

MAGNUSPUB01616.DOC
29/4/2010

MAGNUS
pp.1616-1758

PUBLIC
HEARING

COPYRIGHT

INDEPENDENT COMMISSION AGAINST CORRUPTION

THERESA HAMILTON ASSISTANT COMMISSIONER

PUBLIC HEARING

OPERATION MAGNUS

Reference: Operation E09/0560

TRANSCRIPT OF PROCEEDINGS

AT SYDNEY

ON THURSDAY, 29 APRIL 2010

AT 10.06AM

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

The transcript has been prepared in accordance with conventions used in the Supreme Court. Whilst the transcript is not a verbatim record, every effort has been made to ensure accuracy of evidence. Please advise the Commission of any significant inaccuracy.

.29/4/2010
E09/0560

1616T

1 ASSISTANT COMMISSIONER: Please be seated.
2
3 MS RONALDS: Commissioner, just before we recall Mr Mailey
4 I understand Mr Leggat would like to address the
5 commission.
6
7 MR LEGGAT: May it please the commission. I'm instructed
8 that on the Tuesday evening, the 27th of April, counsel
9 resolved to terminate summarily and with immediate effect
10 the employment of its general manager, Mr Pat Romano. The
11 resolution was unanimous, save for counsel of Faker, who
12 was absent from the meeting. The mayor has expressed the
13 view, on behalf of the council, that Mr Romano could no
14 longer perform the role of general manager and that
15 Mr Romano's leadership has been seriously and irretrievably
16 impugned. Council sought the return of, amongst other
17 things, the motor vehicle used by Mr Romano during the
18 course of his employment.
19
20 I have provided a copy of the media release to learned
21 senior counsel assisting the commission. The media release
22 is dated the 28th of April 2010. In my submission, it is
23 appropriate for that document to be received into evidence.
24
25 MS RONALDS: I agree, commissioner.
26
27 ASSISTANT COMMISSIONER: Yes.
28
29 MR LEGGAT: I also provided a copy of a letter dated the
30 27th of April 2010 to Mr Romano from the mayor, councillor
31 John Soditi and similarly it is my respectful submission
32 that it is appropriate for that document to be received
33 into evidence. However, I seek a non-publication order in
34 respect of the letter from the mayor to Mr Romano. May it
35 please the commission.
36
37 ASSISTANT COMMISSIONER: Yes, I think at think stage that
38 would be appropriate.
39
40 MS RONALDS: Yes, commissioner, I agree with that approach
41 proposed by Mr Leggat.
42
43 ASSISTANT COMMISSIONER: All right, to make it easier I
44 will make it separate exhibits. The media release will be
45 exhibit 215.
46
47

1 EXHIBIT #215 BURWOOD COUNCIL MEDIA RELEASE OF 28 APRIL
2 2010 - BURWOOD COUNCIL TERMINATES GENERAL MANAGER'S
3 CONTRACT
4

5 ASSISTANT COMMISSIONER: The letter dated 27th of April to
6 Mr Romano will be exhibit 216 and it will be a confidential
7 exhibit, not for publication.
8

9 EXHIBIT #216 LETTER FROM THE MAYOR, BURWOOD COUNCIL TO
10 MR PAT ROMANO DATED 27 APRIL 2010.
11

12 MS RONALDS: I call Mr Mailey.
13

14 <RICHARD MAILEY, on former oath: [10.09am]
15

16 ASSISTANT COMMISSIONER: Mr Mailey, you are still under
17 oath and the section 38 declaration continues to apply to
18 your evidence.
19

20 THE WITNESS: Thank you, commissioner.
21

22 ASSISTANT COMMISSIONER: Thank you, please take a seat.
23

24 <FURTHER EXAMINATION BY MS RONALDS:
25

26 MS RONALDS: Q. Mr Mailey, you will recall that we were
27 looking at the running sheets. That's the correct term to
28 use, isn't it?

29 A. That's correct, yes.
30

31 MS RONALDS: Perhaps if the witness could be shown the
32 last two exhibits, 213 and 214.
33

34 Q. From the notes you'll see that Merridy's surveillance
35 on 213 commenced - commenced on the 3rd of March and Brad's
36 on the 12th of March; do you see that?

37 A. That's correct, yes.
38

39 Q. Now, after Merridy commenced her surveillance, did you
40 have some conversations with Mr Romano about how the
41 surveillance was proceeding?

42 A. Not - not that I can specifically recall.
43

44 Q. It's correct, isn't it, that he was the principal
45 person to whom you were speaking in relation to this
46 investigation?

47 A. No, it was - I was dealing with Maddocks.

.29/4/2010
E09/0560

MAILEY
(RONALDS)

1618T

1
2 Q. Right.
3 A. Erin Wilson from Maddocks, the lawyers, and through
4 the committee Ian Dencker and - and another gentleman,
5 refer to notes here, and Peter Macklin.
6
7 Q. And what's that that you've got there?
8 A. It's just a - I just - rough notes I - I've made,
9 thanks.
10
11 Q. If I could ask you just to put it away?
12 A. Yes, certainly.
13
14 Q. And if you don't recall something and you need to
15 refer to it can you please advise me?
16 A. Yes.
17
18 Q. Thank you. Do you recall sending Mr Romano an email
19 on the 12th of March 2009 at 11.37am and attached to it is
20 a discussion and some provisions of the Workplace
21 Surveillance Act. Do you recall that?
22 A. I recall that, yes.
23
24 Q. And I'll just show you this document. Just ignore the
25 name Robyn Keen on the top of it, I know not who she is.
26 A. Thanks.
27
28 Q. Now, in this instance at least you're reporting to
29 Mr Romano or discussing matters with Mr Romano?
30 A. That's correct, yes.
31
32 Q. Now, does this enable you to recall a previous
33 conversation with Mr Romano about briefing the executive
34 about the progress of the investigation?
35 A. Yes.
36
37 Q. And you'll see your note. You see the email has a
38 document attached to it and the attachment is attached to
39 it, so to speak: "Hi Pat, I was quite prepared to do a
40 PowerPoint presentation to the executive committee
41 regarding the photographs of the various activities of the
42 workers." Now, that suggest, does it not, that photographs
43 of the workers had been taken as and before the 12th of
44 March at 11.37?
45 A. Yes.
46
47 Q. So photographs were taken of the workers before any

1 permit or authorisation under the Workplace Surveillance
2 Act arose; would you agree?
3 A. I'd agree, yes.
4
5 Q. And that was in breach of the Workplace Surveillance
6 Act, wasn't it?
7 A. Yes, it was - it was, yes.
8
9 Q. How do you say that occurred? Who instructed that
10 photographs be taken in breach of the Workplace
11 Surveillance Act?
12 A. We - because the council did not have any
13 identification photographs and they didn't seem to give us
14 a correct identification, we needed to try and clarify the
15 identification to put names in our reports and the
16 photographs I think were taken by one of our investigators,
17 Merridy, to - which she took of her own volition on this -
18 to have them identified as to who's - who's - who's coming
19 out of the gates.
20
21 Q. And she would have been aware of the provisions of the
22 Workplace Surveillance Act?
23 A. Yes, she was instructed about that, yes.
24
25 Q. And she has a licence?
26 A. She has a licence.
27
28 Q. And do you have a licence?
29 A. Correct.
30
31 Q. And the provisions of both your licences are that you
32 comply with all relevant legislation?
33 A. That's correct.
34
35 Q. And she failed to do so?
36 A. Yes.
37
38 Q. And you, as her supervisor, failed to ensure that she
39 did so?
40 A. Yes.
41
42 Q. And so there were photographs but what you're
43 suggesting here is you don't want to show them to the
44 executive because that will demonstrate the breach of the
45 Workplace Surveillance Act?
46 A. That's correct, yes.
47

1 Q. And that's the only reason?
2 A. That's the reason, yes.
3
4 Q. And who did you show the photographs to to identify
5 the workers, then?
6 A. They - we - we decided not to show them. I - we
7 decided not to show them on the - we did the PowerPoint
8 presentation. We tried to - to still identify the people
9 from the PowerPoint presentation and were having
10 difficulties.
11
12 Q. So you didn't show the photographs to Mr Romano, for
13 example?
14 A. No.
15
16 Q. So no-one looked at them?
17 A. No.
18
19 Q. So they remained at all times within the custody of
20 IPP; is that correct?
21 A. That's correct.
22
23 Q. They were referred to, were they - their existence was
24 referred to in discussions with Ms Wilson at Maddocks?
25 A. That's correct, yes.
26
27 Q. So she refers in some emails to the existence of
28 material prior to the issuing of the Workplace Surveillance
29 Act authority?
30 A. That's correct, yes.
31
32 Q. And so Maddocks was aware that the Act had been
33 breached?
34 A. Mmm. Yes.
35
36 Q. But did you make a formal report to council that the
37 Act had been breached?
38 A. No, I - I don't believe I did.
39
40 Q. Why not?
41 A. Well, they were purely photographs for identification,
42 not - not for the work - not to - not to spy on the
43 workers, they were just to identify the workers.
44
45 Q. They were photographs taken during a covert
46 surveillance operation, weren't they?
47 A. No, they were - I - I - they were just taken as a

1 one-off situation of the workers leaving the depot, to the
2 best of my recollection, one afternoon.
3
4 Q. So it wasn't covert?
5 A. It was covert, yes.
6
7 Q. Thank you. She wasn't standing slap bang in front of
8 the gate so they could see them?
9 A. No.
10
11 Q. They didn't know they were being photographed and her
12 intention when she took the photographs was that they
13 wouldn't know that they were being photographed?
14 A. That's correct, yes.
15
16 Q. Doesn't that make it covert surveillance?
17 A. It does, yes.
18
19 Q. Thank you. Now, there was some - the surveillance -
20 the purpose of the surveillance, as you understood it, was
21 to see whether there were thefts occurring from the
22 council --
23 A. That's correct, yes.
24
25 Q. -- depot?
26 A. Yes.
27
28 Q. And was there any other purpose when it commenced?
29 A. Yes, there was, to identify mainly the workers'
30 activities when they were leaving the depot and in which
31 direction, what vehicles they were driving when they left
32 the depot on commencement of work.
33
34 Q. And was it also to see whether equipment was being
35 removed from the depot for personal use?
36 A. That's correct, yes.
37
38 Q. And was it also to - whether people were working in
39 secondary employment?
40 A. That's correct.
41
42 Q. Or was it - was it secondary employment or was it
43 doing private jobs during council time?
44 A. It was secondary employment and doing council work in
45 the - like, doing private work in council time, yes.
46
47 Q. And you were told, were you not, that Mr Giangrasso

1 was a particular focus in relation to secondary employment?
2 A. I was.
3
4 Q. You weren't told Mr Child was a particular focus in
5 relation to secondary employment, were you?
6 A. No.
7
8 Q. It was only Mr Giangrasso?
9 A. That's correct and I - Mr - Mr Quirk, I believe.
10
11 Q. And Mr Quirk. So Mr Child wasn't in that category?
12 A. No.
13
14 Q. So - so there was surveillance generally of people
15 coming and going, what they were taking out of the depot?
16 A. That's correct, yes.
17
18 Q. That was the primary focus --
19 A. That was the primary focus.
20
21 Q. -- theft, as I understand it?
22 A. That's correct, yes.
23
24 Q. That the executive were concerned about reported
25 thefts?
26 A. That's correct, yes.
27
28 Q. And it was hoped that by surveilling the workers and
29 following them, some evidence would be collected about
30 theft?
31 A. That's correct.
32
33 Q. And that occurred, didn't it?
34 A. It did.
35
36 Q. In that initial period of surveillance prior to the
37 Workplace Surveillance Act authorisation?
38 A. Yes, that's the way we - that's the way we establish
39 whether they - thefts were occurring or not, yes.
40
41 Q. And there was a use - there was a - one particular day
42 when Mr Giangrasso was seen to drive a truck in and deposit
43 private rubbish, so to speak, and drive out again?
44 A. Without referring to the report, yes.
45
46 Q. Now, the authorisation was granted and I'll go to that
47 in a minute, but just in terms of the activities, on the

1 8th of April the surveillance operative Brad was outside
2 Mr Child's house?
3 A. Yes.
4
5 Q. Can you explain to the commissioner how that came
6 about?
7 A. Yes, on discussions with the - with the law firm and
8 Ian Dencker, that we were concerned that there were certain
9 people that could have been receiving goods from the
10 council, in other words, other - other drivers or other
11 workers delivering goods to their houses and we were just
12 asked as part of our brief just to check.
13
14 Q. And how was it that that came up as a proposition?
15 A. It is part of a surveillance, is that there's got to
16 be receivers of the goods - excuse me - and in this
17 particular case - excuse me - in that particular case we
18 weren't seeing the delivery point of where the goods were
19 ending up. We were seeing them going to the rear of
20 vehicles from council vehicles but --
21
22 Q. What - just to stop you there, if I may: what goods do
23 you say you'd seen going into - or had been seen by the
24 operatives going into the boots of vehicles?
25 A. Well, that's - there's numerous articles and there's
26 video of that during the video surveillance time.
27
28 Q. Yes.
29 A. Going in of large items being taken to street sweeping
30 truck. Items being taken out of the front of cabs of
31 trucks. Items being taken out of other vehicles and placed
32 into private vehicles. That's during the surveillance
33 period, yes.
34
35 Q. And it was a concern, was it, of where they were
36 going?
37 A. That's correct, yes.
38
39 Q. And weren't the vehicles with the material in
40 followed?
41 A. No, because they dropped - they dropped it off in
42 their - when they were leaving what - when they were
43 leaving work of a morning and then they went off on their
44 general duties during the day. We only had two
45 surveillance operators on the operation. It was therefore
46 very difficult to target one or two out of about 30 or 40
47 employees. So once we'd obtained the video of goods going

1 to the car and the registration plate and the photographs
2 of the person carrying out the activity, we pursued other -
3 other surveillance issues.
4
5 Q. But none of those vehicles were Mr Child's, were they?
6 A. No.
7
8 Q. So how was it that someone came up with the idea that
9 he might be receiving them?
10 A. Well, the initial court order, the first court order
11 came out was specific about - I think about four - referred
12 to four employees and - and those --
13
14 Q. And was restricted to the local government area of
15 Burwood?
16 A. Correct. And those particular employees of - were the
17 employees of interest and I think one of them were - was
18 Mr Quirk, as well as. So there's four there of concern
19 that the council was concerned about that might have been
20 receiving goods. So we - we did pay particular attention
21 to those persons and - and their addresses.
22
23 Q. See, what I'd suggest to you is this: Mr Child's house
24 was put under surveillance completely unrelated to what was
25 happening at the depot, would - would you agree?
26 A. Well, I - I was instructed by - by Maddocks that we -
27 you know, we had to carry out a series of surveillance
28 throughout the employees and the target employees and the
29 houses and Childs [sic] was - was mentioned as one of those
30 persons.
31
32 Q. Well, Mr Child - the surveillance of Mr Child's house
33 seems to have been much more lengthy and detailed than
34 anyone else's house?
35 A. It was, yes.
36
37 Q. And do you - so you say, do you, that Mr Dencker
38 directed that or that Maddocks directed it?
39 A. I - I couldn't be specific who directed it. We were
40 receiving a lot of directions from individuals and I'd like
41 to help the commission but I can't recall, you know, who
42 would have directed that but I know from the initial brief
43 given to me by the directors, after the presentation - the
44 PowerPoint presentation, that those persons were named
45 specifically as could - possibly involved in the threat, so
46 we did concentrate on them.
47

1 Q. You see, I suggest to you the reason Mr Child's home
2 was puts under surveillance was to see if he was meeting
3 the journalist from the Sydney Morning Herald; would you
4 agree?
5 A. Yes.
6
7 Q. And you - that was one of the things you were asked to
8 look out for, wasn't it?
9 A. It wasn't - it wasn't - no. No, that wasn't. That
10 was just a specific brief, "Note all people and video all
11 people coming and going from his house."
12
13 Q. And I'd suggest to you that you were told that one of
14 the people to look for in terms of who was coming and going
15 from his house and who he might be meeting away from his
16 house was the journalist from the Sydney Morning Herald,
17 Kate McClymont?
18 A. No. I - I don't know her name. I - I don't know what
19 she looks like, no.
20
21 Q. No, I just ask you to listen to the question. That
22 was one of the directions, wasn't it?
23 A. No.
24
25 Q. So you deny that?
26 A. I deny that.
27
28 Q. You see, what happens is that the articles are in the
29 Sydney Morning Herald on 4 April and 6 April, and on
30 8 April, Mr Child's house is placed under surveillance.
31 That's the sequence; would you agree?
32 A. I'd agree, but I - I wasn't following the articles at
33 the time, though.
34
35 Q. So you say you didn't read them?
36 A. No.
37
38 Q. You didn't know anything about them?
39 A. No.
40
41 Q. No-one mentioned them to you?
42 A. No. The first article where Mr - where the general
43 manager was in the driveway with his car and photographed
44 in his car with his - with his boy leaving one morning is
45 the only article I can remember reading.
46
47 Q. Well, that was the first one?

1 A. Yes. I did --
2
3 Q. And that was on 4 April?
4 A. I did not read any articles after that.
5
6 Q. Now - because when one looks through the notes to that
7 point, there's nothing to suggest on the cars that Mr Child
8 is in any way involved with the activities, if there were,
9 of stealing from the depot; would you agree?
10 A. I'd agree.
11
12 Q. So there was simply no basis to put his house under
13 surveillance except that you say Mr Dencker and/or someone
14 at Maddocks told you to do so?
15 A. That's correct.
16
17 Q. And you didn't query that and say, "Well, I don't
18 think that's a very good idea because it doesn't seem like
19 anybody - that he's up to anything. There's all these
20 other people who are up to things, but not Mr Child"?
21 A. We were following the - the court order. It was a
22 blanket surveillance. We just continued on the
23 surveillance.
24
25 Q. No, just, please, Mr Mailey, if you could listen to
26 the question?
27 A. Yeah.
28
29 Q. You've given evidence before that when Mr XXXXX was
30 being put under surveillance, you suggested that it wasn't
31 very productive?
32 A. Mmm-hmm.
33
34 Q. What I'm suggesting to you is - well, what I'm asking
35 you: did you say to anyone, "We have so far nothing to
36 suggest that Mr Child is up to anything"?
37 A. Yes.
38
39 Q. "And having his house under surveillance for three
40 days, someone sitting outside his house for three days and
41 not doing anything else doesn't seem a very productive use
42 of time" --
43 A. Correct.
44
45 Q. -- did you say that to anyone?
46 A. I say that - I said that and also it was in emails.
47

1 Q. And who did you say it to?
2 A. Oh, I think it was Erin Wilson at Maddocks --
3
4 Q. Mmm-hmm,
5 A. -- that we - it wasn't very productive, and the words
6 were used, I think I can remember those, is "Continue with
7 the - with the - with the court order" --
8
9 Q. Okay.
10 A. -- "the covert surveillance order."
11
12 Q. Now, you'd agree that the covert surveillance order
13 was basic - was focused mainly on stealing?
14 A. Correct, yes.
15
16 Q. And that Mr Child had no connection with that under
17 the surveillance that you had conducted at that time?
18 A. Correct.
19
20 Q. So, on one interpretation, you had no proper basis to
21 put his - his house under surveillance; would you agree?
22 A. Well, you know, they - answering the question is yes.
23
24 Q. And a photograph was taken of his house?
25 A. I believe so, yes. It was video or 35-mill
26 photographs, yes.
27
28 Q. And if I can show you this document, I just note that
29 the photograph itself is already exhibit 203, but I now,
30 thanks to Mr Blake, have the covering email,
31 A. (Handed to witness).
32
33 MS RONALDS: Sorry, if I could tender too the - the first
34 email, the 12 March one.
35
36 ASSISTANT COMMISSIONER: Yes. That - that email from
37 Mr Mailey dated 12 March will be exhibit 217.
38
39 EXHIBIT #217 EMAIL FROM RICHARD MAILEY TO PAT ROMANO
40 DATED 12 MARCH 2009 WITH WORKPLACE SURVEILLANCE
41 ACT 2005 ATTACHED
42
43 MS RONALDS: Q. You'll see this is an email from you to
44 Mr Romano. So, in this instance, you're reporting directly
45 to Mr Romano; would you agree?
46 A. Well, that is correct.
47

1 Q. Yes. And what I'd suggest to you is there is a
2 consistent flow of communication between you and Mr Romano
3 during the course of this investigation; would you agree?
4 A. No. On or about the 30th of, I think, March, there
5 was a threat against - made against Mr Romano, which is in
6 a report there by the investigators.
7
8 Q. We'll get to that in a moment.
9 A. And I - I advised Mr Romano, through the lawyers as
10 well, that we're concerned about his safety. And from then
11 on there was a - conversations with Mr Romano and myself
12 about how - how is it going, because he was concerned about
13 his - his welfare.
14
15 Q. Well, I'd suggest to you that was a somewhat elevated
16 response to what was said, wasn't it?
17 A. That's explaining it, yes, thank you.
18
19 Q. Now, this one is you're sending on 9 April 2009 a copy
20 of a photo of Mr Child's house to Mr Romano?
21 A. That's correct.
22
23 Q. Why?
24 A. We - we still - I think Mr Romano wanted a - to see
25 what sort of house he lived in at Shellharbour.
26
27 Q. Why? What could that have to do with stealing from
28 the depot?
29 A. Well, there was a council ute there in the driveway.
30
31 Q. That he's authorised to use?
32 A. He's authorised to use.
33
34 Q. No suggestion that he'd stolen the car overnight, was
35 there?
36 A. No.
37
38 Q. No suggestion he was using it in an unauthorised
39 fashion to drive home?
40 A. No.
41
42 Q. It's not a photograph just of his house, is it --
43 A. No.
44
45 Q. -- just of the car; it's a photograph of his house?
46 A. His house, that's correct, yes.
47

1 Q. And what possible reason could the operative have for
2 taking a photograph of the house?
3 A. Well, again I wasn't the operator but I - I - I did
4 instruct the operator was there any usual items lying
5 around the premises, such as metal or sweep - anything to
6 do that could be council property and he said, "Look, I'm
7 not sure. I'll send you a photograph."
8
9 Q. What, you're suggesting that you thought Mr Child
10 might have in his front yard a pile of goods stolen from
11 the depot?
12 A. I'm not - a pile would have been obvious - no.
13
14 Q. Now, I'm suggesting to you there was no proper basis
15 to take a photograph of Mr Child's house; would you agree?
16 A. Yes.
17
18 Q. And there was no proper basis upon which it should be
19 sent to Mr Romano; would you agree?
20 A. Yes,
21
22 MS RONALDS: If I could tender that email.
23
24 ASSISTANT COMMISSIONER: Yes.
25
26 Q. Mr Mailey, why - well, why was it sent to Mr Romano?
27 I can't understand, even if it had some evidentiary value,
28 why would you send it to Mr Romano?
29 A. Commissioner, Mr Romano wanted to see what - what the
30 property was like and whether there could have - well,
31 not - assumption, Ms Commissioner, is that he wanted to or
32 he did say, "Is there any other property around there that
33 you can see might be the council property?", and I said, "I
34 don't know." He said, "Well, send me the photograph."
35
36 Q. So you were reporting to him during the course of this
37 surveillance?
38 A. Only after the threat, Ms Commissioner.
39
40 Q. So you're saying only after 30 March?
41 A. That's correct, or about that date of 30 March.
42
43 ASSISTANT COMMISSIONER: This email with the attached
44 photograph dated 9 April will be exhibit 218.
45
46 EXHIBIT #218 EMAIL FROM RICHARD MAILEY TO PAT ROMANO
47 DATED 9 APRIL 2009 WITH PHOTOGRAPH ATTACHED

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37
38
39
40
41
42
43
44
45
46
47

MS RONALDS: Q. Now, do you have - still have the surveillance notes of Brad, exhibit 214?

A. I do, yes.

Q. If I can take you to the second-last page of that. I'm sorry, the pages aren't numbered, but it's the second-last page.

A. Okay, yes.

Q. Do you see Wednesday - about halfway down the page "Wednesday, 8/4/09" --

A. Yes.

Q. --"the subject's home is" and then, et cetera. It's pretty clear that - that by the address, which I won't read out, that this was surveillance of Mr Child's house?

A. That's correct, yes.

Q. And then see "1.10, updated Richard"? I'd suggest that was you?

A. Yes.

Q. That's Brad telephones you to tell you essentially nothing's happening?

A. Yes.

Q. And you told him to go in closer?

A. That's correct.

Q. What was the purpose of that?

A. It's a - a very narrow private estate and, from a surveillance perspective, it's very difficult to get a surveillance or a covert vehicle near the house. I suggested that the client, you know, we're paying - is paying us money to do the job, we've got to get up closer to see if we can get some form of evidence. So he moved up close because it's - it's a cul-de-sac street.

Q. Well, if there were goods in front of the house, they weren't going to be running around, were they?

A. No, that's correct.

Q. So you were actually looking for people coming and going?

A. No. In relation to his particular street again, if he would have driven out of the driveway from where Brad was

1 located, he wouldn't be able to follow him, and I just
2 said, "Move up."
3
4 Q. And then he gives you another update at 3.05 and you
5 told him to remain there until 5.30; why was that?
6 A. Well, I - we had specific job hours on - on these and
7 it was just to watch them during the - the working day, and
8 he hadn't moved all day and we needed to get some sort of
9 evidential - of anything on him. But normally surveillance
10 on a worker goes through till 5 - 5 - 5 - 5 o'clock, any
11 rate.
12
13 Q. And, what, their activities - anything that might be
14 untoward ceases at 5.30, does it?
15 A. Well, at that stage of the investigation, you know, we
16 weren't obtaining - we - the - the - we weren't having any
17 success at all, so I mean it was no use to continue.
18
19 Q. And I'll return to one of the reasons for that in a
20 moment, but just to finish on Mr Child's house, if I may.
21 So then Brad returns, if I could ask you to turn the page,
22 on 9 April?
23 A. Yes.
24
25 Q. Do you see that?
26 A. Yes, yes, yes.
27
28 Q. At 5 o'clock. The ute is in the same position and the
29 house is in darkness. Then Mr Child and his dog, sheepdog,
30 go for a walk?
31 A. Sorry, what date is that, please?
32
33 Q. The last page, on the 9th of the 4th.
34 A. No - oh, right, yes, okay.
35
36 Q. Do you see up the stop?
37 A. "5am start", yes.
38
39 Q. And then he goes McDonald's?
40 A. Right,
41
42 Q. And he's followed there.
43 A. Yes.
44
45 Q. An exciting day. And then went to Jaycar Electronics
46 and bought a power board and power supply, so he's followed
47 there?

1 A. Yes.
2
3 Q. Doesn't seem to be dealing with stolen goods at this
4 stage, does he?
5 A. No.
6
7 Q. Then he made a phone call?
8 A. Yes.
9
10 Q. And then the operative returned on Tuesday, 14 April.
11 Now, are you able to recall why that happened?
12 A. No, I can't recall why that happened, no, sorry.
13
14 Q. And then you'll see at 9.20, "Update is given to
15 Richard"; you'd agree that's you?
16 A. Yes.
17
18 Q. And then the subject's ute was not seen; the house
19 remains closed and during two walk-pasts, the subject's dog
20 is not seen or heard?
21 A. Mmm. Well, it's - it's clearly we missed the ute
22 leaving the premises, so there was no use again staying on
23 the surveillance if - if he'd left home.
24
25 Q. So you lost him?
26 A. Yeah, lost him.
27
28 Q. So you gave up at that point?
29 A. Well, I - yeah.
30
31 Q. And that - and that appears to be the last day
32 certainly on the - the material that's been produced under
33 the section 22 notice --
34 A. Yes.
35
36 Q. -- the last day that any surveillance occurred?
37 A. That's in - yes.
38
39 Q. Well, we'll return to the reasons for that in a
40 moment, but for three days Mr Child was then placed under
41 close scrutiny to no effect; would you agree?
42 A. I would agree.
43
44 Q. Now, on 9 April, during the - while he was out at
45 McDonald's and shopping at Warrawong, a conversation was
46 overheard; would you agree?
47 A. I would agree.

1
2 Q. And I think you've said 30 April, but I think this
3 might be the conversation that you're referring to; is that
4 possible?
5 A. No, there was one in a - in a coffee shop.
6
7 Q. Right.
8 A. That's right; not this one, though.
9
10 Q. All right. Well, let's just turn to this one for a
11 moment, shall we? What happened was that you called
12 Mr Romano directly and told him about the conversation that
13 was overheard that Mr Child was having; would you agree?
14 A. I would agree.
15
16 Q. And so, on this instance again, you were reporting
17 directly to Mr Romano?
18 A. Well, I was reporting to - in that instance, that
19 phone call, yes.
20
21 Q. Yes.
22 A. Okay.
23
24 Q. And Mr Romano made a note of it in his diary. You
25 wouldn't necessarily know that, though, would you?
26 A. No.
27
28 Q. And what he said was that you called so he received
29 a call from you and that, at 11.15, Steve - meaning
30 Mr Child - was talking to Jimmy at the depot about what had
31 been in the papers. Do you recall that your operative told
32 you about the conversation?
33 A. I do, yes.
34
35 Q. And you felt sufficiently moved to telephone Mr Romano
36 about it?
37 A. That's correct.
38
39 Q. Not Ms Wilson?
40 A. No.
41
42 Q. But Mr Romano?
43 A. Well, I'm - I would have contacted Ms Wilson as
44 well --
45
46 Q. Right.
47 A. -- or it wouldn't have only been the singular, no.

