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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 TUESDAY 5 DECEMBER, 2017

AT 2.00PM

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

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

THE COMMISSIONER: Yes.

MS CLIFTON: Thank you Commissioner. This is a compulsory examination of Stephen Taylor. Mr Taylor is in the rear of the court. Mr Harris - - -

THE COMMISSIONER: Move forward please, Mr Taylor.

10 MR HARRIS: Whilst he's coming forward, Chief Commissioner, my name is Harris and I would seek leave to represent Mr Taylor.

THE COMMISSIONER: Yes, granted leave, Mr Harris.

MR HARRIS: Thank you. Commissioner, whilst he is taking his seat could I foreshadow he will be seeking a section 38 declaration.

THE COMMISSIONER: Yes, very well.

20 MR HARRIS: He'll give his evidence under oath.

THE COMMISSIONER: Thank you. Thank you, Mr Harris. Mr Taylor, we'll swear you in, in a moment. I'll just deal with some preliminary matters. I direct that the following persons may be present at this compulsory examination. Commissioner officers, including transcription staff, the witness, Mr Taylor, and his legal representative, Mr Andrew Harris. I propose to make a direction under Section 112 of the Independent Commissioner against Corruption Act restricting the publication of information with respect to this compulsory examination. 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 may be varied or lifted by the Commission without notification if the Commission is satisfied it is necessary or desirable to do so in the public interest. It is a criminal offence for any person to contravene a Section 112 Direction, a direction I now make.

40 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 this witness, Mr Taylor, the contents of any exhibits he tendered, the contents of any documents shown to the witness, 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 **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 THIS WITNESS, MR TAYLOR, THE CONTENTS OF ANY EXHIBITS HE TENDERED, THE CONTENTS OF ANY DOCUMENTS SHOWN TO THE WITNESS, 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.**

THE COMMISSIONER: Mr Taylor, I understand from what Mr Harris has said, it's been explained to you that you're entitled to take an objection to questions and that offers you a protection at law.

20 MR TAYLOR: Yes, Commissioner.

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

30 **PURSUANT TO SECTION 38 OF THE INDEPENDENT COMMISSION AGAINST CORRUPTION ACT, I DECLARE THAT ALL ANSWERS GIVEN BY THIS WITNESS AND ALL DOCUMENTS AND THINGS PRODUCED BY HIM DURING THE COURSE OF THE WITNESS'S EVIDENCE AT THIS COMPULSORY EXAMINATION ARE TO BE REGARDED AS HAVING BEEN GIVEN OR PRODUCED ON OBJECTION ACCORDINGLY THERE IS NO NEED FOR THE WITNESS TO MAKE OBJECTION IN RESPECT OF ANY PARTICULAR ANSWER GIVEN OR DOCUMENT OR THING PRODUCED.**

40

THE COMMISSIONER: Mr Taylor, if you wouldn't mind just standing and I'll have you sworn, thank you.

<STEPHEN TAYLOR, sworn

[2.13pm]

THE COMMISSIONER: Thank you, take a seat. Yes, Ms Clifton.

MS CLIFTON: Thank you Commissioner. Mr Taylor, are you currently an employee an employee of the New South Wales Corrective Services Department?---That's correct, yes.

10 And where are you based at the moment?---Presently at Tamworth Correctional Centre.

All right. And what rank do you hold and what position?---Currently acting as manager of security or my standard rank of senior assistant superintendent based at Cessnock.

At Cessnock ordinarily?---That's my permanent position, yes.

20 Right, thank you. If we could just turn our minds back to February, 2014, do you recall which prison you were operating out of at that stage?---2014 was Lithgow Correctional Centre.

Lithgow?---That's correct.

And what was your role or rank at that stage?---SAS again, senior assistant superintendent, and I may have looked after the protection area, segregation area and the IVOP which is the Individual Violent Offenders Program.

30 Right. At that stage were you also acting as the manager of security?---On occasions, yes.

Right. Now we're going to ask you about some events that occurred on 19 February, 2014. I've got a copy of the roster here and at that stage you were rostered on as the manager of security. I can show you a copy of it, it's page two of the brief, it's very small writing, sorry, I'll bring it up on screen to show Mr Harris.---That's fine, yes.

So you can see up there at the top left you are listed there.---Yeah.

40 And that's you listed as manager of security.---That's correct.

All right.---Yep.

And so as the MOS if we can call it that - - -?---Okay, yeah.

- - - as the MOS do you have different duties to your ordinary duties as SAS?---Yes, I do.

All right. And what are the duties of the MOS?---Well, basically the MOS's duties, he's the operational MOS or commander of the whole centre, so you're looking after all the logistics, administration, structured day, work, everybody going to work, and then you've got all your documents you've got to review in your in-tray, uses of force, IRMs, any of those type of documents you're reviewing and updating, signing off or passing them up to the governor.

10 Okay. So is it more a desk-bound job or is it operational or a mixture of both?---Oh, a bit of both, depends on the individual, some are more the administration side, I try to do a bit of both, go out in the morning, I go out and walk around, talk to inmates then midday, around 10 o'clock I try to do my administration-type work, but it's a bit of both, it depends on the individual I suppose.

And in terms of seniority on a day-to-day basis, where does the MOS fit in?  
---Number 2.

20 Right. Okay. So quite a senior job obviously.---Yes. If the governor's not there, you're the boss so - - -

Right. Okay. So on 19 February, 2014, we've got you rostered on as the MOS.---Yeah.

Do you recall an incident at all with a prisoner in segregation?---Yes, I do.

And do you recall that prisoner's name?---Going with what you gave me before, [REDACTED] yes.

30 Okay. And so we have information that on that morning you made a radio call for IAT to attend 5.1 unit. Do you recall doing that at all?---No, but I could have.

Do you recall there being a radio call going out for IAT to attend 5.1?  
---Due to the type of inmates I had then more than likely it was normally a common occurrence.

To call IAT?---Yeah.

40 And when you say the type of inmates you had - - -?---On the Violent Offenders' Program, the IVO Program. They're the most violent inmates in the system.

Yeah.---So on that side of the wing I normally called IAT.

Okay. And are the violent offenders located near segregation?---Okay, I suppose the easiest way to explain it, it's an H.

Yeah.---So it's an H block. So if you look at the H, on the right-hand side if you're looking at, it's hard to explain it, but on the right-hand side was our IVOP Program.

Ah hmm?---On the left-hand side where [REDACTED] was it was segregation, LA's, NA's, which is limited association, non-association, on that side of the building.

10 Right.---So it was split in two and then the other end was all mainly SMAP inmates, special ah, protection inmates.

Right.---So that - - -

Do you know why [REDACTED] was in segregation?---No, off the top of my head I can't recall. No, I wouldn't.

Okay. So the information we have is that a radio call was put out for IAT to attend to [REDACTED] cell.---Yep.

20 Do you know what that was?---The understanding I have, that the general manager or governor at the time, Mr John O'Shea, had answered a knock-up and the inmate abused him on the knock-up, he abused the inmate back and from that they went into the cell.

Okay. So what was happening on the 19<sup>th</sup>, was there anything else happening elsewhere in the - - -?---I think we had a lockdown that day  
- - -

30 Yeah.--- - - - to be perfectly honest, which means I had one or two staff at either end of 5.1 or 5.2.

And what was the lockdown for?---Could be for anything, usually lack of staff, but it could be we had a disturbance the day before or we had something else going on or yeah, I can't recall on that, that day back.

Okay. So you said before that you, there was a call from [REDACTED] cell.  
---Yes.

40 Was that by [REDACTED] do you know or he had - - -?---I believe by [REDACTED] what I got told by my staff was from [REDACTED]

And do you remember who told you that?---I, I originally thought I wasn't the manager of security so it could be, going back that far back, maybe Kath Turner, one of the seniors in that area.

Right.---Because usually if I've only got limited staff usually I leave my seniors there just for knock-up calls or that sort of stuff.

Is it the usual thing for the general manager, they're also referred to as the governor. Is that right?---Yeah, they've changed, the minister's changed them over the last couple of years, but yeah.

All right. And so is it the usual thing for the general manager to answer a knock-up call?---No.

10 Do you know why Mr O'Shea was there answering knock-up calls?---I have no idea. Because normally they usually come and tell the area manager or that they're going for a walk-around so, or MOS, so you go with them so if they say anything to them, the inmates I mean, you can then follow it up later on. So if they say something and you don't know and you come in second-hand and you go what, don't know what the discussion was about.

And is that the case on 19 February, 2014?---That day, yeah, I wasn't with him on that day.

20 All right. So you had no idea that he was down on that floor?---No, I was upstairs.

When you say you were upstairs where you?---So the building, my normal office was upstairs.

Yes.---So in that, in that building there's a second tier above 5.1/5.2 at Lithgow. I was upstairs when the first call come and then I saw that the IAT were going to go in so I probably made the radio call from that.

30 All right. And so the, generally the executive are based upstairs. Is that right?---Upstairs we had the SAS, the AS, the psychologist, SAPO, and the education teacher. They mainly looked after the IVOP program so the Violent Offenders Program.

So where was Mr O'Shea ordinarily based?---He's normally based in the main admin building at the main gate, upstairs there. That's his normal office.

40 All right. So you were advised by you think one of your staff that Mr O'Shea and [REDACTED] had had a bit of to and fro on the knock-up system? ---Yeah, that's what I asked when I come downstairs, what's going on.

So how did you know to go downstairs?---Usually there's a lot of yelling there because that's how the inmates talk from area to area and because I was upstairs you can hear the yelling. Most of the time you don't take much notice of it because it's just the normal banter, that's how they talk. But it stopped and then it started again which is unusual. Usually they, they talk and say what they want to say and then they, they finish. So I thought something's going on because I've only had one staff member down there so I thought what's going on so that's when I went downstairs and - - -

All right. So at that stage you didn't know about the conversation between Mr O'Shea and Mr [REDACTED] over the knock-up?---No. No.

And at that stage were you aware that IAT had been called out?---No.

10 So when you came downstairs what, what happened next when you got downstairs?---When I got downstairs I asked what was going on, my staff around the office block. Mr O'Shea was halfway between the office block and the cell.

So you could see Mr O'Shea downstairs?---Yeah.

Do you remember who your staff member was that you asked what was going on?---I'm just going to try to remember my regulars back there. My regular senior that was there was Kath Turner, but it could have been any other first classes. Without seeing the roster I - - -

20 Would it help you if I brought the roster back up on screen?---If you don't mind, yeah. I'm just trying to - - -

Happy to do that. So Mr O'Shea was between the office I think you said and the cell.---Yeah. So me being the office and the gentleman in the far, near the door there being the cell.

Mr Grainger.---You being Mr O'Shea. About halfway.

30 All right. And was Mr O'Shea walking towards the cell or walking away from the cell at that point?---No, just standing in the middle.

Just standing in the middle. Was anyone else with Mr O'Shea at that stage?---No. IAT had already gone into the cell.

I just have brought up for, for the tape - - -?---Yeah.

- - - I'll just say we've brought up the roster. So if you could just have a look at that and - - -?---So my senior normally would be Ms Lohse, Jane Lohse. It more than likely would have been Jane.

