

COMMISSION OF INQUIRY INTO
CERTAIN ASPECTS OF THE TRIAL
AND CONVICTION OF JAMES DRISKELL

The Honourable Patrick LeSage, Q.C. Commissioner

Transcript of Proceedings
before the Commission sitting
at the Winnipeg Convention Centre
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Volume 12

INQUIRY PROCEEDINGS

COMMISSION STAFF:

Mr. Michael Code	Commission Counsel
Mr. Jonathan Dawe	Associate Commission Counsel
R.L. (Bob) Giasson	Chief Administrative Officer
Wendy Bergmann	Administrative Assistant
Kathy Karamchand	Administrative Assistant
Nancy Pelletier	Administrative Staff
David Bruni	Legal support staff

APPEARANCES

Mr. Alan M. Libman and	
Mr. James Lockyer	For Mr. James Driskell
Mr. E.W. Olson, Q.C.	For Province of Manitoba
Mr. Jay Prober	For George Dangerfield
Mr. D. Abra, Q.C.	For The Estate of Bruce Miller
Mr. R. Tapper, Q.C.	For Mr. Stuart Whitley
Mr. D. Gates, Q.C.	For the RCMP
Ms. K. Carswell	For the Winnipeg Police Services and certain members
Mr. R. Wolson, Q.C.	For the Winnipeg Police Association and certain members
Mr. J. Kennedy, Q.C.	For the Association in Defence of the Wrongly Convicted

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1 THURSDAY, AUGUST 3, 2006

2 Upon commencing at 9:00 a.m.

3

4 THE CLERK: All rise. This Commission of
5 Inquiry is now in session. Please be seated.

6 MR. LOCKYER: Good morning, Mr. Commissioner.

7 THE COMMISSIONER: Good morning.

8 BY MR. LOCKYER:

9 Q Mr. Kovnats, as I understand it from your
10 evidence yesterday, by December 14th of 1990, it
11 was your understanding that your client was not
12 going to be prosecuted for the arson, he wasn't
13 going to be prosecuted for any offence; is that
14 right, sir?

15 A Yes.

16 Q You understood there was an offence in
17 Saskatchewan, but I think you weren't sure if
18 you knew then what it was; is that right?

19 A Correct.

20 Q And in your statement to Commission Counsel,
21 sir, and I'm looking at the top of page 5 of
22 your statement, it is tab 1. You say,
23 "Before Kovnats drafted his December 14,
24 1990 letter, the police and Miller had both
25 promised that they would make Zanidean's

1 past sins in and out of the province go
2 away."

3 And that's true, is it?

4 A To the best of my recollection, yes.

5 Q And I raise that only because I put it to one of
6 the police officers that indeed that was the
7 case. I think I put that passage to one, I
8 think it was Vandergraaf specifically.

9 And when you say the police and Miller,
10 what do you mean by police? What police were
11 you dealing with in the early days, sir?

12 A Well, to the best of my recollection, and as you
13 saw in my original statement, when I gave the
14 summary of my interview, it was based on my
15 recollections. The majority of the items
16 promised by the police were promised in the
17 meeting that I had, I believe just after
18 Remembrance Day, with Mr. Paul and Mr. Anderson.
19 And that understanding was confirmed, I think,
20 in document number 40 that was produced -- well,
21 I got it last Friday, but it looks to be
22 Mr. Orr's note, because it refers back to the
23 fact that my client and I had still thought that
24 the police had promised that to us. So my
25 recollection, I'm not 100 per cent recalling the

1 words, but I think that was done at that time,
2 for the majority of the items. There were
3 details to be worked out, as I indicated
4 yesterday.

5 Q Then you say in the same paragraph 5 of your
6 statement, that you recall an occasion when, and
7 I don't believe this came out yesterday, when
8 Anderson and Paul tried to qualify, you say, the
9 immunity deal, saying they only offered Zanidean
10 immunity on the Manitoba charges, and that you
11 indicated, and we are now talking about your
12 June 2nd memo, this is where you recorded this,
13 although it happened before then, and you said
14 this would be a deal breaker. And Miller
15 quickly assured him that there was no question
16 that Zanidean was safe with respect to the
17 out-of-province charge; is that right? He
18 wasn't going to be charged?

19 A That's correct.

20 Q And did Miller say that -- was this all part of
21 the same conversation with Anderson and Paul and
22 Miller, sir?

23 A No. Mr. Miller was not at the conversation with
24 Anderson and Paul. Anderson and Paul indicated
25 I would be talking to the Crown, I don't even

1 think they said it would be Mr. Miller, I think
2 they said it would be someone else. And then I
3 ended up talking with Mr. Miller all of the
4 time. I spoke to other Crown attorneys, but I
5 don't recall, I know I spoke to Stu Whitley, I
6 know I spoke to Graeme Garson, I don't know
7 whether I spoke to Lawlor or not, I may well
8 have. I spoke to Mr. McFarlane, I spoke to a
9 number of Crown attorneys over different times.

10 Q Can I assume, sir, that the information that you
11 are getting you are passing back to your client,
12 as matters proceed? Your client always knew
13 what was going on?

14 A I certainly advised my client from time to time.

15 Q And then elsewhere in your statement to
16 Commission Counsel at page 13, for example, and
17 the main paragraph on page 13, and page 18 as
18 well, you basically make it quite clear how
19 important it was to you, and how it was an
20 essential pre-condition for you of Zanidean
21 cooperating, or cooperating further, that he had
22 immunity from the Swift Current charge. Is that
23 right, or charges should I say?

24 A It was Mr. Zanidean's requirement, sir.

25 Q Fair enough. And you pursued them and they were

1 met?

2 A Yes. They were never confirmed in writing.

3 Q I understand that -- well, that's actually open
4 to question, because that takes us back to tab
5 12, sir, which of course I think we heard
6 yesterday that tab 12 was only shown to you some
7 time after your witness statement was completed.
8 Is that right?

9 A That's correct.

10 Q So you have made it clear to Commission Counsel
11 your view as to the fact that Mr. Zanidean had
12 immunity in Saskatchewan some time before you
13 saw that Mr. Miller drafted that memo of
14 March 7th in his own handwriting at tab 12?

15 A Yes, sir.

16 Q And when we look at those three lines on that
17 March 7th memo, sir,

18 "Our undertaking is to NOT leave witness in
19 lurch or in jeopardy."

20 As you think it through, sir, it is hard to
21 believe what jeopardy can mean other than
22 outstanding potential criminal charges. That's
23 the jeopardy that your client was facing. Lurch
24 could perhaps refer to, you know, out on the
25 street on his own without protection. But

1 jeopardy would presumably, likely -- I mean, we
2 can't speak for Mr. Miller as such, but a
3 reasonable interpretation of jeopardy, is
4 jeopardy meaning the charge above all in Swift
5 Current?

6 A It may. I'm not in a position to make a
7 judgment on that.

8 Q All right. Tell me, in the dealings that you
9 had -- of course, by the time of that note on
10 March 7 of '91, you had already met Mr. Miller
11 and spoken to him on several occasions; is that
12 right?

13 A I started meeting with Mr. Miller in either
14 November or December.

15 Q Did you ever get a sense of how you were viewed
16 by the Crowns that you were dealing with from
17 time to time, Mr. Miller particularly, but
18 others, and the police officers that you were
19 dealing with?

20 A In retrospect, I have a different view than I
21 had at the time. At the time I thought I was
22 dealing with people in a straight forward
23 fashion.

24 Q Did you -- certainly from what we have heard
25 from them, sir, they thought that you were a

1 huge problem for Zanidean, in a sense. That's
2 how you have been perceived by the police
3 officers who testified here. Did you get that
4 sense from the officers at the time, that they
5 saw you as a problem, not as a solution? That
6 they seemed to think Zanidean was no problem at
7 all until you arrived on the scene?

8 A I don't recall that.

9 Q Which takes me to the May 26th encounter with
10 Mr. Dangerfield, sir, on the Sunday, May 26th,
11 after Mr. Zanidean has been brought back under
12 arrest, in custody, from Calgary. Can you take
13 your mind to that day?

14 A Yes.

15 Q Had you ever met Mr. Dangerfield before, sir?

16 A Yes.

17 Q And in the context of what, in the context of
18 this case or other cases?

19 A Not in the context of this case. My first
20 meeting with George Dangerfield took place in
21 1977 -- no, pardon me, 1978 in October, and I
22 was in court.

23 Q I don't need the details, I just want to ask you
24 this -- sorry, I don't mean to cut you off but
25 we have to keep moving. Actually, I did mean to

1 cut you off when I think about it, and did, sir,
2 in a manner of speaking, you might say. Did you
3 know Mr. Dangerfield well, sir, or was he a
4 Crown that you had just run into once or twice
5 before?

6 A I think I dealt with him probably maybe four
7 times prior to this case.

8 Q All right. Do you think he knew your name, sir?
9 It is a way of determining how well --

10 A I don't know whether he would have known my
11 name, I imagine he would have, but I don't know.
12 I don't do a lot of criminal law.

13 Q And it became I guess pretty apparent to you
14 during the course of that evening at the Public
15 Safety Building that Mr. Dangerfield certainly
16 knew there was some problems with you and
17 Mr. Zanidean; is that right?

18 A In what sense?

19 Q He knew the two of you were not too happy with
20 the way things were going?

21 A He was aware of that, yes.

22 Q And what position did you take with
23 Mr. Zanidean, sir, down at that Public Safety
24 Building, as to how he should proceed at the
25 outset of this, at the outset of you arriving

1 down at that building, what did you tell him?

2 A At the outset of my arriving --

3 Q You realized there was a lot of problems, you
4 have got an angry client, you have got a client
5 who certainly feels he is not getting what he
6 wants. You are going to try and get him what he
7 wants. And what position did you take with him
8 as to what he should do if he didn't get what he
9 wants?

10 A I believe I instructed Mr. Zanidean, I advised
11 Mr. Zanidean, I didn't instruct him to do
12 anything. I advised him that he had no
13 obligation to speak, that he could keep his
14 mouth shut.

15 Q Yes?

16 A And he had no obligation to speak to or
17 participate in any dealings with the Crown.

18 Q And did you go on to advise him, sir, that he
19 would certainly, if put in the witness box of
20 the court, he would have to speak to the court?

21 A He had been advised of that on more than one
22 occasion.

23 Q Did you advise him of that again on this
24 particular evening?

25 A I believe I did. I think I told him, you don't

1 have to say anything until you are in the
2 witness box. I don't know the words I used, I
3 am sorry, I can't remember the words. I
4 remember a lot about that incident because it
5 was a major event in my life, I had never been
6 involved in anything like that.

7 Q I think you said at one point you told
8 Mr. Zanidean that he only had to talk to the
9 judge?

10 A That's right, I think those were the words that
11 I used, or words to that effect.

12 Q Did you tell him that, sir, in the presence of
13 police and/or Mr. Dangerfield?

14 A Both.

15 Q And was it that instruction or that advice,
16 perhaps to use your word, that caused
17 Mr. Dangerfield to lose his cool, so to speak?

18 A It was after my making that statement that
19 Mr. Dangerfield yelled, started yelling and
20 screaming, got in my face, instructed, told me I
21 was going to be charged with obstruction of
22 justice. Two policeman grabbed me and threw me
23 in a room.

24 Q All right. If we can flush that out a bit, sir.
25 First of all, when you arrive there at the

1 Public Safety Building, were you locked in a
2 room when you first got there?

3 A No.

4 Q If you look at your tab 3, sir, look at your
5 memo, page 3 of tab 3? You have just talked --
6 you see the paragraph beginning "after that
7 agreement," the third paragraph down in other
8 words?

9 A Yes.

10 Q Are you with me?

11 A Yes, I'm with you, sir.

12 Q You then talk in that paragraph about the
13 confrontation with Mr. Dangerfield, or
14 Mr. Dangerfield's confrontation with you, and
15 then at the bottom, sort of towards the end of
16 the paragraph you say,

17 "I would point out...",

18 Do you see where I am?

19 A Yes.

20 Q "...that prior to the arrival...",
21 and I think by that you would have likely have
22 meant the arrival of Mr. Dangerfield,
23 "...the police had locked me in the room
24 with my client and wouldn't let me out, and
25 when they had given me a telephone, took it

1 away from me when I asked who defence
2 counsel was and had on one occasion
3 threatened me with charging me with
4 obstruction of justice."

5 A Yes.

6 Q The way I read that is that on arrival you are
7 locked in a room and in fact it is the police
8 who first threaten to charge with you
9 obstruction of justice.

10 A This memo was dictated and was not edited. It
11 was dictated on a Sunday evening, it started on
12 the Sunday evening, I think, I finished on the
13 Monday morning. I never got to edit the memo.
14 My remembrance of going down there was I was
15 never locked alone in a room, I was locked in
16 the room with my client. I got locked alone in
17 a room after Mr. Dangerfield and I had our
18 verbal altercation.

19 Q Now earlier in that paragraph, sir, you describe
20 your confrontation with Mr. Dangerfield when it
21 was fresh in your memory; right?

22 A Yes.

23 Q And can you just advise us of the confrontation,
24 how it developed? Who was being
25 confrontational, both of you or just one of you,

1 in terms of demeanor?

2 A Well, it started I believe with him being more
3 confrontational than myself, but I don't think
4 that I would have been afraid of answering right
5 back and telling him that he, you know, he could
6 do what he wanted. He threatened me, he
7 starting yelling and screaming, and I probably
8 went right back at him and said, do what you
9 want.

10 Q Did you sense, sir, did the fact that this was
11 going on in the Public Safety Building have an
12 impact on you? You weren't exactly in friendly
13 territory, put it that way?

14 A It had a great impact on me.

15 Q Yes. And let's put it like this -- I'm not sure
16 how to put it. You said at one point, and I
17 forget which document it is in, that
18 Mr. Dangerfield, in your opinion, was trying to
19 intimidate you; is that fair?

20 A That's correct.

21 Q And let me ask you this, sir; were you
22 intimidated?

23 A Well, I guess to some extent. I didn't react to
24 the intimidation. But did he get at me? Yes.

25 Q Did he scare you?

1 A The whole situation scared me.

2 Q And you said that, you just said a moment ago
3 that the police officers physically took hold of
4 you, I think you said, and put you in a room; is
5 that right?

6 A Yes.

7 Q Can you tell us -- this is right in front of
8 Mr. Dangerfield; am I right, sir?

9 A Yes.

10 Q And can you tell us what you mean when you say
11 they physically took hold of you and put you in
12 a room, what do you mean by that? Describe the
13 situation as it is happening, would you?

14 A Mr. Dangerfield and myself were yelling at each
15 other at that point. I was yelling back at him.
16 He was yelling at me. I was suddenly grabbed
17 from, I don't know if it was behind or beside,
18 George Dangerfield was within an inch of my nose
19 and he was yelling and screaming.

20 Q Were you backing up?

21 A No, absolutely not. There is no way. You had
22 to understand, I was representing a client.
23 These people were trying everything in their
24 power to not let me represent my client
25 adequately, and I wasn't giving in.

