I'm going to ask another question to explain. I just want him to agree with whether he - he can explain it and I'll give him the opportunity.

THE COMMISSIONER: Okay. thank you.

40 MR DUNNE: I'm sorry, I'll go back. Do you remember using words to the effect that you were uncertain whether you saw it on a disc or whether you saw it on a computer?---Correct, yeah.

Yes. And then you, and then you gave evidence along the lines of what would normally take place, that you'd be given a disc, it would be put in a plastic sleeve, you'd go to the GM's office, he'd review it, and you came back and you went through the general process. Would that be an accurate view of your evidence?---Correct, yeah.

And then following that you agreed with questions put to you by Counsel Assisting that that's what took place on the 20th of February.---Correct.

Now - - -

THE WITNESS: Am I explaining it or not?

10 MR DUNNE: Can I just take you to - - -

THE COMMISSIONER: Can the witness now explain what he wanted to?

MR DUNNE: I'm sorry, I'll now allow you to explain.

20 THE WITNESS: Going back to that thing you first asked me, back then we had two processes going or starting, the first one we were going like the police briefs, so everything, the CCTV footage, all the reports were put on one disc. I can't remember if we were still going with that or I got the disc and had the reports separated 'cause we were going down the line of putting everything onto one thing and filing it that way so it was easy for recognition and following up later on.

MR DUNNE: Yes.---That's what I'm trying to explain.

Yes, no, I do recall you giving that evidence. Can I just ask that you be shown Exhibit 45 at page 84.

30 Do you have that, it should be the manager's Security Review Guide, Use-of-Force on Inmates.---Yeah. Correct.

And you will see there's a list of ticks of yes, so the first two boxes that aren't ticked yes are listed incident captured on CCTV/HC. Do you see that?---I do.

And the next one also refers to CCTV. Do you see that?---Yeah.

And neither of those two boxes are ticked yes.---That's correct.

40 If I can take you down on the same page about fifth from the bottom, video footage document complete and attached, and yes, it's not ticked.---Yeah.

Now, if I recall your evidence when asked questions about why they weren't ticked, I think, and correct me if I'm wrong but you said something along the lines of you mightn't have had the footage at the time, or something along those lines. You might have got the footage later. Is that correct? ---Yeah. Correct, yeah.

But your evidence is that, in fact, on the day that you conducted this review, you sat with Mr McMurtrie and watched the video.---Yeah.

Can you explain why those boxes aren't ticked yes, then?---No I can't.

Could it be the case, in fact, there was no disc, in fact you were simply watching it from a computer screen?---There was a disc.

I'm sorry?---There was a disc.

10

I see. If I could then take you to page 88. Yes, thank you. And if I take you to the bottom of that, "Has footage been secured as per policy?" And again, there's nothing ticked there.---That's not my form.

Is that not part of the bundle of the documents that you were reviewing?
---Yeah, but I didn't fill that form out.

THE COMMISSIONER: I think the evidence was that it was Mr Walker.

20

MR DUNNE: No, I understand that but you reviewed these documents you say.---Yeah. I just had a quick perusal over it, yeah, but I didn't tick.

I see.---Tex is probably saying there, has video footage been captured, he's probably meaning handheld. It doesn't say handheld or CCTV footage, I'm assuming Tex has gone handheld.

THE COMMISSIONER: And in fact it refers to section 13.9, recording and managing video evidence.

30

MR DUNNE: And just the box ahead of that where it says, "Has video footage been captured? If no, include the reasons." And that's been ticked "no". Do you see that?---Is that the second last one?

The second last one.---Yeah.

And again, that's Mr Walker's document. Where are his reasons?---Sorry?

Where are the reasons?

40

THE COMMISSIONER: I think it might be on the next page.---Yeah. There should be explanatory notes somewhere there. It should be in the summary on page 89.

MR DUNNE: Sorry, can you tell me where the reasons are in that document? I'm sorry, I, I - - -

THE COMMISSIONER: I'm pretty sure I've seen, it might be Mr Walker's own incident report where - - -

MR DUNNE: In any event, I think your evidence that you've given the Commission is at least that there was a CD.---I didn't hear the question, sorry.

