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INDEPENDENT COMMISSION AGAINST CORRUPTION

THERESA HAMILTON ASSISTANT COMMISSIONER

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TRANSCRIPT OF PROCEEDINGS

AT SYDNEY

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AT 10.05AM

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

MR LEGGAT: Commissioner, I wonder if I might raise a matter please. It seems self-evident that the evidence will not finish next Thursday afternoon.

ASSISTANT COMMISSIONER: Until yesterday I was still hoping but I tend to agree with you, yes.

MR LEGGAT: It's a question of what is proposed to be done when that occurs.

10 ASSISTANT COMMISSIONER: I think we had some tentative plan to go to the following Thursday, Friday of the next week after Easter at this stage.

MR BLAKE: Can I indicate, Commissioner, that the Friday would cause me great problems for a personal reason. I'm quite happy to tell you. The following week would be suitable.

ASSISTANT COMMISSIONER: Yes. I'm just not sure what's happening with the following, sorry?

20 MS RONALDS: I think there's something here on the (not transcribable)

ASSISTANT COMMISSIONER: No, not immediately following there's not. I'm pretty sure it's the week after that.

MS RONALDS: Is it?

ASSISTANT COMMISSIONER: I think what we'll do is we'll have a look at the diary of other matters and make some announcement later today about when we expect to continue if as it now appears we will have to continue at
30 least for another couple of days at another time. So we'll try to let everybody know what the options are after lunch.

MR BLAKE: Thank you, Commissioner.

ASSISTANT COMMISSIONER: Yes.

MS RONALDS: Perhaps we can try and sort it out and then I can have a discussion with my friends rather than trading dates up and down. I call
40 Andrew O'Reilly.

ASSISTANT COMMISSIONER: Yes. Is Mr O'Reilly here?

MR LEWIS: Commissioner, I seek your authorisation to represent Mr O'Reilly.

ASSISTANT COMMISSIONER: Yes, Mr Lewis, you're given leave to appear for Mr O'Reilly. Is your client seeking a section 38 declaration?

MR LEWIS: Yes.

ASSISTANT COMMISSIONER: Thank you. Mr O'Reilly, you can sit for the moment.

MR O'REILLY: Thank you.

ASSISTANT COMMISSIONER: Your legal representative has indicated that you wish to seek a declaration under section 38 of the Act?

10

MR O'REILLY: Yes, Commissioner.

ASSISTANT COMMISSIONER: The effect of which is no evidence can be used against you in future proceedings, the only exception being if it's found that you've breached the Act in any way by providing false information, that type of thing. 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 regarded as having been given or produced on
20 objection. 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 HIM DURING THE COURSE OF TODAY'S HEARING ARE TO BE REGARDED AS HAVING BEEN GIVEN OR PRODUCED ON OBJECTION. THERE
30 IS NO NEED FOR THE WITNESS TO MAKE OBJECTION IN RESPECT OF ANY PARTICULAR ANSWER GIVEN OR DOCUMENT OR THING PRODUCED.**

30

ASSISTANT COMMISSIONER: Mr O'Reilly, you're required to take an oath on the Bible or make an affirmation.

MR O'REILLY: An oath, thank you.

MS RONALDS: Mr O'Reilly, my name's Ronalds and I'll be asking you some, a few questions?---Sure.

Can you tell the Commission your full name?---Andrew Mark O'Reilly.

And your business address?---50 Pitt Street, Sydney.

10

And your occupation?---I'm a senior consultant.

And what industry in which are you a senior consultant?---Security primarily.

And do you hold a licence of any sort?---I do, I hold a New South Wales security licence, security licences in other states and a private inquiry agent's licence.

20 And do you consult with IPP Consulting Pty Limited?---I do.

And is that your only company you consult with?---Yes.

And you consulted with them, well, when did you commence working or consulting with IPP?---In early 2004.

And what sort of work do you do?---I primarily am a security consultant so I will go out to mainly government organisations, will look at their security and give reports and also, I also look at mainly factual investigations but also some surveillance.

30

And during the course of 2008 you undertook some surveillance in relation to a brief or instructions from Burwood Council. Do you recall that?---I don't know if it was 2008 but there was surveillance done on numerous occasions, yes.

And what's your practice in relation to, if you're in the office, now, sorry, I'll go back a step. You know Richard Mailey?---Yes.

40 He's a work colleague?---He was a work colleague, yes.

And are there occasions when you're in the office and he's out in the field? ---Yes.

And he would telephone you?---Yes.

And provide client's instructions?---Sometimes, yes.

And what would be your practice when that occurred?---Well, depending on what the instructions were, if they were to do a particular thing for a client I would commence doing that.

Would you make notes?---Yes.

Can the witness be shown Exhibit 21?---Thank you.

Do you see that?---Yes.

10

You see the first page, if I could just ask you to just look through it with me rather than pipping ahead?---Yes.

The first page, is that your handwriting?---I believe so, yes.

And looking at it now, does it remind you of anything you did, that is, do you remember doing this work?---I've got a recollection of it, yes.

If I could ask you to turn to page 2, that's your handwriting?---Yes.

20

It should be headed page with a date 4/9?---Yes.

Does it match the one on the screen? Do you see the one on the screen? ---Yes.

That's page 2 which should be page 2 in the bundle but somehow when it was copied it's gone astray. Is it page 2 in your bundle?---It's page 2 in my bundle.

30 I think I've put that one back together correctly, yes. Now, is that your handwriting?---Yes.

Just to help us, is the first number a four or a nine?---It looks like a nine to me.

It's not a four?---I mean there's a, you can see I'm not the, the best handwriting in the world but - - -

40 You think - - -?---I think it's more likely a nine but there a possibility it could be a four.

Right. So it's either 4 or 9/9/08, would that be the day you made the note? ---No, I don't believe so.

What would that date record?---I'd say that would be the date that Richard Mailey told me he had met with the Mayor and Mr Romano.

So would it be, looking at it now, do you recall making this note?---I have a recollection that, yes, it occurred in the IPP office when I made it, yes.

And it would've been, would this be correct, it may have been Mr Mailey was on the telephone?---There is a possibility, I tend to think it's face to face.

And RTM is Mr Mailey?---Yes.

10 So you've written down RTM met Mayor and P Romano, well (not transcribable). Does that record what Mr Mailey told you?---I believe so, yes.

Well, you weren't present were you at a meeting with Mailey, Mayor and Romano?---No.

No. So someone must have told you about it for you to have written it down?---Richard Mailey would've told me about it, yes.

20 And you would've written down what he said?---Yes.

And will send letter, was that your job to send the letter?---I doubt it.

And need estimation and then some sums, would that have been your estimation or was that Mr Mailey was telling you?---I can't recall that part of the conversation. It may have been can we estimate how much it will cost. And I've put that there because it's a fee we may have discussed.

30 Right. And then there's three names or you see there's three words on the side?---Yes.

And are you aware that they are people's names?---Yes.

And do you recall why you wrote those down?---Yes. Richard Mailey gave me those names.

And were they written down for a purpose?---He was discussing that those names had come up at the meeting with the Mayor and Mr Romano.

40 And then, follow to see if disbursing leaflet drops, hate mail. Is that, I think that's a rendition of that bit there?---Yes.

And it infers to follow the three names above. Would that be a correct - - - ?---Yes.

- - - reading of the document?---Well, not necessarily to follow, but to look at those people from an investigative perspective.

In relation to disbursing leaflet drops, hate mail?---Yes.

And do you remember a discussion about hate mail?---Yes. But not word verbatim, but basically there'd been some hate mail passed around Council during an election and these were suspects that may have been passing that mail into letterboxes.

10 And therefore they were to be, there was to be some surveillance of them. Is that correct?---There was to be some surveillance and because of my background, Richard asked me to look at it from a factual perspective to see if there was enough evidence to go to police or the relevant authority with that.

And, I'm sorry, to help me, do you mean are you an ex-police officer?---I am. Yeah.

All right. And then, so first of all the information would need to be collected before you could apply that assessment?---Yes.

20 So did you and Mr Mailey have a discussion about how that information would be collected?---We did. I'm not sure if, from, from recollection it had already commenced, I believe, the surveillance.

All right?---I don't know how long before this, but I think already those people had already been looked at by our surveillance people.

All right. Then there's a note that says Wednesday, 10.10, Brad got Alvaro at school?---Yes.

30 That's your handwriting?---Yes.

Brad's Mr McCombie?---It is, yes.

And that records, what, something he did?---That would be what Mr Mailey told me had occurred to give me an idea of what had happened with this investigation, the early part of it.

40 And then tried picking up Weiley. Again, that's your handwriting. Would that still all be the same conversation?---Yes.

So these aren't added later you don't think?---No, I don't believe so. I think this would've been during that conversation.

All right. If - - -?---Yeah, look there is a possibility that could be the case because it looks like a different pen. But I can't be sure.

Now the next page which, well my next page is headed Six Days Sidoti. Is yours?---Yeah.

Is yours headed Six days Sidoti?---It is, yes.

You and I seem to be in sync at this stage. Is that your handwriting?---It is.

So what does that record?---It's talking what I presume to be that observations were made by a surveillance operative on a person called Sidoti - - -

10 Right?---For six days.

And Burns Creek, Chiswick written on the side?---Yes. That I think from recollection would be the residence for that, for that person.

And then there's a, then there's a list of dates, you see down there, 8, 9 - - -? ---Yeah.

- - - 9, 10, 9, 10, 10, 11 blah blah?---Yes.

20 That's all your handwriting?---Yes.

Is that a summary of what that operative had been doing?---Yes.

And she must, she reported, I think it's a she, she'd reported it to you?---To be honest I, I don't know if this was from that first conversation that I had and I recorded this from, from Mr Mailey or whether this was a conversation I had at a later stage with, with the operative and she gave me these details.

30 Well, going on the dates, if we think you're right about it, it the 9th not the 4th on the page before, then you couldn't at the same time (not transcribable) about the 10th and the 11th, could you?---Yes, that's a good point, yes.

So it must have been later?---Yeah, yeah.

And then, now is your next page got Friday, headed Friday 5/9/08?---Yes.

And was Strik written up the top?---Yes.

40 Do you understand that was a person's name?---I do.

And again, is this your handwriting?---It is.

And what does this record?---I'll just have a read of it if you - - -

Sure, sorry, take your time. I wasn't sure whether you'd seen this bundle recently?---I haven't. I've seen the first page but none of the other documents.

Just have a look through and then when you finish just indicate?---Yes.

And that records your notes of what you'd done or someone else had done and told you about?---The, the notes in regard to Richard Mailey has made inquiries requiring the Strik unit as, would have come from him.

Ah hmm?---He would have told me about that.

10 Checks on the land titles?---I, I would imagine he would have told me that as well.

Ah hmm. Did directors search?---The same.

Strata plan check?---The same.

Ah hmm?---I do tend to recall doing checks myself at the Electoral Commission in two locations at some time doing this so that may have come from me or from a personal assistant in the office.

20

And did you check, were you checking Mr Sidoti or the other names or all of them?---I would imagine I would have checked Mr Sidoti and Mr Strik? ---Right.

And then the next page, starts Park Road, seen him twice?---Yes.

Again that, is that your handwriting?---It is.