40 Is that Lohse?---Yeah.

L-o-s-c-h-e, is that right?---Yeah.

Thank you.---L-o-h-s-e, yeah.

Thank you.---And the other two would have been Gray Lans or Brian Dickson.



All right. Thank you.---They would have been my usually regular three in that area at that time.

So when you came down you became aware that IAT had already gone into the cell. Is that right?---Yeah, that's correct.

And who told you that do you recall?---One of the staff members there.

10 So when the radio call goes out for IAT assistance - - -?---Yeah.

- - - is that to, that's to a closed radio group I'm assuming, prisoners can't hear that?---No. All the staff can.

All the staff can?---Yeah.

Right. So had you heard the call out?---No. I just heard noise.

20 You just heard noise, silence, noise?---Just the, noise, yeah, that's all I heard.

Right. Oh, as in over the radio system a crackling?---No. No, I just heard people usually yelling. That stopped and they started yelling again. Because I was upstairs I thought oh, what's going on. More because one staff member can't open a call and especially in the area I was looking after you usually have two or three open a cell door.

Okay.---So I was making sure I was going down there because one of my staff we go in and see what's going on.

30 So when you got downstairs you became aware IAT had already gone into the cell?---Yeah.

Who told you that?---One of the staff members.

One of your staff do you know?---Yeah.

40 All right. And do you remember what they told you?---Just that the boss had answered the knock-up system which is Mr O'Shea. The inmate abused him, he abused them and he's asked IAT to go in the cell.

So your understanding from that day was it was Mr O'Shea who called IAT to get in the cell?---Yes, I am.

Or made the order at the very least?---Made the order, yes.

What did you see or hear next?---I walked past Mr O'Shea and I just said, "What's going on?" He said IAT's gone into the cell. I went in there. IAT had [REDACTED] up against the back right-hand corner of the cell near the toilet

or the toilet area and the other inmate was on the top bunk, just sitting there virtually like I am now just looking straight ahead not saying anything.

All right. So how many IAT officers were in the cell?---Three.

Do you remember who they were?---I think Tex Walker, they were both on the roster again, Elliot Duncan, I can't remember the third because, I know they're two because they're normally the regulars back then but if you bring the roster up I would know.

10

All right. So you can't recall who was in there, you're just surmising?  
---No, those two I'm pretty sure were there but the third one I can't, I just can't fathom or recollect.

Was there anyone there from the Dog Squad?---Oh, not to my recollection, no.

Okay. Do you remember seeing an officer called Simon Graf there at all?  
---Could be because Simon is IAT trained and normally if they're not on IAT we put them in the IVO area because of the type of inmates we had so we had people trained up. More than likely that could be a possibility, yes.

20

What about an officer called Wesley Duffy or Wes Duffy?---Wes Duffy.

Was he there, do you recall?---I'm just trying to think, back then, 2014, I don't think Wes was a regular IAT member, I believe he is now but back then, I don't think so - - -

30

You can't recall him being there when you got there?---No. I can recall about four people, the blokes in the cell, the officer I spoke to, Mr O'Shea at that time when I first got downstairs.

All right. So, then there's five of you, three officers inside the cell, yourself and Mr O'Shea inside?---And one officer in the office.

Right. Do you know why IAT were called to go in, in the first place?---Not really no, because normally in that area I've got my own staff and we deal with situations or issues that go on because we've got that type of equipment um, close by.

40

And is, this is a general question not about the 19<sup>th</sup> necessarily, if a prisoner gets on the knock-up system to give a bit of lip, is that a regular thing?  
---Yes, quite regular.

And is that something that ordinarily would result in IAT being called to their cell?---No. A lot of time it's just banter, the knock-up for silly little things. Sometimes they just knock up because they know the person on duty, they know the voice, they just want to have a chat. Normally it's

answered by the wing in the first thirty seconds to a minute and then there's a delay system and it goes to the control room and they answer it, so.

So if the prisoner is just ringing for a chat or to give you a serve, what is ordinarily the reaction to that?---Oh we just say, if we know the inmates pretty well, we just say look, be quite we'll come and see what your issue is, you know, don't abuse us, we don't tolerate that and most of the guys in that area knew that, we were quite fair and honest with them.

10 But if there was an emergency, obviously, you would - - -?---Obviously that's different, we do that straight over the radio.

Yes. So you have no idea why IAT were called in that day?---No.

Have you since learnt why?---I believe Mr O'Shea made it a direction for IAT to go in, that's what I've been told since.

20 But again, you don't know why Mr O'Shea made that direction?---I'm only going on what staff told me, I'm sorry, what staff told me that he had answered the knock-up and got abused and he abused him back and then from that it escalated.

THE COMMISSIONER: Who told you that?---Commissioner, I'm not sure, I'm going back to one of the senior or one of the baggies at the time, because we're going to lock end, my normal return is one staff either end to answer the knock-ups, I'm assuming it's a senior because that's what I normally did back then.

30 MS CLIFTON: And then you've entered the cell and you've seen Prisoner [REDACTED] up near the toilets?---Yep.

And was he - - -

THE COMMISSIONER: Had he entered the cell or did you or were you still outside?---I stood at the door because there were too many people in there anyway.

40 MS CLIFTON: All right. Thank you for that Commissioner. When you were standing at the cell door, you could see Mr [REDACTED] at the rear, near the toilet?---Yes.

Was he being restrained by anyone?---Yes, he was.

Do you know how many officers?---Um, minimum two.

And was he, he was standing you said?---Yes, standing pushed against the wall, excuse me.

And do you remember which two officers were restraining him?---Again, off the top of head, I think it was Tex Walker or Terry Walker and Elliot Duncan I think.

All right. And then the prisoner, the cellmate, [REDACTED] [REDACTED] you said was sitting on top of the bunk?---He was on top of the bunk closest to the door, just basically, if I'm him, just looking straight ahead not saying anything.

10 All right. Was there anyone restraining Mr [REDACTED] No.

And so, Mr [REDACTED] was facing the rear of the cell?---Yes, where the corner is, they had his head in against the, that's the corner of the wall, there's a door there, then a wall there, then a wall there in that corner pushed up.

All right. And so nobody was paying any attention to Mr [REDACTED] at that stage?---No, not as far as I'm aware of, no.

20 And so after you witnessed that, what happened next that you saw?---After that we called the nurses over I believe or we took him to the clinic which is the normal process.

So you took Mr [REDACTED] to the clinic?---I believe he went to the clinic or the nurses come to him, I just can't recall that.

Why was he taken to the clinic?---Because normally when there's a use of force you've got to get a nurse to see him, to see if he's got any injuries, if he's got any complaints.

30 Did Mr [REDACTED] complain to you or in your presence of any injuries?---No, not to me, not directly, no.

Did you see any injuries on Mr [REDACTED] Not directly, no.

Did you, were you close enough, did look at him front on?---Not front on, side on, I saw his face but not front on, no.

40 And I understand it's a very small cell, but did it look like there had been any struggle within that cell?---Um, probably a little bit, yes, because there was stuff on the floor because they would have gone straight in, they would have knocked off the bench like what was on the floor because you've got the bunk, the hallway like that, the walkway and you've got a bench here so I think there was some stuff on the floor.

All right. And so Mr [REDACTED] just as an ordinary part of procedure was taken to see the nursing staff, is that what you said?---Normally we either take them to the nurse or the nurses come to us depending on the situation.

THE COMMISSIONER: That's in a situation, I think you said, where there's been the use of force?---Yes, that's normal, Commissioner.

I take it use of force leading to some form of injury and need for medical attention or checking?---Yes, it's mandatory for us if there's been the use of force we have to get a nurse to speak to them and show them to a - - -

Let me clarify one thing, by the time you got to the door, to the cell, there were already, you said, three members of the IAT inside the cell - - -?  
10 ---That's correct.

- - - with this fellow [REDACTED] That's correct, Commissioner.

So do you know how long those three had been in the cell before you got in a position where you could see into the cell?---Well, they had him against, up against the back wall so I'm assuming a couple of minutes.

You're assuming what?---A couple of minutes, Commissioner.

20 So you think they would have been in there for up to a couple of minutes before you came long, arrived and looked in?---Arrived, that's correct.

MS CLIFTON: Yes, thank you. After you've looked into the cell Mr [REDACTED] is brought outside, is that right, and then taken to the clinic, is there a policy or procedure on taking somebody to the clinic?---Yep, it's normally by IAT or the staff member who's involved.

Do you know which member, which staff members took him to the clinic?  
30 ---I'm assuming the other two, Walker and Elliott.

I know you're assuming but do you remember that?---No, because that area, my staff, the 5.1, we normally took our own because we knew all the inmates, how they behave, what their triggers are so we'd take them to the clinic or the nurses would come to us depending if they were still being violent so, um - - -

Mr [REDACTED] though, was one of your prisoners though, wasn't he, he was in segregation?---In segregation, yes.

40 Yes. So, did you know him at that stage?---Other than going around my normal walk around daily and saying, how are you going, got any issues or concerns, I didn't know him other than that.

THE COMMISSIONER: Did you know whether he was on remand at that time or not?---No sir I didn't, because most of my day was spent the other end, I probably spent 60 to 70 per cent into the other end of the wing because they cause me the most angst or complaints or answering to

solicitors or barristers, that sort of stuff, family members in relation to why they are in that program.

MS CLIFTON: But Mr [REDACTED] wasn't known to you as a particularly violent prisoner?---No.

Hadn't generally come to your attention because of any of his conduct or behaviour?---That's the first time he come to my attention.

10 And so was the last you saw of Mr [REDACTED] on that day as he was being taken off to the clinic?---No, I thought I saw him when he come back. They put him back into his cell with the other, the other inmate.

With [REDACTED] [REDACTED] [REDACTED] [REDACTED] is his cellmate.---Yeah.

Do you recall how long he was gone?---No.

And when he came back did you see any injuries on him?---Not that I could see, no.

20

And were you made aware of any diagnoses or injuries that the clinic had found?---No, not – because that usually comes with our package, so - - -

With the package?---Yeah.

And so there's a use-of-force package?---Force package. And part of that package is there's a Justice Health notification, and they'll tell me any minor injuries, major injuries, that sort of stuff. And I can't recall it being noted.

30

And as part of that package, as manager of security, are you expected to complete some paperwork?---Yes, I am.

And do you recall completing it in this particular incidence?---Yes, yes, I did.

And so I've got some paperwork that I'll show you.---Yeah.

40 But before I do, are you aware that on 19 February an intel report was completed that indicated that an informant had said there was a large quantity of Suboxane, Suboxone – I'm not sure of how I'm saying that. ---Suboxone.

Suboxone in Mr [REDACTED] cell. Were you aware of that intel report?---No. No, I wasn't.

Is that something that ordinarily as the MOS you should be made aware of?

---Yes. Usually that's put up in a morning briefing, those type of stuff, or if we're looking at inmates, targeting searches and that sort of stuff. But - - -

Were you ever made aware that there was an intel report about a large quantity of drugs being in Mr [REDACTED] cell?---After the incident I was told they were looking for Suboxone. That's why they went in.