I'm sorry. I think your evidence to the Commission, if I'm correct, is that it's your belief that the CCTV footage was on a disc of some description. ---That's correct, yes.

10 And you're certain about that?---Yes, I am.

In your role of MOS, or acting MOS I think on that day, were you aware, was there any procedure in relation to the – sorry, I'll withdraw that. Was there any regular routine day that was set aside to destroy drugs that had been held as exhibits?---No.

It could happen on any day?---Yep.

Thank you, no further questions.

20

THE COMMISSIONER: Thank you, Mr Dunne. Who else? Yes. Mr Eurell.

MR EURELL: Thank you. Sir, my name's Eurell, I represent Elliott Duncan.---Oh, yeah. Yep.

Can I just get clear a few matters of timing? This incident occurred four years ago on 19 February, 2014?---That's correct, yeah.

30 Yes. Now, is it the case that you participated in the compulsory examination here six months ago on 5 December, 2017?---That'd be correct, yes.

And is it the case that the only other document that you prepared between the incident and your compulsory examination was your statement of 5 March, 2015?---Yeah, that'd be the only two things, yep, that's correct.

So no other documents that you authored containing your account of the offence of 19 February, 2014 that I've missed?---Not that I can recollect, no.

40

Can I also confirm with you that your evidence is that you came across what was going on in the cell at some time after you think the incident had already taken place?---I concur with that, yeah.

Sorry?---I concur with that, yeah.

I'm just trying to get, these questions might seem trite but the tenor of your evidence as to why you didn't prepare a witness account or an incident

report was because, so far as you were concerned, any use of force had already happened by the time you arrived at the cells?---If we did that, nothing would get done.

I think you're agreeing with me, is that right?---Can you ask the question again, please? You're losing me.

10 The reason that you didn't prepare an incident report was because, so far as you were concerned, you had turned up after the relevant events had already occurred?---Yes.

Now, you also left rather quickly, is that right?---I think so. Yes.

Yes. So you would say you only had the cells, well, the relevant cell under observation for a matter of seconds or - - -?---For about 30 seconds, yeah.

30 seconds, okay.---Give or take.

20 And would you agree that, given the brief opportunity you had to actually make relevant observations and the passage of time between those events and the first time that you were asked to give a detailed account of those events, that you might have some of the details wrong?---Are you talking about Elliott?

Just generally first. We'll get to the specifics. Do you make room for the possibility that with the passage of time, and given your very limited observations or opportunity for observations, you might have some of the things wrong?---Possibly, could be, yes.

30 Yes. And indeed your statement I think says, doesn't it, that by the time you were asked to provide it you had already reviewed a number of other people's accounts?---Are you talking about 15 March?

Yeah, the 5 March, 2015 statement. You say at paragraph 6 that, I think, your statement was prepared after reviewing other people's reports?---On the day?

At any time prior to 5 March.

40 THE COMMISSIONER: I don't think that's quite what he, I don't have it in front of me but - - -

MR EURELL: Incorrect?

MR DUGGAN: I suspect he's talking about a UOF package.---That's what I'm trying to figure out.

THE COMMISSIONER: Are you suggesting to him that he was, he had reviewed other use-of-force packages?

MR EURELL: That he, no, that the, by 5 March, 2015, he had reviewed other people's accounts, whether they were in whatever documents he might have had access to, and I'm not suggesting that there's an impropriety in what he's done. I'm simply just suggesting - - -

10 THE COMMISSIONER: I know. I know you're not suggesting any impropriety but I just wonder whether that's a fair question, because my recollection is that he was referring to the incident reports which led to his review.

MR EURELL: So, what, if I've got this right, Commissioner, what the witness is saying at paragraph 5 of his statement of 5 March, 2015 is that by that time he had reviewed other people's incident reports as part of his review.---On the day?

20 Yes.---On the day I did because that's part of my review process. I thought you meant after that date, like, up to now. I'm like - - -

I don't know what access you've had to documents, but are you saying that as at 5 March perhaps the only documents you had reviewed by way of other people's reports were the incident reports made on the 19th or 20th of February, 2014?---That's correct.