30 And down the bottom it says 30 minutes on phone with Meridee - - -?
---Yeah.

- - - on the 15th of the 9th so is it possible this note reports what she was telling you?---It is I believe but could I just read - - -

Yeah, sure, sorry?---Yeah. Yes, that would have been what came about from that telephone conversation with the person.

40 And where it says Rubbish did not indicate Sidoti living there, does that mean that the operative had gone through Mr well, a rubbish bin attached to the premises - - -?---That appears to be the case, yes.

- - - searching for something?---I would imagine something that would indicate that that person or Mr Strik was living there.

Right. And again on the next page headed Friday, 12/9, that's your handwriting again?---It is.

And is that a report of what the operative had told you?---I'll just have a read of it, thanks. Yes, this is what I would have been told by the operative. I don't know which operative. It could have been Mr McCombie or it could have been Meridee.

Right. And again, the next page, headed Sidoti, there's Sidoti written up the top in big letters?---Yes.

10 That falls into the same category?---I'll just have a read of it, thanks.

Sure?---Yes, that's my writing.

And does that record what someone's told you?---Yeah, I believe that would have come from Mr Mailey.

And then there's a, see that's numbered 1 and then over the page is number 2, it records RTM does surveillance, RTM and then Meridee?---Yes.

20 So that's the list of people who've done it?---Yes.

And then the next page I understand is Mr Mailey's writing?---Yes, it looks similar to Mr Mailey's.

Well, Mr Mailey's identified it as his?---Okay.

And that records what he did. Now, can the witness be shown Exhibit 25 please?---Thank you.

30 Now you see this is a, what I understand is a draft report. Have you seen this before?---Excuse me while I just have a look.

Yes, certainly?---I can't be sure if I've seen it before. I would presume I would have seen it.

So you're not the author as far as you recall?---No.

All right. And if you move in about, well, to the end of the report, you see it goes page 11 of 11 and then there's some handwritten pages behind?---Yes.

40 Is that your handwriting here?---No, it's not.

Up the top of the page?---No.

No, bottom of the page?---No.

Okay. Just turn over the next page. Do you recall whether you yourself did any surveillance of Mr Balzola?---No, I would not of.

Or Mr Alvaro?---No.

Or Mr Weiley?---No.

Or Mr Sidoti?---Mr Sidoti, I never saw Mr Sidoti but I would have went to, I, from recollection his home address and had a look at that, it was more from a supervisory perspective on the, the investigators out there and the Park Road address.

10 So is it right that by September, October 2008 you were more supervising from the office and organising the operatives?---Because I had been given a responsibility of looking at getting an evidential brief together if there was enough evidence to take it further I was looking at it from an overview perspective.

All right. Then there's two pages of handwriting, I think you've indicated they're not yours and then there's some photos?---Yes.

You didn't take them?---No.

20

And then there's some searches?---Yes.

Is that your handwriting on them?---You've got the word typed residential, that's not my handwriting.

Right?---But my handwriting appears to be where it says Electoral Roll and Australian Electoral Commission.

30 And that would be consistent wouldn't it with your recollection of a moment ago that you'd done some electoral service?---Yes.

Yes. And if you turn over to the next page you'll see headed Anthony John Sidoti. Again, there's a bit of handwriting on the electoral issue, a heading?---Yep.

That's you?---The one on the, on, in the left column is but on the right column it doesn't look like my handwriting.

40 All right. And the next page?---That's not my writing on that page.

All right. And there's one more page, down the bottom it says, say five hours per day?---That's not my handwriting.

That's not yours?---No.

Okay. Then there's some investigator's notes, these are those done by I think Meridee is it?---Yes.

And this sets out minute by minute virtually or not minute by minute but what she was doing?---Yes.

And this is the standard form that operatives produce documents?---It's a standard form she used, yes.

Right. And then there's a few pages and then there's another one headed, Notes to Meridee and there's two more pages?---Yes.

10 Right. And she would've provided those notes to you?---Not to me direct, they would probably have been given to the office assistant.

Then if the witness could be shown Exhibit 26 please. This is an email from you, Mr O'Reilly. That's an email from you to Richard Mailey?---Yes.

And it's about the time you'd spent. Is that correct, is that what - - -?---That appears to be the case, yes.

That records does it the hours, AOR is you?---Yes.

20

Hours on Burwood job?---Yes.

And that's the surveillance we've just been looking at?---Not necessarily surveillance, some of that may have been doing the checks and also - - -

Sorry, the job as a whole?---The job as a whole for me, yeah. It looks like they were the hours that I did on this particular inquiry.

Yeah. You started on the 10th of the 9th?---Yeah.

30

10, 11, 12, 15, 16?---Yes.

And so there's some handwriting down the bottom, is that your handwriting?---Yes.

Says, Kilometres?---Yes.

And Taxis?---Yes.

40

So you had been out doing something at some stage?---The kilometres would've been for me driving from the office out to the Burwood, Drummoyne areas and I think the taxi was, when I was in the city I caught a taxi to the various offices to do the electoral checks.

And that all then goes on the client's bill?---Yes.

And do you have anything to do with compiling the accounts in relation to this matter, do you recall?---No, I did not.

That's not one of your jobs?---Burwood Council wasn't my direct client it was Mr Mailey's so that was his responsibility.

And do you recall that the office IPP was involved with the surveillance of a person called YYYY XXXX? Did you have anything to do with - - -?--- YYYY XXXX?

Mmm?---No, I had nothing to do with that.

10

Could the witness just be shown Exhibit 27 please. I just want to see whether you think this is your handwriting on a document?---Sure. Thank you.

See that handwriting on the side there?---Yes.

Phone number, press 4 et cetera?---Yes.

Is that your handwriting?---It isn't.

20

It is?---It isn't.

Is not. Okay. And as far as you recall you didn't have anything to do with the surveillance of Mr XXXX?---Absolutely nothing.

And in terms of producing a report in relation to Mr Sidoti as opposed to the draft report I've just shown you - - -?---Yes.

30

- - - it would be practice at IPP to produce a final report for the client about what had happened?---Yes.

Did you, were you involved in producing a report in relation to Mr Sidoti? ---No, I may have given comment but I would imagine, and I didn't have enough time to read that other report whether it's in there or not I don't - - -

Just take it from me it's not?---Okay.

(not transcribable) about the other three names?---Okay. Well, I can't recall if there was a report or not.

40

Right. You don't have any recollection now?---No, no.

Do you recall in terms of your supervisory or your oversight capacity what you were looking for, that is, what IPP was doing in relation to the job?---In relation to Mr Sidoti and Mr Strik we were looking at evidence that they were not residing there to, to look at it or whether they were residing there.

And the other three names?---We were looking at evidence of finding them passing out hate pamphlets during the election.

And did you find them doing that?---I can't recall but because I can't recall I would presume that we did not.

Right. Because if you did it would've - - -?---Yeah, I, I would presume I'd remember that so - - -

10 Right. So there were two quite different strands in effect to your work?
---There was. Yes.

And they were clearly identifiably different strands?---They were and from a priority perspective with me I was, I was concentrating probably a little bit more on the issue of people that are applying to, for Council that weren't living in the area as being maybe a more serious offence than the other one and was looking at that.

20 And that was the view you formed with your background?---Yes.

That wasn't the instructions from the client?---No, it wasn't, it was just the way I was placing myself on the inquiry.

Right. And did you talk to the client about that at all, that is, your primary focus was on, if I could call it, the address issue?---Not specifically I don't think, no. I was still getting updates in regard to the other, the other part of the investigation of the hate mail but no, I didn't - - -

30 So that remained an active part of the investigation but you prioritise yourself in terms of the address issue?---Yes.

Did you have any direct discussion with the client, that is, anyone at Burwood Council about this matter while it was on?---Yes.

And who did you talk to?---I spoke to Mr Romano, I spoke to Mayor Faker and others who I can't recall their names, I believe one may have been a legal representative for Council.

40 And was that discussion over the phone or did you attend a meeting?---I attended a meeting.

And who was present at the meeting?---Mr Romano, the Mayor at the time, Mayor Faker, the gentleman who I believe may have been a representative of Burwood Council, a legal representative and I don't know his name and one or two other gentlemen who I don't know who they were.

And what was the purpose of that meeting as you understood it?---To brief Mr Romano on the extent of the investigation thus far.

And do you recall when that meeting was?---I don't but I would presume it would be at the tail end of the hours and dates that I'd put into that list that is in the documents.

And did Mr Mailey attend that meeting with you?---He did not.

So you were the only IPP representative?---Yes.

10 And you reported orally to them?---I did.

Those you've identified?---Yes.

And answered their questions?---Yes.

And you reported on both strands of the investigation?---I can't recall, I certainly did on the issue of the Park Road address and whether Mr Sidoti and Mr Strik were living there and that was the main part of the meeting. Yes, I could've talked about the other issues but I can't recall that now.

20

And there was an election at that time around the time you were doing the work, do you recall, a Local Government election?---Yes.

Are you able to recall whether the meeting was prior to or after the date of the actual election?---I, I can only presume, I can't recall. I would presume that it was but - - -

It was before?---It was before, but I could be totally wrong with that, that's my presumption.

30

And did you have a diary or anything that would record the meeting?
---Probably on those, those notes of, of times that I went out there.

That email?---Yes. And perhaps - - -

Well that email records on Tuesday, 16 September, 3.45 hours. Is it possible that that was when the meeting was?---Yes. That is possible.

Because that's a fair chunk of time?---Yes.

40

And would you, do you charge travelling time?---Yes.

So to travel from - - -?---I would, I would presume that's probably the more likely unless it was the three hours on the Thursday, which I presume would not be the case, because I tend to recall once that meeting was over, I didn't work on the inquiry any further.

It was a wrap up meeting in effect?---It was, yeah.

So, doing the best you can, it's more likely to have been the 16th?---Yes.

And do you recall anything else that was discussed at the meeting?---No. Only the issues of whether these people were actually living in the electorate at the time.

And did you have any telephone discussions with Mr Romano prior to the meeting and during the course of the investigation?---No.

10

And was that because it was mainly Mr Mailey's client?---Yes.

And so he does the relationship management, if I could call it that?---Yes. And I do it with my clients, yes.

Yes. So the Mayor was present at the meeting?---Yes.

And was he there all the time?---Yes.

20 And do you recall anything the Mayor said about the investigation?---There was deliberation as to whether, with legal advice, as to whether there was sufficient evidence to indicate that these two people were not living in the electorate.

30 And what was your professional conclusion at that point based on the investigation and IPP?---I would have to read those notes again to, to find out what our observations were from the operatives. I tend to recall that there was some information in that those two people or one of them had been seen in the unit. But it appeared to be used as an office rather than as a residence. And I tend to recall that checks or information from Council or somewhere came in that indicated that Mr Sidoti was or had a DA into his local Council to do his home up and as a result of that there was every indication that he probably wouldn't be living in that home at that time. But it appeared that he was living in the home at that time. So the, the legal issue as it was, was that he may not be living there now, but it may be apparent that he would be living there at some stage. And that was basically what my inquiry came up with. And from that, after discussion, it was decided by Council that they weren't going to proceed with the matter.

40 And so they instructed you to cease the investigation?---Yes.

And it was clear was it during the course of the meeting that you had, those acting on your, those engaged by IPP had been conducting surveillance? ---Yes.

Because you wouldn't of been able to report what you reported without that?---Yes.