After on the 19<sup>th</sup>?---Yeah.

10 Or after - - -?---A couple of days after the 19<sup>th</sup>.

And so you were told that's why IAT went in, is that right?---Yeah, that's correct.

Was that at an official briefing or was that - - -?---No, that's just hearsay, word of mouth, officers talking.

20 And so you had to review the paperwork, is that right? Your job is to review the package?---That's correct.

Did you have to do a use-of-force report yourself?---Yes, I did a review/report and then I do a notation or summary at the end of that report, with my recommendations.

30 I might just bring up on screen page number 4 of the brief if I could, please. This is an intel report by B. McMurtrie and you'll see it's dated Monday, the 13<sup>th</sup> of January, the very last line, but I believe that might just be a cut-and-paste error because you'll see it reads, "Sir, today, Wednesday, 19<sup>th</sup> of February, 2014, the centre was attended by SOG to assist the local IAT with targeted searches." Then you'll see midway down - I'll give you time to read the whole thing. "During the informal interviews an informant stated that there was a large quantity of Suboxone in a cell occupied by [REDACTED] [REDACTED] cell number 208 5.5.1 unit."---Yeah.

40 And it says there, "The informant was confident in the information and has previously been reliable." And the last sentence in that 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."---That's incorrect.

You don't recall being told that at all?---No.

Mr McMurtrie continues in the second paragraph, "I informed the search 2IC, Mr Tex Walker, or T. Walker, of the information" - - -?---Yeah, Terry Walker, yeah.

- - - "and instruction from the manager of security." You gave no such instruction, is that right?---Not to Brian, no.

Did you give any such instruction to Mr Walker?---Not to my recollection, no. This is the first I knew of it, when they went in.

10 Okay. Thank you. I'm going to show you some paperwork that was completed, and for the purposes of the recording I'm going to show you pages from the brief, 9, 10, 15, 16, 17 and 18, 19, 20. So I have a copy for the witness, a copy for the Commissioner and a copy for Mr Harris. I should just ask you, were you the only MOS rostered on that day, is there only ever one?---There's only one, yeah, that's correct.

I've just been told that Mr Brad Peebles was listed on the roster. Do you know what his role was that day?---So Brad, sorry, Mr Peebles was on that day, was he?

I believe he is on the roster, yes.---Okay. He would have been manager of security then.

20 Okay, thank you.---Which means I would have been SAS2.

Right.---Area manager 2, which would come under that area where [REDACTED] was held.

Okay. So Mr Peebles may have been the person that Mr McMurtrie was referring to?---Can I go back a bit?

Yes, please do?---Because one of the officers was there was Mr Peebles.

30 You recall Mr Peebles being on the floor?---Yeah. That's why when you brought me out the roster before it took me by, sorry, took me by surprise.

Right?---Because I didn't think I was the MOS that day.

Okay.---Because the next day when I done the review I was, but that day I thought Mr Peebles and Mr O'Shea were both in that area.

40 Right. Do you want the roster up again or - I don't need you to see it again but if you'd like to I don't want you - - -?---No, if you're saying Brad Peebles was there, well, that's his position so that means I would have gone back to my normal position.

All right.---That's - - -

But what you've told us that you saw doesn't change - - -?---Yeah.

- - - regardless of whether you were acting as MOS or - - -?---Yeah, well back then I didn't think I was so - - -



Okay. So you did see Mr Peebles - - -?---Yes.

- - - on the floor at that time. Was he with Mr O'Shea?---Yes.

All right. So we've now got those two officers, yourself and the three IAT  
- - -?---IAT.

- - - inside the cell?---That's correct, yes.

10 Okay. Does that help you recall if there was anyone else in that area at the time?---No, but I believe Mr Peebles told me that Mr O'Shea answered the knock-up.

Okay. All right. We'll just pull up the roster again just so we're all clear, because Corrective Services jargon I struggle with a little.---Okay.

Where is Mr Peebles?---Brad Peebles is on the left-hand side, detached duty.

20 Right. Yes. So what does that mean?---2014, he could have been doing a review of our inmate numbers. Back then we were looking at increasing our numbers and going 8 to 4, so he might have been working on that.

Right. So he would continue to hold his substantive rank but was off doing a special project.---Yes, yeah, so they might have had me against that, yeah.

Yes. So then – and I understand that rosters can be wrong, but if we look back up at the top left under administration you are listed there as manager security.---That's correct.

30 So you think you were in that, acting in that role whilst Mr Peebles was on detached duty?---More than likely but yeah, I think I based myself over in sector 2, but the answer is correct, yeah, I was.

All right. And in any event, at some stage you came downstairs - - -?  
---Yeah.

- - - and you saw Mr Peebles and Mr O'Shea on the wing?---O'Shea, yeah.

40 And the three IAT officers.---That's correct.

So if I could just have you look at the documents that I gave you, and I've tried to put them in the right order but please tell me if we've got it wrong.  
---Yeah.

The first document right down the bottom you'll see is marked 9, 9 and 10. I believe they, that comes as a little package.---Yeah, the IRM, yeah.

And so that is an IRM which is an Incident Report - - -?---Module, yeah.

- - - Module and we're looking at incident number 9-2-7-1-9.---Yeah, correct.

All right. And so pages 9 and 10 are the one document. Is that right?  
---Normally, yes, yeah.

10 Yes. Good. All right. So we've got the date the incident occurs is 19 February, 2014 and this is a report by Terrence Walker. Do you agree with that?---That's correct.

And if we look on the left-hand side there are a number of headings and the sixth one down is Incident Category and we've got there use of force.  
---Ah hmm.

20 All right. So this is a standard internal form that has to be filled out whenever there is a use of force. Is that correct?---Yeah, on the computer. That's correct, yeah.

All right. And then Mr Walker under Summary has indicated what happened on that day as far as he is concerned. Is that correct?---Yeah, that's correct.

All right. So we've got here during an intel-based centre search IAT were detailed by the MOS to search cell 208 in 5.1 unit with directions to specifically look for buprenorphine. I've said that incorrectly but if I could call it bupe.---Yeah, that's fine.

30 Inmates were spoken to at the cell door prior to entry and appeared compliant and reasonable. So if we just go back. We've shown you the intel report by Mr McMurtrie which indicates the MOS told them to search the cell and Mr Walker repeats that. Do you say if he's referring to you as the MOS that is incorrect?---That, that isn't correct.

All right. So at no time, just to be quite clear, at no time did you tell IAT to go and search [REDACTED] cell?---At no time did I give that direction.

40 Thank you. And so we've got the prisoners appearing compliant and reasonable. Mr Walker continues as officers entered the cell offender [REDACTED] [REDACTED] ran without warning towards the back of the cell in the direction of the toilet. During the action the offender tripped over cell furniture and fell heavily onto the toilet itself. IAT officers were unable to intervene in time to stop the offender disposing of an unidentified article in the toilet. The offender was handcuffed and did not resist. The cell was searched thoroughly with only nuisance items being found. Offender offered medical attention by Justice Health at centre clinic. Reported as a technical use of force on direction of the general manager. So if we can

break that down a bit. You didn't witness any of the reported incident here of Mr [REDACTED] suddenly running to the toilet?---No.

Tripping and falling?---Not at all.

Was that reported to you directly that day that that's what occurred?---I believe so, yes, at the end of the day.

10 At the end of the day. By the IRM or in person?---I think it's by Tex Walker because they have to supply me reports, supposed to supply reports by the end of the day if they've used a force.

And this scenario you recall being told that?---Yes.

So underneath this, the form underneath that we've got some details and we've got question and involved parties. Under staff we've got three IAT officers and that's your recollection?---The top two definitely. Simon could have been there but I definitely know Tex and Elliot were there.

20 All right. Are you over on page 10?---Oh, sorry. Yeah.

Yes.---Sorry.

No, no, that's quite all right. So on page 10 you're saying under involved parties the very last lot of entries staff we've got Walker, Terrence, Duncan, Elliot, Graf, Simon and yourself?---That's correct.

30 And so you only recall Terrence Walker and Elliot Duncan, but you'd recall there was a third officer there.---There was a third officer there but I can't recall back that far. But I know the other two were definitely there.

THE COMMISSIONER: Opposite your name where it says "Role – use-of-force reviewing officer", was that your role that day?---The next day, Commissioner.

40 Sorry, we're dealing with the - - -?---Yeah, so what happens when all the documentation comes in, I'm the MOS, you go through all the documentation. You've got to put on the IRM you're the reviewing officer. If there's any outstanding matters or if it's all justified and warranted. You just tick it off and you can close, close it off. So each use-of-force has a reviewing officer. Usually it's the MOS. At some gaols it can be the SAS.

So the first page of this document is dealing with incidents on the 19<sup>th</sup> and the second page, page - - -?---No, it's still both the 19<sup>th</sup>. But I can come in on the 19<sup>th</sup> or the 20<sup>th</sup> or the 21<sup>st</sup> and update that as the reviewing officer. That's a different drop-down box. You have the ones above it.

Just wanted to check these documents. The one I'm working off has got page 1 of 2, and then turn over it's 3 of 5. But these are pages 9 and 10. How does this work in the original?

MS CLIFTON: 9 and 10 is the ICAC reference from the ICAC brief.

THE COMMISSIONER: Yes, but, so - - -

MS CLIFTON: I'm not sure.

10

THE COMMISSIONER: Page 1 of 2, being number 9, is a completely separate document, is it - - -?---This one I'm looking at.

- - - from document 10, which has got 3 of 6? They're stapled together but they're separate documents, is that right?

MS CLIFTON: My understanding of how – I see what you're saying, Commissioner, but my understanding is that it is one form.

20 THE COMMISSIONER: One document.

MS CLIFTON: One document and - - -?---That's one document.

THE COMMISSIONER: Yes. So you say the same. Why is the numbering system as it is? 1 of 2 and then, turn over, 3 of 6 or 3 of 5. ---Maybe how it's printed off on the IRM. But the first part is the IRM that the staff do straight up as they enter the data across the screen. And then you've got drop-down boxes from involved parties, which will then bring up these, this detail. So I'm assuming when they printed it off it brings  
30 different numbers depending how many pages come off.

MS CLIFTON: So I just wanted to ask you, under the details you'll see after involved – and this is on the first page.---Yeah.

40 “Highest level of force used”. It's got “restraints used and handcuffs”. And then the next one is “most serious”, I think it's “precipitating incident that preceded the use of force”. And the response is “To search an inmate or to seize a dangerous or harmful article.” And the comment is, “Technical UOF only. Offender fell over cell furniture whilst attempting to dispose of identified items in toilet.” I think that's supposed to be “unidentified”. And then you'll see that it says, “Was the use-of-force fully recorded on video or CCTV?” and it says “no”. Are IAT officers issued with cameras?---Yes, they are.

Is it ordinary or the policy that they record these types of incidents if they were going into a cell to search?---Yes, it is.

Do you know why this was not recorded?---My assumption is they were given a direction not to use it.