1
2 Q. So you would have rung a number of people about this
3 phone call?
4 A. Well, I at least would have one rung one or two, yes.
5
6 Q. And what was it about this phone call that caused you
7 to telephone people?
8 A. The investigator - while it's not expressed here, Brad
9 was concerned with the volatility of the voice that was
10 used on the phone call, and he was just a little bit
11 concerned that - again, because he was the one that
12 witnessed the conversation of the threat on the - about the
13 30th and he was just a bit concerned at the attitude and
14 the way it was spoken was of a concern.
15
16 Q. Well, what do you say happened on the 30th then, to
17 save us going around in circles?
18 A. Yeah, well it was a - it was in a coffee shop and I
19 can't - unless I read further reports - it'd be in Brad's
20 report here, he followed a couple of - I think
21 Joe Grasso [sic] and others into a - a coffee shop in
22 Leichhardt or somewhere around that area.
23
24 Q. You say it's 30 March, don't you?
25 A. About 30 March, yes.
26
27 Q. Yes. Well, just look through Mr - exhibit 214. There
28 doesn't seem to be any record of that.
29 A. If I could refer to my - my notes --
30
31 Q. Yes.
32 A. -- I'll give you the exact date, if I may.
33
34 Q. Yes.
35 A. Or --
36
37 Q. How were you able to refresh your memory about that?
38 A. I read the files and made notes at the time of ICAC
39 was looking at the files, but I think the 20th of the 3rd,
40 if that can be corrected.
41
42 Q. The 20th of the 3rd?
43 A. The 20th of the 3rd.
44
45 Q. That's why I was seeking to clarify the date with you
46 because it wasn't - on my reading, I thought it was earlier
47 than that. That was why --

1 A. Right.
2
3 Q. Well, you see that - I'm sorry, the pages aren't
4 numbered but it's five pages in --
5 A. Right.
6
7 Q. You'll see Friday, the 20th of the 3rd?
8 A. Yes.
9
10 Q. That's the conversation you're talking about?
11 A. That's the conversation --
12
13 Q. And it's set out on the following page --
14 A. That's correct.
15
16 Q. -- the details, that from 1.40, "After parking, the
17 subject alighted and went into La Contrata Deli Cafe"?
18 A. Yes.
19
20 Q. And then two men ordered a coffee and a roll,
21 et cetera?
22 A. Yes.
23
24 Q. And that's all set out there?
25 A. That's correct.
26
27 Q. And that's the conversation?
28 A. That's the conversation.
29
30 Q. And what do you say was the threat to Mr Romano in
31 that conversation?
32 A. If you go to the - 2.09pm, the last line, the
33 conversation that the investigator overheard was quite
34 aggressive between the parties at this meeting, and the -
35 the words, we were all concerned about at the time, it's
36 the last three words.
37
38 Q. It could have meant destroy him in particular way,
39 couldn't it?
40 A. Well, the - again the investigator explained to me
41 that he took that as a - as a physical threat.
42
43 Q. And that was conveyed to Mr Romano that Mr Joe
44 Giangrasso had made a threat about Mr Romano?
45 A. No. The - then I can remember ringing Mr Romano,
46 because I was very concerned, and I said that there's been
47 a threat made where they said that they were going to do

1 what was in this report, and I said --
2
3 Q. Smash?
4 A. "I was going to smash Romano", yeah. And I said,
5 "Well, how was the tone of the conversation?" It was
6 in the three - three of the parties, if I know,
7 Ms Commissioner, that is in question here or - or the
8 Commissioner is looking at, three of them met that day.
9 And then I rang Pat Romano and advised him that there's a -
10 quite an aggressive threat been made between these parties
11 and just to be a little bit wary because I think it's my
12 due diligence to advise him. I then advised that
13 Maddocks - I said, "There's been a - a - a threat made by
14 these three people and I'll get the report in as soon as I
15 can."
16
17 Q. Could it have just been blowing hot air, couldn't it?
18 A. I can't make that assessment. I wasn't there.
19
20 Q. Well, you can make an assessment to elevate it to a
21 threat and you weren't there?
22 A. Well, and that's judging by the tone of the operator
23 at that time, but professionally that judgment was made by
24 the operator's tone of voice - by the investigator's tone
25 of voice.
26
27 Q. And you accepted that. What I'm suggesting to you was
28 there could have been a slightly less dramatic response on
29 your behalf?
30 A. Well, I've worked with Mr - I - I've worked with
31 Brad McCombe for six years. I do know him and his
32 investigators and the way he operates. So he's not new to
33 me, and also he's a very accurate operator. So I - when he
34 said something like that, I was genuinely concerned as to
35 the welfare of Mr Romano.
36
37 Q. And then there's the subsequent phone call on 9 April
38 where Mr Child is overheard saying something?
39 A. Yes.
40
41 Q. And I'd suggest to you you had an elevated response to
42 that phone call; would you agree?
43 A. Well, based on Mr McCombe's phone call to me, yes.
44
45 Q. Now, Ms Malouf sent an email to Mr Dencker - so in
46 this instance, it's going to Mr Dencker - saying, "Richard
47 asked me to forward this on to you and this an account of

1 the conversation"; if I could show you this email.
2 A. Yes.
3
4 Q. So Mr Child is followed into the shopping complex, it
5 says?
6 A. Yes.
7
8 Q. And then it - it says, "See, Pat wanted me to forward
9 this on to you." Now, I'd suggest to you Pat's clearly
10 Mr Romano, isn't it?
11 A. That's correct, yes.
12
13 Q. So you'd spoken - so you'd reported directly to
14 Mr Romano?
15 A. Yes.
16
17 Q. Not to Ms Wilson?
18 A. I'd reported it - I can't remember who I reported to
19 that day, no.
20
21 Q. But you reported it to Mr Romano?
22 A. Yes.
23
24 Q. And, as I say, he's got a file note of the
25 conversation?
26 A. That's correct.
27
28 Q. :
29
30 Pat is concerned about the inference in
31 relation to Collin as we believe this could
32 be Calloghan --
33
34 Callan. Oh, I - I don't know quite what the typing is
35 meant to be, but "The tone of Child also inferred he was in
36 regular contact with the mayor."
37
38 Do you see that?
39 A. Yes.
40
41 Q. How is it possible for you, who didn't hear the phone
42 call, to report that to Mr Romano?
43 A. That was related to me I - the only way I would have
44 got that was from Brad.
45
46 Q. And then, "Due to the sensitive nature of this
47 information that's just been received, Pat Romano has asked

1 that this document not be circulated and you can discuss
2 this with him prior to any actions" - that's Mr Dencker?
3 A. That's correct, yes.
4
5 Q. And then there is an account of what Mr - well, what
6 Brad says took place in the conversation with Mr Child. Do
7 you see that --
8 A. I do.
9
10 Q. -- "transcription conversation by the investigator"?
11 A. No, no, that's - yes - no.
12
13 Q. And that's - comes directly from the investigator?
14 A. Yes, it would have.
15
16 Q. It says it was taken down on the investigator's
17 BlackBerry and they'll be clarified when he returns, I've
18 not seen any other further note that clarifies this
19 conversation. Are you aware of any one?
20 A. I'm not aware of any other notes.
21
22 Q. And so this conversation says, "More in the paper
23 today, only just warming up, more in Saturday's paper." So
24 what he's talking about is publication of certain
25 allegations in the Sydney Morning Herald, isn't he, on
26 9 April?
27 A. That's correct, yes.
28
29 Q. And what do you say was concerning about this phone
30 call? It's hardly a threat to suggest to Mr Romano, is
31 it?
32 A. It's not a threat, no. I was just - I think I
33 informed Mr Dencker that there was a conversation by the
34 investigator and, "Could we have a copy of it, please?", so
35 I just forwarded it on to him.
36
37 Q. There's no threat or anything in this, is there?
38 A. No.
39
40 Q. There's nothing to worry about in there?
41 A. No.
42
43 Q. Why was it even reported?
44 A. I - I was - because I was requested to provide it.
45
46 Q. Yeah, but you - you hear about the conversation. You
47 ring Mr Romano and say, "Ooh, there's been this

1 conversation and here's what - what's in it"?
2 A. Yes.
3
4 Q. There's nothing in it. Mr Child is just gossiping,
5 isn't he, with due respect to Mr Child?
6 A. It appears that way.
7
8 Q. Yeah. What possible interest did you have as a
9 professional investigator to pass on gossip from a - a
10 depot employee?
11 A. Well, because I'm not party to the operations of the
12 depot, they might have thought this conversation was
13 important to them and as the client, I - that was requested
14 to forward it on, and I did.
15
16 Q. It's clearly got nothing to do with stealing from the
17 depot, has it, Mr Mailey?
18 A. No.
19
20 Q. And it's clearly all about the Sydney Morning Herald,
21 isn't it?
22 A. Yes, it is.
23
24 Q. Not a hint about things going into the boot and coming
25 out of the boot of a car, is there?
26 A. No.
27
28 Q. There's nothing in the conversation of Mr Child making
29 arrangements to meet someone to transfer stolen goods, is
30 there?
31 A. No.
32
33 Q. There's simply no basis to note the conversation at
34 all, I'd suggest to you --
35 A. No --
36
37 Q. -- in terms of the Workplace Surveillance Act, was
38 there?
39 A. That's correct.
40
41 Q. And there was no basis upon which to pass it on to
42 anyone, was there?
43 A. Again, if a client requests that information, they're
44 paying for our services, I forward it on.
45
46 Q. Mr Mailey, they only know about the conversation
47 because you tell them about it?

1 A. That's correct.
2
3 Q. You ring Mr Romano and say, "Child's been on the phone
4 and this is what he says"?
5 A. That's correct.
6
7 Q. Yeah. So you pass on gossip. You think that's part
8 of your professional duty?
9 A. In this particular instance, I wasn't in the office.
10 I didn't see this document. It was - it was transcribed
11 and sent by Yasmin Malouf. But certainly I rang the - I
12 did ring Mr Romano about it. I was - I was aware of it.
13 There's no doubt about that, but I did not see the
14 transcript until probably a day or so later until I came
15 into the office.
16
17 Q. Well, you must know something about it to ring him
18 about it?
19 A. Well, I did.
20
21 Q. Yeah?
22 A. But I - the full contents I wasn't aware of.
23
24 Q. You were just passing on gossip, weren't you, not in
25 any way covered by the Workplace Surveillance Act; would
26 you agree?
27 A. No, I disagree,
28
29 MS RONALDS: If I could tender that email.
30
31 ASSISTANT COMMISSIONER: Yes, that will be exhibit 219.
32
33 EXHIBIT #219 EMAIL FROM YASMIN MALOUF TO IAN DENCKER
34 DATED 9 APRIL 2009, SUBJECT: INVESTIGATIONS
35
36 ASSISTANT COMMISSIONER: Q. Mr Mailey at the time of
37 this report, you knew that there'd been an article about
38 Mr Romano in the paper?
39 A. Ms Commissioner, only the first, the first article.
40
41 Q. All right. Well, you knew there'd been an article
42 making allegations against him?
43 A. That's correct, yes.
44
45 Q. So you knew that he personally would be interested in
46 this sort of the information; like he'd like to know who'd
47 spoken to the paper, wouldn't he?

1 A. Yes.
2
3 Q. Did it ever occur to you that that was not really
4 council's business, as such? Council was paying for this
5 investigation, weren't they?
6 A. That's correct, yes.
7
8 Q. So whatever personal interest Mr Romano might have had
9 in this, it - it may not have been in the council's
10 interest?
11 A. That's correct, yes.
12
13 Q. Did it ever occur to you to differentiate --
14 A. No.
15
16 Q. -- between his interest and the council's?
17 A. No.
18
19 ASSISTANT COMMISSIONER: Thank you,
20
21 MS RONALDS: Q. Now, if we could just go back to how it
22 was all set up - I'm jumping, but you were engaged by
23 Maddocks in the end, weren't you?
24 A. That's correct, yes.
25
26 Q. But you knew council was the client?
27 A. That's correct, yes.
28
29 Q. But did you see an advice done by Mr Gardner about the
30 surveillance dated 10 March 2009?
31 A. I - I - I'd like to see the document, if I may.
32
33 Q. Yeah, I'll show it to you. You see it's addressed to
34 Mr Macklin?
35 A. Yes, yes.
36
37 Q. Now, have you seen this before?
38 A. I can't - I haven't seen this before, no.
39
40 MS RONALDS: All right. I might just tender it so it
41 stays in the sequence, Commissioner. It's --
42
43 ASSISTANT COMMISSIONER: Yes, that will be exhibit 220.
44
45 EXHIBIT #220 EMAIL FROM ERIN WILSON TO PETER MACKLIN
46 DATED 10 MARCH 2009 WITH LETTER ATTACHED
47

1 MS RONALDS: Q. If you just put it aside then, thank
2 you, Mr Mailey. And were you shown the affidavit that
3 Mr Gardner prepared for the workplace surveillance
4 authority application?
5 A. Not the application, no.
6
7 Q. But were you shown his affidavit --
8 A. No.
9
10 Q. -- which set out what was the factual basis upon which
11 the surveillance was supposed to occur?
12 A. Not that I recall.
13
14 Q. All right. Well, I'll just show you this document and
15 if you look in - if - if you just - I'm sorry,
16 Commissioner, you haven't got yours yet, I don't think. You
17 see there's a cover page and then it's got, "I, Darren
18 Gardner", et cetera, on the next page?
19 A. Yes, yes.
20
21 Q. And then "Application"?
22 A. Yes.
23
24 Q. So this is the initial application. You'll see there
25 are a number of people listed?
26 A. Yes.
27
28 Q. And then, over the page, it says the - at the top of
29 page - numbered page 2, "The employer has reasonable
30 grounds for suspecting that the employees may be stealing
31 from the employer and/or engaging in private work for
32 payment during work hours, possibly using the employer's
33 equipment."
34 A. Yes.
35
36 Q. And that was based on the information that you'd
37 passed on, wasn't it?
38 A. That's correct, yes.
39
40 Q. And then further down the page, do you see at
41 about point 8 on the page, it says, "Further, employee
42 Joe Giangrasso is known to be engaging in private work for
43 remuneration while he's on paid sick leave. During these
44 times, when Mr Giangrasso is working at other work sites,
45 the employer expects he's available to perform work for the
46 employer. This may constitute corrupt conduct under the
47 ICAC Act. Council wishes to undertake surveillance of that

1 employee whilst he is working at other work sites on the
2 days that he is on paid leave." Do you see that?
3 A. Yes.
4
5 Q. Now, that's Mr Giangrasso?
6 A. Yes.
7
8 Q. No mention of Mr Child other than in the list; you'd
9 agree?
10 A. I agree.
11
12 Q. And then there's some vehicles listed - that came from
13 your surveillance?
14 A. Yes.
15
16 Q. And that - then there's two people, Mr Romano and
17 Mr Macklin, being listed as the two responsible operatives.
18 Now, did you see this affidavit before it was filed?
19 A. No.
20
21 Q. Did - Mr Gardner didn't consult you about its
22 contents?
23 A. No.
24
25 Q. But you provided, did you, information to Ms Wilson or
26 Mr Gardner or just--
27 A. No, Ms --
28
29 Q. -- Ms Wilson?
30 A. Ms Wilson only.
31
32 Q. And she then apparently incorporated it into this
33 affidavit?
34 A. That's correct.
35
36 Q. But you were not asked to review it to see if it was
37 correct?
38 A. No.
39
40 MS RONALDS: Right. If I could tender that document.
41
42 ASSISTANT COMMISSIONER: Yes, the affidavit of Mr Gardner
43 will be exhibit 221.
44
45 EXHIBIT #221 AFFIDAVIT OF MR GARDNER - 17 MARCH 2009
46
47 MS RONALDS: Q. And you were then provided then, were

1 you not, with a copy of the covert surveillance authority?
2 A. That's correct.
3
4 Q. You have to be given a copy of that, don't you, to -
5 in order to conduct your surveillance?
6 A. That's correct.
7
8 Q. And if I show you this document.
9 A. Thanks.
10
11 Q. Now, you've seen this one. And it was to start - do
12 you see under paragraph 5 - so, sorry, under paragraph 4,
13 it was to be camera and/or video surveillance from the 6 -
14 6am on 19 March to 6pm on 18 April?
15 A. That's correct.
16
17 Q. Now, they're only issued for a very restricted time,
18 aren't they?
19 A. That's correct, yes.
20
21 Q. And that sets out then what you and your staff - well,
22 the operatives - are entitled to do or allowed to do under
23 the legislation?
24 A. Correct.
25
26 Q. And that includes taking photographs and filming the
27 depot employees who were named in the earlier application?
28 A. That's correct, yes.
29
30 Q. But it doesn't give you authority to go at large, does
31 it?
32 A. And what do you mean by "at large", please?
33
34 Q. Well, you can't just wander around taking photographs
35 of anyone. It's got to be focused on what were the
36 original proposals; that is, to determine stealing,
37 secondary employment, et cetera?
38 A. It was focused on the yard and the activities in their
39 workplace such as working around the streets, yes.
40
41 Q. Yes. And then on the 19th, which is the day this one
42 started, there's an application for variation. Do you - do
43 you recall how that happened?
44 A. The variation was a - I do recall that because our
45 operators reported back and said they're having - it -
46 it's - it's too narrow, the - the order. It dealt with
47 only specific people, I believe, and not - not all the

1 workers. So we were concerned, as were Maddocks concerned,
2 that, you know, we were videoing people that were in the
3 workplace but we weren't authorised to do so, so Maddocks
4 went for the next - to the total cover.
5
6 Q. Well, there was two things, wasn't there: there was a
7 limited range of people and it was only for the Burwood LGA
8 initially?
9 A. That's initially, yes.
10
11 Q. And then it was extended so that it could go outside
12 the Burwood LGA as well?
13 A. That's correct, yes.
14
15 Q. There were two important extensions?
16 A. Exactly.
17
18 Q. And did - did you have occasion to review the
19 application - the application for variation?
20 A. Yes.
21
22 Q. And if I could show you this document. And you'll see
23 under paragraph 2.1 there is a much more extensive range of
24 people, consistent with your evidence that that was a
25 problem?
26 A. Mmm-hmm.
27
28 Q. You see that, under 2.1?
29 A. 2. - yes.
30
31 Q. And then --
32
33 MS RONALDS: I'm sorry, commissioner, I think I forgot to
34 tender the covert surveillance authority.
35
36 ASSISTANT COMMISSIONER: The covert surveillance authority
37 will be exhibit 222.
38
39 EXHIBIT #222 COVERT SURVEILLANCE AUTHORITY
40
41 MS RONALDS: Q. And then you - you'll see down the
42 bottom of the third page there 2.2 "that covert
43 surveillance be permitted to be carried out within and
44 outside the Burwood local government area"?
45 A. There was, yes.
46
47 Q. So that was an extension, wasn't it?

1 A. That was an extension.
2
3 Q. And that was an important extension?
4 A. It was.
5
6 Q. And all council vehicles be regularly and ordinarily
7 be the subject of it and then 3.1 sets out the matters that
8 were to be addressed, that is, to - unlawful and corrupt
9 conduct?
10 A. That's correct, yes.
11
12 Q. And that's the theft again, isn't it, that's a
13 reference to stealing from the depot?
14 A. Yes, it is.
15
16 Q. And a using equipment?
17 A. Yes.
18
19 Q. And again the only person named then is 3.1.2
20 Mr Giangrasso and secondary employment, do you see that?
21 A. Yes, I see that, yes.
22
23 Q. And Mr Child's not named specifically, is he, apart
24 from in the earlier part?
25 A. No, that's correct.
26
27 MS RONALDS: If I could tender that.
28
29 ASSISTANT COMMISSIONER: That will be - the application
30 for variation of the covert surveillance authority will be
31 exhibit 223.
32
33 EXHIBIT #223 APPLICATION FOR VARIATION OF COVERT
34 SURVEILLANCE AUTHORITY
35
36 MS RONALDS: Q. And then the - I could show you - then
37 the variation was issued and that, in essence, reproduces
38 the list of names and the other matters we've just looked
39 at?
40 A. That's correct.
41
42 Q. And go from the 20th of March to the 19th of April,
43 see that?
44 A. Got that, yep.
45
46 Q. And then down the bottom of the last page you'll see
47 conditions. Someone's handwritten from the court "Any

1 surveillance outside the Kingsbury Street works depot is to
2 be by held" - "handheld camera" --
3 A. Mmm-hmm.
4
5 Q. -- "ie, not by way of fixed camera or fixed video
6 surveillance".
7 A. Correct.
8
9 Q. They can't spell, but leave that to one side. And
10 that's been added by the court?
11 A. Yes.
12
13 MS RONALDS: If I could tender that document.
14
15 Q. Sorry, and you were given a copy of this document,
16 weren't you?
17 A. I was, yes.
18
19 ASSISTANT COMMISSIONER: Yes. That variation will be
20 exhibit 224.
21
22 EXHIBIT #224 VARIATION OF COVERT SURVEILLANCE AUTHORITY
23
24 MS RONALDS: Q. And you're aware, aren't you, that on
25 the 1st of April a letter was received by the council from
26 the workers' union, indicating that the workers knew they
27 were under surveillance?
28 A. I'm not aware of that letter, no.
29
30 Q. You're saying that no-one told you about that?
31 A. No.
32
33 Q. And you didn't see a copy of it?
34 A. No, haven't --
35
36 Q. Sure.
37 A. -- seen a copy of it.
38
39 Q. Do you remember the surveillance was called off?
40 A. It was called off - I think it was result of a phone
41 call from - from the solicitors.
42
43 Q. Or from --
44 A. But I can't be sure on - how the call was received.
45
46 Q. Well, you see - I'll just show you this letter.
47

1 MS RONALDS: I will just keep them in sequence,
2 commissioner, so it's easier to follow the evidence later.
3
4 MS RONALDS: Q. You see this is a letter to Mr Romano
5 from Ben Krues from the local government, et cetera, union
6 and - I'm sorry, it's exhibit 204. Do you see - can you
7 see it there in front of you?
8 A. Yes, yes, I have, yes.
9
10 Q. So did Mr Romano not ring you up and tell you that
11 your operatives had been spotted?
12 A. I - I don't recall who called me, whether it was
13 Pat Romano or whether it was Ian Dencker, I can't recall
14 who called me.
15
16 Q. But someone told you you'd been - your operatives had
17 been noticed, didn't they?
18 A. Yes.
19
20 Q. But they didn't show you the letter. What - what,
21 they read it out to you or at least conveyed its contents
22 to you?
23 A. No, nothing was conveyed to me. The contents of it
24 wasn't conveyed to me, no.
25
26 Q. So you weren't told you'd been spotted?
27 A. Told I'd been spotted.
28
29 Q. Right.
30 A. And just to pull back on surveillance, the - and
31 change the locations. That's what we do when a client
32 rings up, so we changed locations but I don't know who
33 called me, I - sorry.
34
35 Q. Wouldn't it be right that once - once the union is
36 writing on behalf of the employees to say that the
37 operatives have been seen, any further surveillance was
38 useless, wasn't it?
39 A. Well, I've - again, I wasn't aware of - of - of this
40 letter but that - it is normal for people not to be alerted
41 a little bit in relation to surveillance and sometimes
42 contact the client and say "There's a strange vehicle in
43 the street" but from - from a covert surveillance period
44 you just change locations, change your vehicle and
45 recommence a different surveillance position.
46
47 Q. What I'm suggesting to you is that from the 1st of

1 April - at least the 1st of April, if not earlier - it was
2 a waste of time subjecting the workers to any surveillance
3 when they well knew they were under surveillance; would you
4 agree?
5 A. Yes.
6
7 Q. And it was a waste of money, wasn't it?
8 A. Yes.
9
10 Q. Because if you've got people who you're trying to see
11 whether they're stealing, if they know they're being
12 watched they're not likely to steal when they're being
13 watched, are they?
14 A. Yes.
15
16 Q. Hardly value for money for the client, is it?
17 A. I - I would dispute that.
18
19 Q. You think it is value for money to keep going?
20 A. Had numerous incidents where a - the thefts continue
21 because in a - in a - in a corporate situation sometimes
22 some of the workers don't talk to each other and,
23 therefore, what - for instance, in this example maybe part
24 of the yard didn't talk to the other part of the yard, so
25 as investigators we can't assume that everybody's aware of
26 our surveillance activities.
27
28 Q. But the union 's writing on behalf of them?
29 A. I was unaware of that.
30
31 Q. It's not just one person raising it?
32 A. I was unaware of it.
33
34 Q. You couldn't have forgotten someone telling you about
35 it?
36 A. Someone told me but not - no mention of that letter,
37 no.
38
39 Q. All right. You then wrote, on the 7th of April a - an
40 email and set out a sequence of events; do you recall that?
41 That is, you'd been asked to stop and then asked to start
42 again?
43 A. I do recall that, yes.
44
45 Q. And do you recall who asked you to stop and why they
46 asked you to stop?
47 A. I think it was - I think it was Maddocks but I can't

1 be sure.
2
3 Q. And do you recall why you were instructed to start
4 again?
5 A. No, I can't recall.
6
7 Q. All right. I'll just show you this email.
8 A. Okay.
9
10 Q. You'll see the email at the top there "Dear Darren",
11 Mr Gardner, this - "We have been requested by Ian Dencker
12 of Burwood Council to urgently provide an interim report on
13 our investigation. To expedite their request I have
14 enclosed" blah, blah.
15 A. Yep.
16
17 Q. "We were advised at 11am on Saturday the 4th of April
18 to cease investigations until advised"; do you see that?
19 A. I see that, yes.
20
21 Q. Does that assist you to recall --
22 A. It does.
23
24 Q. -- how you would have been advised?
25 A. Yes, it does, yes.
26
27 Q. And who advised you?
28 A. Well, it would be Ian Dencker.
29
30 Q. Mr Dencker rang you on - rang you?
31 A. Yes, it would be me, yes.
32
33 Q. And that's the day that The Sydney Morning Herald
34 articles were published. Was there any connection with the
35 instruction to cease, as you recall it from Mr Dencker and
36 the publication of the article?
37 A. I was unaware of the article.
38
39 Q. Well, you've said you were aware of the first one?
40 A. It's the only one I'm aware of.
41
42 Q. And that's the one I'm talking about.
43 A. Well, if that - yes.
44
45 Q. So Mr Dencker didn't say "Given what's in the paper
46 today we're going to give up" or anything?
47 A. No. Mr Dencker's very short in his brief. I can't

1 remember the exact words but it was - would be that "Just
2 hold off on the surveillance, I'll get back to you".
3
4 Q. Okay. And then on Monday at 8 o'clock he rings you
5 and says "Recommence"; see that? That's in the same email
6 in the same paragraph we're looking at.
7 A. Yes, yes.
8
9 Q. And does that help you recall what happened?
10 A. No, it just - just cease and recommence.
11
12 Q. Right. And did he tell you why?
13 A. No, not that I can recall.
14
15 Q. And then he asked for an urgent interim report. Did
16 he tell you why it was urgent?
17 A. No, he didn't tell me why it was urgent but we were
18 giving regular reports to Maddocks on their requests --
19
20 Q. Mmm-hmm.
21 A. -- so I think we were doing weekly reports for Erin
22 Wilson, I'm not sure, but --
23
24 Q. And then attached to that you see behind is a letter
25 to Mr Gardner?
26 A. Yes.
27
28 Q. Set out and signed by you and that's what you call a
29 report, is it?
30 A. That's an interim report.
31
32 Q. Right. Of a page or - and a bit?
33 A. Mmm.
34
35 Q. So there's nothing set out there about what's
36 happened, who's been identified or anything like that, is
37 there?
38 A. No, I was - I was being briefed by and provide
39 information back to Erin Wilson at Maddocks. I --
40
41 Q. And attached in an unadulterated and unadorned form
42 are the surveillance notes?
43 A. That's correct.
44
45 Q. Right. And it refers there, and I'm sorry this is my
46 fault --
47

1 MS RONALDS: I'm sorry, if I could tender that document.
2
3 ASSISTANT COMMISSIONER: Yes. Exhibit 225 will be this
4 email from Malouf to Gardner dated 7 April 2009.
5
6 EXHIBIT #225 EMAIL FROM YASMIN MALOUF TO MR GARDNER
7 DATED 7 APRIL 2009, SUBJECT: INVESTIGATIONS - LETTER TO
8 MR GARDNER ATTACHED
9
10 MS RONALDS: And I'm sorry, this is my fault, I've gone
11 out of sequence but you - you refer there to the PowerPoint
12 presentation that you'd given --
13 A. Mmm-hmm.
14
15 Q. -- and that was to convince them - we started on that
16 this morning - that was to convince the executive to
17 authorise the WSA - sorry, the Workplace Surveillance Act
18 authorisation?
19 A. No, not to convince, it was a document for them to
20 make their decision.
21
22 Q. Right, but that's where you thought they should be
23 going?
24 A. That's correct, yes.
25
26 Q. That's the view you expressed to them?
27 A. That's the view.
28
29 MS RONALDS: If the witness can be shown this document.
30
31 Q. This is the PowerPoint presentation. Did you prepare
32 this?
33 A. Yes.
34
35 Q. And it's taken from the notes?
36 A. That's correct.
37
38 Q. And --
39
40 MS RONALDS: Sorry, it seems the system has fallen apart.
41
42 Q. Wait a minute. Well, you have to wait a minute. You
43 have no choice, really.
44
45 MS RONALDS: I'm sorry, we haven't got copies.
46
47 THE WITNESS: Thank you.

