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INDEPENDENT COMMISSION AGAINST CORRUPTION

THERESA HAMILTON ASSISTANT COMMISSIONER

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TRANSCRIPT OF PROCEEDINGS

AT SYDNEY

ON WEDNESDAY 24 MARCH, 2010

AT 10.10AM

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

ASSISTANT COMMISSIONER: Is Mr Mailey here?

MS RONALDS: I've just got a couple of documents that I neglected to tender from yesterday if I may.

ASSISTANT COMMISSIONER: You may sit down, Mr Mailey.

MS RONALDS: I tender a two page document which is an IPP document identified by Mr Mailey yesterday headed Background Searches.

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ASSISTANT COMMISSIONER: Yes. What will be Exhibit 27.

#EXHIBIT 27 - BACKGROUND SEARCHES RE MR XXXX

MS RONALDS: An email, there's two emails that can probably go together and two emails from Control Investigation and being Mr Travini to Mr Mailey one dated the 23 October, 2007 at 5.00pm and one at 25 October, 2007 at 1.48pm.

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ASSISTANT COMMISSIONER: Yes. That will be Exhibit 28.

#EXHIBIT 28 - AN EMAIL FROM MR MAILEY DATED 23 OCTOBER 2007 AND EMAIL FROM CONTROL GROUP TO MR MAILEY DATED 25 OCTOBER 2007

MS RONALDS: I tender the statement of Yasmin Jane Malouf who works for IPP and she attached to that a bundle of documents from IPP and I was concerned that there was - that those representing Mr Romano had an incomplete set of documents, it was clear to me last night after the questions being asked and so I thought it was easier to tender it now and resolve that issue. And if I could lift the order in relation to the entire compulsory examination of Mr Mailey which occurred on the 4 February, 2010.

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#EXHIBIT 29 - STATEMENT OF MS YASMIN MALOUF DATED 17/2/2010

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ASSISTANT COMMISSIONER: Yes, I lift that suppression order.

DIRECTION PURSUANT TO S.112 - SUPPRESSION ORDER LIFTED IN RESPECT OF TRANSCRIPT OF 4 FEBRUARY 2010 COMPULSORY EXAMINATION OF MR RICHARD MAILEY

MS RONALDS: And then I'll tender that.

ASSISTANT COMMISSIONER: Yes. That transcript will be Exhibit 30.

10 **#EXHIBIT 30 - TRANSCRIPT OF EVIDENCE GIVEN BY MR
MAILEY AT A COMPULSORY EXAMINATION ON 4 FEBRUARY
2010**

ASSISTANT COMMISSIONER: Yes. Mr Blake, can I ask you how long you expect to be with Mr Mailey this morning?

MR BLAKE: It's always hard to say, I just don't know what answers I'll get but I expect about an hour.

20 ASSISTANT COMMISSIONER: Well, I'm happy to give you leave obviously to cross-examine about any conflict between your client's instructions and what Mr Mailey's had to say which I would not really expect to take that long but obviously it's a matter for you. That seems to be the only area I would think upon which you could usefully cross-examine at this stage.

MR BLAKE: I agree with that. We're about halfway through the relevant events.

30 ASSISTANT COMMISSIONER: Thank you.

MR BLAKE: Commissioner, I would seek to tender the three electronic diary entries from the start, Romano's diary that I referred to yesterday and questioned Mr Mailey.

ASSISTANT COMMISSIONER: Well, perhaps they could be provided to counsel assisting.

40 ASSISTANT COMMISSIONER: I presume, Ms Ronalds, we would've obtained a full version of the electronic diary at some stage?

MS RONALDS: We have a version of the electronic diary. You recall that I asked Mr Romano, no 2007 diary was produced in a hardcopy so there's an electronic version and then there's a hardcopy of a different form altogether and the first half of 2008 up to I think it's the 16 June from recollection or around there, I'm sure my friend will correct me with the right date, of 2008 has no entries. Not on the electronic diary on the hardcopy.

MR BLAKE: That's absolutely correct.

MS RONALDS: And then there's electronic diaries that were produced as well but the hardcopy unless you have a different version so there's no hardcopy 2007 diary and the first half of 2008 is empty.

ASSISTANT COMMISSIONER: So these are - - -

10 MS RONALDS: These are from an Outlook calendar held at Burwood Council which is the official Council document as I understand it.

ASSISTANT COMMISSIONER: Which we would already have.

MS RONALDS: We hold it, yes.

ASSISTANT COMMISSIONER: Yes.

20 MS RONALDS: They just confirm meetings and I didn't think they were particularly relevant if there was no dispute about the meetings but Mr Blake obviously has a reason that's unclear to me but I don't object to them going in.

ASSISTANT COMMISSIONER: All right. So we're tendering three pages of the Outlook diary.

MR BLAKE: That's correct.

30 ASSISTANT COMMISSIONER: That will be Exhibit 31.

**#EXHIBIT 31 - 3-PAGES OF ELECTRONIC OUTLOOK DIARIES
OF MR ROMANO**

MS RONALDS: Just the question about the section 38.

40 ASSISTANT COMMISSIONER: Yes, look, I'd just remind you that you're still under oath and the section 38 declaration previously made still applies to your evidence today.

MR BLAKE: Mr Mailey, I was asking you about a meeting on 19 October yesterday and I just want to take you to the end part of that meeting, that was where the question of how long the operation, the surveillance operation, was raised would take and I suggest that meeting concluded with you saying probably a week or two but it depends upon whether there are any incidences or phone calls, further phone calls during that period. You said that?---Yes, I would have said, yes.

And Mr Romano suggested you get back together again in the following week to review progress?---I'd agree with that.

I think the answer was yes, Commissioner.

Shortly before the, Wednesday, 24 October you had a telephone call with Mr Romano suggesting which, you asked him when he could, when you could come out to his home to review the security system. Do you recall such a conversation?---Yes, I recall a conversation, yes.

And you said you'd like to do the Mayor's house on the same day, yes?
---No, I said that if the Mayor, if he wanted the Mayor's house done on the same day I could have a quick look for him.

Yes. And he said he'd get back to you?---Yes.

And there was a further call in which there was a meeting arranged for the 24th. Do you agree with that, the 24th, 24 October or thereabouts?
---Thereabouts.

Yes, okay. And you got to Mr Romano's house early in the morning. Do you agree with that?---Yes, I agree with that.

Yes. And you walked around the house reviewing the external security?
---And internal security, that's correct.

Yes, but initially you walked - - -?---Yes.

- - - around the house reviewing the external security?---That's correct.

You expressed concern or you said to him that the house was exposed at a number of points?---That's correct.

You mentioned there were locations in the street where people could sit in a car and observe his house without being seen by Mr Romano?---That's correct.

You said that there was a problem in the front looking from the house to the street, the front left-hand side corner in terms of coverage because of a low fence which people could easily get over?---That's correct.

And you also mentioned the poor light and visibility in that particular area? ---That's correct.

10 When you went down the side you expressed concern about the lack of lighting in that area?---That's correct.

And when you got to the back or, and when you went round the side that's when you dealt with the switchboard, I think, you observed what you described yesterday?---That's correct.

And when you got to the back of the house you made that the comment that it would be easy for people to get across the back of the house into Mr Romano's backyard?---That's correct.

20 You then went inside and did an internal inspection?---Yes, I did.

You asked him about his alarm system. Do you recall that?---I do.

And you said to him that the sensors that he had in his house were quite old and there was more modern equipment these days?---That's correct.

And you suggested it would be necessary to have a camera installed? ---That's correct.

30 And you, Mr Romano asked you what was wrong with the alarm. Do you agree with that?---Yes.

And you said the alarm wasn't going to help him to identify people that came to his house, it's a deterrent but it's no use in identifying people who want to come and do something to his house?---That's correct.

You went on to say that the camera was, would need to be installed at the risk points for the house that you'd identified?---That's correct.

40 And you said that you would like to use digital cameras?---That's correct.

And I think you described about those yesterday?---That's correct.

That's correct. And Mr Romano asked you how much it was going to cost and asked you for an estimate?---No, I don't recall that.

All right. Did you say to him that you have to put a brief together and get some quotes from a couple of suppliers?---No, I didn't say that, no.

You didn't say that. You're quite sure about that?---I'm quite sure about that.

All right?---In relation to the brief, I didn't say I'd put a brief together, I said that I'd recommend some installers.

Right. Did you tell him you'd put together a specification for the security of his house?---No.

10 No, that wasn't said?---No.

Okay?---What was said (not transcribable) as I remember is, is that I said, you know IPP, it'd cost you too much to have us do a specification and it's only the house and I can recommend some companies to do it for you.

I'd like to show you this document. Can you just peruse that document. The signature on the top right hand corner of the first page is your own? ---Yasmin Malouf.

20 That's Yasmin Malouf is it?---Yes.

And there's a stamp, emailed. Is that correct?---Correct.

And on page 7 there's a signature. Is that your own?---On page 7, it's not on 9, page 9?

Well, sorry, there - - -?---Oh 7, yes, point 9.

30 All right. And that's your signature?---That's correct.

And there's a specification and costs estimate?---It is.

And that's something that was prepared under your supervision at IPP? ---No, that's incorrect. This is a duplication of the SNP specification, the report after the consultation with Mr Romano. This is a report from SNP taken on to our letterhead to verify the costs structure only. But that is not my report.

40 All right. Do you agree however, it's on IPP letterhead?---Yes.

And it's signed by you?---Yes.

Yes. Yes, I seek to tender that document.

ASSISTANT COMMISSIONER: So what is the relevance of this document?

MR BLAKE: Well, it goes to Mr Mailey's evidence, we challenge that Mr Mailey's firm provided the sort of services that he provided (not transcribable). We say that - - -

ASSISTANT COMMISSIONER: This, this is a quote from SNP for, an estimate from SNP is it?

MR BLAKE: It's a quote from we say, IPP Consulting.

10 ASSISTANT COMMISSIONER: What do you say it is?---Miss
Commissioner, the, the way, the way we do it is that is, that report comes in
from SNP, because we have a cost as agreed with Mr Romano that I would
review costs. So without confusing, without confusing the client here, we
just paginated SNP's initialled the document and moved it over to our
letterhead. That is all we did.

20 So you, you arranged for an estimate from SNP provided to Mr Romano. Is
that what you're saying?---No. No, I made recommendations to Mr
Romano to, that SNP would be a good provider. And I contacted (not
transcribable) of SNP Security and SNP then had a meeting with Mr
Romano. And I asked for a copy of that report so we could check the
specifications. And that is in, that's the format of SNP and we just
transcribed that on to our, our letterhead. And (not transcribable) estimate
team that did in our company, IPP, not myself, was check that the costings
are in accordance with standard industry practice.

Yes, well, what is the relevance of SNP having provided this estimate?

30 MR BLAKE: Well, we say it's not SNP who provided it. We say it's a
document from IPP in accordance with Mr Mailey's (not transcribable)
provide a specification.

ASSISTANT COMMISSIONER: Well, Mr Mailey's saying it's not.

MR BLAKE: Well, we challenge that?---And it would be, Commissioner,
there'd be a copy of that in the office from SNP, it'd be an identical
document.

