

ESTRYPVT00486
09/03/2018

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pp 00486-00551

COMPULSORY
EXAMINATION

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INDEPENDENT COMMISSION AGAINST CORRUPTION

THE HONOURABLE PETER HALL QC
CHIEF COMMISSIONER

COMPULSORY EXAMINATION

OPERATION ESTRY

Reference: Operation Estry E17/0345

TRANSCRIPT OF PROCEEDINGS

AT SYDNEY

ON FRIDAY 9 MARCH, 2018

AT 10.00AM

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

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

THE COMMISSIONER: Yes, Ms Clifton.

MS CLIFTON: Good morning, Commissioner. This is the compulsory examination of Terrence Walker. Mr Walker is at the back of the court.

THE COMMISSIONER: Yes, very good. Mr Walker, would you mind coming down, thanks. Mr Walker, just take a seat there for a moment. I'll deal with a couple of preliminary matters. Pursuant to section 31A of the Independent Commission Against Corruption Act, I direct that the following
10 persons may be present at this compulsory examination – Commission officers, including transcription staff; the witness, Mr Terrence Walker.

PURSUANT TO SECTION 31A OF THE INDEPENDENT COMMISSION AGAINST CORRUPTION ACT, I DIRECT THAT THE FOLLOWING PERSONS MAY BE PRESENT AT THIS COMPULSORY EXAMINATION – COMMISSION OFFICERS, INCLUDING TRANSCRIPTION STAFF; THE WITNESS, MR TERRENCE WALKER.

20

THE COMMISSIONER: I propose to make an order or direction under section 112 of the Independent Commission Against Corruption Act restricting the publication of information with respect to this compulsory examination with Mr Walker. The direction will prevent those present today, other than Commission officers, from publishing or communicating information relevant to this compulsory examination. It will permit Commission officers to publish or communicate information for statutory purposes or pursuant to any further order of the Commission. The direction
30 may be lifted or varied by the Commission without notification if the Commission is satisfied it is necessary or desirable to do so in the public interest. I note that it is a criminal offence for any person to contravene a section 112 direction.

Accordingly, I make a direction in these terms. That being satisfied that it is necessary and desirable in the public interest to do so, I direct pursuant to section 112 of the Independent Commission Against Corruption Act that the evidence given by Mr Terrence Walker, the contents of any exhibits
40 tendered, the contents of any documents shown to him, any information that might enable him to be identified and the fact that he has given evidence today shall not be published or otherwise communicated to anyone except by Commission officers for statutory purposes or pursuant to further order of the Commission.

BEING SATISFIED THAT IT IS NECESSARY AND DESIRABLE IN THE PUBLIC INTEREST TO DO SO, I DIRECT PURSUANT TO SECTION 112 OF THE INDEPENDENT COMMISSION AGAINST

**CORRUPTION ACT THAT THE EVIDENCE GIVEN BY MR
TERRENCE WALKER, THE CONTENTS OF ANY EXHIBITS
TENDERED, THE CONTENTS OF ANY DOCUMENTS SHOWN TO
HIM, ANY INFORMATION THAT MIGHT ENABLE HIM TO BE
IDENTIFIED AND THE FACT THAT HE HAS GIVEN EVIDENCE
TODAY SHALL NOT BE PUBLISHED OR OTHERWISE
COMMUNICATED TO ANYONE EXCEPT BY COMMISSION
OFFICERS FOR STATUTORY PURPOSES OR PURSUANT TO
FURTHER ORDER OF THE COMMISSION.**

10

THE COMMISSIONER: Now, before I proceed further, Ms Hughes, you appear?

MS HUGHES: Yes, I'm seeking authorisation to represent Mr Walker in these proceedings.

THE COMMISSIONER: Yes, yes. I grant leave for you to do that.

20 MS HUGHES: And I can indicate that he will give his evidence under oath and that he's seeking the benefit of a declaration.

THE COMMISSIONER: He is seeking the benefit of the declaration. Thank you. Thank you, Ms Hughes. Mr Walker, just before we have you sworn in, I'm told that you understand the provisions of the Act that this Commission operates under, that it is open to a witness to object to giving evidence. That doesn't mean the witness doesn't have to answer the questions. You do. But the same applies to anything by way of a document, for example, that you produce or that may be required from you.
30 The Act is framed in that way to entitle any witness to make that objection, and I understand this has been explained to you and you wish to give evidence on objection. Is that the case?

MR WALKER: It is, Commissioner.

THE COMMISSIONER: Thank you. Pursuant to section 38 of the Independent Commission Against Corruption Act, I declare that all answers given by this witness, Mr Walker, and all documents and things produced by him during the course of his evidence at this compulsory examination are
40 to be regarded as having been given or produced on objection. Accordingly, there is no need for Mr Walker to make objection in respect of any particular question, or answer being given in answer to a question, or document or thing produced.

**PURSUANT TO SECTION 38 OF THE INDEPENDENT
COMMISSION AGAINST CORRUPTION ACT, I DECLARE THAT
ALL ANSWERS GIVEN BY THIS WITNESS, MR WALKER, AND**

ALL DOCUMENTS AND THINGS PRODUCED BY HIM DURING THE COURSE OF HIS EVIDENCE AT THIS COMPULSORY EXAMINATION ARE TO BE REGARDED AS HAVING BEEN GIVEN OR PRODUCED ON OBJECTION. ACCORDINGLY, THERE IS NO NEED FOR MR WALKER TO MAKE OBJECTION IN RESPECT OF ANY PARTICULAR QUESTION, OR ANSWER BEING GIVEN IN ANSWER TO A QUESTION, OR DOCUMENT OR THING PRODUCED.

10

THE COMMISSIONER: Mr Walker, if you wouldn't mind standing, I'll have my associate administer the oath and then we'll proceed with the examination.

<TERRENCE BERNARD WALKER, sworn

[10.17am]

THE COMMISSIONER: Thank you, Mr Walker. Just take a seat there. Ms Clifton will ask you some questions. Yes, Ms Clifton.

MS CLIFTON: Thank you, Commissioner. Mr Walker, for the purposes of the record, could you tell us your full name?---Terrence Bernard Walker.

10 And your date of birth?---[REDACTED]

And I understand that you're no longer with Corrective Services, is that correct?---That is correct.

And you're working in a private capacity. You're no longer a public servant, is that correct?---That's correct. I'm self-employed.

20 Self-employed. Thank you. Now, you understand we're here to talk about an incident in February 2014?---I do.

And in February 2014, where were you located and what was your role? ---My role was the senior correctional officer in charge of the IAT, which is the Immediate Action Team.

Thank you. And where were you located? Which gaol?---Lithgow Correctional Centre.

And how long had you been at Lithgow?---Approximately nine years.

30 And how long had you been a senior?---In total about 13 years.

So before Lithgow, which centre were you based at?---I was at Bathurst before that and Kempsey before that, and Bathurst again, where I started.

Thank you. And how long had you been in IAT?---At Lithgow about two and a half, three years.

40 But you'd been in IAT, by the way you answered that, at other centres, had you?---Yes, I was the IAT officer in charge at Kempsey for six months. And after completing that training I was also at Bathurst initially as a junior officer.

Under somebody else's command in IAT?---Yeah, under someone else's control, yes.

All right. And I'm just interested generally. I know at Lithgow IAT was generally rostered on as three officers.---Yes, it was.

A senior and two first class.---That's correct.

And was that the same at other centres?---Generally, yes.

And you mentioned some training before. IAT has some specific training, is that correct?---Yes, they do.

10 And what does that training entail?---Use of chemical munitions, training in use of force, search techniques, arrest techniques and all the other parts required of the job, report-writing skills through to, later on as I came into control, the use of video cameras.

THE COMMISSIONER: I'll just ask you to keep your voice up just a bit more.---Oh, sorry.

It's all right. Just a bit more, thanks, Mr Walker, so it can be recorded on the sound system.

20 MS CLIFTON: I think the last bit you just said was later on the use of video cameras.---Yeah, video cameras came in when I was at Bathurst. They were not initially in the training.

I understand in terms of video cameras it was a hand-held camera.---That's correct.

And there was one allocated to IAT, is that correct?---That is correct.

And my understanding, I'll just try – I'll tell you what I know.---Yeah.

30 You tell me if I'm wrong. I understand that that camera was to be stored in one of the IAT vests.---That's correct.

And that vest wasn't necessarily allocated to the senior or a first class. It was whoever it fitted best.---Yeah, different vests, different-sized blokes.

But when you would come on duty the camera would be there in a vest so somebody always had it, is that correct?---That's correct.

40 And the Commission has heard that those cameras had a battery-life issue. Was that correct, to your understanding?---That is correct.

And so each time, say you were rostered on in the morning shift, would you check that the camera had battery life or - - -?---Generally swap the battery each morning. We put it on charge.

So it would be swapped out. And from your experience and skills with IAT and as a prison officer, would it be beneficial, do you think, to have the body-worn cameras that police generally have?---It definitely would be.

Definitely would be. And the training that we just talked about, how long was that training?---When I completed it, it was seven days. It's now been reduced to five.

And is that off-site or is that within each gaol?---Off-site.

10 Off-site. Thank you. Now, in terms of the incident that we're here to talk about, 19 February, 2014, I know that you've participated in two interviews, one with Corrective Services investigators on 24 February, 2015.---Yes.

And another with Commission investigators on 9 August, 2017.---Yes.

And those were emailed to you prior to the hearing today?---Yes.

And you've had a chance to read over those?---(No Audible Reply)

20 And I understand that you want to make some corrections to what was stated in those.---I do.

All right. We can do this two ways. I can either show you a copy of the transcripts or you can tell me what you'd like to tell us and then I can ask some more questions. Would you like to - - -?---I can just tell you what happened on the day, if you'd like it that way.

30 If it's easier. If there are minor corrections we can do them page by page, but if you'd like to just tell us.---Yeah, on that morning it was tasked as a lockdown day with the purpose of searching some of the units in the top of the centre.

Do you remember what time you started work that day?---I started at 8 o'clock. I think the searching probably started around the 9 o'clock mark, half past 8.00, 9 o'clock.

So our understanding is that there is a parade on those days.---That's correct.

And on those days you're allocated tasks - - -?---Yes.

40 - - - and searching teams. And were you in charge of a searching team as a senior?---No, I was not. I was only in charge of the IAT.

And IAT were tasked with searching roles?---Not particularly. They were more on stand-by to assist if something went wrong.

And so my understanding of the timing is parade at 8.00.---Correct.

Tasks allocated.---Yes.

A head count then of prisoners.---That would be correct.

And that you, I think you said you might have started searching around, or the searching started around 9.00.---Yeah, I would assume so. That would be about the normal thing.

That's from your experience and skills rather than direct memory.---From, yeah.

10

That's the time that - - -?---From my experience, yes.

Yes. Thank you. All right. So you started searching at 9.00?---Yeah, I was up in 3 Unit. 3.2 Unit, it was. There was searching going on, just general searches, and I was, the IAT was called to attend 5.1 Unit.

So when you say "called to attend", how - - -?---By the radio.

A radio call?---Yes.

20

Yes. And do you remember who made that radio call?---I think it was Mr Taylor.

And so when you were up in 3 Unit searching, who else were you there with on that day?---The two other rostered IAT guys, which would have been Graf and Duncan.

Mr Graf and Mr Duncan. Yes. That's Simon Graf and Elliott Duncan? ---That's correct.

30

Yes. So you get a radio call from Mr Taylor. Do you remember what Mr Taylor said?---We attended the unit. When we got down there, can't remember the exact words but we were advised that over the inmate knock-up system that inmates had abused the general manager, and they wanted him sorted out.

Sorted out. So if we could just go back, when you get the radio call, I understand everyone is issued with an individual radio.---That's correct.

40

And Mr Taylor made the call.---I think it was Mr Taylor, yes.

And so that call came over the radio. Do you remember what was said? ---No, we were just, I think it would have been we were asked to attend 5.1 Unit.

5.1. And who went down?---The three IAT. I think Mick Watson with the Dog Unit. I can't remember exactly who else was there.

And so when you got down there you were told that the prisoners had been abusing - - -?---The general manager.

The GM.---Mr O'Shea.

Mr O'Shea. And you were to sort it out. Is that what you were told?---(No Audible Reply)

10 And who gave you those instructions?---I think they came from both staff, from - - -

THE COMMISSIONER: Sorry, from?---Mr Taylor and Mr O'Shea.

MS CLIFTON: So you remember Mr O'Shea being there?---Yes, I do.

20 I might just have brought up on the screen – because it helps all of us. We don't know the gaol very well. Exhibit 41, if I could, which is a map of what I understand is 5 Unit, and you correct me if I'm wrong. So you'll see – I think it should be on the screen in front of you, if that helps.---Yeah, that's good.

Great. So you'll see there is a yellow highlighted area right in the middle. ---Yeah.

Now, my understanding, and correct me if I'm wrong, that is the office. ---Yes, that is the office.

30 And prisoners don't necessarily go in there. That's where Corrective Services officers - - -?---Yeah, like, inmates should not be in there. The only one that was ever allowed in there was the inmate cleaner.

And now the area – over on either side we see little blocks and one is marked 208. I understand they're the cells on either side.---That's correct.

And the area in the middle, which non-Corrective Services people would call a corridor, I understand is called the day room.---It's called the day room, yes.

40 Excellent. So that we all know what terminology we're using. So when you got down to 5 Unit, where did you go?---We entered through the external door you can see on the day room.

Is that on the top - - -?---On the very top of the screen.

Yes. Where a door opens out on the top right-hand corner?---That's correct.

Yes. So you entered through there and you think with you were Mr Graf, Mr Duncan and Mr Michael Watson?---Yeah, I don't remember who else was there on the day.

But you think there might have been more when you say that?---I think there was other staff around.

10 And so where did you go once you entered?---Went from there, went straight to the office because the officers, the senior officers were all standing in the office.

And at that stage you didn't know which cell to go to or what you were even called down there for, is that correct?---Had no idea.

So when you went into the cell, who did you see in there? I think you've said Mr O'Shea was there.---I didn't go into the cell. Into the office.