1
2 MS RONALDS: Q. And this PowerPoint presentation - and
3 I'm sorry, my friends will just have to rely on the one on
4 the screen for a minute and we'll get copies on the over
5 the morning adjournment - then there's a map showing where
6 the depot is?
7 A. Correct.
8
9 Q. And then there's setting out what had happened and how
10 cars were followed on various different days?
11 A. Correct.
12
13 Q. And you showed this to the members of the executive?
14 A. I did.
15
16 Q. And was Mr Baird promised - present during this
17 presentation?
18 A. No.
19
20 Q. Was Mr Gardner present?
21 A. No.
22
23 Q. Was Ms Wilson present?
24 A. No.
25
26 Q. So was it only the executive?
27 A. Correct.
28
29 Q. Mr Romano was there?
30 A. No, he was not present.
31
32 Q. He wasn't present? So Mr Dencker was there?
33 A. Yes.
34
35 Q. Mr Hullick was there?
36 A. Yes.
37
38 Q. Mr Azer was there?
39 A. Yes.
40
41 Q. Was Mr Macklin there?
42 A. I - I'm not - Mr Macklin was there, yes.
43
44 Q. And was there anyone else present?
45 A. There was other persons present, yes.
46
47 Q. Do you remember who they were?

1 A. (Witness shakes his head).
2
3 Q. So you showed them this and you referred to certain
4 things happening and then sets out a whole series of dates
5 and cars, et cetera?
6 A. Yes.
7
8 Q. And that was basically upon the basis of the
9 information you set out in this - in this PowerPoint
10 presentation that it was decided by the executive to
11 continue with the workplace surveillance provisions; is
12 that right?
13 A. That's correct.
14
15 MS RONALDS: If I could tender the - that document.
16
17 ASSISTANT COMMISSIONER: Yes. Exhibit 226 will be this
18 PowerPoint presentation to the Burwood Council.
19
20 EXHIBIT #226 POWERPOINT PRESENTATION TO BURWOOD COUNCIL
21
22 MS RONALDS: Q. Now, you had a number of conversations
23 with Ms Wilson about it during the course of the whole
24 surveillance period?
25 A. Correct.
26
27 Q. And the surveillance finished when the warrant
28 finished or - sorry, the surveillance finished a few days
29 before the warrant finished?
30 A. That's correct, yes.
31
32 Q. And why was that?
33 A. We were not obtaining any results.
34
35 Q. In fact, you note somewhere or it's noted somewhere
36 that the employees' conduct had changed?
37 A. Yes.
38
39 Q. And I suggest you it changed because your operatives
40 had been noticed and they knew they were being followed.
41 That's likely, isn't it?
42 A. That's correct, yes, towards the end of the first
43 surveillance period, yes.
44
45 Q. Well, from the 1st of April at least, which is the
46 date of the union letter.
47 A. Well, some of the workers didn't appear to act any

1 different to their actions, so I only assumed certain
2 persons knew about - or that's - my operators only assumed
3 that certain persons knew about it.
4
5 Q. Now, did Ms Wilson convey to you that she considered
6 the report produced by IPP was poor?
7 A. No.
8
9 Q. And that it didn't meet the requirements of the
10 Workplace Surveillance Act reporting mechanisms?
11 A. No.
12
13 Q. So you say at no time did she tell you that she needed
14 better than - quality than what you'd produced?
15 A. No.
16
17 Q. All right. I'll show you this email. Where Ms - this
18 is an email to Mr Macklin and Mr Romano, copied to
19 Mr Gardner and Mr Baird. Do you see that?
20 A. Yes.
21
22 Q. Where in the second paragraph it says "the report", in
23 quote matters "is deficient in almost its entirety and
24 fails to analyse or provide any opinion on what has been
25 observed or investigated by IPP field officers. It's
26 simply a regurgitation of the field and diary notes that
27 have already been provided. Apart from the" - "aside from
28 the report not being of any evidentiary value, ie could not
29 be relied upon as evidence in any court proceedings, it
30 does not comply with the requirements of the" - "the CSA
31 regarding preparing a report to the court. We have
32 previously advised IPP on the issues that must be addressed
33 in this report with very little attempt has been made to
34 carry out our request". See that?
35 A. Yes.
36
37 Q. Now that suggests, does it not, that Ms Wilson had had
38 a conversation with you telling you what she wanted in the
39 report and that what had been produced to date was
40 deficient?
41 A. I think it was with Yasmin Malouf.
42
43 Q. Right, so it wasn't with you?
44 A. No.
45
46 Q. But was it conveyed to you?
47 A. It was conveyed to me.

1
2 Q. And - but nothing happened, did it?
3 A. No.
4
5 Q. You didn't produce another more detailed report
6 containing analysis in order to comply with the court's --
7 A. I can't recall the - just - whether the meeting went
8 ahead next week as per the --
9
10 Q. Right.
11 A. -- second-last paragraph.
12
13 Q. Mmm-hmm.
14 A. But Erin Wilson was not experienced at dealing with
15 investigators or - or investigators' notes, she was quite
16 young, and I pointed out to her that this is only the
17 agent's contemporaneous running notes that the stage.
18
19 Q. Right.
20 A. "If you require us to prepare a detailed document and
21 a detailed report, then we could do so" and that's - what
22 happened after that, I don't think we ever prepared a
23 report because Ms Wilson said that they would prepare the
24 report in accordance with our operators' notes.
25
26 Q. Well, I've not been able to find a more detailed
27 report in any of the documents that have been produced, so
28 that's why I was interested to know whether --
29 A. We never - no, we only produced our agents' notes.
30
31 Q. Right. And --
32
33 MS RONALDS: If I could tender that email.
34
35 ASSISTANT COMMISSIONER: Yes. Exhibit 227 will be this
36 email from Ms Wilson dated 30th of April 2009.
37
38 EXHIBIT #227 EMAIL FROM MS WILSON TO MR MACKLIN AND MR
39 ROMANO DATED 30 APRIL 2009, LETTER TO MADDOCKS ATTACHED
40
41 MS RONALDS: Q. And do you recall there was some
42 discussion about - you were asked by Mr Dencker or someone
43 to put together a video with a - with a voiceover,
44 describing what the video - what people were doing in the
45 video and you declined to do so?
46 A. No, I think Mr Dencker or - or Mr Macklin came to our
47 offices.

1
2 Q. Mmm.
3 A. I was not present at the time, I was overseas but -
4 and the - the documents were shown - sorry, the video was
5 shown at our offices to the - to Mr Macklin and I believe
6 someone was present from - from Maddocks, I'm not sure on
7 that, but I was not present during that meeting.
8
9 Q. Okay, so you - you don't know what happened, then?
10 A. No.
11
12 Q. Now, just in terms of accounts, a series of accounts
13 were sent, were they not?
14 A. Yes.
15
16 Q. And they were sent with a misdescription of the
17 services delivered?
18 A. I think the accounts were sent independently to the
19 reports --
20
21 Q. Yes.
22 A. -- I can't be sure.
23
24 Q. But they were sent, I'm suggesting to you --
25 A. Yes.
26
27 Q. -- with a misdescription on them?
28 A. That's correct, yes.
29
30 Q. And that's consistent with what we were discussing
31 last time you were here about --
32 A. Yes, that's --
33
34 Q. -- the practice of doing that?
35 A. That's correct, yes.
36
37 Q. And do you recall that you were asked to do that; that
38 is, asked to --
39 A. No, we - we - in all cases with our clients we suggest
40 that - that "In the interest of - of privacy and other
41 factors do you want the - how do you want the invoices
42 done?".
43
44 Q. Right. Well, I'll show you - I'll show you this
45 email.
46
47 THE WITNESS: Nothing to take back.

1
2 MS RONALDS: Q. Now, this is an email to Mr Romano from
3 Ms Wilson?
4 A. Yes.
5
6 Q. "I also spoke to Richard Mailey today regarding the
7 form of accounts". Do you see that just sort of the middle
8 of the page there?
9 A. Yes.
10
11 Q. "He proposes to invoice council for carrying out this
12 assessment to Burwood Council so the anonymity of the
13 operation is maintained"?
14 A. That's correct, yes.
15
16 Q. Now, that seems to be that you've suggested that that
17 happened; that is, that they be confidential. Would you
18 agree?
19 A. I do.
20
21 Q. Rather than the - the client requesting?
22 A. That's correct.
23
24 Q. So you don't have any recollection of anyone from the
25 council actually asking you to do that?
26 A. No.
27
28 Q. You've done that on your own initiative?
29 A. Well, again, there's a lot of covert operations we did
30 do for council and that was our standard practice to - to
31 deliver that way.
32
33 Q. All right.
34
35 MS RONALDS: If I could tender that email.
36
37 ASSISTANT COMMISSIONER: Yes, exhibit 228 is this email.
38
39 EXHIBIT #228 EMAIL FROM MS WILSON TO MR ROMANO DATED
40 25 MARCH 2009, SUBJECT: IPP COSTS LETTER AND INVOICES
41
42 MS RONALDS: Q. And I show you this document. This sets
43 out from Ms Malouf attaching an account and attached to it
44 in turn are the - are the running sheets - sorry, is a --
45 A. Yes, a progressive account, yes.
46
47 Q. Yes.

1 A. Okay.
2
3 Q. So that's for \$15,000?
4 A. Yes.
5
6 Q. But you see it says "Hi Erin, I work with Richard
7 Mailey. Enclosed is an" - "our client prefers that the tax
8 invoice does not specify the work carried out for
9 confidentiality reasons, for audit purposes the
10 disbursements are itemised and enclosed"?
11 A. That's correct.
12
13 Q. So that consistent with what we've looked at before --
14 A. Mmm-hmm.
15
16 Q. -- it says something - if you - if you only see the
17 front page you might be confused about what services had
18 been delivered?
19 A. That's correct, yes, mmm.
20
21 MS RONALDS: If I could tender that.
22
23 ASSISTANT COMMISSIONER: Exhibit 229 is an email from
24 Erin Wilson to Mr Romano dated 30 March and following
25 emails.
26
27 EXHIBIT #229 EMAIL FROM MS WILSON TO MR ROMANO DATED
28 30 MARCH 2009, SUBJECT: INVOICES AND DISBURSEMENTS BURWOOD
29
30 MS RONALDS: Q. And I'll just show you - just show you
31 three other accounts and you agree that they all relate to
32 this surveillance activity?
33 A. If they - if they were addressed to Maddocks they -
34 they'd only relate to this matter.
35
36 Q. So is that the only bills you sent to Maddocks?
37 A. That - yes, in relation to this matter, there - I'm -
38 I'm not sure how many bills but whatever - if they were
39 addressed to Maddocks it would have been only in relation
40 to this matter.
41
42 Q. Okay. Well, I'll show you the three because there's
43 the three addressed to Maddocks and they --
44 A. Mmm.
45
46 Q. -- and they - just so that we've got the total amount
47 together.

1 A. Okay.
2
3 Q. And you'll see all three - the first one - sorry, I
4 will wait till you get them - the first one you see is
5 dated the 22nd of April for 22,276; see that?
6 A. Yes.
7
8 Q. The next one is dated the 12th of the 5th for 4,172 --
9 A. Yes.
10
11 Q. -- see that? And then the third one is dated the 25th
12 of June dated - 1,392 and that's - and so attached to each
13 of them, including in the costs are meetings with
14 Maddocks - various meetings with Maddocks?
15 A. That's correct, yes.
16
17 Q. Right.
18
19 MS RONALDS: If I could tender those three.
20
21 ASSISTANT COMMISSIONER: Yes. Those three accounts from
22 IPP Consulting will be exhibit 230.
23
24 EXHIBIT #230 THREE ACCOUNTS FROM IPP CONSULTING
25
26 MS RONALDS: Q. So the surveillance ceased and as far as
27 you're aware, would it be correct to say that you're not -
28 you weren't involved in anything happening with the
29 surveillance product; that is, you've never given evidence
30 in court to sustain a dismissal of anyone arising from the
31 surveillance material?
32 A. No.
33
34 Q. You've never been further - asked to participate in
35 any form of investigation conducted by the council in
36 pursuit of information revealed during the investigation?
37 A. There was only one matter, I think, that - that was
38 non-electronic and that was in relation to workers'
39 compensation matter locating a - one of these - one of
40 the - one of the persons mentioned in the covert and that
41 was - the council had received information that a
42 particular employee, and I can't recall the name, was - was
43 working even while receiving workers' compensation and we
44 were asked to verify that and - which we had a lot of
45 difficulty but we finally located him, yes.
46
47 Q. Was that during that part - time or was that later?

1 A. That was out of the - that was out of the covert order
2 time.
3
4 Q. And what authority do you say you had to do that?
5 A. Well, it was - it was non-electronic and it was purely
6 a locate to see whether the worker is working whilst
7 receiving benefits for workers' compensation.
8
9 Q. And you don't remember the name of the worker?
10 A. I think it might have been Quirk. I'm not - I can't
11 be sure on that.
12
13 Q. And would that be included in these accounts I've just
14 shown you or would that be something separate?
15 A. That could - that would be something separate.
16
17 Q. Because that didn't come through Maddocks, that just
18 came directly from council?
19 A. I think that might have just gone to council.
20
21 Q. And I'll just show you this document. I can't because
22 I've lost my trusty sidekick. You're aware under the
23 Workplace Surveillance Act there has to be a report to the
24 court?
25 A. Yes.
26
27 Q. And I've just shown you a document which is signed by
28 Mr Gardner, and you know who he is --
29 A. Yes.
30
31 Q. -- not you, but have you seen this before?
32 A. No, I can't recall seeing this document before.
33
34 Q. All right. Well, if I could ask you just to turn to
35 the last page and the last paragraph, Mr Gardner says
36 "There's not been any previous use of covert surveillance
37 in connection with suspected unlawful activity with which
38 the authority is concerned". See that?
39 A. Yes.
40
41 Q. That's not consistent with your evidence, is it; that
42 is, there was covert surveillance prior to the issue of the
43 warrant or the authorisation?
44 A. Correct.
45
46 Q. So that Mr Gardner, when he says that, is incorrect,
47 would you agree?

1 A. I'd agree.
2
3 Q. But you say you didn't - Mr Gardner didn't show this
4 document to you beforehand --
5 A. No.
6
7 Q. -- or Ms Wilson didn't show it to you beforehand?
8 A. No.
9
10 Q. So you didn't have an opportunity to review it?
11 A. Correct.
12
13 Q. Because if you'd read that you would have known that
14 was wrong, wouldn't you?
15 A. Absolutely.
16
17 Q. Because you knew photographs had been taken before the
18 authorisation was obtained from the court?
19 A. Absolutely.
20
21 Q. Are you aware whether, in terms of the surveillance
22 that IPP did in relation to posters, and you know the
23 surveillance I mean --
24 A. Yes.
25
26 Q. -- whether there's ever been a prosecution launched by
27 Burwood Council of - or on behalf of Burwood Council as a
28 result of that surveillance?
29 A. Yes, there's been a lot of action by Martin Jenner,
30 the ranger officer, in relation to prosecutions and we
31 carried out a lot of work in relation to that - that.
32
33 Q. I know you did a lot of work, I'm just trying to see
34 if there was any product from that work?
35 A. I believe there was - there was prior legal - legal
36 issues to cease - ask - from the council asking to cease
37 and desist from the posters and that was failed - had
38 failed, they denied it and then we investigated it and
39 found it was that company and approached that company. We
40 gave the report to then Martin Jenner of the council and
41 Martin was proceeding, as far as I know, to attempt to
42 prosecute the company for legal posters. I can't help you
43 after that. I don't know what happened after that.
44
45 MS RONALDS: I have nothing further.
46
47 ASSISTANT COMMISSIONER: That last - the report --

1
2 MS RONALDS: Sorry.
3
4 ASSISTANT COMMISSIONER: -- on the use of the authority
5 will be exhibit 231.
6
7 EXHIBIT #231 REPORT ON USE OF AUTHORITY
8
9 MS RONALDS: I don't know if it is convenient we break
10 now?
11
12 ASSISTANT COMMISSIONER: Yes, I think we should take a
13 break. The recorders need a break between witnesses, I'm
14 informed.
15
16 MS RONALDS: I suspect there may be others who want to ask
17 Mr Mailey some questions.
18
19 ASSISTANT COMMISSIONER: Yes.
20
21 MS RONALDS: I might be wrong. No, no-one wants to?
22
23 ASSISTANT COMMISSIONER: Is anybody going to question
24 Mr Mailey? Will you be five minutes?
25
26 MR BLAKE: I couldn't guarantee five minutes, Assistant
27 Commissioner.
28
29 ASSISTANT COMMISSIONER: All right. Look, I think we will
30 take the - the morning tea break now. We'll adjourn for
31 15 minutes.
32
33 SHORT ADJOURNMENT
34
35 <EXAMINATION BY MR BLAKE:
36
37 ASSISTANT COMMISSIONER: Thank you, please proceed. Yes,
38 do we need Mr Mailey back?
39
40 MS RONALDS: I think so.
41
42 MR BLAKE: Well, I can't ask my questions unless he's
43 here.
44
45 MS RONALDS: Try and be creative.
46
47 MR BLAKE: Try and be creative as well?

1
2 MS RONALDS: Have a bit of existentialism.
3
4 ASSISTANT COMMISSIONER: Sorry, Mr Mailey, he wants to see
5 the whites of your eyes, as he questions you, could you get
6 back in the box, please.
7
8 (Witness returns to witness box)
9
10 MR BLAKE: Could Mr Mailey be shown exhibit 229, please,
11 and at the same time, and it has to be the same time, could
12 he also be shown exhibit 226, together 229 and 226.
13
14 THE WITNESS: Thank you.
15
16 MR BLAKE: Q. Mr Mailey, can you go to exhibit 229,
17 please. You'll see it's an email from Yasmin Malouf to
18 Erin Wilson which annexes a tax invoice of IPP consultants?
19 A. That's correct.
20
21 Q. Do you see that.
22 A. Yes.
23
24 Q. Can you go to the disbursement part of the tax
25 invoice, please, and you'll see on the last page there's a
26 reference to "senior consultant Richard Mailey"?
27 A. That's correct.
28
29 Q. Do you see that?
30 A. That's correct, yes.
31
32 Q. And you'll see that there is a reference to three
33 actions there - a meeting at Burwood on 2 March 2009. And
34 just stopping there, you gave some evidence, I think
35 yesterday [sic] - that that's when you met with members of
36 the executive team where Mr Romano was present at the
37 beginning and then excused himself after --
38 A. That's correct.
39
40 Q. -- introducing you to the executive?
41 A. Yeah.
42
43 Q. Now, the - there's also a meeting at Burwood on
44 16 March 2009, four hours. Just, firstly, is four hours
45 the length of the meeting or does that include some
46 travelling time as well?
47 A. No, that's the length of the meeting.

1
2 Q. Right. And - and what was that meeting about? And
3 who was it with and what was it about?
4 A. It was to discuss the - the presentation or initial -
5 initial presentation. I can't recall the exact day, but I
6 would say the 16th would have been the presentation, the
7 PowerPoint presentation, to the executive committee.
8
9 Q. I just might come back to that in a moment. And then
10 there's a meeting in the solicitors on 19 March, in the
11 city for one hour. Is that a reference to a meeting at
12 Maddocks?
13 A. Yes. I believe it's to discuss the - the
14 presentation, the PowerPoint presentation.
15
16 Q. Yes, and that - and that was at their office, I think,
17 in Angel Place or near Angel Place?
18 A. Yes, it was, yes.
19
20 Q. Not far from the IPP office?
21 A. Yes.
22
23 Q. And in that meeting, you showed the PowerPoint
24 presentation on a screen?
25 A. That's correct, yes.
26
27 Q. And there were members of the council executive team
28 present; is that correct?
29 A. I believe there was - there was someone from the
30 council but I can't recall who.
31
32 Q. And there was some lawyers present?
33 A. Correct.
34
35 Q. Mr Baird was one of those?
36 A. Yes.
37
38 Q. And at that meeting, I suggest that you expressed the
39 view that the PowerPoint showed prima facie evidence that
40 would stand up in court in relation to theft and staff
41 doing private work being - being done in council hours; you
42 expressed that view?
43 A. No.
44
45 Q. Well, I suggest you did express the view that the
46 PowerPoint showed prima facie evidence of theft.
47 A. It showed prima - yes, it certainly did, yes.

1
2 Q. And it showed prima facie evidence of private work
3 being done in council hours?
4 A. Correct.
5
6 Q. And you expressed the view at the meeting?
7 A. Yes.
8
9 Q. And you also expressed the view that the evidence
10 would be stronger if it was supported with video or
11 surveillance evidence?
12 A. Yes, correct.
13
14 Q. And you expressed the view that that couldn't be done
15 without a court order under the Workplace Surveillance Act?
16 A. That is correct.
17
18 Q. And you also expressed the view that it would be wise
19 to get a court order "to allow us to bolster the evidence
20 shown in the PowerPoint"?
21 A. Correct.
22
23 Q. And I suggest that - you know Mr Baird?
24 A. Mmm-hmm, yes.
25
26 Q. You've seen him here and you met him on that occasion?
27 A. Yes.
28
29 Q. He expressed agreement with what you said?
30 A. Yes.
31
32 Q. And said he would support further surveillance?
33 A. Yes.
34
35 Q. And there was a discussion about how to go about
36 getting a court order; do you agree with that?
37 A. Yes.
38
39 Q. And Mr Baird said you'd need to make an application to
40 the court?
41 A. Correct.
42
43 Q. And it was a relatively easy process which could be
44 done quickly?
45 A. I'm not - I'm not sure of the process, but, yes.
46
47 Q. And he said it could be done quickly?

1 A. I - I didn't - it wasn't --
2
3 Q. You don't recall it?
4 A. Sorry?
5
6 Q. You - I think you just nodded your head but I'm not --
7 A. No, well, I - I wasn't familiar with the process, so I
8 couldn't state the time.
9
10 Q. No, no, I'm just saying did Mr Baird say it was a - a
11 relatively easy process?
12 A. Yes, yes.
13
14 Q. And it could be done quite quickly?
15 A. Yes.
16
17 Q. And Mr Baird said the field notes that had been
18 provided could be used as a basis for the application?
19 A. Correct.
20
21 Q. Thank you. And I suggest, prior to that meeting, and
22 maybe it's 16 March, you had showed the PowerPoint at - at
23 the council; is that correct?
24 A. That's correct.
25
26 Q. And you also showed it to Mr Romano on that occasion?
27 A. I'm not sure if Mr Romano was present. I don't
28 believe he was present.
29
30 Q. You don't think he was present, all right. But you're
31 not sure about that?
32 A. I'm not sure about that.
33
34 MR BLAKE: All right. Thank you. Those two exhibits can
35 be returned and that Mr Mailey be shown exhibit 217,
36 please?
37
38 Q. Mr Mailey, you were shown this email this morning and
39 I think you identified it as one you sent?
40 A. Yes.
41
42 Q. Do you agree with that?
43 A. Yeah.
44
45 Q. I suggest that shortly prior to that email being sent
46 by you that you'd had a conversation with Mr Romano on the
47 telephone where the issue of taking photographs had been

1 discussed?
2 A. Yes, that'd be correct.
3
4 Q. And Mr Romano expressed to you he had concerns about
5 photographs being taken?
6 A. Yes.
7
8 Q. And he said he had some legal advice which confirms
9 concerns about using video or photographs without a court
10 order under the Workplace Surveillance Act?
11 A. Correct.
12
13 Q. And you said he was probably right and you would get
14 back to him?
15 A. No. I've dealt with matters like this before and I
16 remember the conversation, "How can I carry out this
17 surveillance when you have no photographic IDs of any of
18 your employees? And, you know, it's - it - the task is
19 spending council money. Just watching a - a depot is not -
20 is not - is not the right way to go about it. We need a
21 surveillance, Workplace Surveillance Act, and we need
22 proper - proper identification of the workers."
23
24 Q. And I suggest that following that conversation with
25 Mr Romano, you did some research which you set out in the
26 attachment to the email and sent the results of your
27 research to Mr Romano?
28 A. That's correct, yes.
29
30 Q. Thank you. And could I show you an email of 20 March,
31 which I don't think was tendered this morning, and you'll
32 see it's an email dated 20 March 2006 from Erin Wilson
33 addressed to yourself and Mr Romano copied to Mr Baird and
34 Mr Gardner?
35 A. Yes.
36
37 Q. Is that an email that you have received?
38 A. Yes.
39
40 Q. And attached to that was the - a - a letter dated
41 20 March from Maddocks formally retaining IPP to carry out
42 surveillance; is that correct?
43 A. That's correct.
44
45 Q. And also attached to that was the variation of the
46 covert surveillance authority which has already been
47 tendered?

1 A. Correct.
2
3 MR BLAKE: I seek to tender that document.
4
5 ASSISTANT COMMISSIONER: Do you have this document,
6 Ms Ronalds?
7
8 MS RONALDS: Yes, I've seen it
9
10 ASSISTANT COMMISSIONER: Do you consent to its being
11 tendered?
12
13 MS RONALDS: Yes, I consent to its being tendered
14
15 ASSISTANT COMMISSIONER: Yes. Exhibit 232 will be an
16 email from Erin Wilson to Richard Mailey dated 22 March
17 2009.
18
19 MR BLAKE: Thank you.
20
21 EXHIBIT #232 EMAIL FROM MS WILSON TO MR MAILEY,
22 MR ROMANO AND COPIES TO MR BAIRD AND MR GARDNER
23 DATED 20 MARCH 2019
24
25 MR BLAKE: Now, can Mr Mailey be - the exhibit that he
26 has, 217, that can be returned and can he be given exhibit
27 230, please.
28
29 Q. Mr Mailey, firstly, if you can go to the tax invoice
30 dated 22 April 2009 and again go to the last page where it
31 has "Senior consultant, Richard Mailey"?
32 A. Yes.
33
34 Q. And you'll see there there's a meeting with Maddocks
35 on 30 March 2009?
36 A. Yes.
37
38 Q. And then one on 7 April 2009?
39 A. Yes.
40
41 Q. With the first meeting, are you able to recall who was
42 present at that meeting?
43 A. No, I can't recall it, sorry. I believe it was just
44 Erin Wilson and myself, but I can't recall.
45
46 Q. Well, so far as the second meeting, being "Maddocks to
47 check investigators contemporaneous notes and forward

1 documentation to Maddocks", would that have been a meeting
2 between you and Ms Wilson?
3 A. It would have been between the times as specified
4 there.
5
6 Q. Between you and Ms Wilson; is that correct?
7 A. I - I can't be sure on that.
8
9 Q. You can't be sure on that?
10 A. There were people coming and going from the lawyers'
11 offices in relation to this matter during the conversation.
12
13 Q. And, what, were you at the lawyers' offices dealing
14 with Ms Wilson was one person?
15 A. Ms Wilson was the main person we're dealing with, yes.
16
17 Q. And Mr Gardner from time to time?
18 A. Yeah, from time to time.
19
20 Q. And Mr Baird?
21 A. Correct.
22
23 Q. So those three people that you were dealing with?
24 And - and can you go to the tax invoice of 12 May 2009,
25 again go to the last page?
26 A. Yes.
27
28 Q. You'll see "Investigators meeting, Maddocks offices",
29 on 4 May 2009?
30 A. Yes.
31
32 Q. Is that one where you and the investigators,
33 Mr McCombe and Ms Merridy - I think, Ms Cairn-Duff, were
34 present?
35 A. Yes, it - I think it was at - at our offices, I think,
36 in Pitt Street.
37
38 Q. Sorry, it says, "Investigators meeting, Maddocks
39 offices"?
40 A. That's correct.
41
42 Q. Is that a meeting where the two investigators and
43 yourself met with a - a lawyer at Maddocks?
44 A. Yes.
45
46 Q. And there's --
47 A. Or - or it could have been at - at our offices, I'm

1 not sure.
2
3 Q. Well, it says "Maddocks offices"?
4 A. Which one are we talking? What date, please?
5
6 Q. 4 May 2009.
7 A. Investigators, yes, that's correct, yes.
8
9 Q. Yes. And then there's a meeting on 7 May 2009, a
10 meeting at Burwood Council. Can you recall who was present
11 at that meeting?
12 A. No, not at all.
13
14 Q. You don't have any notes about that?
15 A. No.
16
17 Q. Do you recall whether Mr Romano was present or you
18 just can't recall one way or the other?
19 A. I can't recall.
20
21 Q. And do you recall what was dealt with at that meeting?
22 A. No, I can't.
23
24 Q. And if I can just take you to the last of the
25 invoices, you'll see there a - a meeting on 25 May 2009 at
26 your offices correlating surveillance operators' notes and
27 videos?
28 A. As I wasn't present; that was a surveillance operator.
29
30 Q. So you weren't present at that time?
31 A. No. On the 25th, I was, but my hour is different
32 there. I was there on the afternoon, I believe.
33
34 Q. Sorry, you were there on the afternoon and there were
35 some council officers present; is that correct?
36 A. That's correct, yes.
37
38 Q. Now, can I show you, relating to that, an email of
39 27 May or a bundle of emails?
40 A. Yeah.
41
42 Q. I think this is three lots of emails together, but if
43 you - if you read from the - from the rear to the front is
44 the correct chronological sequence.
45 A. Yes.
46
47 Q. Have you read those?