And do you recall discussing, there was the surveillance of the other three, you know, Weiley, Alvaro, that I've taken you to?---Yes.

And that was raised at the meeting by you?---I can't, I can't recall. It may have been, but I can't recall.

And that, as we called it, I think you've called it the second part of the investigation?---Yes.

10 Was that terminated as well at that point, that is when Mr Romano or, sorry, I'll go back a step. Who instructed them that the investigation ceased?---It was either Mr Romano or the Mayor.

Right. And did, was there a discussion about the other strand and whether that was to cease also?---I can't recall.

But it stopped?---I don't know. It may have continued after that. I can't recall.

20 And how was that meeting organised? Did you organise that meeting?
---No.

Were you invited to the meeting by someone? Richard Mailey told me that I was to attend a meeting on, I presume that particular day to brief Council on the investigation.

Right. And then so you attended?---Yes.

30 But he wasn't present?---He wasn't present.

On, see your list there, sorry, have you still got Exhibit 26, which is your email of 18 September?---Yes.

You see you've got an hour on Monday, the 15th. Are you able to recall what work you undertook in relation to the matter on that day, the day prior to what we think might be the meeting?---I can't. It may possibly have been the, the electoral roll check.

40 Well, you've done three hours, three hours, one, one and then three point five?---Yes.

So you can't remember what you did on any, for any of those parts of the work?---No, I can't.

Now did you have any other, you say you didn't have phone discussions with Mr Romano during the course of the investigation. Did you have any phone discussions with the Mayor during the course of the investigation?
---No, I did not.

Did you have a discussion with the lawyer?--- No, I did not.

Did you discuss with anyone else at Burwood Council?---No.

So your, your main discussions were they with, with Mr Mailey?---Yes.

And then Mr Mailey would have the discussions with whoever?---Yes.

10 Now, in terms of the discussion about the surveillance and what had been done by IPP in relation to Mr Sidoti and Mr Strik and your report. Did anyone indicate any surprise about the surveillance being undertaken? Anyone at the meeting?---I can't recall.

Was it your impression that everyone was aware of it beforehand?---I can't really say. I, I can't recall that it seemed to me somebody was perplexed by it. But I don't know what they were thinking.

20 No, I'm not asking you that, I'm just asking you whether anyone expressed surprise that there had been surveillance undertaken?---From recollection, no.

And you say that it was quite clear from your report that those activities had occurred?---Yes.

And I just showed you some photos earlier of, as I understand, are of Mr Sidoti's home. Did you show the photos?---From recollection, no.

30 So you reported on what had happened, but you didn't show any of the images that were taken during the investigation?---No.

I have nothing further.

ASSISTANT COMMISSIONER: Yes, thank you. Does anyone seek to question this witness?

MR BLAKE: I do, Commissioner.

ASSISTANT COMMISSIONER: Yes, Mr Blake.

40 MR BLAKE: Mr O'Reilly, do you still have Exhibit 21 in front of you, the handwritten notes? Counsel Assisting took you through them one by one after you'd identified your handwriting. It's the first document that she took you to?---Thank you.

I think at one point you identified, you thought the, I think you said the pen appeared to be different and that it mightn't of been written at the same time. I'm just wondering did we have the original here?

MS RONALDS: I'm just checking.

MR BLAKE: Well, this, which page was it do you think that the pen was different and might've been written at a - - -?---Page 2.

Page 2. That's the one that has the 4 or the 9/08?---Yes.

And which part of it did you think might be written at a later time?---Well, I, I don't know if it was written at a later time - - -

10

Right?--- - - - but it appears that it seems lighter in colour to the, from where it says 2000, after that where the, the name Weiley is - - -

Yes?--- - - - that seems lighter.

Yes. So that just based on the different, I suppose, strength of the light and dark you would think it's likely that the material Weiley, Balzola and following was written at a later time from the material above?---No, I wouldn't, I wouldn't think that.

20

You wouldn't think that?---It is a possibility that I could have used another pen, I don't know.

Oh, I see. So you can't say or the best you can do is that you think it might have been a different pen to do the top material and the bottom material?

---Yes. I guess there's a possibility that that was at a different time or there's a possibility I used another pen or a pencil or, I've only got a photocopy of this here but looking at it this appears to be notes that I would have taken when Mr Mailey was telling me about or giving me an update on this inquiry and I would have presumed that would have just continued on.

30

Now at the top of the page after there's the reference to RTM met Mayor and P Romano, there's, the next line is the words Will send letter?---Ah hmm.

Do you know what you, well, can you explain what that meant, what that note means, Will send letter?---No. I can presume but I don't know.

You don't know what it refers to?---No, I don't.

40

Thank you. And the second last paragraph has Wednesday 10/10, Brad got Alvaro at school. What does, I think I understand the Wednesday, what does the 10/10 refer to?---That appears to be a date, perhaps I've written October instead of September in there inadvertently but I've, the way, the way I usually do dates is that way and looking at the date there I would not imagine that was done in October because the inquiry was over and I wasn't on it so - - -

Right. So you think that's probably just an error of date as best you can - -
-?---Yeah, I, I would imagine so, yes.

And if you can over to, I think it's page 5 but I could have it wrong, anyway
the one that commences Park Road?---Yes.

And down the bottom there's the rubbish, you see the sentence Rubbish did
not indicate Sidoti living there?---Yes.

10 Can you just read to me the next paragraph, I, I can't understand all the
words there?---I think it's perhaps is the first word, perhaps John Strik dis,
I've got dis, so distributed I would imagine, dirty stuff. Designed all flyers
apparently.

Right, thank you. Just pardon me a moment. Counsel assisting asked you
about activity on Monday, 15 September and you probably still have it in
front of you, your email, Exhibit 26?---Yes.

Your email to Mr Mailey?---Yes.

20

Is, is it possible that either the whole or some of the time spent on Monday
was preparation for the meeting the following day?---That's possible, yes.

Okay. I want to take you to that meeting and you mentioned a couple of
others were present, I think you identified from there Mr Faker, Mr
Romano, the lawyer - - -?---Yes.

- - - and a couple of others?---Yes.

30 Do you recall if one of those others was a Mr Dastyari, an ALP official?
---No.

No. And do you recall whether one was a Councillor, Councillor Nanva?
---I don't recall those names.

You don't recall those names. And did the, all the people, were they all,
sorry, all the people, that's the Mayor, Mr Romano, the lawyer and the other
two, were they present for the whole of the meeting or did some leave
before the end?---The Mayor's office, it was either the Mayor's office or
40 Mr Romano's office that the meeting was in and it has a verandah on it and
there was some discussion by different persons in that group on that
verandah at different times.

Right. Did the other two people you mentioned leave the meeting part way
through?---I, I can't, you mean and not come back or leave - - -

Yes?---I can't recall.

You can't recall, thank you. I think you said you couldn't recall whether you showed any photographs at the meeting. Is it possible you did show some photographs?---Perhaps but I doubt it.

All right. But - - -?---No, I take that back, I, perhaps I did, I can't - - -

Yes, thank you. And do you recall whether at that meeting you showed some pamphlets, electoral pamphlets that had been retrieved from a rubbish bin?---I don't recall it but it could be possible, yes.

10

It could be possible. And you mentioned at the end of the meeting instructions were given not to proceed from either, this is the Sidoti, Strik matter, the Mayor or Mr Romano gave those instructions?---Yes.

Do you recall that evidence? Were you involved in a discussion with the lawyer as well as the Mayor and Mr Romano as to whether there was sufficient evidence to proceed with that matter?---Yes.

Yes. Yes, nothing further.

20

ASSISTANT COMMISSIONER: Thank you, Mr Blake. Yes, Mr Leggat.

MR LEGGAT: Thank you, Commissioner.

Mr Reilly, you have Exhibit 21 before you I believe, could you turn to page 2?---Yes.

30

You indicated that the purpose of collecting information was to take it to the police or to relevant authorities. Was that something that you inferred or was that said expressly?---No, that was something that was told to me by Richard Mailey, that I was being brought in to this investigation for that purpose.

The three names that you see in the middle part of page 2, Weiley et cetera, is there any likelihood, any reasonable likelihood that those three people were also associated with the Park Road inquiry?---I can't, I can't answer that, I don't know.

40

You've written down the words "hate mail" do those words have any special meaning in the security business?---Well, in the security business I guess hate mail could be death threats that type of thing but hate mail is, I would imagine, from what I took hate mail to be was, in an election campaign it would've been written in that capacity of, you know, untruths about the character of somebody.

Was there anything said to you as to why those three people were thought to be connected with the hate mail?---I can't recall it but yes, something may have been said, I can't recall it now.

Have you ever performed similar surveillance for other Councils?---For that type of occurrence, hate mail?

No, the two stands to use counsel assisting's terms. The Sidoti Park Road inquiry and the hate mail inquiry?---So basically electoral issues. No, I haven't.

Have you heard of any other security firms ever performing that type of investigation?---No.

10

Thank you.

MR STANTON: If I may please, Commissioner, just two questions. Mr O'Reilly, in the police force what rank did you hold when you left?--- Detective Sergeant.

And what squad were you associated with, sir?

20

MR LEWIS: I object, Commissioner, I don't know that this is relevant to - -

ASSISTANT COMMISSIONER: Yes. I must say I don't see the relevance.

MR STANTON: Just exploring his expertise as a trained observer prior to his private inquiry career.

30

ASSISTANT COMMISSIONER: I don't see how his expertise is relevant to anything we have to consider.

MR STANTON: And how long have you been out of the police force, sir? ---11 years.

Now, in terms of Exhibit 21 do you still have that there in front of you?---I do.

And you say, sir, that these were notes that you took in respect of matters that were in part relayed to you by Mr Mailey you say?---Yes.

40

And as to other matters things that you were involved in yourself?---Things that I was involved in or as being told about by surveillance operatives.

And was there a running sheet so to speak for any of that concept?---A very sloppy running sheet if, but it was, it was just more or less notes for me to know what's happening with the investigation.

Now, in terms of your practice with IPP do you keep a day book yourself in terms of what occurs?---Not a day book, no.

Do you keep a book of entries of recording what occurs at meetings, for instance, that you say you had at Council?---No, I don't.

Do you go back and make a record of what is said at the meeting that you attended for the purpose of IPP's records for instance? Is that your practice?---Yes, generally in a report, if it's relevant it would come out in a report at a later stage and I'd rely on notes like this to compile the report.

10 And you took no notes of any meeting you had at Council where you say you were present where there was people such as you say the Mayor and Mr Romano and others? No notes were taken while you were at those meetings?---No.

And no notes were taken contemporaneously when you returned to your office of what occurred at those meetings. Is that what you're saying? ---Yes.

So the best you're doing is your recollection?---Yes.

20 Some fair time ago now since 2010 as we sit here today?---Yes.

And when were you first asked to recall those matters, sir?---A few days ago.

And was it in the form of a statement that you made to the Commission's investigators?---No, it was the summons.

It was the summons?---Yeah.

30 But pursuant to that summons was a statement taken from you?---No.

It was just a conversation or was the conversation in terms of the summons being served on you to attend?---Yes.

So it was service of a summons but no interview subsequent to that? ---That's right.

Prior to you giving evidence today?---Yes.

40 And were you shown any exhibits prior to you giving your evidence today, sir, after service of the summons?---I was shown the first page of Exhibit 21 by my legal representative.