40 ASSISTANT COMMISSIONER: I really don't see the relevance of it, but
if you want it admitted as an Exhibit, I will admit that as Exhibit 32.

**#EXHIBIT 32 - IPP CONSULTING DOCUMENT RE
SPECIFICATION AND COST ESTIMATE**

MR BLAKE: Thank you, Commissioner.

ASSISTANT COMMISSIONER: Yes, Mr Blake, if you want to tender documents, you should have copies for everybody available.

MR BLAKE: Well, I've (not transcribable) in relation to that, Commissioner, (not transcribable) his signature.

ASSISTANT COMMISSIONER: But in general terms it's really not your function to be tendering documents. All of the relevant documents will come in through counsel assisting. I presume at some stage we'll be given a
10 copy of this because we subpoenaed IPP's documents.

MS RONALDS: Well just to make it clear, as I, I just didn't consider it was a relevant document. The relevant issue is the amount paid which was put on the invoice and I must confess, I'm (not transcribable) lost with what the relevance may be or may not be and am still unclear about the point being made by Mr Blake. But maybe that will become clear about whether, whether it was SNP or IPP, doesn't, for the purposes of this inquiry, what matters is that sum was paid by Burwood Council for the installation of an alarm system at the home of Mr Romano. None of that seems to be in
20 dispute. So I'm not quite sure where this issue takes some dispute between them about whose quote it was. The issue for this inquiry, as I say, is the payment of the funds at the end of the day.

ASSISTANT COMMISSIONER: Yes. And I don't think Mr Mailey's disputing that he took some role in arranging for SNP to be the one's who actually did the installation, so, yes, Mr Blake.

MR BLAKE: Well, I suggest to you that, sorry, I'll withdraw that. That meeting at Mr Romano's place took about an hour in total. Do you agree
30 with that?--I agree with that, yes.

And you then went with Mr Romano to the Mayor's place at Croydon, Mr Faker's place immediately after - - -?--No.

You disagree?--I can't recall that, no.

All right?--I was never ever in attendance at the Mayor's premises with Mr Romano.

40 Well, I suggest to you your recollection is mistaken and you went from Mr Romano's place on Wednesday, the 24th to the Mayor's place?--I can't recall that.

You can't recall that. Do you recall meeting with Mr Romano on the following day in the city, 25 October?--I can't recall that.

You can't recall. Do you recall leaving shortly after the inspection of his home where the surveillance was discussed?--Yes, I can recall that.

Yes. And Mr Romano asked you whether you had a report from the field officers?---Is this after the report, the surveillance had commenced is it?

Well, it's immediately after the inspection I'd suggest to you?---I'm not sure whether the surveillance started prior to the inspection or during.

10 Well, I think the evidence shows it had started prior to the inspection. So did he ask you that? Can you recall him asking that?---I can't, I can't recall that.

You can't recall that. Did you tell him that the report wasn't finished? You only got some results last night?---There were several, several conversations between Mr Romano and myself in relation to the reporting. And I can't be specific about which one, what time or what date.

20 Did he ask you for an indication of where you were up and who you were looking at?---That, that was a daily, that was, not a daily it was a four, five hourly update, that was always supplied to Mr Romano.

Well, I suggest to you that you weren't giving daily updates but they occurred about weekly, Mr Mailey?---Well, no, they were, they were regular.

Yes. But I think you were saying yesterday you have no record of those daily updates. Is that correct?---No written record.

No written record?---No, not that time, no.

30 No. You're just relying on your memory. Is that correct?---That's correct, yes.

And you told him that you're investigating YYYY XXXX?---That's correct.

And he said to you, Why didn't you start with the others, there were four or five people I gave you the names of?---(NO AUDIBLE REPLY)

The answer's yes?

40 ASSISTANT COMMISSIONER: Sorry, Mr Mailey, are you agreeing with that?---No, I'm not agreeing with that.

Well, what, you need to answer, you don't have to agree with something just because it's put to you?---No, no.

It seems to me you're just nodding along and saying yes, yes, yes?---(not transcribable).

Well, if you listen to the questions what's being put to you on my view is quite different from the evidence you've previously given that Mr Romano wanted you to start with Mr XXXX. Is that correct or not?---That is, that is correct, I have not answered that.

And would he have had to ask you what people are you looking at in the surveillance? Wasn't he well aware of who you were looking at?---He was well aware of who I was looking at.

10 Yes, all right.

MR BLAKE: Well, I'm suggesting you were in a meeting, Mr Mailey, when you mentioned Mr XXXX was being surveilled. Mr Romano said to you, Why didn't you start with the others, there were four or five other people I gave you the names of. Do you agree with that?---No, XXXX was the main, the main target in this matter.

And Mr Romano said, How much is this costing? Do you agree with that? ---I can't recall that.

20

And he said, You know I've had problems with Weiley why didn't you start with him?---And I, I can't recall that.

And you said to him, We started on XXXX and haven't started on the others yet?---There is no brief on Weiley or anybody else, this particular brief was on XXXX only and we focussed on that.

You agree with me I think, Mr Mailey, yesterday that some other names were given to you by Mr Romano weren't they?---That's correct.

30

And you told him that there'd been a problem with an operative being compromised?---That's correct.

And that you would have to get some other operatives and you'd need two operatives?---(not transcribable)

Yes. And Mr Romano asked you exactly what you were seeking to get out of the surveillance. You agree with that?---Well, he asked me, the purpose was to do an assessment of Mr XXXX and that's exactly what we're doing.

40

And you told him you were trying to match events in the surveillance process with incidents or phone calls that you'd received?---No, that's not my terminology.

Yes. And you said, Don't worry, this will work out, I told you about the work we're doing with Macquarie Bank?---That's correct.

Yes. And you suggested that with time you would get to the person?

---That's correct.

Yes. And Mr Romano asked you how much time you needed?---No.

And I suggest you told him, About a week?---Which meeting is this you're referring to?

This is shortly after the inspection of the house on the 24 October, Mr Mailey?---No, I couldn't agree with that.

10

Can't agree with that. Thank you. And you were aware, I take it, that Ms Malouf at that period was sending some updates to Mr Romano via email?
---That's correct.

They included the latest surveillance sheets that had been prepared?---That's correct, yes.

Yes. And, just excuse me. I'll just show you this email, Mr Mailey. Do you agree you gave to Mr Romano some advice about the security system and referred to the Noho System?---That was provided by Chris McGregor the employee of IPP in the Technical Services Section.

20

Yes. That's an email from you to Mr Romano sent at 5.37pm on the 25 October?---And the advice about technical surveillance team.

Yes. Thank you. I seek to tender that, Commissioner.

ASSISTANT COMMISSIONER: I don't see the relevance of that. There is no dispute at all is there that Mr Mailey was involved in various activities to assist Mr Romano to have a security system installed?

30

MR BLAKE: There's a very significant dispute as to whether IPP charged for this and - - -

ASSISTANT COMMISSIONER: Whether they charged - - -

MR BLAKE: Charged for doing the specification and advising about the security system and we challenge that evidence given yesterday.

40 ASSISTANT COMMISSIONER: That they did charge for it?

MR BLAKE: That they did charge for it.

ASSISTANT COMMISSIONER: You are challenging that they did or that they didn't?

MR BLAKE: No, we are challenging the evidence that they didn't charge for it. We will contend that they did charge for it.

ASSISTANT COMMISSIONER: Yes, all right. So this is a, what is this document you're tendering?

MR BLAKE: It's a string of emails including an email of the 25 October, 2007 at 5.37pm from Mr Mailey to Mr Romano.

ASSISTANT COMMISSIONER: Has counsel assisting been given a copy?

10 MR BLAKE: Yes, I've just shown her.

MS RONALDS: I haven't been given a copy.

ASSISTANT COMMISSIONER: Exhibit 33.

#EXHIBIT 33 - EMAILS BETWEEN MR MAILEY AND MR ROMANO

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MR BLAKE: I show Mr Mailey again the document Cost Specification which I think is exhibit 32. Do you agree, Mr Mailey, that you had a further meeting with Mr Romano on Friday, the 9 of November?---Can't be specific on the date.

Can't be specific. You recall a meeting where you showed Mr Romano the document in front of you now Exhibit 32?---I can't recall that.

And do you recall any discussion about this document at all?---No.

30

No. Well, I suggest to you that there was a meeting with Mr Romano where he expressed shock that the quote of 46, \$47,000?---Yes, this is with an arrangement made between SNP who, who was the one that provided the technical specifications and Mr Romano. I even remarked on the, the height of the cost and Mr Romano said, I need the best protection.

And Mr Romano asked you to get a revised quote at that meeting. Do you recall that?---No, I don't.

40

Well, I suggest to you that at that meeting that you agreed that you would see if you could get a revised quote?---No, I would've, I do remember, I have a good relationship with SNP, I would've rung SNP up and said that the client would probably want a revised quote but I can't remember that but sometimes the client asks for that.

Right. You wouldn't disagree that you agreed to get a revised quote?---Yes.

Thank you. And at about that same meeting Mr Romano expressed some concern that the surveillance was taking so long to get results?---Not to get results but the surveillance was taking so long. I do remember a conversation but not the specifics of it.

And you suggested to him you still didn't have that week's report, give him until Monday, give you until Monday and you'd review the information and get back to him. Do you recall saying something like that?

---Not, not in any specific occasion, no.

10

But that's consistent with your practice, if you didn't have a report you'd get back to him?---Because I'm relying on the field agents' reports.

And I suggest to you on Monday, 12 November you did speak to Mr Romano by telephone and you told him that you hadn't been able to find any evidence linking YYYY XXXX to the harassment calls?---That's correct.

20 And Mr Romano said to you if you haven't found anything it's unlikely we're going to get any results, I think surveillance should be stopped?---I don't recall the date.

And you said to him to give you another week because your guys were in the field?---No, incorrect.

Mr Romano said to you, Richard, I'll give you one more week?---That was on his request because he believe we still could get results, we believed we couldn't get results.

30 And he went on to say he wanted you to stop the surveillance as soon as you can and to give you a final report if you don't get any results?---That conversation would have taken place, yes.

And I suggest that on Monday, 26 November you had a further telephone conversation with Mr Romano where he contacted you and said Richard, it's been over a week now and I don't have your report, when are we going to get something?---Well, I can't reply to that, that would be Yasmin Malouf and the field agents, she's the coordinator of that one.

40 Well, do you recall Mr Romano saying words to that effect to you?---No.

And you told him you hadn't completed the report because you still have officers in the field and it would be at least another week?---I can't answer that, no. I don't recall.

Well, when you say you can't answer it do you disagree or you can't recall? ---I can't recall.

Right. And Mr Romano said what do you mean, you still have officers in the field, I told you over a week ago to stop, why do you still have people in the field. Mr Romano said that to you, didn't he?---No, he did not.

Right. And you said to him you just wanted to give it one last go before you close it off?---Definitely not.

10 And you said I like achieving results for my clients and I feel obliged to get results. You said that, didn't you?---Absolutely not, it's not a statement of mine.