1 A. I would have read them, yes.
2
3 Q. But have you had a chance to read them now? I don't
4 wish to hurry you, Mr Mailey.
5 A. Yes.
6
7 Q. And in the second-last page, you had received or had
8 copied to you an email from an Ian Dencker and you replied
9 on Saturday, 23 May setting out the time for a Mr Azer to
10 attend at your offices; do you recall that?
11 A. Mr Azer? I can't see Mr Azer's name mentioned there.
12
13 Q. All right. It's the second last page. There's an
14 email, said to be from yourself, sent Saturday, 23 May 2009
15 at 8.34am, addressed to Mr Dencker; do you see that?
16 A. I do, yes.
17
18 Q. And it says - perhaps it's spelt incorrectly - "What
19 time would" - it's got - "Kalaled like to attend our
20 offices?"
21 A. I'm not sure who that's referring to.
22
23 Q. Right. A - a Mr Azer attended your offices, didn't
24 he?
25 A. No, not that I - not that I recall.
26
27 Q. Not that you recall?
28 A. No.
29
30 Q. And can you go forward to the front of the emails,
31 you'll see the second page begins with an email of 25 May
32 2009 at 3.10pm and it was copied to you; can you see that?
33 A. Yes.
34
35 Q. And if you see below that, you will see an email from
36 you of 25 May at 11.27am addressed to Mr Dencker?
37 A. Yes.
38
39 Q. And then below that a - an email from Mr Dencker to
40 yourself on 22 May 2009 at 11.55am?
41 A. Yes.
42
43 Q. There was some concern expressed about the quality of
44 the surveillance videotapes that you had received through
45 the operators, wasn't there?
46 A. Correct.
47

1 Q. And it was unclear, at least in part, who was depicted
2 in the videos; that is, the identity of the council
3 employees?
4 A. That's correct.
5
6 Q. And council, through Mr Dencker, was keen to see if
7 that matter might be clarified through watching the videos
8 or any greater specificity could be achieved; correct?
9 A. Correct.
10
11 Q. And it was in that context that council staff came to
12 IPP offices to observe the tapes; is that correct?
13 A. That's correct, yeah.
14
15 Q. And - and I think the end result was that no greater
16 specificity or clarity could be achieved; is that correct?
17 A. That's correct, yes.
18
19 MR BLAKE: I seek to tender that email.
20
21 ASSISTANT COMMISSIONER: Yes, that will be exhibit 233.
22
23 EXHIBIT #233 STRING OF EMAILS COMMENCING 22 MAY 2009 FROM
24 TINA RIORDAN ON BEHALF OF MR DENCKER TO KHALED AZER,
25 SUBJECT: FINALISING THE DEPOT SURVEILLANCE TAPES
26
27 ASSISTANT COMMISSIONER: Q. Mr Mailey, do you remember
28 who the former employee who was seen with monkey grips in
29 his hands was?
30 A. Commissioner, I don't think - I don't think we were
31 able to ID him. I'm not sure.
32
33 Q. Well, the fact that he's referred to as "a former
34 employee" tends to suggest somebody knew who he was --
35 A. Yeah, I --
36
37 Q. -- the fact that he was hallmarked in some way?
38 A. I think it - it gives - I think there's a name in the
39 investigator's report about that date.
40
41 Q. All right. Well, maybe we can find it in the report.
42 A. That's - yeah, because I know we had trouble
43 identifying the descriptions so --
44
45 ASSISTANT COMMISSIONER: Thank you.
46
47 MR BLAKE: Can this - can that exhibit be returned and can

1 Mr Mailey be shown exhibit 219, please?
2
3 THE WITNESS: Thank you. Yes, I have the document.
4
5 MR BLAKE: Q. And - and - I think - I - I think your
6 evidence, if I can just check, this morning was, Mr Mailey,
7 was that the operative concerned spoke to you on the
8 telephone and reported what he'd heard?
9 A. That's correct.
10
11 Q. And then the operative spoke to Yasmin and she
12 recorded what he had been - what she had been told by the
13 operative - that's Brad, is it?
14 A. That's correct.
15
16 Q. And you didn't vet this or check it before it was sent
17 by Yasmin to Mr Dencker; is that correct?
18 A. That's correct.
19
20 Q. And the - the operative, I suggest, told you when you
21 spoke to him - and was that on 9 April that you spoke to
22 him?
23 A. On the - on the - it's immediately after the
24 conversation, yes.
25
26 Q. He told you that Mr Child had made a reference to
27 Khaled - that's K-H-A-L-E-D - Azer having to go as he was a
28 troublemaker. That was said to you, wasn't it?
29 A. Oh, he just - he just relayed the conversation. I was
30 in the middle of another incident at the time.
31
32 Q. No, but --
33 A. No, I don't - I just said, "Look, just contact Yasmin.
34 Hold your BlueBerry [sic] up at the phone. She'll take it
35 down.. I'm busy." I remember that specifically.
36
37 Q. But the operative told you what he had heard, didn't
38 he?
39 A. He - he did, yes.
40
41 Q. Yes. And what the operative told you you conveyed to
42 Mr Romano, didn't you?
43 A. Correct.
44
45 Q. And you told Mr Romano that Mr Child had made
46 reference to Khaled Azer having to go because he was a
47 troublemaker. That was one of the things that you said to

1 him?
2 A. No. I referred to him as a - an aggressive
3 conversation that was heard - overheard by one of our
4 investigators similar to the call at - on the other time in
5 the - in the cafe and I think Pat said, "Well, can you give
6 me a transcription of it or - or whatever of what had
7 happened?" And I said, "Fine, I'll get it organised for
8 you."
9
10 Q. Well, I - I suggest to you you told him in that
11 conversation that there'd been a personal threat made
12 against Khaled Azer - that's the conversation with
13 Mr Romano?
14 A. Not on this occasion, no.
15
16 Q. And I suggest you told him that there could also have
17 been a personal threat against Mr Romano himself?
18 A. Not on this occasion, no.
19
20 Q. Well, I suggest you're mistaken about that and that's
21 what you did say to Mr Romano on or about 9 April 2009?
22 A. No.
23
24 MR BLAKE: And - and that exhibit can be returned. Can
25 Mr Mailey be shown exhibit 218, please?
26
27 THE WITNESS: Yes, I have that, that email.
28
29 MR BLAKE: Q. I suggest at about the time you sent that
30 email, you spoke to Mr Romano on the telephone and you told
31 him you had a photograph of Mr Child's house?
32 A. He - he requested a photograph of the - Mr Child's
33 house.
34
35 Q. No, I suggest - just listen to the question.
36 A. Yeah.
37
38 Q. About the time you sent it, you had a conversation
39 with Mr Romano in which you told him you had a photo of
40 Mr Child's house?
41 A. Yes.
42
43 Q. And you said it was a brand new house on an acreage in
44 Kiama?
45 A. That's correct.
46
47 Q. And you told him it's possible he might be using

1 council material to build his house?
2 A. That's - that would be correct, yes.
3
4 Q. And Mr Romano asked you to keep him briefed?
5 A. That's correct.
6
7 Q. And so --
8
9 ASSISTANT COMMISSIONER: Q. Sorry, what made you think
10 he might be using council material to build his house?
11 A. Well, that was the - that was the question put to me
12 by Mr Romano at the time because it was a brand new house
13 and - and --
14
15 Q. So Mr Marra - Marra, sorry, I've got --
16 A. Mr Romano.
17
18 Q. Mr Romano thought he might have used council resources
19 to build this house?
20 A. Yes.
21
22 Q. Did he say based on what information?
23 A. No, no, it - we - the operator described,
24 Ms Commissioner, the house and the location, the fact that
25 it was brand new and it was well out of Sydney, well out of
26 the reach of the council, and he said, "Well, you know,
27 maybe - maybe it's part of the property or something, it
28 could have been built by council. If you send me a
29 photograph on that and then I can have a look at it." So I
30 said, "All right."
31
32 ASSISTANT COMMISSIONER: All right, thank you.
33
34 MR BLAKE: Q. And I suggest that instruction came
35 through Maddocks or through one of the executive teams?
36 A. No, it came through Mr Romano.
37
38 Q. Right. And I suggest you're incorrect about that; do
39 you agree with that or not?
40 A. Well, at the time I was speaking to - to Maddocks as
41 well as Mr Romano, so it - but that came from Mr Romano.
42
43 Q. And it could equally have come as well from Maddocks?
44 A. No, I - I specifically remember it coming from
45 Mr Romano.
46
47 Q. I suggest you're mistaken about that, Mr Mailey.

1 A. No.
2
3 Q. You disagree with that?
4 A. I disagree.
5
6 MR BLAKE: Yes. Nothing further, Commissioner.
7
8 ASSISTANT COMMISSIONER: Yes, thank you, Mr Blake.
9
10 MR NEIL: Commissioner, could I seek leave to ask
11 questions arising out of Mr Blake's questions?
12
13 ASSISTANT COMMISSIONER: Yes, Mr Neil.
14
15 <EXAMINATION BY MR NEIL:
16
17 MR NEIL: Q. Mr Mailey, did you deal regularly with Erin
18 Wilson at Maddocks on matters of surveillance?
19 A. There was Yasmin Malouf and myself dealt with Erin.
20
21 Q. Thank you. Did you or Ms Malouf deal regularly with
22 Mr Darren Gardner at Maddocks about surveillance matters?
23 A. No.
24
25 Q. Did you know that Mr Gardner was a partner at
26 Maddocks?
27 A. Yes, I did.
28
29 Q. Did you ever see any correspondence from him regarding
30 these matters?
31 A. No, other --
32
33 Q. Do you know - do you know that Mr Gardner swore a
34 number of affidavits in relation to obtaining covert
35 surveillance authority or amendment to authority from the
36 court?
37 A. Yes.
38
39 Q. Did you know that he provided a form of report on use
40 of the authority to the court?
41 A. Yes.
42
43 Q. And did you know that he was a person who gave you,
44 either through you yourself or Ms Malouf, ideas in terms of
45 whether or not there should be an addition to the
46 surveillance by seeking a court order?
47 A. Yes.

1
2 Q. And could you just have a look at - did you understand
3 that Mr Gardner had an office at the Maddocks' office? I
4 suppose you knew that.
5 A. No, I didn't.
6
7 Q. You didn't?
8 A. No.
9
10 Q. Well, did you know he was with Maddocks?
11 A. I - I've met him at Maddocks. I assumed he was with
12 Maddocks.
13
14 Q. Thank you.
15 A. I don't have a business card.
16
17 MR NEIL: Could the witness have a look at, Commissioner,
18 at exhibit 230, two hundred and thirty.
19
20 Q. Could you please have a look at the - I think it's the
21 first of the documents. Do you see the tax invoice N727636
22 dated 22 April 2009?
23 A. Yes.
24
25 Q. And if you go to the last document, do you see that
26 carries the costings page? Do you see that?
27 A. I see that.
28
29 Q. And there is an item that you've been asked some
30 questions about, on 30 March 2009, about a meeting with
31 Maddocks solicitors; correct?
32 A. Correct.
33
34 Q. Now, did you say at some part of your evidence that
35 you didn't - you didn't have a good recollection of who had
36 been at that meeting?
37 A. That's correct.
38
39 Q. And you've got a poor recollection of who was at that
40 meeting; is that right?
41 A. That's right.
42
43 Q. And you've got a poor recollection of who said what at
44 that meeting; isn't that right?
45 A. No.
46
47 Q. Could Mr Gardner have been at that meeting?

1 A. I'm not sure.
2
3 Q. Would it be Mr Gardner who, rather than Mr Baird, gave
4 advice on going to the court to get a court order to obtain
5 further evidence of an electronic nature?
6 A. It was a general discussion between parties. I don't
7 remember who made that remark.
8
9 Q. It could have been Mr Gardner, could it?
10 A. It could have been Mr Gardner.
11
12 MR NEIL: Thank you.
13
14 MR CHALMERS: Commissioner, may I seek leave to ask some
15 questions or a question?
16
17 ASSISTANT COMMISSIONER: Yes, Mr Chalmers.
18
19 <EXAMINATION BY MR CHALMERS:
20
21 MR CHALMERS: Q. I act for Mr Issa - right at the back.
22 Have you ever heard of M&A Investigations?
23 A. I have, yes.
24
25 Q. Do you know whether they do any work for Burwood
26 Council?
27 A. No, I don't, no.
28
29 Q. Do you know anything about any present work they're
30 doing in relation to any workers working for the Burwood
31 Council?
32 A. No.
33
34 Q. All right. Okay. And have you ever referred work to
35 them --
36 A. No.
37
38 Q. -- in relation to Burwood Council?
39 A. No.
40
41 Q. No. And you've never heard of them being involved
42 with Burwood Council --
43 A. No.
44
45 Q. -- in any project?
46 A. No.
47

1 MR CHALMERS: Yes, thanks.
2
3 ASSISTANT COMMISSIONER: Thank you, Mr Chalmers.
4
5 If there are no other questions for this witness, he
6 is to be excused?
7
8 MS RONALDS: Yes, he can be excused.
9
10 ASSISTANT COMMISSIONER: Yes, thank you, Mr Mailey. You
11 are now excused from further attendance.
12
13 THE WITNESS: Thank you, Ms Commissioner.
14
15 <THE WITNESS WITHDREW
16
17 MS RONALDS: I just very briefly call Mr Issa, very
18 briefly, and then Mr Baird, who very keen - I can see to
19 leap into the witness box. We just have to wait for one
20 minute because the video - so you understand, you're being
21 videoed tape recorded. The video has to change with a new
22 witness and I have been instructed so far by five different
23 people to make sure I remember that we have to wait one
24 minute. So you just have to hang on before we do anything.
25
26 THE WITNESS: Okay.
27
28 MS RONALDS: It's not covert surveillance, you don't need
29 to.
30
31 ASSISTANT COMMISSIONER: Yes, Mr Issa, you're already
32 under oath and the section 38 declaration continues to
33 apply to your evidence. Thank you.
34
35 THE WITNESS: Thank you.
36
37 <AMMAR ISSA, on former oath: [12.31pm]
38
39 MS RONALDS: We can go, apparently.
40
41 <FURTHER EXAMINATION BY MS RONALDS:
42
43 MS RONALDS: Q. Mr Issa, you were present, I think, when
44 Steve Ellul gave some evidence?
45 A. Yes, that's correct.
46
47 Q. And he recounted some - an account of others of an

1 incident in - two incidents involving you and Mr Child and
2 workers?
3 A. Yes.
4
5 Q. Now, since you were - you were working in the council
6 office --
7 A. Yes, that's correct.
8
9 Q. -- the - whatever you call it, the --
10 A. Chambers.
11
12 Q. Chambers, sorry and then you were, in effect, stood
13 down and you've not received any restricted duties since
14 then, have you?
15 A. No, not until last week, the week before.
16
17 Q. And what happened then?
18 A. I don't know, the insurance company - some company
19 reapplied - rehabilitation providers contacted me --
20
21 Q. Right.
22 A. -- and they told me that they're going to help me get
23 back into work.
24
25 Q. Right, but that's the first time since --
26 A. That's the first time, since, yes.
27
28 Q. And what - just remind me of the date where you - when
29 you stopped working; sorry, I've forgotten.
30 A. July 2009.
31
32 Q. And you consider, don't you, that the failure of the
33 council to offer you any alternate duties since that date
34 is an act of reprisal against you?
35 A. Yes, I do believe so.
36
37 Q. But you have that view - no-one's said that to you
38 from the council, have they?
39 A. No, they haven't.
40
41 Q. Mr Macklin hasn't said to you "We don't want you back
42 because you're seen as part of Steve Child's gang"?
43 A. No, he hasn't.
44
45 Q. And no-one's said anything like that to you?
46 A. No, they haven't.
47

1 Q. But you just think that that's what's happened?
2 A. Pretty much, yes.
3
4 Q. Right. And do you recall when you and Mr Child were
5 recently in the Burwood area and you stopped and had a
6 conversation with some workers?
7 A. Yes, I do.
8
9 Q. Well, there were two incidents, I think?
10 A. Yeah, there was two incidents.
11
12 Q. And are you able to tell the commissioner - let's take
13 them one at a time - what happened on the first incident?
14 A. Which one, the one in Fitzroy Street?
15
16 Q. Well, the --
17 A. I think that --
18
19 Q. Which one came chronologically first? One was in
20 March, one was in April?
21 A. Fitzroy Street.
22
23 Q. Right. What happened?
24 A. Well, my usual routine is just to leave home, pick up
25 Steve and go pick up Joe, then we all travel together to
26 this commission.
27
28 Q. To come into the commission?
29 A. Yes.
30
31 Q. Right. And this is during the hearing time, is it?
32 A. Yes, this is during the hearing time.
33
34 Q. Right. And what happened?
35 A. We were driving along and there's a couple of ways I
36 go to Joe's house, depending on traffic. This time we cut
37 through Fitzroy Street and towards the end of
38 Fitzroy Street there was a couple of - some of my ex team
39 members, if you want to call it that, working on the side
40 of the road, so we just pulled up and said a brief hello,
41 asked us how are we going, "How are things going?" and
42 that's pretty much it. And - Carlos Mendez came in just a
43 bit before we were leaving. He had a quick chat with
44 Steve, then we left to pick up Joe.
45
46 Q. So why did you stop in the first place?
47 A. Because we haven't seen them for a while. I had

1 regular contact with Petro who was there and John Vidalla
2 as he came to the commission. We just stopped to say
3 hello, see how they are.
4
5 Q. And did you - were you present when Mr Child was
6 talking to Mr Mendez?
7 A. I was present but I didn't hear the conversation.
8
9 Q. Did you hear Mr Child say "Look after my boys"?
10 A. No, I didn't hear that.
11
12 Q. Did you hear Mr Child say "Make sure you have my car
13 cleaned, as I will need it when I return to work in about
14 three weeks"?
15 A. No, I didn't hear him say that.
16
17 Q. And did you hear him say "You're pushing my boys too
18 hard"?
19 A. No, I didn't hear him say that
20
21 Q. And then you just hopped back in your car and drove
22 off, did you?
23 A. Yes, that's --
24
25 Q. And the second - that was the 25th of March, would
26 that be correct?
27 A. There but I didn't take them --
28
29 Q. But if it was recorded as reported on the day it
30 occurred --
31 A. Yeah, I --
32
33 Q. That --
34 A. -- believe so.
35
36 Q. You'd accept that was correct?
37 A. Yeah, I'd accept that was correct.
38
39 Q. And the second incident, as I understand it, was on
40 the 15th of April 2010?
41 A. Thereabouts, yeah.
42
43 Q. And what happened then?
44 A. We were driving down Cheltenham Road, same routine to
45 pick up Joe, and after I picked up Steve and we were
46 driving down Cheltenham Road and we seen Gary. He waved to
47 us so we pulled up, we said hello to him. He goes "I'm" --

1
2 Q. Mr Wright, Gary Wright?
3 A. Yeah, Gary Wright.
4
5 Q. And was that a Wangel Park, on --
6 A. Yeah.
7
8 Q. -- Cheltenham Road at Croydon?
9 A. Yes, that's correct.
10
11 Q. Sorry, yes.
12 A. We said hello to him - we pulled over and said hello
13 to him. He goes "I'm not supposed to be speaking to youse"
14 and we asked him why. He didn't reply to that but then he
15 was asking us how are we are going, how are things, he even
16 asked me how by back was going, told him I had the second
17 operation he goes "It's no good" and that's pretty much it
18 and we left, picked up Joe.
19
20 Q. Now, you've heard Mr Ellul's evidence about the reason
21 you were uninvited to the Christmas party was because there
22 were concerns that someone would assault you after they'd
23 consumed alcohol?
24 A. Yes.
25
26 Q. Was that the first time you'd heard that you were so
27 unpopular as to give rise to threats to your safety?
28 A. Other than Mr Macklin's evidence, yes.
29
30 Q. And - and it appears that Mr Macklin was relying on
31 the advice from Mr Ellul?
32 A. Yes.
33
34 Q. And do you know of anyone that - have you had any
35 altercations with any people at the depot that would
36 suggest there was a basis for - a proper basis for there to
37 be any genuine fears about your safety if you'd attended
38 the party?
39 A. I've never had a physical altercation with anyone,
40 other than - I just had a verbal altercation with Joe Saad
41 but that was back when I was working at the actual depot.
42
43 Q. And Mr Saad doesn't - isn't employed any longer?
44 A. No, he's not.
45
46 Q. So he wouldn't be a threat to your safety tat
47 Christmas party in 2009?

1 A. No, he wouldn't, no.
2
3 Q. Is there anyone else that you know of in the depot who
4 bears you some sort of malevolent feelings that --
5 A. Well --
6
7 Q. -- to sustain the views --
8 A. I haven't been to the council depot for over a year
9 now, so I wouldn't know what the atmosphere's like or who
10 likes me, who dislikes me.
11
12 Q. And what's your reaction to the evidence of Mr Ellul
13 that - that there was a threat to you?
14 A. Pretty surprising. Pretty worried if I go back to
15 work. Just in relation to if I do go back to work, what -
16 whether they're going to provide safety for me.
17
18 MS RONALDS: I have nothing further at this stage but I
19 understand his legal representative has some propositions
20 he wishes to put, which is essentially why he's been
21 recalled.
22
23 ASSISTANT COMMISSIONER: Yes.
24
25 MR CHALMERS: Yes, thank you, commissioner.
26
27 <EXAMINATION BY MR CHALMERS:
28
29 MR CHALMERS: Q. All right. I think we're on a bit of a
30 time leash here, so move through it quickly. You started
31 working at the council in about July 2006?
32 A. Yes, that's correct.
33
34 Q. And just very, very briefly, your previous work
35 experience including supervision?
36 A. I used to work for a company called San Marino
37 Concreting. I was employee of 12 staff and I was a
38 supervisor of them 12 staff.
39
40 Q. And from July 2006 to March 2008 you worked as a
41 concreter at the council; is that right?
42 A. Yes, that's correct.
43
44 Q. And I think you were promoted in that time?
45 A. Yes, I was.
46
47 Q. Right. And just very quickly, what were you promoted

1 to?
2 A. Team leader of construction.
3
4 Q. Right. Now, in March 2008 you had your accident and
5 you - you had time off and an operation; is that right?
6 A. Yes, that's correct.
7
8 Q. You came back to work in about mid August 2008?
9 A. Yes, that's correct.
10
11 Q. Right. What work were you doing at the depot at that
12 time?
13 A. I was pretty much supervising with Steve and Steve
14 would - would be in the office doing a bit of paperwork.
15 If the boys needed a hand - not a hand, like just in
16 general, like, knowing what to do at a job, I'd be out
17 there and just give them - like, show them what to do and
18 we done two roundabouts and I was pretty much full-time on
19 site at the roundabouts.
20
21 Q. Okay. And the - then you were moved to the -
22 chambers; is that right?
23 A. Yes, that's correct.
24
25 Q. And what work were you doing there?
26 A. I was doing all the asset management, the drainage for
27 the Burwood LGA area, the road, the footpaths, kerb and
28 gutter and road pavement for Burwood LGA area, costings,
29 budgeting and all that.
30
31 Q. This was essentially paperwork?
32 A. Yeah, all paper - computer work.
33
34 Q. Yeah, computer work. And in - now, I'm going to bring
35 you to a telephone conversation you had with Macklin in
36 June/July 2009 but just before that, who were you working
37 with?
38 A. I was working with Fred Thinesh.
39
40 Q. Right. And he was the engineer?
41 A. Yeah, design engineer, something.
42
43 Q. Right. And did he tell you anything just a few days
44 prior to the telephone conversation with Macklin?
45 A. On a regular basis Fred would tell me "If you don't
46 have anything to do", you know, "I could always get
47 something for you to do in relation to council work".

1
2 Q. And can you just very quickly tell the commission what
3 outstanding council work there was to do that would have
4 kept you occupied?
5 A. There's still the measurements of the actual drainage
6 boxes of the Burwood LGA area, every single - each and
7 every drainage pit there needed to be measurement and size
8 taken for that. There was that budgeting thing that I was
9 working on that still needed to be finished, there was a
10 couple of months on that, so there was a fair bit of work.
11
12 Q. Okay. So there really wasn't any question in your
13 mind, or you believe Fred's mind, that there was plenty of
14 work to do?
15 A. There was --
16 Q. Yeah.
17
18 A. -- plenty of work, yes.
19
20 Q. Yeah. And it was also - now, at this time you are -
21 the council was provided with monthly medical reports?
22 A. Yes, that's correct.
23
24 Q. Okay. And can you just tell the commission very
25 quickly just what were the restrictions on your work?
26 A. Well, it was just to sit no longer than 30 minutes,
27 stand no longer than 10 - I think it was 10 - and not to
28 walk longer than 15 minutes.
29
30 Q. Right. And as a result of that did you stop working
31 and take those - that time to walk around?
32 A. Yes, I would. I would take - they gave me, like, a
33 rest period table that I had to fill out every half an hour
34 if I get up and walk around. Wasn't actually to get up and
35 stretch, it was just to get up and walk around because I'd
36 been sitting for a - half an hour, so it doesn't cause too
37 much pain.
38
39 Q. And was there any requirement that you stretch?
40 A. No, there was no requirement to stretch.
41
42 Q. And on one occasion I think you were taking your
43 10 minute break and you were stopped by someone and
44 criticised in relation to being on the phone?
45 A. Yeah, well, I was outside on the phone and I seen
46 Pat Romano walking in. He didn't give me a pretty pleasant
47 look and then within seconds later Khaled Azer came out and

1 told me, you know, "You're not supposed to be on the phone,
2 you're supposed to be inside. Don't stand in front of the
3 council building" and so on.
4
5 Q. Okay. All right. Now, you got a phone call from
6 Mr Macklin. Can you tell the court - tell - can you tell
7 the commission about that?
8 A. Yeah, it was on a Thursday evening, I can't recall the
9 exact date, but I came --
10
11 Q. About July?
12 A. Yeah, it was in July. I came back from --
13
14 Q. 2009?
15 A. 2009, yeah, I came back from uni, I'm doing a
16 preparation course, and I received a phone call about 6pm
17 from Peter Macklin telling me that he spoke to Khaled Azer
18 and Fred and that - him and Khaled Azer approached Fred and
19 asked if there were any suitable duties for me and they
20 told me that Fred had no suitable duties for me and not to
21 come in to work tomorrow and I told Peter Macklin, I told
22 him that there is work for me and I - couple of days prior
23 to the phone - couple of days prior to him calling, Fred
24 told me if I didn't have anything he'll find me work to do
25 and I told him that I had - still had a couple of months on
26 a couple of the projects that I was working on.
27
28 Q. Just very quickly can you just tell us what else was
29 said at that phone call before it finished?
30 A. And he told me to pretty much just sit at home,
31 "You'll get paid as normal" and not to come in to work and
32 to call him back Monday morning to see if he's got any
33 suitable duties for me.
34
35 Q. At the end of that phone call what did - did you ring
36 up anyone else?
37 A. Yeah, I called up Fred straight after the phone call
38 and I asked Fred "Fred, is this true that", you know,
39 "Peter Macklin, Khaled Azer approached you and asked if
40 there's", you know, "Work for me and you told them no".
41 He said "No, no-one approached me, no-one asked me about
42 anything" and that was the first that he heard that I
43 wasn't coming in the next day.
44
45 Q. Right. All right. So then there was - was there a
46 phone call on Monday; is that right?
47 A. Yeah, I called Peter Macklin back Monday morning and

1 asked him if there's any suitable duties for me. He told
2 me no, he hasn't found anything yet, to give him a - if he
3 doesn't call me by Wednesday midmorning - Wednesday
4 morning, to give him a call Wednesday midmorning.
5
6 Q. Right. All right. And did you ring on Wednesday?
7 A. I called him Wednesday midmorning and he told me he
8 hasn't found anything yet and he goes "Look, just leave it
9 with me", he goes "If I find something I'll give you a call
10 back".
11
12 Q. Right. And if you heard from anyone from the council
13 up till about two weeks ago in relation to work?
14 A. I did hear from council on about the 19th of March, I
15 think it was, about - no, 19th of November 2009 in relation
16 just to attend a compulsory investigation in requiring to -
17 in relation to the discrimination matter with Joe Saad.
18
19 Q. Right. And - all right. And - now, in relation to -
20 just in relation to the fact that you haven't been working
21 at the council, that's meant a lot of - a loss of income
22 for you; is that right?
23 A. Yes, it has.
24
25 Q. And I note that in October 2009 you had a second
26 operation, so clearly you wouldn't have been able to work
27 in October?
28 A. Yes, that's correct.
29
30 Q. But even bearing in that mind - bearing that in mind,
31 you calculate that it's probably cost you about 9 - \$9,000
32 net --
33 A. Yes.
34
35 Q. -- difference between the workers' compensation
36 payment and the fact that you're not working at council?
37 A. Yes, that's correct.
38
39 Q. Just very approximately and --
40 A. Yeah, approximately that much.
41
42 Q. -- rough calculation? All right, now, in relation to
43 the Christmas party, you made approaches to go to the
44 Christmas party; is that right?
45 A. Yes, I went to the council depot and I paid Daniel
46 Scroi for the party for me, Joe and Steve.
47

1 Q. Yes, and were you rung up by someone?
2 A. No, I was told by a couple of - by Stan Aidinlis
3 that - that we weren't allowed to attend, so I contacted
4 Peter Macklin to see what was going on. He told me "Yeah,
5 you're not allowed to go". He goes "I'll be sending out a
6 letter for you".
7
8 Q. Did he - did he offer to send out a letter?
9 A. Yeah, he send out the letter. I asked him to put it
10 in writing and he sent out the - the actual letter.
11
12 Q. All right. And did at any time he say it was because
13 you were vulnerable to an attack by workmates?
14 A. No, he didn't.
15
16 Q. Now - all right. Now, in relation, just very quickly,
17 yesterday: you - can you just tell the commission extremely
18 quickly what you saw and observed?
19 A. Yesterday late morning, probably about 11 o'clock, I
20 are received a phone call from Steve Child, was coming
21 around to just drop off some paperwork. Steve arrived at
22 my place beforehand and I got - I got there after -
23 probably about five minutes after Steve arrived. Steve was
24 parked a couple of doors up and we sat in the car, we were
25 talking. He gave me some papers that he'd copied off me
26 and probably about midday, it was probably about that,
27 there was - a white ute had pulled up in my parents'
28 driveway around --
29
30 Q. And that's the place you live?
31 A. That's where I live, yes.
32
33 Q. Go on.
34 A. The car stopped in the actual driveway inside the
35 property and had a look - there was two male occupants in
36 the car and they were having a look inside the actual
37 house, looking for a house number because the house
38 number's not actually on the front of the house, on - on
39 the actual house and they were having a look around and
40 then they reversed out and they drove up again, they had
41 another look, they reversed out slowly and they were
42 driving out and they were still having a look inside the
43 property and they drove up slowly and they pulled over on
44 the side and I was very concerned about this because during
45 the day mainly my mum and my sister-in-law are always home
46 alone, so I was very concerned. I told Steve "Let's just
47 follow" and see if I could recognise them. We followed

1 them out. They turned left onto Wattle Street, travelling
2 towards Bankstown. We followed them up the road, they
3 pulled over, I think they noticed us following them, they
4 pulled over. Me and Steve continued driving along. I had
5 a look, then we went down, drove along past them. We done
6 a U-turn, we came back and the bloke driving the actual car
7 had jumped out of the car and he was waving us over, so we
8 done another U-turn and pulled up behind them and the male
9 driver approached the passenger window.