And just finally if I may please, Mr O'Reilly, as you sit here today you've got no recollection of what the Mayor said as you say you were in a meeting with him? You can't recall precisely what he said if anything?---I can't recall precisely what he said, no.

And certainly, sir, in terms of the other participants at that meeting you can't attribute to them what was said by them in the course of that meeting?---No, not precisely.

No. And just if I may, sir, the meeting that you say the Mayor and Mr Romano were present at as well as the legal representative how long did that go for?---Perhaps half an hour, perhaps an hour.

And a fair bit said during that time?---I beg your pardon?

10

A fair bit said in terms of conversation during that time?---Yes.

For which we have no note contemporaneously of what was said as you recalled it either at the time of the meeting or shortly thereafter?---Yes.

Thank you.

ASSISTANT COMMISSIONER: Thank you. Anybody else? All right. Mr O'Reilly can be excused?

20

MS RONALDS: He can be excused.

ASSISTANT COMMISSIONER: Yes. Thank you, Mr O'Reilly, you're now excused from further attendance?---Thank you, Commissioner.

<THE WITNESS EXCUSED

[11.06am]

30 MS RONALDS: Call Mr Faker?

ASSISTANT COMMISSIONER: Yes. Mr Faker, could you come back up. Mr Faker, you're still under oath and the section 38 declaration applies to your evidence today as well.

MS RONALDS: Mr Faker, you've been present while Mr O'Reilly just gave his evidence?---Yes, Senior Counsel.

10 Do you now recall that he was present at the meeting to discuss the issues about Mr Sidoti that we were talking about yesterday?---I honestly couldn't recall but if he says he was at the meeting I would take that as he was probably there.

And you've seen him, does that produce any flash of recognition?---To be honest, no, but it could, it's possible, I mean I met so many people in my time as Mayor that it's possible he - I remember specifically with that meeting that Mr Romano spoke about an investigation, I don't recall surveillance, it could've been possible, I'm not sure but Mr O'Reilly could've been there, I couldn't recall.

20 And do you recall whether you saw any photos - - -?---I don't recall that.
- - - of Mr Sidoti's house and car?---I don't recall that.

Now, yesterday you gave some evidence about the night before the election, that is, the Friday, 12 September, 2008. Do you recall that? Just at the end of your evidence yesterday. Remember we were talking about what happened on the night before and people to man the polling booth the next day?---Yes. I'm not sure - - -

30 Work on the polling booth?---Sorry, Senior Counsel, just to correct that, I'm not sure if it was the night before, could've been, I thought it was two days before but it could've been the night before.

Well, in fact that's what I was going to follow up with you. You said you had a conversation with Wayne Moody?---Yes.

Do you recall whether that was the Friday or the Thursday before the election or some time earlier?---No, it was earlier than that.

40 So that would've been earlier in that week?---I had a number of discussions with Mr Moody, I think one would've been possibly a few weeks before where he expressed interest to support via providing volunteers and then I assumed there was probably a call a few days before that.

And would you be aware whether Mr Moody had any conversations with Mr Romano?---Not that I would be aware of.

Did Mr Moody ever attend at Burwood Council to visit you?---Yes.

And in relation to the election did he visit you around that week, the week prior to the election to discuss electoral matters?---I don't recall visiting, I recall phone calls but he may have.

But you say he's visited you there at other times?---Yes.

For other work related matters?---Yes.

10 And have you ever introduced Mr Moody to Mr Romano?---I don't believe so, I'm, he may have seen him in the foyer, I'm not sure, I'm not sure.

But you, Mr Romano and Mr Moody haven't gone out for coffee?---Never.

You remember you gave some evidence yesterday about having a conversation with Mr Romano about staff to volunteer on the polling booth. Do you recall that? Yesterday you gave some evidence about that matter?--
-Yes.

20 Now, was it a discussion about union members? Was that the term used or was it Council staff? Do you understand the distinction I'm making?---Yes. It was clearly, I remember Mr Romano came in and advised me that he had become aware that there were union members that were being organised by the staff, by the union. And that he was going to seek legal advice.

Now you said that Mr Romano gave you some names?---I presume it was him. He never gave them to me personally, but I found a post-it note on my desk.

30 Now that post-it note, was it in Mr Romano's handwriting?---I can't recall, possibly. I can't recall that.

And you spoke about, yesterday you gave some evidence about getting a list from Mr Moody?---Yes.

40 Was that the, that wasn't, so there were two, there were two documents were there? There was one from Mr Moody and one from someone else who you thought was Mr Romano?---Well, I can't exactly recall because I had a, it would've been a list that I'd write names down, so I would assume it would've been two lists.

Right. One from the Moody list and one a Romano list?---I would assume so.

Now who do you say in your campaign team that you passed those names on to?---It was one of the ladies that was doing the booths.

Right. Now you gave some names yesterday. Do you recall that?---Yes.

How is it that you recall those names now?---Because I checked with my campaign team and they checked the lists.

So you don't actually have any independent recollection of whether they were the names written on the list?---No.

And when you're talking about the two lists, you don't really remember what names they were?---No, no, I don't remember the names on the list. But I've gone back and checked - - -

10

Just bear with me. Is it since you heard the evidence or the cross examination earlier in the week that, and I think it was on Monday, but it's been a long week, I think it was Monday, about election night or election eve? Is that what triggered you to make some inquiries of your former election staff?---I would believe so, yes.

So you were here?---Yes.

You heard those questions?---Yes.

20

You thought, oh, I vaguely remember something about that?---Yes.

I'll go and check?---Yes.

And so who was it that you checked with?—Sally Deans, who did the booths, I believe.

And Ms Deans had, what an old computer list or something, something on, she had some old records?---I would presume so.

30

Did she just tell you over the telephone or did she send you an email with a document attached?---No. I think she's told me over the telephone. But, sorry, just to correct that, I may have asked prior to that.

And why would that have been?---I remember that it was raised by Mr Child with me that he had organised some staff and the way he told me was that it was done by Mr Romano. I wasn't aware of that. And I may have checked after that.

40

And when would that have been?---I would say last year, early last year, possibly, mid last year. I think when all the stuff came out in the newspapers about the work at the home.

Right. And so the names that you gave you've obtained from Ms Deans. How did she know who were the Council workers? I assume there were lots of people on the list?---I think they were the names that were recognisable to us as possible Council workers.

And you sat down with her did you and go through them and (not transcribable)?---No. She told me.

And do you have that list now?---No, I don't.

But you're able to obtain the list?---I would say so, yeah, if I can get it.

10 And you're saying, so you may have got it in April last year when the Sydney Morning Herald ventilated the allegations?---Yes, because I remember having a meeting with Mr Child.

Right?---At the time.

And have you discussed this issue with Mr Romano since the Sydney Morning Herald allegations were published?---No, not that I recall.

Have you had any discussion with him around the election period where you've talked to him about getting staff to volunteer on the booths?---No.

20 And have you spoken to Mr Romano about paying people to attend the booths?---Absolutely not, senior counsel. Absolutely not. I don't need to pay people to work on my booths.

All right?---So I absolutely refute that.

Well, what are you refuting?---Well, the fact that I would suggest that I would pay or ask someone to pay a volunteer. That's absolutely inaccurate. That's absolutely something that I would not do.

30 And it's something that obviously upsets you somewhat?---Well it does. I mean to, well, it doesn't upset me, but to suggest that I would do that is absolutely incorrect.

And that's because you have enough volunteers. Is that right?---Well, no. You can never have enough volunteers. But people that want to volunteer can volunteer in their own time as volunteers. The only I guess reward is if people come back for a drink at the after party or have food and things like that, not payment.

40 Right. Now you say you spoke to Mr Child in, was that after the Sydney Morning Herald articles?---Yes.

And what were the circumstances of that conversation?---There was an article regarding a cabinet that came out, that I think everyone's probably aware about. I had a different recollection, so I called Mr Child to speak to him about that. And I wanted to really express that I didn't believe in a trial by media, if it was relating to me. If Mr Child had allegations then he should take them to the appropriate authority. And Mr Child was pretty

friendly, he said, no, no, this has got nothing to do with you. And then we caught up for a drink.

All right. Just bear with me for one second. Sorry, I'll just the article so that we're - - -?---That's O.K.

10 - - - so the transcript is clear. I'll show you this article, now this is obviously a photocopy of it. But this is an article from the Sydney Morning Herald on 4 May, 2009, and you talked about an article about installing a cabinet. Is that the article you're referring to?---Yes, that's it then.

And, and in summary form it suggests that, that Council workers came to your house during Council time and put up a cabinet?---That's right. That's right.

That's in summary what it says doesn't it?---That's right.

And what's your recollection of the event?---Of what happened?

20 Yes?---I remember doing a site visit at the Council library civic precinct where it was being demolished. I walked through and I think Mr Child and a few of the workers were there. And I think one of the directors was with me, I think it was Khaled Azer, Mr Azer. And there was some furniture that was sort of put aside in the building, it was being gutted. And I said, oh, it was just a passing comment, what's happening with that furniture? They said it was being, it's surplus Council furniture and it was being thrown out. I then expressed an interest in the cabinet, if I could purchase that. And then that was arranged. There was a valuation that was done, I think, by the
30 General Manager. And I agreed to a price of \$500 which was to include staff delivery or a delivery of the, of the cabinet.

And affixing it to the wall?---It doesn't need to be affixed, senior counsel.

So is that part of the article not accurate?---Yes.

And - - -?---The cabinet comes in two pieces. It's a bottom piece, which, which has a top piece that sits on top.

40 Oh, right?---So it's just like a cupboard.

Right?---It's not, it's not as if you install it. I was not home when they delivered the cabinet at the time. I think it was Mr Child rang me and advised me that he was going to deliver the cabinet. And I said, okay. And I think my wife let them in. I think I came in after they had just finished and
- - -

And so you say the Sydney Morning Herald article wasn't accurate in terms of - - -?---I didn't believe so. And I, and I didn't believe it was accurate and that's why I, you know, I didn't believe so.

All right. So after that happened you contacted Mr Child and you spoke to him and you told him, what, that you're upset because it didn't seem accurate?---Well, I, I think it was more along the lines that I didn't believe in a trial by media. And Mr Child was, was nice. He said to me, no, this has got nothing to do with you. And he had - - -

10

Did he tell you what it did have something to do with?---Yes.

And what was that?---Well, I'll get to that. He had told me that - - -

Is this on the telephone?---Yes, he told me, I think he had been stood down - - -

Right?--- - - - by Council and he was upset about that then we decided to catch up for a drink and we had a - - -

20

Just stop, if I could stop you there. Prior to that had you ever had a social occasion with Mr Child?---No, other than seeing him around and talking to him and, and like being friendly, no.

So you and he met for a drink?---Yes.

Do you remember when that was?---No, I remember it was after the article.

30

So the article is 4 May, was it within two weeks after that or the next day or - - -?---I would say it would be close around that time.

And you and he met for a drink, do you remember where?---Yes.

Where was that?---At the Croydon Bowling Club.

And you had a discussion there?---Yes.

And he told you certain things?---Yes.

40

Now, one of those, as I understand it, was about the night before election night?---Yes.

And he told you, what did he tell you then?---He told me that, that he had, well, sorry, I don't recall whether he told me it was the night before or not.