20 Sorry, into the office. That was my mistaken language. When you went into the office you saw Mr O'Shea?---Yeah, the first one near the door was Mr Taylor. There was Mr O'Shea, Mr Peebles and Mr Kennedy.

And Mr Kennedy was there also. All right. That's quite a senior line-up, isn't it?---It is, yes.

So my understanding is Mr O'Shea is the general manager. Used to be called the governor.---That's correct.

And he's the most senior officer in a prison?---He is.

30 Mr Peebles, I understand is the manager of security but he was off-line if I could call it.---Yes, he was off-line doing something else.

All right. Mr Taylor was acting in his position that day?---That's correct.

Yes. That is the second most senior position, the manager of security. ---That is correct.

We generally, I think they're called the MOS for obvious reasons.---Yes.

40 Then Mr Kennedy, what was his role?---Very little, I never spoke to Mr Kennedy, he never spoke to me in any part to do with it.

All right. When he was at the gaol, what position was he performing in, do you know?---I believe he was on, I'd say some sort of punishment, he was dropped rank from manager of security to deputy governor which is a slightly lower rank after an incident at Oberon Correctional Centre.

All right. Do you know what his day to day duties were at Lithgow by any chance?---Very little.

Very little. All right. So we've got those four senior people in the office. You've gone to the office, did the other IAT members and Mr Watson come with you?---I don't know about Mr Watson but the other two would have come up there with him because I think Mr Watson had the dog with him and they generally keep the dog back.

10 Yes, yes. All right. So you go into the office, and what were you told when you went into the office.---I was told by Mr Taylor that the inmates in 208 had abused the general manager over the intercom.

Yes. That knock up system is the internal system that the prisoners can use to contact the office.---It's primary purpose is just, you know, in emergencies and that and in that unit they use it for most communications.

20 Yes. That's unit segregation and may be violent offenders, I might not be using the right terminology but that's - - - ?---Yes, there's a violent offenders unit and segregation and pseudo protection.

Right. So they weren't given, they weren't allowed out of their cells very often, is that - - -?---Well, they're allowed, if you see the, where the cell, where it's written 208, there's a back door to that cell and a small yard.

Yes.---They were allowed access out in that yard part of the day but on a lock down day everyone remains in cell.

30 Right, okay. So Mr Taylor told you that, were you told that it was Cell 208 at that stage?---I can't remember exactly.

So Mr Taylor said that some prisoners had been using the knock up system to abuse, was it abuse staff or abuse the GM I'm sorry, Mr Walker?---From what I gathered that they had knocked up on the system and the general manager had answered it, I don't know what had been said, I wasn't there, but I was told that he had abused the general manager.

40 All right. So, you were told then to, "sort it out", I think were your words. ---Yes, that was the term we were given just go down and sort him out.

All right.---I think that was what was said.

Okay. So what happened next?---I spoke to the boys, I said we'll just go down and see what's going on. Went down, I knocked on the door let them know we were there, opened the cell. Told them to get out of bed I think but I don't think either of them did. Then we entered the cell, I think Mr Graf and Elliott took the inmate off the bottom bunk and inmate [REDACTED] was on the top bunk.

Okay. So my understanding is there are two doors on these cells, there's a solid door and then there's a grilled or barred door.---That's correct.

So the solid door was open this morning, that morning that we were talking about?---No it wasn't.

It wasn't.---No, they are always secured.

10 Okay. So who opened the door?---Possibly me, I couldn't tell you exactly.

All right. You don't know if you had the keys?---I don't remember, I would have had keys to the doors, however, I don't know exactly who opened the door.

Okay. And so you entered the cell first, is that correct?---I did.

The prisoners were in bed from memory?---Yes, I believe so, from memory.

20 Yes, all right. Mr Graf and Mr Duncan took Mr [REDACTED] out.---Yes, I can't remember the name of the other one.

So we've got Mr [REDACTED] was the cell mate and Mr [REDACTED] who we allege was assaulted. All right. So they've taken Mr [REDACTED] outside the cell?---That's correct.

And you're left with Mr [REDACTED] just you and Mr [REDACTED] in the cell.---Yes.

30 All right. What happened then?---I told [REDACTED] to get down, I believe we had words over it, abusing the boss over the intercom. I can't remember exactly what was said and I told him to get down off his bed.

THE COMMISSIONER: Again, if you wouldn't mind just keeping your voice raised, actually - - - ?

THE WITNESS: I told the inmate to get down off his bed.

MS CLIFTON: Did Mr [REDACTED] get off the bed?---Yes, he did eventually.

40 All right. Was he aggressive, was he stubborn, was he angry?---Probably aggressive and stubborn more than anything.

All right. Do you remember, I know I'm asking a lot, do you remember what he was wearing?---Wouldn't have a clue.

So you just said eventually he got down off the bed.---Yes.

This is all in a relatively short period of time.---That's correct.

Okay. So he got down off the bed. What happened next?---I can't remember exactly but I spoke to him about the abuse to the boss, along those lines.

Do you remember what you told him?---I couldn't tell you exactly.

10 All right. Do you remember what his responses were at all?---Yes, I think, I think it went along the lines, you know, you abused the general manager over the thing. I think he said, "It wasn't me," and just sort of laughed and - - -

THE COMMISSIONER: I'm sorry, look I'm sorry to keep interrupting you, this microphone here might elevate your voice somewhat.---Sorry, is that better.

I think that's better, thanks.---I'm sorry, thank you sir.

20 I think you were asked, did he say something?---Yes, he's, the inmate said something, I can't exactly remember what it was but - - -

MS CLIFTON: You think it might have been, "It wasn't me."---Yes, I think it was along the line it wasn't me and then started to abuse me I think at the time.

Started to abuse you?---Yes, but it's water off a ducks back normally, it's just part of what they do.

30 All right. So, and I don't mean to belittle what you do, in terms of what is said to you, it wasn't out of the ordinary in terms of how prisoners speak to you on a day to day basis?---No, it wasn't out of the ordinary, that's correct.

So you had some words, he denied being the person to use the knock up system but that's probably - - - ?---That's correct.

40 - - - may be too much detail and said, "It wasn't me." A few more words, and what happened after that?---He moved towards me and abuse, I thought he was going to strike me and I used what was called a palm strike and lunged out and I hit him on the side of the jaw with my right hand and shoved him backwards.

Okay. So you thought he was advancing on you.---Yes.

So you used, I think you said your right hand. Are you right handed?---Yes, I am right handed.

All right. Push forward with a palm strike.---Yes.

All right. Hand up about chest height. Is that right?---That's correct.

Okay. Pushed forward and I think you said you got him on the left side of the, you're showing jaw?---Yes, it would have been the inmates left side.

All right. Is that, I know this sounds obvious, is that palm strike used to push the person away?---I used it to shunt him away from me, yes.

10 All right. What happened next?---He retaliated, we had a - - -

And how did he retaliate?---He threw a punch and hit me.

Where did he hit you?---I think it was in the face at the time.

So he threw a closed fist punch.---Yes, he did.

All right. Where did that land on your face, do you recall?---I can't remember.

20 Did it cause any injury?---No.

Okay. What happened after he threw a punch at you?---Him and I got into a scuffle, a few punches were thrown by both of us. As we went back, he fell on a chair, I think, he tripped on a chair and then hit the back of the cell wall and bounced off the toilet.

When you threw a few punches, did they connect with Mr [REDACTED] at all?
---Probably, yes.

30 You don't remember when - - - ?---I can't remember exactly whether they all would have connected.

All right. When Mr Graf and Mr Duncan while that was happening?---I couldn't see them, they were behind me out of the cell, so.

All right. They weren't inside the cell with you?---I don't know.

40 So Mr [REDACTED] then has fallen back over a chair you think over something?---Yes, chair, there's very limited space between the desk, the bed, and the shower area.

So he's fallen, and I think you said, may be hit the back of the wall.---Yes, we were struggling and I sort of, probably helped him to get to the back wall, just trying to restrain him and as he hit the back wall he fell down and was still trying to fight with me and he fell and I believe he hit the toilet.

All right. Do you know which part of his body hit the toilet?---I think it was torso.

All right. So he was still trying to scuffle with you, you just said. So once his torso hit the toilet, where, did he then fall to the floor?---I couldn't tell you exactly.

So what did you do next?---The scuffle continued. I was restraining him and I think Mr Duncan come in and helped me grab him.

10 So were you standing still when Mr [REDACTED] was now on – he's on the ground.---Yeah, I think I was bending over, trying to restrain.

And Mr Duncan then came back into the cell?---Yes, he did.

And he assisted you. What did he do?---Just helped restrain the inmate. Just grabbed hold of him.

All right.---I don't remember much more about the, what happened there.

20 Do you know, did one of you handcuff Mr [REDACTED] at that stage?---He would have been handcuffed but I don't think I did it.

So it could have been Mr Duncan.---Could have been Mr Duncan. I could not be sure. But that's generally protocol.

Now, my understanding is that on a day-to-day basis, the only officers that always have handcuffs are IAT, is that correct?---That is correct.

30 And so a general duties, if I can call them that, Corrective Services officer wouldn't necessarily have handcuffs?---Inside that unit, the staff that were there had handcuffs supplied to them because of the aggressive nature of the inmates, and under the protocols for moving segregated inmates, they're always to be placed in handcuffs.

And those protocols, do they state whether you're handcuffed at the front or at the back? Or is it just handcuffed?---Generally if they're just moving inmates, they can cuff them in front. But if the inmate's known to be highly aggressive or, you know, has a tendency towards attacking staff, they often, they can be handcuffed behind their back.

40 And do you recall if Mr [REDACTED] was handcuffed at the front or at the back? ---I could not tell you.

Do you recall if he was handcuffed?---No, I don't.

And so at the end of this scuffle we've now got Mr [REDACTED] under control by yourself and Mr Duncan.---Yeah.

And do you remember what happened next?---I think Mr Duncan took him out of the cell. I can't remember too much about that.

Did you see any injuries on Mr [REDACTED] at that stage?---No, didn't.

And so when Mr Duncan took him out of the cell, do you know where Mr Duncan took him?---I think that he took him diagonally across to an empty cell on the other side.

10 So my understanding is, if we look back at the map on the screen, you'll see where 208 – and that's the cell that Mr [REDACTED] and Mr [REDACTED] were in. Directly opposite that is cell 203.---Yeah, I presume so.

Did you take Mr [REDACTED] into cell 203?---No, I didn't.

So you think Mr Duncan did but you're not sure, is that correct?---I think so, yes.

20 And so once both prisoners were out of the cell, what was the next thing that you did?---I think they'd both been secured in cell, and I went up, I think I went and saw the boss, Mr Taylor.

You went and saw Mr Taylor. And was Mr Taylor still in the office or where was he at that stage?---I don't remember.

And when you went to speak to Mr Taylor, was Mr O'Shea there?---I think they had just left.

30 And when you say "they", was that - - -?---The three of them. Mr Taylor, Mr Peebles and Mr Kennedy.

All right.---I sort of have a little bit of recognition. I think Mr Kennedy may have gone earlier but I'm not sure.

And so did you see them walking off as you were coming back to speak to Mr Taylor?---Yeah, they were just heading down the hallway.

40 And what was your conversation with Mr Taylor?---I can't remember exactly.

You must have wondered what you were now going to do with those prisoners. So did you have a conversation about "What do we do now? What do we" - - -?---I think when we spoke to them, I think the answer was just, "Oh, we'll leave them in that cell to cool down." I think that was the term of what went on.

Well, do you know where Mr [REDACTED] was at that stage, the other prisoner?

---They were both in a cell opposite. If you look at the map, one, two, three, I think it would be the third or fourth cell from the top of the map, opposite.

On the left-hand side of that day room?---On the left-hand side, yes.

And so you think both prisoners were in there and you think there was a conversation about “Just leave them there to cool off.” All right. And so what did you do then?---I think we left the area pretty well after that. Just left them there.

10

And when you say “we left the area”, was that Mr Graf, Mr Duncan and Mr Watson?---Yeah. Yeah, we went out through the front door, from memory, and went back up to the top unit.

And when you say “the front door”, do you mean the one at the top?---The external door at the top.

When Mr Taylor gave you the instruction to go and sort it out, was Mr O’Shea and Mr Kennedy and Mr Peebles all there?---They were.

20

And so they heard that instruction?---They did.

And what was your understanding of “sort it out”?---The boss wanted me to go down and teach him a lesson. He wasn’t, he wasn’t happy with what had gone on.

Well, and “teach him a lesson”, does that mean some form of physical conduct?---I believe so. At the time that was what I believed my direction was to go and do.

30

All right. And did - - -

THE COMMISSIONER: I think originally when you gave evidence about hearing – you said there’d been searching going on. The IAT was called. I think there was Taylor there, Duncan and Graf. And then you made reference to the fact that the inmates had abused the general manager and “wanted him sorted out” was the way you put it. Then the three IAT men went down. Is that as you recall?---That’s the best of my recognition, Commissioner.

40

Yes.

MS CLIFTON: Thank you. And that understanding “to sort it out” was to go in and perhaps do something a bit physical with the prisoner, teach him a lesson?---That was exactly it.

That was it, yes. And that understanding, has that come from being given that instruction previously?---It has.

And was that instruction that had been given to you previously, who gave that to you?---Mr O'Shea.

Mr O'Shea.---And Mr Peebles.

And Mr Peebles. So would it be fair to say that they used you as the person to go and sort out prisoners?---That's correct.

10 And was that whilst you were in IAT at Lithgow?---Yes, that's correct.

And did Mr Duncan also get used in a similar way, to go and sort prisoners out?---He had been, yes.

And so he understood what "go and sort it out" meant?---Quite clearly.

And he heard that instruction that morning from Mr Taylor?---I believe so.

And did Mr Graf also be used in that way?---Yes, he was.

20

And he understood what "sort it out" meant?---We all did.

You all did. All right. And was that something that you felt you were directed to do by the governor?---I would not have done it without being directed to do it.

Now, in terms of with the prisoners being left in cell 203, were they just left there at that stage?---I believe so. We had just left the unit.

30 And my understanding is then you went back up to, I think, 3 Unit - - -?
---Yeah, 3 Unit.

- - - and continued on with your day.---We did.