Sorry, did you say that's correct?---That's correct, yeah.

30 Thank you. And you also say in that statement that you had no knowledge of any flogging.---Not at all.

And that's because – is that, do you say, because, so far as you were concerned, by the time you had arrived at the cells whatever had happened had already taken place?---That's correct.

40 Now, your memory is quite clear, though, is it, that when you first made observations of the cells, [REDACTED] [REDACTED] who was [REDACTED] [REDACTED] cellmate, was still sitting on the top bunk?---No, as I said to the other barrister before, my recollection was wrong on the previous occasion, and my recollection now is that [REDACTED] [REDACTED] was on the outside of the cell with Simon Graf.

How do you account for that error, that your previous version, which was back in - - -?---I don't know. Just probably the last 18 months, 12 months I've just been thinking about it all the time. It's taken up most of my day, to be perfectly honest.

Can I suggest – I'm sorry to cut across you. Had you finished?---No, you're right.

Can I suggest to you that what's happened is that over the past four years, having read reports, had conversations, going over and over events from different perspectives, your memory is the product of reconstruction and you just don't have a clear memory.---Incorrect.

10 But it is possible, would you agree, that when you arrived it was somebody other than Elliott Smith, sorry, Elliott Duncan who was at the back of the cell with Terrence Walker?---Possibly could be, but he's a big lad, so maybe. But Terry was there. But on the IAT that day was Simon, Elliott and Terry.

Yes. And I'm not suggesting to you that Mr Duncan wasn't present in the vicinity. What I'm suggesting to you or asking you to make room for is that you might be mistaken about it being Mr Duncan at the back of the cell with Mr Walker at the time you say you saw Mr Walker holding Mr [REDACTED] Is that fair?---It's probably fair.

20 And I would suggest to you, sir, respectfully, that that's not inconsistent with what you've said in your compulsory examination, because you do say on two occasions where that matter is dealt with, at page 127, that you only thought. You were clearly, would you agree, trying to reconstruct the events on 5 December, 2017 when you had your compulsory examination? ---I was trying to remember, yeah, that's correct.

30 And just finally, as an extension of that point, would you agree that it's possible, in fact, that Mr Duncan was outside of the cells with Mr [REDACTED] – that is the inmate [REDACTED] [REDACTED] – and Mr Graf at that time?---Not to my recollection. I'm pretty sure Simon was by himself.

You seem uncertain. It is the case, isn't it, that you would make room for the possibility that that was the state of affairs?---Could be, but there was two officers inside the cell.

Yes. And if you make room for the possibility that it was Mr Duncan and Mr Graf or Mr Duffy who was outside the cell, then the person who was inside the cell with Mr Walker was Mr Duffy?---No. If you seen the size of the three boys, they're all different sizes. You can't miss Elliott Duncan.

40 Do you, did you at any time see Mr Duffy inside the cell?---I can't recollect seeing Mr Duffy there.

Do you at any time see Mr Graf inside the cell?---Not to my recollection. Outside the cell?

Yes.---Yeah.

No, no. Inside the cell?---Not to my recollection, no.

So, is it possible that you were present briefly whilst Mr [REDACTED] was moved from the top bunk to the outside of the cell?---My recollection, he was outside.

That's your recollection now. Your earlier recollection was he was on the top bunk. What I'm asking you is, in light of the acknowledgements you make about the limitations of your memory over the last four years, is it possible that what in fact that you saw was Mr [REDACTED] being removed from the top bunk and taken out to the front of the cell?---No. I'll stand by that he was outside.

And that you only ever saw him outside?---From what I can recall, yes.

So you never saw him on the top bunk?---Not that I can recollect, no.

Thank you, sir. Thank you, Commissioner.

THE COMMISSIONER: Mr Taylor, I'm very keen to get your evidence finished today. Do you need another break?---No, you're all right. Keep going, please. I've got to catch a plane.