- 1 Q Are we in an open area, in a room?
- 2 A We were by the door of a room -- how to describe
3 it -- and I'm going from memory. My
4 recollection is that there was a room with a
5 table in it. My client was sitting at the
6 table, he was sitting to my left. There were
7 policemen around the table. Mr. Dangerfield had
8 come over and stood beside where I was, and I
9 was near the end of the table, at this end of
10 the table, so to speak.
- 11 Q Yes?
- 12 A And I stood up. He was yelling and screaming,
13 he was threatening me with obstruction of
14 justice, and he put his -- he used an
15 intimidation tactic that a client of mine had
16 told me about years before, how to intimidate
17 people. So I recognized it for what it was. He
18 was yelling and screaming, or at least that was
19 my perception of what it was, and I responded to
20 him. And then I was grabbed and I was taken
21 sort of --
- 22 Q This is all happening right in front of your
23 client?
- 24 A Oh, yes, we were all there.
- 25 Q How many police are we talking about?

- 1 A I don't recall.
- 2 Q One, two, more?
- 3 A Certainly more than two, but I can't tell you.
- 4 Q Any that you knew? Anderson or --
- 5 A You know what, I wish I could remember, but I
- 6 can't.
- 7 Q I understand. So you are grabbed?
- 8 A I'm grabbed, I'm taken --
- 9 Q By?
- 10 A -- by a couple of policemen, and I'm shoved into
- 11 a room. And it is sort of a room across, the
- 12 room we were in, sort of kitty-corner to it
- 13 there was another room.
- 14 Q Were you frog-marched there, so to speak?
- 15 A I am physically taken there. You have to
- 16 understand, I hadn't been in any sort of a
- 17 tussle since I was a little kid. All of a
- 18 sudden I'm in this situation where I'm being
- 19 grabbed by two police officers, I know it was
- 20 more than one, maybe there were three, I can't
- 21 tell you, I believe there were two. I'm grabbed
- 22 and I'm thrown into a room. I'm trying to
- 23 represent a client, I'm a lawyer, and I'm
- 24 getting into this position. They lock me in.
- 25 Q Thrown into a room gives an image that may not

1 necessarily be quite right. Let's not over do
2 it.

3 MR. PROBER: I would ask Mr. Lockyer to speak
4 up, please?

5 BY MR. LOCKYER:

6 Q I said thrown into a room is perhaps a manner of
7 speaking, or perhaps it isn't, I don't know?

8 A I was physically thrown into a room. All right?

9 Q And then what?

10 A And then they locked the door.

11 Q You tried and it was locked or what?

12 A I tried to open it and I couldn't open it.

13 THE COMMISSIONER: Mr. Lockyer, is this
14 furthering the inquiry about disclosure? I
15 realize it is interesting and colourful, but
16 does it further the inquiry that I have to make?

17 MR. LOCKYER: Mr. Commissioner, yes, I thought
18 about this, and certainly in my submission, yes.
19 We have Mr. Dangerfield coming, and a way of
20 assessing what Mr. Dangerfield, I anticipate
21 will say, having read his statement to
22 Commission Counsel, in my submission, we have
23 here a very different image of the image that
24 Mr. Dangerfield is trying to present. We have
25 an image of a Crown Counsel who is being

1 intimidating to a lawyer. Heavens knows how
2 Mr. Zanidean would be impacted by this. He is
3 doing it right in front of a witness.

4 THE COMMISSIONER: And I agree, to the point
5 that it was in the presence of Mr. Zanidean, I
6 didn't say anything. But now that it is not in
7 the presence of Mr. Zanidean, I doubt that this
8 is helpful.

9 MR. LOCKYER: I just feel that Mr. Dangerfield
10 is allowing this to happen, indeed causing it to
11 happen, and then allowing it to persist.

12 MR. PROBER: I object to that. There is no
13 evidence from this witness or anyone else that
14 George Dangerfield allowed this to happen, or
15 participated, other than in a verbal
16 altercation.

17 MR. LOCKYER: It happened right in front of him.
18 But it will help you, Mr. Commissioner,
19 comprehend the credibility of Mr. Dangerfield,
20 both when he deals with this incident -- it is
21 said by Commission Counsel he gives a similar
22 version, I think that's arguable.

23 THE COMMISSIONER: It seems to me, maybe it is a
24 like similar fact, which as you may know, I'm
25 not very fond of.

1 MR. LOCKYER: I do know. All right. I hear
2 you, Mr. Commissioner.

3 THE COMMISSIONER: Thank you.

4 BY MR. LOCKYER:

5 Q Tell me, sir, you are in this room. Was
6 Mr. Zanidean brought into the room at any point?

7 A No, he could see the door of the room.

8 Q So you were in this room alone?

9 A Yes.

10 Q I see. And you then had -- how long were you in
11 the room?

12 A Well, once they locked me in, I made sure they
13 couldn't get in, and I phoned -- I don't know
14 how long I was in the room.

15 Q Are we talking a minute or two, or five minutes?

16 A Enough time for me to take a table, overturn it,
17 put it under the door knob so they couldn't get
18 in at me and phone for help.

19 Q All right. That has never appeared, I didn't
20 know you did that.

21 A That is what I did. This is a very painful
22 thing for me to be discussing. I don't really
23 want to discuss it. If we are going to deal
24 with it, let's deal with it.

25 Q At some point you were let out of the room, sir?

1 A Yes, when Mr. Miller came. I don't know that
2 they might not have let me out of the room
3 sooner, but I wasn't letting them into the room.
4 I was trying to get help. I couldn't believe
5 what was happening to me.

6 Q I understand that you did call counsel.

7 A I tried to call counsel, and unfortunately the
8 person I called couldn't represent me.

9 Q There was a problem, yes, I understand that.

10 And at some point, sir, you end up back
11 talking to Mr. Dangerfield and now Mr. Miller as
12 well; is that right?

13 A That's correct.

14 Q And in the course of that conversation, sir,
15 with the two of them, am I right that you are
16 talking substantively with Mr. Dangerfield and
17 Mr. Miller about the kinds of demands, or I
18 don't know about demands, the kind of conditions
19 that you are seeking for Mr. Zanidean?

20 A No. I don't think you would be right. I don't
21 remember discussing the details of anything with
22 George Dangerfield, other than the fact that we
23 were trying to get Bruce to honour his
24 commitments.

25 Q All right.

1 A I don't think we went through on an item by item
2 basis, I'm not saying we didn't. All right.
3 You are asking me again to recall an incident
4 and certain parts of it are vivid in my
5 imagination or my mind, whatever you want to
6 call it right now, but I don't want to say
7 something and be wrong here. It is very
8 important that I be accurate and not say things
9 that aren't there.

10 Q I think everyone here would agree with you, sir.

11 A So I can't say with certainty that I discussed
12 the details, and in fact I don't believe I did
13 discuss the details with George Dangerfield.

14 Q Let me take you to your memo at tab 3, could I?

15 A Sure.

16 Q At the bottom of page 3?

17 A Yes.

18 Q You are here now talking about your conversation
19 with Dangerfield and Miller?

20 A Yes.

21 Q And you say at the bottom,
22 "Looking away from Mr. Dangerfield to
23 Mr. Miller, I said to Mr. Miller in no
24 uncertain terms, either you are honest or
25 you are not, either you honour your

1 undertakings or not. Dangerfield said that
2 you have no right to talk to him like that,
3 he is not the Crown, I am the Crown in this
4 case, I make the decisions."

5 Do you remember that, sir?

6 A Yes, words to that effect. As I say, I don't
7 remember, today I don't remember the exact
8 words, they are probably far more accurate in
9 the memo, but the gist of it is correct, yes.

10 Q So, in essence, what you recall, whether those
11 were exact words or not, is Mr. Dangerfield
12 asserting, if you like, authority in this case
13 over Mr. Miller because he is the one running
14 the case?

15 A I didn't let him do that with me. I told him --

16 Q I'm not saying you did, I'm just trying to get
17 Mr. Dangerfield, what he is saying?

18 MR. PROBER: Perhaps the witness can be allowed
19 to finish his answer, Mr. Commissioner.

20 MR. LOCKYER: Sorry.

21 THE WITNESS: I directed my comments to
22 Mr. Miller, and I wasn't going to spend much
23 time talking to Mr. Dangerfield. I think that
24 most of my conversation was with Mr. Miller. I
25 think I responded to Mr. Dangerfield basically

1 saying, he is part of the Crown, you are part of
2 the Crown, whatever words we used, and the Crown
3 is bound by what he said and I'm dealing with
4 him.

5 BY MR. LOCKYER:

6 Q All right. I'm more interested, sir, on
7 focusing what Mr. Dangerfield was saying, as
8 opposed to what you are thinking and saying
9 yourself.

10 From what I read of what you wrote in that
11 memo, Mr. Dangerfield is clearly asserting in
12 Mr. Miller's presence, I'm the one in charge of
13 this case, I'm the prosecutor?

14 A Well, that's what my memo says. I remember
15 trying to not deal with Mr. Dangerfield. I'm
16 sorry, that's what I remember. I didn't want to
17 talk to him. I had no -- I was too upset with
18 him, I didn't want to talk to him, and I was
19 going to talk to Bruce. Bruce is the one who
20 had given me his word, Bruce is the one I dealt
21 with, and Bruce is the one who should have
22 honoured his word, straight out. I apologize,
23 but that's the way it is.

24 Q This is an important point. That's all very
25 well, but what you have said in your memo is

1 that Mr. Dangerfield's reaction is, I'm in
2 charge, not him?

3 A That's the memo.

4 Q You don't remember that now?

5 A You know what, I can't remember all of the
6 details now, I'm sorry.

7 Q You don't remember that detail now is what you
8 are saying?

9 A I remember him saying something to me, and I
10 remember me trying to dismiss him. I'm sorry, I
11 don't remember the exact words. The memo was
12 probably far better than what my memory is 15
13 years later. I apologize, but that's the way it
14 is.

15 Q A memo was written by Mr. Brodsky, sir, of a
16 conversation with you, it is at tab 33. Could
17 you turn to it? And go to page 3 of the tab,
18 would you, please, the third page of the tab?

19 Now, Mr. Brodsky, as I understand it from
20 Mr. Brodsky's statement to Commission Counsel,
21 the date June 10th at the top we can effectively
22 ignore, because all that date reflects is the
23 date that his secretary or his assistant typed
24 this document up. All right. As I understand
25 it, Mr. Brodsky would have put this on a

1 dictaphone likely, I think on the day the events
2 happened, or maybe very close to that. So
3 ignore the June 10th date because I don't think
4 it really is very helpful.

5 And you will see there, he says -- and I'm
6 going to take you through this quickly -- he
7 said he had just come from your house. Do you
8 remember Mr. Brodsky going to your house, sir,
9 meeting you at your home?

10 A Yes.

11 Q That you told him that your client still hadn't
12 signed the witness protection agreement; do you
13 remember saying that, sir, to Mr. Brodsky?

14 A That was the truth at the time, I would imagine
15 that I would have confirmed it.

16 Q That you told him that Mr. Zanidean was afraid
17 of Mr. Driskell, is that right?

18 "His client is afraid of mine."

19 That is what he wrote.

20 A There is no question that my client was afraid
21 of his, yes.

22 Q That was your opinion. All right.

23 A No, that's what my client told me.

24 Q I understand. That you told him a number of
25 things, one being that you had understood

1 Driskell had already been to five lawyers, and
2 then Mr. Brodsky told you the story about Ian
3 Garber. Do you remember that?

4 A Yes.

5 Q You kept saying to Mr. Brodsky -- I mean, when
6 you were talking to Mr. Brodsky you were being,
7 would I be right in saying that you were being
8 fairly tight-lipped, you had solicitor/client
9 privilege issues?

10 A My client had ask me -- Mr. Brodsky had asked to
11 talk to me, my client had said I should talk to
12 him. I was caught between how far I should go
13 with him, so I was being cautious.

14 Q Fair enough, another way of putting it, okay.
15 You passed on his request, according to Mr.
16 Brodsky's memo, that he be allowed to meet with
17 your client, to Mr. Miller?

18 A Yes.

19 Q And I think you told us yesterday that
20 Mr. Miller did not want Mr. Zanidean meeting
21 Mr. Brodsky; is that right?

22 A That is my recollection, yes.

23 Q And Mr. Miller presumably told you that?

24 A Yes. That's my recollection.

25 Q Yes, I understand.

1 That you were unable to get ahold of your
2 client, and here we are talking June 2nd,
3 June 3rd, around there; right?

4 A Yes, my client was supposed to be phoning me
5 daily.

6 Q That your client kept telling you that he had
7 been lied to, especially by Detective Paul; do
8 you see that? Did you tell Mr. Brodsky that?

9 A Yes.

10 Q Sorry, he kept repeating -- sorry, you kept
11 saying that you had been lied to by Detective
12 Paul, I think actually would be the way of
13 interpreting what Mr. Brodsky has written there;
14 is that right?

15 A Well, if that's what Mr. Brodsky wrote.

16 Q Did you tell him that?

17 A I don't think that I would have said that I was
18 lied to, although I certainly may have felt that
19 at the time, and still do.

20 Q Okay. And that Mr. Brodsky then, as a result of
21 that, really warned you that you would be pretty
22 wise to make a record of all of the incidents
23 and the people involved, because if you left it
24 too long, things would get blurry. Do you see
25 that at the bottom of the page?

- 1 A Yes.
- 2 Q True?
- 3 A That's why I dictated in the memo.
- 4 Q You did that on Mr. Brodsky's advice, in
5 essence?
- 6 A In effect.
- 7 Q And once more he asks if his private
8 investigator, Mr. Savage, a former RCMP officer,
9 can speak to Mr. Zanidean. And you said that
10 you would see what you could do about it, in
11 essence; is that right?
- 12 A I told him that on one hand I have a client that
13 wants to be able to talk to him, on the other
14 hand, he doesn't want to talk to him. I have a
15 Crown Attorney who may feel that we are
16 jeopardizing our arrangements with him, and I
17 had to check with everybody. I don't know
18 whether I used those words, but that's what was
19 going on at that time.
- 20 Q Mr. Brodsky recorded that you either told him or
21 he was of the opinion that you were scared. Do
22 you see that on 405?
- 23 A I don't believe I told him I was scared but --
- 24 Q Fair interpretation?
- 25 A I think that's probably a fair interpretation.

1 Q Yes. And that the police had really put a scare
2 into you. And then he discussed with you one of
3 the body packs, I think you were under the
4 impression that a conversation that Mr. Zanidean
5 claimed he had had with Mr. Driskell was
6 recorded on a body pack, and Mr. Brodsky advised
7 you that that wasn't the case. Do you remember
8 that?

9 A I don't remember it today, but it is quite
10 possible.

11 Q All right. Now, I think it is -- the backdrop
12 of all of this, of course, Mr. Kovnats, is that
13 there is obviously a very serious trial about to
14 happen, as of May 26th, June 2nd, June 3rd,
15 June 4th, and you are obviously well aware of
16 that; right?

17 A I'm aware that the trial is coming.

18 Q And did you ever consider the issue of just how
19 much did Mr. Brodsky know about what had been
20 going on for the previous months, and in
21 particular in the last week or two?

22 A I would like you to repeat the question because
23 I want to make sure I understand what you are
24 asking me?

25 Q Yes. Did it occur to you that Mr. Brodsky may

1 not have been well informed, if informed at all,
2 about what was going on with Mr. Zanidean and
3 the negotiations, and as well with regard to
4 what had happened in the preceding days?