I suggest to you in mid to late November you had a further conversation with Mr Romano in which you told him you had a revised cost for the security system down to \$27,000?---About that time, yes.

20 Yes. And you said to him that if you, he was happy you'd get SNP to start ordering materials and get on with the work?---Not at all. I'm not, the arrangement was made between SNP and Mr Romano. I had no authorisation to instruct anybody to proceed.

Right. I'm putting to you that Mr Romano, you said to Mr Romano if you're happy with it you would get SNP to start ordering materials and get on with the work?---Firstly, it's not my terminology, ordering materials is not practice words. Secondly, that's, I would have, might have rung SNP but purely was to say the client's happy with the revised price, contact the client.

30 ASSISTANT COMMISSIONER: Mr Blake, I cannot understand the relevance in any way of who was more involved in arranging the security system, whether it was SNP or IPP or whether IPP did or did not charge for parts they did in it. In my view the only relevance is whether the amount that was eventually paid for the security system was rightly charged to the Council or not, the reason that the security system was put in. I can see that some of the issues you've been taking Mr Mailey through are relevant to that, his advice about it or whatever. This issue about who exactly paid for what or who got the quotes I really can't see the relevance of it to this inquiry.

40 MR BLAKE: Well, it certainly goes to the relevance as to some evidence given by Mr Mailey as to whether invoices were truly for the XXXX matter or for something else, at least that, and it's important that the evidence of additional witnesses put an overall context upon what's happening and it's important that the picture is completed.

ASSISTANT COMMISSIONER: Well, the overall context could have us here for 12 months. I mean, I can understand that you want to put relevant issues that may be in dispute to this witness but - - -

MR BLAKE: Well, this is in dispute (not transcribable).

ASSISTANT COMMISSIONER: It's not a relevant dispute.

MR BLAKE: Right.

ASSISTANT COMMISSIONER: Does it really matter how much IPP had to do with arranging the installation of this security system? What does it go to?

10

MR BLAKE: Well, apart from anything else it goes to this witness's credit. It is quite clear that conversations that he has given evidence about will be relied upon against my client and I'm entitled to challenge that.

ASSISTANT COMMISSIONER: Yes, go on.

MR BLAKE: I suggest to you that Mr Romano asked you whether you could get the price down further?---That's correct.

20

And you told him that was the best you could do, if you're happy you can go for it but if you're not happy you'll have to look at something else?---Are we talking about the first quotation, the second?

No, I'm talking about the second one?---The second one, again, that's not my terminology but I would have said that's a good price as, because it was referred to our IT people that work for our company, not me and they've said yeah, it's a good price, we recommend it and that's probably the words used to Mr Romano, that the price of the equipment's reasonable on the second quote.

30

Yeah. Now you attended Mr Romano's home when the security system was being installed. That's correct, wasn't it?---No.

Well, I suggest you did attend when the security system was being installed and you had a conversation with Mrs Romano on that occasion?---No.

I suggest to you that you did have a conversation with Mrs Romano and you told her that you were looking at securing her home and providing her with better protection?---That's correct and that was in the presence of SNP and Mr Neil Witt, as Mr Witt was walking him round the technical aspects including the VDU screen on another morning's meeting.

40

And you told her that Pat had been receiving some strange calls and that there'd been some unusual things happening to your home and we're going to make sure you're protected. You said that to her, didn't you?---I can't recall that conversation specifically, no.

You said you had a perfect alarm, I'll withdraw that. She said they had a perfectly good alarm at the moment?---I don't think she could say that when the alarm kept on playing up all the time including when Mr Romano was at work, the alarm was faulty.

And she said she didn't want her house to become a fortress?---Those words were used.

10 Yes. And you said this is perfectly normal for a general manager?---What, to have cameras up?

Yes?---To be specific on that, if a general manager or a person in, in, is threatened, it's my standard terminology in any occupation, it's a workplace issue and, you know, you've got to protect the general manager.

And you told her your husband has a high profile job and needs to protect himself?---Certainly.

20 And you told her don't worry, other general managers have similar security systems?---That's correct.

I want to move on so can that exhibit be returned to, returned and can Mr Mailey be given Exhibit 18, please.

Mr Mailey, can you look at the invoice of 19 November?---Yes.

30 You gave evidence yesterday that that was in respect of the XXXX surveillance. Do you recall that evidence?---Yeah, in the absence of having an attachment behind, I can't categorically state that. It does not have an attachment behind it.

That's obviously the only invoice that did not have a disbursement sheet, as you described it. Right?---At the time when they were doing building reviews, both Andrew O'Reilly and myself, well Andrew O'Reilly was doing building reviews and this I think relates to a child care centre plus other buildings for the Council. But I cannot be specific on that without, and as there is no attachment, I would assume that that's what that is.

40 Yes. And it included the work you did for Mr Romano's house and the Mayor's house as well didn't it?---No.

Who prepares tax invoices, Mr Mailey, for IPP?---Sandra Shepherd and Yasmin Malouf.

The IPP accounts department is in Melbourne wasn't it?---Yes, it does.

Yes. And the invoices were generated from Melbourne weren't they? ---Generated from Sydney. Sent to Melbourne for verification.

I see. Now can I just, if that Exhibit could be returned. Now you gave some evidence yesterday, yesterday about surveillance at about the time of the local government elections in New South Wales in September of 2008. Do you recall that at all?---I recall that.

10 All right. I suggest to you that two or three weeks prior to the elections, you had a phone call with Mr Romano in which he said he had another sensitive job for you to do on behalf of the Council. Do you recall that conversation?---That's correct. Yes.

And he said he'd received a complaint in relation to a candidate running for the September elections?---That's correct.

He said the complaint related to whether or not the candidate is living in a unit in Burwood?---That's correct.

Or whether he's running a campaign office from the unit?---That's correct.

20 Yes. And he asked you to undertake some surveillance work on this matter to determine whether the unit was being used as a campaign office?---That's correct.

Yes. And you agreed to do that. You said you'd put a couple of people on to it?---I don't use that terminology, but I just would've said we'll commence the investigation.

30 Yes. And I suggest to you before the election you gave him an update and you told him that your operatives have found pamphlets and election material in garbage bins at Park Road, Burwood?---Specifically where I can't, but I remember the conversation, yes.

Yes. And the unit in question was in Park Road, Burwood wasn't it? ---That's correct.

40 Yes. And there was also evidence that the candidate and his wife and his children would travel from their home in Drummoyne to the unit in Burwood. You told him that?---We had no evidence of her or his children travelling to the unit. But we have evidence of the candidate travelling.

Yes. And you told him they don't appear to be staying there, at Burwood? ---At Burwood, no. That's correct.

Yes. And you told him they appear to be commuting between the two places, Burwood and Strathfield or Burwood and Drummoyne?---Yes.

And that you'd found Mr Sidoti and the other candidate on (not transcribable) had registered, sorry, another candidate had registered the same residential address?---That's correct.

Yes. You were also asked some questions yesterday about some further work in connection with, I think, lighting on the security system at the Mayor's place and Mr Romano's place in 2008. Do you recall those questions?---Yes.

10 Yes. And I'll show you, is that your signature on the document?---Yes, it is.

You'll see a tax invoice SC tax invoice is referred to at the bottom of the document. What tax invoice was that?---The tax invoice from SNP Security, as verified by our IT (not transcribable) people.

All right. The (not transcribable) and assessment didn't relate to Mr Romano's home, that was the Mayor's home wasn't it?---It was the Mayor's home, yes.

20 Yes. Well why, SNP Security didn't do the work for the Mayor's house did they?---That's correct. But SNP wanted to attend to the work and they were shown the quotations from the current installer. And we compared costs at that time. And then I continued to review the tax invoices from the installer at the Mayor's premises.

Yes. And that tax invoice is certainly not an SNP one, it could be an IPP tax invoice?---No. That's from the installer.

30 And the signature on the top right hand corner, whose is that?---That's Malouf on an email.

Right. All right. I seek to tender that document.

ASSISTANT COMMISSIONER: Shouldn't we see the document?

MR BLAKE: Well, it is, counsel assisting reminds me that a document without some handwriting is already part of an existing Exhibit. I think it might be 25, but I'm not certain.

40 ASSISTANT COMMISSIONER: No, it's not 25.

MR BLAKE: I could be incorrect but I, my belief was that it had not been yet tendered. I don't think it's in here, so, well, I seek to tender the document. If it has in fact been tendered without some handwriting, I will advise in due course, but my belief was it had not been tendered.

ASSISTANT COMMISSIONER: Yes. Well, that will be Exhibit 34.

**#EXHIBIT 34 - LETTER TO MR ROMANO FROM RICHARD
MAILEY DATED 10 MARCH 2008 – Cc: SC TAX INVOICE**

MR BLAKE: Yes, counsel assisting, I'm indebted, informs me it's part of my turn and that's correct.

ASSISTANT COMMISSIONER: Yes.

10

MR BLAKE: That's all. Oh, sorry, just one last, I did ask you some questions yesterday about your relationship with Mr Romano, and you said it was purely professional?---Correct.

Are you sure that's correct, Mr Mailey?---That's correct.

Okay. Is it true that in January or February, 2008 you and your wife and Mr and Mrs Romano had a dinner together at a restaurant at Haberfield, didn't you?---That's correct.

20

And that was social wasn't it?---It was social.

Yes. And you told Mr Romano on a number of your occasions that your sporting activities, including kayaking and endurance events in Tasmania, for example?---Yes.

Yes. And that was not just purely professional, you exchanged information about personal matters - - -?---Correct.

30

- - - in the course of your business dealings with him?---Yes.

Thank you.

ASSISTANT COMMISSIONER: Yes. Does anyone else seek to cross-examine this witness? No? Thanks.

40

MS RONALDS: I just have several short questions if I may. Can the witness be shown Exhibit 29? Just so you understand there's a statement from Ms Malouf, you see that? If I could just ask you to flick over that and then you get to an index which says List of Documents XXXX. You see that?---Yes.

And then the page directly behind that you see has UUUU written on it? ---Yes.

And it's got a date if I could ask you to look down the bottom of the 17/09/2007?---Yes.

Now, what I'd suggest to you is that this is part, if you look through the next little bit of the bundle as I understand it part of what was done by the firm you referred to yesterday as the search?---That's correct.

Is that right? You see there's a number of documents there in a bundle and they appear to be, correct me if I'm wrong, what's done by the company called Hazlett Information Services?---No, Hazlett would not have done that.

10 Right?---That document that's off, off a website probably based on the information provided by the investigators at the time.

And I'll take you - if you just go through, sorry, the pages aren't numbered and that's remiss of us but about ten pages through there starts some handwritten notes if you could go to those and it's headed XXXX, 26/9/07. Do you see that?---(NO AUDIBLE REPLY)

It's behind the sort of - - -?---26/9?

20 Yes. You see up the top, no, up the top it's handwritten and I think it's from Brad, Brad McCombie. You see it's (not transcribable)?---That's correct, yes.

Yes. It's in the bundle there and it starts 26/9/07 XXXX and this appears from the file to be the first day of the surveillance of Mr XXXX. Do you see that?---Yes.