I think that's - - -

MR EURELL: So, Mr Commissioner, can I just indicate that's as far as I can take cross examination. I can't get in touch with Mr Duncan. I haven't been able to get in touch with Mr Duncan since the compulsory examination was released this morning due to the requirements of the work he's currently doing. I don't anticipate that I'd need to go any further than what I've just done, but can I just put on the record, as I've indicated to Counsel Assisting, the limitations of my instructions at this time?

THE COMMISSIONER: Where are you currently stationed?---Tamworth.

You're going to need some pretty good reasons to get him back. I'm not saying that I would refuse such an application, but you'll need good reasons. Now, Mr Greenhill.

MR GREENHILL: Your Honour, Commissioner, my cross-examination has been substantially reduced. I won't be long.

THE COMMISSIONER: Thank you.

MR GREENHILL: Sir, you have my sympathy if you can't hear properly. ---Thank you.

And you have my sympathy about lack of recollection over so long. But the fact is, as you've told the last cross-examiner, your memory about certain things is patchy, isn't it?---I agree with that. I agree with that.

You need to move forward.---Yeah, you're right.

10 Just, don't move forward to it. And, look, I appear for Mr Graf, I should tell you. And throughout your compulsory interview last year, you couldn't recall Mr Graf being there in or around the cell, could you?---Going back to last November, no, just because they were the three guys on duty.

And you can't recall seeing Mr [REDACTED] removed by Mr Graf from the cell now?---As I said to the previous gentleman, as far as I know Simon was outside with Mr [REDACTED] against the wall. That's all I can recall.

You can recall that now, can you?---As I said to the gentleman before.

20 You can recall that now? That's what I want to know. That you saw Mr Graf outside with [REDACTED] against the wall.---Yes.

But you can't remember seeing the officer with the dog nearby?---No.

All right. I have no further questions, I think. Thank you.

THE COMMISSIONER: Mr Taylor.

30 MR TAYLOR: Just briefly, Commissioner, if I may. Mr Taylor, my name is Taylor, and for the record we're not related, are we?---No.

Thank you. I appear on behalf of Mr Walker. In relation to the evidence you've given about Mr Walker restraining the inmate [REDACTED] did you mean to infer that Mr Walker was doing anything wrong at that time when you saw him?---No.

So it wasn't unreasonable use of force at that time?---To me it was a reasonable force. He was just holding him there like that.

40 Thank you. Nothing further.

THE COMMISSIONER: Mr Harris.

MR HARRIS: Thank you. And I note the time and I will endeavour to be brief. Thank you.

THE COMMISSIONER: I've just been asked by the transcription staff, if you can keep your head away a little bit from the microphone.

MR HARRIS: Sorry.

THE COMMISSIONER: Somebody else is going to have hearing problems.

MR HARRIS: Sorry, Commissioner.

THE COMMISSIONER: That's okay.

10

MR HARRIS: Mr Taylor, when you were interviewed and made a statement at Wellington on 5 March, 2015, did you believe that the CCTV footage existed at that time?---I did.

And when you came to this place for your compulsory examination on 5 December last year, did you still believe the CCTV footage was in existence?---I did.

20

And were you comfortable in your mind as to the fact that, whatever your recollections were, the CCTV footage would confirm and clarify your evidence?---I did.

All right. Briefly, please, you have a certificate in intelligence investigations?---That's correct.

Did you have that as at 2014?---I did.

All right. And you have an associate degree in correctional management? ---That's correct.

30

Was that also as at February 2014?---Yep, that's correct.

All right. You've completed an executive leadership program?---That's correct.

All right. Now, you were 12 years in the army, is that prior to Corrective Services?---That's correct, yes.

40

And you did your apprenticeship there?---That's correct.

And were apprentice of the year?---That's correct.

All right. Now, as at 2014 during your previous years with Corrective Services, had you worked as an intelligence officer?---I had.

And what about a surveillance officer?---Yeah, I worked as a surveillance officer for the ICAC, I was trained by the ICAC back in 2000.

All right. And you had been an investigator?---That's correct.

Who was that with?---I was an investigator with CIG or (not transcribable) Investigations as you guys would know it.