10
11 Q. And very quickly what was the conversation?

12 A. I asked him pretty much "What were you doing in the
13 street?" He goes "Oh, I was just doing a U-turn", he goes
14 "Why, who are you guys? Are youse police or private
15 investigators?". Wouldn't answer that. We asked him who
16 you are, he told us he's a private investigator and then we
17 asked him "Are you working for IPP?", he said "No". He
18 said "I work for, like, a workers' comp sort of" - then I
19 asked him if he's working for State Cover, which is
20 council's insurance company. He said "No" and then he
21 offered us to give us his ID, his private investigator's
22 ID. I ended up getting that off him and just jotting down
23 his details. I asked him what company he worked for, he
24 said M&A Investigations at Engadine and that was the
25 extent. Then I called up Don McKenzie from the ICAC
26 Commission and just told him of the incident.

27
28 Q. Right. Okay. And just very quickly can I take you -
29 and this is the last thing - to the 25th of March 2010
30 where you were asked questions about Fitzroy Street.

31 A. Yes.

32
33 Q. When Steve Childs [sic] was talking what were - what
34 were you doing?

35 A. I was speaking to - talking to Carlos.

36
37 Q. You were?

38 A. No, no, Steve was talking to Carlos and I was --

39
40 Q. What were you doing?

41 A. I was in the actual car at the time because we were
42 ready to go and I was speaking to the other staff out of
43 the window when Steve was speaking to actual Carlos.

44
45 Q. Okay. All right.

46
47 MR CHALMERS: Thank you, Commissioner. I have nothing

1 further.
2
3 ASSISTANT COMMISSIONER: Thank you. Is there any other
4 questions for this witness? No. Is he to be excused at
5 this stage, Ms Ronalds?
6
7 MS RONALDS: He can be excused.
8
9 ASSISTANT COMMISSIONER: Yes, many Mr Issa, thank you,
10 you're now excused from further attendance.
11
12 <THE WITNESS WITHDREW
13
14 MS RONALDS: I call David Baird. Mr Baird, can you - you
15 have to wait a minute. You can't say anything until the
16 video's changed.
17
18 MR BLAKE: Do you --
19
20 MS RONALDS: Yes. I will just wait till Mr Baird sits
21 down.
22
23 <DAVID BAIRD, on former oath: [12.53pm]
24
25 ASSISTANT COMMISSIONER: Yes, Mr Baird, I note that you're
26 still under oath and the section 38 declaration still
27 applies to your evidence.
28
29 MS RONALDS: Mr Blake's just going to note something for
30 the record.
31
32 ASSISTANT COMMISSIONER: Yes, Mr Blake.
33
34 MR BLAKE: Commissioner, there are a very large number of
35 communications in which Mr Baird was involved in 2009,
36 early 2 - up to 2010 between him and members of the
37 executive team and/or Mr Romano and we have prepared two
38 folders containing those communications. I've discussed
39 this with Ms Ronalds and also with Mr Neil and what we
40 propose to do is to provide those to Mr Baird's lawyers
41 today. We also propose to provide a statement from
42 Mr Romano setting out the detail of conversations dealing
43 with, if I can just call it generally so-called reprisal
44 matters involving Mr Cummins, Mr Child and Mr Giangrasso at
45 meetings at which Mr Baird was present.
46
47 The aim of doing that is to give Mr Baird an

1 opportunity to consider it in the break. It will hopefully
2 save a great deal of time, otherwise I would have to go
3 through each meeting with each conversation and I hope
4 there might be an arrangement reached where, if there is
5 some disagreement, that can be indicated what it is prior
6 to the next occasion and also Mr Baird will have a chance
7 to review the documents and confirm that he in fact sent or
8 received the emails. So I'm hoping that that will lead to
9 the matter proceeding more expeditiously but also, in
10 fairness to Mr Baird, he will know the sorts of matters
11 which are coming.

12
13 ASSISTANT COMMISSIONER: And is the proposal, then, that
14 those two folders will be tendered as --

15
16 MR BLAKE: Yes.

17
18 ASSISTANT COMMISSIONER: -- exhibits?

19
20 MR BLAKE: Yes.

21
22 ASSISTANT COMMISSIONER: Yes. All right, yes, that
23 seems --

24
25 MR NEIL: Commissioner --

26
27 MR BLAKE: Subject to council assisting --

28
29 ASSISTANT COMMISSIONER: Yes.

30
31 MR BLAKE: Yes.

32
33 MR NEIL: Can I just make mention of that matter.
34 Mr Baird had naturally hoped that his evidence would
35 complete today and he wouldn't be having to wait another
36 month or so before resuming. However, we do see that there
37 could be some ultimate savings in the commission's time if
38 this procedure were adopted and it does appear to be that
39 there will be a large number of documents that Mr Baird and
40 his advisers will need to go through in the meantime.
41 Also, council assisting may put documents to Mr Baird that
42 may be additional to what we've already had. They may or
43 may not be part of Mr Blake's bundle --

44
45 ASSISTANT COMMISSIONER: Yes.

46
47 MR NEIL: -- and then there may or may not, at the end of

1 that, be something that - I would imagine very little, if
2 anything - that we might want to ask to be added. In the
3 circumstances, we would consent to that course but bearing
4 in mind that it does create a considerable amount of delay
5 in the completion of Mr Baird's evidence, we would hope
6 that some of the examination by some of my learned
7 colleagues who may not need to be involved with all those
8 documents could go ahead today but any of the - our learned
9 friends who want to see the documents, perhaps they would
10 also look at them during the break because I wouldn't want
11 various of my learned friends to be having a questioning
12 session today and then going away and coming back and
13 having another questioning session of Mr Baird, which
14 could, in - in our view, be rather onerous.

15
16 ASSISTANT COMMISSIONER: Yes, yes, those comments are
17 noted. I think that's all very sensible and we'll - we'll
18 get through as much as we can today with Mr Baird.

19
20 <FURTHER EXAMINATION BY MS RONALDS:

21
22 MS RONALDS: Q. Mr Baird, just a few short matters
23 before we move to the matters of more substance. What, if
24 anything, did - what role, if any, did you play in relation
25 to Maddocks answering the section 22 notices issued by this
26 commission?

27 A. I seem to recall that the first section 22 notice
28 served was served upon me when I was at the new firm.

29
30 Q. Yes.

31 A. So --

32
33 Q. And I understand that, I think that's right.

34 A. Yeah, so I - I - I think --

35
36 Q. The first - I think that the first section 22 for the
37 council may have come earlier but the first one actually to
38 Maddocks themselves was after you'd moved to Ebsworth.
39 That's why I'm just trying --

40 A. Yes, that's --

41
42 Q. -- to explore - and just so you understand the basis
43 of my question, Mr Romano is in a possession, or at least
44 through Mr Blake, of a significant number of documents that
45 have not been produced under any of the section 22s and it
46 is a matter that will be pursued further at some stage
47 because he has documents that have not been produced to the

1 commission but should have been produced to the commission
2 obviously and they're in his possession and - and that's a
3 matter that will be taken - obviously the commission has
4 very serious concerns about the failure to properly produce
5 on the notices but in terms of - by the council and by
6 everyone, it seems - but I'm just concerned whether you did
7 anything in relation - because you'd left, in terms to the
8 Maddocks notices, just so you understand where I'm coming
9 from.

10 A. I do, I do, I'm just trying to recall.

11
12 Q. And you'd understand the commission's concern about
13 inadequate --

14 A. Absolutely.

15
16 Q. -- production and Mr Romano being the only person who
17 appears to have a complete set of documents?

18 A. Yeah, yes. My recollection was that I was responsible
19 for attempting to collate documents that were referred to
20 that were within my possession or within Ebsworth's
21 possession, that we had custody of files, and a number of
22 the documents or matters referred to in the notice may
23 have - still have - hadn't been physically located at the
24 Maddocks practice and I cannot recall whether I or somebody
25 operating under my direction may have - or - or indeed it
26 may have been a - at my suggestion, a call placed from
27 Burwood Council to Maddocks but I seem to recall that we
28 did have a - a good dialogue with Maddocks and we may have
29 put them on notice that there were documents within their
30 possession that may have been - relevant to answering the -
31 the notice and that we would probably request that they be
32 made available in due course. Now, I can't recall exactly
33 how that was executed but that probably - observing the
34 correct protocols between firms --

35
36 Q. Mmm.

37 A. -- I think that's generally how it came about.

38
39 Q. Right. So you don't recall physically returning to
40 Maddocks and rifling through files and endeavouring to
41 identify relevant documents?

42 A. I can't - I - I think I've been back there once but
43 I'm not sure whether it was this matter or another matter,
44 but I think they were quite cooperative once they received
45 instructions from Burwood direct to cooperate. So there
46 was no suggestion of - I can't recall how they were
47 physically collated.

1
2 Q. Just - obviously it's a matter we'll be following, I
3 just wasn't sure where - whether you could help us on - on
4 the inadequacies. You recall you gave some evidence before
5 about a meeting between yourself and Mr Becerra and
6 Mr Romano?
7 A. At the coffee lounge?
8
9 Q. Yeah.
10 A. Yes.
11
12 Q. And you had indicated that it might have been an
13 informal drop-in. Could the witness be shown exhibit 173,
14 please. And what I want to suggest to you is it wasn't an
15 informal drop-in, it was something that was well organised
16 in advance and not "We just happened to be in town, let's
17 meet", as you indicat it might be. You'll see there
18 there's an email to Mr Becerra "Albert, I confirm your
19 meeting with David Baird and Pat", meaning Mr Romano. "On
20 Wednesday 14/3 at 0800". Do you see that?
21 A. I do, indeed, yes.
22
23 Q. And that was - don't worry about the page behind but
24 that's - that's the second meeting.
25 A. I think my point was that I hadn't seen this email and
26 it may have been a - a - a well organised meeting between
27 Mr Romano and Mr Becerra but I don't think I was made aware
28 of it until I actually - were downstairs.
29
30 Q. Well, what I'm suggesting is your recollection may be
31 flawed and it's clear that you're intended to be at the
32 meeting?
33 A. There's no doubt about that but when - when - I can't
34 recall when I was actually put on notice of the proposed
35 meeting because I wasn't a recipient of this and I can't
36 recall when I was required to attend, that's what I'm
37 suggesting.
38
39 Q. Now --
40 A. Or at what stage, at what point I was required to
41 attend and I --
42
43 Q. Sorry, I just --
44 A. -- and here we go again.
45
46 Q. Just noticed the time. You and I can keep going but I
47 think everyone else might leave.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37
38
39
40
41
42
43
44
45
46
47

A. I'm happy to.

ASSISTANT COMMISSIONER: Yes, I think we better adjourn.
We will resume at 2pm.

MS RONALDS: If I can indicate, I'll only be an hour, I think.

LUNCHEON ADJOURNMENT

1 UPON RESUMPTION:
2
3 MS RONALDS: I've just got some material to tender.
4 Mr Baird got a bit over-excited about what we were doing.
5 You recall there was some evidence from Mr Giangrasso about
6 a dinner at Il Bucco and if I could tender a document
7 relating to that.
8
9 ASSISTANT COMMISSIONER: Yes, this credit card statement
10 will be exhibit 234.
11
12 EXHIBIT #234 CREDIT CARD DETAILS OF MR GIANGRASSO
13
14 MS RONALDS: I have a - we've received some more records
15 in relation to calls on 12 September 2008, that is the day
16 before the local council election, involving who spoke to
17 whom. Mr Baird has given some evidence about this before.
18 If I could tender a - a new sheet of series of calls.
19
20 ASSISTANT COMMISSIONER: Yes, those telephone records of
21 12 September '08 will be exhibit 235.
22
23 EXHIBIT #235 2008 PRE-ELECTION CALLS - 12 SEPTEMBER 2008
24 RELATING TO MR ROMANO AND MR CHILD
25
26 MS RONALDS: These are call sheets. These are matters
27 that Ms McDonald, who's not here but we'll make sure she
28 has them - these are two tables. One is calls by Mr Child
29 and note - noting where he was on his time sheets in
30 relation to the calls he made to Mr Becerra and Mr Becerra
31 made to him in relation to the units. So there's two of
32 them. If they could perhaps be given --
33
34 THE WITNESS: Thank you.
35
36 MS RONALDS: I tender them.
37
38 MR BLAKE: Can I just inquire with 235 who was the maker
39 of the call? Is it Mr Baird? It just doesn't say on it,
40
41 MS RONALDS: Yes, the - sorry, I don't have one. I've
42 just given it away.
43
44 MR BLAKE: That's all right. It's from particular phone
45 numbers --
46
47 MS RONALDS: Yes.

1
2 MR BLAKE: -- two particular phone numbers. Do - do we
3 know --
4
5 MS RONALDS: Oh, sorry. Yes, you see it says, "User of
6 service, Pat Romano to David Baird". So what these are -
7 the new - the new information is they are - it's been
8 sourced back to Mr Romano's landline in his office.
9
10 MR BLAKE: Oh, okay,
11
12 MS RONALDS: And so where it's - see - see the two calls
13 the 16.22 and the 16.27 --
14
15 MR BLAKE: Right.
16
17 MS RONALDS: -- Romano to Faker, Romano to Baird. That's
18 the only new information from the ones that you had before.
19
20 MR BLAKE: Thank you.
21
22 MR RONALDS: And that - they go back to the --
23
24 MR BLAKE: Sure.
25
26 MS RONALDS: As I understand it, they - they go back to
27 the number in his room.
28
29 MR BLAKE: So Mr Romano's landline?
30
31 MS RONALDS: Mr Romano's landline.
32
33 MR BLAKE: At the council?
34
35 MS RONALDS: In the council.
36
37 MR BLAKE: Yes.
38
39 MS RONALDS: His - God, what's the - what's the word? -
40 extension number.
41
42 MR BLAKE: Yeah, okay. Thank you. Well, it's - it's
43 clear now, thank you.
44
45 MR RONALDS: Looks like, sounds like, is - anyone --
46
47 ASSISTANT COMMISSIONER: Yes, the list of calls from

1 Mr Becerra to Mr Child and related time sheets will be
2 exhibit 236,
3

4 EXHIBIT #236 LIST OF CALLS FROM MR BECERRA TO MR CHILD
5 AND RELATED TIME SHEETS
6

7 MS RONALDS: And Mr Baird gave evidence earlier about
8 receiving a call from Mr Romano on - to Mr Baird's mobile
9 and this is what this call - this sheet shows that on
10 12 September at 16.37. Mr Romano called Mr Baird, on
11 Mr Baird's mobile, and Mr Baird's evidence earlier was that
12 he recalled being called on his mobile while he was driving
13 home. He was obviously having an early day.
14

15 THE WITNESS: Going back to the office, I think.
16

17 MR RONALDS: He was driving home. Now - is that right?
18 Are we right?
19

20 Q. Mr Baird, when you moved from Maddocks to Ebsworth -
21 HWL Ebsworth --

22 A. Yes.
23

24 Q. -- what happened about the - the panel, because
25 Maddocks was on the panel, as I understand it, as Maddocks.
26 You're not on it personally as David Baird?

27 A. No. It's a firm appointment.
28

29 Q. And therefore when you moved to HWL Ebsworth, you were
30 no longer on the panel?

31 A. Correct.
32

33 Q. What steps were taken - or did you - what did you do
34 about that because if you weren't on the panel, it would be
35 correct, would it not, that you couldn't receive legal
36 advice - legal services, provide legal services?

37 A. No. I believe the - the position is that you - it's
38 not that you can't receive but there would be a concern,
39 and there always is a concern with off-panel instructions,
40 and it gets back to the tender threshold. If you're
41 receiving significant instructions you might breach the
42 threshold. A number of councils reserve their positions to
43 brief off-panel experts.
44

45 My recollection with Burwood was that when I - when I
46 left, I advised the - the general manager of my resignation
47 and he suggested that a number of strategic files should

1 continue to be managed by myself, and how did one achieve
2 that having regard to protocols and exit from - from one
3 firm to the other. And I advised him that it - it would
4 require a formal authority from the council or the person
5 having authority to direct files to be forwarded. The
6 usual authority requires all fees to be paid on the file
7 before it's transferred, and I indicated my desire to
8 continue working with Burwood Council and that I would
9 formally apply to be appointed to the council's panel. And
10 that occurred by, I think, a - a letter where we wrote to
11 Burwood Council seeking to be appointed.
12

13 We were - we were required to prepare a formal
14 document setting out the firm's capability, the new firm's
15 capability, and submit it to the council. I think it - I
16 think that document went to Mr Hullick or Mr Dencker, I
17 can't recall exact - exactly and I don't - and I don't know
18 the exact process that occurred, but my understanding was
19 that the council's executive prepared a report which was
20 put in place before the elected members of council with a -
21 a recommendation that HWL Ebsworth be appointed to
22 council's legal panel.
23

24 Q. What I'm concerned about is this: first of all, did
25 you advise the council that they should seek independent
26 legal advice about the process that they were going to
27 undertake?

28 A. That's an interesting question. I --
29

30 Q. Thanks.

31 A. I - I don't remember the exact discussion.
32

33 Q. Because you clearly had a conflict of interest. It
34 was in your interest that your existing relationship be
35 continued when you went to the new firm?

36 A. I - I - I don't know whether I would call it a
37 conflict of interest. I would call it an interest in the
38 outcome; not necessarily a conflict of interest but a - an
39 interest.
40

41 Q. Well, you had - you had a - a significant financial
42 interest in taking at least some of the Burwood work with
43 you?

44 A. I had a - no, well, I didn't see it in terms of a
45 financial interest. I wanted to maintain and continue my
46 relationship with Burwood Council as a professional
47 adviser. I had been involved in a number of very, very

1 significant matters, which were ongoing, and they mainly
2 related to the land and property transactions for the
3 Burwood Town Centre and the library project, and I'd been
4 working on those for a number of years and I know that
5 Mr Romano was keen to - to continue with my involvement in
6 those matters.
7
8 Q. That might be so, Mr Baird --
9 A. Yeah.
10
11 Q. -- if I could just stop you there. I'm really
12 interested in the process. As I understand it, HWL
13 Ebsworth were not on the panel at Burwood?
14 A. That's correct.
15
16 Q. They had no existing relationship, client to solicitor
17 with Burwood?
18 A. Yes, that's correct.
19
20 Q. And then one is created. Now, when Mr Becerra came to
21 see you about moving firms and getting off the panel, you
22 told him that it wasn't possible to add someone to the
23 panel of architects because the tender process had been
24 completed; do you recall giving that evidence before?
25 A. I don't remember that aspect of it - exactly that
26 aspect, but what you say may be right. I don't recall the
27 exact words I used.
28
29 Q. And that's what he says you told him?
30 A. Well, I said he - I - I can't remember. I'd have to
31 check the --
32
33 Q. Well - well, just leave that aside for a moment. You
34 see, what I'm suggesting to you is this: there was an
35 existing panel.
36 A. Yes.
37
38 Q. The tender process had been gone through. Ebsworths
39 weren't on it and somehow then Ebsworth get on it and --
40 A. Yes, but I wasn't --
41
42 Q. -- what I'm concerned about is the requirements of
43 section 55 need to be met because clearly, when one looks
44 at the bills that have been paid, there's close to \$1m, so
45 obviously the \$150,000 threshold is well over?
46 A. Yes.
47

1 Q. And I'm - not been able to find anywhere that the
2 panel, as a whole was re-tendered.
3 A. At Burwood?
4
5 Q. Yes.
6 A. Legal services?
7
8 Q. Yes.
9 A. Oh, well, there was definitely a report and a process.
10 Mr Hullick was in charge of it.
11
12 Q. But - all right. But do you say that process involved
13 everyone who was on the panel or did it only involve
14 Ebsworth?
15 A. I don't know because Mr Hullick was in charge of the
16 report to council. I'm not - I'm not sure whether he
17 informed other members of the panel or what arrangements,
18 and --
19
20 Q. Well, there were no public advertisements. There was
21 no tender process, was there?
22 A. Yeah, I don't think it was a re-tender, no, no.
23
24 Q. No.
25 A. That - that's certainly the case.
26
27 Q. Yes. And what I'm concerned about is who, if anyone,
28 provided advice about the operation of section 55 and your
29 transfer to a new firm?
30 A. Well, I - I don't recall writing any advice or being
31 asked to comment on that, but I was most concerned and
32 insisted upon a formal process which would meet a - a body
33 such as this, or any body, coming in and looking at it and
34 inferring any impropriety.
35
36 I was extremely concerned about that because I was
37 very, very aware of perception, and I wanted to be dealt
38 with at an arms-length and I insisted upon that, but I
39 didn't - I wasn't asked to give any advice on - on the
40 actual process because I think that would have been
41 improper because I was seeking to be - you know, advance
42 the interests of my new firm and I didn't want to be giving
43 advice on --
44
45 Q. Mmm.
46 A. -- how to do that. I think that would have been
47 improper and I --

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37
38
39
40
41
42
43
44
45
46
47

Q. Indeed; that's what I'm trying to explore with you.

A. Yes, well, I - I wasn't involved in that but the discussions that I had with the parties - and I can't recall who they were, but I think it would have been Mr Romano and Mr Hullick - I am certain that I would have emphasised that the matter had to be dealt with according to the best standards of probity, and I don't --

Q. There's more than that, isn't it? There's a requirement under section 55 that certain requirements have to be met. It's not - it's got nothing to do with probity. It's - it's a - it's a strict statutory regime?

A. There is, but if - but the regime also has exemptions based on other - based on circumstances, and I don't want to go into the - the chapter and verse of the sections because - unless you - you - you want me to go on --

Q. You're not claiming that the ongoing relationship came within any of the exceptions, are you?

A. I'm not suggesting that, but I'm just saying that it's - there is a - a prescriptive regime with a whole range of matters that needed to be taken into account, and Burwood Council, I - I - I insisted upon Burwood Council adopting a process which would meet the strictest standards of scrutiny, because I didn't want myself or my new firm in any way to be tarnished with any suggestion that we were doing anything wrong other than applying to be included on a tender panel for the provision of legal services.

Q. But that panel existed?

A. The existing - the panel existed - an existing panel was in place, yes.

Q. And the end result, as far as you know, is that you made some form of application to, in essence, join the panel?

A. Correct.

Q. And what I'm suggesting to you is that when one looks at section 55, that's simply not a possibility?

A. I don't believe that's correct.

Q. All right.

A. I don't believe legally that's correct and I don't believe that that in practice is correct either.

1 Q. All right. So you felt comfortable that there was not
2 a reopening of a competitive tender for anyone else to join
3 the panel?
4 A. I didn't believe that was the case, no.
5
6 Q. And you didn't believe that was necessary?
7 A. It was a matter for the council. They could have gone
8 to fresh --
9
10 Q. No, just answer; please, Mr Baird --
11 A. No, no, well, it was a matter --
12
13 Q. -- just answer the question.
14 A. -- for the council. It - they - they had to take
15 their own advice on it because --
16
17 Q. I'm asking you whether you believed it was necessary?
18 A. My legal opinion?
19
20 Q. Yes.
21 A. No, I didn't - I didn't believe it was necessary -
22 mandatory. It was an option.
23
24 Q. And did you proffer that view to anyone at the
25 council?
26 A. No. I - I - in - I didn't offer any legal advice
27 because I - I seem to recall, because this - this is over a
28 year ago, and the discussions were - were short because I
29 didn't want to labour the point. I felt very, very
30 concerned about giving advice on the issue because I did
31 have an interest and I - I - I think I probably qualified
32 my comments by stating exactly that, that I have an
33 interest and I can't really comment, but I would like to
34 join the panel if it's possible, the firm would like to
35 join the panel, and I was invited to - to make a
36 submission.
37
38 Q. Thank you. Turning now to the certain conversation
39 you had with the mayor, Ms Furneaux-Cook, I am not sure if
40 you were present when she gave evidence or whether you've
41 had an opportunity to read the transcript?
42 A. The robust discussion.
43
44 Q. Mmm. What I'd suggest to you is this, that when you
45 spoke to both - well, I'll do them one at a time. When you
46 spoke to Ms Furneaux-Cook on or about 31 March and 1 April
47 2009, you were acting to protect Mr Romano's interests and

1 not the council's interests; would you agree?

2 A. Absolutely not.

3

4 Q. And that when you spoke Ms McClymont on 1 April and
5 sought to speak to her on or around 1 April, you were
6 seeking to protect Mr Romano's interest and not the
7 council's interest?

8 A. Not at all.

9

10 Q. See, you put a view to the - the mayor, didn't you,
11 that she had to reveal to Pat Romano certain information?

12 A. I discussed the matter in great detail with her, and
13 what you have just suggested is not an accurate reflection
14 of the discussion.

15

16 Q. Well, doing the best you can, you tell the
17 Commissioner what you say you said to her?

18 A. This was the conversation that she referred to as the
19 robust discussion; is that the one?

20

21 Q. Well, you tell --

22 A. Because there were so many discussions.

23

24 Q. Well, the very first discussion, please relay that.
25 We'll go through the whole series of them, so if you - if
26 you recall --

27 A. Yeah, I'm just trying to recall the sequence because
28 you - you may have to prompt me, I can't remember the exact
29 date. But the - the - the date when we had - I think the -
30 the first serious discussion that we had, which she
31 referred to as the robust discussion, was the date when I
32 was called in to talk to her about the whole issue of - of
33 what was occurring. And she was very guarded in her
34 comments and - guarded in the sense of not wanting to - and
35 deliberately qualifying her comments to me, not wanting to
36 say too much because she felt legally constrained. And I
37 felt that that was a bit awkward in trying to advise her
38 because she was very, very guarded.