Right?---He, he, he was, told me more so that he, I mean, look, they were pretty upset about the issues regarding Mr Romano and that they had been stood down and they felt that they had been victimised. I was very clear in

saying that if you've got allegations you should take them to the ICAC. My understanding was at the time was that it had already gone to the ICAC because I think it was in the articles in the papers, I'm not sure, and then he made the comment that he was or arranged for two people to work on the campaign and that he, I don't know if he paid them or was told to pay them, I'm not sure.

10 So, but you understood during the course of that conversation that money had changed hands for people who (not transcribable) the campaign.

Well, I'm not, I can't recall exactly whether he said money changed hands or that he was going to, I'm not sure.

And was that the first time you'd heard - - -?---Absolutely the first time, senior counsel.

And you discussed other matters during the course of that conversation?
---Yes.

20 Now, was it just you and Mr Child when you said - - -?---No.

Was Mr Giangrosso there?---Yes, he turned up.

And anyone else?---No, just three.

Just the three of you. And how long did you meet for?---I can't absolutely recall but it was, I mean, I drink water, I think Steve and, and Joe had a beer, they probably had one or two so it was probably, I don't know, 40 minutes, something like that.

30 And did you report back to Mr Romano that you'd met with them?---No.

So you didn't say to Mr Romano I'm concerned because they've been stood down, that doesn't seem very fair or anything like that?---No, that's operational, they're issues I can't get involved in.

40 Right. So that if someone came to you with a concern like that, leave them aside and the circumstances of that one, but if a member of staff came to you when you were a Mayor and raised a concern about the General Manager, what would you have done then?---I would have firstly sought the legal advice depending on the seriousness of it and then if it was a very serious issue reported it to the ICAC.

And in terms of them being stood down and they considered that was victimisation. Did that concern you?---Yes.

And did you raise it with your fellow Councillors at a Council level?---Not that I recall, I may have.

Well, did you consider it a matter that the Council might be exposed to some liability about?---No. I considered it a matter, senior counsel, that was operational and that if they had allegations they should go to the ICAC and I really didn't want to be involved in that. I felt like I was being put in between a sandwich so - - -

10 I'm sorry, you were put in between a sandwich, how come?---Yes, because the staff were saying, well, making complaints about Mr Romano and everything else and I didn't want to be involved in that and Mr Romano, when it came out in the paper was saying that he was being set up so I didn't want to be involved in that. If people had certain complaints I always said make them to the, to the ICAC.

So you didn't think in your role as a Councillor and a community representative you were concerned about the health of the organisation?
---Of course I am.

20 But you didn't consider it was part of your role to get involved in what appeared to be a staff management conflict?---Well, no, that's not my role, it's an operational issue.

And did you contact this Commission then after you had that conversation?
---No, I believe I think it was reported that it was alleged but I think the Sydney Morning Herald would do a good enough job reporting that and making the Commission aware of allegations.

30 When Mr Child and you had that conversation about just before the election organising people, did he tell you why he'd organised people?---I can't recall.

Well, did he tell you that Mr Romano had asked him to do so?---Possibly.

And that he'd organised people who did it because the General Manager asked them to do so?---He, I think he possibly, possibly said something along those lines.

40 And, and you understood that those people had done it not because they necessarily wanted to assist in your campaign but because they'd been requested to do so by the General Manager. Is that how you understood it?
---Prior to, at that meeting or prior to when - - -

At that meeting?---At that meeting, that's what was conveyed to me.

And how did, what was your response to that?---Absolutely shocked.

And why was that?---Because I didn't expect any Council official to speak to staff or order staff, if that was the case, I, I wasn't sure if that was the case.

And were you short-staffed, short volunteers for that election?---I can't recall, I couldn't tell you because I didn't organise that. I don't believe so.

10 So you weren't running around the week before the election trying to get volunteers to be on the polling booth?---No, I was running around doorknocking.

Right. Just returning to the conversation you had with Mr Romano just before the election, so not this conversation with Mr Child - - -?---Ah hmm.

- - - but when you spoke with Mr Romano on or about 12 September, 2008, and Mr Romano mentioned some names, did he mention Mr Child's name, do you recall?---He didn't mention any names to me.

20 So he wrote a list with a couple of names on it?---I assume he wrote a list because I found a post-it note on my desk.

And you think, and you thought at the time that was him?---Well, I, I saw it had volunteers and two names so I assume it was from him, I can't absolutely say it was or wasn't.

But at the time you thought it was from him?---I thought so.

And that didn't have Mr Child's name on it then?---No.

30 No. I have nothing further at this stage.

ASSISTANT COMMISSIONER: Thank you?---Am I free?

MS RONALDS: No, you're not free quite just yet.

ASSISTANT COMMISSIONER: Well, this might be appropriate to take break. I presume there are some counsel to which to question this witness?

40 MR BLAKE: I do, Commissioner. I'm hoping I might get a transcript from yesterday. I would have been prepared to start right now but at the time I left to come here this morning, yesterday afternoon's transcript was not on the website so - - -

MS RONALDS: I could be nice and (not transcribable)

MR BLAKE: (not transcribable)

MS RONALDS: It's a conditional offer.

MR BLAKE: There's a conditional offer that I might be able to see one so that (not transcribable).

ASSISTANT COMMISSIONER: Yes. All right. Well, we'll adjourn for 15 minutes in any case. You'll have to come back then, thank you.

SHORT ADJOURNMENT

[11.28am]

10

ASSISTANT COMMISSIONER: Thank you, please be seated.

MS RONALDS: If I could just tender that newspaper article that was referred to.

ASSISTANT COMMISSIONER: Yes. That will be Exhibit 51.

20 **#EXHIBIT 51 - NEWSPAPER CLIPPING TITLED COUNCIL'S
CABINET INSTALLED AT HOME APPEARING IN THE SYDNEY
MORNING HERALD MONDAY, MAY 4, 2009**

ASSISTANT COMMISSIONER: Yes, Mr Faker, could you come back, please. Just have a seat. Yes, Mr Blake, you want to, have some questions.

30 MR BLAKE: Mr Faker, you were asked some questions yesterday by counsel assisting about the procedures that operated within Council, particularly during the time while you were Mayor, and I think that was 2006 to 2008, is that correct or 9?---8.

8. Yes. It was a three year period. Yes. And during that period it was the practice of Council for the management team, the executive to produce quarterly budget reports which were presented to the Councillors?---Yes.

And there was also an annual financial report which was independently audited?---That's correct.

40 And presented to the Councillors. And there were also workshops that were held on budgetary matters. And I think you referred to, in your evidence, an annual workshop where the, the budget for the ensuing year was discussed? ---Yes.

Yes. And from time to time there would be additional workshops to deal with major projects or services where the executive team came together with the Councillors to discuss the projects or services including the budgetary aspects of that?---Not so much the budgetary aspects. For example if you

were talking about, there may have been a component on the budget for that particular issue, but it was primarily on the policy.

Yes. But as appropriate there may be a budgetary aspect of a discussion?
---Yes.

Yes. Thank you.

10 And if there were variations to a budget in any financial year, the variation was reported to Council and voted on by the Councillors wasn't it?---That's right.

Yes. And in the course of the period when you were Mayor, your practice was to meet with Mr Romano at least weekly?---Yes, to discuss matters.

20 Right. Sometimes it would be more often depending on the nature of the particular business at the time?---Well, I think in the beginning it was a weekly meeting. After that, I think it sort of just, we didn't have a set weekly meeting, it was just if we bumped into each other.

Yes. But on a regular basis and sometimes more often than weekly, depending on the nature of the business at the time. Do you agree with that?---Yes.

And as Mayor, you had full access to the executive team at any time didn't you?---In what way?

30 Well, you didn't need the permission of the General Manager to speak to any member the executive team did you?---No. But I'd usually go through the General Manager.

Yes. There was a, a policy within the Council on the interaction between Councillors and senior staff during that period wasn't there?---Yes.

And you were entitled to speak to the General Manager and the executive team pursuant to the policy?---I believe so, yes.

Also the Media Officer?---Yes.

40 The Governance Officer?---Yes.

And also the personal assistant of the General Manager?---Yes.

Thank you. Now, can Mr Faker be shown Exhibit 8 please. I beg your pardon, Exhibit 40?---Yes.

You'll see that the email is in two parts, Mr Faker, the bottom half was sent on Wednesday, 24 October, 2007 at 11.22am and the top half records that it was sent on the same day at 11.26am. You see the two components?---Yes.

I just want to ask you about the bottom half for the moment. It records the email as having been copied to you?---Yes.

And do you recall receiving that email at about that time?---Possibly. I remember some of the contents of that email, yes.

10

Yes. You would've read it at the time?---I would say I would have, yes.

Yes. And the top email, the one sent 11.26am, again, from Mr Romano to recipient this time Mr Baird but copied to you?---Yes.

Do you recall receiving that at the time?---Yes.

And you read it?---I believe I would have, yes.

20

Yes. Thank you?---I can't absolutely recall, Senior Counsel, only because it's so long ago but I, I assume if it was sent to me I would've read it.

Yes. And at the time that around about the 24 October you were certainly aware at that time that Mr Romano was complaining about harassment? ---Yes.

30

Yes. And you'd had a discussion with him before that hadn't you?---I remember having a discussion with him where he initially reported the, what was happening and that the Council was going to look at getting a security audit.

Yes. And the discussion prior to this email was the discussion where you raised that you'd also had sort of the knock and run incidents?---Yes, it was a discussion where it was a comment more so than really discussing the issue that, gee, that's funny that you're receiving all of these because in previous weeks I had been copping the knock, I'd been getting the knock and runs starting to happen.

40

And that discussion was when Mr Baird was present too?---Yes.

Yes. And you, I suggest, can't recall now what Mr Baird had with him during that discussion can you?---Sorry?

What Mr Baird had with him in terms of paper or documents during that discussion can you?---Yes, I can recall what he had.

What did he have?---He had a legal advice that he had prepared for the Council.

Well, I suggest you're mistaken about that, he had his notepad but not a legal advice?---No, I remember seeing a legal advice.

Now, that exhibit can be returned. Can Mr Faker be shown Exhibit 8 please?---Sorry, just to correct that, Senior Counsel, to the best of my recollection I remember he had some type of legal advice that he was going through and he was making notes.

10 And you don't, he didn't show it to you did he?---The legal advice?

Yes?---I remember him talking about the issue of occupational health and safety and I recall there was some discussion that he was going to make a file note, not that Mr Romano was requested to make a file note and that, and it was primarily on that, there was absolutely no discussion on the matter going before Council or recommending that way or the Mayor, he may have mentioned the Mayor in emergency circumstances could approve or authorise the system, I believe my comment at that time was, Well, emergency, for the Mayor to use his emergency powers would have to be a
20 a serious emergency like a flood or, you know, a tornado or something like that so I said I wasn't prepared to do that.

Yes. Just pardon me a minute. So you're quite clear in your recollection that there was no discussion or no advice from Mr Baird that the matter of authorisation should go to the Council?---No. Sorry, that means you're, you're correct in what you said.

Yes. And was there any discussion about who could approve any security to your home?---I believe there was discussion that it was an operational
30 issue or along those lines and that the matter was being dealt with by, or had been dealt with by the executive and I think Mr Baird from what I saw was comfortable with that.