THE COMMISSIONER: Well, your assumption is based on the fact that it's normal policy and practice to - - -?---Well, normal policy is if it's spontaneous, like if I walk up to somebody now, like Andrew, and just punch him in the, in the nose, that's spontaneous. If we're going to a cell where inmates we know may misbehave, play up - - -

10 Pre-planned.---Pre-planned, we're supposed to use a camera.

That's what you've got a camera for.---That's what the camera's for. So if anything happens it's all on camera. This wasn't done so I'm assuming the two managers there gave a direction for it not to be used.

MS CLIFTON: So the IAT officers themselves wouldn't take it upon themselves to decided not to use the camera?---Not in a use-of-force, no.

20 All right. And so when you say you're assuming that the two managers, you're assuming that either Mr O'Shea or Mr Peebles gave them a direction not to record?---That is correct. Either one of those gentlemen.

Is there CCTV footage or CCTV cameras in the corridor area?---In the living/common area?

I believe it's called a dayroom.---Oh, yes. The dayroom, definitely. I thought you meant the walkway – there's not. But the dayroom there is and the cells there's not.

30 And so the walkway where you saw Mr Peebles and Mr O'Shea, is there cameras?---That'd be on the camera.

It would be under - - -?---Under camera.

40 Underneath "Was the use-of-force fully recorded on video/CCTV?" we've got "Reason use-of-force was not fully recorded or captured on TV?" and the response is "Nature of the incident" and the comment is "No force anticipated. Offender fell without any physical contact from officers." See that?---Ah hmm. Sorry, yeah.

Given what you know about the reason for entering the cell, apparently, the official version that we're searching the cell for drugs - - -?---Yeah.

- - - wouldn't it have been the case that it is policy to record that, regardless of whether use of force was expected or not, if you're going into a cell to search for a large amount of drugs, ordinarily that ought to be - - -?---If it's IAT normally there are videos, you should use a video.

Yes, regardless of whether you anticipate violence or not?---Yeah. If you think an inmate's got a syringe on you, nine times out of 10 you use the video. They, they should.

THE COMMISSIONER: The point is to capture it on camera so there can be no argument later on that it wasn't planted, it was actually found.

---That's correct, like picture paints a thousand, you know, a thousand words, you can just say look at this.

10

MS CLIFTON: And underneath that we've got the next column, I'm sorry, I know this is a bit tedious - - -?---No, you're right.

- - - "If not fully recorded were photos of inmates taken?" Response is, "Yes, location held." And the comment is, "Still photos as part of standard centre procedure." Can you explain to us what that means?---Some gaols take photos of, after use of force or an incident where an inmate's been assaulted so you've got a package that you can bring out later to show that inmate injuries weren't sustained at that time, maybe done later, i.e.

20

Wellington does that, a couple of other gaols around the state do a similar role. Lithgow used to take still cameras but it wasn't standard procedure.

Okay. Did you ever see any of the still photographs taken according to Mr Walker on that day?---Of [REDACTED] Not that I can recall, no.

So over on the second page, which is marked by ICAC as page 10, you'll see under the first listing of staff members and their roles we have your name, the date of the 20<sup>th</sup>, resubmitted for closure. What does that involve, what were you doing there?---Resubmit for closure? What I do there is, as a reviewing officer I go through all the documents, so the officers' reports, nurses' medical stuff, any videos, either hand-held or CCT camera footage, make sure the reports read the same so they're not all different, make sure that you can read them, and then make sure if it's justified or warranted the use of force, if it's not, is training needed and required to this, is further action required, i.e. go to Professional Standards Branch, so you make all those recommendations and once you've done that you hand it up to the governor or general manager for their final, final decision.

30

All right. And as part of that you obviously look at – well, I withdraw that. Is any officer involved expected to put in an IRM?---An IRM, no, a report, yes.

40

All right. So this IRM only needed to be reported by one officer involved. Is that right?---Yeah, normally by the senior of IAT or the senior-most person there at the time.

And that was Mr Walker in this case?---Mr Walker in this case, yes.

All right. So what would Elliot Duncan be expected, what kind of paperwork would he be expected to fill out?---Elliot should be doing use of force supervisor's one I think and a normal standard incident report witness statement.

All right. And when you say a witness statement, is that again one of these dropdown fill-in automatic forms or does he actually do - - -?---No, it's an automatic form similar to this one here you got me here.

10 Yes.---Similar to that.

Okay.

THE COMMISSIONER: I take it that it's standard procedure that more than one officer puts in a report on a matter like this?---Yeah.

So that there is some corroboration of the account given?---IAT - - -

20 In other words it's corroborative of what actually happened.---Yeah, that's correct, Commissioner, because they all, they've got one office, they've got one computer so they all sit around the desk and do their stuff.

Yes. Okay. There's just one point on this document number 10, it's got you down there as, it just says resubmitted for closure. Do you know whether in fact it was submitted to you for closure?---No, I put resubmitted for closure.

Mmm?---So what, what happens is the duty officer up above - - -?

30 Yeah?--- - - - he's got status, I've done my bit and I put pending review and then I put resubmit then - - -

Do you recall whether it was resubmitted?---It must have been because it's got my name there, so I - - -

It's got the name there but do you recollect whether in fact you were asked to deal with the matter for resubmission for closure or don't you remember?---I don't remember but - - -

40 Some of these forms have got inaccuracies in them we've clarified that so far.---But this one here is against the computer so it should have been my I so that's, that should be me there.

MS CLIFTON: All right. So any update that's attributed to you, you have to log in and - - -?---Yes, log onto the computer - - -

And it automatically identifies.---So you go onto the IMS module, Inmate Management System and then I've got my own log in, password log in

without telling anybody else, which I don't, but then I just log into it and then it comes under my, whatever I do, but we can track it.

All right. So I couldn't log in and attribute something to you - - -?---No.

10 - - - because it would automatically identify my log in and attribute updates to me. Is that right?---That's interesting because I wouldn't think so, but you could probably go into a drop down box with my name in it but usually there's a witness, I'm not an IT guru so I'm not a hundred per cent on that one.

Okay.

THE COMMISSIONER: Why did you have to be there this day, because you weren't there from the start you told us?---That's correct, Commissioner.

20 You came along a bit later after they've already gone into the cell, so did you have any official role in relation to this particular IA?---The next day I did Commissioner, the next day I did.

No, this day though, the 19<sup>th</sup>?---Well, my position is to make sure he's seen by medical, he had no issues, if he was fed that night.

30 Well that's what I'm trying to clarify in my own mind, you correct me if I'm wrong, but it didn't sound to me as though you were part of this team, as it were, going in to do the search or whatever, allegedly going in to do the search in the cell, that had already commenced before you actually - - -?---I was upstairs at the time.

Yes, so, why would you be, why would they give it to you to resubmit for closure if you were there from start to finish?---No, what happens the next day is all the documents are on the MOS's desk, the manager of securities desk, it's part of my role to just go through all them and close off documents, do reports, finish them off, finish them off and hand them up.

I see. Just to clarify, you were the MOS on this day the 19<sup>th</sup> of February, is that right?---Yes.

40 What does MOS stand for?---Manager of security.

All right.---I was but I based myself on that day because of the people that was in, in my own area so I was upstairs in 5.1 because we had a lockdown so it didn't matter where I had my seat.

Just going back over page 9 if you've got it there again.---Yes.



So I'm understanding it correctly, it says the IAT was detailed by the MOS to search 208, that's not - - -?---That's not me.

That's not your understanding of what the - - -?---See the regular MOS at the time was Mr Peebles, so that's his standard position. So I think Tex and Elliot pulled their direction from Mr Peebles or Mr O'Shea and claimed that the MOS knew about it or the regular one did, I was just a fill-in, so to speak.

10 You were the fill-in on this day.---On this day I was on the roster as the MOS but I'm thinking that they've used Brad as the go-to man.

I think you've already dealt with this but I just, where it says IAT was detailed by MOS to search cell, that's not your understanding, that's not your - - -?---That's not my direction, no.

That's not your direction.---No.

20 You didn't understand that was the purpose of going into the cell that day, is that right?---Yes, that's right, Commissioner.

Then it goes on, on the same line to say, specifically to look for Burofen or whatever it is?---Buprenorphine, yes, or bupe.

That doesn't accord with your understanding of why they were there that day?---That's correct.

30 Further down the page where it says, a serious precipitating incident et cetera and under the heading response, to search an inmate or to seize a dangerous or harmful article as I understand it, that's not your understanding of why they were there that day.---That's correct.

The other unusual aspect of this form, as I understand as you say, cameras are usually used as issued and they were not issued on this day, is that right, it's another unusual feature of this document?---They have a camera, I have a camera in 5.1, I have a camera in 5.2, so there was ample enough handheld cameras in that area to be used.

40 Well, there's a number of matters then recorded on this document page 9 which don't appear to accord with fact as you understand it?---That's correct, Commissioner.

Thank you. Yes.

MS CLIFTON: Thank you, Commissioner. I just wanted to ask you about the entry over on page 10, the very last one which is an entry by you as use of force reviewing officer and you've written there under outcome nil action. Does that mean that there will be no further, when you were saying

before you, you look at the whole package and you determine if education is required or what, what is required, where you've written nil action there is that because there is no further action from the use of force?---No, that's just a generic when I sign off and there's nothing else to be done, it's completed.

All right.---Because my comments and recommendations are on the manager of security's review form. If I think there's something irregular or inappropriate it's on that form not on this.

10 All right. Well, we might go to that form but before we do, are you aware that there was a section 24 order that day for Mr [REDACTED] prisoner [REDACTED] to be taken to the Lithgow Hospital?---No.

If there was would that ordinarily have been part of the package that you reviewed?---24, not necessarily, no.

All right. If the, if the fact that the was taken to the Lithgow Hospital and not just treated on-site at the clinic, is that something that you, is that part of the package that you as MOS should review before signing off?---I should, I  
20 should sign off on the 24.

Right. It was, it appears, well, it was reported by Phil Turton, Philip Turton.---Okay. Area manager, yeah, the area manager.

He's the area manager?---Yeah.

And what's his role as area manager?---Depends which area you're in. So Phil back then would normally be in area 1. I think on the roster it'd show he was in area 2.

30 Right.---So he (not transcribable) escort assessment.

All right. So he's filled out a section 24 notice so that, a section 24 order so that Mr [REDACTED] can be taken to the Lithgow Hospital. Were you aware of that?---No, I wasn't.

We might go to, I think you should have another document in front of you that is now, it's called the Using Force on Inmates Incident/Witness Report coversheet.---Correct.

40 And that's page 15 and my understanding this is the document that runs from page 15 to page 20. If you could just have a look and confirm that that's an entire document or not two different ones.---It's - - -

THE COMMISSIONER: So you've got two documents, one page 15 to 17, and another document - - -?---I've got three documents.

- - - 18 to 20. Is that what you're - - -?---Yeah.

Ms Clifton, is that what - - -?---So the first three one, that's one.

Is that what we're all meant to have, two separate documents?

MS CLIFTON: All right. Sorry, I'm not familiar with these documents so I may have stapled the wrong ones together.---No, you're right.