39

40 And I - I said, "Well, look" - and she invited me to
41 call her Lesley. I normally - it's - it would be "Madam
42 Mayor", but I - I said, "Lesley, if you want advice,
43 let's - let's go through this in sequence and let's try and
44 understand what's happening because, from what I understand
45 you're telling me, there - there - people have - have given
46 you information which would lead you to believe that
47 there - that there's going to be a complaint made and there

1 are going to be allegations made.

2

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28

29

30

31

32

33

34

35

36

37

38

39

40

41

42

43

44

45

46

47

And she wouldn't tell me who was making the complaint or confirm who was the subject of the complaint. I said, "That's - that's fair enough, but let's try and understand what - what is going to be the process in the event that there's going to be complaints against senior officers or indeed the general manager", and I was thinking in terms of the council's code of conduct. And I said to her, "Lesley, I want you to understand that I - my position is to give you advice on - as council's adviser", and I then put it fairly and squarely on the table. I said, "There may be a perception that you might hold that I am Pat Romano's man and that I just act for Pat and - and do his bidding", words to that effect. And I said --

Q. Because that was the perception, wasn't it, Mr Baird?

A. It was a perception that I was aware of, and I was very sensitive to that perception because I believed that it was incorrect and it was not a - you know, it - it gave me a great deal of discomfort both personally and professionally. So I said to Lesley --

Q. But if I could just interrupt you there --

A. Mmm.

Q. -- there was sufficient contact between you and Mr Romano on an ongoing basis as friends to provide a factual basis for it, wasn't it? It wasn't based on --

A. Not so much --

Q. -- misconceptions?

A. No. No, no, no, not so much as friends. I'd - I - I told Lesley about our friendship. I did - I - I - this robust discussion, which I will tell you about, I'll tell you exactly what I said to her. But to answer your question, I don't think - if the perception was that I was in Pat's pocket, that is completely wrong and mischievous. If the perception was that I was Pat's colleague and friend, that was factually closer to the mark. If the perception was that I deliberately tailored advices to suit Pat's convenience, that is wrong and mischievous. And I - in those sort of words, I conveyed that to Lesley - to - to the mayor. And I said, "I've had the privilege of working for five mayors at Burwood and it's a difficult job in advising councils and it's a difficult job in advising mayors and general managers." And I said to her - after

1 she explained what was happening, I said, "This is
2 dynamite, Lesley. We have to play this with a straight bat
3 because the repercussions could be extremely serious."
4

5 Q. What was dynamite about it?

6 A. Well, I regarded these - the - the nature of the
7 allegations as - as extremely worrying from the perspective
8 of the organisation - the impact on the organisation and
9 public perception and confidence in Burwood Council as - as
10 a functioning and functional organisation, and we were on
11 the --
12

13 Q. You turned out to be prescient, Mr Baird.

14 A. Pardon?
15

16 Q. You turned out to be prescient, Mr Baird.

17 A. Yes, absolutely, and we - you know, but operating
18 from my level of knowledge and understanding at that
19 particular time - where I didn't even know that the mayor
20 had spoken to the ICAC, I didn't even know that the mayor
21 had spoken to people apparently at the depot, and she
22 didn't tell me these things - I was under the impression
23 that there was going to be a complaint made against a
24 senior officer or the general manager and that it was going
25 to be a code of conduct style complaint and that these
26 allegations involved the - the misuse of council resources,
27 and I'm just trying to recall the sequence of the - the -
28 you may - if - if you could assist me, please, the meeting
29 with the mayor on that particular day, what date - what -
30 what day of the week was it?
31

32 Q. Well, it was a Wednesday. She says that you contacted
33 her at 1 o'clock on Wednesday the 1st of April --

34 A. Mmm-hmm.
35

36 Q. -- and said Pat was very concerned.

37 A. Mr Romano wanted me to speak to the mayor, yes, and
38 she was very happy to - to - to receive my call because I -
39 as I understand from what Mr Romano told me, "The mayor is
40 expecting your call", so I took --
41

42 Q. Why was Mr Romano in a position where he could direct
43 you to do that?

44 A. I don't think he was so much directing me; he was
45 making a suggestion from his discussions, as I inferred
46 from his - from his - from the discussions I had from his
47 discussions with the mayor that she wanted to speak to me

1 about this matter.
2
3 Q. And --
4 A. And, you know, I was invited to call her.
5
6 Q. And she recalls you said --
7 A. Mmm-hmm.
8
9 Q. -- that "he" - you - "were concerned legally about
10 Pat's right to know the nature of the allegation"?
11 A. That was - no, no, during the telephone conversation
12 or the meeting?
13
14 Q. No, that's the meeting.
15 A. Yeah. No, let me take - let me go to that point
16 because it was --
17
18 Q. And that was your position, wasn't it?
19 A. No, no, if I could explain, please.
20
21 Q. Well, no; just answer my question. That was your
22 position, wasn't it? You were concerned that Mr Romano
23 had, in your view, a legal right to be told what
24 Ms Furneaux-Cook knew at that time?
25 A. No, that's not my position at all.
26
27 Q. I'm not asking you your position --
28 A. No what I --
29
30 Q. -- I'm asking you the view you expressed --
31 A. That is not the view I expressed.
32
33 Q. -- on 1 April?
34 A. Yeah, that's not the view I expressed. The - I - I -
35 if I can explain.
36
37 Q. No, just about what was the view you expressed?
38 A. That's what I want to explain.
39
40 Q. Not the explanation; do you understand? I know you
41 want to editorialise and explain everything, but that's not
42 what - the Commissioner wants to hear what you actually
43 said, not what you think you said --
44 A. I know, I understand.
45
46 Q. -- or why you said it; okay?
47 A. I - I understand.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37
38
39
40
41
42
43
44
45
46
47

Q. And I'm putting a specific sentence to you.
A. Yeah. To answer the question and to tell you what I said to her, I need to give you the words.

Q. That's all I want, Mr Baird.
A. Yeah, and it was in the context of the discussion that we were having over allegations. I said, "Lesley, if it's going to be a code of conduct investigation" - and I believe she raised the issue of - of a potential protective disclosure - that's my recollection. And I would have said, "Lesley, if it's in the - in the context of a protected disclosure or a - or a code of conduct investigation, it's my understanding from the guidelines that I've read, and these guidelines are prepared by the office of the Ombudsman and I think there are ICAC guidelines, that - and - and my practice that I have adopted with other councils is that when an allegation is made, the - there are two competing interests - the interest of maintaining the integrity of the investigation and, in this case, if it's a protected disclosure the identity of the person who makes the disclosure must not be revealed. But on the other hand", I said, "there is also, I believe, the right of the person who is the subject of the allegation to know the nature of the allegation" - not identity of the person, the nature of the allegation, and I believe that that - that is the general guideline of all practitioners who deal with this area as referred to in the text, in the documents that give us general guidelines on this subject.

And I said to Lesley, because this is where it got into, "Oh, but you're just - you know, you're just Pat's friend, you're telling me" - and that's where it got a little bit not heated, but I had to persuade Lesley and I had to win her trust that I was not batting for Pat but I was batting for Burwood Council and I was batting for a process that was going to be fair and according to the law, and if we were dealing with a code of conduct inquiry there are - there are two sides to the fence, and I explained this to her. And she said, "If it's against Pat, I - I agree with what you said, David. I feel sorry for him." Those were her words, "I feel sorry for him." "He has rights too." That's what she said. I remember that because she accepted generally --

Q. Don't - of course, don't editorialise. Please --

1 A. I'm sorry.
2
3 Q. -- just tell the conversation as you recall it?
4 A. Yeah, I - well, she said, "He has rights too and I
5 feel sorry for him", and I said, "Well, Lesley, we've got
6 to play with a straight bat. We've got to understand both
7 sides of it. We've got to maintain the confidentiality of
8 the people who've - who are going to make complaints and I
9 believe that the person who is the subject of the
10 allegations has a right to know the nature - the general
11 nature of the allegation." That's all I put to her, and I
12 said to her --
13
14 Q. Did you discuss timing? Did you say to her, "That
15 doesn't need to happen today but maybe some further time
16 down the track when the matter has progressed" --
17 A. During the - oh, absolutely --
18
19 Q. I'm sorry; if you wait for me to finish, please,
20 Mr Baird.
21 A. Sorry.
22
23 Q. It's not possible for the transcription person,
24 otherwise. Did you say to her, "It can be a matter of
25 timing"; that is, it may be if a formal allegation is set
26 up then the person gets told the allegations? Did you
27 traverse with her a - the full range of options?
28 A. I did, as best as I could, traverse the general
29 process. The answer is yes to your question, but I don't
30 think we - we're speaking in terms of specific times. We
31 were talking about general concepts and general
32 propositions, and I was not suggesting in any way that we
33 march off immediately to Mr Romano's office and tell him
34 what was going to happen in terms of process or any of the
35 matters. I - it - it was - it was a broad general
36 discussion of principle.
37
38 Q. Well, see, I suggest to you that during that
39 conversation you in fact were more weighted towards
40 Mr Romano being advised immediately about the nature of the
41 allegation; would you agree?
42 A. No, I think that's - that - your proposition is -
43 whilst it has some elements to it, is not entirely correct
44 because we were - we - I'd reached a point where - there's
45 a missing link that I - I must put in so that you'll
46 understand the proper answer to your question. This is
47 when we started to get to the point of our philosophical

1 difference between the timing of when a respondent - I call
2 the person a respondent to the allegation - is entitled to
3 know the nature of the allegations and I said "Lesley,
4 that's my view. I may be wrong. If you're happy, let's
5 get senior counsel's opinion on this".
6
7 Q. And you say this - this was still in the conversation
8 on the 1st of April?
9 A. I believe it was raised then.
10
11 Q. Right.
12 A. And it was pursued in other conversations, yes, but I
13 wanted to - to emphasise to her that this - this sort of
14 matter was extremely important to get right and whilst I -
15 I - I try my best, if I was in any way perhaps not - not
16 entirely correct with my interpretation, I didn't want her
17 to feel that I was biased in favour of Mr Romano because I
18 knew what she was thinking. We - we said other things as
19 well in relation to my relationship. I declared to her, I
20 said "Lesley, you must know I'm declaring to you I regard
21 myself as a friend of Pat. We've had some social outings
22 and I want you to know that because I want you to know that
23 even though that is the case, I can be objective and I want
24 to deal with this matter objectively" and that's when I
25 said "If that causes you a bit of concern or if you're a
26 bit nervous about me being perceived to be biased, or
27 whatever, let's get senior counsel's opinion" and I --
28
29 Q. Did you --
30 A. -- recommended Mr Leggat.
31
32 Q. Did you suggest to her that because there may be, in
33 her mind and others, an apprehension of bias, that she
34 consult another firm off the panel?
35 A. I don't think I - I - I - I may have said that, I
36 don't remember. I - I think that --
37
38 Q. Well, I'm suggesting to you that that's not a
39 proposition you put to her. You put a proposition, and I
40 mean no disrespect to Mr Leggat, but that your firm briefed
41 Mr Leggat; do you understand I'm putting to you --
42 A. Yeah, yes, yes. I did not - I - I don't - I can't
43 remember but I may have said that "You can "- I can't - I -
44 I think I - I - I may have said "There's a panel of lawyers
45 but if we're going to deal with it, and my suggestion is we
46 get senior counsel's opinion" and I said "Lesley, if you
47 have an issue with my personal involvement, I'll stand back

1 because I don't want the council or you to feel as though I
2 am weighting this in Pat's favour" and I did that. I said
3 "I will introduce you with one" - "to one of my lawyers in
4 my team", who at the time I - I entrusted this to Monica
5 Kelly, and I invited Monica to come and - and - I - I think
6 she had a meeting with the mayor, I can't remember, but
7 certainly the mayor was very comfortable with the idea of
8 me standing back from the matter and very comfortable, as I
9 understood, going to see Mr Leggat and --

10
11 Q. All right. Well, just let me stop you there. It's
12 correct that Ms Kelly accompanied the mayor to see
13 Mr Leggat?

14 A. I believe that's the case.

15
16 Q. And that was a member of your team?

17 A. Correct.

18
19 Q. So when she --

20 A. A member of the firm.

21
22 Q. -- returned you were able to ask her what had
23 occurred --

24 A. I was --

25
26 Q. -- to review her notes?

27 A. No, I never reviewed her notes, nor --

28
29 Q. That's not what I'm asking you. I was saying to
30 you --

31 A. Did I --

32
33 Q. -- if were you able to do so had you been so minded?

34 A. Could I have?

35
36 Q. Yes.

37 A. I could have but I didn't.

38
39 Q. She's a member of your team, she's under your
40 direction and control?

41 A. Yes, but I explained --

42
43 Q. Not another partner in the firm?

44 A. If I could answer, please. No, she's under my
45 direction and control --

46
47 Q. Thank you.

1 A. -- but she was well aware of the reason that she was
2 coming in to the matter and well aware of the sensitivities
3 and I did not in - in any way, as I recall, compromise her
4 in that regard. My discussions were with the mayor and
5 with Mr Leggat and Mr Leggat gave advice to the mayor,
6 which I - I understand was not - not a hundred-per-cent
7 consistent with what I had said and I never challenged
8 Mr Leggat in terms of his interpretation. I deferred to
9 him as I deferred to all senior counsel whom we sought
10 advice from.

11
12 Q. Thank you. Mr Romano contacted the mayor at - so you
13 had a meeting at around 1 o'clock - at around 3.22 on the
14 1st of April, and he said that you'd told him that he'd
15 been denied natural justice by her refusing to tell him
16 what was in the allegation.

17 A. I don't believe that's correct.

18

19 Q. And --

20 A. My recollection was that Mr Romano was asserting to me
21 that he had been denied natural justice.

22

23 Q. Well, he's rely - he's quoting you as the source of
24 this information?

25 A. He said "I've been denied natural justice". I said
26 "Pat" - words to the effect - "This is very difficult. I
27 have a view, the mayor and I are discussing it. The mayor
28 is - is going to take advice - independent advice from
29 Mr Leggat and we've got to - we have to work out a process
30 to deal with this", something - words to that effect.

31

32 Q. But why were you talking to him about it at all?

33 A. He probably rang me.

34

35 Q. Yes, but he - I'm sure he may have.

36 A. I - yes --

37

38 Q. Why were you talking to him about it when you'd been
39 having a conversation with the mayor about her position?

40 A. Because Pat Romano would ring me and ask me about what
41 was happening and I had to tell him continually that there
42 is a process whether he rang me about whether - what
43 Mr Hullick was doing or what Mr Dencker was doing, I had to
44 continually remind him there is a process.

45

46 Q. I'm only asking you about this conversation, Mr Baird.

47 A. Yes.

1
2 Q. If I could please ask you to listen to the question
3 and if you could just not editorialise, please.
4 A. Yes, all right. Sure.
5
6 Q. Why didn't you say to him "I can't discuss it anymore.
7 I've been giving the mayor some advice. If you want advice
8 you need to go and get someone else off the panel"?
9 A. I think I probably said exactly that.
10
11 Q. Well, I suggest to you, sir, that you're just making
12 that up, now, that --
13 A. No, I'm not. I - those are the sort of words I would
14 have used because he --
15
16 Q. You didn't ever try and send him to someone else in
17 the panel, did you?
18 A. To Mr Romano?
19
20 Q. Yes.
21 A. To another - what do you mean? I don't understand.
22
23 Q. You never tried to send Mr Romano to another person on
24 the legal panel for advice on this matter, did you?
25 A. On this matter?
26
27 Q. Yes.
28 A. Not - not on this matter but when I realised that he
29 was - his interests were diverging with Burwood I
30 immediately told him he had to get his own lawyer and it
31 couldn't --
32
33 Q. During the conversation when he was seeking to find
34 out about the mayor why didn't you tell him that you just
35 simply couldn't have any conversation with him?
36 A. I am sure and confident that those are the style of
37 words I used in discussing the matter with him because I
38 gave my word to the mayor that we would have to be very,
39 very discreet in what we discussed with Mr Romano.
40
41 Q. And so that if Mr Romano was quoting you some two and
42 a half hours after you'd had the discussion with the mayor
43 as having told him about natural justice and that he was
44 not being protected, you say that didn't happen; so if he'd
45 said that that would be a lie, would it?
46 A. I would say my recollection was that he was asserting
47 he had been denied natural justice.

1
2 Q. No, please listen to the question, Mr Baird.
3 A. I - I - I did, that's what I'm answering. I - my
4 recollection was that he - it was the reverse of that.
5
6 Q. If he was asserting you'd given him that advice, that
7 would be a false assertion on his part, would it?
8 A. I don't believe I gave him any advice, other than to
9 try and calm him down and to tell him that there was a
10 process and we were going to work through the process.
11
12 Q. So is the answer "Yes"?
13 A. I believe the answer is "Yes".
14
15 Q. Thank you.
16
17 ASSISTANT COMMISSIONER: Q. Can I ask you, Mr Baird: I
18 get the impression that it was your view as at the 1st of
19 April that he did have a right to know the nature of the
20 allegations against him at that time?
21 A. When the allegations, Commissioner, were crystallised,
22 my view was that he was entitled to know the general nature
23 of the allegations.
24
25 Q. So even prior to any investigation taking place you
26 thought procedural fairness required that the subject be
27 told the nature of the allegations?
28 A. I was putting in the context of - of the allegation
29 would arrive in the form of a complaint --
30
31 Q. Yes.
32 A. -- or a protected disclosure and once that had been
33 analysed and once there was a process for dealing with it
34 established, in terms of the - either the council's PD
35 policy or a code of conduct - a committee established under
36 the code of conduct, then at that stage my view was that he
37 could have a formal advice as to the nature of the
38 allegations.
39
40 Q. So as soon as it was decided to investigate or analyse
41 the matter, you thought he should be told what the
42 allegations were?
43 A. That was my view, yes and I - look, I --
44
45 MS RONALDS: Q. And what legal basis did you have for
46 that view, Mr Baird?
47 A. It was my interpretation of the legislation and the

1 guidelines.
2
3 Q. What legislation are you speaking of?
4 A. Both the Protected Disclosure Act, the - and the
5 guidelines for the protected disclosures prepared by the
6 Ombudsman and the ICAC.
7
8 Q. Did you consult those on the day or did you just have
9 those in your head because you need to refer to them
10 regularly?
11 A. I think I had - had read them or - or tried to read
12 them prior to the meeting with the mayor because I - I had
13 a general feeling as to what we were going to be talking
14 about. I don't know whether I read them cover to cover but
15 I - it just seemed to me to be correct and the appropriate
16 step.
17
18 Q. And you now understand Mr Leggat holds a different
19 view?
20 A. I do. With respect, Mr Leggat holds a different view
21 and I accept and defer to his view on the matter.
22
23 Q. And you - I think you can probably gather that I hold
24 a different view but that doesn't matter.
25 A. As I said --
26
27 Q. Now --
28 A. -- before, I - I stand - stand corrected on that issue
29 if I was wrong but at the time I sincerely held the view
30 that it was appropriate.
31
32 Q. You were at council when you met with the mayor?
33 A. Yes.
34
35 Q. Did you remain there physically for some time during
36 the course of the afternoon on the 1st of April?
37 A. I can't recall.
38
39 Q. Were you aware of the email that Mr Romano sent on the
40 1st of April to the mayor cancelling fortnightly meetings?
41 A. I don't - I don't recall that.
42
43 Q. Did he ask you any advice about that?
44 A. I don't remember. I think it - he may have said in
45 conversations subsequent to that, as he was - want to
46 editorialise in discussion "I've cancelled all the mayor's
47 meetings. I don't want anything to do with it" or - you

1 know, and - and there was animosity between Mr Romano and
2 the mayor. That's another issue that was raised during the
3 robust discussion. I told Lesley "I'm aware that you and
4 Pat don't see eye to eye and I still believe that you have
5 to work with your general manager. If the mayor and the
6 general manager cannot work together or provide" - you
7 know, "If we can't work out a - a process to resolve this",
8 we were talking - I - I - I'd mentioned the possibility of
9 dysfunctionality in terms of council not being able to
10 attend to its business. I referred to the possibility of
11 the department of local government taking a real concern
12 over whether Burwood was reaching a point of crisis.
13 There - there was a - an element - a crisis atmosphere and
14 a pressure cooker atmosphere building at council at this
15 time and I was trying, as best as I could, to act as a
16 diffuser of that tension and to try and allow for cool
17 heads to prevail and not - not the emotion that was being
18 generated, both significantly by the general manager but
19 also the mayor was - was quite emotional too. She was
20 very, very upset that this had happened during her
21 mayoralty, et cetera.

22
23 Q. Thank you. I could show --

24
25 MS RONALDS: If the witness could be shown exhibit 196.

26
27 THE WITNESS: Thank you.

28
29 MS RONALDS: Q. Do you say you didn't see this on or
30 about the 1st of April?

31 A. I can't remember.

32
33 Q. But you became aware of the fact?

34 A. I did.

35
36 Q. And did you give any advice - if it can be returned -
37 did you give any advice to the mayor about what she should
38 do and what rights she had in relation to working with the
39 general manager when he was, in effect, ending the
40 relationship?

41 A. I think I did. I - I think I recall there was a
42 discussion - it might not have been on the 1st but I was
43 having - pardon me - very - I was having regular
44 discussions with the mayor and - and indeed she gave me her
45 personal mobile, which we were using to contact each other
46 over this period, and I think she may have mentioned that
47 Pat has - "Pat's cut out our regular meetings" and - and I

1 gave her advice - I recall that I - I think I said words to
2 the effect "Well, it's imperative that you have" - "you
3 have an ongoing relationship with the general manager, you
4 have to have communication with him, you have to understand
5 what the business of the council is and if you can't
6 achieve that through a relationship discussion with Pat,
7 then you may have to seek a resolution of the council
8 directing him to have regular" - I - I remember putting
9 that to her "You may have to get a resolution".

10

11 Q. It's an extremely unusual thing to happen, isn't it?

12 A. Absolutely. This was a crisis.

13

14 Q. And not one that I'd suggest to you you could support
15 Mr Romano in that step?

16 A. I've said in all my evidence that I have had some
17 significant disagreements with Mr Romano --

18

19 Q. Just answer the question.

20 A. -- and this was one on one occasion that I would
21 have - it's not a question of supporting him or not
22 supporting him. The question is: what is the best outcome
23 for Burwood, in terms of the relationship with the mayor
24 and the general manager and their ability to communicate.

25

26 Q. Because at that point it was clearly dysfunctional and
27 the department of local government might be looking to send
28 an administrator, mightn't they, given --

29 A. Not - not - I don't think you'd say clearly
30 dysfunctional. It had the potentiality to degenerate into
31 a dysfunctional council and I've seen many examples.

32

33 Q. Thank you. The general manager is refusing to meet
34 with the mayor?

35 A. Very serious.

36

37 Q. You say that's not dysfunctional?

38 A. I say it's - it's a - an element that could lead to -
39 it's an element of dysfunctionality but it may not be a
40 determinant of dysfunctionality. Dysfunctionality has a
41 number of tests, both - I think legal - legal definitions
42 of dysfunctionality but I wanted to broker a relationship
43 between the two of them through this crisis so that they
44 could get on with their work.

45

46 Q. And how did you see that was a role of a legal
47 adviser?

1 A. It's probably not but I was there - I was being asked
2 for both legal and strategic advice by the mayor and by the
3 general manager and I've always offered my best efforts to
4 provide general strategic advice to my clients.
5
6 Q. Now, the next day, the 2nd of April, at 8.43am you
7 telephoned Kate McClymont?
8 A. If - if - at what time? 8 --
9
10 Q. 8.43am and --
11 A. Quarter to --
12
13 Q. -- you left a message asking her to call you?
14 A. Yes, I'd been asked - I'd been instructed to contact
15 her.
16
17 Q. Who'd instructed you to contact her?
18 A. I think that - I can't remember whether it was the
19 mayor or the general manager but there was a great concern
20 as to - this - just if you could help me because I can't
21 remember the sequence. What - what day of the week was
22 that?
23
24 Q. That was the Thursday?
25 A. The Thursday. This is before the Saturday
26 publication; is that correct?
27
28 Q. So what had happened was, just to put it in context,
29 there was a Sydney Morning Herald photographer outside the
30 home of Mr Romano on the 2nd of April. It appears that he
31 then either immediately contacted you and was in your
32 office or at least certainly was by the time re-called at
33 10.37am.
34 A. He was --
35
36 Q. Does that help you remember?
37 A. He was extremely distressed about --
38
39 Q. Does that help you remember the sequence of events?
40 A. Was that the - the week before the Saturday or
41 the week after?
42
43 Q. That's the Thursday the --
44 A. Before the Thursday --
45
46 Q. Thursday the 2nd. The articles are on Saturday the
47 4th.

1 A. Yes, yes, I recall it.
2
3 Q. Thank you.
4 A. I believe that I was instructed to put - to contact
5 the Herald and I --
6
7 Q. And I'm asking you who --
8 A. Who --
9
10 Q. -- instructed you?
11 A. It was either the mayor or the general manager, I
12 can't remember.
13
14 Q. I'm suggesting to you it was the general manager and
15 he was present with you. Would you agree?
16 A. There was - if it was the meeting that I think it was,
17 he came in to the offices at Maddocks for a meeting and he
18 brought with him someone that I hadn't met, and I can't
19 remember the gentleman's name, who was a - some consultant
20 and he asked me would I mind sitting in on the discussion
21 that he wanted to have with Kate McClymont. My
22 understanding was that the mayor was aware of our endeavour
23 to try and find out what she was going to write about
24 Burwood Council and I sat and listened to Mr Romano --
25
26 Q. All right, well --
27 A. -- talk to him.
28
29 Q. You've gone a few steps ahead.
30 A. I'm sorry.
31
32 Q. What I suggest is you made the first call to
33 Ms McClymont, having been given her name by Mr Romano?
34 A. That is correct.
35
36 Q. And you did that at 8.35am and asked her to call you?
37 A. That is probably correct. I don't remember exactly.
38
39 Q. And she didn't return your call, so you rang again at
40 10.37 and left a message which said "I'm with Pat Romano,
41 he's in the city. We would like to have a chat"?
42 A. That's probably correct.
43
44 Q. And then you called again at 11.45am back to
45 Ms McClymont --
46 A. Yes.
47

1 Q. -- and at that point you spoke to her?
2 A. I - Mr Romano spoke to her, I was - was in the room.
3
4 Q. Well, you spoke to her first up?
5 A. I may have, yes. I may have introduced her - myself
6 to her and - and said that we wanted to have a talk to her,
7 yes.
8
9 Q. She records it as you said "It's David Baird from
10 Maddocks. What is the bottom line? What's going on"?
11 A. Yes, probably.
12
13 Q. Now, have you had occasion to read her very poorly
14 typed notes, which is exhibit 146?
15 A. Maybe several weeks ago but I can't recall them now.
16
17 Q. Right.
18
19 MS RONALDS: Can the witness be shown exhibit 146, please.
20
21 A. Thank you. Do you want me to read them all or just
22 any --
23
24 MS RONALDS: Q. Just at the top there you'll see - just
25 the top page.
26 A. Yes.
27
28 Q. See that?
29 A. Yes.
30
31 Q. It starts off with you, that would be correct?
32 A. Yes, but it's obviously an edited version because I
33 didn't - I would have introduced myself, said who was in
34 the room, et cetera, et cetera. You - you - if you're on
35 speaker phone you must identify the parties that are in the
36 room. I think that's a practice direction and I would have
37 said "I'm with Mr Romano and Mr" whatever his name was "and
38 we want to have a talk to you".
39
40 Q. And then she put a series of propositions to
41 Mr Romano?
42 A. She put --
43
44 Q. And he answered them?
45 A. Yes.
46
47 Q. Did you take any notes of this conversation?