And you see it says, 2.15 or 2.45, sorry, start at subject's office in city. See that's the first entry?---25th is it?

30 26th?---26th, yes.

See, start, sorry, it's a bit of an unclear copy but doing the best we can. 2.45pm start at subject's office in city. Now, that seems to be the first day that there is any surveillance of Mr XXXX, right?---I think he was, he was followed from home, that doesn't appear to be right. His first surveillance period I remember he was followed from home from the address provided.

40 See, yesterday you gave some evidence and I'll just quote from it if someone hasn't ripped my folder. This is the transcript at page 144 from line 30 or starting at line 20. You indicated in short form that the first time you knew where Mr XXXX, from the investigation, worked was the first day he was followed by Brad?---That's correct.

Remember giving that - I mean it's a short form of what the evidence is but that's what the evidence was yesterday, that's 144, line 20. Right?---Yes.

And he went to the building, remember we talked about whether he went up and et cetera?---(not transcribable).

Now, what I'm suggesting to you is this that it's clear from the 17 September from the printout in relation to UUUU that in relation to Mr XXXX something was known about UUUU at that stage isn't it?---Yes.

That is that that's where he worked. Because that's the date on the printout 17/09/2007 at the bottom of the UUUU printout?---Yes.

10

Now, does that enable you to recall at all how it was or when you became aware of where Mr XXXX worked?---That may have been obtained through our search company, I'm not sure, but that's probably the search company would've come up with that address, place of employment and all that situation, I'm not sure on that.

Could it have been given to you by Mr Romano?---It could've been given to me by Mr Romano.

20

Because this - as you say it's a website printout isn't it?---Yes.

And if you look through the rest of the bundle there's documents from Hazlett that have Hazlett's indicia on it?---Yes.

But you're not able to tell - do you recall whether you yourself printed out this sheet?---No, I didn't print it out.

You didn't print it out?---No.

30

Is that not one of your skills?---I'm not in the office.

Right?---Yasmin does all the searches.

Right. So somehow you acquired information before the surveillance commenced, that is, by the 17 September that Mr XXXX worked at UUUU? ---Yes.

40

So that the evidence you gave yesterday I'd suggest you can't be correct can it, that is, that you didn't know until the first day he was followed?---No, that's, I need to verify that because searches don't necessarily verify the true place of employment or the place of employment without making inquiries and, you know, we may have gained these searches or been provided with the information prior to that but verification of the actual employment is usually done face to face by the investigator or making inquiries at the place of employment.

So you make a distinction between possibly knowing and confirming? ---Correct.

So that if I can take you back to the 26th, the handwritten note of Mr XXXX, of Mr McCombie on the 26 of the 9 you think this may not have been the first entry 2.45 start at subject's office in city. That would certainly infer would it not that the subject's office in the city was an identified place?

---Correct.

10 And that the surveillance commenced at least on the 26 September, 2007?
---With Brad McCombie he was a specific operator for us and we'd get a contract in, once given the job he would estimate the amount of hours for each day on the job, it would be up to him to at his own time to go out and discover and locate and track them down. So this, this 26th I'm not aware of because it would've been, we don't have, I mean, how can we identify the suspect when we don't even know what he looks like. So that doesn't ring true from my perspective.

Well, it's headed XXXX in the same hand?---Yes, that's correct, yes.

20 So is it possible there was earlier surveillance?---Possible there was and I believe there was an earlier surveillance.

Because you don't doubt that this is surveillance of Mr XXXX?---No, I don't doubt it, no.

So that at least by the 26 of September it was occurring?---Yes.

And it was put to you yesterday that it started on the 19 of October, 2007 but that's not correct on this note is it?---No, it's not correct, no.

30 No. It started at least by the 26 September and you say maybe earlier because by then he'd been identified?---That's correct.

And it's difficult to follow someone if you don't know who you're following?---What they look like, yes.

Yes. Makes it tricky?---Mmm.

40 So that the best we can do on the notes that we have produced by IPP is that by the 26 September, 2007 at 2.45 surveillance was started?---Yes.

Thank you. Now, in relation to the termination of the surveillance of Mr XXXX there was, you were just asked some questions from Mr Blake about a conversation with Mr Romano about extending it for a week?---That's correct.

To the best of your recollection who decided that it should be extended by a week?---Mr Romano.

In terms of the relationship of IPP to the client do you have the capacity to continue surveillance after the client directs it cease?---No, we have a strict policy against that, IPP's policies.

You just have to take your hand away from the front of your face - - -?

---Sorry.

10 - - - it's quite hard to understand?---Okay. We have strict policy and procedures and one of them is where the client's wanted to terminate, they terminate, if they want to extend, they want to continue. We realise that if we continue we're not going to get paid so why would we continue and why would we continue when we weren't getting any results over an extended period of time.

And so is it your evidence that when you were given the direction to cease that's what occurred?---Yes.

20 And at that stage you would have conveyed that to Mr Travini?---Yes, to Mr Travini, yes.

Now, could the witness be shown Exhibit 21 but could I just look at it quickly beforehand because I think the pages might have got out of order because mine have. If I could show you these notes that we were looking at yesterday, that's Exhibit 21, Commissioner, and take you to the second page. You see the handwriting, what I think's a 4/9/08 RTM met Mayor and P Romano, will send letter et cetera?---Yes.

You say that's not your handwriting?---That's correct.

30 And I think your evidence was that you would have dictated that over the phone to someone at the office?---I would have, I would have, thank you, I've had a chance to look at that document yesterday.

Right?---I have not spoken to anybody but I, I would have spoken to Andrew O'Reilly who would have been in my office at the time and he would have taken those notes down from the phone.

40 So are you able to identify positively that as far as you know that's Mr O'Reilly's handwriting?---It is Mr O'Reilly's handwriting.

Thank you?---And if I may clarify something else, please, the need to estimate, our company's policy is we can't enter a job up unless we just give it a figure, we can't, like the computers won't accept it so our standard information is oh, probably 15 to 2,000 just so we can enter it in the database.

And so that wouldn't be a realistic assessment - - -?---No, not at all.

- - - of what was to happen?---No, not at all.

Thank you.

ASSISTANT COMMISSIONER: Is Mr Mailey going to be excused after this?

MS RONALDS: No, Mr Mailey has to return next week in relation to certain surveillance activities of the depot staff.

10

ASSISTANT COMMISSIONER: Yes but not in relation to this issue again?

MS RONALDS: No, but if there was anything left over we could return when he returns if you know what I mean.

ASSISTANT COMMISSIONER: Yes, all right, thanks.

MS RONALDS: There are some, obviously some further inquiries that have to be made of IPP in light of the evidence yesterday about the final reports not being available et cetera and they are matters the investigators will discuss with Mr Mailey when he leaves the witness box.

20

ASSISTANT COMMISSIONER: I would just like to ask you one thing, Mr Mailey. You've been asked several questions this morning about whether Mr Romano was concerned about the length of the surveillance. You recall you gave evidence before the Commission on 4 February?---Yes.

30

And I'm referring to pages 21 and 22 of that transcript. At that time you said that on several occasions Mr Travini reported back to you that, what's going on, there's nothing happening with this fellow, do you recall that?---I do.

And you said that on at least three or four occasions you conveyed this to Mr Romano and said nothing's happening, do you want us to continue and that Mr Romano said no, I believe he's the suspect, just continue with the surveillance?---That's correct.

40

So on several occasions you indicated to him nothing seemed to be happening?---Yes, Miss Commissioner.

And he wanted you to continue with the surveillance?---That's correct.

Yes, thank you. Now, you may be stood down at this time. You will have to come back and give evidence on another topic - - -?---Ah hmm.

- - - but you're free to go at this stage?---Thank you, Miss Commissioner.

Thank you.

THE WITNESS STOOD DOWN

[11.13am]

MS RONALDS: If I could just ask him to wait outside for a moment, one of the investigators will come and speak to him about, I think Tim's going to, Mr Fox is going to meet him outside. I call David Travini.

10

ASSISTANT COMMISSIONER: Yes, Mr Travini, please take a seat. You've been called to provide evidence to this inquiry and you are required to answer all of the questions asked of you. You can seek a declaration under section 38 of our Act that, the effect of which will be nothing you say here could be used against you in future proceedings. Do you wish to seek a declaration under that section?

MR TRAVINI: Yes, Commissioner.

20

ASSISTANT 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 today's hearing are to be regarding as having been given or produced on objection and there is no need for the witness to make objection in respect of any particular answer given or document or thing produced.

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 TODAY'S HEARING ARE TO BE REGARDING AS HAVING BEEN GIVEN OR PRODUCED ON OBJECTION AND THERE IS NO NEED FOR THE WITNESS TO MAKE OBJECTION IN RESPECT OF ANY PARTICULAR ANSWER GIVEN OR DOCUMENT OR THING PRODUCED.

40

ASSISTANT COMMISSIONER: Mr Travini, you're required to take an oath on the bible or make an affirmation to tell the truth.

MR TRAVINI: Yes.

ASSISTANT COMMISSIONER: Do you have a preference?

MR TRAVINI: The bible will be fine.

ASSISTANT COMMISSIONER: Thank you.

MS RONALDS: Mr Travini, my name's Ronalds, I'm counsel assisting in this inquiry and I'll be asking you a few questions. Can you tell the Commission your full name?---David Travini.

Your business address?---70 Roseby Street, Drummoyne.

10 And your occupation?---Private inquiry agent.

You don't have to worry about leaning into the mike, it'll fix you up and if it doesn't the charming gentleman over there will help?---Okay.

Just sit so you're comfortable. Now, in relation to a surveillance of a Mr YYYY XXXX, do you recall that incident?---I do.

20 Now, I'll just explain to you that there are certain suppression orders or non-publication orders in relation to the name of Mr XXXX, his wife and the name of the employer but we can use them in the hearing and they're just expunged from the transcript, just so you don't - - -?---I understand.

In case you heard there were some non-publication orders, that's how it works so you just use the name normally in answering questions. All right? ---Okay.

Thank you. I'm sorry, I'm just trying to find the document. Now, you know a person called Richard Mailey?---I do.

30 And you met him, physically met him, I think, in October 2007? ---Thereabouts, yes.

And prior to that you'd not met him?---No.

But as I understand it he asked you to take over the surveillance of Mr XXXX?---That's correct.

And that's the first time you'd taken on some work from IPP, was it?---It is.

40 And you had a meeting with him?---I did.

And do you recall what was discussed at that meeting?---Basically to take over the surveillance investigation on YYYY XXXX.

And do you recall what was, you were told to do in relation to that surveillance?---Well, initially just a saturation period of surveillance to document - - -

I'll stop you there, what does that mean?---Oh, just full surveillance, start early and finish late.

Right?---So it's a full day and, and more, surveillance on Mr XXXX, document and film any of his, Mr XXXX' meetings with any individuals and just basically identify his routine activities.

And were you given any special factors to look for?---Nothing special in that respect, no.

10

And at the conclusion of that meeting or sometime after that meeting on the same day I think you sent Mr Mailey an email and if the witness could be shown Exhibit 28, please?---Yeah.