10 Is 15, 16, 17 is that one entire document?---That's one entire document.

All right.---18 and 19 are an entire document and 21, 20, sorry, is usually a standalone.

THE COMMISSIONER: It's a standalone document?---Yeah, normally a standalone document.

All right. We'll detach it then I think.

20 All right. Well, if that's - - -?---It goes with it but it's usually a standalone document.

MS CLIFTON: All right. Thank you. I will get better at this. All right. Well, if we can look at 15, 16, 17 and you'll see on page 17 there is an electronic box at the bottom that is signature box and it has name T. Walker, rank IAT SCO and dated 19 February, 2014. There's no signature in the box below it. There is a signature above that, a handwritten one and it's a date 20.2.15. Do you know whose signature that is?---No, I'd be guessing.

30 No, no.---I think I do but I don't, I'd be guessing if I said it.

THE COMMISSIONER: When you say you think you do, is there some recognition there?---I think it's John O'Shea's but I'm not a hundred per cent sure.

MS CLIFTON: Thank you. And so if we look over on page 16.---16, yeah.

40 And there's a list of yes/no questions there, and the second question is "Was there any emerging problematic behaviour identified prior to force being necessary? If yes" - - -

THE COMMISSIONER: Sorry, where is this?

MS CLIFTON: On page 16.

THE COMMISSIONER: 16. Right, thank you.

MS CLIFTON: And the second question asks if there was any emerging problematic behaviour identified prior to force being necessary, and we've got a 'no' there.---That's correct.

10 And again that doesn't really support why IAT would have been called if there was no problematic behaviour beforehand. Or am I making too much out of this?---No, because in that area usually we call IAT if we can't handle it. So if it's, the inmate's problematic or he's violent or continues to be violent, setting fires, then we get them involved. But normally the staff in that area are trained for that type of incident or those type of incidents, and they deal with those inmates on a regular basis. So the inmates know the regulars, so it's, we don't have, usually have a great deal of problem.

So if you, in an ordinary course - - -?---Yeah.

- - - if you had received intel that there may be drugs in a cell of one of your inmates, if I could put it that way - - -?---Yeah.

20 - - - and that particular prisoner had no reports of violence and had generally been compliant, are you saying that in the ordinary course your staff members would go in and conduct that search?---Yeah, normally, normally if we got a tip-off that there's drugs or syringes in there, we put them in the back day yard (not transcribable) in the morning and then we lock their, their cell door and then we go and do a search from that and looking through to find any bupe, syringes. Because that's our normal process every day so it's nothing, nothing unusual for them and nothing unusual for our staff.

30 THE COMMISSIONER: It'd be quite common.---Yeah, so it's just a standard operation.

MS CLIFTON: So the three IAT officers being called down was uncommon in this instance, is that correct?---Probably in this instance it's uncommon but it's not uncommon for them to be there due to the other type of inmates we've had there. They just usually will just walk through, wander through quite a few times a day.

40 And was it common or uncommon for Mr Peebles and Mr O'Shea to be there on the cell wing?---How to explain this one? It's an uncommon but a common occurrence. They'll probably come round once a fortnight, once a month. It's not an everyday occurrence. They do happen. As I said, they usually come and see the managers and say we're going to, I'm going for a walk, talk to the inmates.

A few questions down, on page 16 still, we've got a question, "Did all staff that were either involved or witness the incident complete an incident/witness report? If no, include reasons in summary." And we've got "yes" marked there.---Yeah.

So is this one of the documents that you would receive to conduct your final closure report?---That's correct, yeah.

And so you rely on all of this information to be accurate and correct?  
---That's correct.

You don't go and ask individuals if they were there or ask – do you question individuals at all about their involvement?---Not, that's not the normal, common practice, no.

10

Do you go and speak to the prisoner at all?---After a use-of-force?

Yes.---Not generally.

All right. So you, you rely - - -?---I might, I might a couple of weeks, weeks later go and see [REDACTED] and say, "What was, what happened the other day, mate? What was your, what was your go?" But - - -

20

So you rely on these official reports to be accurate and correct?---That, the videos, the CCTV. You know, I don't normally go and see inmates after a use-of-force.

But there was no video from this one.---That's what I mean.

And was there CCTV, do you recall?---(not transcribable) I can recall, I can see the door, that was it, when they opened the door. There was nothing else because there's no CCTV in the cell.

30

Right.---So it's only the day yard. Not day yard, sorry. The common, common room.

And the next question is "Are the number of reports submitted consistent to those reported on the IRM? If no, include reasons in summary." So what you're looking for, then, there – and correct me if I'm wrong – is that on the IRM it's listed that there were three staff involved, so you're looking for three reports, is that correct?---That's correct, yeah.

40

And there we've got a "yes" as well. Are you aware that Wesley Duffy put in a report regarding this incident?---No.

Mr Duffy did. If it wasn't recorded on the IRM, which it's not, that Mr Duffy was present but Mr Duffy put in a report, how would that be brought to your attention? Is there an automatic system?---No.

If Mr Duffy filed his report with the deps clerk, would that be ultimately brought to your attention?---Yes.

It would?---She, back then it, trying to think back then – yeah, she, she would have told me, yeah.

THE COMMISSIONER: Can I just ask, what date did Mr Duffy make his report?

MS CLIFTON: It was shortly thereafter.

10 THE COMMISSIONER: That's all right.

MS CLIFTON: On that day, in fact.

THE COMMISSIONER: Which day?

MS CLIFTON: On the 19<sup>th</sup> of February, 2014.

THE COMMISSIONER: Well, it should have come to your attention, then, should it?---Yes, Commissioner, yeah.

20 As part of the package.---It would have either gone – should have come straight to me direct or the deps clerk, and she would have brought it straight to me. So I can't recall Wes being involved.

You don't recall seeing it?---No. Sorry, I meant the other two, Tex and Elliot. I remember a third person in there but I didn't think it was Wes.

MS CLIFTON: I might bring it up. I'll just bring it up on the screen so you can see it, in fairness to you. It's page number 5 in the ICAC brief. Mr Taylor, I'll just give you some time to read that.

30 THE COMMISSIONER: Yes, just take your time.

MS CLIFTON: You've read that?---Yeah.

All right. If I could just – for the record you'll see the incident report is called that. It says, "From rank date", which are standard entries. The date of the 7<sup>th</sup> of December, 2016 is an automatically generated date each time the report is printed, so it's updated. But you will see that the incident Mr Duffy is reporting is around 10.00am on the 19 February, 2014. So have you ever seen that report previously?---Not to my recollection, no.

40 And that tells a somewhat different story to that of Mr Walker's IRM. ---That's correct.

And if you had seen this, what action would you have taken given the two accounts were quite different?---Probably took a different view, how I worded my report.

And would you have spoken to Mr Duffy?---I probably would have spoken to all three of them and then spoke to the bosses and said, “What's going on?”

So when you say “all three of them”, you mean Mr Duffy, Mr Walker - - -?--Walker and - - -

- - - Mr Elliot?---Yeah, to get a, because that’s different to what the other two said.

10

Now that you've seen this report from Mr Duffy, do you recall him being there at all?---No, I don't, because I was just trying to remember then when I was reading it. I can't – yes, there's a third person there but I can't recall who it was.

But you also can't recall Simon Graf being there either?---No. But I know the other two are definitely there because they had him against the wall.

20

THE COMMISSIONER: What, in your experience, is the way IAT manage a situation like this? Assume that they've come into a cell, three of them, and the guy backs up to the wall, raises his arm. Is it practice just to get stuck straight into him?---No.

Well, what do you - - -?---Normally they're pretty good. Like - - -

30

What's the approach, what's the tactic or strategy?---If the inmate goes, if you go in and he puts his hands up straightaway you just ask him to put his hands on his head like so. You just turn him around and face him against the wall. If they're going to be violent then you just use the amount of force you deem necessary to control him but, yeah, I don't know, he didn't have a weapon so there was no use to, yes, they do flush things down the toilet. That's not uncommon.

40

So if a guy raises his arm up, which might be for a number of reasons, could be to strike or it could be for some other reason, are these IAT guys trained to deal with the situation a particular way or - - -?---Yeah, they're trained to go, depending on escalation from, minor force to (not transcribable) force. They train once a month in different in different scenarios on dealing with inmates who are violent, inmates who've got mental health issues. We do scenarios about where women who are pregnant. So all different scenarios so they know how to handle different situations for different things. Not all, not all cases fit the same way of dealing with an inmate, particularly that area. We have a number of inmates who are violent so they're quite aware of what's required and what's got to happen so it's, yeah.

So use of violence is not the first resort by an IAT man?---No.

You try and control the situation?---Yeah. Because in that area you've got to go back a number of times. Over a month you might be going back to the same cell four or five times so if you go to violence in the first incident then when you go back the second time you've got nowhere to go so he's just going to say you're going to turn it on anyway well, let's just do it. And that's what they say, let's just do it. You're going to hurt me I'm going to hurt you. But if they, you've got a bit of rapport and say look, I know you've got a syringe. Hand it over and we'll just go through the charges and sometimes they do, sometimes they just say okay, you have to come in.

10 So then you deal with the situation as it arises. The normal course of action is not violence first no.

So they'd issue some warning if the bloke was going to, looked like he wasn't going to co-operate?---Yeah. You've got to give them a proclamation so the first proclamation is you're going to say you're going to use force or you're going to use gas. Then you give them a couple of minutes to think about it. Nine times out of 10 once they know you're serious, you're going to come in, that they may get hurt they go okay, I'll hand it over. Then you give them a second proclamation and say we've got

20 to come in. If you don't we're going to use force or gas and then depending on the situation, if he's got a weapon we usually normally use gas, CS gas. If we know he hasn't got a weapon then we normally just go in with a shield and just butt him up against the wall. But we try not to be too violent because you've got to go, particularly at the other end of the wing you go back to them every day, every second day. You're dealing with those inmates all the time.

So I suppose establishing a rapport is pretty important overall management?---Yeah, that's why when we try to keep people regular so

30 they knew the inmates, what their triggers were, how they behaved, how they behaved to different people. That's why we didn't like outsiders coming in. We had a note there if you go to the wing you're supposed to go and see the area manager or the senior before you walk in so that they knew you were there so if you're talking to one of their inmates they were there to figure out what was going on because normally it's other people who upset them not the normal staff.

Thank you.

40 MS CLIFTON: The Duffy report indicates that there was at least some physical interaction between Mr [REDACTED] and the officers and the Duffy report indicates that Mr Walker struck Mr [REDACTED] possibly in self-defence, but it certainly indicates that he was struck to the side of the head and that then it says a figure-four leg lock which is like a leg sweep I understand was applied to him and at that stage Elliot Duncan entered the cell. So now we've got three officers and all three fell heavily on top of Mr [REDACTED]. So again that is quite different to Mr Walker's recollection of events exactly the same day, the same events.---Correct.