Yes. And the same position pertained to Mr Romano's home, it was also an operational issue?---I can't absolutely recall if there was a discussion with regards to Mr Romano's issue as per the authorisation, I thought it would've meant the executive or Mr Romano because it was a doorknock interruption meeting where Mr Romano, as I mentioned previously, brought Mr Baird in and said, David's here to talk to you about the advice that you'd been asking
40 about re the security systems.

Yes. And there was your recollection no request by Mr Baird that the discussion be noted by Mr Romano and placed in Council records?---My recollection to the best of my ability was that he was going to make a note, he was Council's solicitor and that was his role, he was going to diary, make a file note.

And did you meet Mr Baird on many occasions during your period of office as Mayor?---Yes.

Can you recall any occasion where he asked for Mr Romano to make a note of the meeting and put it on Council files?---I can't recall. He may have. What I mean is I can't recall, there may have been meetings where he would have or would not have, I can't recall.

10 Thank you. Mr Faker, I'd like to take you to a different topic now. And can Exhibit, sorry, I forgot to ask you about Exhibit 8. Exhibit 8, can you just look at that for the moment?---Yes.

You'll see that that's an email from Mr Romano to yourself and copied to Mr Howe and Mr Baird?---Yes.

Did you receive that email?---Yes.

And you read it?---Yes.

20 Yes. And did you yourself take any action in relation to that email after you read it?---I can't recall.

All right, thank you. That can be returned and can Mr Faker be shown Exhibit 39 please.

I think you were shown that advice yesterday, Mr Faker?---Yes.

30 As at 10 July, 2008 was your personal assistant's name Linda Pham?
---From memory.

Yes. Can I show you this document, Mr Faker?---Yes.

You'll see there again a string of emails all dated 10 July and the first one's from Mr Neal to PA Mayor at Burwood, that's to your personal assistant. Is that right?---Yes.

40 That would be Miss Pham and you'll see one minute later an email was sent from Mr Neal both to himself and to Linda Pham, a copy to Mr Romano and Mr Baird?---Yes.

And you saw the advice and read it - - -?---Well - - -

- - - I'd suggest on or shortly after 11 July?---Well, senior counsel, I remember flicking through the advice, I don't think I read it in that much detail because I usually relied on the advice of the staff or the Council solicitor to break it down and tell me what it meant.

Yes, you, you perused the letter though, of advice?---Yes.

The draft advice?---I, I, possibly.

Yes. And I suggest that after you perused the advice you had a discussion with Mr Romano?---Possibly.

And he said to you had you read the advice from Mr Baird?---I can't recall the conversation but we possibly could have had a conversation.

10 Well - - ?---I, I remember having a conversation with regards to the Mayoral, the one that goes in the newspaper, the Mayoral column.

Yes, well, that was the subject of the advice, wasn't it, in part?---Yes.

Yes. You told Mr Romano when you discussed the letter, yes, you had read it and you thought it was bullshit. Do you recall saying that?---I don't recall that, no.

20 That's what you thought though, wasn't it?---No, I, what I said to Mr Romano is that I, we were told that we don't have to, we can't put in a Mayoral column in the newspaper and we didn't end up doing that even though I rang up surrounding councils like Mayor Tsirekas at Canada Bay and at Canterbury who were continuing with that as long as it wasn't political information.

You disagreed with Mr Baird's advice about the mayoral column, didn't you?---No.

30 No. And I suggest that Mr Romano said there's new legislation and it's pretty tough?---Yes.

And you said what does it mean in terms of correspondence that you were sending out?---Yes.

And he said that his understanding from the advice is that you can't respond to constituents from about 4 August onwards?---That's right.

40 And you said you're kidding, what about the Mayoral column and other Council leaflets?---I remember the Mayoral column, I didn't think, I didn't remember talking about the Council leaflets.

Yes. You were concerned in your conversation with Mr Romano that you would be unable to continue with your usual practice of having a Mayoral column in the local newspaper, weren't you?---I remember that because other adjoining councils were continuing to put a Mayoral column where ours had stopped, we stopped it.

Yes. And Mr Romano said to you, that is the Mayoral column and other Council leaflets are going to have to stop?---That's right.

And he said from his reading of the advice you can't send out any correspondence at all, you'll only be able to perform civic or ceremonial activities?---I don't recall that part.

10 Yes. And you told him you didn't agree with that?---I don't recall talking to him about that, I remember it was primarily about the Mayoral column which to my understanding to this date did stop as per the caretaker agreement, even though adjoining councils like Canada Bay and Canterbury continued to have a Mayoral column, I, I believe in Burwood it stopped.

Yes. And Mr Romano said to you, well, he'd talk to David again and see if he could get some more specific advice?---I can't recall.

20 You can't recall. And you said he should do that but you were going to check with head office people and see what they say?---No, because this wouldn't be a head office matter so why would I check that with head office.

Thank you?---I, I, possibly as I mentioned, checked with adjoining councils as to what they were doing but it would not be a head office matter.

That, Exhibit 39 can be returned and I'd seek to tender the attaching email.

MS RONALDS: Can it be marked?

30 MR BLAKE: Sorry?

MS RONALDS: Can it be marked?

MR BLAKE: Yes, can it be marked.

ASSISTANT COMMISSIONER: Sorry, what, what, what is the relevance with this email? What is it to show, something?

40 MR BLAKE: It shows when it was received, when the conversation took place, the involvement of Mr Faker in this matter.

ASSISTANT COMMISSIONER: Yes. I just think the whole issue about this advice is a bit of a side issue as far as I'm concerned and what discussions were had about it. I think it was only mentioned, wasn't it, as an example of a matter when Mr Romano had felt free to discuss with the advice given, that's my memory. I don't think it's a matter we'll be making any findings on conclusions or otherwise so, I mean, look, I'm happy to accept the email but I'm just telling you for your information that I don't

consider this advice and whatever reaction the Council had to it as a matter that this inquiry will make a finding on but I'll - - -

MR BLAKE: Well, if it can be marked, counsel assisting just asked that it be marked at this stage.

ASSISTANT COMMISSIONER: As an exhibit or - - -

10 MR BLAKE: No, no, marked, marked.

MR STANTON: Marked for identification.

MS RONALDS: Marked, just marked.

ASSISTANT COMMISSIONER: All right. Well, that will be MFI2.

20 **#MFI2 - EMAIL FROM MR TODD NEAL, MADDOCKS TO
BURWOOD COUNCIL DATED 10 JULY 2008, SUBJECT: DRAFT
ADVICE RE ELECTORAL MATERIAL**

MR BLAKE: Thank you, Commissioner. I want to take you now, Mr Faker, to the election period itself and I think it's agreed that that took place on Saturday, 13 September, 2008?---Yes.

30 I want to suggest to you that during the week before the election Mr Romano and you had a telephone conversation that went like this and I'll break it down into parts and ask you about each part. Mr Romano said to you, Mr Mayor, that Councillor Christo-George had contacted him some time in August regarding some irregularities in the electoral roll. I did not want to raise this with you at the time because I wanted to validate Councillor Christo-George's concerns before I brought it to you. Do you recall him saying something like that?---I don't recall that.

Yes. And do you recall him saying, before the election to you, that he'd engaged IPP Consulting to do some investigative work for me to try and validate whether there are any irregularities?---No.

40 And he said he would like to meet with you to discuss the complaint and have the material that had been collected by IPP discussed and did you have time for a meeting?---I remember there was possibly a time when I was possibly running out of the office or something like that. I think it was the day before the election or two days before, I can't remember exactly, where he possibly bumped into me and said that he wanted to have a meeting about electoral fraud matters. And I spoke to, about a complaint and then I would've told him from memory, speak to the PA's and let them arrange a meeting, which I assume would've been the 16th.

You asked him what the irregularities were didn't you?---I don't recall that at that time.

Sorry. You recall a reference to electoral fraud being mentioned?---Yes.

10 And Councillor, the name Councillor Christo-George as the person making the complaint was mentioned?---I remember the name, I can't remember if it was, if it was when I was running out of the office or if it was at the meeting of the 16th, with Council's legal advice, advisor.

Yes. And Mr Romano said he'd prefer not to discuss the matter further at that point, but to do so in the following week when the Council's lawyers and the IPP representatives were present?---I said that?

20 No, Mr Romano said that to you?---Look, I can't, I can't recall that conversation. I remember that possibly I would've bumped into him in the foyer and he could've mentioned something, where the PA's were and mentioned something that he wanted to arrange a meeting with me about an electoral fraud matter. That possibly could've happened. I remember recalling that. But I don't remember the name IPP, only because the first time I recall that name was at this Commission this week, so - - -

I mean, your recollection is there was a discussion about electoral fraud and arranging a meeting the next week. That's the extent of your recollection? ---Well, I wouldn't call it a discussion, no. It was probably an encounter on my way out, possibly.

30 Yes. You spoke to him and your recollection of that conversation was there was a reference to electoral fraud and a meeting next week?---No. Not a meeting next week. I believe if it was discussed I would've said work it out with the PA's or organise a meeting.

I see and possibly Councillor Christo-George's name was also mentioned in the conversation?---I think that probably came up at the meeting rather than before then or possibly, I remember he said there's, he had received a complaint from someone in Council.

40 Right. And you were out and about on polling day itself?---Yes.

And the polling booths nearest your home, I said is at Croydon School. Is that correct?---Yes. Croydon Public School.

Croydon Public School. And you attended there during the day from time to time?---Yes.

And you met Mr Romano at, on one of those occasions at Croydon Public School. Do you recall that?---No.

No. Well, I suggest to you that on one occasion during that day, at Croydon Public School you had a short conversation with Mr Romano?---No. I was too busy on polling day.

Well, I suggest to you that on polling day that Mr Romano said to you outside the polling booth at Croydon Public School that, sorry, I'll withdraw that. That you said to Mr Romano that you'd heard that the union had spoken to him about staff wanting to help on our booths. What did you tell them?---No.

And he told you, John, it was Child who approached me, not the union?---I don't, I don't recall that, no.

And you said, Oh, what did you tell him?---Absolutely not. The only recollection I have of any matter regarding volunteers was when Mr Romano interrupted me in my office through a doorknock and said that he had become aware that the union organiser or the union itself and I, I had been aware because I had spoken to Wayne Moody, was organising volunteers to help out on the day. And that he was concerned with that, yes, I say that I would say that. But that he was going to seek legal advice.

Well, I suggest to you that at the polling booth outside Croydon Public School Mr Romano told you he'd got legal advice and he told Mr Child that it was inappropriate to have staff helping out on polling booths in Burwood. So he told you it was inappropriate. That's the legal advice he got, he told you about the legal advice?---Well, senior counsel, I don't remember a meeting with Mr Romano on the polling day because I wouldn't be meeting with the General Manager, I'd be, I exactly remember on polling day I was more concerned about (not transcribable) votes and why would I be talking about volunteers on a day when volunteers should be there.

Well, I'm just asking about your recollection?---Well, I don't recall that meeting at all.

And I suggest that, when he said, that's Mr Romano said he told Child that it was inappropriate to have staff helping out in polling booths in Burwood, you, you asked what did Child say?---Senior Counsel, as I advised you, I don't recall that discussion. And I absolutely don't recall the name of Steve Child being involved until Steve Child told me at that Bowling Club drink that we had.