You see that's an email from you?---That's correct.

And it sets out your charges?---Yes.

20

And in essence what you were offering to do, I provide a detailed report, photographic schedule and a copy of the video film in whatever format you require et cetera?---That's right.

And that's the normal way you operate?---Pretty much, yes, to get confirmation by the client on, on rates et cetera.

And you produce and we've seen some of the reports you produced which are typed?---Yes.

30

And are they typed by the field operative who actually undertakes the surveillance?---They, yes, they are.

It's a two way thing, you wait for me to finish and then I give you a go. Okay. And you'll see at the top of that email that Mr Mailey responds and at the first meeting had he said to you, it'll be necessary for you to meet someone in relation to the surveillance?---At the first meeting?

Yes, you and he had had?---No, I don't recall, but obviously it was shortly after that.

40

But you, then he says meeting Angel Place, building 123 Pitt Street at Bar Cupola et cetera?---Yes.

Now do you recall that meeting?---I do.

And do you recall how many people were present?---Three, including myself.

And who were those who were present?---Richard and someone I now know to be Pat, Pat Romano.

And was that person introduced to you at the time?---He would've been, yes.

And do you recall what you discussed?---Basically how I was going to undertake the investigation, pretty much with the use of two operatives and just provide some sort of level of comfort for the client, for Richard's client.

10

And you explained that to Mr Mailey and Mr Romano?---How I would go about it, yes.

And did Mr Romano ask you any questions about the process?---Not really. Nothing in depth.

Was there a discussion about how long you might be undertaking this project?---No, not that I remember.

20

Was there any discussion about costs?---No, no. No, costs weren't discussed at that point only in the, in the email with Richard and I.

Right. So there was no suggestion by Mr Mailey that there was a top, you know, once you hit, I don't know, \$20,000 or something you should tell him and - - -?---No, no. It'd be just, it'd be over within a week or two (not transcribable).

Right. We'll get to that in a moment. So is there anything else you recall at that meeting that you were, that was discussed?---Not really, no.

30

And so at that meeting was there any particular focus of the investigation told to you by Mr Mailey?---Not additional to what was in the brief.

Or anything said to you in particular by Mr Romano about the focus of the investigation?---No.

And those discussions concerned an, surveillance of only one person. Is that correct?---That's right.

40

There was no suggestion that you were also going to be putting other people under surveillance?---Not at that point that I can recall.

Only Mr XXXX?---That's right.

And Mr Mailey had provided you with some background information had he?---That's right.

And that you understood had been obtained from an earlier part of the surveillance?---Yes.

Did that include photos of Mr XXXX?---It may have. I don't remember.

And were you give a background sheet by Mr, Mr Mailey?---Yes.

And if the witness could be shown Exhibit 27. Is that, are you familiar with that document?---Yes.

10

You see on page 2 of that document on the fourth dot, it says, video of 35 stills required of him associating with any females. Do you see that?---Yes.

Does that remind of anything that was particular that was said to you about females?---Well, the whole investigation was, my understanding, in relation to someone that had been harassed at their place of employment by XXXX.

So that's what you were told by who, Mr Mailey?---Yes.

20

That you were investigating or putting this person under surveillance because they had harassed someone at work?---That's right.

And you understood that to be a female?---Yes.

Right. And if you've still got Exhibit 28 there, if you just turn over two pages, you'll see there's another email from you dated 25 October, at 1.48, that is after the meeting in the Bar Cupola. And you'll see that sets out certain matters?---That's 25 October?

30

Yes. Do you see that, that sets out certain matters about how you were intending to go about it, et cetera?---Yes.

Right. And that was from you and that set out your understanding of what the task was?---Correct.

Just bear with me one minute. If the witness could be shown Exhibit, and perhaps if I could just have a look at it first, Exhibit 29. I'll just open it at the relevant page because the pages aren't numbered, so it'll just save a bit of time if I could do that. Just on a tag on a page there, which is headed,
40 Background Searches, and you'll see, you'll see it's a slightly different version of the document I showed you a moment ago?--- Yes, it is.

And do you recall receiving this document?---I don't think so.

And you'll see, if I could ask you to turn to page 2 of it where it says on the third dot, YYYY ZZZZ XXXX was not sighted, incorrectly spelt but never mind, associating with any females or males at either prior, and either prior to or leaving for work or after work returning home?---I can see that, yes.

That's not a notation you made. Is that correct? That's not your document?---No.

And you don't recall seeing that document before?---No.

But you recall seeing the other version that I gave you?---That's right.

10 Thank you. Now your operatives undertook the surveillance and that occurred over a period?---That's correct.

And you dealt with Mr Romano, is that, oh, sorry, you didn't deal with Mr Romano apart from the time that you met him at Bar Cupola?---That's correct. Yes.

Is that the only contact you ever had with him?---Yes, it was.

So you reported to Mr Mailey?---Yes.

20 And you assumed he reported to Mr Romano?---Correct.

Or did he indicate to you that that's what was happening?---It wasn't exactly put in those terms.

But you assumed - - -?---Yes.

30 - - - that was what was happening. If the witness could be shown Exhibit 1. Do you see there's a handwritten note down the bottom, 8.11, instructions, inst client, meaning instructions to client to Dave, continue observations week days only, no weekends until advised. Do you see that?---Yes.

Do you recall receiving an instruction at some stage on or about 8 November?---Probably, yes.

That it was not to be, not, to no longer cover weekends?---Yeah, I think by that stage it's November, the investigation was winding down.

40 Right. And do you recall when it was that the, your activities ceased?---Not exactly without referring back to the files.

All right. And, well, if the witness could be shown Exhibit 7. And could I ask you to turn to the second page of Exhibit 7. So the first page is an email cover but not from you. You see the second page headed YYYY XXXX?---Yes.

Date 25, Tuesday, 27 November?---November, yes.

Yes. Now this is a report from your company?---Yes.

Signed by David?---Yes.

Assuming that's you?---Yes.

10 And it sets out what happened, investigator 1 arrived near the subject's residence at 5.45am. And it goes through, and then it says 10.30am, surveillance was discontinued as instructed. Now would that mean, does that mean that that's when you were instructed to do it or you'd previously been instructed?---Oh, to be honest, I don't recall. It would've been around that time, either way.

Mr Mailey was the only person authorised to give you that instruction?---Yes.

Is that correct as far as you were concerned?---Oh, yes.

20 And so that he would've instructed you either prior to around that time and that date, that is, the 10.30am on the 27 of November to cease?---Pretty much so, yeah.

To cease surveillance and so the subject exited his residence walking his dog and never returned home on the report so that it ceased at that point. Would that have been because someone would've telephoned someone. Do you recall?---If someone would've telephoned someone?

Yeah?---Regards to what, to terminate surveillance?

30 Yeah?---Well, I would've been instructed so, yeah, to terminate surveillance at 10.30.

And what's your practice when you're instructed to terminate?---There's always a time delay, it might be 15, 20 minutes before either I or one of my investigators, by the time you communicate to them (not transcribable) yeah, that's it. And when we speak to clients in insurance matters we'll update them and they may say terminate surveillance today so by the time you recontact your investigator depending on mobile coverage it's terminated, thereabouts from the time - - -

40 So it would (not transcribable) take a week to do that?---A week? No.

So it's a fairly instantaneous, as fast as possible transaction?---Pretty much, yes.

And the surveillance itself as I've indicated was included in a number of detailed reports and that's the common practice of your company?---Yeah, pretty much, however, there could've been another time where we were reinstructed because you try to conserve hours for the clients, it may be that

particular Tuesday we were instructed to terminate 10.30 so it's done, I don't remember if we did anymore work after that period.

Well, there's no records of anything?---Right. Well, that would've been it.

And in terms of costs you sent your bills to Mr Mailey at IPP?---Yes.

Not to Mr Romano?---No.

10 And you've indicated - and so at the end of this as and from the 27
November, 2007 did you ever give Mr Romano any sort of oral briefing?
---No.

So all your contact was only with Mr Mailey including once the process was concluded. Is that correct?---That's correct.

Now, was there anything you said to Mr Mailey during the course of the surveillance process which went over a few weeks about the process itself?
---Well, of course, you know, it was stretching for a number of weeks, there
20 was, well, YYYY XXXX was pretty, his activities were pretty normal, there
was basically nothing to report except the time he departed, walking dogs,
minor things like that.

And what was, did you suggest that it should be stopped?---I don't think I suggested it should be stopped but I'd report to, to Richard and does he want, you know, does the client want to continue and then I would be instructed some time after that to continue.

So you'd raise with him that nothing seemed to be happening of - - -?
30 ---Initially but after perhaps several weeks, yes.

And then he got back to you and said that the client wanted to continue?
---Yes.

So he didn't it on the same call but he would return to you later?---Basically that's how it worked, yeah.

And did you raise that with him on more than one occasion?---I can't recall, I may of. I mean, you know, IPP are getting daily reports, we investigators
40 know at any time an investigation like that can be terminated so, you know,
we just keep going and we discuss the investigation and the merits of same
and waiting for instructions to terminate.

And they, like you, could tell by looking at reports that nothing remarkable was happening?---In regards to my investigators?

Yeah?---Yes.

In relation to Mr XXXX?---Yes.

That there was no, nothing seen by what you understood you were meant to be looking for?---Pretty much.

I have nothing further at this stage.

ASSISTANT COMMISSIONER: Does anybody wish to cross-examine this witness? No.

10

MR BLAKE: Commissioner, I haven't seen a couple of the exhibits that were tendered this morning, if I could let you know after morning tea, I'd just like a chance to review.

ASSISTANT COMMISSIONER: Certainly.

MS RONALDS: Mr Travini, if we just have morning tea adjournment and you'll just have to wait for that period.

20 ASSISTANT COMMISSIONER: We'll adjourn for 15 minutes, thank you.

SHORT ADJOURNMENT [11.34am]

ASSISTANT COMMISSIONER: Nobody wants to ask him any questions?

MS RONALDS: No.

30 ASSISTANT COMMISSIONER: All right. Thank you for coming back. You're now excused, Mr Travini?---Thank you, Commissioner.

Thank you.

THE WITNESS EXCUSED [12.10pm]

MS RONALDS: I call Mr David Baird.

40

ASSISTANT COMMISSIONER: Are you Mr Baird?

MR BAIRD: Yes, I am.

ASSISTANT COMMISSIONER: Yes, Mr Baird, you've been called here to provide evidence to the inquiry. You are required to answer all of the questions asked of you, however, if you object to answering on any ground

of privilege you can seek a declaration under section 38 of the Act. Do you wish to seek such a declaration?

MR BAIRD: Commissioner, I've been advised by senior counsel that it is prudent to do so and I seek the declaration.

10 ASSISTANT COMMISSIONER: Thank you. 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 the witness during the course of today's hearing are to be regarded as having been given or produced on objection and there is no need for the witness to make objection in respect of any particular answer given or document or thing produced.