5 A He seemed to have much more knowledge than I
6 did.

7 Q He seemed to have heard -- apparently, the
8 incident with Mr. Dangerfield sort of hit the
9 rumour circuit; am I right, sir? Is that your
10 understanding?

11 A That's my understanding. I had calls from a
12 number of people that I knew asking what was
13 going on.

14 Q So people that you hadn't told about it were
15 calling you about it?

16 A Mentioned it to me in the course of discussion,
17 yes.

18 Q And it sort of hit the gossip mill in the
19 Manitoba Bar; am I right?

20 A Well, I don't know how -- I don't know your
21 definition. I can tell you that when I was
22 talking to other lawyers on other issues, some
23 of them said, what the heck happened at the
24 police station, I heard you had a real problem,
25 or words to that effect.

1 Q I simply raise that, sir, because I think we are
2 going to hear from at least one witness that he
3 knew nothing about this, which may be of some
4 significance as to whether that's feasible.

5 Subsequent to -- I'll put it like this --
6 in the 2003, 2004, sir, inquiries were made of
7 you on behalf of Mr. Driskell whilst his
8 application for Ministerial review was being
9 made. Am I right?

10 A Correct.

11 Q Both by way of phone call from Mr. Libman and
12 myself; is that right?

13 A Yes.

14 Q And I understand, sir, as well you were
15 interviewed by Reverend Jim McCloskey, that
16 would be in late 2003; do you remember that?

17 A I remember him coming to my office, yes.

18 Q And would I be right in saying, sir, that you,
19 being conscious of solicitor/client privilege
20 issues, essentially stayed mum; is that right?

21 A That's correct.

22 Q You did promise that you would retain your files
23 and never destroy them?

24 A Whatever I had left, I said I would try and
25 save, yes.

1 Q So, you felt that your solicitor/client
2 relationship meant that you couldn't disclose,
3 in 2003/2004, the dealings and the happenings
4 that you had been engaged in with the police and
5 the Crowns back in 1990/1991; is that fair?

6 A I would like you to repeat the question, because
7 I want to make sure I understand each and every
8 word.

9 Q Okay. You felt, from a solicitor/client
10 privilege perspective, sir, that you were in a
11 position where you could not, should not, maybe
12 one, maybe both, discuss with Mr. Driskell's
13 representatives the events that had transpired
14 in 1990 and 1991, between you and Mr. Zanidean,
15 and between you and the Crowns, and between you
16 and the police, on behalf of Mr. Zanidean; am I
17 right?

18 A That is partially correct.

19 Q What isn't correct about it?

20 A I think there is also an issue of
21 solicitor/client confidence, which is different
22 than privilege. And I have to be very careful
23 between confidence and privilege, and it has
24 only been recently that I have been released
25 from privilege, although confidence is a

1 separate issue.

2 Q I am not sure if you see confidence as something
3 that you are not allowed to break, or if it is
4 something that you feel you shouldn't break?

5 THE COMMISSIONER: I'm not sure where this is
6 leading. I would prefer not to get into this
7 issue, it is not uncomplex. What is the purpose
8 of it?

9 MR. LOCKYER: It is systemic, Mr. Commissioner,
10 ultimately. One of the difficulties that
11 appears in cases with witnesses such as
12 Zanidean, jail-house informants and the like, is
13 that they often retain counsel. And whenever
14 that happens, any attempt to try and get behind
15 what really happened in the dealings with the
16 individual become almost impossible to find out,
17 because of claims of privilege. And it makes
18 investigating cases like this very difficult.
19 And we may well want to make submissions to you
20 at the end of the inquiry as to how ways around
21 this might be devised to make it easier for
22 someone in Mr. Driskell's position to be able to
23 acquire this information.

24 MR. CODE: If I could assist, perhaps,
25 Mr. Commissioner. I can state for the record

1 that Mr. Kovnats took the same position with us,
2 with Commission Counsel, and insisted on a
3 subpoena to overcome the law of confidentiality,
4 and insisted on a waiver to overcome the law of
5 privilege. So the position that he took with
6 the inquiry is completely consistent with the
7 position that he took with Mr. Lockyer. And we
8 can make admissions about all of that in order
9 to facilitate the systemic discussion that
10 Mr. Lockyer wants.

11 MR. LOCKYER: You see, Mr. Commissioner, it gets
12 particularly important --

13 THE COMMISSIONER: If we were to get into this,
14 it then seems to me that I'm going to have to
15 hear at least from the Law Society of Manitoba,
16 if not a host of legal organizations. All I can
17 say is that I have had a lot of involvement in
18 solicitor/client confidentiality, and I have
19 little certainty of where the lines are. And it
20 wasn't something that I had intended to look
21 into. I see your point, but I think it is a
22 very, very broad area that you are suggesting
23 that I inquire into.

24 MR. LOCKYER: Can I just finish the factual
25 scenario, Mr. Commissioner, for this case?

1 Because what happened in this case was, we get
2 disclosure from the Manitoba Justice in 2003, a
3 few months after the DNA results, and the
4 disclosure does not include any of the
5 Kovnats/Manitoba Justice correspondence. We
6 don't get, as I recall, I think I'm right in
7 saying a single piece of paper about the
8 correspondence between this witness and Manitoba
9 Justice.

10 The first time we see any of this
11 correspondence, despite the fact that we have
12 been assured that we got full disclosure back in
13 2003, in writing we are assured of that by
14 Manitoba Justice, the first time we see the
15 Kovnats' letters and documents -- because
16 Mr. Kovnats wouldn't give them to us, and I
17 understand why he wouldn't, I'm not being
18 critical of him, I want you to understand, I'm
19 trying to bring out a series of facts to present
20 the problem -- is when the Department of Justice
21 produces all of these documents to us in 2004,
22 when they present the investigative summary to
23 us, they have managed to acquire these documents
24 from Manitoba Justice. So our submission to the
25 Minister was severely flawed, because we didn't

1 have, for example, the December letter of '90 or
2 the June letter of '91, which one might have
3 thought would be highly material to an
4 application to the Minister. We had never seen
5 those documents until the investigative summary
6 was given to us. So we ultimately had to depend
7 on the good offices and good work of the
8 Department of Justice in Ottawa to find those
9 documents. And in my submission, that's not
10 good enough, that's not the way we should have
11 to work.

12 THE COMMISSIONER: Okay, but that --

13 MR. LOCKYER: See how it all comes, and that's
14 why I'm asking these questions.

15 THE COMMISSIONER: Yes, I do. However, you are
16 speaking about the disclosure or non-disclosure
17 by the Department of Justice.

18 MR. LOCKYER: I am.

19 THE COMMISSIONER: Which I think is a much
20 different and simple -- well, it is not
21 simple -- but it is a less complex area than
22 disclosure by Mr. Kovnats.

23 MR. LOCKYER: Yes, I think you are right. I
24 just thought it helpful, it was a short series
25 of questions of Mr. Kovnats and I feel that they

1 are answered. I just wanted to bring out of him
2 that he didn't even feel it was appropriate,
3 rightly or wrongly, and I understand why he did
4 what he did, to even disclose his correspondence
5 with Manitoba Justice to us, or his dealings
6 with Manitoba Justice or the police to us.
7 Because he saw that, as best I can understand,
8 as being under a rubric of confidence as opposed
9 to solicitor/client privilege. Is that a fair
10 summary of your position, sir, without getting
11 too complicated?

12 THE WITNESS: Without getting too complicated, I
13 had to do a lot of research and I had to look at
14 each document to determine what was confidence,
15 what was privilege. It is a very difficult
16 area. I had to hire counsel before coming to
17 this Commission because it was a very difficult
18 area.

19 BY MR. LOCKYER:

20 Q And ultimately your counsel advised you that you
21 really shouldn't even give us even your
22 correspondence with Manitoba Justice?

23 A I'm not talking about then, I said before coming
24 to this hearing.

25 Q I'm talking 2003, 2004, you did not give us your

1 correspondence?

2 A No, I couldn't.

3 Q You felt you couldn't? Fair enough.

4 A That's my understanding of the law.

5 Q Fair enough.

6 THE COMMISSIONER: I don't disagree with your
7 understanding, I don't say it is right or wrong,
8 but I probably would have done the same.

9 THE WITNESS: Thank you, because it has been
10 very difficult.

11 MR. LOCKYER: Could I just have a moment to get
12 my --

13 THE COMMISSIONER: Certainly.

14 MR. LOCKYER: I got a bit off track in my head.

15 BY MR. LOCKYER:

16 Q Sir, I want to ask you about one thing, you
17 said -- and I don't know, I wish I had a
18 reference for it but I don't -- you said to
19 Commission Counsel in your interview that it was
20 your understanding that you were to attend court
21 when Mr. Zanidean testified. That was the
22 understanding that you had from fairly early on;
23 is that right?

24 A I would have to go back.

25 Q Whether you said it to Commission Counsel, was

1 that your understanding? I can't give you the
2 reference, I didn't write it down. Did you
3 believe that to be the case?

4 A I would have to review my notes. Is it in my
5 memo?

6 Q Page 16, sir, of your -- you know what, I have
7 got it written down. Page 16, sir, of your
8 Commission Counsel interview you said -- can you
9 look at the first main paragraph?

10 "When Kovnats began representing Zanidean,
11 he understood that it would be part of his
12 brief to attend court when Zanidean
13 testified."

14 Is that how you understood it?

15 A That was then. Not at the end, though, I was
16 told not to.

17 Q I'm asking you, that was your understanding
18 throughout?

19 A Yes, I would be representing and be with
20 Mr. Zanidean.

21 Q You would be there in court when he testified?

22 A That was my original understanding.

23 Q But that continued to be your understanding
24 pretty well right through up to the end; am I
25 right, sir?

1 A In the last week of so --

2 Q Up to then, that's what I'm asking?

3 A Yes.

4 Q Fine. If we look, sir, at tab 39 in this
5 regard, which is the letter from Mr. Miller to
6 you, which is dated June 12th, which is actually
7 a date the day after Mr. Zanidean has testified,
8 he says, first paragraph:

9 "This is to confirm the government will be
10 responsible for the reasonable costs of
11 necessary legal advice given by you to your
12 client. It is understood that at the wish
13 of your client, you will be involved
14 throughout the proceedings to attend with
15 him in court when he testifies."

16 And that, sir, would seem to be reflective of
17 the understanding that you had had throughout
18 the proceedings, at least up until a week before
19 he testified. Is that right, sir?

20 A Yes.

21 Q As it turns out, sir, you weren't there when he
22 testified. Can you tell us how it is that the
23 understanding that you had for so long didn't
24 become a reality?

25 A No. I can just tell you that Mr. Miller told me

1 that I wouldn't be required in court. My client
2 said that he had been talking directly to the
3 police and the Crown and that I wasn't required
4 in court.

5 Q Did you think that was a little odd, sir, after
6 all of the dealings and all of the work you had
7 done for Mr. Zanidean, that suddenly they are
8 saying to you, you don't need to be in court?

9 A The police were constantly -- I shouldn't say
10 the police -- the police and the Crown, and I
11 don't know which, but it seemed that
12 Mr. Zanidean was dealing with them on his own,
13 in addition to having me try and deal with them.
14 And I was -- I don't know who he dealt with, but
15 he would come back to me when he felt he needed
16 help, and he would sort of not use my services
17 when he didn't feel he needed help, and it was
18 going back and forth like a yoyo.

19 Q I don't know if this is right, sir; did you get
20 a sense that the authorities, Crown and/or
21 police, were trying to, in a sense, separate
22 your client from you?

23 A I don't know who was trying to separate whom
24 from whom. I can't tell whether it was my
25 client's volition or theirs.

1 Q All right. Suffice to say, sir, it was made
2 clear to you that it wasn't necessarily a good
3 idea for you to be there when he testified?
4 A That's correct.
5 Q You were discouraged from going?
6 A I was told that I would not be required.
7 Q Right. And from that you decided not to go?
8 Presumably, but for that, you would have gone
9 for sure?
10 A I had originally planned to be there.
11 Q And that sort of takes us to an area of
12 examination of Mr. Code yesterday when he took
13 you to Mr. Zanidean's evidence. You remember he
14 took you through parts of Mr. Zanidean's
15 evidence yesterday?
16 A Yes, sir, I remember.
17 Q And to move things along, sir, the way you put
18 it to Commission Counsel in your interview, when
19 similar passages were read to you or shown to
20 you of Mr. Zanidean's testimony, looking at page
21 16 of your Commission statement, sir, the last
22 paragraph on that page?
23 A Yes.
24 Q You said that your view was that,
25 "...some of his evidence was incorrect,

1 some of his answers regarding payments are
2 literally true, the overall impression is
3 misleading."
4 If you had been present, or if I,
5 "...had been present during Zanidean's
6 testimony, I think I would have consulted
7 with my client, suggested he review the
8 facts, and if he had refused to correct
9 things, then I would have declined to act
10 further. I would probably have also
11 contacted Miller and told him that
12 information was being put before the court
13 that was different from my recollection and
14 would have reminded Miller of his
15 unfulfilled request that he be present for
16 all interviews with the Crown."

17 True, sir?

18 A That's correct.

19 Q Of course, you weren't there so you didn't know
20 what he was saying?

21 A No.

22 Q You had meetings, two meetings, as I understand
23 it, with Mr. Miller on June 10th, sir, the day
24 before Mr. Zanidean testified; is that right?

25 You may not know it is the day before, but I can

1 tell you it was.

2 A I would have to take a look at my time docket.

3 Q I think we went through this yesterday. Look at
4 June 10th. You will see that you had two
5 meetings and I understand they were both with
6 Mr. Miller?

7 A I believe that to be correct, yes.

8 Q Do you remember if there was anyone else present
9 at those meetings, sir?

10 A No.

11 Q You don't remember, or there wasn't? I'm not
12 sure what no means?

13 A You asked me do I remember, and I answered no.

14 Q So you don't remember. Fair enough. And at the
15 end of those second meetings, sir, were you
16 aware during those meetings that the plan was to
17 call Mr. Zanidean the next day?

18 A I don't recall. I don't have a note on the
19 meetings and I don't recall. I indicated that
20 yesterday as well.

21 Q Do you know if the decision was made to call him
22 the next day because of those meetings on the
23 evening of June 10th?

24 A I have no knowledge of that.

25 Q You don't remember?

1 A No.

2 Q Or you don't know?

3 A No.

4 Q And at the end of those meetings, sir, were you
5 satisfied in your mind that a deal had been
6 struck?

7 A I can't recall what the deal was, and I don't
8 know whether we were still at the point where we
9 had a choice of A or B. Was there an agreement
10 in principle? Yes. The detail, I can't recall.
11 I can't recall the date on which we went
12 strictly to the second option of money, as
13 opposed to the Witness Protection Program.

14 Q You can't remember if it was before or after
15 your client testified?

16 A That's correct, I can't remember what date that
17 was.

18 Q But whichever that was, by the end of those
19 meetings on June 10th, you were satisfied that a
20 deal, albeit perhaps with two alternatives built
21 into it, was struck?

22 A Certainly well before that. It kept changing,
23 but we had deals.

24 Q I imagine May 26th, the events of May 26th must
25 have caused you some concern as to whether what

1 you had already negotiated was still a reliable
2 negotiation. Is that fair?