Now, you're aware that Mr [REDACTED] the prisoner, was taken to hospital?---I was later. I didn't know on the day.

You didn't know on the day?---No, I didn't.

40 Did you have a conversation with Mr McMurtrie that day, 19 February, 2014?---If he was, I don't remember whether he was on but, yeah, I think I did have a - I, I can't truly remember.

And you'd worked with Mr McMurtrie previously?---Yes.

Yes. Were you friendly with Mr McMurtrie?---We were work associates.

So you weren't - - -?---I never had anything to do with him outside of Corrections while I was employed there.

You and Mr Elliott Duncan were friendly, is that right?---Very close.

Very close. And I understand you remain friends.---We are.

10 And your relationship with Mr Graf, was that a professional or a friendly, colleagues?---Oh, friendly, professional, but I'd only ever been to his house once, I think.

You didn't see him regularly outside of work?---No, I never made it a thing to associate with other staff outside of work.

But you did see Mr Duncan, I think, outside of work?---Yeah.

Yes.---He's a close friend.

20 And do you know an officer Cameron Watson?---I do.

Do you remember if Mr Watson, Cameron Watson, accompanied you to the cells that day?---I think he did.

You think he was there also. Do you remember if he went into the cell?---I don't know.

And do you know an officer Wesley Duffy?---I do.

30 And do you recall if Mr Duffy was there that day?---I believe so, yes. Yes, he was there.

And did Mr Duffy go into the cell at all?---I don't know.

All right.---I was directed at the inmate. Anyone else that would have come in would have been behind me.

And so the main scuffle with the inmate was between you and him?---Yes.

40 And you were obviously focused on what was happening there. All right. And when Mr Duncan came into the cell, is it possible that Mr Duncan had any physical contact with the prisoner?---Yes, it is.

And what was his physical contact?---I couldn't tell you exactly but he was with me.

Did you see Mr Duncan assault Mr [REDACTED] No, I didn't.

Did you see Mr Duncan tackle Mr [REDACTED] Yeah, I believe that was part of restraining, when he grabbed [REDACTED] I think myself, and knocked us into the wall.

Knocked, sorry, you and Mr [REDACTED] into the wall?---Well, we hit the wall, yeah.

And was there a period where Mr Duncan may have fallen, perhaps because he's tackled or tripped, on top of Mr [REDACTED] I believe so, yes.

10

And were you also knocked to the ground at that stage?---I think I was knocked on my knees, yes.

And I think you said you didn't see any injuries on Mr [REDACTED] at that stage. ---No, I didn't.

Didn't notice that he was perhaps bleeding to the lip?---No, I didn't. Because as it occurred, he was on the ground and then Mr Duncan I think grabbed him and dragged him towards the door, and then the other inmate was taken out.

20

And, sorry - - -

THE COMMISSIONER: Do you recall whether there'd been any trouble with that inmate before that date?---He had a bad attitude. I believed, from memory, he'd been up in the top units and was moved down to there because of his affiliation or claimed affiliation with the, with an outlaw motorcycle gang.

30

But do you have any recollection of him being involved in any violent behaviour towards staff before this day.---No, I don't.

Yes, thank you.

MS CLIFTON: Now, obviously what you've just told us is quite different to what you told in the Corrective Services interview on 24 February, 2015. ---That's correct.

40

And I have to ask you this, so you lied in the interview with Corrective Services?---I did.

And it's quite different to what you told ICAC investigators on 9 August, 2017.---That's correct.

And again, so you lied to the ICAC investigators?---I lied to the ICAC investigators.

And you were told at the time that it was an offence to lie to ICAC investigators?---I was.

And you decided to stick with the original story?---Yes. I was under – I believed I was under pressure to stick with that.

And why did you believe you were under pressure?---At the time, well, with the general manager and that there, I'd have been put on the dog and - - -

10 THE COMMISSIONER: Sorry, I didn't catch you.---Sorry, I would have been put on the dog, and that's just not what you want.

MS CLIFTON: So you were still working at Lithgow Correctional - - -?---I was.

- - - Centre when you gave both those interviews?---No, I'd resigned I think a week or two before.

20 Before the ICAC interview?---Before the ICAC came.

And you said you felt pressure from the general manager?---Well, I felt pressure from, yeah, the ranking officers, yes.

From all the ranking officers.---From - - -

And had they said anything to you?---Not directly but just - - -

30 But it was an implied - - -?---It was implied if, and I, well, I was told at one stage before the Corrective Services interview, "Stick with this. It will all be okay." Mr O'Shea said to me, "I'll speak with the investigators. We'll sort this. It won't go any further. It'll be okay."

Mr O'Shea told you that?---Yes, he did.

THE COMMISSIONER: When you said you were told "stick with this", who are you talking about saying that?---Stick with the report and what we've been told on the initial report, and told to stick with the same story - - -

40 So the - - -?--- - - - for the interview.

That's the story in the report?---That is it.

And was that O'Shea or somebody else saying that?---O'Shea told me that.

All right. Yes.

MS CLIFTON: And, all right, so you felt that there was some implied pressure. And was that from your experience previously at the gaol?---That was from my previous experience with Mr O'Shea and Mr Peebles.

THE COMMISSIONER: Just on that, what do you mean by that, that was your experience with those two men?---They had a, both had a reputation for sorting things out themselves and not in the correct manner.

10 MS CLIFTON: And you used a term before that I didn't understand. You said you knew if you told the truth that you'd be "on the dog"?---Yeah, the dog. That's a term used for those that give others up.

Yes. So - - -?---If you put - - -

I've heard of - - -?---Yeah.

- - - when people are called a dog, and that is if you tell the truth or dob someone in.---That's correct.

20 So when you say "on the dog" is that - - -?---That's just a term, just the way it's, it's put.

And did you fear some retribution professionally?---Feared professionally and personally.

And personally.---Because it would get out amongst others and - - -

30 And when you say "personally" is that affecting your social relationships? Or were you concerned about some physical retribution?---I was unsure.

Now, I understand that after this incident you drafted a report because you had to.---Yes. We got a call – I can't remember. I think it was, well, it would have been from one of the senior officers, to go down and write a report, yeah.

And do you remember where you were when you got that call?---I, I believe we were up in 3 Unit still.

40 And so it was the same day?---The same day.

Yes.---We were told to go and write some reports.

You don't remember which senior officer it was?---I think – no, I can't tell you exactly who.

And so when you say "we", are you talking about the three IAT officers? ---Yes.

So the three of you were called down to go and write reports?---We were.

And were you told why you had to complete a report?---They said it was so I – I can't remember exactly why, but we were told to go and write reports, which we should have done as per protocols anyhow.

And what protocol was - - -?---Well - - -

10 - - - well, brought into being - - -?---Initial protocols. We should have went down there, we should have had a video camera with us. I believe my camera at the time was being used up on the searches.

Yes.---But there's video in the day room. Yeah.

Well, this particular incident, if you're told to go in and sort it out, doesn't really fit into any of the protocols, though, does it?---No, it doesn't.

No.---It was purely wrong. It was wrong of me.

20 So which protocol would, when you're talking about "We should have used a camera," which protocol would have that been? For cell removal?
---That's the correct, the correct procedure.

For cell removal or - - -?---Yes.

30 And so cell removal was, if we're going to find an official reason, is that what we were doing, that team?---If, it's badly worded, the procedure, but it's, basically says, yeah, if you think there's going to be an incident – if we're just going to get a normal inmate, quite often wouldn't use the camera. There was no need. But if they became violent, someone should start the video camera immediately and the procedure is they nominate themselves as the camera operator, the time, the date, and then they should give an overview of what's occurring or what has occurred.

So in terms of protocol when you say, "We should have had a camera," you knew there was going to be some kind of physical - - -?---Once I got down there, yes, I did.

40 - - - altercation. And so you're saying the camera should have gone on - - - ?---It should have, yes.

- - - at that stage. But in this instance, if you knew you were going in to sort it out or teach them a lesson and you were going to be physical, obviously you don't want the camera going for that.---That's correct.

And so is that why the camera was not used or was - - -?---No, my camera was up in the top units because staff were using them, videoing the searches that they were doing, because they were actually doing searches.

So you couldn't have used it in any event.---No.

But is it correct to say that you would not have used it because of what you were going in to do?---Once I've been given instruction, yes.

And so because there ended up being some physical altercation, is that why you were told you had to do reports?---That's correct.

10 That's standard procedure where there's a physical altercation, a report needs to be completed.---That's correct.

Now my understanding is at the senior officer, you collect documents that are called the Use of Force Package, is that correct?---That's correct.

All right. It's your job as a senior - - - ?---To move that onto management.

All right. As the senior, you do what I understand is called an IRM. ---That's correct.

20 That's a computer module that you have to put details into.---Yes, that's it.

And the junior officers under you, they also have to do a report?---Yes, just a normal written report.

All right. And do they, is everyone who's involved, do they have to do a report?---They should do, yes.

30 So in terms of Mr Michael Watson who you remember being there.---Yes.

Did he have to do a report?---No, I don't, I didn't believe he had any involvement in it, I didn't see him involved in anything.

Okay. Well, Mr Simon Graf, he removed Mr [REDACTED] and you've said you can't recall him coming back in while the scuffle with Mr [REDACTED] was occurring. Did he have to do a report?---Yes, he did.

40 Why did he have to do a report because he moved the inmate out of the cell and I think he was involved in the movement of [REDACTED] from the one cell to the other.

Right. I'm just trying to figure out what, at what point do you have to do a report. So Mr Watson was off to the side with his dog.---By rights, they all should have put a report in seeing they were there. They should have put in what was called a witness statement. I was told, it was just Mr Peebles, just to get the three reports and leave it at that.

All right. So Mr Peebles directed you to restrict the number of reports to the three IAT officers?---He did, he said write them and then come up to where I am which was upstairs near the general manager's office, it's a large meeting room, situation room and he was on a computer up there when I went up there.

10 Right. I'll just get, I'm sorry about this, I know it's a bit tedious but if we can go back. So you were directed to do a report. Do you remember where you wrote that report up or typed it up?---I typed it up in the IAT room which is above 5 Unit, the cell areas are either end, there's a middle piece in that building. We had an office upstairs adjacent to the executive staff's offices.

And that's where IAT had computers to use.---That's correct.

I understand that's often where you ate lunch together, is that right?---Yes, it was, it had some training equipment in there, it was our storage room for all our gear. It was basically our office.

20 Could anyone, any Corrective Services Officer access that room or was it only IAT?---Pretty well anyone could get in there because the rotation of staff, there's a key lock on the bottom but you could come through from the executive staff office into that area as well.

All right. If you logged on to a computer, for example, this is more a general question, if you logged onto a computer and then got up and walked away. Could another officer come on and log on and use your log in?---If it was still open they could, yes.

30 All right. Was it the general practice officers, and I know you don't know what everyone else does, would you generally log off each time you would leave?---I generally log off, occasionally you'd forget or something would happen and you'd have to rush off and you'd forget.

Yes.---I'd just like to state that I did not do the IRM.

You did not.---No I did not, it was done - - -

40 I might show you that.---It was done on my log in but I did not do it.

We might have a look at that, that might help at this stage. If the witness could be shown Exhibit 16 please.---Is that the IRM?

It is.---Yes, I know what's in it, I did not author it.

I'll show it to you so we make sure we are all talking about the same document.---That's it.

All right. If we can just have that brought up on the screen so Ms Hughes can see what we're talking about. For the purposes of the record I'll just indicate that this is our Exhibit 16 and it's an IRM Incident 92719 and it's got there reported by Walker, Terence. You just said you did not author - - - ?---I did not.

No, all right. Well, do you know who was the author of this?---Brad Peebles.

10 Brad Peebles. And did you see him write this up?---I was there when he wrote it.

All right. And he did that in his office?---Can I just explain, it might be easier.

Yes, please do.---We would have called him and said we've got the reports. He said, "Bring them up to where I am." We took them up.

20 Did all three of you go to there?---Three of us went up there. The computer that's, that was written on, I have never, I don't believe I have ever accessed. Mr Peebles was on the computer doing stuff, he logged out and I, I think I said I can do it but I'm not very quick typing and that. His words were, "Well, this one may come back to bite us on the arse, so I'll write it for you."

All right. So was this in - - -

30 THE COMMISSIONER: Just one thing. When you said the three of you went in there, did you have a report of your own at that time or not?---Yes, there was a handwritten report.

Handwritten one.---And I would have email it to them.

Right, okay. It's all right.

MS CLIFTON: You'd done a handwritten report and Mr Graf had done a report at that stage.---They had.

40 And Mr Duncan had done a report.---Correct.

Had you seen what was in their reports?---Basically, yes, we colluded.

You colluded. All right.

THE COMMISSIONER: Sorry I just want to follow this. What happened to your handwritten report?---It would have went to the, up with up to Peebles and then it was all handed over, I believe, to the manager of security Mr Taylor that day.

All right. We'll come to that probably, is that right. Yes thank you.

MS CLIFTON: Yes, so when you say we colluded, you sat with Mr Duncan and Mr Graf and three of you came up with what you were going to put in your reports?---Yes, we did.

All right. Who came up with the story or was it a joint effort?---A bit of a joint effort I think.

10

All right. We spoke about an officer called Wesley Duffy.---Yes.

You weren't sure if he was there or not. Do you remember telling Mr Duffy that he was not to put in a report?---I was told later he did, I was told later.

I know you were told later he did put in a report.---He went to give me one later and I said to him the IRM's already been done, Mr Peebles only wanted three.

20

All right. When did he go to give you that report, do you remember, was it the same day?---Same day but probably two or three hours later, after the incident.

Okay. So yourself, Mr Graf and Mr Duncan had similar reports, is that right?---We did.

You took those up to Mr Peebles.---Yes.

30

Was he in his office, did he have a separate office that was his?---Well, he was using the staff meeting room upstairs.

All right. He logged off.---He logged off the computer he was on, he said, "What's your log in?" I told him.

So he logged you in?---He logged me in and then started typing it because the way it's written isn't my - - -

40

They're not word you use.---It's not my writing style, I'm not very brilliant with it, it's not exactly how I would have even written it.