Yes. And I suggest that Mr Romano told you that Child wasn't happy about it and said that the staff involved may do it anyway?---Sir, I don't recall that. Sorry, senior counsel, I don't recall that.

And when you say you don't recall it, you accept that it may have happened, you just simply can't recall one way or the other?---Well, senior counsel, as

I mentioned earlier, I was absolutely sure that on polling day I was more concerned about handing out how to votes and speaking to potential voters and constituents, rather than be talking about having volunteers, which it wouldn't of been an issue then because it was the actual day of the election.

10 All right. I just want to clarify, Mr Faker, do you deny the conversation that I put to you took place or you cannot recall one way or the other?---I am confident it didn't, I mean I can't, from the best of my memory, I can't recall seeing Mr Romano on the day of the election. If he bumped into me he may have said hello or something like that. But I definitely don't recall a conversation on polling day.

All right. Just let me clarify that. You don't recall one way or the other. It could've taken place, you said you don't recall it or are you saying it did not take place?---Senior Counsel, if by chance Mr Romano bumped into me on a polling booth, it would've been, he would've said hello. But absolutely I don't recall any conversation about volunteers on that day. I don't recall even seeing him on polling day. That's the best of my recollection.

20 Yes. Thank you. Now there was a meeting that took place on 16 September, 2009. You do recall that?---Yep.

That it involved, sorry, I'll withdraw that. Thank you. 2008. The Tuesday after the election?---Yes.

And it took place at the Council building?---It took place in the General Manager's office.

30 Office. And Mr Baird was there?---Yes.

Mr, I think you were asked about Mr O'Reilly and you can't remember one way or the other?---I, yeah, I can't, it's possible he could've been there. I can't remember.

You mentioned in your evidence that Councillor Nanva was there?---Yes.

And Mr Sam Dastyari was also there?---No.

40 I suggest you're mistaken about that?---No, I'm not. And I'll tell you what happened, if you allow me to, senior counsel. Mr - - -

You say that Mr Dastyari was not there?---Mr Dastyari walked in as we were walking into the office and, and walked passed, he was visiting me on a social call, he said hello, and then walked straight into my office.

Well, I suggest to you that Mr Dastyari and Mr Nanva were there at the very beginning of the meeting and then left?---I don't recall that.

Yes. But it could've happened couldn't it?---I don't believe so. I remember Mr Nanva being there and Mr Dastyari when we were, when w were walking in to begin the meeting and he walked into my office, sorry, walking through the foyer and I said to him, Look, we're just going to have a quick meeting regarding an issue. He then said, Well, I'll wait in your office 'cause it's not appropriate for him to be at that meeting.

Yes. And Mr Dastyari was an official of the Australian Labour Party. Is that correct?---Mr Dastyari is a friend of mine, yes.

10

And an official of the Australian Labour Party?---I don't know if he was at that time. He is now.

And you chaired that meeting didn't you?---No.

Yes. I suggest that you asked Mr Romano for a report?---No.

20 And I suggest that Mr Romano told you there were two issues to be dealt with in the meeting, that the first part was Mr Baird to advise on some legal issues as to an issue of defining a place of living under the Electoral Act and the second issue was in relation to the electoral roll and irregularities involving Mr Sidoti and Mr Strik?---Senior Counsel, I did not chair that meeting, if I chaired meetings they would've been in the Mayoral office not in the General Manager's office so I didn't chair meetings in the General Manager's office firstly.

30 Right. Well, you've told me that but - - -?---Secondly, secondly, I was requested to be at that meeting, I did not ask for the meeting to happen. With regards to answering your question I remember Mr Romano was very, should I say, concerned about wanting to know and get advice from Mr Baird about if he had a responsibility or if the Council had a responsibility to take action because a complaint had been made to him. I remember that.

Yes. And do you recall Mr Baird gave some advice at the meeting?---Well, Mr Baird would go on about legal jargon so I would assume he was giving some advice.

40 And I suggest to you that it was when Mr Baird started speaking that Mr Dastyari and Councillor Nanva left the meeting?---No, Councillor Nanva was, was, remained at the meeting.

Yes. I think you've given some evidence that you couldn't recall Mr Reilly being there and at the end of the meeting you and Mr Romano and Mr Baird had a discussion about whether any action should be taken?---Well, I, my understanding was when I asked, when Councillor Nanva was with me when I asked Mr Baird if I had a legal obligation as, as a public or as an elected official and he advised me no, I didn't and I, I assumed that Mr Romano was satisfied as well that he didn't have an obligation at that stage

to take any further action that, that the meeting ended, that's, that was the completion of the meeting.

Yes. Well, Mr Baird said on the basis of the evidence he had, he didn't believe that any further investigation was warranted or any action was warranted. Do you recall him saying something to that effect?---Yes.

And Mr Romano agreed with that?---Yes, I remember Mr Romano agreed with that, yes.

10

And you agreed with it too?---Yes. Just, Senior Counsel, just to point out I think when it began we, Mr Romano when he started began about, he was asking about whether he had an obligation as a public officer and then it came to myself and that's, as I repeat, I asked Mr Baird if I had a legal obligation as an elected official because I had been made aware of the complaint that, that I have to take any action. And he advised me no, I didn't.

20

Can you recall any defamatory pamphlets or potentially defamatory election pamphlets being looked at in the meeting?---No, not at all.

I suggest that you can't be sure whether that happened or not?---No, I'm absolutely sure, I, I, from my recollection it was to do with the electoral issue and that's why Mr Baird was there and he was providing advice and it wasn't to do with electoral matters.

30

Thank you. Can Mr Faker - is there a copy of yesterday afternoon's transcript that he can be shown? I have only one copy myself I'm afraid. Mr Faker, could you turn, you'll see pages in the bottom right-hand corner? ---Yep.

Can you go to page 374 please?---Yes.

You'll see a question asked at line 22 and your answer went from line 22 down to I think line 37. Can you just look at that please?---Yes. So you want me to read it do you?

40

I just want you to refresh your memory?---Is that about Wayne Moody and - -

Well, I just wonder if you can look at from line 22 to line 37?---Yes.

I want to suggest to you that that conversation within the answer between you and Mr Romano never took place?---No.

Thank you. The transcript can be returned. You disagree with what I was putting to you that I was suggesting the conversation never took place? ---Well, I disagree with that.

Yes, thank you. Just for the transcript's sake I'm indebted to my friend. I want to move on from that topic now and go slightly earlier to about June 2008 and ask you about a conversation with Mr Romano dealing with your alarm system at your home, the security system?---Yes.

Yes?---Sorry, June 2008?

Yes, about June 2008, the middle of 2008?---I can't recall.

10

Well, let me see if I can help you. I suggest about that period there was a, you had a conversation with Mr Faker in which he told you that Richard Mailey wanted to - - -

ASSISTANT COMMISSIONER: Mr Romano I think you mean, Mr Blake. You said he had a conversation with Mr Faker.

20

MR BLAKE: Sorry if I've confused everybody. This is a conversation between you and Mr Romano in which Mr Romano said, "John, I've received a call from Richard Mailey who wants to know if all is well with your alarm."?---I, it's possible, I can't recall.

And you told him it was working well?---Well, I, I, I don't believe I had any issues with the alarm so possibly.

30

Right. And Mr Romano said that he wanted to make sure that you understood that when you stopped being Mayor you'll either have to pay back the monies for the alarm or return it as it was bought under the operational budget?---That was known to me from day one so - - -

Yes. Well, I suggest to you it was something that Mr Romano said to you in about June of 2008?---I can't recall that particular conversation but I remember prior to the alarm going in that I was advised of that, yes.

Yes. And about June of 2008 when your opposition in terms of continuing as Mayor was at least uncertain at that point?---Didn't think of it at the time.

Right?---I can't remember.

40

And is it the case that in mid, about mid-2009 that you had another conversation with Mr Romano about this topic where you raised with him that he had earlier said to you that when you stop being Mayor you would need to pay back the moneys for the alarm?---I remember having a conversation in early 2009 with Mr Romano where I raised with him the issue that what's happening with the alarm system, that is Council going to come and remove it or am I going to be provided with advice to see if I would purchase it.

I'd suggest to you there was a conversation on that topic about the middle of 2009, would you agree with that?---It could have been, I remember it was in 2009.

And you said that nobody from the Council staff had contacted you and you were concerned about the matter?---Yes, that I hadn't been contacted. I would have thought the Council would have been more proactive in looking after its assets.

10 And Mr Romano said that you should contact Mr Hullick and Mr Walker to discuss the matter?---No, I recall, well, from my recollection Mr Romano was to contact Mr Hullick and Mr Walker.

Well, I suggest to you that Mr Romano suggested to you that you contact Mr Hullick and Mr Walker?---No, from my recollection it was, he was going to contact Mr Hullick and Mr Walker.

20 Yes. And I suggest that you said you would but could Mr Romano also follow it up for you?---From my recollection he, he was, he was going to contact, as he had done in the past, contact the director or the CFO.

And I suggest the conversation concluded with Mr Romano saying he would talk to Mr Hullick but you should also speak to him directly?---He possibly could have said that and I had some conversations with Mr Hullick after that time.

Thank you. You gave some evidence this morning about a conversation with Mr Child after the article published in the Sydney Morning Herald on 4 May, 2009?---Yes.

30 Did Mr Child tell you in that conversation that he had gone on sick leave? ---I believe he had told me he had been stood down.

Right. There was no conversation from Mr Child about him being on sick leave?---I can't recall.

It's something you would recall, isn't it?---It's possible. I mean, at the end of the day he was stood down as, as far as I was aware.

40 Thank you. No further questions, Commissioner.

ASSISTANT COMMISSIONER: Thank you, Mr Blake. Yes, does anybody else wish to question Mr Faker?

MR HANLEY: Assistant Commissioner, Hanley for Mr Child. I have some questions.

ASSISTANT COMMISSIONER: Yes, Mr Hanley.

MR HANLEY: Mr Faker.

MR BLAKE: Faker.

MR HANLEY: Faker, sorry, you were asked some questions by counsel assisting the Commission in relation to events leading up to the September 2008 election?---Yes.

10 Particularly about staff and volunteers coming forward to assist in your campaign?---Yes.

Do you recall those questions?---Yes.

And I think you advised the Commission that you recalled Wayne Moody, a union representative, I think United Services Union, is that correct?---State organiser, yes.

20 Approaching you about volunteers?---Well, there were, there were discussions prior to the election, months before where he said they would support or want to provide support via volunteers and I believe in the week or two weeks up to the election my campaign staff would have called him and I think I spoke to him.

And were these volunteers to come from the union membership generally or from union members that worked for Burwood Council?---I wasn't absolutely sure at the time.

30 I think you told Council assisting that the union had a history of doing this? ---The unions, not that union, more the unions.

Had this particular union or Mr Moody on behalf of this union assisted you in past elections?---I, well, I only got to know Mr Moody at this election, well, prior to this election.

Had this particular union provided assistance from the members?---No.

Had any union assisted in your prior election campaign?---Prior elections, yes, other unions have, yes.

40 And what were they?---I can't recall, I think the CFMEU provided some assistance and I think there may have been a USU union, I'm not sure.

And did they provide members who worked for Burwood Council to assist you?---I can't recall.

You said to counsel assisting that Mr Romano had attended your office and became aware of the requirement for staffers at booths. Is that correct? ---Sorry?