All right. And you've been on two task forces?---I've been on the gangs task force and I was also in Task Force Stead, which is a drug task force.

10 And you've worked during Olympics in Sydney with intelligence for New South Wales Police?---Yeah, I was an intelligence analyst due to the Paralympics and the Olympics with the New South Wales Police Force.

Now, the gist of my questions is as at February 2014 you would have been well aware of the processes and procedures whereby deliberate wrongdoing and reporting might be detected?---Correct.

And you've never had a misconduct allegation in your 27 years in the department?---No.

20

Nor in the army previously?---Correct.

All right. Commissioner, I thank you.

THE COMMISSIONER: Thank you. Mr Duggan?

MR DUGGAN: Commissioner, I have one question before we finish. If I can show the witness a document.

30 THE COMMISSIONER: Sure.

MR DUGGAN: And if I could indicate it's page 41 of the brief, and I have highlighted cell 208 just for ease of reference, and I'll indicate that's my highlighting.

40 Mr Taylor, I asked you some questions in relation to Mr O'Shea in the day room when you entered the day room on the 19th, and my understanding of your evidence was that you looked into the cell and you could see Mr Walker with the inmate up against the back of the cell with the hand on the throat and you indicated I thought that Mr O'Shea was standing next to you, although in some answers you gave to some questions from Mr Willis I'm not so sure. What I want to ask you is if you could, if there's a pen in front of you, if you could mark with an X the spot you say Mr O'Shea was standing on when you looked into the cell and could see Mr Walker having the inmate up against the back of the cell holding him by the neck. I might just get that returned so I can - - -

THE COMMISSIONER: Can I just have a quick look? Thanks. Thank you.

MR DUGGAN: Thank you. And I might just pass it back so that Mr Willis can see that. Commissioner while that's happening and being considered, I have no further questions of the witness at this point, but can I tender please Mr Taylor's compulsory examination. There have been a number of questions in relation to it and so I tender that document which is 5
10 December, 2017.

THE COMMISSIONER: That's on the restricted website at the moment, isn't it?

MR DUGGAN: Yes, it is now, yeah. And I think the suppression order was lifted this morning in relation to that.

THE COMMISSIONER: Yes, it was. So we'll mark that Exhibit 76.
20

**#EXH-076 – TRANSCRIPT OF OP ESTRY COMPULSORY
EXAMINATION OF STEPHEN TAYLOR HELD ON 5 DECEMBER
2017**

MR DUGGAN: Thank you.

MR HARRIS: Sorry, I didn't hear?

30 THE COMMISSIONER: 76.

MR HARRIS: Thank you.

MR DUGGAN: I also tender Mr Turton's record of interview dated 20 July, 2017.

THE COMMISSIONER: That will be Exhibit 77.

40 **#EXH-077 – RECORD OF INTERVIEW BETWEEN PAUL
GRAINGER AND PHILIP TURTON HELD ON 20 JULY 2017**

MR DUGGAN: Thank you.

MR BRASCH: Can I just inquire, sorry, Commissioner, that the, as I haven't had a chance to see it, that redactions have been made to that in relation to [REDACTED]

MR DUGGAN: The name has been redacted, I'm instructed.

MR BRASCH: I'm not sure whether it might – the name may be redacted but whether it could [REDACTED]

MR DUGGAN: Commissioner, before it's published on the website we'll make sure that those redactions take place and I'm happy to have discussions with Mr Brasch if he's got particular concerns about that.

THE COMMISSIONER: Certainly.

MR BRASCH: Okay.

THE COMMISSIONER: All right.

MR DUGGAN: And I can also indicate that I haven't tendered yet the policy documents, in particular the Assistant Commissioner memorandum that I asked Mr Taylor about, but Mr Brasch I think is going to consider that overnight and I'll tender that tomorrow.

MR BRASCH: I'm just going to get some instructions overnight, Commissioner.

THE COMMISSIONER: Okay, thank you, Mr Brasch.

MR DUGGAN: I have no submission to make in relation to whether Mr Taylor can be released, he should be released unless Mr Willis has a question of him arising out of that.