All right. So under summary which is I guess a quarter of the way down on this Exhibit 16, that summary there during an Intel based searched IAT were detailed by the MOS with directions to specifically look for buprenorphine is there. I think that's - - -?---That never occurred.

That never occurred. Inmate spoken at the cell door prior to entry and appeared compliant and reasonable. There's some elements, did you speak

to them before you went it?---Yes, we did, they were, it was no worse than what I expected from those that are in that area.

Okay. As officers entered the cell, offender [REDACTED] [REDACTED] ran without warning towards the back of the cell in the direction of the toilet. Did that happen?---No.

10 During the action the offender tripped over cell furniture and fell heavily onto the toilet itself.---I believe he did trip on a chair or something.

All right. IAT officers were unable to intervene in time to stop the offender disposing of an unidentified article in the toilet. Did that occur?---No.

The offender was handcuffed and did not resist. Did that occur?---He did resist.

He did resist.---Yes.

20 But he was handcuffed at some stage.---Well after the incident, yes.

All right. The cell was searched thoroughly with only nuisance items found. ---That's a lie.

The cell was not searched that day?---It was not searched. We were never, ever tasked with searching the cell. We were told later.

All right.---And actually, come to think, I think that may have come from McMurtrie.

30 You were told - - -?---He said to put it down as a, put it down as a drug search.

Do you remember now when Mr McMurtrie might have told you that?---I think it was after the event.

Before you spoke, before Mr Peebles drafted this or after?---I think it was before we went to Peebles. I can't be a hundred per cent sure but that's, we were told to put it down.

40 And did Mr McMurtrie tell you why it was going to, why it ought to be recorded as a drug search?---It's what they wanted to do. They said it'll all be all right. We'll fix it up. And we didn't - - -

What was everybody worried about that they needed to fix up at this stage? ---I don't know. But I think it was, they were worried about themselves because they had sent us to do it and then we'd found out later that the inmate was injured.

So it was the injury that made everyone need to cover something up?
---Without, without that injury we're, I do believe he hit it on the toilet, and I honestly believe that. Without that injury it would never have been reported.

There would have been no need for you to do reports?---No, they would have covered it up.

10 There would have been no need for Mr Graf or Mr Duncan to do report?
---We wouldn't have been asked to do them. We were asked later to do them.

20 So the thing that has concerned them is the Justice Health reporting, is it? That you can't keep it locked in the cell.---I believe Mr Turton may have gone down and saw the inmate, and then he was taken across to the clinic. That was what I, I was advised later, that Mr Turton, I believe, had seen him and then he was taken across to the clinic. But at that point we hadn't been told and the exact words I do remember from Mr Peebles, "I think this one will come back to bite us on the arse, so we'll have to clean it up."

And was Mr Turton involved in any of the cover-up?---No. Mr Turton is an outsider. He was put on the dog by the general manager on a regular occasion.

All right.---And Mr McMurtrie also, well, I don't think McMurtrie, Peebles or O'Shea got on with him. They used to put him on the dog. You know, "What's he doing now?" Quite common terms, "What's he doing off, off his lead? Do you need flea powder to go in here?"

30 Right.---He, because he actually was a witness to another event at Parramatta years before and, yeah, he copped a lot of flak because of it.

So he copped, he - - -?---I found him, I found him to be a decent and up-front bloke and honest and - - -

So he copped flak because he was honest, is that - - -?---That's correct.

THE COMMISSIONER: Sorry, what was his name?---Turton.

40 Turton. Sorry. And - - -?---He's an SAS.

What rank did he, what was - - -?---Senior assistant superintendent. He's one under a deputy governor.

Right.---There was my rank. The next reporting rank was an AS, SAS, which is senior assistant superintendent, and then the MOS.

MS CLIFTON: Yes.---They were all commissioned officers. I wasn't a commissioned officer.

And so you felt that you were acting under their direction as officers?
---Totally. When I spoke to Mr Peebles, I said, "What are you going to put this down as?" He said, "A technical use of force." He said, "I'll tell O'Shea that."

10 Well, that was what I was interested in. You'll see in this little narrative or summary we've got "After the cell was searched," which you said didn't occur - - -?---No.

- - - "offender offered medical attention by Justice Health at centre clinic." Now we know the offender was ultimately taken to the hospital, and that's how this incident came to not be contained within the gaol. Is that correct?
---That's correct.

20 Thank you. And then we've got this line, "Reported as a technical use of force on direction of the general manager."---That was written by Mr Peebles. I - - -

And so that was Mr Peebles's idea, this technical use of force?---That's what he told us he was going to put it down with. I'd never even heard of the term.

Never heard of the term?---Never.

30 All right.---You can check the, if you check the computer log-ons, Peebles was using a computer, there's a short break, and he went back onto the computer.

That was on the 19th?---On the day this was written, yeah.

Yes.---The day he wrote this.

40 And so I've just got a few more questions that you might be able to help me with this. You'll see underneath the summary we've then got some columns that say Question, Response, Date, Time, Number, Comment. And so, sorry, can you see that? I don't want to go too fast.---You're right. No, go. Fire away. That's better, yeah.

Yes. Mr Grainger will hover around the bits that I'm asking about. So you'll see first off we've got "involved parties" and we've got one offender.
---Yes.

And that's Mr [REDACTED] obviously. Would you ordinarily include Mr [REDACTED]
---I would have. I would have.

All right. So two offenders?---If I had written this, I would have put the two down.

And then we've got "Staff number – three IAT officers."---Well, that's incorrect because the Dog Unit was there as well, and I would have put him in there if that was me.

10 Thank you. And then we've got some details in the comment, "Technical UOF", use of force, "only. Offender fell over cell furniture whilst attending to dispose of", and that's "inidentified" but I think it's meant to be "unidentified items in toilet".---Yes.

And you said that's incorrect, that's a lie.---Yeah, we were never, ever tasked with doing a search in there. We were never told at the time it was a drug search.

20 THE COMMISSIONER: And was there any form of searching at all that went on on that day?---There was no searching went on. Oh, there was searching in other units but - - -

No.---Related to this incident, Commissioner, there was nothing.

MS CLIFTON: And then the next comment is it's asked why reason force was not fully recorded or captured.---Mmm.

And Mr Peebles has entered here, "No force anticipated. Offender fell without any physical contact from officers." And both those sentences are incorrect, is that right?---Yeah.

30 Yes. There was force anticipated because that's what you'd been sent in - - -?---That's what I'd been sent to do.

Sent to do, yes. And he didn't fall without any physical contact from officers.---That's correct.

40 Thank you. Now, this next bit, "If not fully recorded on camera, were photos of inmates taken?" And we've got, "Yes. Still photos as part of standard centre procedure." Were photographs taken, to your knowledge? ---Not to my knowledge. I think that was collusion between Peebles and McMurtrie at the time.

To include that or - - -?---They just wrote it in there.

All right.---Because I actually questioned them on that at the time and said, "Well, where are these photos?"

And what did Mr - - -?---Because I was concerned I was going to be sunk for it all. And he said, "No, no. It's all right," he said. "We'll just tell them

we won't be able to find them or they didn't record on the disc." He said, "We'll sort that out later." Because - - -

And that was Mr Peebles who said that to you?---That was McMurtrie, I believe. Because McMurtrie also told me later, because I said to him, "This is going to blow up and I'm the one that's going to get sunk." A fairly heated discussion I had with him. And he said to me, "Oh, it's all right, mate. Don't worry about it." He said, "They're not going to get the footage from the day room either."

10

Do you remember where that conversation took place?---I believe in McMurtrie's office.

And was it the same day?---I think it was on the same day. But he also, he said, "It'll be okay." He said, "I'll delete the footage."

20

All right.---So he told me then he was going to delete it. Later on when the first investigation came around, I questioned him about it and, because I was concerned and I was worried and was stressed really bad at the time. And he said to me, "Don't worry about it." He said, "I've got it all on my screen." He said, "When the idiots from in town," meaning the Intelligence people in town, CID, he said, "when they take it from my computer," he said, "the footage won't be there." He said, "It'll just delete." I said, "What?" He said to me, "I've set it up so just the reports will go," he said. "And when the footage comes off, when they take the footage," he said, "they won't get it." He said, "It'll just delete." He said, "It's on my screen so they can take it this afternoon."

30

So he was quite computer savvy, then?---Very computer savvy.

And so he had somehow done a program that you could see it on his screen, but once you tried to copy it - - -?---I, I don't know how he did it. I'm not that, I'm not computer techo at all. But, yeah, he told me that's what would happen to it. He used to also have heaps of thumb drives with stuff on them too, so.

Did you ever see the day room footage prior to it being deleted?---No. He told me on the day that he'd been up and deleted it.

40

That he'd gone up and deleted it on the 19th?---Because when, when, I forget, I spoke to Peebles. I said, "What about the day room footage?" And I believe he, along the lines of, "Yeah, McMurtrie's taken care of that."

All right.---And McMurtrie told me later, because I was off the next few days, I said, "What about the footage for this?" because I was really concerned at that point after the injuries had come out. And he said, "No, it's all right." He said, "There's no footage of it." He said, "They'll never get it. Don't worry about it. It's all good."

All right.---I was told the same when the first investigation, the same morning that the investigators coming. I was called into O'Shea's office when we were called up to be interviewed. He said to me, "Don't worry about it, it's all good, he said, I've spoken to them, they've got nothing."

We Mr McMurtrie in the office at any time whilst you were, whilst Mr Peebles was drafting this?---No.

10 All right. Would Mr Graf know that Mr McMurtrie was involved in part of this conspiracy to cover it up?---He would have, yes, he clearly would have.

All right. Mr Duncan was of full knowledge that - - - ?---They all knew.

Okay. Was Mr Watson involved in in any of these discussions or was he - - - ?---No, because he was from the outside unit he works at a unit which rear of the gaol which is the Western Security Unit.

20 Yes, okay, thank you. Mr Duffy, I know you don't really remember him being involved.---Yes.

Was he part of, if I could call it a conspiracy to cover it up?---No, we never actually involved Duffy in it because I was told just to get the reports from the three of youse and bring them up, sorry, I've got a bit of a cramp coming.

I was going to say, you look a little uncomfortable, do you need a short break?---No, it's all right, it's gone.

30 All right.

THE COMMISSIONER: We'll shortly take a break for morning tea.

MS CLIFTON: Yes, thank you. I just wanted to, if we could go over to page two of this document and you've answered this, but just to ensure that I'm being quite complete with this document. You'll see that the second part of this document on page two has the involved parties listed and again, we've got Mr [REDACTED] and his role was subject to the use of force.---Yes.

40 Then we've got yourself, Mr Duncan and Mr Graf and you're listed as searching officer. That role description you say is incorrect.---It's all false.

It's false. Now - - -

THE COMMISSIONER: The expression, "Use of force," in context of dealing with inmates, does that have a commonly understood meaning, for example, along the lines that if force being applied to control the actions or conduct of an inmate, does it mean something along those lines.---Along

those lines Commissioner. If an inmates moved, just purely as a move and it's just a controlled move, not, you know, he might have been injured and involved in a fight and we move him, there was no issue, that would be okay but anything further than that had to be reported as a use of force.

Of course, "use of force" is quite a different concept to assaulting an inmate.---It's a long way from it, sir.

It's a long way from it.

10

MS CLIFTON: Thank you. You see that Mr Taylor is listed there as use of force reviewing officer. Now I'm assuming this is an electronic document and so Mr Taylor would have been added later?---No, that would have been put in by Mr Peebles.

All right.---Sorry, no, they continue on this section later because he's done the reports to the other officers. The only thing you need to, would be aware of is that the reviewing officer should not be anyone that's involved in the thing, so therefore it should have gone to someone else that wasn't involved to be the reviewing officer.

20

All right. I'll show you those documents later but I understand that Mr Taylor was the reviewing officer and he signed off the use of force as all legitimate.---I believe he did that under pressure from the GM and Mr Peebles because Mr Taylor is a very reputable man.

He is, ordinarily.---I've known Mr Taylor for a long time and we never spoke about this but my personal opinion, Mr Taylor, he would not have been at all happy about being involved in that. He used to live next door to me when he was down, I lived at a gaol house at Kirkconnell after my breakdown and he lived next door and yes, that's just not his go.

30

All right. Would you describe Mr Taylor as a friend or was it a professional relationship with courtesy and respect.---Mr Taylor is a friend and a professional work mate.

All right. Thank you. My understanding, and again, I can show you the documents that is true of Mr McMurtrie was the second person who signed off on this use of force.---Yes.

40

From what you told me, Mr McMurtrie also should not have been involved in that sign off. When you said Mr Taylor, you think he would have been under some pressure to sign off on it, he was the one who gave you the order to go in and sort it out, was he not?---He was, but he'd also been under pressure because he had Peebles and O'Shea beside him.

Beside him.---They would have been telling him what to do. Normally he's a rank lower than that. I believe the instructions came from O'Shea.

All right. But the person who actually said them to you from your recollection was Mr Taylor.---Mr Taylor called us down. I can't one hundred per cent say whether it was Mr Taylor or O'Shea but with us all down - - -

But he certainly made the radio call.---Mr Taylor made the call to get us down there.

10 All right.

THE COMMISSIONER: Ms Clifton we might take the morning tea adjournment if that's all right.

MS CLIFTON: Yes, I was going to move to another document.

20 THE COMMISSIONER: All right. If that's a convenient time. Mr Walker we are going to take a break we normally take ten or fifteen minutes or thereabouts and then we'll resume. You're free to step down and just wait outside if you wouldn't mind. Somebody might get you a cup of tea or something like that. I'll adjourn.

SHORT ADJOURNMENT

[11.26am]

THE COMMISSIONER: Thank you Mr Walker.

30 MS CLIFTON: Thank you Commissioner. Have you handed back the IRM or do you still have it there in the box. Still got it there in the box, all right.

THE COMMISSIONER: Do you want him to have it?

MS CLIFTON: Yes, sorry. I just wanted to ask you a few more questions about it. Now that summary there, I know that you said Mr Peebles logged on as you, did he type that?---He did it all.

He did it all.---I did not part of it.