You said I thought, you gave evidence that Mr Romano had attended your office and was aware the union wanted to organise members for the day?
---He interrupted me in my office and advised that he had become aware that the union was organising members.

Did he tell you how?---No.

10 Did it seem strange that an official for the Council not involved in the politics of Council was approaching you about your campaign?---Yes.

Had he ever done that before?---Not that I recall.

Did he tell you he was going to get some legal advice, did he?---Yes.

Of, did you assume or did he tell you that that was from Council's legal adviser?---From Council's legal adviser I assume.

20 Did you think that was appropriate, that a Council official, from the administrative staff was going to seek advice from Council's solicitor about how you would staff your campaign?---I thought, no I didn't think it was unusual because I think Mr Romano had a history of always wanting to get legal advice if he was uncertain about issues or concerned about issues.
With regards to - - -

ASSISTANT COMMISSIONER: Mr Faker, the question was not whether it was unusual, the question was did you think it was appropriate?---I didn't believe it was inappropriate.

30 MR HANLEY: Well, as I understand it you told Mr Romano that, or he'd become aware that some union official wanted to supply some assistance to your campaign and then tells you that he's going to get some legal advice about it. Did you think that was within the realms of his position and where Council funds should be directed?---I think his concern was that it was staff, part of the staff.

40 Did he say that to you?---Well, I assume so because he said he'd become aware that the staff, that the union had been organising some of its members who I believed were part of the staff.

But he didn't mention any names?---No.

And did you say in your evidence to counsel assisting that he told you that he would get advice and if it was okay he would give you some names?
---No, he didn't say that.

Who said that?---He, he said that he would get the advice and as he was walking out I said well, if it's okay do you mind providing me with the names of those that you're aware that want to volunteer.

Did you make any inquiries of him directly whether he had received any advice as to whether this was appropriate?---No.

10 You were present when Mr Romano gave evidence about this incident in these proceedings?---Yeah, I can probably recall, I wouldn't recall exactly but I was present.

Do you recall him saying that that he spoke to Mr Baird?---Yes.

And that afterwards he spoke to Mr Child and told Mr Child that it would be okay if it was in their own time and they weren't wearing Council uniforms. Do you recall him giving that evidence in the - - -?---Yes.

Did he tell you that at all?---No, I didn't see him after that at Council.

20 So all you know is that he told you he was going to get some legal advice but you never heard anything about it?---No, I remember, no I didn't hear anything back in direct conversation with Mr Romano, no.

But you became aware at some stage that there was a volunteer from a union or the union by the name of Mark Avery?---Yes.

Did you know him?---I can't recall him but I probably know him by face.

30 And did he work for the Burwood Council?---Yes, I believe so.

Who told you that he was going to volunteer as part of the union's assistance?---Wayne Moody.

Wayne Moody told you?---Sorry, counsel, just to correct that. I can't recall the exact names that were given to me by Mr, I assume Mr Romano on the post-it note. And the list of the names on the unions. My, I would pass that on to my campaign office.

40 Through two sources, one from Mr Moody and one by this postal note that's just stuck somewhere, was it on a computer or a desk?---I believe it was on my desk at the time.

There were three names, Avery was one?---I think there was either three or four. I can't recall exactly.

Joe Saad?---I, Joe, I can't recall the names at the time, but since I've checked I remember now that there, there were those names, I think.

And Ammer Issa?---Yes.

And you've checked since you heard Mr Romano being questioned by counsel assisting about this issue?---Yes.

But those names were somehow, you are now aware were provided in one form or another in relation to assistance being provided to your campaign in respect of handouts?---Sorry, can you repeat that question, counsel?

10 You were aware from one source or another, either the postal notes or Mr Moody that at least these three names that you gave in evidence earlier - - - ?---Yes.

- - - were going to assist in your campaign by providing handouts to potential voters?---Well, I passed, as I mentioned I passed the names on to my campaign staff and they made the arrangements, so at the time I didn't know who was handing out or who wasn't handing out.

20 But you've made, those inquiries that you've made subsequent to hearing Mr Romano give evidence, have indicated that those three names were provided. Is that true?---I would say so, yes.

Well, is that the case or not?---I believe so.

Well, who gave you that information?---I got that from my campaign staff, because I went and checked.

You went to who?---I think it was Ms Deans, Sally Deans.

30 And you spoke to her what, within this week?---Within this week and prior to this week.

So were you aware that it was an issue prior to this week?---No, because I, as I mentioned in my previous answer to the senior counsel, I remember checking after I had a drink with Mr Child and Mr, and Grasso.

On 5, sorry, 4 May, 2009, there was an article which is now Exhibit, I think, 51 of these proceedings in the Sydney Morning Herald?---Yes.

40 And it was as a result of that article, on a, I would suggest a subsequent Saturday, you rang Mr Child on his Council mobile phone?---I can't remember what phone I called him on, but I, I remember calling him.

Had you ever rung him before?---Possibly if, I don't know, I can't recall that.

Well, you knew he had a position in the depot at the Council?---Yes.

A senior position as a supervisor?---Yes.

And that he was, I might suggest a person known to you who got things done?---Yes.

And you knew him in that capacity, but you didn't have a personal relationship with him at all did you?---No.

10 And you rang him did you because of the article?---From memory I rang because I remember I, it was about the article, yes.

And because you knew that he'd been involved in installing this particular cabinet at your home?---I had some recollection that he was there because I was, I went in as they were leaving, yes.

20 Did you also ring because it had become known around the higher echelons of Council that Mr Child may have been someone who'd been leaking information to the Sydney Morning Herald and ICAC about corrupt procedures within the Burwood Council administration?---No.

You didn't ring him for that reason?---No.

Did you ring him then for the reason that he had helped to move the cabinet?---No, I gave you the reason why, counsel. I did not believe in a trail by media and Mr Child had always been nice to me. He was a nice person.

30 Can I just stop you there. How did you associate Mr Child with someone you should speak to as a result of what was contained in the article then?
---Because Mr Child had - - -

Moved the cabinet?---Moved the cabinet to my home, yes.

And you thought he may have leaked this information?---I wasn't concerned about the leak, I was more, had an issue with, I did not believe in a trial by media and what I was, yes, I just wanted to talk to him about that.

Well, who else had moved the cabinet?---I don't know who else was there.

40 You're saying that you were unaware from other members within Burwood Council administration that they suspected Mr Child had provided information to the Sydney Morning Herald and ICAC about corrupt procedures?---No, counsel, that wasn't my concern.

In any event, he rang you back, Mr Child, didn't he?---I can't remember if he rang me back or we had a, or we arranged to have a drink. I know we were supposed to have another catch up, like just to catch up socially and I rang and cancelled the second time, I said, look, I'm not going.

Let's just work through it. You rang him. Did you speak to him or did you leave a message on the first occasion?---I can't remember. I may have, I'm pretty sure I got him on the phone.

Okay. And he lives a long way away from Burwood doesn't he? Down the coast?---I don't know where he lives, no.

10 No. I suggest he wasn't in Sydney at the time and you were arranged to meet subsequently through another call by him to you. And you suggested the Croydon Bowling Club?---I can't, I, I can't remember exactly how the conversation took place at the time.

You did meet at the Croydon Bowling Club?---Yes.

And how many days from the time that the article on 4 May did that occur? ---I, I couldn't tell you or can't remember.

20 And you wanted to speak to him about the article?---No. If he had concerns with me, I wanted to know what those concerns were. Because I, I did not believe in a trial by media.

Did you tell him on the telephone, look, if you've got concerns with me, I want to talk to you about it?---From memory, that's what I - - -

What concerns could he have with you from your association with him? ---Well, I think with regards to the issue as I mentioned in the article, it led me to believe that he may have had concerns with me.

30 You met him - - -?---Yes.

- - - by himself initially?---Yes.

At the Croydon Bowling Club?---Yes.

And did he make some complaints to you about being harassed at Council? ---I can't remember the exact complaint, but I remember that he was very upset.

40 He was upset (not transcribable) suggest and that he said he was being harassed because he'd paid some workers some overtime money and they'd done some work on Park Road in Burwood?---Possibly, that could've, that could've been part of the discussion. I can't, I can't recall it exactly.

And he'd received a disciplinary letter because he'd paid these workers out of his own money some overtime?---I recall, I can't remember, it's possible, counsel. I remember we discussed the footpath where they drilled some holes.

And I want to suggest in the context of that him paying people out of his own money he said he couldn't understand what the problem was because he paid for some members at the request of Mr Romano to turn up at the election and hand out How to Vote cards?---That's, I remember him saying something about the payment of members.

10 In effect he was saying there seemed to be, you know, two values here, I can pay for that but I'd get into trouble for paying for overtime now that they're harassing?---I know he was very upset.

And he also said an indication of how I'm being harassed is that some concrete work we did recently they drilled a hole, part of the holes in it to see how much concrete they used?---I remember that.

And then he rang Mr Giangrasso and asked him to attend the meeting and he turned up?---Yeah, to have a drink.

20 But he also confirmed to you didn't he that they were both concerned about the way they were being treated by Romano and others and senior management at Burwood Council?---Yes.

And they believed they were being harassed?---Yes.

They believed they were being harassed because they had come forward and disclosed certain things to the Mayor initially and later it's in the Sydney Morning Herald and ICAC?---Yes.

30 Thank you.

ASSISTANT COMMISSIONER: Yes. Thank you. Is there anybody else who - - -

MR STANTON: Your Honour, I've got some short tender but I've got a problem, at 2 o'clock I'm before the District Court, it was supposed to be this morning. At a suitable time, your Honour, I could show my learned friends (not transcribable) what I want to tender and it may be that that could be done by consent without putting it through Mr Faker?

40 ASSISTANT COMMISSIONER: Yes, certainly. Anything to save time.

MR STANTON: If you don't mind.

ASSISTANT COMMISSIONER: So if that's to be done then Mr Faker is finished in this segment?

MR STANTON: Thank you.

ASSISTANT COMMISSIONER: Is he required again for another segment?

MS RONALDS: No. Well, unless, as it happens everyday something new leaps before us and so perhaps if he could not be - if he could be stood down and we can advise him at the end if he's not required but at this stage he's not required again.

THE WITNESS: Thank you so much, Commissioner.

10 ASSISTANT COMMISSIONER: You understand that? You're stood down, it's unlikely you'll be called back but if you are to be you'll be notified?---But I can stay home and if you need me you can contact me so I don't - - -

Yes, you can do whatever you like.

MS RONALDS: You don't have to be here. And you'll be contacted but through your lawyer Mr McKenzie will contact your lawyer?---Thank you, Senior Counsel. And thank you, Assistant Commissioner, I think the
20 process has been very professional.

ASSISTANT COMMISSIONER: Thank you, Mr Faker, it's always good to hear.

MR STANTON: Commissioner, could I professionally be afforded the indulgence of withdrawing if I'm no longer required as Mr Faker - - -

ASSISTANT COMMISSIONER: Yes, you may withdraw. Everyone may withdraw and we'll adjourn till 2 o'clock this afternoon.
30

MS RONALDS: And then we'll call Mr Hullick.

ASSISTANT COMMISSIONER: Thank you.

<THE WITNESS WITHDREW [1.00pm]

40 LUNCH ADJOURNMENT [1.00pm]