20 **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 THE WITNESS DURING THE COURSE OF TODAY'S HEARING ARE TO BE REGARDED AS HAVING BEEN GIVEN OR PRODUCED ON OBJECTION AND THERE IS NO NEED FOR THE WITNESS TO MAKE OBJECTION IN RESPECT OF ANY PARTICULAR ANSWER GIVEN OR DOCUMENT OR THING PRODUCED.**

ASSISTANT COMMISSIONER: Mr Baird, you're required to take an oath or make an affirmation.

30 MR BAIRD: An oath, Commissioner.

ASSISTANT COMMISSIONER: Yes. Could the witness be sworn, please.

ASSISTANT COMMISSIONER: Yes, Ms Ronalds.

MS RONALDS: Could you tell the Commission your full name?---David John Baird.

10 And your business address?---Care of HWL Ebsworth, George Street, Sydney, Australia Square, George Street, Sydney.

And you're a solicitor?---Yes.

And are you a partner at HWL Ebsworth?---I am.

And when did you, you changed firms during the course of 2009, is that correct?---That's correct.

20 Or moved firms or whatever the correct verb is?---Yes, I left the practice of Maddocks and I joined HWL Ebsworth on 1 June, 2009.

1 June?---1 June.

And how long were you with Maddocks?---I commenced on 1 June, 2002, 1 July, I beg your pardon, 1 July, 2002.

As a partner?---As a partner, as the founding partner.

30 And that's when it opened in Sydney?---Yes.

And prior to that where were you?---PricewaterhouseCoopers Legal from approximately, I think it was 1999 to 2002.

And Burwood Council is or was a client of yours?---Is - - -

Is?--- - - - a client of the firm's yes.

40 Right. And when did you first start doing any legal work for Burwood Council?---(NO AUDIBLE REPLY)

Roughly?---Roughly, I think I would trace it back to probably around about 1996, '95, '96 when I was at Dunhill Madden Butler which became PricewaterhouseCoopers Legal we were first instructed by Burwood Council.

And when did you meet, first meet Pat Romano?---It would have been at the beginning of his general manager appointment, general manger's

appointment and as best as I can recall that was, he indicated in evidence I think it was 2002, 2003 when he was appointed.

September 2002?---Yes.

Did you play any role in interviewing or recruitment of Mr Romano?---Not at all.

10 And did you provide any role in the preparation and drafting of his initial employment contract?---I don't believe I did, no. No.

Or any subsequent contracts?---My firm, I, I can't recall having a personal involvement, but my firm may have advised on an aspect of the employment contract acting for Council, acting for Burwood Council and, and I'm just trying to recall, those matters - - -

But not yourself?---Not myself. Usually that went to the employment part though.

20 Right. A matter for Mr Gardner?---Darren Gardner, yes.

So that you wouldn't of had anything to do with setting his terms and conditions of employment in any way?---Not at all. No.

And you were familiar with them though?---Reasonably familiar.

30 And from time to time you gave him advice about certain terms of his contract?---Either Mr Gardner and I advised or someone from Mr Gardner's group probably advised, because I didn't really consider myself an employment expert, employment contract expert.

40 And Mr Romano has described you as a planning lawyer. Is that a correct appellation?---Well, I don't think it is because it's just one aspect of the area that I practice in. I, I did spend probably 25 years in Land and Environment Court as a planning lawyer and specialised in planning law. But in recent times I have moved more towards what I call governance in major project work, which covers a whole range of issues of, involving professional practice including local government, itself, the, the statutory provisions and all the statutory, the (not transcribable) legislation around local government, governance being practice procedures, code of conduct, ICAC, ombudsman issues. All those sort of matters, so - - -

Now in, sorry - - -?---I'm not just a planning lawyer.

And I wasn't meaning anything (not transcribable) to any planning lawyer who is now offended. But so a more strategic, broader approach. Is that correct?---Yes. Yes.

And you were, I think, acting for the Council in relation to this investigation. Is that correct? To this Commission's investigation into these allegations?---That is correct. Yes.

So there were certain matters published in the Sydney Morning Herald in April last year. Do you recall that?---Yes, vaguely, yes.

And you were acting for the Council at that stage?---Acting for the Council, yes.

10

And you continued to act for the Council in relation to this Commission's investigation when you moved from Maddocks to Ebsworth, if I could call it that?---That's correct. Yes.

So you took that matter with you?---Well, the client instructed Maddocks to transfer the matter.

Right. And you are no longer however, the instructing solicitor in relation to this matter. Is that correct?---That is correct.

20

And you ceased on or about 17 December, 2009. Is that correct?---On or about in, yes, that's correct.

We'll return to the circumstances of that?---Yes.

I'm just trying to get the chronology right?---Yes. Yes.

And so that you now no longer play an active role in the representation of the Council before this inquiry?---That is true, but there have been certain matters where I have assisted in terms of factual identification of matters and to provide some background. And that's been with, as I understand, with Mr Leggitt's involvement and - - -

30

And Mr Leggitt appears as senior counsel for the Council, for the Council in this investigation?---Yes. Yes.

40

But you've provided some historical context or steps that were taken or advice that you gave in relation to certain matters?---Yes. I have been the, well what is called the relationship partner for Burwood Council. Well, that's the way we describe the relationship, being the client and, and the firm and it was my responsibility to co-ordinate all matters relating to Burwood within the firm.

But you were also actively involved in representation in terms of the Council and this investigation before 17 or about 17 December, 2009? ---Yes, yes, that is correct. Yes.

But that's not your role now?---Not, not now, no.

And you've been present on and off during the inquiry for the last few?
---Yes, yes.

So you've heard most of the evidence including this morning's. Is that correct?---Most of it. That's correct, yes.

10 And by December 2009 you described Mr Romano as a "good friend" when do you say that the professional relationship became a personal relationship as well?---I can't recall the exact date but I would have thought that by around 2005, 2006 because of our close working relationship we, we had formed a friendship by around about that date, that time.

It appears when one looks at the Maddocks bills and Mr Romano's parking, for example, that he spent a lot of time at Maddocks?---He certainly did.

20 And that was mainly because of the library project was it or, it's got various names but - - -?---Combination of matters. We, we often had legal, we called them I think legal status committee meetings regularly at either Burwood Council or at, at the firm, Maddocks or currently HWL and that would often involve a review, it was all the current legal matters that we were conducting on behalf of Council and we would arrange for use of the boardroom and the facilities and because we often had members of the executive team involved they would come in to the firm as well and these were both legal and strategic reviews of various matters. Often we would have ten or eleven matters to review. The main matters, you referred to the library project, that was a significant brief, there were two or three other major matters that we had which may or may not be relevant to the Commission but yes, we, we had Mr Romano as a, as a regular guest.

30 Right. And you and he socialised as well during working hours, that is, you went to lunch on occasions with each other?---Yes, indeed, but often because we would have a morning meeting and then we'd go and have a sandwich downstairs at the, at the café downstairs which has been referred to as Bar Cupola or Cupola.

Depends what part of Italy?---Yeah, indeed. And that was a very convenient location just to grab a quick sandwich or a coffee.

40 And you had some slightly more extravagant lunches than just, just a sandwich at Bar Cupola. Would you agree?---Extravagant is an interesting word that you use but we, we went to - - -

Well, costly?---Well, we went to restaurants and that is true and I would hope that it's not taken out of context or given a colour that would be unfortunate because I, I, I do remember there were a number of restaurant engagements or restaurant occasions but I - and you suggested that there

were three in your opening, there may be more, there may have been a lot more, I, I didn't count them over the years and I often paid.

10 Were they part of your professional relationship or your personal relationship?---I would say it was a professional courtesy to extend to the most senior executive of the Council that I would often say let's go out for lunch, we probably might've met up once a month, I don't recall the actual frequency, it might've been less or more than that but I would certainly suggest that it was an acknowledgement of the close working relationship, professional relationship that we had that we could discuss things in a slightly more relaxed environment. And for what it's worth there was - I didn't believe there was any excessive indulgences in terms of expensive bottles of wine and the like and we were modest eaters.

But alcohol wasn't assumed?---I think we've - - -

(not transcribable)?---No, no, no, no, they weren't entirely dry, some were, some were but they weren't, you know, we'd have a glass of wine and - - -

20 And do they count as billable hours in terms of the way the firm billed?
---That I, if, if we were discussing Burwood matters perhaps there may have been a component but I just can't recall.

So you may have paid for lunch but you may have billed for some, some or all of the time spent at the lunch as well?---That I'd have to check but if, if - I, I, I don't recall. I'd have to check.

30 Do you have a practice that you would normally follow in that regard?---If, well, my practice was if, if work was discussed generally it was that time had to be accounted for and these were, I would say with the exception of - sometimes there were dinners, not just lunch because sometimes after a Council meeting I think we might've had the occasional dinner, I don't think they were, would've been billed, the professional attendance would've been billed.

At the Council?---At the Council, yes.

40 And it appears and correct me if I'm wrong that you spent quite a significant time on the premises at Burwood Council itself?---Yes, very, a lot of time, yes.

And so that on some occasions, and I'll return to that shortly but on some occasions you were involved in what seemed to be informal unplanned discussions but which were important discussions because you happened to be there?---Yeah, well, it probably reflects the quite, could use the word dynamite management style of Mr Romano that when you were there he, he would grab you and say, I want to talk about this, let's talk about it now and he'd call in the people that were relevant and would say, The Mayor's in,

let's go and talk to him about that issue that you were looking for and, you know, you might conservatively estimate two hours of time we went out there but it was not unusual for me to be waylaid and dragged into a number of meetings and I'd spend four or five hours at Burwood.

10 Was it your understanding that you were the principal legal advisor to Burwood Council?---There was, not so much a formal label but I would've, we'd certainly agree that I was the, probably the most - I, I, I would describe it as their lead lawyer in that the firm that I was with probably received the lion's share of the engagements. And in terms of the major matters, matters of great importance I think that we had the lion's share of those so that would be a fair way to put it.

Did you have anything to do with setting up a panel of lawyers?---I don't believe so, no.

20 And were you on a panel of lawyers as far as you knew?---We were appointed after the tender process to Burwood and indeed all our appointments they're usually by panel appointment.

And did you understand though that despite the existence of the panel you were given still the lion's share of the work?---Well, my understanding was that we were receiving a lot of instructions but I, I understood that other firms were involved and were doing work for Burwood. I never really had an interest any maintaining the fact that we were maintaining our, our share and make sure the work was done properly and make sure the client was happy at which my passion.

30 And I'd suggest to you that in your endeavour to keep the client happy on occasion you gave Mr Romano the sort of advice you knew he wanted? ---No, that's not true. I, I, I would have to disagree. There are a number of occasions where I had quite, I think, robust is a word that's been used, robust discussions with Mr Romano and there were many occasions where we would debate the issue, he wanted, if he wanted an outcome that was inconsistent with a proper analysis or application of the law I would not allow for his predetermined objective to become the outcome of the advice.

40 Well, we'll return to one specifically in a moment and we'll perhaps analyse that a little bit?---Ah hmm.

You've been present and you've heard some evidence about the surveillance of a person called Mr YYYY XXXX?---I've heard about this, yes.