40 Okay. So all of those words were one's that he chose.---That's correct.

Did he have any conversation with you, Mr Graf or Mr Duncan about what he was putting in there or did he just type it?---He had a bit of conversation with us, yes, but he was the one saying, I'll make it right.

All right. Do you know if he spoke with Mr McMurtrie whilst he was doing this?---Not whilst he was dealing with it.

All right. But possibly beforehand.---I believe they had spoken beforehand.

All right. Yes, you can hand that one back. I just have another document I'd like to show you. I have three copies there, one for The Commissioner, one for yourself and one for the Associate and I have one for Ms Hughes. You'll see this is a two page document and the first page is an email and that the heading of it, UOF [REDACTED] doc and it's from you to Mr Peebles and Mr McMurtrie on Wednesday 19 February, 2014 at 12.59 and the attachment is Use of Force [REDACTED] doc. We'll turn over, and on the next page you'll see that there is, I'll call it a memo, let me know if it's got an internal name. To General Manager Mr O'Shea from Terry Walker date 19. So I'll just give you a moment to read the attachment.---It's okay.

The document entirely.---I'm right.

Have you seen that document before?---I have.

All right. Did you draft that email?---I did.

20 You did. Did you draft the attachment, the second page, the memo?---Yes, that was mine.

All right. So you typed that up?---I did.

Okay. When did you type this?---Just before I went and saw Mr Peebles.

All right. So this is your version of - - - ?---That's what, yes, I was thinking while I was out, I did discuss this with McMurtrie.

30 You discussed this.---By phone.

All right. So do you remember, was this when you were with Mr Graf and Mr Duncan doing your reports?---It would have been, yes.

Okay. So you telephone Mr McMurtrie or did he phone you?---I'd say I phoned him, I would have sought advice on how they wanted to do it.

All right. How did you know that Mr McMurtrie was going to be involved at that stage in this cover up?---He's involved in everything.

40 He is. So you - - - ?---He was the intelligence officer, so, it was part of his job like downloading footage and all those parts as well.

All right. But you said he's always involved. Do you mean when you've been instructed to go in and sort it out?---Not necessarily with that but with most things that happen within the centre he's got his finger in the pie.

All right. I understand that there are a number of rumours about Mr
McMurtrie' s conduct.---Yes, there is.

Do you, did you have any specific examples, have you witnessed him doing
these types of things previously?---I know he used to keep lots of cigarettes
in his drawer, he'd use them as bribes and taking care of inmates that gave
information on the dodge. He used to have a lot to do with the Imam which
seemed very unusual to me.

10 With whom?---The Imam, the Lebanese Religious fella that came to the
centre.

Right.---Just pretty well anything that was going on, if there wasn't
something a hundred per cent kosher, his finger was in the pie.

Okay, all right. So this page two, this memo that you've sent to Mr O'Shea
and this version of events in here, who gave you the details to put there or
did you make them up?---I think we discussed it and he was, yes, put this in,
put that in. He told, he told - - -

20

THE COMMISSIONER: Discussed it with whom?---With McMurtrie and
he told me to put it down as a drug search.

MS CLIFTON: All right.---To which it never was.

If you have a look at the details contained in this memo which you say you
typed up, they are quite similar to what was ultimately put in the IRM which
I can show you again, if you'd like to compare.---Yes.

30 Did Mr Peebles copy the information into the IRM from your memo?---He
had that report but I, I got the impression at the time that him and Mr
McMurtrie had discussed it and then, McMurtrie'd half authored that with
me. Put this in there, put it in, put down, he told me put down like a search
operation which it wasn't and that there, we were searching for drugs.

All right. Mr McMurtrie told you to do that on the phone. You said you got
the impression that Mr Peebles and Mr McMurtrie had already spoken, did
Mr McMurtrie tell you that or was that - - -?---No, but they were always
together.

40

THE COMMISSIONER: Can I just get the sequence right. Before, when
you said you and the others went in with your handwritten statements and
then colluded to produce the other IRM report, we are now talking about a
telephone conversation that you had with McMurtrie, which comes first?
---McMurtrie's conversation was the one I had when I rang him and said,
"What do you want written in this?" And he basically said work on this, on
this part of it, throw that in and just make it look like he's just fell, so.

No, but was that telephone call you're just talking about now the one that led to the creation of this document, the one that you've just been asked questions about?---Yes.

Which talks about a drug search, et cetera.---Yeah, that's right, sir.

10 So that came first. And then later you walk in with your statements and then sat down and he types out.---This was written with the advice of Mr McMurtrie. He said put him down that he had that and – as it said there – that he had a large amount of buprenorphine tablets, which he told me, “Put that in there.” He said, “He's got a drug history,” he said, “and this will fix it up.”

Well, we should have this marked as an exhibit, I think, so we can refer to it on the transcript.

MS CLIFTON: Yes. Yes, I was going to tender it. Happy to do so now.

20 THE COMMISSIONER: We'll do that now, yes. What number are we up to? Sorry? 42, isn't it? Yes. Very well. The email from Mr Walker to Mr Peebles, 19 February, 2014, 12.59, with attachment letter, Mr Walker to General Manager O'Shea, will be together admitted as one exhibit, exhibit 42.

#EXH-042: EMAIL FROM TERRENCE WALKER TO BRAD PEEBLES & BRIAN MCMURTRIE WITH ATTACHED LETTER TO JOHN O'SHEA FROM TERRY WALKER BOTH DATED 19 FEBRUARY 2014

30

MS CLIFTON: Thank you.

THE COMMISSIONER: All right.

40 MS CLIFTON: So, Mr Walker, the wording in this document, in the attachment, particularly paragraph 2, “As I entered the cell, the inmate now known to me as [REDACTED] jumped up from the lower bunk, where he was seated, threw an item towards,” et cetera. Was that something that you drafted on the advice of Mr McMurtrie?---Partially, yes.

And what was the other partial part?---Putting in there that the information was received that he had a large amount of drugs on him.

And was the other part made up by you?---Partly, yes. Just to try and make a flow path to it.

And some of it you've entered is truthful because you knew he'd fallen and hit his torso on the rim of the cell?---That was correct.

Sorry, on the rim of the toilet.---But you will note too that this was written in the afternoon.

Yes. And so did you know that Mr [REDACTED] had been taken to the hospital? ---Not at the time, no.

10 THE COMMISSIONER: Can I just ask you another question? So this letter, now part of Exhibit 42, is written with your name on it, addressed to General Manager Mr J. O'Shea. Are you able to say whether that represents normal, accepted practice that a letter would be written like this to the general manager, Mr O'Shea? Or was this – are we looking at a one-off-type situation here?---Any correspondence that you write as a report is always addressed to the general manager.

20 When there's an incident perhaps involving a prisoner and use of force, et cetera, would you in addition to the IRM write a letter like this one to Mr O'Shea about it?---That would basically be my cover letter, Commissioner. Matches up with the other two that were involved. I put that together with the three documents and then normally I would have written the IRM at my desk and then I would forward that on to the general manager and to the manager of security.

All right. Thank you.

30 MS CLIFTON: Thank you. And I think it may assist – so you've emailed this, then, to Mr Peebles and Mr McMurtrie at 12.59. And can I ask why you also emailed it to Mr McMurtrie?---I'd been talking to Brian, now from my recollection, and at that time I'd said to him, "Send it down to him. Have a look at this. Is it okay?" And he sent, he rang me back and said, "Yeah, it's right."

And then you went up and spoke to Mr Peebles. Now, I've just noted, and I'm happy to show you, but - - -?---Yeah.

40 - - - really to put on the record. The Exhibit 42, the email is 12.59 to Mr Peebles, and the IRM, which is Exhibit 16, has an automatic time reporting, and that is timestamped as 13.23. So 24 minutes after this email was sent. So that seems to fit with your timelines.---Yeah, that'd be enough. That's about enough time for me to write it, check it, with, with those that were concerned in it, and just print it off and take it straight up to Mr Peebles. We went from our office, which was inside the centre, out to the front of the centre, where the general manager and the admin officers are upstairs. So the difference in the time would only be the time it took us to walk from one area to the other.

Sure. All right. And so 24 minutes later, when Mr Peebles is typing this up, feels about the right time frame?---Yes. Yeah.

Great. Thank you. Yes, I think you can hand that document back. Just as you do, do you know if Mr O'Shea ever received that report?---He would have.

10 But you don't know?---Well, he would have, yes. He, I would know that he would have received it, because all correspondence and use-of-force packages are done by the manager of security.

Yes.---And then handed on to the general manager.

Well, I might show you now Mr Graf's official version, which is Exhibit 26, please.

THE COMMISSIONER: What's the exhibit number?

20 MS CLIFTON: 26.

THE COMMISSIONER: Thank you.

MS CLIFTON: And I'll just pull that up so that Ms Hughes can also follow along. And you've read that?---Yeah.

Have you seen this document before?---Yes, I have.

And did you see it on 19 of February, 2014?---(No Audible Reply)

30 And is this the report that Mr Graf wrote up following the incident?---Yes, it is.

And this is part of the story that you, Mr Graf and Mr Duncan determined would be Mr Graf's report, is that correct?---That's correct.

And you'll see that Mr Graf has left Mr Duncan out of the report entirely. Was that an intentional decision from memory or - - -?---I don't know.

40 And Mr Graf has effectively removed himself completely from the cell - - - ?---Yes, he did.

- - - during the incident. And you say that part is true?---That part's correct, yeah.

And you can see that he says, "IAT attended cell 208, occupied by those inmates, to search the inmates and cell."---Yeah.

And what, do you say that is the truth?---No, it's not.

All right.---We never went there to search.

And was that part of the story that you discussed with Mr Graf that would be included - - -?---Yes, that was part of what we were advised by Mr McMurtrie to run with.

10 Was Mr Graf in the room or your vicinity when you had the telephone conversation with Mr McMurtrie?---He would have been but I don't know what he heard.

When you say he would have been, do you remember him - - -?---Yeah, we were, we were all there together, yes.

Yes. And Mr Duncan also?---Yes, that's correct.

Was anyone else in the vicinity or in the room?---I don't believe so.

20 All right.---To the best of my recollection.

And it's something that you would have tried to have kept, the three of you, because you knew what you were doing was part of a cover-up?---That's correct.

And so Mr Graf has reported there that Mr Walker, yourself, escorted ██████ to cell 203 and that he returned ██████ to cell 208 with no further incident. Your memory, you can't remember if that's - - -?---I don't remember putting - I, I believed it was Duncan that took him across there.

30 All right.---But I don't clearly remember that.

And so that wasn't part of the conspiracy or the collusion, it was just - - -? ---No, that was just probably his recollection of what it was at the time.

A detail that you didn't think anyone thought was particularly relevant?--- No, and they're supposed to be written in the words of the staff member, so, naturally you don't write them all looking exactly the same.

40 Yes, so they needed to have some individuality and difference.---Yes.

But the story was concocted between you.---The basic story was concocted by the direction of Mr McMurtrie to say it was a drug search.

Yes, and that there was according to Mr Graf's version, he didn't witness any scuffle or any assault.---I doubt that he did actually see anything because the diagonal across and the shape of the doors.

Yes. You don't think that he would have witnessed it?---I don't believe that he saw anything, no, of the assault.

All right. When would Mr Graf have become aware that there was an assault within the cell?---Nearly immediately, he'd have heard it.

He'd have heard it.---He'd have heard it but I don't, don't know that he specifically like visually saw what had occurred.

10 Okay. But he was there when - - - ?---He was there.

- - - everyone was given the instruction, "Go and sort it out."---He was.

From having been given that instruction and being part of, "sorting it out", it was understanding that everyone knew what that meant?---My belief is was that everyone was clear what it meant, we were sent there to do a task.

Sorry, you were sent it to do a task.---We were sent in to do a task.

20 Thank you. Whilst Mr Graf wasn't involved on this occasion your understanding is, he knew what was going on?---He knew exactly what was going on.

And certainly at the time of drafting this report because you're talking about what you need to not say, he knew what had occurred.---Exactly.

Thank you. I'd like to show you Mr Duncan's version now which is Exhibit 25 and you can hand back Exhibit 26 at the same time.---Thank you.

30 I'll just give you a moment to read those.---Yes, I've read it.

Thank you. Have you seen this document prior to today?---I have.

All right. Did you see it on 19 February?---I did.

Was this a document that Mr Duncan drafted as part of the story between the three of you.---That's correct.

40 Partly on the direction of Mr McMurtrie?---That's correct.

All right. I know we've covered this, but I'm sorry for the record, the fact that he states the IAT were called to search Cell 208, is a lie, is that correct?---That's correct.

All right. You'll see that he says, he does not involve himself in any scuffle after Mr [REDACTED] was involved.---Yes.

Sorry, removed. From your memory, Mr Duncan did in fact come back into the cell and assisted you to remove Mr [REDACTED] He did.

Yes. All right. Do you recall why that was not included in this, no particular reason?---No particular reason.

All right. Because, if he had included that there was a scuffle and he came in to remove Mr [REDACTED] that would not necessarily have got him in any trouble?---No, it wouldn't have.

10

No, because that's a - - - ?---He was assisting - - -

A legitimate use of force if he recorded it.---It was a legitimate use of force.

In that way, yes.---Yes.

So are you saying when he did come in to assist you that actually was a legitimate use of force?---Yes, it was a legitimate use of force, I was scuffling with an inmate so he came in to assist.

20

All right. And so in terms of an illegal assault, was that your conduct alone?---It was my conduct, for which I apologise for.

All right. Thank you. So are you saying that Mr Duncan did nothing illegal?---I don't believe he did, no.

All right. You'll see that Mr Duncan says [REDACTED] was then moved to Cell 203, he doesn't detail who did that, that's a second last sentence sorry I've jumped.---Yes.

30

Was then moved to Cell 203, he doesn't say who did it.---No.

Your recollection is that it was Mr Duncan?---Yes, it was.

It's not a firm recollection.---It's not a firm recollection.

I understand that. Do you know if Mr Duncan assaulted Mr [REDACTED] in that second cell?---I never entered the second cell.

40

No, did Mr Duncan ever tell you that he assaulted Mr - - - ?---No one's ever said anything about it.