3 A No.

4 Q You still even --

5 A No, my position on May 26th was that the Crown
6 had a deal and they better honour it. They had
7 given a commitment, and they had to do so. Read
8 my memo, it is quite clear. I said to Bruce, in
9 no uncertain terms, either you are honest or you
10 are not, you honour your undertakings or you
11 don't, and the Crown is bound by what you have
12 done. And when Dangerfield tried to pipe in
13 that he was in charge or whatever, I said, look,
14 I'm dealing with him, he is the guy I dealt with
15 and that's it.

16 Q But the purpose of the June 10th meetings would
17 have been presumably to try and cement once and
18 for all the deal being made for Mr. Zanidean?

19 A I can't say for sure what the purpose was. I
20 know I was pursuing actively and vigorously
21 having the deal memorialized. There is a
22 difference between making a deal and
23 memorializing a deal.

24 Q Yes, there is. Did you know, sir, have you read
25 in the newspaper or elsewhere, or been told, the

1 kinds of sums of money that were paid to or on
2 behalf of Mr. Zanidean as a result of his giving
3 evidence in this case? Have you seen the
4 figures, more than \$80,000?

5 A I've heard those kinds of figures, and I don't
6 know how one does the accounting. And I never
7 knew his day-to-day support things. I did know
8 from time to time there were disputes about the
9 day-to-day support.

10 Q Is it fair to say, sir, that if I had sat down
11 with you and you hadn't had solicitor/client
12 privilege problems, and talked to you in, shall
13 we say 1992, six, nine months after your client
14 testified, and told you that your client had
15 received in one way or another more than
16 \$80,000, you would have told me I was full of
17 it?

18 MS. CARSELL: Sorry, Mr. Lockyer?

19 MR. LOCKYER: You would have told me I was
20 wrong?

21 THE COMMISSIONER: Better expression. You know,
22 in part, remember, some of that are charges that
23 the RCMP have charged back to Manitoba as well.

24 MR. LOCKYER: Yes, indeed.

25 THE WITNESS: You know what, I don't know. You

1 are asking me to speculate on things, and I
2 guess I could speculate, I would have to sit
3 down and go through my entire file and figure
4 out what was being paid when. I mean, I would
5 want to look at the accounting.

6 My client at that time was to -- I mean, I
7 feel like I'm being repetitive, but my client
8 was just to basically move from A to B and have
9 immunity. He wasn't to come out ahead
10 financially. What it cost to do that wasn't
11 something that was of great concern to us. He
12 was to be protected from the time his life was
13 in danger to after he testified and then beyond.
14 And I had no idea what those kinds of costs
15 would be. I mean, my role was to get him a
16 witness protection deal and put him back whole
17 somewhere else.

18 BY MR. LOCKYER:

19 Q The correspondence that you had, sir, certainly
20 don't account for that kind of figure; am I
21 right?

22 A That's correct.

23 Q Right. Finally, sir -- or a couple of
24 finallys -- you spoke to Mr. Zanidean after he
25 testified; am I right?

1 A I had spoken to him a number of times after he
2 had testified.

3 Q You spoke to him, I don't know if it was the
4 same day, but certainly within a short period of
5 him testifying?

6 A Yes.

7 Q And did he ever tell you then that he had just
8 received immunity from the charge in
9 Saskatchewan -- or sorry, in Swift Current? My
10 mistake.

11 A No.

12 Q And on reflection, Mr. Kovnats, given everything
13 that's happened with you in this case, on
14 reflection, would you wish that your dealings
15 with the police and your dealings with Manitoba
16 Justice might best have been recorded?
17 MR. PROBER: Might best have been which?
18 BY MR. LOCKYER:

19 Q Recorded?

20 A Probably.

21 MR. LOCKYER: All right, thank you.

22 THE COMMISSIONER: Thank you, Mr. Lockyer.

23 BY MR. LOCKYER:

24 Q By recorded, I meant tape recorded. You
25 understood that is what I meant by recorded?

1 A Yes.

2 Q I didn't mean recorded handwriting.

3 MR. PROBER: I didn't hear that.

4 MR. LOCKYER: By recorded I meant tape recorded,
5 and the witness understood that's what I meant.

6 THE COMMISSIONER: Mr. Kennedy, do you have
7 questions?

8 MR. KENNEDY: No, I don't have any questions of
9 this witness, no.

10 THE COMMISSIONER: Thank you, Mr. Kennedy.

11 MS. CARSWELL: Thank you, Mr. Commissioner.

12 BY MS. CARSELL:

13 Q Good morning, Mr. Kovnats, my name is Kimberly
14 Carswell and I'm here on behalf of the Police
15 Service.

16 A Good morning.

17 Q Now, Commission Counsel, when they took you
18 through your evidence yesterday, took you
19 through your involvement in this matter up to
20 1991. And I would like to talk to you first
21 about the additional involvement that you had in
22 1993. Do you recall that?

23 A No.

24 Q All right. I'm going to have two documents put
25 in front of you, and Ms. Handlin will pass them

1 out at the table. I would ask that the one page
2 document be marked as the next exhibit, please?
3 And that's a portion of the Perry Dean Harder
4 homicide review, specifically page 83. I know
5 that Mr. Libman asked everyone to bring their
6 copies, but I thought, given it was one page, I
7 would provide a copy.

8 THE COMMISSIONER: What number are we at, Madam
9 registrar?

10 THE CLERK: 16.

11 THE COMMISSIONER: Perhaps 16A could be one
12 page.

13 MS. CARSWELL: One page, page 83 of the review,
14 the page number is at the bottom.

15 THE COMMISSIONER: That will be 16A.

16 (EXHIBIT 16A: Page 83 of review of Perry
17 Dean Harder homicide)

18 MS. CARSWELL: The second is a portion of the
19 log book that was kept by Inspectors Hall and
20 Ewatski, that's provided in police disclosure,
21 specifically 30 and 35, and I understand that is
22 likely to be entered as an exhibit in the
23 material to come, but again three copies for
24 Madam registrar.

25 THE COMMISSIONER: That will be 16B, pages 30 to

1 35 of log book of the Hall and Ewatski.

2 (EXHIBIT 16B: Pages 30 to 35 of logbook of
3 Hall and Ewatski)

4 BY MS. CARSWELL:

5 Q Mr. Kovnats, I have put before you, if you can
6 look at what has now been marked as exhibit 16A,
7 it is only a portion of the Perry Dean Harder
8 homicide review, and it discusses your
9 involvement with that review in May of 1993. If
10 you could go to the middle paragraph, the large
11 paragraph, there are three shorter paragraphs.

12 It reads,

13 "On 93/05/21 we attended to his
14 residence...",

15 and they are talking about Mr. Zanidean,

16 "...and quickly confirmed our suspicions."

17 If you go on,

18 "He suggested, Zanidean, that we did not
19 want to hear how he had been treated by the
20 police and justice system, implying that he
21 was dissatisfied with his treatment. He
22 stated he would not talk to us at this
23 time. He claimed he was upset with the
24 means we had used to try and locate him and
25 that we should deal with him through his

1 lawyer, David Kovnats."

2 Next paragraph,

3 "After trying to address his concerns, it
4 was obvious to us he was totally against
5 talking to us, so we told him we would
6 contact his lawyer. We did so, and by
7 means of a three-way conference call we
8 attempted to have Kovnats convince him it
9 would be in his best interest to talk to us
10 about how he had been treated. Kovnats
11 also made it clear that he too was unhappy
12 as to the treatment that he received from
13 some members of the police. He also said
14 that the Justice Department had not fully
15 compensated him for his involvement in this
16 matter. However, he continued to try and
17 convince Zanidean that this was an
18 excellent opportunity for him to express
19 his thoughts on this matter. He offered
20 Zanidean several options on how to
21 facilitate this meeting with us, but
22 Zanidean continued to decline participating
23 in this meeting."

24 Does this assist you in recalling?

25 A I have a vague recollection, but not a firm one,

1 sorry.

2 Q And then I have passed you the log book which
3 has been entered as 16B, because it gets into
4 more detail about the conversations that were
5 had between you and Inspector Hall on that date,
6 that being the 21st of May of 1993. And if you
7 turn to page 31, about, I would say two-thirds
8 to three-quarters of the way down the page, you
9 will see there is a time indicated of 9:40 a.m.
10 Do you have that?

11 A Yes.

12 Q And it says,

13 "Hall calls Kovnats, identifies myself.
14 Kovnats advises he was waiting for my call
15 as he had just got off the phone with
16 Zanidean."

17 A Yes.

18 Q "He relates that as he has had contact
19 with Janie Duncan, a private investigator
20 who he does not want to deal with, he wants
21 to confirm who we are, indicating that he
22 is very nervous."

23 A That's correct.

24 Q "He asks who he should call to confirm our
25 identity and I advised that he could call

1 whomever he wished."

2 And at that point, and I'm not going to read
3 this whole thing to you, you contact Chief
4 Henry, the then Chief of the City of Winnipeg
5 Police Department, and have a discussion which
6 assures you, I take it from this, as to who Hall
7 and Ewatski are and what their mandate is. Is
8 this assisting your recollection?

9 A Yes.

10 Q And during the time that you then talk to Hall
11 and Ewatski, you then enter into a three-way
12 conversation with, or four-way, Hall, Ewatski,
13 yourself and Mr. Zanidean, who comes on to the
14 conference call.

15 "Kovnats is satisfied...",
16 you will see this is the fifth line down,
17 "Kovnats is satisfied and he now calls
18 Zanidean into our conference call. During
19 this call Zanidean is leery about speaking
20 to us and Kovnats tries unsuccessfully to
21 convince him it would be in his best
22 interest to talk with us. He explains that
23 logistically it is not possible for him to
24 be there, but he could be present via
25 conference call. Not acceptable to

1 Zanidean. That Zanidean could be
2 represented by legal aid lawyer. Not
3 acceptable to Zanidean. Kovnats tries very
4 hard to convince Zanidean that he believed
5 we were there with good intentions for
6 Zanidean to talk with us and relate any and
7 all problems that he/they had with the
8 police and or Justice Department, and that
9 our visit had the blessing of Chief Henry."

10 And I'm not going to go on past that. Do you
11 recall this conversation now?

12 A Not in detail. I remember it vaguely.

13 Q All right. And you wouldn't take exception that
14 this is a fair representation of what happened
15 then, that Hall and Ewatski were certainly very
16 interested in speaking with your client, and
17 that they wanted to hear his position and in
18 fact your position on what had happened;
19 correct?

20 A I have a recollection, but it is vague, I'm
21 sorry. I didn't re-open the file. The file
22 wasn't present at the time.

23 Q So you don't have any other notes or any other
24 material from this particular time?

25 A No, not that I'm aware of. I mean, I could go

1 back and search my office.

2 Q I'm not asking you to go back and search your
3 office, Mr. Kovnats.

4 It appears from that contact that
5 Mr. Zanidean's character, if I can call it that,
6 hadn't changed much. He still wasn't very
7 willing to listen to you during this period on a
8 number of points, would that be fair, or take
9 your advice?

10 A I don't know that I would -- you characterize
11 what you want, I don't know that I would
12 characterize it that way.

13 Q But you offered him a number of alternatives and
14 suggested to him that this would be a good
15 avenue for him to explore his complaints;
16 correct?

17 A I believe so.

18 Q He didn't take you up on that advice or avail
19 himself of that opportunity; correct?

20 A Not in my presence.

21 Q In fact, the suggestions that you put forward,
22 he rejected?

23 A According to this memo, yes.

24 Q Now, if I take it from your evidence, both with
25 Commission Counsel and with Mr. Lockyer this

1 morning, the only recollection of police you
2 dealt with were Messrs. Anderson and Paul; is
3 that correct?

4 A No.

5 Q Who else did you deal with?

6 A I dealt originally with two uniformed officers
7 late in the evening, that's how I got involved.
8 I was asked by the police to come to Chelsea
9 Avenue, and I didn't want to go, and they said
10 this is absolutely urgent, we need you, please
11 meet us. We then went to the house on Chelsea,
12 and this is before meeting with Paul and
13 Anderson, and I went to the house on Chelsea.
14 We couldn't get in the front door. They said
15 please try and go in the back door. I didn't
16 want to try and go in. They then forced the
17 door, objects had been sort of stuck in the
18 door, I believe. They flew out at us. The
19 police said they needed my help because I had a
20 client in problems. I said, look, this is not
21 my area, this is not my bailiwick, I want
22 nothing to do with this. And they said, please,
23 please come with us. And in retrospect, I
24 should have never have gone, I should have said
25 forget it, but I did.

1 Q It is my understanding that Mr. Zanidean
2 contacted you the day before your meeting with
3 then officers Anderson and Paul. That was your
4 evidence I believe yesterday, that your meeting
5 was on November 13th, and the day before you had
6 been contacted by Mr. Zanidean in order to
7 assist him in this matter. Did I get your
8 evidence wrong?

9 A No, that's correct.

10 Q What does this other contact have to do with
11 this matter?

12 A Well --

13 THE COMMISSIONER: I take it this was Zanidean's
14 house, was it?

15 THE WITNESS: It was Zanidean's house. What
16 happened was --

17 MR. CODE: It is in the witness statement, tab
18 1, page 1. I didn't review it because it is
19 preliminary, but it is in his witness statement.

20 BY MS. CARSWELL:

21 Q That would have been prior to Mr. Zanidean
22 coming to the attention of the police, though,
23 in this matter?

24 A No, that's not --

25 Q In this matter?

1 A Am I going to answer?

2 Q I hope so.

3 A I'm going to answer, I hope. My understanding,
4 this was an ongoing thing, that's why it is in
5 my statement and that's why I said it.

6 Q And that was the summer?

7 A No. That was in October, I believe, or early
8 November.

9 Q No, I understand, but this first contact was in
10 the summer?

11 A No, it was in October or early November. I
12 can't give you the date.

13 Q If you could look at page 1, and I'm confused
14 because --

15 MS. CARSWELL: All right. Fine, thank you.
16 Mr. Kovnats, that is all right. Commission
17 Counsel has corrected me, I was misreading the
18 statement.

19 BY MS. CARSWELL:

20 Q Throughout this process, would it be fair to
21 say, Mr. Kovnats, that your understanding of the
22 financial arrangements to be made was that
23 Manitoba Justice would be responsible for the
24 payment of any financial assistance to your
25 client?

1 A I don't know who was paying the bill. I don't
2 know if that was ever discussed per se. I dealt
3 with Manitoba Justice. I don't know where the
4 money was coming from. Certain things had to be
5 authorized because Stu Whitley was involved, but
6 I don't know that I ever inquired as to who was
7 paying the entire bill, or where the money was
8 coming from. That wasn't something that was
9 germane to my discussion with them.

10 Q All right. But you understood that the deal was
11 to be negotiated with Manitoba Justice, and not
12 with members of the Winnipeg Police Service,
13 your negotiations were with Manitoba Justice?

14 A My final negotiations were with Manitoba
15 Justice, my original negotiations were with the
16 City of Winnipeg Police. It was them that made
17 the offer.