So after you got to the cell door and looked in and saw Mr [REDACTED] being restrained I know that you've said he was then taken out and taken off to the clinic but I'm just wondering if you can give us any more detail as to who brought him out, whether he was handcuffed?---He would have been handcuffed. A, he's a segregation inmate so they can't move without handcuffs from that - - -

10 Right. That's, that's policy?---That's policy in that area. He can't move without handcuffs. Any inmate in that area move to the clinics in handcuffs. Due to that incident I would have said it would be IAT so Tex Walker, Elliot Duncan, now Wes Duffy.

All right.---Or, or Simon Graf. But they would have definitely been involved. More than likely because the, the use of force (not transcribable) might have even had a camera, which is normally we do to follow them on in case he then arcs up at the clinic, because we've got nursing - - -

20 But there wasn't any camera in this instance?---Not that I'm aware of. For the incident itself or after the incident, no. He was just escorted down to the clinic as far as I'm aware.

Did you see him being taken into another cell prior to being escorted to the clinic?---Not that I'm aware of, no.

30 And at any time did you see Mr [REDACTED] being assaulted by any Corrective Service officer?---No, as I said before, when I got there he was up against the wall with Walker and Elliot holding him against the wall. So it was all over when I got there.

Well, it may have continued afterwards.---I, I've got no recollection of it. I haven't heard anything.

40 If we could just go back to that document, pages 15, 16, 17. And if we could go to the last page, page 17. You'll see there that's a summary by Mr Walker of what happened. And again we've got "During an intel-based centre search, IAT were detailed by the MOS to search cell 208.5.1 unit, with direction to specifically look for buprenorphine, bupe. Inmate spoken to at the cell door prior to entry and appeared compliant and reasonable." Again, I know we've asked you about this in several other documents but at any stage did you direct IAT to search cell 208 in 5.1?---No, I did not.

Thank you. And then Mr Walker repeats the information that he put in his IRM, that as they entered the cell Mr [REDACTED] ran without warning towards the back of the cell, tripped and fell over the cell furniture and fell heavily on the toilet itself, and it goes on. You'll see the second-last entry under the summary says, "The cell was searched thoroughly, with only nuisance items being found. [REDACTED] was offered medical attention by Justice Health at

centre clinic.” Were you aware if the cell was searched thoroughly at that stage?---No, because IAT would have taken him across. It would have been my staff.

10 And did you direct your staff to do a search of the cell?---I'm trying to think. Normally I'd say, I'd say yes, but I can't recall. That's four years ago. I normally would say yes if we were trying to look for bupe, so I'd have to say yes, that I would have said to my staff, “Have a look in there.” Because they're looking for something so there must be something in there, and we would have spoken to the other inmate.

But you can't recall doing that?---No.

20 And if you did do that, would there be any paperwork?---Only if we found something. Like, if we found bupe there would have been paperwork because we would have charged the inmate for the bupe or anything else, [REDACTED] or the other inmate in the cell. That's a normal procedure. If there was nothing found, just nuisance items, we'd just write it off because it's not uncommon to get heaps of nuisance items.

And I'm just interested in that last entry there on the summary, “Reported as a technical use of force on direction of the general manager.” And the general manager was Mr O'Shea.---That's correct.

And so regardless of whether it was a technical use of force or any other use of force, Mr Walker has to report it, doesn't he?---He does, that's correct.

30 And so that just seems an odd entry, “Reported as a technical use of force on direction of the” - - -?---I don't know what a technical use of force is. We have minor and major uses of force but there's no such thing as a technical one, because once you put your hand on them we class it as a use of force regardless if there's injuries or not. So that's how we record it, so - - -

40 THE COMMISSIONER: Well, I suppose there's force and then there's excessive use of force, isn't there?---Yeah, I mean, Commissioner, if you're putting a hand on him we class it as a use of force, or handcuffs on is a use of force. Nothing else happens, but that's what we class as, so it safeguards everybody.

As you say, you'd expect if there's a search on in the cell, they'd speak to you and search the inmate who was with him. What's his name? [REDACTED]

MS CLIFTON: That's right, yes.

THE COMMISSIONER: There's no record of [REDACTED] ever being searched or spoken to, is there, or is there?

MS CLIFTON: No, not on the 19<sup>th</sup>, no.

THE WITNESS: No.

THE COMMISSIONER: All right.

MS CLIFTON: And so these documents though would have been documents you reviewed to submit the matter for closure. Is that correct?  
---When you're talking about closure are you talking about the IRM or are  
10 you talking about the paperwork closure?

Well, my understanding is these are part of the package that as MOS you would have reviewed to close the matter?---Yeah, okay, because I'm thinking we're talking about two different issues here.

All right. Please explain?---Resubmit for closure is the IRM, the, the reporting module side of it.

Right?---On this side where I've got all the documents to here and this one  
20 here, the review, that's where I put down my recommendations, what needs to be done, that's two different, two different things.

All right. So the IRM isn't part of this package of documents that we're looking at?---No, it's, it's the reporting side of it, this is the administration side of it where I put down recommendations, any further action required, that's not normally done on the IRM, you just - - -

All right. So that page, page 17 that we just looked at with - - -?---Yeah.

30 - - - Mr Walker's description, would you have seen that document?---Yes.

Okay. So when you looked at the IRM and you submitted that for closure, were any alarm bells raised about an intel search, a direction by MOS, by the manager of security to search the cell because you've said those things definitely did not happen, but you've had to review the form to close it.  
---On that day, no, afterwards, yes.

And when you say afterwards, yes - - -?---A couple of days later I found out that the MOS and the general manager directed IAT to go in.  
40

They had directed them. Right. But you haven't seen anything official on that?---No.

It's just what you've been told.---What my staff told me a couple of days later.

All right. And - - -

THE COMMISSIONER: Do you remember which staff told you that?  
---No, Commissioner, just it's more word of mouth, people speaking, just shop talk.

Yes.

MS CLIFTON: And so then if we're looking at the documents we're looking at now, that's part of the package you had to review to sign off on what further action?---That's correct.

10

And so when you saw page 17 there again repeating that IAT were detailed by the manager of security to search the cell - - -?---Yeah.

- - - you say that wasn't you?---That's correct.

But you were rostered on in that role that day?---That's correct also.

And did that raise any, any concerns with you as you were signing off on the paperwork?---No, because they're probably speaking about the regular one which is Brad Peebles, so they're putting it to him, not to me.

20

Okay.---So no, it wouldn't of. If they gave them a direction or the general manager gives a direction, they're higher than me so I just go look at it and see the paperwork's fine and everything, there's nothing untoward then I'll sign off on it.

Okay. So if we go now to page 18/19, I understand that's a complete document. Is that right?---18 and 19 are and 20's a different document, that's correct, yeah.

30

And 18/19, is that the document you've completed?---That's correct, that's my signature.

And so this is a document you complete after looking at the other documents completed by those that were involved?---That's correct, yeah.

Okay. And I think on the front page you'll see there's considerations forming the basis of assessment and there are a number of policies and other items about responding personnel, technical details and the offender that you need to take into account.---That's correct.

40

Okay. So over on page 19 we've got your recommendation and it reads, "Reviewed UOF," which is use of force, is that correct?---That's correct, yes.

20/2/2014 by acting MOS and intel manager?---Yep.

So who was the acting MOS?---Me.

Okay?---Sorry.

So you've reviewed, so you've reviewed the package on that day. Is that what you're saying there?---On the 20<sup>th</sup>, yeah.

And it was also reviewed by the intel manager, and who was that?---2014, Brian McMurtrie.

10 Okay. And it says, "All staff reports consistent with IRM, use of force within policy and appropriate to level of resistance of inmate. Spontaneous reaction resolved before camera could be turned on. I recommend no further action as all reports consistent with the use of force." And you've signed that off the next day on the 20<sup>th</sup> of February, 2014.---That's correct.

And so your recommendation is based on the paperwork that you were given by those that attended and witnessed, is that correct?---Yes.

20 All right. And now that you've seen the Duffy report, I know hindsight's a wonderful thing, now you've seen the Duffy report, would you have made a different recommendation or would your summary within that box have changed?---I reckon the summary in the information box would have changed.

THE COMMISSIONER: I think that's a very fair and proper concession. In what respects in particular would you, in the light of the material you've seen this afternoon, consider you need to correct what's here?---Well, Mr Walker and Mr Duffy's report are not the same so there's inconsistencies there would have maybe either looked at managing on a local level or gone to other action either speak to the GM or the manager of security.

30 Mr Taylor, I know enough about the institution where you work at Lithgow to know it's not an easy job, you're dealing with some not easy people a good deal of the time but on the other hand, I'm sure as you'd appreciate, prisoners of any description, ones held in custody are in a sense in a vulnerable position, they can be in a vulnerable position for a number of reasons, could be vulnerable from fellow inmates or if there's any improper use of force by staff, they're vulnerable, would you generally agree with that?---I agree with that, Commissioner.

40 There's been, of course, a number of reports, not just by this agency but others about unreasonable use of force, for example by police in watch houses and things of that kind where prisoners can be vulnerable or people held could be vulnerable. As you'd be aware in this examination we're looking at the events of this day and as a matter of public interest, essentially, to ensure that if there's things gone wrong that they be exposed so that they don't repeat and thus part of the function of this Commission is to identify matters and to make recommendations to ensure, in everyone's

interest, but not only inmates but staff as well, things go as they should. So far as the particular matter we're examining in this compulsory examination's concerned, there's reason to, as you would understand, to investigate what happened, have there been events involving staff in Lithgow over time that you've been concerned about? I know it's a very general and broad question but I'm saying things, I'm talking about the inappropriate use of violence or force?---It's fair to say, Commissioner, yes, probably with Mr Walker.

- 10 I'm asking you these questions of course in the context of this examination which remains a private examination so, I'm just wondering whether in this particular matter we're examining where there's matter that come into your knowledge or attention, might be through hearsay accounts it that have raised concerns in your own mind about what might have happened, and if so, what matters have come to your attention?---Hearsay's basically heard that senior managers have been trying to push this aside or squash whatever this is now up to this level but probably a gaol level or up, I've heard that on the grapevine a couple of times that they were trying to push this away and make it go away, for reasons, I don't know um, but I've had concerns about  
20 Tex Walker or Terry Walker on a couple of uses of force.

What, about the same period that we're talking about or since or earlier than that?---No, probably late 2012, '13, '14.

Was there any investigation into any other matters involving Mr Walker that you're aware of? Or they sort of just fell away?---Regarding the use of force or Mr Walker himself?

- 30 Well, both.---Mr Walker, [REDACTED]

So you understand he's had [REDACTED] Then after that we took him out of IAT due to the stress level, and tried to put him in a place where that wouldn't, I suppose, get worse. But then again he had, his make-up or temperament didn't allow us to put him in many areas of the gaol without him, you know, raising the ire.

- 40 Is he still in the service?---As far as I'm aware, I believe he is, Commissioner. But, I mean, I haven't been there for three and a half years, four years.

MS CLIFTON: My understanding, Commissioner is he's recently resigned.---Okay.

Within the last few months.

THE COMMISSIONER: Right.

MS CLIFTON: Or weeks.