Did you ever hear Mr Duncan tell Mr Peebles that he was worried he might have broken Mr [REDACTED] ribs?---No.

So to your knowledge there was assault by Mr Duncan?---No. I had my back to him at the time and he's just come racing through and basically tackled everyone.

All right. You certainly didn't accompany Mr Duncan when he took Mr [REDACTED] to the opposite cell?---I don't believe so.

So you don't know what happened in that other cell?---I don't know what happened.

Thank you. All right. I have no further questions about Mr Duncan's report. Was there anything else that you wanted to tell me on the face of that?---No, I don't think so.

I might now move to show you Mr McMurtrie's report of, which is Exhibit 15, yes Exhibit 15 please. You've read that?---Yes.

Have you read that document prior - - - ?---Never seen it.

All right. What do you say about the contents of that document, is that true or is that a lie?---I'd say it was a lie the drug part.

20 All right. I probably asked that far too broadly.---I can't say what he got but I, as I said, I was told later to say it was a drug search so as far as my concern, he fabricated that to match what he told us to do.

All right. No, I apologise, I asked that too broadly, we're going to have to go through it a little bit.---Okay.

I should tell you that you'll see at the very bottom of that document it's dated Monday 13 January 2014 and I'm told that's a save as error, so somebody's used a previous document and forgotten to update the very bottom date but you'll see that Mr McMurtrie starts with today Wednesday 30 19 February.---Yes.

Centre was attended by SOG to assist the local IAT with targeted searches, that's correct, that's what was happening on that day?---Yes, well the Securities Operation Group the SOG did attend the centre but they attended with the main purpose of searching 3 Unit which had been very rowdy and causing a lot of grief within the centre because they were being moved from that area down to another accommodation block and they didn't want to go.

40 Okay. All right. But that was, was that the purpose of the lock down that day?---That was the purpose of the lock down, search that area because there had been fights and drugs up in that area.

Right. SOG's Mr Michael Watson's Group, isn't it?---He's part of the SOG, yes.

So that explains why he was there that day.---Yes.

You have no knowledge as to whether during the searching, inmates were questioned with regards to drug and weapon possession although that seems, that that would happen?---That's sort of the standard procedure with SOG, they try and learn information from where ever they can.

Sure.---Just by talking to inmates.

That would make sense you would ask.---Generally if someone's got something they dob someone else in.

10

Yes.---On the hope that their search cell isn't searched and torn completely to pieces, it's just a ploy.

I understand that.---Quite often, yeah, you do get help from some inmates. But - - -

But there's a practice, is there, of an inmate giving up someone else in the hope - - -?---Yeah.

20

- - - that you'll not look too closely at them?---Especially if there's someone of another ethnic variety.

Right.---If it's just, not picking specifically, if you receive the information off a Lebanese bloke, it will normally relate back to a Caucasian male, maybe, or something like that.

So there's honour and loyalty within their own groups.---Within their own groups, yes.

30

But outside of that they'll give them up to try and protect their own?---Very easily.

And so Mr McMurtrie goes on to say, "During the informal interviews, an informant stated that there was a large quantity of Suboxone in a cell occupied by [REDACTED] Now, I know you don't know whether an informant actually did pass that on, but my understanding of your evidence is that this, the fact that there was a large quantity of drugs in [REDACTED] cell was made up as part of the cover story.---That would be true. It's extremely hard – I'm not saying it doesn't happen – but it's very hard to get drugs into 5.1 Unit.

40

All staff are searched into there. Normally the only time the inmates leave that area is if they're taken to the clinic. When they're taken to the clinic, they're strip-searched. They're placed in a set of overalls. They're escorted over. The staff stay there with them, generally. Come back. And it's the same when they go to visits. They're, they're sat in a separate area, and when they're brought back they're strip-searched by the unit staff and basically everything is taken off them, and then they're given their clothes back to put back on and go back in.

So for Mr [REDACTED] to have a large quantity of Suboxone in a cell, that's almost impossible, is it?---In my opinion it's a fabrication.

In your opinion it's a fabrication. Thank you. And certainly that's – did Mr McMurtrie tell you that he was going to make that up?---Yeah, well, he said to me he's going to write it up as “You were told to go and do a drug search.”

10 All right.---I didn't know what he was going to put into it. As I said, I've never seen the document.

And that is the reason – I know you've already given this evidence – but that's the reason why the three of you IAT officers concluded that it was a drug search in your reports.---That's what we were told to do.

20 And you'll see the last sentence in that first paragraph is “The manager of security was informed and instructed to have this information forwarded to the search teams and have [REDACTED] included in the target searches.” I know you've never seen this before, but do you know which manager of security he was referring to there? Because we've got Mr Peebles - - -?---I would assume that that would have been forwarded to Mr Peebles.

Yes.---Because Mr Taylor is too proper and correct.

And his next sentence or second paragraph, which is a sole sentence, says, “I informed the search 2IC, Mr T. Walker, of the information and instruction from the manager of security.” Did that happen?---No.

30 So that's a lie?---That's a lie.

All right. Yes. So, now, you don't know when this was drafted, do you? ---No, I don't know.

40 I might show you another document that I have, which is an email from Mr McMurtrie to Mr Peebles. And I have three copies here. And if you just keep that, and I'm sorry, I don't have a further one but I think through the magic of technology Mr Grainger can bring it up on the screen. And you'll see there that that's an email from Mr McMurtrie to Mr Peebles and the timeline fitted in is Wednesday, 19 February at 12.25. And you'll recall that the email from you to Mr Peebles and Mr McMurtrie was at 12.59, and the IRM was 13.23, 1.23. And if you look at page 2, you'll see that that wording there is exactly the same as the document that I have just shown you.

THE COMMISSIONER: Exhibit 42. Is it? Yes. No.

MS CLIFTON: No, it's Exhibit 15.

THE COMMISSIONER: Sorry, 15. Oh, 15, I'm sorry.

MS CLIFTON: 15, yes. And so were you – I know this, you weren't an addressee on this email, but were you aware that Mr McMurtrie had emailed this to Mr Peebles?---No.

No.---But - - -

10 But it certainly fits with your timeline?---It, it, it would fit with it to be done as part of the package.

All right.---For the reporting package.

And I know you said you'd never seen the attachment before. Had you seen that email before?---No, never.

Could I tender that email?

20 THE COMMISSIONER: Yes, that will be an email from McMurtrie to Peebles, Wednesday, 19 February, 2014, 12.25, with attached letter by Mr McMurtrie dated 13 January, 2014. To be admitted, becoming Exhibit 43.

#EXH-043: EMAIL FROM BRIAN MCMURTRIE TO BRAD PEEBLES DATED 19 FEBRUARY 2014 WITH ATTACHED LETTER TO SIR FROM BRIAN MCMURTRIE DATED 13 JANUARY 2014

30 MS CLIFTON: Thank you. And now I'm going to do another swap-over of documents. You can hand all of the ones back and I'll ask that you're handed Exhibit 18, please. And I'll just give you some time to read that. You've read that?---Yeah.

Have you seen that document before?---Never.

40 Never. All right. And so, again, I'll just explain about the date. You'll see that that's from Wesley Duffy, ranked first-class correctional officer, and the date is 7 December, 2016. Again, I'm told – and I accept, if you'll accept from me - - -?---Yeah.

- - - that this is the document that has the date embedded.---Yeah.

And so each time you print it, it automatically updates to the print date.---A lot of the people have automatic roll-over of the dates on their documents.

Yes, yes. So that date is not indicative of when Mr Duffy drafted this document - - -?---No.

- - - if you'll accept that from me. And you'll see that he's talking about what I believe is the same incident we're talking about today.---Yeah.

He says that approximately 10.00am on the 19 February, he was conducting search duties and he says that there was a radio call for IAT to attend 5.2 Unit. And that's from your recollection.---Yes.

10 There was a radio call. And he says that he went down to the unit with IAT, and when they got there it was actually 5.1. Is 5.1 where cell 208 is?---Yes, that's 5.1

And the cells on the other side of the office, are they 5.2?---They're 5.1.2.

Right. Thank you. And in his first paragraph, Mr Duffy goes on to say that he saw Mr O'Shea and Mr Peebles in the office. Now, his recollection that he did at the time is that "Mr O'Shea directed us to cell 208 and asked us to remove [REDACTED] from the cell." Did you hear Mr O'Shea give that direction?---As I said at the time, I thought it came from Mr Taylor but they
20 were both standing together. There was a discussion going on and I was more concerned at the time the information from, I was receiving from Mr Taylor that, you know, he had abused the general manager.

All right. Mr Taylor told you that [REDACTED] abused Mr O'Shea - - -?---Yes.

- - - over the knock up system?---That's correct.

Now you'll see that Mr Duffy says you entered the cell, which is your recollection.---Yes.
30

And that he was directly behind you.---I never realised at the time.

This doesn't help your memory that he was there?---Look, he was, as I say, I don't recall Mr Duffy coming in behind me, I didn't realise at the time he did. It happened so quickly, as he says there, he would have seen it because he obviously saw me strike to the side of the head which was the palm strike.

40 Okay. Can I ask, I'll come back to this in a moment but can I ask, is your recollection of this incident not that clear incidents like this occurred regularly?---No, my recollection of this are poor because my mental health history. I've had major bouts of depression, I was, I attempted suicide at my home, I've had another one since, I was admitted to Bloomfield, was placed in Bloomfield by the police for my own health and safety and welfare. I had another incident where my depression got too much for me again and I walked from my home about three kilometres to the highway with the intentions of walking under a truck, some gentleman picked me up and took me to the hospital and I was found swinging in the hospital.

THE COMMISSIONER: Mr Walker - - - ?---I've had, I've missed little bits and pieces and I blame that a lot of that on the recollections.

MS CLIFTON: All right. Thank you.

THE COMMISSIONER: Mr Walker, can I just ask you another matter. As I understand it, this whole chapter of unhappy events - - -?---Yes.

10 - - - started with what was said to be some of form of verbal abuse over the, what do you call it, over the - - - ?---Over the inmate call up system.

It was believed that [REDACTED] was the person who had, responsible for the abuse. Now, if you trace through the relevant events as you've related them today, you start with a verbal abuse by an inmate, that leads, so, I understand from your evidence to a chain of events. We have the incident when you go in and you say there was a scuffle. He's then taken away to another cell. He, it would seem, on the evidence was bashed, ends up going to hospital. That then leads to a further chain of events involving six or
20 eight officers who then set about engaging in fabricating an account as to what is to alleged to have happened which lead to this assault, all right. You've got on this account, O'Shea involved, McMurtrie involved, Peebles involved, three IAT members involved and then there's others Taylor and so on. On this account, a number of activities if true suggest unlawful activities such as conspiracy to assault [REDACTED] secondly the actual assault of [REDACTED] occasioning physical injury, thirdly conspiracy to fabricate an account as to what happened and fourthly, the actual falsification of evidence based on the fabrication. All starting with verbal abuse over the
30 system. On any account, if you accept all of these things as being true, there seems to be a gross disproportion of reaction to what was more than verbal abuse over the phone system leading to, as I said, a whole cast of senior officers involved and then all these other activities as a consequence. Can you explain to me, how such a disproportionate chain of events in Lithgow Correctional Centre could have occurred through a verbal incident, in other words, having regard to the personalities involved, O'Shea and others and your experience, how do you explain what was, in a sense, a revenge attack on [REDACTED] for his verbal abuse, if it was his abuse at all? Leaving that to one side.---Mr O'Shea is a very reactive man, very short tempered and what he says goes. He runs the gaol, he makes it quite clear. As for the rest of it,
40 as I said for my part I apologise to you Commissioner and to everyone else involved. Many, many staff get abused on a daily basis and do not react in the way that he did but as the general manager - - -

So what I'm really trying to understand is, how officers, senior officers indeed would so readily, buckle and just follow O'Shea's directions and McMurtrie's direction for that matter. What was it about the past history could explain that compliance with, by officers to doing things which were plainly illegal?---I don't know how to answer that. I'm sorry.

I'm trying to understand whether was an isolated incident or whether this was just a repetition?---It was an isolated incident there are the centre. He was, Mr O'Shea just went off and - - -

Well, is O'Shea to your knowledge acting anything like the way he was said to have - - - ?---Not, not, I've seen him get very angry before with inmates and yell and scream and carry on.

10 Did you have frequent personal dealings with him, with work?---Only work dealings.

Yes, that's what I meant. But you on a daily basis would talk to him or? ---Not on a daily basis, no, the reporting protocols for me were mainly to the managing of security because he runs the day to day running of the inside of the gaol.

20 Do you have any other knowledge of him acting in a way that is either illegal or contrary - - - ?---I've seen him on a borderline accounts where he's screamed and abused people. He, I've seen him enter cells but when he does that he generally goes in and speaks to them on his own, pulls the door shut. I haven't actually physically seen him anything at Lithgow like that. His personality persona sort of, people think he's a great leader.

He'd been there many years?---He's been in the gaol system for a long time, he was very well connected with further up the Commissioner chain for a long time till some of those went.

30 All right. Thank you.

MS CLIFTON: Just want to clarify some of that evidence. My understanding of when you went down to the officer's room and you were told to, "go in to sort it out," was that you knew what that meant because you'd been instructed to do that before. Did I get your evidence - - -?---Yes, but it never, normally went to that extent, like we'd go in and, we used to call them therapy searches where we'd go in just pull everything apart and drag them out and basically just put them on show.

40 All right. So, you had been instructed by Mr O'Shea before to, "go and sort it out." When you say, it had never gone to this extent before, are you talking about the on-going cover up involving Mr McMurtrie or are you talking about the injuries?---No, the whole thing like, it's just not that way. We'd take the camera in and we just pull everything apart and the best way to do it is to tear everything out and you'd use a property card and then find out everything they've got and whatever they didn't belong to them you'd just take the whole lot of it and leave them with absolutely nothing and then he'd go down and scream at them later.

So they would know that the search, the upturning of their cell and the removal of items that they ought not have, was related to their conduct with Mr O'Shea?--I'd tell them.