18 Q When you are talking about police in that
19 instance, you are talking about who?

20 A I believe -- you are asking me to go from
21 memory, and I have predicated all of my
22 testimony on saying, look folks, this is 15, 16
23 years ago, so I want to be very careful here. I
24 believe it was the offer that was made in my
25 office that first day with Messrs. Anderson and

1 Paul. I also met, I believe I met with
2 Mr. Cameron. I also believe I met a
3 Mr. Vandergraaf at some point. Those are the
4 police officers' names that I remember.

5 Anderson and Paul started the thing going,
6 if my memory serves me right, and then they
7 referred me on to someone else in Justice, but
8 it wasn't -- it wasn't him that I dealt with, I
9 think they referred me to Lawlor, but I can't
10 say for sure. And then I was moved -- I was
11 dealing with Bruce Miller all of the time. I
12 also dealt with Graeme Garson and Stu Whitley.
13 Miller brought Mr. Whitley into it, I brought
14 Mr. Garson into it.

15 Q And you described Mr. Whitley, in your evidence,
16 as the banker, that's your understanding of why
17 he was there?

18 A My understanding of why Bruce brought him in is
19 he is the one with the cheques, yes. I don't
20 know -- if I said he was the banker, then I said
21 he was the banker.

22 Q Your first meeting, according to your dockets,
23 with Mr. Miller was either November 21st or
24 December 12st, is that correct, the tab 2
25 dockets?

1 A I can't tell, I don't know what is according to
2 my dockets. I can tell you this, I met him some
3 time between November 12th and December 14th, I
4 met him more than once. I have already
5 expressed my disappointment that my dockets
6 weren't more detailed entered. It is
7 unfortunate, but they are not as detailed as
8 they should be.

9 Q Up until that point in time, you have discussed
10 later problems you were having with your client
11 negotiating on his own behalf. I take it that
12 up to that early stage, he was satisfied with
13 you negotiating for him; would that be correct?

14 A That was my understanding.

15 Q And you indicated that at your first meeting
16 with Mr. Miller -- and whether or not that
17 meeting takes place in early November or
18 December isn't germane to my question -- Miller
19 knew everything, and as I took down your
20 evidence, that there was a major issue in
21 Saskatchewan and minor issues in Manitoba;
22 correct?

23 A In the meetings between November 12th or 13th
24 and my December 14th letter, I don't know if it
25 was at the first meeting with Miller or if I had

1 two meetings with Mr. Miller, he certainly by
2 the end of our meetings expressed to me -- he
3 knew more than I did, because it wasn't just the
4 matter of the Saskatchewan issue which my client
5 had told me about, Mr. Miller was the one who
6 informed me there were other "minor" issues in
7 Manitoba.

8 Q So you would have formed the view then, based on
9 what he was telling you, that he had received
10 information on the Saskatchewan matter as well
11 as some other minor Manitoba matters from the
12 police; correct?

13 A I don't know where he got his information.

14 Q Now, if you could look please at tab 17? And
15 this is the meeting held March. Have you got
16 tab 17 there?

17 A I am at tab 17.

18 Q This is the meeting held on March 25th of 1991,
19 at your office, with Corporal Orr. These are
20 Corporal Orr's notes.

21 A Yes.

22 Q And you have an indication in your docket, and I
23 don't need to take you there because we have
24 dealt with this, at March 26th of this meeting,
25 which you indicate lasts and hour and a half, if

1 I'm reading your docket correctly?

2 A I would have to look at my docket.

3 No. My indication is that I had a meeting,
4 and then I had a discussion with my client, and
5 the total time was 1.3 hours, not an hour and a
6 half. I recorded both items, not just the
7 meeting item.

8 Q All right. Thank you. Now, the purpose of that
9 meeting, as I understand it from both you and
10 Corporal Orr's evidence, was that so you could
11 understand on behalf of your client what the
12 RCMP Witness Protection Program was like and
13 what they could do. Is that correct?

14 A In part. I believe the meeting, I had thought
15 that we were going to see a document that gave
16 us what we had been promised. It wasn't to see
17 what they were going to do, it was to verify
18 what we had been promised. I think that I would
19 rather characterize it appropriately.

20 Q All right. The purpose, in your mind throughout
21 this program, in your negotiations and the
22 reason you had these meetings, you kept
23 referring to wanting to see exactly what the
24 deal was?

25 A Yes, I wanted to get the deal finalized.

1 Q Right. And you wanted to understand exactly
2 what was in the deal, what was going to be in
3 paper for the deal; correct? You have said that
4 a number of times in your evidence.

5 A Yes -- using your words versus my words, I
6 wanted to have the whole deal documented,
7 everything.

8 Q Right. We've heard from Corporal Orr that at
9 the point he had the meeting with you, he had
10 your client's witness protection application.
11 Were you shown that?

12 A I believe I was. I believe it was similar to
13 the paper that is shown -- I can't remember the
14 tab number, you would have to give it to me.
15 MS. CARSWELL: If Madam Clerk could then put
16 before the witness, please, exhibit 6B, tab 16.

17 THE COMMISSIONER: What tab number in 6B?

18 MS. CARSWELL: 16.

19 THE COMMISSIONER: All right. The witness
20 protection application, I guess.

21 MS. CARSWELL: Yes.

22 BY MS. CARSWELL:

23 Q Have you got tab 16?

24 A Yes, I do.

25 Q Is this document familiar to you? Is this the

1 one you would have seen?

2 A I can't say today. I don't have a copy in my
3 file, so he didn't give me a copy.

4 Q No, I am not suggesting that he gave you a copy.
5 You indicated earlier that you thought you were
6 shown a copy of the application at the meeting.
7 And I am wondering if, looking at this, which we
8 have had identified as the application, which we
9 know Corporal Orr says he had at the time of the
10 meeting, whether you recall seeing this
11 document?

12 A I don't recall. I'm not saying it was there or
13 it wasn't, I don't recall.

14 Q Certainly, as Mr. Zanidean's counsel, it would
15 be prudent for you to look through this and
16 ascertain whether the information was correct,
17 because this was the document that was going to
18 allow Mr. Zanidean into the program. Would that
19 be fair?

20 A I have no idea. I don't recall.

21 Q I'm asking you if prudent counsel would want to
22 look at this application in order to make sure
23 that the information is correct, so that their
24 client would get what they thought they were
25 going to get, because it lays out the requests?

1 A Ms. Carswell, if I had been handed this document
2 at the time and I remembered having the
3 document, I would consider that prudent counsel
4 would have read it and gone through it
5 carefully. I do not remember it. I do not have
6 a copy of it. And so I don't know how I can
7 make a comment at this point on it, other than
8 to say if someone handed me this piece of paper,
9 and I was representing Mr. Zanidean at the time,
10 yes, I would have read it over carefully.

11 Q All right.

12 MR. CODE: I don't believe it was ever put to
13 Sergeant Orr by any counsel as to whether or not
14 this document was shown to Mr. Kovnats.

15 MS. CARSWELL: I didn't suggest,
16 Mr. Commissioner, that the document was, that
17 Constable Orr stated he did show it to counsel.
18 I asked counsel if he recalls seeing the
19 document, because Corporal Orr said he had it at
20 that point. He indicated he thought he had, at
21 which point I took him to the document. I don't
22 think that my question was inaccurate at all.

23 MR. CODE: There is an assumption, though, that
24 Corporal Orr could show this to him, that it
25 would be appropriate for him to show it.

1 THE COMMISSIONER: You may proceed with your
2 questions.

3 MS. CARSWELL: Thank you.

4 BY MS. CARSWELL:

5 Q I'm going to ask you, please, to skip through
6 some of the preliminary pages which just set out
7 who the various parties are involved in this.

8 A Are you referring again to this document number
9 16?

10 Q Yes, I am.

11 A What page do you want me to turn to?

12 Q You could flip to, perhaps we will start at page
13 472. This would appear to be a list of the
14 witness's debts, liabilities, assets; correct?

15 A Perhaps you could give me a few minutes to read
16 the whole document, then I will know what I'm
17 dealing with. I don't recall this document at
18 all.

19 Q All right.

20 A And you are asking me to tell you what the
21 document is. It says part 4 continued, so I
22 have to go back to -- it says areas of concern
23 in changing identity. Then it says credit
24 cards, amount owing, so I would imagine that the
25 Sears referred to in there is a debt. I'm not

1 familiar with the document, but I will tell you
2 that's what it looks like to me. Bank accounts,
3 balance \$5 looks like an asset.

4 Q I'm not asking --

5 A You have asked me a question, and I will answer
6 the question. The one thing I made a decision
7 is I'm going to answer questions here the way I
8 want to. And then it appears that you are
9 referring to a vehicle in number 14, that
10 appears to be an asset. That's it, that's what
11 I can tell you about that page.

12 Q Would you take a look at page 474, your name
13 appears; would you agree with that?

14 A My name is there, yes.

15 Q And then there is an employment history?

16 A Item 27 in that document, yes.

17 Q Turn now to page 476, please? And this is a
18 list of the witness's requests. And you would
19 have been interested in knowing what the
20 requests were that the RCMP felt your client had
21 made.

22 My question is simple, Mr. Kovnats. Would
23 you have been interested in knowing what the
24 RCMP perceived as your client's requests?

25 A Of course I would have been interested in

1 knowing what someone perceived.

2 Q If I could take you to tab 24, please, of the
3 volume of documents that was prepared for you,
4 exhibit 15A. Are you there?

5 A I'm at that tab, yes.

6 Q Now we know from your examination with
7 Commission Counsel yesterday that there is no
8 account or docket at tab 2 for this meeting.
9 But you recalled that meeting, generally, which
10 took place at your office with Mr. Zanidean, his
11 wife, Staff Sergeant Vandergraaf, Mr. Miller and
12 yourself?

13 A I have a recollection.

14 Q All right. Do you have a recollection of Staff
15 Sergeant Vandergraaf being very angry with your
16 client at the beginning of that meeting? You
17 will see that in the second paragraph under the
18 note 91/04/29, 9:00 o'clock.

19 "Ray was very upset about the money
20 problems they faced and an extended
21 argument was held between him and Sergeant
22 Vandergraaf."

23 Do you recall that?

24 A I recall reading it.

25 Q You don't recall the argument? I'm not asking

1 you if you recall reading it, it is obvious you
2 have just read it. I'm asking if you recall the
3 argument?

4 A The details of it, no. At that point there were
5 a lot of arguments going on.

6 Q And your client was a fairly excitable
7 individual?

8 A I wouldn't characterize him that way.

9 Q He frequently changed his position on things,
10 you've indicated that?

11 A My client was under a great deal of pressure and
12 seemed to respond to which pressure he was under
13 the most at any given time.

14 Q Your client was telling you that he was under a
15 great deal of pressure; correct?

16 A My client was telling me he was under a great
17 deal of pressure. I observed my client under a
18 great deal of pressure.

19 Q I am going to take you to another point that I
20 found somewhat confusing in your evidence
21 yesterday. If I could take you first to tab 40,
22 and this is another meeting that we have no note
23 for in your dockets. This is the meeting of
24 June 19th. Again, we have Orr's note of this
25 meeting -- and you indicated that you didn't

1 take exception to this note -- that occurs on a
2 Wednesday, June 19th?

3 A Yes.

4 Q All right. And this is the meeting where we
5 have an indication that there is some more
6 discussion about the lump sum payment; correct?

7 A Yes.

8 Q All right. And certainly at this meeting we
9 know that the Winnipeg Police Service is not
10 present. Mr. Miller is there and Mr. Zanidean
11 is there and you are there?

12 A Yes.

13 Q All right. And the idea of a relocation fee is
14 considered attractive by your client and the
15 others at the meeting?

16 A Yes.

17 Q And it is obvious that, despite your general
18 practice of being at the lake at this time, you
19 obviously weren't on this day?

20 A I came in -- I was probably at the lake Monday,
21 Tuesday. I don't always get Wednesday off, but
22 I try to. During the last two weeks of June, my
23 kids used to get out of school for the last two
24 weeks of June, all of the summer programs were
25 started in July. So I never -- I shouldn't say

1 never -- in 1982 I did take off from my office
2 consistent weeks, and the next time was 2006 I
3 think it was. But my general practice is not to
4 be gone the whole week out of my office. During
5 my kids' elementary and up to high school, their
6 school got out mid June. I would take the last
7 two weeks, go up to the lake, I have had various
8 cottages, and I would go up to the lake and try
9 and spend Monday, Tuesday, Wednesday with them.
10 It appears this Wednesday I came in. It also
11 appears Monday, Tuesday --

12 Q That's all I'm suggesting, Mr. Kovnats, this
13 particular day you were obviously not at the
14 lake?

15 A That's correct.

16 Q And then Commission Counsel referred you to the
17 letter that was faxed to you at tab 42, that you
18 referred to as a draft letter?

19 A It was stamped draft, it was sent to my office,
20 and it was stamped strictly confidential for
21 discussion purposes. You see that.

22 Q I understand and I see the stamp. And my
23 question to you is, given that this letter comes
24 on June 21st of '91, and you indicated in your
25 evidence that you had sort of no knowledge of

1 the dealings that lead to this letter, isn't it
2 logical, that given that you have just had a
3 meeting two days before with Mr. Miller and
4 Constable Orr and the RCMP and your client,
5 wherein the discussion of a lump sum payment is
6 discussed and described as attractive, isn't it
7 logical that this letter comes from that meeting
8 two days later? Take a look at the letter?

9 A It is not logical, because if I had been
10 involved, the figure that I heard, and had heard
11 at all times was \$30,000. The figure in my
12 letter was \$30,000. When this letter came,
13 obviously my client and Mr. Miller had met
14 without me again. I had no knowledge of where
15 that came from. I had no knowledge of an
16 agreement at \$20,000. It was not made in my
17 presence.

18 Q But the letter doesn't say -- Mr. Kovnats, if
19 you could take a look at the last paragraph on
20 the first page of that letter? The letter
21 doesn't say, we have agreed on a payment of
22 \$20,000. It says, it is understood that the
23 costs of relocation would be \$20,000. So I
24 would suggest to you that it is not particularly
25 necessary that your client may or may not have

1 had another meeting with Mr. Miller. It is
2 Mr. Miller has come back to you after this
3 meeting with this discussion of relocation
4 costs, and I think it logical that this letter
5 arises out of that meeting two days later?

6 A Mr. Miller had received my comment on a letter
7 from Mr. Garson that I had received
8 approximately a week before this. I don't think
9 Mr. Miller would have written to me with a
10 number less than something that my client had
11 agreed upon, after what I told him in no
12 uncertain terms upon receiving Mr. Garson's
13 letter. I would have found that -- I would have
14 taken the letter, faxed it back to him with a
15 note saying "forget it."

16 MR. CODE: If Ms. Carswell would put the note of
17 the June 19th meeting to the witness, I think
18 she will see it is quite clear that there was no
19 agreement reached at that meeting.

20 MS. CARSWELL: I didn't suggest there was. I
21 said it was discussion at that meeting about a
22 lump sum payment. I didn't suggest there was an
23 agreement reached at that meeting.

24 Thank you. Those are my questions.

25 THE COMMISSIONER: Thank you, Ms. Carswell.

1 MR. GATES: Good morning, Mr. Commissioner.

2 BY MR. GATES:

3 Q Good morning, Mr. Kovnats. My name is David
4 Gates, I'm here representing the RCMP, and I
5 actually have only a very few questions for you,
6 sir.