Prior to Monday morning at 10.00am and thereafter had you ever had any involvement or any discussion with Mr Romano about Mr YYYY XXXX?-- -I never knew the name, the name had never been identified and as far as I can recall even the discussion I had with him on the 17 December and I

believe that he referred to that person but the name had not been disclosed to me.

From the time of September, October 2007 did Mr Romano discuss with you any aspects of his personal life in terms of a person that you could now identify as Mr XXXX. Do you know what I mean?---What was the date?

September, October 2007?---I don't recall.

10 During that time, say from September 2007 to December 2007 you were in regular contact with Mr Romano?---Yes.

He was at work on a regular basis as far as you knew?---Yes, yes. I've been trying to remember whether there were any oblique references to problems with the family or things like that and I just can't recall any great emphasis on problems. The problems that he referred, the family problems that he referred to me principally related to the issues where he indicated that, that he'd received these threats and that's, that's, those were the family problems, yes.

20

And in terms of seeing on a, you saw him on regular basis during September to December 2007?---Yes, I believe so.

And it seems again, looking at the Maddocks bills and the parking et cetera that there was regular contact and visits between him and yourself both at Maddocks and at the Council?---Yes. I should state that you could not always correlate. If, if, if you've correlated the parking attendants at, not Skygarden, Angel Place which was the Maddocks building and if, if, if the correlation is drawn between the parking paid for by Maddocks and
30 Mr Romano's attendance at the building and therefore he attended at Maddocks that was not always the indication, not, not always the case because sometimes he - - -

30

If I could save you trouble about that?---Mmm.

What we've gone on is Mr Romano's claims for parking where he has handwritten Maddocks?---Yes, but sometimes he would ring and say can I park in the building and I would say, yeah, that's fine.

40 But these are claims for parking reimbursement?---But, where the firm paid. I don't believe that, the, the practice at Maddocks was we provided free parking for all clients.

Well, there are significant claims of parking by Mr Romano, claims to Burwood Council on his expenses for parking that he says at Maddocks. That doesn't now make any sense to me?---He may have, well, he may have paid independently and I would have no knowledge of that but if he wanted a parking voucher we would pay for the parking - - -

Right?--- - - - and he could receive free parking and that was our, a courtesy extended to all significant clients of the firm.

So you'd be surprised that there's a quantum of parking said to be at Maddocks?---Well, so far nothing, nothing would surprise me.

10 If you would just answer the question, Mr Baird, and you can editorialise away from the witness box if I could ask you to do that please?---Mmm. Could you repeat the question, please.

So you'd be surprised that there are claims for, and I've forgotten the quantum but I'm sure someone will tell me, for parking at, by Mr Romano which are reimbursed claims to Burwood Council for parking and they, there's a large number that consistently have written next to them Maddocks?---If it, it's hard to answer that because - - -

20 All right. Don't, it doesn't, but, but Maddocks provided Mr Romano free parking?---Free, generally when he wanted it he got free parking, yes.

And you knew that and he knew that?---Yes.

And you and he had discussed that as one of the services Maddocks provided?---To all our major clients, yes, not just Mr Romano.

No, no, I appreciate that?---Mmm.

30 Now in terms of the advice you gave about the home security system? ---Mmm.

And, and you're aware what I'm speaking about?---Yes.

It started with you being, could the witness be shown Exhibit 8, please?---I have a copy of the advices in front of me.

Well, I'm not going to the advice so if could just - - -?---Oh, well - - -

- - - bear with me and go to the exhibit as I show it to you - - -?---Ah hmm.

40 - - - if that's all right, if we can follow the conventional arrangement it might be suitable?---No, I, I, I accept that.

You'll see this is an email sent to a number of people including yourself dated 24 October, 2007?---Yes.

And attached to it is a document by Mr Bob Howe?---Yes.

Self-described as the director of Strategic Consulting Solutions. Now, did you know Mr Howe?---I was introduced to Mr Howe. When I can't recall but I, yes, I did know him.

Now, is this the first time you'd heard about this issue, that is security coverage for the Mayor and the General Manager, for their homes?---(NO AUDIBLE REPLY)

10 You see, you see the email says, "Upon receiving advice from Maddocks I'll action the implementation of the security systems," and I don't know if you were here when I was suggesting to Mr Romano that he'd already made up his mind what to do and had told you what he wanted?---Yeah, no, I, I remember that but I can't place an exact date on the first series of discussions that I had with Mr Romano - - -

20 Right?--- - - - where he had indicated that he, he and the Mayor had been receiving threats and other issues relating to his house and the Mayor's house so if it's consistent with the timeline I would have thought that those discussions had first started prior to 24 October because he had first raised it with me and the sequence of events would have been the initial discussion with myself and I think there were two or three discussions where he was outlining the nature of the problem and then I wasn't, so that this email would have been consistent with me probably having received instructions to consider the matter and to start preparing an advice.

30 And perhaps if we go to the advice that may assist us with the chronology. If the witness could be shown Exhibit 10?---Could I just make an observation which I should have done earlier, Commissioner, and that is that I know that it's probably not technically required but I have sought and asked for Mr Leggitt to confirm that I can, from the client's perspective, speak about these matters which are confidential to Burwood Council and as I understand it confidentiality and privilege is waived from the client's perspective but I'm here to assist you but I just wanted, as a courtesy to the client, that that be noted because we are going to discuss confidential matters.

40 I assume you're familiar with the contents of the Commission's Act, Mr Baird?---I, I know it's not, I know you can ask but I'm just saying that I don't want people to feel that I haven't raised it with the client, anyhow, back to the exhibit, yes I have that.

You have Exhibit 10?---Yes.

Now, if I could take you to page 2 of Exhibit 10?---Page 2.

You'll see under background it sets out a number of factual matters?---Yes, yes.

Well, what were purported to be factual matters?---Yes.

Now, can you recall how these came to be, appear here, that is, was that information given directly to you from Mr Romano?---Yes.

And you reduced that to writing?---Yes, that's, that, yes.

10 Perhaps if I could go back a step. You've provided draft advice and that seems to be practice of yours to the client?---Yes, it was also Mr Romano's instruction to provide drafts for approval in terms of factual accuracy.

Right. So it would be intended, would it not, when you'd sent this email that the client, that is Mr Romano in this instance, would read it and if there was anything factually inaccurate it - - -?---To immediately correct the record, yes.

If I finish the question - - -?---I beg your pardon.

20 - - - and then you answer?---I'm sorry, I'm sorry.

It works better that way?---Okay.

30 And that's your intention when you provide the advice because you then provide a week later a final advice and you would do that after you had confirmed, in this instance with the client Mr Romano, that it was correct to proceed on the basis that the material included was correct?---Yes. The, the practice was generally as, as you've outlined and the objective was to have the matters of factual instruction thoroughly checked and approved as accurate.

Now I think you were present when Mr Romano gave some evidence on Monday?---Yes.

And when I took him through these and, a short version so we don't have to go through it all, was that some were completely false and some were exaggerated?---Yes.

40 I don't want to misrepresent his evidence?---I know, I know what you're saying.

Now would it be that Monday morning or Monday afternoon, I can remember what it was, Monday sometime, would that be the first time that you'd become aware that the material you'd set out in paragraphs 4 to 8, for example, 4 to 8, were not correct?---I think a more accurate answer would be from about 17 December when Mr Romano made those statements to me, that was when I became on notice that those matters were not correct but as supplemented by his evidence on this Monday, yes, that is true.

And it's correct is it not that the quality of your advice is dependant on the quality of your instructions?---Totally. We're, we're creatures of instructions and if we're instructed in a certain manner, we can only respond to those facts that are put before us.

10 And would it be correct by November, 2007, I think you've said that it was 2005, so bar 2007, you had a professional and a personal relationship with Mr Romano?---Yes, but not to get it out of context. I think we had an, I've described the level of social interaction in the statement that I made and it wasn't as though we were living in each others houses or anything like that. There were occasional social interactions.

No, I'm not suggesting you were best buddies, but you were friends as well as work colleagues?---That's a fair description.

20 So would it be true that with those two components to your relationship that if Mr Romano was relating to you personal matters you would have no occasion to query the quality of the instructions?---I think I can answer that if I - - -

Do you understand what I mean?---Yes. I trusted him implicitly and I trusted in his instructions that they were accurate and that he was telling me the truth. I've, it's also fair to say that when he told me of these attacks and these threats that I was sympathetic, yes.

And would you therefore have put your critical judgement aside?---Not at all. Not at all.

30 You didn't ever pursue with him did you, why for example there were no photographs of the eggs that were purportedly thrown at the house? Did you ask him if there was a photograph?---No. I didn't, I don't recall a specific question. I did tell him to contact the police immediately and to pursue it through the police. And I suggested that if we were going to, when he referred to getting an investigator, I, my, my focus was, if you're going to get an investigator, try and get the number plates of any suspicious cars that might be following you or parked near your residence. And if there are phone records that, when you receive these threatening phone calls, if you can get those numbers, then maybe we can approach through the investigator some sort of identification of the phone numbers. That's what we discussed. I didn't, I don't recall asking for photographs or any other documentary evidence.

40 Well, in paragraph numbered 5 you say you've received hand delivered packages to your home which caused your family the most distress. Didn't you ask him for the packages or to view them?---I can't recall. I, I don't, I don't recall asking him and, I don't recall. I don't remember.

Wouldn't it be usual if you saw a client had been subjected to some form of harassment that you'd expect to see if there was physical evidence, some physical evidence?---Well, it may in the circumstances, but I don't recall asking him about, to actually see the, the package. No, I don't recall.

10 And in terms of the emails referred to in paragraph 4. Did you ever view any emails which were purported to be sent to him from an unknown source?---I don't, he may have shown me an email. I can't recall. I think he probably, he used to show me things on his Blackberry all the time. And he may have shown me an email. But the, he described to me the, the people were ringing up all the time, there was heavy breathing on the phone, people were making comments which were insulting to both him and his wife. That sort of thing, but by his description.

Well, we're just focusing on the emails?---Yes, I - - -

If I could ask you to focus on that for the moment, Mr Baird?---I can't recall seeing a specific email, but he may have shown me an email.

20 And do you now understand from his evidence that the only emails that were sent were ones that were invented by him?---Yes, I, I understand that.

And were sent from an email address he invented variously as (not transcribable) et cetera?---I did probably trust in his instructions that he was telling me the truth and that these were matters that he could verify if required.

But you didn't seek verification?---No, I did not.

30 And would that be because the relationship being both personal and professional meant that the trust you had in his instructions was such that you didn't feel you needed to take that extra step?---No. There was no, the rigour of the analysis was not in my view coloured by any friendship. It was just the trust in the professional relationship and that I regarded him as a person with total integrity and that he was telling me the truth and I wouldn't need to second guess him on any assurance that he gave me. That was probably the way I'd put it.

40 And had you never had occasions prior to this, November, 2007, where you had cause to question his honesty?---Prior to which date?