10 And why was this time different? Why was Mr [REDACTED] assaulted and the cell wasn't - - ?--Well, he lunged towards me and that's when I palm struck him. Then it evolved from there. It turned from what would have been "Go down and yell at them." I've had plenty of them, you know, you'd yell at them and carry on and, you know, you'd often get them out and make them go up and apologise to the boss, but I don't think – at that time there was a lot of pressure on everyone at the centre because of all the big changes. It was fairly hectic. There'd been a lot of unrest within the centre.

Yes.---Especially from the remand inmates. And, yeah, it wasn't a pleasant place to even work at the time.

All right. So - - -

20 THE COMMISSIONER: I'm sorry just to interrupt. When he told you to go and sort him out, this is [REDACTED] you went down and you went into the cell and you've given an account of what happened. What was your intention in entering the cell? What were you going to do with [REDACTED] about the abuse?--Oh, I was probably going to rev him up at the time and I was just going to yell at both of them, basically, to start with, and then just tear the cell apart.

30 I see.---Just purely as a therapy method but, to say – as Mr Duffy even says, like, he lunged towards me and I struck out. Probably wasn't that appropriate by me, but as I say, my mental state at that stage - - -

Yes.---I now admit that I shouldn't have been at work probably for a year before that.

MS CLIFTON: All right.---The grief I'd been through with my depression.

Yes. Thank you. And so when you said earlier this morning, "IAT were regularly used to go and sort it out," this incident was different because there was an assault and then there's the ongoing cover-up.---That's it.

40 "Sorting it out" other times was tearing the cell apart, searching it.---Yeah.

Giving them a bit of a talking to.---Bit of therapy.

Therapy, yes. That's your nickname for it, yes.---That's what, that was one of the terms that was used within the gaol.

And so you don't remember another incident where it all went horribly wrong?--No, not like this.

If we could just go back, I think you've still got Mr Duffy's report with you. So you'll see in paragraph 2 there that Mr Duffy says what he recalls as happening, that you entered, [REDACTED] backed up towards the rear of the cell. Mr Duffy witnessed him, Mr [REDACTED] raise his hands as though to strike you. He saw you retaliate with a strike to the side of [REDACTED] head and you said you think that's when your palm did the palm strike.---Yeah.

10 And Mr Duffy says he then reached low and applied a figure-four leg lock to [REDACTED] leg in an attempt to take him to the ground to apply handcuffs, and Mr [REDACTED] continued to struggle. Does that help your recollection?
---No, it doesn't. I don't recall Mr Duffy being in there. And at the time, because if I had that, that would vindicate my actions.

Yes.---But I was told just to put the three reports in. I had never seen that document.

20 Yes. And so if we'd stuck with Mr Duffy's version, which you say is truthful except that you cannot recall him being there.---Yeah, well, yeah, I didn't know he was behind me.

Yes. And the third paragraph you'll see Mr Duffy goes on to say that "At that point Elliott Duncan entered the cell to assist." And this is a part that you recall, except Mr Duffy not being there.---Yeah.

30 Mr Duffy says that in the struggle Officer Duncan tripped on the end of the bed and fell to the ground with yourself and Mr Duffy, and everyone fell on the ground. "At this point [REDACTED] had three officers on top of him and could struggle no more. [REDACTED] was restrained and handcuffed and moved to a vacant cell opposite cell 208." So Mr Duncan tripping and falling and you all falling over, that's - do you recall - - -?---Well, I thought he came in and tackled us.

All right. Yes.---I didn't see what's behind me. You know, confined space about that wide with a toilet there, so - - -

Yes. Well, a trip and a fall could be seen as similar as a tackle.---Yeah. The floor's wet in there. They've got vinyl on the floor. They are very slippery.

40 Yes. So Mr Duffy's version, though, doesn't scream to you as incorrect?
---No, it doesn't.

It could have occurred that way?---Yeah, it, as I say, I just didn't realise he went in. And when he, I do recall him saying, "I've got a report," and I said, "Oh, they've done it all, mate." Because I didn't even know he'd gone to write one at the time.

And you said that before. Do you remember when Mr Duffy came to you and said, "I've got my report"?---Yeah, and I just said to him, "Well, Mr Peebles already dealt with it, mate." I said, "It's all gone in."

Did you at any time say to Mr Duffy – and I've asked you this before, but now that you've seen this – "You don't need to do a report. You weren't there"?---No, I said to him, well, I probably said he didn't need to do a report because I didn't believe he was in there. That'd be the only reason.

10 And did immediately after this event, I know you say you can't remember Mr Duffy being there, but did you and Mr Duffy have a conversation about what occurred and Mr Duffy said, "Well, this is my version," and you said, "No, he tripped and fell"?---No, I don't recall any of that. I do know he said he had to report and - - -

Yes. Was that on the 19th or you think – I know you went there on - - -?---It was on that day but it was after the time when we'd come back, and Mr Peebles had written the IRM and everything had gone in.

20 So it was on the 19th, from your memory?---I believe so, yes.

Yes.---Yeah.

I do have the roster from the next day and you're not rostered on. I know you said earlier you had a few days off, you think.---I think I had two or three days off.

And so are you aware that Mr Duffy later lodged his report with the dep's clerk?---No, I was never aware of it.

30

And did Mr O'Shea ever discuss with you that Mr Duffy had lodged a report?---No.

Did Mr Peebles ever discuss that with you?---No.

Did Mr McMurtrie ever discuss that with you?---No.

40 No. Were you – you and Mr Duncan ever had a conversation that Mr Duffy put in a report?---Oh, after it come out that he'd been spoken to. That was the only time there'd been any conversation about it.

Yes. Do you know how much longer?---Oh, like, after the investigations.

After the - - -?---After the initial investigation and - - -

The Corrective Services one?---The Corrective Services one. I was made aware of, that he'd had a report by another officer he'd shown it to.

All right.---And I think Mr Grainger or someone had spoken to him upstairs at the centre. That's when I first found out about it, that it was actually put into the system. But up till then – which was I don't know when, whenever you spoke to him – I knew nothing of it. I knew that it hadn't been submitted.

It had not been?---I, I thought it had not been.

As part of the use-of-force package it was not submitted?---Yeah.

10

I'll just show you quickly the Exhibit 23, which is a Justice Health report from when Mr [REDACTED] was seen by a doctor or by the hospital staff. And you'll see there it's a very short document. It is for, surname is [REDACTED] Location, Lithgow. Date of presentation, 19 February, 2014. And you'll see that the injuries noted are “A contusion to the left eye/cheek/lip. Bruising to right-side torso over ribs.” Right. And so on your version that you've given here today, are those injuries consistent with what you say occurred in the cell?---Well, I'd say that's what would have probably happened, because that's what's written there. But - - -

20

Oh, those are the injuries that he received.---Yeah.

But given what you say, that you had a palm strike and then there were a few punches - - -?---And then we fell and hit the ground and the wall. Yeah, that would be consistent.

All right. And I have to ask you again, the bruising to the right side of the torso. Did you at any time see Mr Duncan come in contact with Mr [REDACTED] right side, right torso?---Well, he obviously came in contact.

30

Whether he was falling – I thought he was tackling us, but I believed he came in to try and assist.

That was the only thing I wanted to ask you about that document. Do you recall during the scuffle – I know you were facing the back of the cell – do you recall Mr Taylor entering the cell at any time?---No, I don't.

And was there a period where you and Mr Duncan may have had Mr [REDACTED] with his face up towards the corner of a cell, being held into the corner?---I don't believe so, but he might have been held up into the corner while he was being handcuffed. I don't remember.

40

It's not something specifically that stands out from that day?---No.

And I know you weren't at work on the 20th, but I just wanted to ask about your knowledge of a cell search the next day of [REDACTED] and [REDACTED] cell. Do you know that the cell was searched that day?---I found out later on it would have been searched that day and - - -

And do you know who was involved in that search?---I know that Graf and Duncan were told to stand down – they weren't to do it – at McMurtrie's direction, and he got three other officers to go and do the search.

All right. And - - -?---The only name I could remember that was, I knew was involved was Allan Murdoch.

Mr Murdoch was involved, that's right. A Mr Dippel was involved.---Yeah, possibly.

10

And he was rostered on that day as an IAT officer?---Mmm.

Can you recall that at all?---Yeah, well, well, I don't know.

Well, I know you weren't there.---I don't, I don't recall it. I wasn't there.

Sorry. But - - -?---But, yes, Mr Dippel is an IAT-trained staff, the same as Mr Murdoch was too.

20

Thank you. That was a much better answer to my badly worded question. And we have been told that – on the 20th of February – that a small amount of buprenorphine, or bupe, was planted in Mr [REDACTED] cell. Do you know anything about that?---I know nothing about it. I wasn't there.

You weren't there. No, I know that.---Yeah.

But have you heard that since?---I did hear they found some bupe there and I must admit I did have my doubts.

30

You had your doubts. Did Mr McMurtrie ever tell you that he planted drugs in Mr [REDACTED] cell?---No, he didn't directly tell me that but - - -

All right. Mr Kennedy - - -

THE COMMISSIONER: Did anybody? Did anybody tell you that's what had happened?---No, never, because I'd have jacked up on that one because it's, it's just so immoral.

40

MS CLIFTON: It's a step too far in your view?---That's it.

All right. And Mr Kennedy was in charge of that search. Would Mr Kennedy have been involved in any planting of drugs? I'm not saying do you know he did – is that the type of character?---In my professional opinion - - -

Yes.--- - - - Mr Kennedy would have no involvement in that.

No involvement in that.---None at all. He - - -

And what about Mr Dippel?---Mr Dippel would not either.

Mr Murdoch?---I don't believe so.

All right.---I don't believe any of them would do that.

And do you have any more information about February, the 20th that you want to tell us?---No, I have, no, as I said, I wasn't there.

10

All right. Thank you. Now, do you know an officer Mr Dale Ashcroft?---I do.

And how do you know Mr Ashcroft?---Worked with Mr Ashcroft right from the start of my career.

Since the start of your career?---Yeah.

20 So he's been at other gaols with you?---I was at Bathurst with him. He spent a short period of time at Lithgow and then he went to Oberon.

And would you class him as a good friend?---He is a friend and he's also, with my depression, he, he's, he's been a support person for me.

So he checks on you regularly?---He does, he, yeah.

And do you see him outside of work?---Oh, I've spoken to him on a few occasions outside of work since, but I've had – I went out to dinner with him after I resigned.

30

And did Mr Ashcroft have knowledge of what occurred on 19 February? ---Well, he wasn't even in the centre at the time.

He wasn't at the centre at the time?---No, he wasn't at the centre, no.

Do you know which centre he was at?---I believe he was at Oberon at the time.

40 Right.---He was the manager of security or acting manager of security at Oberon.

And I understand that the rumour mill, if I could call it that, within the gaol is pretty prolific?---Oh, very big.

So is it possible that Mr Ashcroft may have heard about the assault of Mr [REDACTED] on the 19th from somebody else?---Quite possible.

I just want to show you an email that Mr Ashcroft sent to you on the 19th. And you'll see that's headed "What?" and it's from Mr Ashcroft to you. And it's dated 19 February, sent at 14.23, which is 2.23 in the afternoon. And he says, "You're a thug, Walker." Was that related to the events of 19 February?---I believe he wrote that, yeah, but it was just as a joke.

All right.---Yeah.

10 Did he know about what had occurred or was that just something that - - -?
---I don't know. He probably, well, he would have by the IRM.

Right. So when the IRM gets lodged, how would Mr Ashcroft have - - -?
---Well, they, they've all got access to it.

Everyone's got access?---Yeah.

20 THE COMMISSIONER: You didn't take this seriously as a rebuke or - - -?
---I didn't take it seriously. Just took it as a joke. And with Dale and with my health history and the way he's supported me, it's just, yeah, he'd have meant nothing by that and - - -

Yes, sure. That's fine.---Yeah.

MS CLIFTON: And when you say - - -?---It's purely just a poor taste joke but - - -

THE COMMISSIONER: Yes. Thanks.

30 MS CLIFTON: Right.---The mentality of people within the gaol, some of the jokes are very poor. I can recall a situation where I got a needle stick, and I come back two weeks later to pick up my new diary, and one of the blokes had cut the last six months of it and said, "You'll be dead by then."

Right. It's a black humour.---It's a very black humour. That's what that was too.

And a way to deal with a stressful job.---Yeah.

40 Yes. Not - - -?---And the bloke that did it to me, like, nice enough bloke.

All right.---No malice meant and, but, yeah. It was a bit of a sad joke at the time with, after a needle-stick injury.

THE COMMISSIONER: Do you want to tender this?

MS CLIFTON: Yes. Yes, I can complete - - -

THE COMMISSIONER: The email from Mr Ashcroft to Mr Walker, 19 February, 2014, 14.23, become Exhibit 43, is it? 44.

#EXH-044: EMAIL FROM DALE ASHCROFT TO TERRENCE WALKER DATED 19 FEBRUARY 2014

10 MS CLIFTON: Thank you. I've just really got some general questions now. Did the IAT keep diaries of duties and what you did each day and where you went?---Yeah, there's just a day diary there.

A day - - -?---The day diary just – they're a, just a set-out document where you mark off, like, that the armoury check was completed, whatever through, and then - - -

All right. And - - -?---Yeah. Who's, who's on duty and who's not on duty.

20 And would that have searching or cells attended or that kind of detail or not?---Yeah, depending on what we were doing on the day.

And do you remember if there were any notes made in that diary about the 19th?---I don't remember whether I logged anything on that day.

30 And was that the role of the senior to complete that? Or just whoever was available?---Oh, look, whoever was on duty. It's technically the role of the senior but I just allocate the tasks to different ones to do the – so whoever would do that bit. Or, you know, they'd say, yeah, it's all done. It's all correct and checked, so - - -

40 And I think we've discussed that – the being told to go in and sort it out entailed this therapy, which was often turning the cell upside down and finding whatever items they ought not have - - -?---Yeah. Yeah.