7 I want to start, if I can, by trying to
8 clear up some confusion that I have about the
9 sequence of events surrounding the actual trial
10 of Mr. Driskell, and what was going on at a
11 number of different points.

12 Can we start with the letter from
13 Mr. Garson that you just referred to, which,
14 sir, you will find at tab number 39. I think it
15 is volume 2 of your materials.

16 A Yes.

17 Q Do you have the letter, Mr. Kovnats?

18 A Yes.

19 Q Now, the letter -- let me just back up for a
20 minute. My understanding is that your client
21 testified at the Driskell trial on June the
22 11th. Is that your understanding as well?

23 A I don't know what date he testified. To this
24 day, I have never looked it up. I have been
25 told today he testified then, but I have never

1 checked it out.

2 Q We understand, or I understand from your
3 evidence earlier today that you had two meetings
4 with Mr. Miller on June the 10th?

5 A I said I believe that to be the case. I can't
6 say for sure. I know I met him once for sure,
7 and I believe twice, but I can't say for sure.

8 Q Can you tell us -- I'm sorry if you already
9 answered this question earlier this morning --
10 can you tell us if the meetings on June the 10th
11 revealed anything to you about when the Crown
12 planned to call your client as a witness?

13 A I don't recall that. I can't tell you. I don't
14 recall the content of the meetings. I know we
15 were trying -- I can't recall the details of the
16 content, I know we were trying desperately to
17 get the arrangement between my client and the
18 Crown memorialized.

19 Q The reason that I take you here is that, I mean,
20 assuming that Mr. Garson, who is the Deputy
21 Attorney General, was he not, at the time?

22 A I don't know if he was the Attorney General or
23 Minister of Justice, but he was the top civil
24 servant, yes.

25 Q Assuming that Mr. Garson's letter of June 12th

1 reached you within a couple of days, what I'm
2 wondering about is the statement in the letter,
3 in the first paragraph, and I quote:

4 "It is understood that at the wish of your
5 client you will be involved throughout the
6 proceedings to attend with him in court
7 when he testifies."

8 Now, if he testified on June 11th, and you
9 receive a letter dated the following day, June
10 the 12th, there is a bit of an inconsistency,
11 wouldn't you say?

12 A The facts speak for themselves.

13 Q You weren't there when he testified?

14 A No. I had been told before that, just shortly
15 before that, not way before that, but shortly
16 before that I wouldn't be required.

17 Q The other area of confusion that I have relates
18 to your understanding as to the status of the
19 Swift Current charges at the time that the
20 agreement with the Province of Manitoba is
21 memorialized, to use your word, Mr. Kovnats.
22 Can you look at tab 42, please? This is a
23 letter dated the 21st of June to you from
24 Mr. Miller; is that correct?

25 A Could you repeat that? I thought it came from

1 Mr. Miller.

2 Q This is a letter from Mr. Miller to you, dated
3 June 21st, sorry?

4 A Yes, that's correct.

5 Q My understanding is that this is the last piece
6 of correspondence from Mr. Miller about the
7 arrangement with Mr. Zanidean?

8 A I don't believe so.

9 Q Do you understand that there was a further piece
10 of correspondence with Mr. Miller?

11 A I don't know for sure. I tried to collect the
12 money six or seven months later.

13 Q Okay. In terms of the arrangement that you had
14 negotiated with Mr. Miller, am I correct in my
15 understanding that this is the letter that you
16 had been waiting for?

17 A No. I was waiting for a much better letter than
18 this.

19 Q This was the only letter that you actually got,
20 though; is that fair to say?

21 A I think so. You have to understand at this
22 point that Mr. Miller, I believed, was dealing
23 directly with my client, and from comments that
24 my client made, you know, I'm going from memory,
25 I apologize again, it is 15, 16 years ago, but I

1 believe they were talking.

2 Q Mr. Kovnats, leaving aside that there may have
3 been some further correspondence which you have
4 just told us about, with Mr. Miller, involving
5 the payment of your account --

6 A No, not payment of my account, the payment of
7 the money for Ray.

8 Q Sorry, regarding the payment of money to
9 Mr. Zanidean?

10 A Yes.

11 Q In terms of the terms of the agreement, in terms
12 of the agreement itself, I believe you have
13 agreed with me that this is the last piece of
14 correspondence from Mr. Miller with respect to
15 the agreement?

16 A It appears to be. I haven't gone through this
17 other book. I would have to look at my file.
18 What I did was I took my file, and I didn't
19 actually photocopy it, the Commission people
20 came to my office and photocopied my file.

21 Q Sorry, Mr. Kovnats?

22 A I would have to go through this book.

23 Q It is okay. My understanding is that there is
24 no further letter which outlines the terms of
25 the arrangement. There may be some further

1 correspondence about the payment of the money,
2 but this is the last letter that deals with the
3 terms of the arrangement?

4 A I believe that to be the case. But you are
5 asking me that, and for me to verify, I would
6 have to go through the file.

7 Q Okay. Let's just take it as a given that it is
8 the last letter.

9 My question, Mr. Kovnats, and sorry it is
10 taking so long to get to it, is, as I read the
11 letter, there is nothing said about immunity?

12 A No, sir, I never got in writing the letter on
13 immunity, that I can recall. I don't see it
14 anywhere. You know, we had immunity, we were
15 promised immunity by the police, we were
16 promised immunity by Mr. Miller, and that
17 promise was made certainly way back before this
18 letter ever came. All I wanted was to get the
19 deal in writing and get it over with.

20 Q That's the last area that I'm going to go to, is
21 what you understood at the beginning. But we
22 are now at the end of your dealings with
23 Mr. Miller with respect to the terms of the
24 arrangement. You agree there is no reference to
25 immunity in this letter of June 21st that's at

1 tab 42?

2 A Well, I don't know how -- I don't know if the
3 reference to witness protection practice
4 includes the immunity or not. There is no word
5 "immunity" in the letter.

6 Q Would you agree there is no explicit reference
7 to immunity from the Swift Current charge?

8 A I would agree.

9 Q I believe you also told us twice, once yesterday
10 in response to a question from Commission
11 Counsel, Mr. Code, and once today I believe in
12 response to a question from Mr. Lockyer, that
13 Mr. Zanidean never told you that after his
14 testimony he had been given immunity by the
15 Winnipeg Police Service relative to the Swift
16 Current charge?

17 A No, that's not the question that was asked of
18 me. The question that was asked of me was, did
19 he contact me and tell me that I have just been
20 given immunity, that I have been given immunity
21 right after he testified. He mentioned that he
22 had immunity, he has told me for years he has
23 had immunity. I have been in touch with him
24 over the years, we have discussed this matter.
25 He had immunity, I believe, starting as early as

1 November, certainly by December, and again even
2 more confirmed by March, going back in
3 1990/1991. There is no question he has had
4 immunity.

5 Q But my question, Mr. Kovnats, and I'm not trying
6 to confuse you, is, we have heard evidence that
7 immediately following his testimony in court on
8 June the 11th, Mr. Zanidean was told that he had
9 immunity from prosecution for the Swift Current
10 arson. And my understanding of your evidence is
11 that Mr. Zanidean never shared that with you?

12 A He never shared that someone had just told him
13 that, no, not that I can recall. I'm not saying
14 he didn't, but I can't recall it. I think that
15 would be pretty important.

16 Q What I'm getting at, Mr. Kovnats, is what was
17 your understanding at the end of all of this
18 about immunity from prosecution for the Swift
19 Current charge?

20 A That he had immunity.

21 Q And that was based on?

22 A That was based on representations made to me for
23 the out-of-province past sins, made early in
24 November, made in December, made in March, and
25 made on a number of occasions as this thing

1 progressed.

2 Q Okay.

3 A I don't mean to sound short. I'm frustrated
4 that I'm getting asked this again and again. I
5 think I have answered it and answered it and
6 answered it.

7 Q I apologize if I have contributed to your
8 frustration. I'm just trying to understand
9 where your understanding came from.

10 A I am sorry, Mr. Gates. My original
11 understanding came from, I believe, and I can't
12 swear 100 per cent to it, but I believe it came
13 from that original meeting with the City of
14 Winnipeg Police, where they said you have
15 immunity. Then I had conversations between that
16 meeting and my December 14th letter, I had
17 conversations and I think meetings with Bruce
18 Miller, and my understanding was confirmed at
19 that time. My understanding was sent in my
20 letter of December 14th. I then had further
21 ongoing discussions with Bruce over a number of
22 months, and I think with some of the police
23 officers, but more with Bruce on this issue than
24 anyone else. And it was never -- we discussed
25 that I was supposed to get the letter

1 confirming, the letter confirming it, the letter
2 confirming it, and it never came. So there is
3 where my understanding was. My understanding
4 was right early on that my client had immunity.

5 Q Can we go back to the beginning of the statement
6 that you just made, and that has to do with your
7 suggestion that the immunity first came to your
8 attention through conversations with the police
9 officers?

10 A In the conversation with --

11 Q Sorry, Mr. Kovnats, before you go there, can we
12 take you to where you dealt with this in your
13 interview with Commission Counsel, that's at
14 page 5, tab 1 of the book, the very top of the
15 page, sir.

16 "Before Kovnats drafted his December 14,
17 1990 letter, the police and Miller had both
18 promised that they would make Zanidean's
19 past sins, in and out of the province, go
20 away, though Kovnats did not know how they
21 planned to accomplish this."

22 Do you recall speaking to Commission Counsel
23 about this?

24 A Yes.

25 Q Can you assist me by breaking this down as to

1 what promises came from the police and what
2 promises came from Mr. Miller, at the beginning?

3 A To the best of my recollection, shortly after
4 Remembrance Day we met in my office, Messrs.
5 Orr, Paul and Mr. Zanidean. I can't remember --

6 Q Sorry, who?

7 A Messrs. Orr, Paul, the police officers, and
8 Mr. Zanidean, and I can't remember whether Susan
9 was there.

10 Q You said Mr. Orr and Mr. Paul?

11 A Sorry, Anderson, sorry, I apologize, not Tom
12 Orr. It was Anderson and Paul who met in my
13 office. I didn't meet Orr until March. Sorry
14 about that.

15 Q Okay.

16 A Anderson and Paul came to my office, met in my
17 boardroom with Ray. Ray said in front of them
18 that they had promised him immunity for
19 everything, including some big item in
20 Saskatchewan. I don't think at that point I
21 knew it was arson, I may have, but I really
22 don't think so. And they said, oh, no, we only
23 promised Manitoba. And Ray reacted to that. I
24 told them then there is no point in being here.
25 I said we can terminate this meeting right now,

1 or I can't tell you the exact words, but I can
2 give you the gist of it.

3 Q Sorry, go ahead?

4 A And then they said no, no, no, he won't have any
5 charges, you don't need to worry, there will be
6 no charges. I was left with the impression,
7 although I can't swear to the exact words that
8 they used, I was left with the impression after
9 meeting with them there would be no charges
10 anywhere against Mr. Zanidean for any past sins,
11 and that I was going to negotiate -- and that
12 they promised us in that meeting that Ray would
13 be moved -- I don't remember all of the details
14 but the basics were he was going to go to B.C.,
15 he was going to have his life, he was going to
16 have a job, they were going to maintain Susan's
17 whatever, and he would be part of the RCMP
18 witness protection and all of that stuff. And I
19 had to negotiate the final details with the
20 Crown. I can't say for sure, but I think they
21 referred me to Mr. Lawlor, but it wasn't
22 Mr. Lawlor who was in touch with me, it was
23 Mr. Miller.

24 And we discussed, I met with Mr. Miller, I
25 discussed with Mr. Miller, I can't tell you how

1 many discussions, I could look at my docket and
2 probably give you an idea. But the general gist
3 of it was, we had an agreement in principle, and
4 I confirmed everything with Ray. And Miller
5 said, David, write me a letter confirming
6 everything. And that's my December 14th letter.
7 The only thing I added to the letter, when I met
8 with Ray to finalize the letter, was that we
9 added -- if my memory, and I'm going from
10 memory, but I'm about 95 per cent certain, but
11 there is a little element of doubt and I'm not
12 going to sit here and say I can recall 16 years
13 later exactly what happened, but I can tell you
14 pretty close -- the only thing I believed that I
15 added to that letter was the issue of handling
16 some alarm systems, because Ray was getting more
17 concerned with his safety.

18 Now, I don't believe that we discussed with
19 the police the first day about the Chevette, but
20 the basics of the deal were certainly discussed.

21 Q At this meeting with the police that I believe
22 you told us took place around Remembrance Day?

23 A Just after Remembrance Day.

24 Q I beg your pardon, Mr. Kovnats, was Mr. Miller
25 or Mr. Lawlor present at that meeting?

1 A No.

2 Q And the meeting took place in your office?

3 A Yes.

4 Q Okay. My last question, Mr. Kovnats, it is not
5 related to this part of your evidence.

6 My friend, Ms. Carswell, asked you some
7 questions about your participation with then
8 Inspector Ewatski and Inspector Hall in their
9 review of the Perry Harder murder investigation
10 in 1993?

11 A I have a vague recollection of it. I didn't
12 re-open the file. I had closed the file and I
13 didn't re-open it at that time.

14 Q Did you speak to Inspectors Hall and Ewatski
15 about your involvement, your personal
16 involvement in this matter?

17 A They have some notes. I don't recall the
18 details of it. I'm sorry. Read their notes,
19 their notes are probably better than anything
20 that I have.

21 Q Do you recall if you told them about the
22 incident that you described for us this morning,
23 that took place in the Winnipeg Police Service
24 office, involving you being confined in a room?
25 THE COMMISSIONER: Public Safety Building.

1 BY MR. GATES:

2 Q Sorry, Public Safety Building?

3 A I don't recall the details of that conversation,

4 I'm sorry. I have been called three or four

5 times over the years by various people, and I

6 can't tell you what each person has asked me.

7 MR. GATES: Thank you very much, Mr. Kovnats,

8 those are my questions. Thank you very much

9 Mr. Commissioner.

10 THE COMMISSIONER: We will take a recess for 15

11 minutes.

12 THE CLERK: All rise. This Commission of

13 Inquiry is now recessed.

14 (Proceedings recessed at 11:30 a.m. and

15 reconvened at 11:45 a.m.)

16 THE CLERK: All rise. This Commission of

17 Inquiry is now recommenced. Please be seated.

18 MR. OLSON: Mr. Commissioner.

19 THE COMMISSIONER: Mr. Olson.

20 BY MR. OLSON:

21 Q Mr. Kovnats, we know each other. I am

22 representing the Attorney General for Manitoba

23 and Mr. Lawlor in these proceedings.

24 A Yes.

25 Q I have a few questions, if I may.

1 I understand from a summary of your
2 evidence, Mr. Kovnats, that you have no memory
3 of meeting Mr. Lawlor with respect to these
4 matters?

5 A Not really. I have a vague recollection of his
6 name coming up, but I don't even remember
7 whether I met with him, sorry.

8 Q Fair enough. I was talking about meeting. You
9 have a vague recollection of his name coming up,
10 let me help you with that, there is a notation
11 both in Sergeant Anderson's and Sergeant Paul's
12 notebooks that on November 13, 1990, they met
13 with you?