THE COMMISSIONER: Yes, again, maybe this is a general question, but because you're very experienced I'll take the advantage of leveraging off your experience. Are there different cultures, were there different cultures at Lithgow? In other words do you have the old guard and then you've got the newer brigade coming in and different attitudes to handling prisoners?  
10 Or am I generalising too much?---Not really. Like, I was a new one. I was, I got there in 2010, left in February 2015. Most staff there are, the first classes were the two-strippers of 15 years plus, so they're really set in their ways. It's like "Lithgow does it this way" and you try to say, "No, this other gaol's the other side of the hill. You've got to do it this way." So there is a bit of us-and-them, and the newer staff get - - -

Yes, I thought that might be the case.--- - - - a harder time just to settle in.

So far as Mr O'Shea is concerned and his administration at Lithgow, did  
20 you have any concerns about the way he handled things?---Mr O'Shea, he's old school.

I thought he might have been.---Governor, general manager. So over the 25 years I've been in there, he's the style or type I'm used to. So that's, that's changed over the last five or six years but he's very much old school. So he's the boss. Everything goes his way. The inmates know that. So, yeah.

Thank you, Mr Taylor.---No worries.

30 MS CLIFTON: Thank you. If we can just look again at page 19 at your recommendation. I'm just trying to understand what you've included here, given what you saw and heard on the 19<sup>th</sup> yourself, both that Mr O'Shea had been involved in some verbal altercation. You told on the 19<sup>th</sup> – and correct me if I'm wrong if it wasn't the 19<sup>th</sup> – that Mr Peebles or Mr O'Shea ordered IAT down. Is that something that you ought to have put in this report here, in this summary?---That normally doesn't go in the summary.

So what goes in this summary is your review of the documentation?  
---Documents, yeah.

40 So where do your concerns about the fact that the general manager has gotten into a bit of a verbal altercation with a prisoner, and as a consequence IAT are called – where is that documented or recorded?---It's not. It's - - -

Should it be?---It's a hard one. If I think there's something inappropriate then I'd need, have to go to my AC, or my director, which is another level above him, which then he'd find out anyway. If I thought there was something amiss.



Did Mr Peebles speak to you about this review at all?---No.

This document? Did he - - -?---No, nobody spoke to me about this, no.

Did Mr O'Shea speak to you about this document at all?---No.

10 So neither of them have put any pressure on you to - - -?---No, I've done hundreds of these and I don't allow anyone else to put pressure on me or tell me to change it or anything.

All right. And Mr O'Shea has then signed off and agrees with your recommendations - and I know I'm asking you about somebody else's state of mind or what they ought to have done but is that the place where Mr O'Shea ought to have noted he was somewhat involved or is he simply signing off?---Normally if we're involved in something we step aside.

20 Right.---If I was there with the use of force or that sort of stuff as a witness, I wouldn't do the review, I'd step aside and say somebody else has to come in and review it.

Well, given Mr O'Shea's involvement ought to have he stepped aside and not been the person who signs off on this?---If I was on the outside looking in being the person in the public, yes, because he initiated it.

All right. You don't consider yourself then a witness to the use of force? ---No, because I was right at the end, it had all finished when I got there.

30 All right. So by the time you got there and the prisoner was handcuffed with two officers restraining him, you don't say that's part of the use of force?---No, normally we don't, no.

Are you aware that the police interviewed Mr [REDACTED] as to whether he wanted to make a formal complaint about the assault?---No, that would normally be on the package.

40 It should have gone in the package?---Yes, it's part of the package of documents you ring the local police and then there's a form that the inmate signs that if he wants police action to follow up.

He wasn't actually interviewed, to be fair to you, he wasn't actually interviewed until April of that year, so you filled this out in February. And so if we just go back to that page 17.---17.

Mr Walker's summary.---Yes.

Were you aware at any time that any of that was false?---No.



Just going to - we can move on shortly. Just going to show you the intel report by Mr McMurtrie on the 28<sup>th</sup>, sorry it's page 28 of the brief it's the same intel report I showed earlier that I believe it was attached to an email that I'm going to show you. That's the email, you'll see that's forwarded to you from Mr Peebles on 19 February at 12.54pm. The attachment is [REDACTED] doc and it originally came from Mr McMurtrie at 12.26pm to Mr Peebles. Mr Peebles says to you, "Steve, as I'm offline could you attend to this." I think we've agreed offline means he's working on a special project. ---That's correct.

10

Now, from what we can tell from the metadata, page 28 of the brief, is that intel report by Mr McMurtrie up on the screen now was what was attached to that email. Do you recall seeing that now that you've seen the email? ---I can't recall but if it was attached to my email then it must have come to me, so, but I can't recall it, no.

20

All right. Thank you. And Mr Walker on his IRM reports that, well the IRM has an automatic date time stamp that says that it was reported at 13.23 so that's, well if you received this email it was sent to you at 12.54 but you don't recall receiving that?---No, I don't but if it's attached to my email then I must have got it then, sorry.

THE COMMISSIONER: Sorry, what was your answer?---Commissioner, if it was attached to my email I must have got it but I can't recall the document itself, no.

30

MS CLIFTON: I'm going to move on to the 20<sup>th</sup>, events of the 20<sup>th</sup> and this will be a little bit shorter. Now, on 20 February, 2014 obviously the next day we've got you rostered on as the MOS that day. Did you want to see the roster from that day?---No, because I checked on my computer documents and that's, I was the MOS that day.

All right. Now, are you aware that there was a cell, a cell search of [REDACTED] cell conducted on that day together with a strip search of [REDACTED] ---On the 20<sup>th</sup>?

Yes.---Not that I, no, not that I recall.

40

All right.---I didn't authorise it if you ask me as the MOS.

Is that something that needs to be authorised by the MOS?---Normally on operational type of stuff in the gaol the MOS directs all those.

All right. Well, the search, I've got some paperwork again I can show you but the search was conducted because of a threat made by [REDACTED] on the phone to his father that morning in which he said he had a blade. He says he was flogged - - -?---Yeah.

- - - by the squad and that he had a blade if it happened again.---Yeah.

And his dad says well, I'll wait outside the prison.---Okay. Well, blade, if the intel got that then they would have done a search off that.

Yes. But as the MOS is that something that you ought to have been made aware of that that threat was made?---Yeah, but, yes, but going back then Brian would have gone straight to John. So Brian McMurtrie would have gone straight to John O'Shea.

10

John O'Shea?---Yeah. He would have cut me out of the loop.

Why is that?---That's how Brian did business.

All right. Was that because you and he didn't have a good working relationship or because he liked to deal with the very top?---Yeah, Brian liked to deal with the very top and keep information to himself so he had the power.

20

Right. So you're not totally surprised that you may not have been told about the search or the threat if I could put that first?---Not at all.

All right. And you weren't aware that there was a search conducted on the 20<sup>th</sup>?---No, not on the 20<sup>th</sup>. A couple of days later, yes, but not on the 20<sup>th</sup>.

All right. So a few days later somebody told you that there had been a search of [REDACTED] cell?---Yeah. Looking for a blade. That's correct.

30

Do you know who told you that?---It would have been someone in 5.1 so one of the permanent staff because they talked to the inmate so they would have told me.

40

And given Mr Walker's report says that the cell was thoroughly searched with only nuisance items found, are you saying that a search would still have been conducted because of the threat about a blade?---Because of the threat of a blade we got over the phone call then we would have gone in, particularly that area because you're on segregation and all that sort of stuff because a lot of inmates in that area have blades so we, it's more for security, security but also for safety of staff. They have to go in there A, for a search or if a under the use of force happens because we've had inmates there with knives and blades there before so it's not unusual.

All right. You weren't involved in the search at all yourself. Is that correct?---That's correct.

Do you know any of the staff who were involved in the search?---The second one?

Yes, on the 20<sup>th</sup>?---No, not at all. Brian would have worked it out between himself, the boss and IAT. They would have just gone over.

All right. So we've been told Mr Kennedy was involved. He's quite senior is he not? It's Mark Kennedy.---You're talking about Mark Kennedy?

Yes.---Yeah, back then he, yeah, he was on probation so to speak. He was deputy superintendent at that time. He's now governor at Bathurst.

10 All right. And as deputy superintendent it wasn't part of his role to come and say to you as MOS we're doing this search?---Well, you'd think common courtesy, yes, but - - -

I'm more interested in policy.---It's not usual for him, it's not usual for that person at that rank to do a cell search. We don't do them. And the reason is because we've got to do the policy and the administration after any incident happens, so we can't be involved in the, the day-to-day stuff. So I don't know why Mark was there.

20 I'd suggest that obviously a threat that a prisoner has a blade in their cell is very serious?---That's correct.

And I might be misunderstanding your role, but as manager of security that seems to me to be something that ought to be brought to your attention.---It should be brought to my attention. I should have authorised it and give approval it because operational requirements are supposed to go through the manager. But you've got three different personalities involved there.

30 Just going to bring up – I've got a copy of the exhibit book. And I think it's page 118 of the brief. Yes.---That's my writing.

So you'll see that this is out of an exhibit book. It says "Police station – Lithgow" but I'm presuming that was issued to - - -?---No, that would be housed, usually housed in the intel office, exhibit book in a safe.

So it's issued to the prison, not - - -?---Yes, that's ours, yeah. Sorry.

And we've got offender [REDACTED] [REDACTED] Yeah.

40 And then we've got listed there that there was a contraband find on [REDACTED] on the 20<sup>th</sup> of the 2<sup>nd</sup> of the 14<sup>th</sup>.---Yeah.

"IAT dis. 258. 0.2 grams." And over on the left under Receipt, is that your signature signing off?---Yeah, the description is my, my words. That's mine. And the left-hand side writing is mine.

So do you recall filling this out?---No, because I do so many.

Sure.---But it's my signature, so I did.

And so presumably when this was brought to you to sign off, at that stage you must have become aware that there had been a search of the cell.

---Yeah. Well, there'd be an IRM with that so as, it's got at the top. So, yeah, that all goes together with the exhibit, exhibit bag, all in the safe, because the safe's kept in (not transcribable) office.

10 So if there is going to be an organised search of a cell such as on this date, after the intel about the knife or the blade was given, is there a paper trail or formal documents that need to be signed off to go in to do that kind of formal search?---The big ones, yes. The little ones, no. So if you're just doing, just for this instance, [REDACTED] cell, no. Probably had a briefing, a small briefing with MOS, which was me. If it wasn't, probably the governor, the deputy, which was Mark then. IAT, what they require and what they're looking for. And a small (not transcribable) and away they go. The bigger ones, yes, we have a whole briefing and who does what, but the little ones, no.

20 So am I correct, then, in saying you first became aware of this search when the exhibit book was brought to you to sign off on the 20<sup>th</sup> of February, 2014?---I'd say correct, yeah, because (not transcribable).

THE COMMISSIONER: Would you have expected a disciplinary charge or an internal charge to have been raised on the basis of the search finding this pill they found?---Yes, Commissioner. There should have been a, a charge on that due to the - - -

30 You'd normally expect one?---Yeah, for the drug find, yes.

Trying to work out why one was not brought in this case.---I'm not sure if they charged him.