- - - and taking them. Is that – and you've said that that was a, I think, and please don't let me put words in your mouth, that this was a general understanding that all officers generally participated in. Was it - - -?--- Yeah, well, it, it's, it's classed as non-prescribed property. You get a lot of standovers where they'll take someone else's TV and that or they've got it. And on major search days, it's the same thing. You take everything apart, take it all out, remove it and then - - -

And in terms of what occurred on 19 February, that we've been talking about today, how do you know which officers will turn a blind eye or participate in the collusion? Is it, I mean, Mr Turton, you were saying before, a good guy, wouldn't be involved in this kind of thing.---Mmm.

Mr Taylor - - -?---Yeah.

- - - Mr Kennedy, you're saying they wouldn't - - -?---No, they wouldn't.

- - - ordinarily be involved in this. So - - -?---Mmm.

- - - is there a reputation or - - -?---No, not particularly. Oh, Peebles and O'Shea have reputations from previous but nothing I can specifically - - -

10 So if something bad happened, would you feel comfortable going to Mr Peebles and saying, "Oh, I need help"?---Probably not.

Probably not?---Mmm.

Probably not now because of this or - - -?---Oh, certain situations, certain people that has, got your confidence, you can sort of trust, but - - -

20 Yes. And so Corrective Services has been described by some officers to the Commission as a boys' club, and others have said there's a level of mateship with certain officers where the mateship goes above truth.---I would say, yes, that would be correct.

So do you simply know who's within your - - -?---I don't have a - - -

- - - club because of, sorry, because of your time and experience with those people and you can trust them?---Probably so, yeah. But once again, as I say, I didn't - I very rarely spent time with any of them outside of the gaol, no matter what gaol I went into. Even with their social club do's and that, I've never been to one yet.

30 THE COMMISSIONER: What was McMurtrie's reputation?---A lot of people didn't like him. A lot because of the way he conducted himself.

What's that refer to?---Well, with Mr Turton I was told that he printed off all the documents relating to a previous interview, a previous situation where Mr Turton had given evidence, and he left them all laying over a table while talking to junior staff. You know, he's, yeah, his reputation and behaviour precedes him. His methods, the way he speaks to people, the way he speaks to a lot of people in a derogatory manner too.

40 When you talk about his methods, what are you adverting to?---Oh, just his, his personal demeanour, the way he speaks to people is very poor on occasions. You know, he'll walk into a room where there's someone there and, "Oh, have you got flea powder or something?" Once again referring to putting a bloke on the dog. Like, it's just not appropriate.

What about Peebles? What was his reputation?---Teflon-coated.

Well, what's - - -?---From the early days - - -

What's that adverting to?---Well, you only hear the rumour mill but, yeah, his incidents relating to Wellington Correctional Centre. I never got any specifics but he jumped through the ranks very quickly, same as Mr O'Shea.

Just one other matter. Since 19 February, have you had occasion to discuss the events of that day with O'Shea?---Sorry, since the - - -

Since then, as the days, weeks, months, years went by.---Yeah. Yes, I did.

10

When do you recall you had that conversation?---Can't remember specifics. I do remember when the first investigation come, he, he said to me (not transcribable) he served me with the documents and spoke to me then about it. And I said to him, "What's going to happen?" He said, "It'll all be okay. It will all blow over." And then on another occasion, the day of the interview, he said to me, "It's okay. I've already spoken to them. They understand what's gone on." So since then I'd spoken to him on a couple of occasions but, yeah, I've cut off all contact now with everyone.

20

What about McMurtrie? Did you ever have occasion to talk about the events back on 19 February, '14 with him or not?---No, I, I knew he was interviewed. I said to him, "Well, how'd you go?" and he said, "I was down there for ages." He said, "They're trying to pin a heap of stuff on me I didn't do. I don't know what they're up to." And as I say, the other occasion with O'Shea when he said to me, he said, "Oh, apparently ICAC are looking at me," he said, "but I don't know what for." He said, "I don't know what they're up to," so. And O'Shea did ring me a while ago, and when I had the bout of depression I did some stupid things and he rang me just to get the details of the doctor, because apparently he hadn't followed through the full report and protocols or something. But he'd rang the health assistance part of the department because I was just getting out of control of myself. My, I was, I, it was affecting my personality and everything at the time.

30

Yes. All right. Thank you.

MS CLIFTON: Chief Commissioner, I have maybe 10 or 15 minutes to go, but I'm very aware that Mr Walker has been in the box for a while.

40

THE COMMISSIONER: Yes.

MS CLIFTON: I don't know if you'd rather push on and then be done. ---No, can we just finish it? I'd be happy.

THE COMMISSIONER: Would you?---Yes.

How are you placed?

MS HUGHES: That's fine with me, Commissioner.

THE COMMISSIONER: Is that all right?

MS HUGHES: Yes.

THE COMMISSIONER: Well, we'll see if we can get through it as efficiently as we can.

10 MS CLIFTON: Yes. I'll try my best. I just wanted to show you one other document, which is Exhibit 17. And this is a document that's an annexure and it's called the Using Force on Inmates Incident/Witness Report cover sheet.---Yeah.

And you'll see it's a three-page document. If you go to the third page. ---Yeah.

At the bottom that is electronically signed "T. Walker. IAT SCO, 19 February, 2014."---Yeah.

20

And above that there's a squiggle and a date, 20.2.15. Do you know whose that squiggle is above that - - -?---Looks a bit like mine, but - - -

Could be yours?---I don't know. But I wasn't there on that day.

Well, it's actually a year later.---Oh, is it?

If that date's correct. So you think that squiggle could be your - - -?---This is a year later?

30

Well, you'll see it's - so the squiggle and the date next to it is 20.2.15. ---Yeah.

Is that squiggle your - a signature that you use sometimes?---Yeah, that's, that's, yeah, it looks like my squiggle but I don't - - -

You don't recall - - -?---Well, I don't recall the document, that's all. That's - - -

40

Well, that was going to be my next question. Do you recall drafting this document?---I'm just, that's the supervising officer's package. I don't remember drafting it actually, but - - -

You don't remember - - -?--- - - - it looks my squiggle on the bottom of it.

Well, I can tell you that the NSW Corrections Services interview with you was 24 February, 2015. But that still doesn't help with the - - -?---Mmm.

- - - with the 20th. And you don't recall if you were shown this document? I don't recall when I read your Corrective Services report. I'm wondering if this was a document that you remember Mr Peebles drafting also or if it was one that you recall drafting.---Yeah, it's just the basic package. It's quite possible that I did it.

10 Well, it's got the IRM number entered, 927 - - -?---Because, because this looks like the, once you do the IRM it drops into another section, and that's probably what it was. And when it's come out, but, yeah.

So do you think this was something that perhaps Mr Peebles drafted or is it - - -?---Yeah, it's not, it's not my handwriting because during the intel-based search of the centre, IAT were detailed. See, I wouldn't, I would have put "tasked by the MOS to search the cell" with the directions. Yeah, well, my mind would have been to look for drugs, I'd say. I don't, I don't believe I've authored that.

20 All right.---If that's the continuation of the thing and I've just, just signed it, I would say.

And you'll see it says, "IAT were detailed by the MOS to search the cell with directions to specifically look for", and then it spells out a drug there. ---Yeah, buprenorphine.

Is that how you spell it?---We have all sorts of spellings for that word.

Yes. All right.---But it's not written, I don't believe it's written in the style of my writing. Like - - -

30 Well, is it possible that this document - - -?---If this - - -

- - - generates information from the previous document?---Yes.

All right.---If that IRM matches the other number - - -

It does.--- - - - it was all done by the same person. It wasn't me.

40 All right. So you don't recall - - -?---I've just, I've just been told to sign it off. But that's not, as I say, it's not my writing.

And so - - -?---Because mine, mine would have, if I had have (not transcribable) during, during a search, you know, we, I would have wrote where we're tasked with searching for drugs.

All right.---Or, or contraband.

You wouldn't have been so specific?---I would never have been specific, saying I was looking for buprenorphine, because if you're tasked with searching you don't just look for the one item.

Yes. All right.---Because if they've got buprenorphine, you should be looking for syringes or drug-smoking implements or whatever, so - - -

10 All right.---It would have been just task – well, I would have put down, you know, “Directed to undertake a target search of the cell” - - -

That's your usual language?--- - - - “based on drug,” yeah, that, that would be how I would have written it. That's not my, yeah, it's definitely not my writing.

All right. Thank you. Now, you said before – I just wanted to follow up – that Mr McMurtrie told you don't worry about any ongoing investigations. ---Yeah, he did.

20 They'll be sorted. Did he tell you how he was going to sort that, other than he was deleting the footage?---No, he didn't elaborate greatly. But as far as I was concerned he said the footage will go and there'd be nothing to it.

Did he ever tell you that he had someone in Internal Investigations that could help him get rid of this?---Oh, no, I don't believe so.

All right.---But he used to brag highly about how he had all these contacts, but he was full of wind half the time, I thought.

30 All right.---He was just full of his own self-importance.

Yes. And did Mr Peebles also tell you not to worry, that any internal investigations would be taken care of?---Mr Peebles said to us on the day this was done, “We've got to sort this out because it may come back to bite us on the arse.”

All right.---I do remember that clearly.

So his efforts to sort it out were drafting the IRM?---Yeah.

40 Did he tell you that he'd done anything else in terms of - - -?---No. Nothing.

And in terms of this cover-up - - -?---Yes.

- - - and all of these documents being created - - -?---Yeah.

- - - who were we trying to protect? Was it Mr O'Shea? Was it you? Was it - - -?---I believe they were probably protecting O'Shea and myself.

O'Shea and yourself?---Yeah, me because I've done it, but I do believe the bulk of it was to protect O'Shea.

All right.---Because he gave the direction to do it.

Yes. All right. Excuse me for one moment. Thank you very much, Mr Walker. I've got no further questions.---Thank you.

10 THE COMMISSIONER: Mr Walker, thank you for your attendance, for your evidence.---Thank you, Commissioner. Once again, I'd just like to apologise for not being truthful in the initial parts, but pressure was placed upon me to do that and I'm actually disgusted in my own behaviour.

Thanks, Mr Walker. That's been noted. That's recorded on the transcript now.---Thank you.

Thank you.

20 MS HUGHES: Commissioner, just before you break, there's just one variation I'd be seeking to the suppression order. Mr Walker undergoes a great deal of counselling.

THE COMMISSIONER: Yes.

MS HUGHES: And I'd seek to have variations not that he can discuss the contents of this examination with his counsellor, or his psychiatrist, but the fact that he's been here. He hasn't been able to disclose that. It's caused him a great deal of stress.

30 THE COMMISSIONER: I'm sorry, I just missed the point.

MS HUGHES: He wants to be able to disclose the fact or discuss the fact that he's been involved in ICAC with his counsellor.

THE COMMISSIONER: Oh, I see. Yes.

40 MS HUGHES: He hasn't been able to to date because of the suppression order and the fact that this is obviously a compulsory and private hearing. He doesn't want to discuss the contents of what has happened here today but more the fact that it has caused him a great deal of stress.

THE COMMISSIONER: Well, in your instructions is there a necessity for him to disclose to the counsellor that he's been here?

MS HUGHES: He tells me he's felt very constrained by not being able to disclose to them the source of his recent stress.

THE COMMISSIONER: Source of?

MS HUGHES: His recent stress, which is his appearance here at ICAC.

THE COMMISSIONER: All right. Do you know who the counsellor is?

MS HUGHES: I don't. I don't, Commissioner. I should have found that out earlier.

10 THE COMMISSIONER: Can you help us on that?---I've got a - - -

Well, perhaps you don't have to disclose his identity but - - -?---It's, it - - -

Is it a doctor? A psychiatrist?---It's a psychiatrist, Commissioner.

A medical practitioner?---Yeah, he's a registered psychiatrist. I see my medical practitioner on a needs basis with my mental health, which rapidly goes up and down. And he suggested that I see a psychiatrist because I was getting anxious. My blood pressure and - - -

20

So you're presently under the care of a psychiatrist, treating - - -?---Well, I, I've, I've asked him for a new psychiatrist. I've, I've been under the care probably on and off, for the last four years, of the mental health team at the hospital. But that takes up a lot of their time and it's - I normally score pretty badly on the scale that they draw up.

Can I ask you this? As you see it at the moment, is there any particular need you have to disclose the fact that you have been here to give evidence in a compulsory examination or not?---They look at it for triggers.

30

Yes.---To see what sets me off. And - - -

Look, I think, Ms Hughes, it would be, I think, appropriate to deal with it, perhaps on this basis, that is to say that he's been required to attend the ICAC to assist them in an investigation. There's probably no need for any more.

MS HUGHES: No, and I wouldn't be seeking that there be any more.

40 THE COMMISSIONER: Yes.---I didn't wish to disclose any further information, Commissioner.

No. Yes.

MS CLIFTON: I think it's entirely appropriate that he be able to tell his psychiatrist about the compulsion and needing to come along. But - - -

THE COMMISSIONER: Yes. I think, then, Ms Hughes, just so there's no misunderstanding, I vary the order I've made under section 112 so as to permit Mr Walker to disclose and only disclose the following, that he has been required and did attend today at the ICAC in order to assist the Commission with an investigation.

10 **I VARY THE ORDER MADE UNDER SECTION 112 SO AS TO PERMIT MR WALKER TO DISCLOSE AND ONLY DISCLOSE THE FOLLOWING, THAT HE HAS BEEN REQUIRED AND DID ATTEND TODAY AT THE ICAC IN ORDER TO ASSIST THE COMMISSION WITH AN INVESTIGATION.**

THE COMMISSIONER: Is that clear?

MS HUGHES: That's clear.

20 THE COMMISSIONER: All right. I think that seems to meet Mr Walker's own position. And you can just go over that with him to make sure that he understands that the variation is limited to that extent. Mr Walker, thanks again for your attendance. You may step down. Thank you.---Thank you, Commissioner.

THE WITNESS EXCUSED

[1.16pm]

30 THE COMMISSIONER: Nothing else?

MS CLIFTON: No, thank you, Commissioner.

THE COMMISSIONER: Yes. Nothing else from - - -

MS HUGHES: Nothing else.

THE COMMISSIONER: Thanks, Ms Hughes. I'll adjourn.

40 **AT 1.16PM THE MATTER WAS ADJOURNED ACCORDINGLY**
[1.16pm]