14 A Yes.

15 Q And I think that's the meeting you are
16 recalling --

17 A Yes.

18 Q -- shortly after Remembrance Day?

19 A Yes.

20 Q And in their notes, both of them independently
21 record that they gave you the name of Mr. Lawlor
22 as being a contact person on the Crown to deal
23 with the witness protection issues?

24 A Yes. I believe that was the case, but I dealt
25 with Mr. Miller.

1 Q And you have no recollection, I gather, of
2 speaking with Mr. Lawlor at any point either?

3 A Not on this issue, sir.

4 Q Thank you. Tab 12 of the documents in front of
5 you, sir, was a note in Mr. Miller's
6 handwriting, page 2 of that, if you could turn
7 to that?

8 A Yes.

9 Q And I know that you indicated you hadn't seen
10 that until very recently?

11 A Last Friday night.

12 Q Thank you. You recall you've been asked some
13 questions about the word "jeopardy" there?

14 A Yes.

15 Q And, indeed, Mr. Lockyer suggested to you that
16 what else could it mean other than immunity. Do
17 you recall him asking you that?

18 A Yes, I recall.

19 Q Thank you. In fact, what your client had said
20 to you, when you were first retained, was that
21 he needed protection; isn't that what he said?

22 A He indicated that, as well as the immunity, yes.

23 Q Well, what he said was protection, sir. That's
24 the word he used, wasn't it? If I can help you,
25 sir, tab 3 is your memo to file --

1 A Yes.

2 Q -- dictated on June 2nd. Do you see that?

3 A I'm looking at my whole note. Yes, protection
4 and assistance for the witness protection plan,
5 both.

6 Q Right. And your client, we know was afraid of
7 Mr. Driskell?

8 A Yes, he indicated that to me.

9 Q And we have seen that reference, if you want to
10 look at it, it is tab 33.

11 A No. I remember it quite well.

12 Q Right. And we know as well from the documents
13 that are before you, sir, that, in particular,
14 tab 40, we know that Constable Orr of the D
15 Division records at June 19, if you see that
16 entry in June 19 of '06,
17 "On a number of occasions over the past
18 while I have received phone calls from
19 Mr. Miller and Ray..."
20 which I understand to be your client,
21 "...about his protection."

22 A Well, that was the Witness Protection Program.
23 I would use that word in that --

24 Q Well, this isn't your word, sir, it's Constable
25 Orr's?

- 1 A Yes, but you see it in quotations.
- 2 Q Of course.
- 3 A He was the man that was giving us the Witness
4 Protection Program originally, that's what we
5 were told.
- 6 Q But the point of all of this, sir, was your
7 client was afraid of Mr. Driskell and he was
8 seeking protection from day one, and he
9 continued to be concerned with his protection?
- 10 A That's true.
- 11 Q Thank you. Isn't it reasonable to assume that's
12 the jeopardy that Mr. Miller is talking about,
13 sir, they wouldn't leave him in jeopardy, they
14 would see that he was protected?
- 15 A My understanding was that Mr. Miller was going
16 to see him physically protected, financially
17 protected, and immunity protected. I wouldn't
18 limit it by any stretch of the imagination.
- 19 Q I see.
- 20 A I don't know what -- you know, I can't sit here
21 today and tell you what someone else meant in a
22 memo that they wrote 15 years ago, that I never
23 discussed with them.
- 24 Q Fair enough.
- 25 A That I had never seen. I can't tell you, I'm

1 sorry.

2 Q Fair enough. You've also referenced, sir, some
3 concerns you had with members of the Department
4 of Justice not fulfilling either understandings,
5 or agreements, or undertakings, however you want
6 to refer to it, with you?

7 A Yes.

8 Q Exhibit 16A was put to you by Ms. Carswell. Do
9 you have that? Sorry, it's not a tab, sir, it's
10 that loose piece of paper, excerpt from the
11 homicide review report, page 83?

12 A I have it.

13 Q You recall she put to you the second last
14 paragraph on that page, sir? I will give you a
15 minute to look at it, Mr. Kovnats.

16 A Yes.

17 Q Fifth line,

18 "Kovnats also made it clear he too was
19 unhappy as to the treatment he received
20 from some members of the police."

21 Period. No reference about Justice, correct?

22 A That's what this says.

23 Q Yes.

24 A This is their --

25 Q Yes.

1 A -- this is their memo, not mine.

2 Q No. But it's their memo of talking to you, sir?

3 A Yes, that is their memo about talking to me.

4 Q Yes.

5 A I don't recall this conversation.

6 Q I'm sorry?

7 A I don't recall the details of this conversation.

8 Q Fair enough. And I'm trying to refresh your
9 memory. You go on apparently to say to Hall and
10 Ewatski,
11 "He also said the Justice Department had
12 not fully compensated him for his
13 involvement in this matter."
14 Your complaint was you hadn't been paid
15 adequately; correct?

16 A My complaint to them at that time may have been
17 that. We had solved the other issue by then.

18 Q Right. My point was, sir, there is no recording
19 of you ever saying anything to Hall and Ewatski
20 in the '93 homicide review that they were doing,
21 that you had concerns with what the Justice
22 Department did by way of its dealings with you,
23 other than that you didn't get paid enough;
24 isn't that correct?

25 A I don't know. I can't tell you. If you want to

1 know if I had issues with the Department of
2 Justice, my file reveals very clearly that I had
3 issues with their conduct. I'm sorry, but
4 that's the case.

5 Q Then, sir, it was put to you, tab 39, do you
6 have tab 39 in the bundle of documents in front
7 of you, sir?

8 A Yes.

9 Q Yes. That's the letter from Graeme Garson, the
10 then Deputy Minister of Justice?

11 A He was a Deputy Minister, I can't remember if it
12 was Justice, or Attorney General, or whatever.

13 Q Fair enough. This was a letter that you had
14 been waiting for some time because this was your
15 retainer letter?

16 A That was part of what I had been waiting for,
17 yes.

18 Q And you had been quite vocal in saying, I want
19 my retainer letter?

20 A Yes, I had been vocal about that.

21 Q Thank you. And you had been given the assurance
22 by Mr. Miller previously that you could attend
23 for, and with Mr. Zanidean at the trial, if you
24 were to be called as a witness?

25 A That's correct.

1 Q In fact, what you had been given assurance of by
2 Mr. Miller is confirmed by the letter you get,
3 albeit as Mr. Gates says, one day after he has
4 testified. It confirms what that earlier
5 understanding you had with Miller was?

6 A To a certain extent, it also went on -- I
7 responded to this letter to Mr. Miller in very,
8 very vocal terms.

9 Q Well, I'm just talking now, sir, whether you
10 were authorized, at the wish of your client, to
11 be involved in the proceedings when he
12 testified?

13 A To that extent in the letter, on that basis
14 only, that was my understanding.

15 Q Thank you. And if, in fact, you were told by
16 somebody prior to him testifying that you were
17 not required, if it was Miller, as you think it
18 may have been -- you don't have a recollection
19 of it being Miller; correct?

20 A I am reasonably certain in my mind it was
21 Miller, but when you say to say 100 per cent
22 sure, no, but I believe it was Miller, then
23 confirmed by my client.

24 Q If it was Miller, sir, you would have called
25 your client because it was he you were acting

1 for and under his instruction; correct?

2 A No.

3 Q You would not have checked with Ray Zanidean?

4 A Yes, I would have checked with Ray Zanidean. I
5 would not have called my client. I had no
6 access to my client.

7 Q Sir, you were talking to him throughout this
8 period of time?

9 A Only when he phoned me. You asked me if I would
10 have called him, the answer is no, I was not
11 able to call him. Only he could call me.

12 Q Well, then, if you hadn't been able to get his
13 instructions, you would have gone down to the
14 court house when he was --

15 A No. I've indicated to you already, he confirmed
16 it.

17 Q Thank you. I missed that.

18 A I am not trying to be difficult, but I am trying
19 to be careful.

20 Q Sorry, I missed that answer, sir, that you very
21 much. He confirmed it.

22 Now, respect to the issue of the lump-sum
23 payment, and you've been asked several times,
24 and I'm not going to go through that again
25 because you apparently get frustrated with it.

1 A I apologize for getting frustrated. This has
2 been a long time. It's not easy being -- I have
3 gained a whole new appreciation for people who
4 act as witnesses.

5 Q Well, we hope to give you a little bit more
6 experience yet.

7 A Well, I would like less experience, thank you.

8 Q The point of the lump-sum payment, was it not,
9 Mr. Kovnats, that was being discussed with you
10 on behalf of Mr. Zanidean, was to attempt to
11 ensure that your client was not out-of-pocket in
12 being relocated?

13 A Yes, that's correct.

14 Q Yes. You described very carefully and properly
15 so, this was not to put any money in your
16 client's jeans?

17 A Absolutely not.

18 Q Right. And at some point your client requested
19 \$30,000. And if that was the right amount to
20 ensure that he was relocated, then that would be
21 fair; right?

22 A That was my understanding, yes.

23 Q Sure. And when you then get the letter at tab
24 42, from Mr. Miller, you are now told that it
25 understood that the cost of relocation will not

1 exceed \$20,000. And is it your position that if
2 \$30,000 was promised as being the cost of
3 relocation, and now they are satisfied it would
4 only be \$20,000, that he still should have got
5 the other \$10,000 to put into his jeans?

6 A No, sir.

7 Q Thank you. You also referred to, although you
8 have no way of proving it, that your client may
9 have been dealing directly with Mr. Miller?

10 A Is there a question there?

11 Q No. I said I believe you indicated that, I'm
12 just confirming that's what you said, sir, that
13 although you have no way of proving it, you
14 believe your client may have been dealing
15 directly with Mr. Miller. Is that what your
16 understanding was, sir?

17 A At which time? I believe he was dealing -- I
18 know on certain occasions he was dealing, and
19 other times I believed he was dealing.
20 Sometimes my client told me he had dealt
21 directly, and other times it was my belief, I
22 don't know that I had it confirmed.

23 Q What you know is that your client was calling
24 everybody involved, directly, without going
25 through you; isn't that fair?

1 A The term "everybody" is a little expansive, sir.

2 Q Fair enough. He was certainly calling various
3 police officers and talking to them?

4 A I know he was talking to police officers.

5 Q Right. You knew he was talking to Corporal Orr
6 at D Division without going through you?

7 A No, that I did not know.

8 Q Well, we know that now. Tab 40, at the entry
9 that I just referred you earlier at June 19th.
10 "On a number of occasions over the past
11 while I received phone calls from
12 Mr. Miller and Ray."

13 A Well, I guess he and Mr. Miller were phoning
14 him.

15 Q That's my point, sir, that your client was
16 talking to various people without going through
17 you?

18 A I've indicated that before, yes.

19 Q Thank you.

20 A There is no question, my client was doing some
21 of his own negotiation.

22 Q Now, as I recall, sir, and as is noted in tab 2,
23 which is your documents, if you could turn to
24 tab 2? On November 13, that's the first entry,
25 there is a four and a half hour meeting with

1 police?

2 A Well, it may have been with the police and then
3 subsequently with my client. I don't know that
4 it was just the police.

5 Q Fair enough.

6 A As I've explained, my docket entry, my
7 handwriting is atrocious and my staff tries to
8 put in the best they can. If you would like
9 proof or backup, I have some of my staff here
10 now, they would like to tell you.

11 Q What we know is you don't memorialize in your
12 docket sheets any phone calls after that
13 meeting?

14 A No, but it might have included phone calls as
15 well. The way the meeting and telephone comes
16 up in our system is, for meeting you put 2, for
17 telephone you put 1. So that's how it starts.
18 And then you put in -- like I don't write out
19 meeting with so and so. I put number 1 and then
20 I put the guy's name, that's a telephone call.
21 Then I might put meeting, and then it would be
22 with police, and then I might put my client's
23 name in. In this case I didn't. I didn't just
24 meet with the police for fun, I had my client
25 there. But that's how the docketing goes, so

1 that's why you have a 1, or a 2, or a 3, that's
2 the system we use.

3 Q Fair enough. Do you recall when that meeting
4 started with the police, sir?

5 A It was just after Remembrance Day is what I
6 recall now. My docket says it was on the 13th
7 of November.

8 Q Sorry, let me be clear, what time of day the
9 meeting started?

10 A It was in my board room, so it was at the
11 office, so it would have been during business
12 hours. I can't tell you when. I would have to
13 look -- I don't have my time docket with me, but
14 I think there is a note -- isn't there a note in
15 one of the policeman's files about what time we
16 met?

17 Q Yes. If the registrar could put before you
18 exhibit 6A, volume 1 from the book of documents
19 for the examination of Messrs. Vandergraaf,
20 Anderson and Paul, tab 4 of that, sir?

21 A Yes.

22 Q We have had this trouble before, but about
23 halfway through tab 4, it's at page 77 at the
24 bottom, but there is two system of numbers, so
25 just stay with the first system, about halfway

1 through page 77?

2 THE COMMISSIONER: No.

3 MR. OLSON: Don't go too far or you will be into
4 the second book.

5 THE COMMISSIONER: Go to the middle and start
6 looking at it.

7 THE WITNESS: When I go to the middle I'm at 37.

8 THE COMMISSIONER: Okay. Follow through from
9 that.

10 THE WITNESS: And then there is -- oh, my
11 goodness, it jumps.

12 BY MR. OLSON:

13 Q Page 77?

14 A Yes, I have it.

15 Q This is, as we have heard, Sergeant Anderson's
16 notes of the meeting of November 13. You will
17 see in the second paragraph,
18 "Approximately 12:05, Al Paul and I meet
19 with Zanidean and Dave Kovnats."

20 A Yes.

21 Q So we can pinpoint when the meeting starts,
22 12:05 that day?

23 A Okay.

24 Q You have got it at 4.5 hours, so we know it is
25 4:30 or shortly after that?

1 A Well, my time for the day was 4.5 hours.
2 Whether it consisted with only the meeting, that
3 I can't say for sure.

4 Q I understand that, sir. And the name you've
5 been given in that meeting is Lawlor?

6 A I believe it was, but I don't think I ever dealt
7 with Mr. Lawlor.

8 Q I understand that. But even if you made calls,
9 you would be trying to track down Lawlor that
10 same day. And we know you didn't deal with him.

11 A Right.

12 Q And somehow you get to Miller. And, in fact,
13 it's Miller who calls you?

14 A Probably.

15 Q In fact, in your summary of evidence, your
16 statement to Commission Counsel, tab 1, page 2,
17 sir, line 6,

18 "Shortly after he first became involved in
19 the case, soon thereafter he received a
20 call from Bruce Miller."

21 A Yes, he called me.

22 Q Right. So we know in a lengthy meeting, and
23 perhaps after meeting with your client, and
24 perhaps a contact with Lawlor to find out who
25 might be involved, although you don't track

1 Miller down, he eventually calls you?

2 A I would imagine so, yes.

3 Q And yet you say, sir, that you had promises from
4 Miller in respect of everything you had been
5 assured by Anderson and Paul at a meeting on
6 December 13, before you write your December 14
7 letter?

8 A Yes, definitely.

9 Q Well, you certainly didn't have a meeting with
10 him, you didn't either memorialize it, nor did
11 you have the time probably to have a meeting
12 with him?