MS CLIFTON: No, they didn't.---That's unusual. Because normally we do. Any gaol I've been, and I've been to a few now, you charge them for any small finds.

40 THE COMMISSIONER: Well, I suppose drugs in gaol has always been a problem, and if you don't charge them that's - - -?---Yeah, it's an ongoing issue. You know - - -

You've got to take action.---That's one of our biggest things we're fighting. But we charge them for everything we find. That's what our dogs are trained for, the minute amount. So everything's, because, and that, yeah, if I don't charge that one then the rest of the wing know they can get away with it.

That's right.

MS CLIFTON: You'll see on that exhibit book entry, over on the right-hand side, we've got "disposal details". You'll see "how to be disposed" and it's "flushed". And the date was the 3 May, 2014, destroyed by McMurtrie. And there's a witness, which is Brad Peebles.---That's correct.

10 Right. Is that a standard way of disposing of small amounts of drugs?---We used to go to the police and go with them but they got, they went away from destroying ours and doing it when they did their bigger ones so what we've gone to or have been doing is having a witness, flushing it, with smokes and tobacco, doing a little small fire and putting it on the fire but at least having a witness there to say you've destroyed X amount of tobacco, usually we write it up and say 25 packets of tobacco, 15 boxes of matches and whatever, so, and plus the police, normally that amount wouldn't, wouldn't charge the inmate. We can charge them internally but externally the police, because they send away to their laboratories, it takes six, six weeks to six months to get an answer back so - - -

20 Was there any internal, were there any difficulties between you and Mr McMurtrie at that time?---I wouldn't say we were best of mates, we were professional, but other than that we didn't - - -

THE COMMISSIONER: What was McMurtrie's reputation?---Somewhat tainted.

In that?---Oh, just, just trying to think back then. He'd just come back from the academy or been involved in an inappropriate relationship with a trainee, so that was a bit – and he was very I suppose angry with the world.

30 I'm talking more or less about his reputation as a colleague or - - -?  
---Oh, okay, Commissioner.

40 - - - professionally whether he was a difficult character or - - -?---He's a difficult character. Brian kept most of the stuff to himself, so as far as he was concerned, information was power, so he'd keep all the information, all the work stuff or stuff he heard off the phones to himself, give it to the boss and he would run straight to the boss, he wouldn't include the other managers in it. He's a lot of the time exclude us from information then in a briefing he'd bring it up and say, "Your area, this is happening." Prior to that you wouldn't know.

First you knew about it?---Yeah, so he'd try to I suppose sideswipe you in meetings and stuff like that, which isn't uncommon for Brian, and he'd do his own little operations and he'd always say they're intel-based and yes, they're supposed to come through us but they don't always do because sometimes he's got the okay from the boss so a lot of the times John would say go and do it.

So he and O'Shea were fairly close?---Back then they were, yeah.

MS CLIFTON: Thank you. I just wanted to ask you about that final document you have which is marked page 20?---The original documents.

And that's headed, "Using Force on Inmates, Manager Security Review Guide."---Yes.

10 Is that a document that you filled out?---I would say yes.

All right.---As part of it.

And I just noticed that in terms of the tick a box, yes, yes, yes, the incident captured on CCTV/HHC is left empty. Is that - - - ?---It means, it means no.

That means no.---Yeah.

All right. So - - -?---There's no no-box, it's either yes, so it just means - - -

20 Right. Okay.---It's more like a tick and flick up here make sure you've got everything covered, everything.

And the comment below that is that the footage was reviewed, recorded footage was reviewed and storage of footage is in line with policy, and that's not marked so that's a no.---That's the second one, yeah.

And do you know why it wasn't reviewed in line with policy?---No (not transcribable) the door, when they went in the door that was it.

30 Okay.---That's all I had from my recollection back then.

And you don't recall ever seeing any CCTV from day room, corridor - - -? ---Day room, yes, but just them going in the door, that was it, so it didn't show me anything else (not transcribable).

When you say just them going in the door, IAT entering the cell?---that's it, yeah.

40 And so that did exist?---I believe so, yeah.

And you recall seeing it?---I'm pretty sure I did on the day or the day after, pretty sure the day I think off the top of my memory 'cause when I was doing this.

Do you recall where that was?---Brian did most of our burning, Brian McMurtrie, he had access to all the cameras in the gaol, the hard drive and that was in his office off the top of my memory and he could access all that

sort of information, 'cause I did it with Brian, the review, so I'm pretty sure he brought me the disk to the MOS's office or I went to his office.

Right?---Usually the two places we did it.

All right. So that was on a disc?---Yes.

10 And who kept the disc?---And I, what happens if I can explain the whole situation. Once all of the reports are done, they go up to the general manager. His PA TRIMs the documents, then he goes back to Brian and Brian burns all the paperwork stuff and the footage, one on one document and then he stores it on the Intel in a plastic sleeve in a four litre cabinet and it's just dated from when the uses of force were. So if anybody comes to us, policy anybody else, we can put it on disc and go there's the whole incident, all reports, everything there, there you go, there's a copy of it and that's how we did it once it came back from the governor at the time.

20 Thank you. I just wanted to show you one final document which is page 14 of the ICAC brief and this is a Justice Health report that you will see was completed on 19 February, 2014 regarding Prisoner [REDACTED] You'll see there that the injuries are noted as a contusion to the left eye, cheek and lip, bruising to the right side torso over ribs. Did you ever see this Justice Health report as part of your review?---Normally I'd say yes, I'd have to say yes because I'm normally get them the same day or next day.

All right. Well, those injuries are entirely inconsistent with Mr Walker's IRM and subsequent documentation.---That's correct.

30 And I appreciate your openness but you don't recall seeing that but it would be the ordinary course.---The ordinary course in use of force pack is that would come with it, we always ask for it from the nurses, usually most times that day or the next day if they do give it to us but it's a standard document that goes with the use of force stuff.

40 All right. So it appears either that certain documents were withheld from you or that your review was pretty cursory and has missed comparing versions and other documentation, is that fair?---No, it's not. I've done hundreds of these so, either things have been left out I've done, yeah, hundreds of these at my level.

I'm not generally saying that you do a bad job, what I'm concerned about is that we've got a review by Officer Duffy saying I saw Officer Walker strike prisoner [REDACTED] we have a Justice Health report saying that there is bruising on the face and over the ribs. We have Mr Walker saying oh he just tripped and fell. I can show you a photograph of the injuries which is taken from a still on the 20<sup>th</sup>, you can quite clearly see there that there's bruising around the eye, the lip isn't so good but it's quite clear on the tape and on the 20<sup>th</sup> he's complaining to officers about fractured ribs and holding



his ribs. There's more detailed medical reports it just the documents cannot all stand together as being a consistent version and I'm just wondering how this has gone through as an official - - -?---I didn't get Wes Duffy's report.

You didn't get Wes Duffy's report?---Not at all.

10 No, I accept that that may well be the case, can you recall getting the Justice Health Report?---I can't recall but I normally get it, I normally get them so I'd have to say yes because it's standard operations that we get, but a bruised lip's not unusual in a maximum security gaol.

No, I understand that it's just Mr Walker's report says he tripped and fell with no injury, with no physical contact by officers and quite clearly from that photograph - - -?---He's had physical contact.

He's had physical contact.---Yes.

20 THE COMMISSIONER: Well, I think in fairness to you, Mr Taylor, you say you may have seen the medical record but you can't recall specifically seeing it, is that right, now?---No, Commissioner, but normally I do get them. That's what I'm saying.

So we've ascertained that there was at least one other important document that you should have seen that wasn't given to you. Is that right?---I never knew Wes wasn't, was involved.

That's right.

30 MS CLIFTON: Sorry, Commissioner. Thank you. Were you ever spoken to by any Corrective Services investigators about this matter?---Yes, I was.

Have you ever spoken to Mr O'Shea about this particular matter?---Not about this matter, no.

What about Mr McMurtrie?---No.

40 And other than Mr Harris, have you discussed coming in here today with anyone?---No. It was very hard not telling my wife I have to admit because usually I go home on my days off so I've just told her I've gone to court.

Thank you. I just have a few documents to tender and your associate - - -

THE COMMISSIONER: All right. Well, we don't have to keep Mr Taylor for that though do we?

MS CLIFTON: No. I have no further questions for Mr Taylor.



THE COMMISSIONER: All right. Now, Mr Harris, is there any matter you want to raise?

MR HARRIS: No, I don't. Thank you, Commissioner.

THE COMMISSIONER: Thank you. Mr Taylor, thank you for your attendance today and for your evidence. You may step down and you're free to go.---Thanks, Commissioner.

10 Thank you.

**THE WITNESS STOOD DOWN**

**[4.11pm]**

THE COMMISSIONER: Mr Harris, no need for you to wait.

MR HARRIS: I'll be excused?

20 THE COMMISSIONER: Yes, indeed.

MR HARRIS: Thank you.

THE COMMISSIONER: You've got a list of the documents?

MS CLIFTON: I have. Your associate has been very kind.

30 THE COMMISSIONER: Then we'll have the exhibits marked in accordance with her list. That will bring the exhibits into perfect order I'm sure.

MS CLIFTON: Yes.

THE COMMISSIONER: All right. But I'll leave you to ensure that's done.

MS CLIFTON: Yes, I'm happy to do that.

40 **#EXH-014 – EMPLOYEE DAILY SCHEDULE FOR LITHGOW  
CORRECTIONAL CENTRE ON 19 FEBRUARY 2014**

**#EXH-015 – LETTER FROM MCMURTRIE TO SIR DATED 13  
JANUARY 2014**

**#EXH-016 – INCIDENT DETAILS REPORT REGARDING  
INCIDENT NO 92719 REPORTED BY WALKER**

**#EXH-017 – USING FORCE ON INMATES REPORT COMPLETED BY WALKER DATED 19 FEBRUARY 2014**

**#EXH-018 – INCIDENT REPORT FROM DUFFY DATED 7 DECEMBER 2016**

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**#EXH-019 – USE OF FORCE MANAGER OF SECURITY REVIEW COMPLETED BY TAYLOR DATED 20 FEBRUARY 2014**

**#EXH-020 – EMAIL FROM PEEBLES TO TAYLOR DATED 19 FEBRUARY 2014 & ATTACHED LETTER FROM MCMURTRIE TO SIR DATED 13 JANUARY 2014**

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**#EXH-021 – COPY OF EXHIBIT BOOK ENTRY DATED 20 FEBRUARY 2014**

**#EXH-022 – USE OF FORCE MANAGER OF SECURITY REVIEW GUIDE**

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**#EXH-023 – JUSTICE HEALTH INCIDENT/ ASSAULT FORM COMPLETED BY SINCLAIR DATED 19 FEBRUARY 2014**

**#EXH-024 – PHOTO OF [REDACTED] INJURIES**

THE COMMISSIONER: All right then. Nothing else then I'll - - -

MS CLIFTON: No. Thank you, Commissioner.

THE COMMISSIONER: Thank you. I'll adjourn.

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**AT 4.12PM THE MATTER WAS ADJOURNED ACCORDINGLY  
[4.12pm]**