1 A. I can't recall.
2
3 Q. Was it - you knew it was an important conversation?
4 A. Yes, yes, no, I - I probably did and I haven't looked
5 for those notes but I - I think that the other gentleman
6 was taking notes and I was - I was concentrating on the
7 discussion because I was participating in the discussion
8 and I can't - I can't remember who was taking notes.
9 Someone was taking notes.
10
11 Q. Well, there were only three of you there?
12 A. Yes.
13
14 Q. Mr Romano's speaking, so he's unlikely to be the
15 person taking the notes?
16 A. Yeah, I was speaking too.
17
18 Q. You're there as the lawyer, were you?
19 A. And also I was talking. I - I don't doubt that I may
20 have written down some things but "KM", who's K - Kate
21 McClymont.
22
23 Q. That's the journalist called Kate McClymont. If I
24 could take you - turn over the page.
25 A. Mmm-hmm.
26
27 Q. And down towards the bottom of the second page.
28 A. On the back?
29
30 Q. Yes, on the back. See it's got a little "2" down the
31 bottom? Do you recall Mr Romano saying "As is recorded at
32 about point 7 on the page, starting with the paragraph 'Why
33 didn't Albert mention to you'"; see that?
34 A. No. Yes, I do "Why didn't Albert" --
35
36 Q. See it goes on and it says "It was my wife that
37 engaged these people. She was doing all the bookkeeping on
38 them. My wife doesn't know who the staff are". See that?
39 A. Yes, can I read it?
40
41 Q. Sure.
42 A. Yes.
43
44 Q. See that?
45 A. Yes.
46
47 Q. So that at that point Mr Romano is seeking to say that

1 it was his wife. I don't know whether you've read
2 Mrs Romano's evidence --
3 A. I have.
4
5 Q. -- but her evidence is that she never engaged any
6 people, that she didn't perform those services.
7 A. Yes.
8
9 Q. So what he seems to be seeking to do in that answer is
10 move responsibility to someone else?
11 A. I accept that.
12
13 Q. And do you recall that part of the conversation?
14 A. Vaguely but this is a - I don't doubt that this is
15 what was said but it's - yes.
16
17 Q. And you wouldn't doubt if Mrs Romano had said that she
18 didn't ever do that, that that would be accurate?
19 A. I accept her statement that there's a - there's a
20 complete inconsistency between the --
21
22 Q. Yes.
23 A. -- two of them, yes.
24
25 Q. Yes. Thank you. What I'd suggest to you is that that
26 is a pattern of Mr Romano's that whenever under attack for
27 anything, he blames someone else?
28 A. I'm afraid I have to agree with you.
29
30 Q. And fails to take any personal responsibility for his
31 own failures?
32 A. Well, once again I - I'm compelled to agree.
33
34 Q. But at that stage you say you didn't know that
35 particular personal characteristic of Mr Romano's?
36 A. Well, it hadn't exhibited itself in the way that
37 you've emphasised at that particular point and certainly I
38 wasn't aware of any of the details of the - the family
39 involvements or the - the relationship in terms of the
40 units and the unit holding and I wasn't aware of any of the
41 factual matters. Mr Romano continually emphasised to me
42 his entire innocence and that he kept on saying - he's -
43 he - he ultimately explained his theory on what was
44 happening and no doubt we'll get to that point but I - I
45 don't want to --
46
47 Q. Let's not get ahead.

1 A. Yes.
2
3 Q. If you can just wait for my - you - I'll get you there
4 eventually.
5 A. Mmm.
6
7 Q. Then --
8 A. But I think --
9
10 Q. Sorry?
11 A. Just - just - I mean, I think in this transcript he
12 does say "I'm completely innocent of" - "of any
13 wrongdoing". I remember him saying that.
14
15 Q. Well, he went aggressively on the front foot from day
16 one, didn't he?
17 A. In terms of asserting his innocence.
18
19 Q. Yes.
20 A. Aggressively asserting his innocence, yes.
21
22 Q. And do you now understand that at least some of those
23 positions he adopted were false?
24 A. Absolutely.
25
26 Q. Do you say that you never had any occasion to doubt
27 him at the time?
28 A. None whatsoever.
29
30 Q. Now, you'd worked with him for a long time?
31 A. Yes. Worked professionally with him as a legal
32 adviser, yes.
33
34 Q. And there's been some evidence - if I could just veer
35 off onto a slightly different path for a moment - there's
36 been some evidence that some members of the executive and
37 Mr Macklin has given evidence that they didn't feel able to
38 take him on, if I could adopt the vernacular?
39 A. That is - that is correct. I understand what you're
40 saying.
41
42 Q. And you were present at a number of meetings with
43 those various people: the executive, Mr Macklin and
44 Mr Romano. Did you not observe anything that caused you to
45 be concerned about the nature of the relationship between
46 Mr Romano and those most senior members of the council
47 staff?

1 A. Yes, there were - there were examples which I - I can,
2 if you want me to tell you about, which caused me some
3 concern and which I raised with Mr Romano.
4
5 Q. Raised with him because you thought his actions had
6 within inappropriate?
7 A. Yes, totally.
8
9 Q. Did you ever - what I'm seeking to explore with you is
10 that in the meetings that you were at did you ever realise
11 that other people there didn't feel equal to speak --
12 A. Yes, yes and I - I --
13
14 Q. That's not quite how they put it --
15 A. I --
16
17 Q. -- but I - I'm trying to put it in a non-judgmental
18 way but --
19 A. I understand what you're saying and I think that my
20 evidence before was that on many occasions Mr Hullick
21 and/or Mr Dencker and/or Mr Macklin would ask me to take
22 him on over an issue because they felt that he would
23 browbeat them or would emphasise matters which would
24 ultimately see them retreating and - and I was able to take
25 on that mantle occasionally when they asked me to and I was
26 happy to do it, if I believed that I - it was appropriate
27 for me to do so and certainly secondly, that on a merits
28 assessment, that what Mr Romano was asserting was - was
29 either wrong or - or it was an exercise of poor judgment
30 and there were a couple of occasions, most of these - when
31 you - you said before I attended executive meetings, I
32 don't recall that I was ever invited to an executive
33 meeting. The meetings that I attended were what were
34 called the - the project control group meetings. Those
35 were the meetings that I had --
36
37 Q. But you were also in a number of meetings with one -
38 with one or two members of the executive and Mr Romano?
39 A. Yes.
40
41 Q. Well, you were there, as I understand it, as a fairly
42 regular fifth leg, so to speak, and so you saw a lot of the
43 exchanges, not just formal exchanges?
44 A. I - I - look, I - I - Mrs Ronalds, I was sometimes the
45 proverbial fly on the wall --
46
47 Q. Mmm.

1 A. -- and --
2
3 Q. So you would not --
4 A. I'm sure you would appreciate that it is very, very
5 difficult for me to be placed in a position where I - I'm -
6 I will answer the questions but I - I feel as though
7 there - you know, these were confidential discussions and
8 to be asked to discuss them in this forum is - is difficult
9 but I'm happy to oblige.
10
11 Q. All I'm trying to explore with you is that the
12 suggestion that nobody knew or that Mr Romano was somehow a
13 rogue operating on his own, without others knowing what he
14 was like, I suggest to you is simply not a plausible
15 explanation. That at least - just let me qualify it this
16 way: at least in terms of control of the senior executive
17 and the way he treated the senior executive, that was no
18 secret?
19 A. His management style was no secret. I don't believe
20 anybody, up until the first day of this commission, would
21 have used the word "rogue" in the way that perhaps you've
22 just used it to describe --
23
24 Q. I think I started it.
25 A. Yes, but after - after the first day of this
26 commission, the world has changed. Let me just say the
27 world has changed. My point is that his management style
28 often led him to, in my observation, be extremely abrupt
29 with - with his executive, abrasive, sometimes patronising,
30 sometimes insulting, sometimes in a humourous way,
31 sometimes in a not so humourous way.
32
33 Many times he would turn his venom towards me when he
34 felt I had offended, but I would always try and dismiss it
35 in a humourous way to diffuse him because he got very wound
36 up. He was a very animated personality. He was a complex
37 personality, but I believed that everybody who dealt with
38 him, including his executive, respected his abilities but
39 often were very, very disappointed by his inter-personal
40 relationship skills.
41
42 Q. Did he on occasion have charm?
43 A. Did he have charm?
44
45 Q. Mmm.
46 A. Oh, yes.
47

1 Q. Yeah.
2 A. Yes, he - that's the answer.
3
4 Q. Thank you.
5 A. I'm not going to editorialise.
6
7 Q. After the articles were published in the Sydney
8 Morning Herald, it would be correct to say, wouldn't it,
9 that senior management at - at - I'm sorry, at Burwood went
10 into a sort of meltdown?
11 A. This was the - what I call the crisis atmosphere, yes.
12
13 Q. And that after the - on and after 4 April, that then
14 continued for some time?
15 A. That is correct.
16
17 Q. And I just want to explore with you, first of all, the
18 response, just so you know where I'm going, so the response
19 to the allegations, and what I will suggest to you is a
20 complete muddling of the role between Mr Romano as general
21 manager and Mr Romano protecting his personal interests,
22 and what I'll suggest to you is this: that you played an
23 active role in the muddling of that between his personal
24 interests and the role - his role as general manager?
25 A. No, I don't believe that's correct. I've been very --
26
27 Q. And that when he said he would step aside and have no
28 role in various components of it, that that was just a
29 farce; would you agree?
30 A. No.
31
32 Q. And that you were party in a number of meetings where
33 he was privy to decisions and indeed making and actively
34 involved in decisions in matters that he'd said publicly he
35 would not be involved in?
36 A. No, that's not accurate either.
37
38 Q. All right. Well, we'll go through the documents and
39 we'll see whose thesis survives. Now, you don't need to be
40 shown the articles; you recall them?
41 A. Well, I recall the general tenor, but --
42
43 Q. Now, there was a meeting - sorry, Mr Romano put out -
44 if the witness can be shown one bundle of documents, of
45 197. The first article, if I ask you to take it from me,
46 was Saturday, the 4th. If you look at page 1 of the
47 document bundle you've been shown --

1 A. Thank you.
2
3 Q. -- you see that's dated the 5th; that is the next day?
4 A. Sunday.
5
6 Q. Sunday, 5 April. So the first article is Saturday the
7 4th; right? The second one is the 6th, but on the 5th this
8 statement comes out. Now, what if any role did you play in
9 this statement?
10 A. Let me read it. I'm just trying to remember. I know
11 I - I know I --
12
13 Q. You met with him on the 4th, as I understand it, on
14 the Saturday?
15 A. On - on the Sunday morning.
16
17 Q. You think it was the Sunday because last time you
18 weren't sure whether it was the Saturday or the Sunday? Do
19 you now - now clarify that somehow and you say it was the
20 Sunday?
21 A. No, I can't - I --
22
23 Q. Mr Romano says it was the Saturday he met with you and
24 then he went up and saw Gorry; is that correct?
25 A. It might have been the Saturday morning, on the
26 Saturday morning when - when he - on - on the weekend
27 morning we met with Mr Romano and Mr Becerra and
28 Mr Fasanella.
29
30 Q. And, I'm sorry, I - I didn't hear who you were with?
31 A. Mr Romano, Mr Becerra, Albert Becerra --
32
33 Q. All right, sorry, someone --
34 A. -- and Mr Fasanella.
35
36 Q. Right.
37 A. Councillor Fasanella, from Canada Bay.
38
39 Q. And they met you at Maddocks?
40 A. That's correct. Mr Romano requested what he called an
41 emergency meeting to have a talk about the Herald article
42 and I - I - I think it was the - the Saturday morning and I
43 said --
44
45 Q. Right. You didn't act for Becerra?
46 A. No.
47

1 Q. So what role did you have to be in the meeting?
2 A. He wanted to talk to me as council's solicitor about
3 the articles. I said to him - he - and he said, "I think
4 Albert will come and I want Tony Fasanella to come." I
5 just said, "Well, Pat, one of my concerns will be the issue
6 of conflict and who can act for whom, but" - and he said,
7 "Right. Let's - let's meet. Let's meet. We've got to
8 meet. We've got to meet." I said, "All right. I'm happy
9 to meet."

10
11 Q. He was upset at this stage?
12 A. He was - he was beside himself. He was extremely
13 agitated. He was - he was distraught, and probably on that
14 basis and also on the basis that we were, I'm pretty
15 certain, communicating with the mayor because I told the
16 mayor about the meeting, and I - I'm - I - I'm not sure
17 whether I rang her after or before to tell her what had
18 happened, but he was - he was distraught. He wanted to
19 meet me and talk about it.
20

21 My concerns were that I wouldn't be able to assist him
22 because it was really going to create an issue of conflict
23 between his private interests and the interests of him as
24 general manager - and I'll go on if you want.
25

26 Q. Did you help him draft this statement --
27 A. I think --
28

29 Q. -- on 4 or 5 April 2009?
30 A. Yeah, my recollection was that I had suggested to him
31 in the light that - well, he - he said, "I - I want to make
32 a statement. I want to make a statement." I said, "Well,
33 I" - I said, "Hold the phone on that." He said, "I want to
34 say to the staff that I'm innocent." I said, "Well, if you
35 want to draft something up, I'm happy to look at it
36 providing the mayor is happy for me to have a look at it."
37 And I'm sure that she was happy for Pat to make a staff -
38 a - a - a - a comment to the staff in these sort of terms.
39 And he - he was saying and asserting in absolutely
40 unequivocal terms that these allegations were false, they
41 were lies. He wanted to assure the organisation that his -
42 from his point of view, he'd continue to work for Burwood,
43 et cetera, et cetera. It was a morale issue and he wanted
44 to get on the front foot. And from the perspective of the
45 organisation, Burwood Council, and from the perspective of
46 a general manager who has been subject to very serious
47 allegations, was prepared to publicly deny them and assert

1 his sentence, and repair some of the damage to the
2 organisation in terms of staff morale, I didn't see an
3 objection to that course and I'm sure that I consulted with
4 the mayor on this.
5
6 Q. So that you, at that stage, didn't have any reason to
7 doubt his veracity?
8 A. None.
9
10 Q. And on - was that because you were too close to him --
11 A. No.
12
13 Q. -- and therefore you were not bringing an objective
14 eye?
15 A. No, no, no. No, not at all.
16
17 Q. Then, if you turn to page 2, you'll see there's a
18 council meeting on the 2nd, and I understand - well,
19 certainly I - I understood you were there, but you're not
20 listed as being in attendance?
21 A. Where is that document?
22
23 Q. Page 2. Do you see there's some numbers down the
24 bottom?
25 A. Yes, I think, extraordinary meeting of council on
26 7 April, Tuesday, 7 April. I believe I was there. I --
27
28 Q. I understood certainly from the mayor that you were
29 there?
30 A. I was yes, I - if it's a meeting that I - can I just
31 check the --
32
33 Q. Yeah, sure. If you go through to - the critical part
34 is page 6.
35 A. Page 6.
36
37 Q. Mmm-hmm. Do you see the numbers, it's the
38 hand-numbered pages down the bottom?
39 A. I've got it. I've got it, yes.
40
41 Q. "The general manager has indicated to me you will
42 voluntarily step aside from any involvement in the
43 management of issues relating to allegations in the Sydney
44 Morning Herald?"
45 A. Yes, I assisted the mayor in drafting this - her
46 statement, just as I assisted Mr Romano in drafting or at
47 least settling, from the perspective of Burwood Council,

1 his protestation of innocence to the staff. I assisted the
2 mayor in a press release on that evening. I assisted the
3 mayor in drafting the resolutions of council that we were
4 to establish a code of conduct review panel and that
5 Mr Dencker was to assist in resourcing the panel's
6 requirements. And my understanding - my recollection was
7 that we were waiting for some news from the ICAC as to
8 whether they were going to investigate matters because I
9 was concerned about overlap.

10
11 Q. Right.

12 A. And as - I think the mayor shared that concern.

13
14 Q. If you've got - turn to page 6, the - the reason I was
15 querying that is because I understood you were there but
16 you didn't make it onto the "people present" list; would
17 that be normal because you weren't there at - I mean --

18 A. I was - I was - probably I think I was sitting in the
19 gallery. I - they normally let me sit up the front in the
20 gallery or sometimes they let me sit on the side bench with
21 the officers.

22
23 Q. So you're not formally present in the sense of --

24 A. I'm not formally present, no.

25
26 Q. Okay. If you could go to the page 6, this is the -
27 the statement that "The general manager has indicated to me
28 that he'll voluntarily step aside", I suggest to you does
29 not reflect what happened over the next six to nine months,
30 does it?

31 A. In the ultimate practice, I think it did. I - I think
32 that the - the - the - the - you described it in terms of
33 the merging of the two interests or you used another term.
34 The - I can't remember your words.

35
36 Q. Well, I'm just asking you a very simple question. I'm
37 suggesting to you that that actually never happened and the
38 general manager never stepped aside from involvement in the
39 management of the issues relating to the allegations?

40 A. I don't believe that's correct.

41
42 Q. You seriously tell the Commission that you believe
43 that that did happen, that he stepped aside?

44 A. From my understanding, he did, although he had to be
45 continually reminded on a number of occasions that he was
46 trespassing on that particular issue.

1 Q. So I suggest to you it never happened in effect at all
2 and that all decisions and actions taken he played a main
3 role in it; would you agree?
4 A. I - well, I don't believe that's the reality. I
5 believe that Mr Dencker and Mr Hullick, in their respective
6 roles, did their very, very best to manage him, as did I.
7 The big problem for Mr Romano was he couldn't keep his
8 hands off it and had to be continually reminded that he had
9 no role to play. That is where the confusion arose in his
10 mind. We had to often tell him to leave the room. We
11 often had to tell him - I had to warn him, in a nice way,
12 "Pat, you've delegated this to Ian", or, "Pat, Les is
13 handling this." He was very outspoken on what he wanted;
14 but in terms of did he get what he wanted, I don't know.
15
16 Q. All right. Well, we'll go through a series of
17 meetings that you, Mr Gorry and he are at where all these
18 issues are being discussed.
19 A. Yes, I know that --
20
21 Q. There was no hands off, I suggest to you, at all
22 A. No, that's not right, because those meetings were
23 managed in a way to try and control him and those meetings
24 often ended up with him being asked to leave on occasions.
25 And there were issues which, unfortunately, crossed over
26 sometimes because they were - there was common factual and
27 legal - there - there were - there were matters, for
28 example, with the workers compensation claims that often
29 crossed over factually in terms of Mr Romano's involvement
30 acting for Burwood as a witness and Mr Romano's issues
31 relating to this Commission and we had to try and walk the
32 tightrope between those two.
33
34 Q. Well, what I'm suggesting to you is that you didn't
35 manage to do it very successfully?
36 A. We did - I believe that we did it to the best of our
37 collective abilities and we did it in a way that didn't
38 compromise the integrity of what we were trying to achieve
39 and --
40
41 Q. We'll have to disagree with that.
42 A. I understand.
43
44 Q. If I could ask you to turn to numbered page 7.
45 A. Seven, yeah.
46
47 Q. Do you see that? There's a note from Peter Macklin,

1 and attached to it is a report by the general manager.
2 What role - on page 8, if I could ask you then to turn to
3 page 8. What role, if any did you play in the production
4 of this document?
5 A. Can I read them, please?
6
7 Q. Well, I'm just asking you about page 8. I mean, I
8 assume you didn't write the email, but maybe you did.
9 A. No. Let me just --
10
11 Q. Just read it to get the context.
12 A. I don't recall having any input into that article,
13 into that - that - that statement, but I was aware of it
14 and I was aware of the Herald article and I was aware that
15 there were allegations that Mr Romano had owned property in
16 Burwood because Mr Hullick wanted to investigate that.
17
18 Q. And that turned out to be wrong in the Herald but
19 basically I think, apart from that, the Herald, on the
20 evidence before this Commission, got pretty close to the
21 mark?
22 A. Well --
23
24 Q. But you didn't know that at that time?
25 A. I didn't know that at the time because --
26
27 Q. All I'm asking you is what role, if any, did you play
28 in producing this statement?
29 A. I don't believe I had any role in this statement, but
30 I was aware of it.
31
32 Q. All right. If I could ask you then to turn to page 9.
33 There's an email from Mr Macklin. Why was it that
34 Mr Macklin was in the position of sending out these general
35 information emails and not a member of the executive? Do
36 you know that? Did you --
37 A. No, I don't - I don't know, I don't know.
38
39 Q. You didn't play any role in that --
40 A. None.
41
42 Q. -- allocation of duties?
43 A. None whatsoever.
44
45 Q. And did you have any role in producing this document?
46 A. I can't recall exactly. Mr Macklin might have rung me
47 and told me that he wanted to broadcast to the council

1 through this and he might have sent it to me to have a
2 quick look at it, I can't recall.

3
4 Q. All right. I ask you to turn to page 12. There was a
5 meeting that you attended along with others with the
6 Department of Local Government?

7 A. Yes.

8
9 Q. Why were you there?

10 A. I was invited to attend and I think it - I can't
11 recall; it might have been my - my suggestion with - with
12 the - the mayor, who, at this stage, I was working very
13 closely with, and cooperatively and constructively. And my
14 view was that Burwood Council should get on the front foot
15 and go to see - or I - I - I think she might have said that
16 she'd spoken to Ross Woodward, she and the deputy mayor had
17 gone to - had either gone to see the department or she had
18 spoken to Mr Woodward, who was the deputy director-general,
19 I can't recall, but my - my suggestion to her was, "Let's
20 go and talk to them. If you want me come, I'm happy to
21 come", because they wanted me to do a - a - a summary, I
22 think, at the beginning of the meeting and outline some of
23 the legal challenges that would face council, and also I
24 think this is the meeting that Mr Romano came with us and
25 then left after he made his statement.

26
27 Q. Look at page 13.

28 A. Yes. And Mr Romano was very keen to state, as he
29 said - I think his words were I - he wanted to eyeball Ross
30 Woodward and tell him that he was innocent, and that meant
31 a lot to him. And I know we can be wise after the event,
32 but at the time we thought that - both the mayor and I
33 thought if - if Mr Romano is going to stand up and say to
34 the director-general, who reports to the minister, "I'm
35 completely innocent", it seemed to be a - a pretty good
36 indicator that he was backing himself 100 per cent, and we
37 didn't want the department to feel any lack of confidence
38 in the way in which Burwood was conducting its affairs.

39
40 These were serious allegations against the general
41 manager. The - the - the mayor coming in to meet the
42 director-general, myself being there to give a legal
43 overview, and the general manager making this statement and
44 then leaving us to discuss the matter seemed to be a pretty
45 decisive way of stating to the department, Burwood
46 Council's general manager is not guilty. The council, the
47 elected representatives still have faith and confidence in

1 him in terms of his general ability to manage the council's
2 affairs. He stood apart from these other duties and it was
3 business as usual at Burwood. We'd get to the bottom of
4 these allegations in due course.
5
6 Q. And you now know when you read that statement that it
7 contains a number of false assertions by Mr Romano?
8 A. Well, I - let me read it again to refresh my memory,
9 if you want me to comment. Well, a number of the matters,
10 unfortunately, are not true.
11
12 Q. But again you had no reason at that stage to identify
13 Mr Romano as telling untruths to the head of the department
14 and, in effect, to the minister?
15 A. Correct.
16
17 Q. And again it didn't cross your mind at that stage that
18 that would be the position?
19 A. Not at all. I - I thought this was the ultimate test
20 of his integrity, credibility and his honesty, to stand up
21 in front of the department and say, "Not guilty"; it's not
22 only not guilty but this - this contains the - the general
23 case thesis that he was putting forward, which you'll
24 probably come to and I won't elaborate the conspiracy
25 theory, at the depot.
26
27 Q. Yes. Well, the conspiracy theory at the depot was his
28 explanation - isn't it, for the allegations?
29 A. Absolutely.
30
31 Q. And he repeated that ad nauseam, didn't he?
32 A. That was his - ad nauseam is a good way to describe
33 it - to everybody who was advising him.
34
35 Q. And to anyone who wanted to listen to his response, or
36 whether they wanted to or not?
37 A. Correct.
38
39 Q. As I understand it, it was repetition-ville, wasn't
40 it? I mean, it went on - he went on and on and on for
41 weeks about the matter?
42 A. Well, yes, and I'm not trying to disrespect him but it
43 was a - an obsessive defence mechanism where he would
44 launch into a - a long-winded explanation and it - I guess
45 there's an old saying, "If you repeat something often and
46 continually, people might start to believe it."
47

1 Q. That's Goebbels, I think --
2 A. I don't want to quote that particular gentleman, but
3 that's exactly what I'm saying.
4
5 Q. -- to convince either yourself or others. Now, I want
6 to show you a bundle of documents, and they are a series of
7 meetings in terms of - if I could just call them the
8 workers - what are headed "Workers compensation and ICAC
9 issues", and there are a number of diary printouts and then
10 a number of other documents. I don't want to go through
11 each one. What I just want to suggest to you is that they
12 indicated that, for over a period of months, Mr Romano was
13 actively involved in what I called the workers compensation
14 issues?
15 A. I believe that's correct, because he was, on my
16 understanding - and can I just qualify my answer by saying
17 I wasn't acting for Burwood Council in the workers comp
18 matter?
19
20 Q. You weren't?
21 A. No.
22
23 Q. No.
24 A. I was --
25
26 Q. But you attend a lot of these meetings?
27 A. I was invited to attend by - by Mr Hullick, Dencker
28 and/or Mr Romano, in their various capacities, and to - to
29 assist as best I could. But I wasn't acting for the
30 council in the workers comp matter. There was a firm of
31 solicitors and I can't remember the name of the gentleman
32 involved --
33
34 Q. Oh.
35 A. -- in Bowral.
36
37 Q. Yes, in Bowral. I will remember because I've got
38 documents from them.
39 A. Yes.
40
41 Q. Barker or Baker, something like that.
42 A. I can't recall, but he was handling the matter, and
43 it's - as I understood he required Mr Romano's assistance
44 as a witness of fact to --
45
46 Q. And - and that might be right and a witness of fact
47 goes off and produces a statement. That's all a witness of

1 fact needs to do, I'd suggest to you?
2 A. Yes, in - in general --
3
4 Q. A witness of fact does not need to be at strategy
5 planning meetings about what will the council's response be
6 claims made against this by a variety of people?
7 A. In - in simple - in simple terms you're entirely
8 correct but I wish it was that simple.
9
10 Q. Why wasn't it that simple?
11 A. Because --
12
13 Q. Mr - it was quite simple there were statements made by
14 people, Mr Romano had to make a statement in reply. That
15 should have been his only role but I wasn't. He's
16 constantly at meetings with you and Gorry and other
17 discussing the strategy in relation to the matter not as a
18 witness of fact?
19 A. No, I - I - I would say that the meetings were - well,
20 he was focusing on his statements and reviewing his
21 evidence for his defence of the council's workers
22 compensation position.
23
24 Q. But just look at the first one. He's organising the
25 meeting?
26 A. Yes, I know. I know, and I --
27
28 Q. His PA is organising the meeting?
29 A. Well, his PA organised the meeting. I don't know who
30 - whether - which page?
31
32 Q. On page 1.
33 A. Yeah.
34
35 Q. Sent to you as well. There was no mystery to you that
36 it was going on?
37 A. Oh, no, no, no, I'm not suggesting it was a mystery,
38 no. In - in --
39
40 Q. Well, in your role, did you produce a document that
41 set out clearly the different things that could happen and
42 that he could and couldn't do?
43 A. I didn't - I didn't produce it - a document in those
44 terms.
45
46 Q. Why not, a sort of form guide?
47 A. I don't know the answer to that. I think that there

1 was an attempt to do that at the very beginning but I'm not
2 sure where it - where it ended up.
3
4 Q. It just seems that - I mean, Maddocks and - well, you
5 author advices on a large sum of things. This was an
6 extremely significant matter, wasn't it?
7 A. The ICAC matter?
8
9 Q. The involvement, of Mr Romano in the ongoing
10 management of all these issues; that is, the workers comp
11 issues and the ICAC issues?
12 A. Yes.
13
14 Q. And the conflict, the potential conflict between his
15 personal interests and those of the council was sitting
16 there as a very large and present cloud, wasn't it?
17 A. Correct, and that's - it was understood and addressed
18 by everyone in the room, hence I was always, I - I have to
19 say, a little bit uncomfortable meeting in Mr Gorry's
20 offices, but that was a - I don't believe there was any -
21 any discourtesy or disrespect intended, but we met in his
22 conference room. Mr Gorry was there to advise Mr Romano in
23 his personal capacity.
24
25 Q. I understand that. You see, what I'm putting to you
26 is that Mr Gorry and Mr Romano should not have been at any
27 of these meetings. That planning strategy should not have
28 involved him if the statements about not being involved had
29 any truth to them?
30 A. The meetings that we were involved in with Mr Gorry
31 were essentially to look at the evidence relating to
32 statements.
33
34 Q. The only evidence that Mr Romano was to have
35 involvement in was his own statement?
36 A. Yes, and --
37
38 Q. He didn't need to see anyone else's?
39 A. No, he wanted to --
40
41 Q. He didn't need to know about the exchange of
42 correspondence with the workers comp lawyers, et cetera,
43 did he?
44 A. I don't know,, I wasn't handling that matter. That
45 was being handled by the workers comp --
46
47 Q. Mr Baird, you're at meeting after meeting with

1 Mr Gorry and Mr Romano, and what I'm suggesting to you is
2 this: you permitted a complete blurring of Mr Romano's
3 personal interests and the interests of the council to
4 occur?
5 A. Not at all, no, I don't agree.
6
7 Q. You didn't produce anything to protect the council
8 against that blurring occurring in terms of a written
9 document to advise those who were at the meeting about what
10 to do, did you?
11 A. I didn't. No, I did not, but I don't believe that the
12 blurring occurred in the way that you're suggesting.
13
14 Q. Well, certainly Mr Macklin didn't have any hesitation
15 in saying that it did?
16 A. Mr Macklin said a lot of things which are - I didn't -
17 I don't accept his view,
18
19 MS RONALDS: Now, if I could tender that bundle.
20
21 ASSISTANT COMMISSIONER: Yes, those documents relating to
22 meetings will be exhibit 237.
23
24 EXHIBIT #237 EMAIL DATED 22 JULY 2009, SUBJECT: BURWOOD
25 COUNCIL - CONFIRMATION OF MEETING AND MEETING RELATED
26 DOCUMENTS
27
28 MS RONALDS: Q. I show you this series of emails, and
29 just so you understand what they are, this is about paying
30 Mr Gorry's bills by council?
31 A. Yes.
32
33 Q. And it starts off with "Ian" - from you - "Yes, I'm
34 working for - on Sunday for Burwood." Do you remember that
35 exchange?
36 A. It was probably meant in good humour.
37
38 Q. I'm sure it was.
39 A. But I can't remember why I'd have said it, until I
40 look at this.
41
42 Q. If you just go over a few pages, start at the back,
43 you'll see from page 5 onwards, there's an account from
44 HDY, if I may adopt the vernacular?
45 A. Yeah.
46
47 Q. Do you see that? And it is - go to the first email,