MR WILLIS: I have no further questions.

THE COMMISSIONER: Were you going to tender the drawing with the - - -

MR DUGGAN: Apologies, yes. I tender the - - -

THE COMMISSIONER: That's Exhibit 78.

#EXH-078 – MAP OF 5 UNIT AT LITHGOW CORRECTIONAL CENTRE HIGHLIGHTED BY COUNSEL ASSISTING TO IDENTIFY ROOM 208 & MARKED WITH A CROSS BY STEPHEN TAYLOR TO IDENTIFY THE LOCATION OF JOHN O'SHEA

THE COMMISSIONER: Before we adjourn, Mr Taylor, there's just one matter that I should have raised with you, and I do apologise. Could we have Mr Taylor's compulsory examination at page 120 put on the screen? The reason I want to raise this with you, Mr Taylor, is that you were very firm in your evidence today that you didn't make the radio call. Do you recall that?---Yeah.

10 Yes. Now, if you look at about line 21, Ms Clifton asked you this. She said, "Right. Okay. So on 19 February, 2014, we've got you rostered on as MOS." And you answered, "Yeah." Question, "Do you recall an incident at all with a prisoner in segregation?" And you said, "Yes, I do." Question, "And do you recall that prisoner's name?" And you said, "Going with what you gave me before, [REDACTED] yes." And then this question was asked, "Okay, and so we have information that on that morning you made a radio call for IAT to attend 5.1 Unit. Do you recall doing that at all?" And you said, "No, but I could have." Question, "Do you recall there being a radio call going out for IAT to attend 5.1?" and you said, "Due to the type of inmates I had then, more than likely. It was normally a common occurrence." Question, "To call IAT?" and you said, "Yeah." Do you admit of the possibility that you could have used the radio?---Back then I thought I did, but now I'm pretty sure I didn't.

All right. All right. Anything arising from that?

MR DUGGAN: No, Commissioner, but can I just indicate that tomorrow's witness will be Mr McMurtrie, and his compulsory examination will go up on the restricted website this evening.

30 THE COMMISSIONER: Before midnight?

MR DUGGAN: I hope so.

MR MADDEN: I'm not going to say anything.

MR EURELL: Commissioner, further to that point, I thank Counsel Assisting, but I have some difficulties getting instructions out of my client during the day because of the nature of mining work, which I'm sure is appreciated.

40 THE COMMISSIONER: Of course, yes.

MR EURELL: If it is at all possible for those compulsory examinations to go up by sort of close of business time, the difficulties that obviously I've just put on the record concerning this witness will fall away because I'll have an opportunity for Mr Duncan to read that material this afternoon and to give me instructions tonight so that I don't – and I'm sure my fellow practitioners would be in the same position. So if that's at all possible to be accommodated it would be much appreciated.

THE COMMISSIONER: I was thinking it should go on the website at about 1.00am. I just wonder whether it would be possible for you to take a copy with you so you can get instructions from Mr Duncan. Is that possible?

MR DUGGAN: It will be up in half an hour, I'm told.

MR EURELL: That'll be terrific. Thank you.

10

THE COMMISSIONER: All right.

MR MADDEN: Can I just ask, is it Mr McMurtrie only tomorrow or – I know it's difficult. I know it's like saying what's - - -

MR DUGGAN: Yes, can I indicate, my expectation is this, that Mr McMurtrie will take most, if not all, of tomorrow. I expect Mr Kennedy will be Thursday morning, followed by Mr Peebles.

20 MR MADDEN: All right.

THE COMMISSIONER: We were expecting to call Mr Kennedy today, but because he's got a new solicitor we have put it over to Thursday. But, so that's where we stand. Mr Taylor, thank you very much for your evidence and you're released from your summons, so you're free to go.---Thank you, Commissioner.

I hope you're not driving back to Tamworth tonight, are you?---No, flying, sir.

30

Good on you. I'll now adjourn.

THE WITNESS EXCUSED

[4.21pm]

AT 4.21PM THE MATTER WAS ADJOURNED ACCORDINGLY

[4.21pm]