When you (not transcribable) advice in November, 2007?---I don't think I have ever questioned his, his honesty or integrity. And he has and had constantly assured me, even when this Commission became involved and the other allegations became apparent, he constantly assured me that he was innocent. That he would be vindicated. And he said, I have committed no corrupt act. The worst that they will ever find is that I'm a sloppy manager. I remember him saying that over and over again. And I accepted him on his

word and my assurance to him was, well if that's the case, we will fight this, these allegations, we will defend you, that is our job to defend Burwood Council and you are the General Manager. So that was the, that was the relationship. But I, I accepted his assurances as to integrity and honesty. I can't recall, I can't recall any basis to suggest otherwise other than after 17 December.

10 And in terms of, so we've done the eggs, now you have engaged a private investigator to conduct an investigation and issue a report to yourself. At any stage did you seek from Mr Romano either while it was in draft or even sometime later that you be given a copy of the report?---I can't recall that, no.

And do you now understand that in fact there was no such report?---I know that to be the case now and once again, I, I accepted his assurance as to the legitimacy of his instruction and the fact that there had been a report.

20 But you didn't ask for it at the time, oh, can I have a look at it?---I, I don't, I can't remember, but I probably did not.

Wouldn't conclusions of any investigator about the harassment be a critical factor your advice about whether the Council should be spending its money on protecting the General Manager and the Mayor?---Indeed. And that probably led to another line of discussion that I had with him, which took over, as I recall, the, my, my assessment of this matter. And that was that we, well, I can't say, he suggested to me quite strongly that he had very strong suspicions that it was related to a certain person. I've referred to that person in my statement. I don't want to, unless you want to direct me otherwise, to say the name, because obviously - - -

30 Well, your statement's going to be tendered shortly so - - -?---Okay. Well, he, he, well, if I can go back a step. Around about this time the Council had a number of significant commercial transactions and disputes. One was with a developer named VVVVV WWWW. And Mr WWWW and Mr Romano did not get on.

40 All right. I'll just stop you there. Commissioner, I think in relation to the existing non-publications orders that it's appropriate that that person's name be added to the non-publication order and perhaps to assist Mr Baird could - it's WWWW as I understand it?---I think so, yes. I'm being assisted by - VVVVVV.

It's best if we don't take calls from the back of the room?
---I didn't but I noticed someone was nodding when I said it, I'm just alerting (not transcribable).

Surname?---No, VVVVV I believe is his first name.

I see, sorry?---WWWW.

So it's UUUUU is the first name?---Yes.

WWWW. If I could seek a non-publication order.

ASSISTANT COMMISSIONER: Yes. Well, in respect of that name I direct that it shouldn't be published nor should any information which might enable that person to be identified or located.

10

**NON-PUBLICATION ORDER - IN RESPECT OF MR VVVVV
WWWW I DIRECT THAT IT SHOULDN'T BE PUBLISHED NOR
SHOULD ANY INFORMATION WHICH MIGHT ENABLE THAT
PERSON TO BE IDENTIFIED OR LOCATED.**

MS RONALDS: Is that convenient, did that resolve what I perceive to be a problem for you?---Yes, thank you. Thank you, thank you. So - - -

20

So did Mr Romano name that person to you?---Yes. And we had a discussion because he was suggesting to me that the threats were coming from a source associated with that gentleman if not from that gentleman and my view was that that was something of great concern and, and as I said we should, I, I, I already advised him to talk to the police and I think we were talking about referring it to the ICAC and basically to take the usual sort of precautionary action that was generally advised in a circumstance. But he referred me to - I seem to recall a conversation where he stated that, I, I, I think I've got information which might lead to VVVVV and see if I think there's someone involved in this who's actually making the threats and I think this person, and it was a name, it was a name like Wong, Mr Wong or something like that, I don't recall the exact name. But this fellow I believe he's associated with WWWW and I believe he's the one who's making the phone threats to me. I said, How do you know this?

30

Can I just stop you there? You're not getting confused are you between the texts that came some time later?---I don't - - -

You are reflecting a conversation in October, November 2007 in your current evidence?---The, it's hard - - -

40

That's all right?---No, no, I understand what you're saying but - - -

I'm drowning in paper so I may have - - -?---Well, let me go back and just say that I, I am absolutely certain that the discussion centred around the potential involvement of Mr WWWW.

And that was the 2007?---2007.

I think you're right, sorry, I think I was wrong there?---Well, you've thrown me now but I think that was my recollection and I, I don't believe - - -

No, I think you're right, sorry, proceed?---Yeah.

10 So that was one person who was nominated. Did he never nominate any other person?---There were, well, we had a discussion as to who these people might be because my, my reaction to him was that if it were to be a reimbursable and expense paid by Burwood Council there had to be a reasonable connection between the source of the threat and a nexus between the threat and the person making the threat having business with Burwood or in some way connected with the business of Burwood Council and therefore his position was General Manager and when he referred to the Mayor's exposure to these threats the same principle applies. That was the principle at law that I was trying to convey to him that needed to be satisfied before there could be a proper reimbursement of funds by the Council for these, these types of expenses. So when we were talking about or when he raised the issue that I'm, I'm very certain that it's associated with Mr
20 WWW or there could be a, there are a few rate payers who were dissatisfied with Mr Romano who wrote letters from time to time he pointed, I think, to those sort of - those were the class of people he regarded as the suspects for this activity, for these threats. I said, Well, if we can establish that nexus then you get over the threshold problem.

30 And you said that to him orally?---I think we had many, many discussions about this because it built over a time and also he wanted the draft advice done urgently and had a number of lawyers engaged on it, Mr Neil and Ms Kelly and also Darren Gardner to look at the occupational health and safety issue because I, I wasn't certain in my own mind whether the Mayor was covered under legislation.

Because I'd have to say, with due respect, that the parity with which you just described the nexus is not set out in the written advice at all in the way that you've just described?---That's true, that's why, well, that is true but it was crystallised over a period, probably when the second draft was being prepared was that there were a number of steps in this work in progress.

40 But even when we looked at the final iteration, the clarity with which you just described that matter is, I would say with respect, not addressed?---I - - -

It is referred to but not at any length in the way that you've just described it? ---That is, well, that, that may be a fair comment but it is referred to and there's also a whole, there, there, in the final advice, page 2 to 4.7 I think we tried to cover the nexus point but - - -

Well, you say this advice is predicated on the assumption that the harassment stems from your respective high profile positions at Council?
---Yes, yes.

You don't spell out in writing that there needed to be a nexus for it to be, I'm sorry, I don't think this is your term, but a justifiable expense?---Yes.

10 And you're, you're aware that now, I don't know if you were aware at the time, but the executive, some members of the executive, considered the advice weak or thin?---Yes, and what happened if, do, do you want me to tell - - -

We'll get to that in a moment?---Yeah, no, I, I found out, yeah, I was aware of the criticism but I, I wasn't being precious about it because the advice was a draft. It had been put together very, very quickly and it was something that I was very happy to perfect and, and hopefully get to a product which was final.

20 But in terms of the nexus point that you've just articulated as an innocent bystander reader one would be, well, I was surprised, for example, that there was no such articulation. So I'm just trying to explore with you is it your evidence that you articulated that point, which was the critical factor, that point was articulated to Mr Romano orally?---Yes, and also later on to the Mayor.

Well, we'll return to, we'll go to the Mayor in a moment?---Yes.

So I'm just looking at the background at the moment?---Yes.

30 If I could ask you then so in terms of paragraphs 4 to 10 you now understand that they are, do not represent an actual, accurate factual position as at November 2007?---That is correct. I was deceived.

40 And if I could ask you to go to paragraph 18. You advise that considering the possible risks faced by the Mayor from this unknown source, now nowhere in the advice do I find an articulation of what you understood the threats to be the Mayor, the threats to the Mayor to be, sorry. There's no factual assertions in relation to the Mayor similar to those that, which we've just looked at for Mr Romano, even leaving the falsity aside, there's no, nothing, there's no factual assertions in relation to the Mayor at all, would you agree?---(NO AUDIBLE REPLY)

Just concentrating on the draft at the moment and I don't think that the, I don't think that the final assists either but there's nowhere, is there, an articulation of what you understood when you were drafting the advice or you and Mr Gardner and your assistants understood were the threats or the harassment to the Mayor?---You, you may be correct. I was assured, I think

it goes back to the old instructions from Mr Romano that the Mayor had received similar threats.

Wouldn't it be your practice to set out your instructions - - -?---Yes, that's what - - -

- - - from the time before?---Yes, that's why it was sent as a draft for Mr Romano to check.

10 But you're drafting the advice, you're the one with the instructions?---No, the instructions, the background or the instructions.

But there's nothing about threats to the Mayor?---No, that, that probably is correct but when I went to, when I went to see Mr Romano and saw the Mayor the types of threats that he was receiving were, were discussed as well so it, you're - - -

20 Again, for the innocent bystander reader, one is in the dark about what may have been purported to have happened to the Mayor in October, November 2007 when one peruses this advice, would you agree?---That, that's probably a fair comment.

And you don't have any other record of what was supposed to be the threats to the Mayor?---(NO AUDIBLE REPLY)

There's, there's not a separate advice setting them out in the form that you set out - - -?---No, no, no, no there isn't, no, no.

30 In terms of paragraph 24 - - -?---Of the draft?

Yes, of the draft, you talk about considering the paragraphs about, the engagement of a private investigator and the provision of a security system at your home and again in, and I'm sorry, I have to take you back to 8, you refer to a security system has been installed at your home and at the home of the Mayor. That was factually incorrect. The matter was under consideration, but hadn't been installed?---That's correct, yes.

40 And so paragraph 24 has again some flawed factual basis, that is there was really no, well, a private investigator had been engaged, but not for the purposes as you understood it. Do you now understand that?---That's correct. Yes. Yes.

And the home, home matter, the security hadn't been installed at that stage?---As, as I later found out.

But in 25 to 27 you were clear on that issue weren't you, that it was Council's policy, both in relation to the Councillor, that is the Mayor, that he had to pay upfront and then he had to claim reimbursement?---Yes.

And that's how you understood the system to work?---Well, it was consistent with Council's policy on the reimbursement of those types of expenses, yes.

And do you now understand that's not what happened?---As I understand it, yes.

And when did you learn that?---On Monday.

10

Right?---This Monday.

And in relation to the General Manager, did you consider that the General Manager would also, consistent with the policy, pay for his own and be reimbursed?---Well, paragraph 26, my recollection is I, I advised the General Manager to put himself in the same position from a probity perspective as the Mayor would have been placed in, because there was no comparable policy that governed the General Manager.

20

I've not been able to find a comparable document?---No, there isn't and that troubled me at the time, so I do recall that, the concern that I had was from a perception of probity perspective. The Mayor shared that concern when I discussed it with him, that there be, we were dealing with public monies and that these had to be dealt with in a proper and responsible fashion. And the policy for the Mayor was to pay for it out of his own pocket and seek reimbursement, with a report going to Council, so that it became of matter of public record and the Council could approve the funds.

30

All right. Well, we'll return to that, I notice the time, Commissioner.

ASSISTANT COMMISSIONER: Yes.

MS RONALDS: We'll return to those matters after lunch, Commissioner.

ASSISTANT COMMISSIONER: Yes. We'll adjourn until 2 o'clock.

LUNCHEON ADJOURNMENT

[1.03pm]