1 which starts at the bottom of numbered page 2. Do you see
2 there's an email to you from Gorry saying, "Further to our
3 conversation", blah, blah?
4 A. Gorry? I'm lost. You've lost me.
5
6 Q. See at the bottom of page 2 "David, further to our
7 telephone conversation today I attach a document setting
8 out our services in relation to workers' compensation
9 claims against council by Cummins, Child and Giangrasso".
10 A. Yes.
11
12 Q. See that?
13 A. Yes.
14
15 Q. And then you send it to Mr Hullick?
16 A. Yes.
17
18 Q. And Mr Hullick then sends it on to others and then, if
19 I could take you to the bottom of page 1, you'll see the
20 16th of September, so this all happens relatively
21 quickly --
22 A. Yep.
23
24 Q. -- 16th of September down the bottom 2.54: "David",
25 that's to you, "As discussed, please provide formal legal
26 advice that payment of this invoice would be compliant with
27 all relevant state and local government legislation,
28 guidelines, policies including any ICAC guidelines. Please
29 provide this advice ASAP".
30 A. Got it.
31
32 Q. So Mr Hullick was concerned, obviously, that it was
33 proper to pay it. Did you have a conversation with him?
34 "As discussed", you must have. Sorry - sorry this is from
35 Mr Dencker.
36 A. I --
37
38 Q. "As discussed"; Mr Dencker must have said to you "Do
39 we have to pay this? Are you sure we can pay it" or words
40 to that effect?
41 A. Is it appropriate to pay it, that was - that was the
42 question, and I wanted to make sure once again that we were
43 operating according to - to policy and the law and I didn't
44 want to be seen to be favouring Mr Romano and that's why I
45 suggested that I'd also disturb Mr Leggat on Sunday and --
46
47 Q. Well, it was a bill for - going for some period of

1 time?
2 A. Yep. But it was extremely important for us to have a
3 proper sound legal basis for advising Burwood Council on
4 whether there was to be any reimbursement for Mr Romano's
5 fees and I suggested that we get senior counsel's advice on
6 it because I was alive to the whole issue of transparency
7 and process and I went and had a conference with Mr Leggat
8 on the weekend and we worked through the policies and
9 the --
10
11 Q. You looked at the council policies about
12 reimbursement?
13 A. Yes, yes.
14
15 Q. Satisfied yourself or Mr Leggat satisfied himself that
16 he could do so?
17 A. He was kind enough to prepare a written advice on the
18 matter.
19
20 Q. Well, that's something that's not been produced
21 anywhere.
22 A. Well, I'm --
23
24 Q. So that's certainly not to me.
25 A. Mr Leggat, I'm sure, prepared a written opinion on -
26 on that issue, which I've seen. I'm pretty --
27
28 Q. You're one up on me, then.
29 A. Maybe I'm - I don't think I'm confused but he did
30 ultimately produce a - a written advice on the issue of
31 reimbursement of fees and the appropriate way to treat
32 Romano's claim for reimbursement of fees. I'm - I -
33 there's no doubt in my mind about that. I - I'll have a
34 look for it if you want and find it.
35
36 Q. Are you speaking about this issue, the workers'
37 compensation claims and the answers to those, or are you
38 speaking more broadly?
39 A. I'm sure that it was - I'd have to find the advice but
40 the tenor of the advice, the - the gist of it was that it
41 was appropriate for council to reimburse professional fees
42 incurred by Mr Romano in meeting and assisting council in
43 the workers' compensation matters but not otherwise.
44 Because I think Mr Romano wanted a reimbursement of all of
45 his fees that he was generating by going to see Henry Davis
46 York to represent him and my concern was that that was not
47 consistent with the policy --

1
2 Q. Mmm.
3 A. -- of what --
4
5 Q. And that was my concern when I read the policy, I
6 couldn't quite understand how it had come to pass.
7 A. We agree at least on one thing today.
8
9 Q. Goodness. So late in the day as well.
10 A. You promised one hour but I - I'll let you continue.
11
12 Q. You understood if you had monosyllabic answers we
13 would get there much faster, Mr Baird.
14 A. My --
15
16 MS RONALDS: If I could tender that bundle.
17
18 A. -- European ancestry I --
19
20 ASSISTANT COMMISSIONER: Yes, those emails about
21 Mr Gorry's bills will be exhibit 238.
22
23 EXHIBIT #238 EMAILS BETWEEN BURWOOD COUNCIL AND MR BAIRD,
24 CC PAT ROMANO AND STEPHEN GORRY, SUBJECT: WORKERS
25 COMPENSATION SCHEDULE AND SCHEDULE ATTACHED
26
27 THE WITNESS: I have a lot of documents here which I'm --
28
29 MS RONALDS: Q. Just put them down.
30 A. -- am happy to return.
31
32 Q. Ms Ross will retrieve them from you at some - some
33 stage. Before I move on to another matter, in your
34 understanding of councils, how common is it for the council
35 to purchase a car for the general manager's private and
36 professional use?
37 A. I don't think I can answer that. I - I'm aware that
38 you're referring to this - to Mr Romano's car. I wasn't
39 aware of that arrangement until this - this commission,
40 I --
41
42 Q. You weren't aware?
43 A. I - I wasn't, no. So I - I just don't know. I think
44 it's fairly unusual. I don't know whether it's entirely
45 unexceptional but - or exceptional, I should say. I just
46 don't know.
47

1 Q. And if you were giving - did you ever give any advice
2 about that matter?
3 A. The car? I don't believe so.
4
5 Q. And just generally, if there was something - which
6 there was - state government policy about cars, would you
7 anticipate state government - the department of local
8 government has policy about cars and what cars can be
9 purchased and they apply across the public sector. Would
10 those sort of rules be, in your view, the common standard
11 that should be applied in a - in a local government as
12 well --
13 A. Well, they could be --
14
15 Q. -- perhaps --
16 A. -- relevant. If their department has issued a
17 circular, then that is of - of - that is a document that
18 has statutory relevance and it should be taken into
19 account.
20
21 Q. And if the policy said no cars over the luxury tax
22 level, that wouldn't surprise you, would it?
23 A. Well, I don't know what the policy says but I can't --
24
25 Q. So you've never had occasion to suggest to any of your
26 council clients that they need to look at that sort of
27 policy before they introduce their own motor vehicle
28 policy?
29 A. I've never been asked that question.
30
31 Q. Right. Now, you're aware that Mr Romano received a -
32 two, I think it was, texts that were threats or were
33 interpreted possibly as threats, on the 27th of February
34 and the 3rd of March 2009?
35 A. Are these the "I will expose the corruption" texts?
36
37 Q. "Your corruption is about to be exposed" and "Your
38 corruption is about to be exposed very soon".
39 A. Yes.
40
41 Q. And then one to Mr Becerra --
42 A. Yes.
43
44 Q. -- "Your corruption is about to be exposed very soon
45 with your mate"?
46 A. Yes.
47

1 Q. Now, in a statement that Mr Romano's made he says
2 that - he consulted you about these matters?
3 A. Yes. I recall that and I recall that he had theory
4 and some information about it.
5
6 Q. Sorry?
7 A. He had a theory and some information about the
8 threats.
9
10 Q. Well, what I'm interested in - and if I could just
11 show you this document - I'll just open it up at the page.
12 Just to put it in context, this is - if you could start at
13 the bottom of the first page. I'm not sure whether you
14 were here when Mr Giangrasso said he sent these texts?
15 A. I was here but I didn't know until he said --
16
17 Q. Okay.
18 A. -- who.
19
20 Q. No. What I'm interested in is - so if you start at
21 paragraph 9, you see that - that's just the texts set out
22 and then over the page - then you see down the bottom it
23 says "I also notified council's lawyers, Maddocks" and then
24 over the page at the top he said "In addition, council's
25 lawyers, Maddocks, did a search on the mobile phone that
26 the text message came from and discovered the mobile phone
27 number was possibly owned by XXXXXX".
28 Now, where - I can find --
29 A. Yeah, I've got it. I've got it. I'm just nodding
30 in - a react - yeah.
31
32 Q. "I and council's lawyers assumed at the time that the
33 threats may be related to a court matter involving the sale
34 of one of the council's properties". Now, what do you
35 recall about this?
36 A. Yeah, my recollection about this was that Mr Romano
37 showed me the texts or read - read the texts and he asked
38 me did I know - he said - I think his words were "I - I
39 have had some searches done and the mobile number seems to
40 belong to someone who is associated with a - a group
41 called" - and I think it was the XXXXXXXX.
42 I know - I know --
43
44 Q. So you're saying he told you --
45 A. Yes.
46
47 Q. -- he had the checks - the searches done --

1 A. Yes, I don't --
2
3 Q. -- not you tell him?
4 A. I don't think we searched. I - I don't think - I've
5 never done a search. I wouldn't know how to.
6
7 Q. Well, I can tell you that the commission can and they
8 have and have been unable to verify what is asserted to be
9 your position here; that is, that those numbers had no link
10 with XXXXX?
11 A. Well, I don't believe I did any search, nor do I
12 believe that I was asked to do any search. I think he
13 presented me with the information that he had information,
14 he'd had the - the - the phone number searched. How - how,
15 I don't know but he - this is what he put to me. It was
16 linked to a group called the XXXXX. I
17 think he asked us to do a - to do a search, a business name
18 search or a corporate search, of the - of the business name
19 but he said to me that he'd received information that - and
20 he was very sure that this was a company that was
21 associated with the same person that I mentioned to you and
22 I think that that suppression order has been lifted, so
23 therefore I can mention his name. Mr VVVV WWWW who was
24 the - it would seem the scapegoat for all that was wrong
25 with the world in the eyes of Mr Romano.
26
27 Q. So even though he had at this time or shortly
28 thereafter had the conspiracy theory or a month later had
29 the conspiracy theory of the disaffected depot folk, that
30 wasn't the conspiracy theory he had at this point?
31 A. Well, it --
32
33 Q. Sorry, conspiracy theory's the wrong word but the -
34 the - the --
35 A. It wasn't the - he - he - he added an additional
36 suspect that, yes, that this was the - the work of someone
37 who worked for WWWW and he - he received information and
38 I said - I - I - my response, I recall, was "Pat if - if -
39 if this is true, we need concrete evidence. If you are go
40 - if you want to go to the police or take it further, we'd
41 need concrete evidence. Can you tell me who it is?" He
42 said "Oh, it" - I think his words were "It's a Chinese
43 businessman. I don't know his name. I'll get it for you".
44
45 Q. After The Sydney Morning Herald and the meltdown did
46 that topic ever return?
47 A. Which, topic, the --

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37
38
39
40
41
42
43
44
45
46
47

Q. The text threats - well, the text messages, were they ever referred to again between you and Mr Romano and where - where he suggested something like "I've thought about it again and perhaps it wasn't them, perhaps it's someone from the depot who stooged these stories about me in the Herald"?

A. I don't - I don't remember but he - his list of suspects were always being - there was - there was always constant speculation as to who was behind this - this - this concerted and coordinated attempt to undermine him.

Q. Because this was dated - this statement is dated the 15th of April 2009, so it has some - you know, it was close to the time.

A. Yes.

Q. But you would say, would you that, that is not, according to your recollection, a correct account of your involvement in determining the identity of the possible sender?

A. Perpetrator. Correct.

Q. It was just I couldn't understand it.

MS RONALDS: If I could tender that bundle.

ASSISTANT COMMISSIONER: Yes, this letter and attachments from Henry Davis York dated 28th May 2009 will be exhibit 239.

EXHIBIT #239 LETTER FROM HENRY DAVIS YORK TO THE ICAC DATED 28 MAY 2009 - PAT ROMANO - PROTECTED DISCLOSURES

MS RONALDS: Q. And in terms of the surveillance of the depot and Mr Mailey's evidence, you didn't play in the role in it, did you?

A. Not really, no, I - I --

Q. That was really, was it not, Mr Gardner who is the employment --

A. Yes, Mr Gardner and the - the solicitor acting under his supervision.

Q. Ms Wilson was under --

A. Ms Wilson was --

1 Q. -- is in his team, isn't she?
2 A. Yes.
3
4 Q. And there was some evidence today about the Power -
5 PowerPoint meeting with the Power - I can show you the
6 PowerPoint if you need to?
7 A. I've seen the - the exhibit.
8
9 Q. You weren't at that meeting, were you?
10 A. Well, I - I don't really remember it. I was - I don't
11 really remember. I could have been there because often I -
12 I - if - if there was a - an important Burwood matter where
13 other lawyers were involved in the firm, sometimes they
14 would ring me and say "Look, we want you to pop in. We -
15 we want you to sit in on this". I don't recall it but I
16 certainly - even if I was there, I would not have given the
17 advice that was attributed to me by Mr Mailey because it's
18 not my area and I don't comment about - in - in those
19 specific terms, about matters which I'm not comfortable and
20 if that - you know, employment law is not my area. I
21 didn't say it and I --
22
23 Q. That's why I was confused. It didn't seem to me from
24 what I understood the professional --
25 A. I don't think I was there but I could have been, I -
26 I just can't remember.
27
28 Q. I just show you this email. Then I've just got one
29 more?
30 A. That's okay. Take your time.
31
32 Q. No, no, one more. Now, this is an email from
33 Mr Hullick dated the 31st of July. You see it's addressed
34 to you and Darren Gardner and copied to Mr Romano and
35 Mr Dencker. Again, I'd say that this is inappropriate to
36 be copied to him but I'll reserve that for Mr Hullick,
37 since it was his choice, not yours.
38 A. Mmm.
39
40 Q. It's about - do you remember receiving this email?
41 A. If I can just read it, please.
42
43 Q. Sorry. It's addressed to both you and --
44 A. Yep.
45
46 Q. -- Gardner, so.
47 A. I vaguely recall it.

1
2 Q. In anything that's been produced there doesn't seem to
3 be any form of response from you to Mr --
4 A. I think --
5
6 Q. -- Mr Hullick. Would that be because for your - in
7 your terms this would not be necessary - something you'd
8 comment on?
9 A. I think Mr Gardner dealt with it. That is my
10 recollection, yes.
11
12 Q. I mean, there's not been any response at all produced
13 anywhere, so, I mean, is it possible you had a meeting with
14 Mr Hullick about it?
15 A. I - I - I don't discount the possibility of a
16 telephone discussion with him but I think that Darren was
17 handling most of these matters, especially the - well, we
18 were - I'm not - not - I think we were joint - jointly
19 handling this sort of inquiry but I think I dealt with it
20 by telephone.
21
22 Q. So you think you responded to Mr Hullick by telephone?
23 A. Yes.
24
25 MS RONALDS: If I could tender that email.
26
27 ASSISTANT COMMISSIONER: Yes. That email from Mr Hullick
28 of 31 July 2009 will be exhibit 240.
29
30 EXHIBIT #240 EMAIL FROM LES HULLICK TO DAVID BAIRD DATED
31 31 JULY 2009, SUBJECT: PROTECTED DISCLOSURE
32
33 THE WITNESS: If I dealt with it.
34
35 MS RONALDS: Q. Can I hand you a bundle of documents.
36 This is a series - again back to the topic we were on
37 before about I'm suggesting to you that Mr Romano did not
38 remove himself and he played an active role and you
39 permitted and were party to that - sorry, not permitted,
40 you were party to that happening at all times and did
41 nothing to prevent it - to protect the interests of
42 council. That's the proposition I'm putting to you, you
43 understand that?
44 A. I understand the proposition. I reject it.
45
46 Q. I understand you reject it but let's just work through
47 the document, shall we. Now, these documents you'll see

1 there's very little - the machine took over. There's very
2 small numbers down the bottom as opposed to the large
3 handwritten ones. If I could ask you to page - turn to
4 page 4. There's an email sent to you and Darren - sorry,
5 Mr Gardner - addressed to you from Mr Romano, see - and
6 it's asking about Mr Cummins. Now, purportedly he had
7 removed himself from the Cummins matter, would you agree?
8 A. This is March 2009.
9
10 Q. Yep. Or had he not done that till several days later?
11 A. I can't remember exact date but - do you want me to
12 read it?
13
14 Q. Because at this point he's initiating material.
15 Mr Cummins went off on the 16th of February, I think?
16 A. "Project" (reading).
17
18 Q. And then perhaps if you'd look at the next document.
19 A. I don't remember.
20
21 Q. Yeah. The next one is Mr Hullick but you're copied in
22 and this one says that - that he was appointing Mr Hullick
23 as acting general manager for the purpose of dealing with
24 the allegations and separation of Cummins from Burwood.
25 See that?
26 A. Yes.
27
28 Q. And do you recall seeing that? Sorry?
29 A. I think I was aware of it, yes. I - I don't - I can't
30 remember whether I saw it. I must have seen it, I mean
31 it's - it's a --
32
33 Q. And then if you --
34 A. -- year ago.
35
36 Q. -- look at the middle of page - page 7 there's an
37 email that you're copied in to from C - from Pat Romano's
38 iPhone to Les about matters involving Mr Cummins' credit
39 card purchase and then he's expressing certain views about
40 that. Do you remember that?
41 A. Yes. I can see what - I can see the email, yes.
42
43 Q. Do you remember that?
44 A. I don't know whether I remember it but I was copied
45 into it, yes.
46
47 Q. Mmm-hmm. Now, if I could ask you then to turn to

1 page 8. This is an email from Macklin to you and
2 Mr Gardner. See down the bottom of the page --
3 A. Yes.
4
5 Q. -- and then it says "David and Darren, I'd appreciate
6 your meeting this afternoon", et cetera "I have met with
7 the executive team this morning and it's council's
8 preferred position that if either of these employees,
9 Cummins and Child, attempts to return to work they are
10 suspended from the workplace for the duration of the
11 investigation". The investigation being, I would suggest
12 to you when you've read it, the ICAC investigation.
13 A. You've lost me. What page?
14
15 Q. Page 9.
16 A. 9, sorry. "David" (reading).
17
18 Q. And then down the bottom he says "David", that's
19 you --
20 A. Mmm.
21
22 Q. -- I assume, "I would appreciate it if you could
23 liaise with both Ian and the general manager on your
24 collective view re the above as a matter of urgency".
25 Now, Mr Romano had supposedly removed himself from having
26 anything to do with Mr Cummins and his employment, yet you
27 are being asked to liaise with him, that is Mr Romano,
28 about that very issue; would you agree?
29 A. He's asking me to.
30
31 Q. Yes. Now, I can find nowhere an email back saying
32 "I cannot possibly discuss it with the general manager, he
33 is not meant to be involved with it".
34 A. I - I - I - there may be no email but I - probably
35 because I had handed it - this to Mr Gardner, who was
36 handling all the employment issues and Mr Gardner was aware
37 of the - of the withdrawal of Mr Romano as well and was
38 sensitive to the issues that I was sensitive with and I
39 thought he was dealing with it. I don't recall having much
40 to do with Mr Macklin at all because Mr Gardner was - even
41 though it says "David, I would appreciate you were to
42 liaise" I asked Darren "Have a talk to him about it, I
43 think you're best to deal with this".
44
45 Q. All right, if I could just ask you to turn to the last
46 page of the bundle?
47 A. Ten - no?

1
2 Q. No the last page of the bundle, page 33?
3 A. Got it.
4
5 Q. You see that's from Romano to you --
6 A. Yeah.
7
8 Q. -- on Saturday, 28 November, "David, further to our
9 discussion, I've received advice from my legal adviser that
10 there's no conflict in me issuing instructions that will
11 protect council's interests in the interview this Tuesday,
12 I therefore instruct you to be, 1, present at Tuesday's
13 interview with ICAC to represent council's interests" - and
14 then other things - "Ring Stephen Gorry to discuss Cummins
15 matter."
16
17 Now, what was your position, that Mr - Mr Romano is
18 getting private legal advice, but he's directing you what
19 to do on the basis of private legal advice that you're not
20 privy to, hence you don't know what the instructions were,
21 and telling you what do on matters where he was supposedly
22 removed from it?
23 A. This is exactly my point. This reflects Mr Romano's
24 confusion as to the issue and I don't know whether Mr Gorry
25 said this or not, but my response was to always ring either
26 Mr Hullick or Mr Dencker and put it to them that this - "I
27 received this and I don't think that Pat should be giving
28 instructions." I've had that discussion with Mr Hullick or
29 Mr Dencker on innumerable occasions and we discussed his
30 conflict. I'm just - I'm just not --
31
32 Q. See, this is by November --
33 A. I just --
34
35 Q. -- he still hasn't learnt?
36 A. He had - yes. He was - yes, his ability to
37 understand and delineate was, I think, so distorted by his
38 emotional state and his - his capacity to inject himself
39 into everything that had Burwood written on it, he just
40 couldn't contain himself.
41
42 Q. Well, you know now that he would have been seeking at
43 least in part to protect the fabrications that he had built
44 around him?
45 A. That's - that's a very real possibility. Now I know
46 this to be case, at this time I didn't, but my response is
47 that I - I think I remember seeing this. I think I

1 remember reacting similarly to your reaction, that it's -
2 seems to be perverse that he's giving me instructions based
3 on his private lawyer's advice that he didn't have a
4 conflict. That's not, with great respect to Mr Gorry,
5 it's - his prerogative. It's my prerogative, as adviser to
6 council, to work out who's got the conflict or not and I
7 regarded him as conflicted.
8
9 Q. And he's telling you to ring Gorry about Cummins?
10 A. Yes. And when I would ring Mr Gorry to talk to him on
11 occasion about matters, we were always at pains to
12 reestablish the strict demarcation because Mr Gorry
13 understood and I - and I had respect for his - his ability
14 to - his ability to manage Mr Romano, who is the most
15 difficult of people to manage. And many times he would
16 comment, "I'll have to put Pat back in the box on this", or
17 words to this effect.
18
19 Q. Or this box.
20 A. Yeah, but not the council's box. I can't remember
21 which ICAC interview this was.
22
23 Q. You'd agree that, as a cold outsider like myself
24 reading that, it raises very significant concerns?
25 A. Well, on the face of it, it raises concerns to me, and
26 that's why I reacted in the way I - that I did, raising it
27 with Mr Hullick and Mr Dencker.
28
29 Q. I can find no response anywhere from you.
30 A. I think that these were telephone discussions that we
31 had and I think --
32
33 Q. Would you have kept a file note of such a telephone
34 discussion?
35 A. I'd - I have to check. I don't - I don't - I don't
36 know. I - I would not have placed a great deal of - of
37 weight upon this type of email from Mr Romano on this
38 subject.
39
40 Q. I'm not worried about this type. I'm worried about
41 this very specific one --
42 A. I don't know.
43
44 Q. -- relating to this Commission, this inquiry, and
45 Mr Cummins, both of which matters he says he's withdrawn
46 from?
47 A. I accept your point, but I don't know whether I - I

1 did make a - a file note.
2
3 MS RONALDS: If I could tender that document.
4
5 ASSISTANT COMMISSIONER: Yes, those documents will be
6 exhibit 241.
7
8 EXHIBIT #241 EMAIL FROM PAT ROMANO TO IAN DENCKER
9 Cc PETER MACKLIN, PINA VINEY SUBJECT: PROTECTED
10 DISCLOSURE - DEPOT STAFF
11
12 MS RONALDS: Can the witness be shown exhibit 237, please?
13
14 THE WITNESS: Thank you.
15
16 MS RONALDS: Q. If I could ask you to turn to the second
17 last page of the bundle?
18 A. From Don McKenzie - no, from Peter Macklin.
19
20 Q. Yes, from Peter Macklin. Sorry, that just happens, as
21 you know, when you print it out in the --
22 A. Yes, yes.
23
24 Q. So Mr McKenzie was not playing a role, I hope at that
25 stage, in receiving or sending emails; otherwise we're in
26 more trouble than we think. Do you see it's from
27 Mr Macklin to you?
28 A. Yes, his trademark g'day.
29
30 Q. And - yeah, and it sets out a number of matters
31 about - and in the original it's in different colours just
32 to make it more exciting. And you say - see under 3,
33 "ADB", that is the Anti-Discrimination Board - "matter
34 discussed"; that's the Saad complaint --
35 A. Yes.
36
37 Q. "And agreed not - not to provide further information
38 to ICAC but only provide brief mention"?
39 A. Where are you - where are you reading?
40
41 Q. Number 3.
42 A. ABD; who's ADB?
43
44 Q. Anti-Discrimination Board.
45 A. Right, "have discussed" --
46
47 Q. Well, in my world that's what it stands for. I

1 don't --
2 A. Yeah, you know they - you're right.
3
4 Q. So that's the Saad matter discussed "and agreed not to
5 provide further information to ICAC but only provide brief
6 mention"; that appears to be your advice?
7 A. I don't --
8
9 Q. Why was that?
10 A. I don't know whether it was my advice; it's just his
11 notation of it.
12
13 Q. "To be included in letter prepared by D Baird"?
14 A. Yeah.
15
16 Q. And "Maddocks to provide a brief advice on appropriate
17 process to follow in regard to ADB matter and further
18 investigation"?
19 A. Yes, that's --
20
21 Q. Now.
22 A. That's right, and that was - that was Gardner.
23
24 Q. Sorry?
25 A. That was Darren Gardner.
26
27 Q. That was Gardner. But in terms of Mr Gardeners's not
28 present, you are?
29 A. Yeah - well, I don't think he was present.
30
31 Q. What was the basis on deciding not to provide certain
32 information to ICAC but to, in essence, withhold the
33 substance of the --
34 A. No, no, no, no. There was no - never any - any
35 discussion of withholding information from the ICAC and to
36 be - if that's where you're suggesting, I - I can assure
37 that the council's instructions at all time were to
38 cooperate completely with the ICAC and the lawyers in the
39 room, I reiterated that to them. They knew that to be the
40 case.
41
42 Q. Just read the sentence again before you seek to
43 postulate?
44 A. I know. I'm just --
45
46 Q. "ADB matter discussed and agreed not to provide
47 further information to ICAC but only provide brief

1 mention." It's pretty clear, isn't it, on the face of it?
2 A. No, I don't think it is clear. I think it's cryptic
3 and I don't believe it conveys the correct minuting of the
4 matter, and there was never any suggestion that we were to
5 withhold any information. I think that the proper - the
6 proper understanding of what should have been put into this
7 document or a better way of expressing it, shall I - I say,
8 is that there was - it was not a relevant matter for ICAC
9 in terms of the Anti-Discrimination Board hearing. We
10 didn't think that they were - wanted to be swamped with all
11 that material, because there was volume and volumes and
12 volumes of his statements. That was my understanding. But
13 "provide a brief mention" meant we were to provide a - a
14 status report in to the ICAC on where it was up to. That
15 was my understanding, not - not - not to withhold any
16 information. There was never any suggestion, nor would I
17 be a party to any suggestion, to withhold information from
18 this commission - period,

19
20 MS RONALDS: There's a - I think didn't tender the last
21 bundle.

22
23 ASSISTANT COMMISSIONER: Yes, it's 241,
24

25 MS RONALDS: Oh, did I? That's a - it was headed the
26 email of Tuesday, 10 February?
27

28 ASSISTANT COMMISSIONER: Yes, that's 241,
29

30 MS RONALDS: I have nothing further at this stage.
31

32 ASSISTANT COMMISSIONER: Yes, but Mr Baird will have to
33 come back,
34

35 MS RONALDS: These are matters we can work out but perhaps
36 other people might --
37

38 MR HANLEY: Because I'll certainly be seeking to ask him
39 some questions, Commissioner.
40

41 ASSISTANT COMMISSIONER: Well, he was going to have to
42 come back, anyway. All right, so --
43

44 MS RONALDS: The 24th?
45

46 ASSISTANT COMMISSIONER: We're resuming on the 24th,
47

1 MS RONALDS: The venue is yet undetermined, I think, isn't
2 it? I think it's - I think it's here.
3
4 ASSISTANT COMMISSIONER: I think it's pretty likely,
5
6 MS RONALDS: It will be here unless people are told
7 otherwise. So assume it's back here unless you're advised
8 to the contrary.
9
10 ASSISTANT COMMISSIONER: All right. We will adjourn now
11 until 10am on 24 May.
12
13 AT 4.07PM, THE COMMISSION WAS ADJOURNED TO MONDAY, 24 MAY
14 2010 AT 10AM
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37
38
39
40
41
42
43
44
45
46
47