13 A I had a month.

14 Q So where is the meeting with Miller? Is that
15 memorialized then?

16 A I don't know that it's memorialized. A lot of
17 my memorializing is missed, all right. But I
18 can tell that you, in fact, I thought I met with
19 him twice. I certainly had a lot of telephone
20 conversations with him. I said before, I think
21 I met once -- I said I think I met twice, I know
22 I met at least once with Miller between November
23 and my December letter. I know for a fact we
24 met. You know, that I remember. And I can't
25 remember the exact date, I'm sorry.

1 Q Well, that's understandable.

2 A And I know we had a number of phone calls.

3 Q Well, that's understandable, Mr. Kovnats, after
4 15 or 16 years that you don't recall that level
5 of detail. But my point is this, sir, if
6 anything can be said about the way you practice
7 law is that you are cautious, sir, is that fair?

8 A Not as cautious as I should be, it turns out. I
9 have learned over the years to be more cautious,
10 not because of this, but even today with clients
11 I trust, I don't make memos on every single
12 phone call.

13 Q I understand that, sir. But what you do do, as
14 a practice, when somebody has reached an
15 agreement with you, you would write to them a
16 confirming letter, wouldn't you?

17 A As a general rule, yes, not always.

18 Q Right. And we know you write a letter to
19 Mr. Miller on December 14, that is tab 7?

20 A Right.

21 Q And you don't say "confirming our agreement or
22 understanding"?

23 A Because I added two items to our understandings.
24 And I have made this clear, if you read my
25 statement to the Commission, I cannot confirm

1 certain things, I can't say here's confirming
2 what we agreed, when I'm the one who is changing
3 it slightly. I was asking for a couple of extra
4 items towards my client's safety, which was
5 alarm systems.

6 Q Of course, Mr. Kovnats.

7 A And I have told you that, so there you go.

8 Q Well, you haven't told me, but you told this
9 Commission that.

10 A You were sitting there.

11 Q And let me just say to you, sir, that you're a
12 cautious practitioner. And I suggest to you,
13 you would have written,

14 "Confirming our understanding reached such
15 a date, 1 to 12, I would like the following
16 two points to also be the subject of
17 agreement between us."

18 And you didn't do that?

19 A If I thought that I was dealing with a slippery
20 practitioner, I would have documented it up the
21 ying-yang and I would have done it right. I
22 didn't feel that way. I was dealing with
23 Miller, whom I knew, a person I could trust, and
24 I just wrote a letter and I had it sent off.
25 You know, when I deal with people that I trust,

1 I don't get into as much detail. When you
2 finally do a contract, you do. But when you are
3 just going through it, half the time you don't
4 even write. In the commercial bar, a house
5 deal, if you write me a letter and Bill Olson
6 said, David, here is a trust condition, and I
7 didn't like your trust condition, I would say,
8 hey, Bill, I don't like it, let's note in the
9 file, and I would write on there, Bill changed
10 it, and I would ask you to write the same thing
11 and I wouldn't write a letter back. It is done
12 everyday.

13 Q Mr. Kovnats, not only do you phrase your
14 November 14, 1990 letter like that, I have never
15 seen nothing from you to Miller or to anyone in
16 Justice saying, you know, I had a deal with
17 Justice back then, and here's what the deal was
18 and they reneged?

19 A Excuse me. You have seen my memo of June,
20 whatever it is, the second or whatever. I told
21 everybody, in the presence of the police
22 officers, in the presence of George Dangerfield,
23 I told Miller, either you're honest or you're
24 not, either you honour your commitments or your
25 undertakings or you don't. I was quite upset

1 with him, because I was very definitely, very
2 definitely under the understanding with him that
3 we had an arrangement. We had an agreement in
4 principle, we hadn't ironed out all of the
5 details, we still had to meet with the RCMP.
6 Certain things were sacrosanct and had been
7 agreed it to, in no uncertain terms. And I told
8 Graeme Garson the same thing. Graeme and I were
9 old friends, I worked with Graeme in the 1970s.
10 I was absolutely mortified by what went on that
11 day. So I'm telling you now that we had an
12 arrangement, whether I wrote my letters in the
13 same detail, if I hadn't trusted them, I would
14 have written them in a lot more detail than I
15 did.

16 Q It is not a question of detail, Mr. Kovnats.
17 You never wrote a letter to anyone in the
18 Department of Justice saying, I had this
19 understanding which was binding on the Crown and
20 they had not fulfilled it?

21 A No. I never wrote a letter saying that.

22 MR. OLSON: Thank you. Those are my questions.

23 BY MR. PROBER:

24 Q Good morning, Mr. Commissioner. Mr. Kovnats, we
25 know each other and you know that I represent

1 Mr. Dangerfield.

2 A Yes.

3 Q And I just have four, what I hope to be brief
4 areas of examination. The first one is dealing
5 with the witness protection and immunity issues,
6 both.

7 A Yes.

8 Q As I understand your evidence, you dealt with
9 Director of Prosecutions Miller?

10 A Yes.

11 Q You dealt with Stu Whitley?

12 A Yes, a little bit.

13 Q And a little bit with Graeme Garson?

14 A Dealing with Graeme, I don't know that I would
15 say we actually dealt, I phoned him and I talked
16 to him.

17 Q All right. No phone calls with George
18 Dangerfield on those issues?

19 A Never.

20 Q No correspondence with George Dangerfield on
21 those issues, that is witness protection and
22 immunity?

23 A No.

24 Q No meetings with George Dangerfield, other than
25 the one I will get to in a moment, if we can

1 call it a meeting, at the Public Safety
2 Building?

3 A Correct.

4 Q Okay. Now, talking about meetings, I take it,
5 as best you can recall, you don't have any
6 personal knowledge of any meeting that
7 Dangerfield had with Zanidean?

8 A Other than the one in the Public Safety Building
9 that night, no.

10 Q Right. No. Thank you. And I'm not sure if I
11 understood your evidence correctly, this is the
12 third area, and it's about a meeting with
13 Brodsky, Greg Brodsky. Did I understand your
14 evidence to be that you actually met with him
15 the day before Zanidean testified, that you
16 actually met with Brodsky on June 10th? I know
17 he did memos on June 10th, which we find at tab
18 33, but did you meet with him on June 10th?

19 A No. The only time I met with Greg on this issue
20 was on the Sunday night when he came to my home.

21 THE COMMISSIONER: That may have been the 9th.
22 Was that the 9th or was that an error?

23 MR. PROBER: I think it was the 2nd.

24 THE COMMISSIONER: The 2nd?

25 MR. PROBER: If you look at the memos, Mr.

1 Commissioner, they seem to refer back to the
2 2nd.

3 THE COMMISSIONER: Okay. Thank you.

4 MR. PROBER: Although they are a little
5 misleading because you see the date, June 10th,
6 and immediately on the third memo, I just came
7 from Mr. Kovnats house at 89 Eastgate, I think
8 it says. That is tab 33, but your dockets, are
9 you looking at them?

10 THE WITNESS: No, okay. June 2nd was my
11 mother's birthday, I had been out at the lake at
12 Ponema with her. I came back into the city,
13 there were answering machine messages, I
14 remember that.

15 BY MR. PROBER:

16 Q Okay.

17 A And I came back. There were phone calls. I
18 made the memo. I contacted Miller. In fact,
19 there may have been phone calls on my cell, but
20 I had bad reception at that cottage. Anyway, on
21 Sunday, June 2nd, he came to my home, and right
22 after he left, I sat down and started to dictate
23 this memo.

24 Q That's right. And your memos are dated I think
25 June 3rd and --

1 A No, June 2nd, 9:15 p.m., that's when I started
2 my memo.

3 Q That is when you started your memo.

4 A Yes.

5 Q Okay. Fair enough. There is a meeting referred
6 to, if you look at your docket, the third page,
7 I think it is, they are filed at tab 2. But the
8 third page refers to a two-hour meeting on this
9 matter on June 10thth, an evening meeting.

10 A Wasn't that with Miller?

11 Q Well, I don't know. Did you meet with him in
12 the evening? I think, if memory serves me
13 correctly, there is a meeting referred to, a
14 day-time meeting, if you will, a two-hour
15 meeting earlier on, and then there is an evening
16 meeting of two hours. Am I right about that? I
17 can get my book.

18 A No, that's correct. I can't remember, I didn't
19 memorialize who I met with.

20 Q Right.

21 A I know one of those meetings was involving
22 Miller at some point in the meeting, but I can't
23 tell you exactly.

24 Q What about the other meeting?

25 A I can't tell you.

1 Q Fair enough.

2 A I have indicated that a number of times, and I
3 don't recall.

4 Q It is a long time ago, fair enough. The final
5 area that I have some questions --

6 A You know, one of the things that I have a
7 problem with is because we use this code system,
8 I can, in my mind --

9 Q You use the code system -- it sort of went over
10 Mr. Code's head.

11 A Well, having said that, we use this numerical
12 system in our time keeping, and 2 is a meeting.
13 And because my handwriting is so bad, I can
14 start with a meeting, be meeting with someone,
15 make calls to someone else, and it would
16 involve -- my record keeping is, you know, it
17 starts with meeting, because that was the
18 predominant issue, but I may have 4 or 5 phone
19 calls to other people in it. But when they went
20 to read it, unfortunately my handwriting is such
21 that, as I've said before, they just type in the
22 meeting part because they can't read the rest.

23 Q No problem. But as best you recall, you had one
24 meeting and one meeting only with Brodsky?

25 A At that time, yes.

1 Q Yes. The fourth area that I have some questions
2 on, and you'll be happy to know that I'm not
3 going to take you through all of the lurid
4 details of it like some of my colleagues, the
5 May 26th verbal confrontation with George
6 Dangerfield. As I understand it, you're already
7 at the Public Safety Building?

8 A Yes.

9 Q And Dangerfield arrives some time after you have
10 been there?

11 A I believe so. I think we were in the room with
12 the police and myself and Ray.

13 Q Right.

14 A And he came in.

15 Q Because Ray's wife called you, I think you've
16 been precise about that?

17 A Yes.

18 Q And they had denied him the right to call you,
19 but she called you. You went down there and
20 then Dangerfield comes after?

21 A No. I made arrangements with Bruce to meet him
22 down there.

23 Q Okay.

24 A With Bruce Miller to meet my client.

25 Q Right.

- 1 A Because my calls came from Susan.
- 2 Q Do you happen -- now, again, it's a long time
3 ago, you may not be able to help me out with
4 this, but do you recall how long you had been
5 there before Dangerfield arrived?
- 6 A No.
- 7 Q Okay.
- 8 A The thing I recall is the altercation and then
9 being thrown in that room.
- 10 Q We will get to that in a moment. But in a
11 general way, you know, at least according to
12 your interview with Commission Counsel in the
13 summary, that you arrived and Dangerfield
14 arrives sometime after. And then Miller arrives
15 after that?
- 16 A Miller arrived when I was in the room.
- 17 Q That's what I was going to ask you, but Miller
18 arrives after Dangerfield?
- 19 A Oh, yeah.
- 20 Q Okay. Can you help me with this, do you know
21 how long Dangerfield had been there before
22 Miller got there, approximately? Any idea?
- 23 A I indicated earlier that I didn't know.
- 24 Q Okay.
- 25 A I can tell you the events.

1 Q Well, no, I'm not asking you about that. I'm
2 trying to get some kind of idea.

3 A A timeline?

4 Q Yes, if you can help, but if you can't --

5 A We were in the room, we were talking. The
6 altercation took place. I was grabbed. I was
7 in the other room. I phoned for help.

8 Q Right.

9 A Miller arrives when I was on the phone, right
10 after the hung up from the first person I phoned
11 for help, I was going to phone someone else for
12 help, and Miller arrives.

13 Q The question was, and, well, you've answered one
14 of them, that is you were in the room that the
15 police had put you in when Miller arrived?

16 A Yes.

17 Q All right. And did Miller sort of open the door
18 to let you out, or do you recall?

19 A No. Miller encouraged me to come out. At that
20 point, he couldn't get in.

21 Q Well, no, he couldn't get in, that's true. You
22 had the table up against the --

23 A That's right.

24 Q -- against the door. And as a result of
25 Miller's encouragement, you came out?

1 A Yes. We talked through the door, so to speak.

2 Q All right. Now, the question was, can you help
3 me with times? In other words, can you tell me
4 how long you had been there with George
5 Dangerfield before Miller arrived, how much time
6 elapsed, any idea? And if you don't, that's
7 fine.

8 A I don't know. I'm sorry.

9 Q All right. Fair enough.

10 A It wasn't an hour or anything like that, it was
11 a few minutes. I can't tell you how long,
12 whether it was 10 minutes, 15 minutes, 5
13 minutes, I can't even say.

14 Q Fair enough. The verbal conversation that you
15 have talked about, how long would you say that
16 last?

17 A A couple minutes.

18 Q A couple of minutes, okay. And I think you made
19 it clear that you didn't back down and you
20 weren't about to back down; right?

21 A Absolutely not.

22 Q And after this heated exchange, there was no way
23 that you wanted anything to do with Dangerfield
24 in talking about the December 14th letter or its
25 contents; right? You wanted to talk to Miller,

1 you didn't want to talk to Dangerfield; correct?

2 A Correct.

3 Q You were upset with him; right?

4 A Yes.

5 Q And you didn't want to talk to him about

6 anything, if I could put it that way?

7 A That's correct.

8 Q Now, we know, according to what you've told us,

9 that Dangerfield leaves before Miller? And

10 Miller stays back, right?

11 A Yes.

12 Q And how long did Miller stay, if you can recall,

13 approximately, and discuss the issues of witness

14 protection and the like with you?

15 A I don't recall. You know, that night the most

16 important thing that I recall is --

17 Q The heated exchange?

18 A -- the heated exchange and what happened.

19 Q Right. And about that, Mr. Dangerfield did

20 apologize to you before he left; right?

21 A Yes.

22 MR. PROBER: Thank you. Those are my questions.

23 THE COMMISSIONER: Thank you, Mr. Prober.

24 MR. ABRA: Mr. Commissioner.

25 THE COMMISSIONER: Mr. Abra.

1 BY MR. ABRA:

2 Q Mr. Kovnats, we know each other. I'm acting on
3 behalf of the late Bruce Miller.

4 A Yes, Mr. Abra.

5 Q I'd like to take you, firstly, to tab 2 in the
6 book of documents, volume 1, your time sheets.

7 A Yes.

8 Q Now, it's my understanding that the system that
9 you were using back in 1990 and 1991 was the
10 system of individual slips for each entry, am I
11 correct, for your time records?

12 A On the yellow sheet, there was a bottom sheet.

13 Q Yes.

14 A And what we had --

15 Q And there were white slips that were on top?

16 A Yes, white slips on top.

17 Q And you would make an entry on whatever file you
18 were working on, and the time and the file
19 number, and then it would be recorded on the
20 yellow slip underneath and the white slip would
21 go to accounting; is that the way it worked?

22 A That was the way it was supposed to work. It
23 didn't work that way with me.

24 Q Well, what did you do?

25 A Well, timekeeping has always been a difficulty

1 with me. I would write it out, but I wouldn't
2 have the file number, so I would wait and sit
3 down later and put the file numbers on. Because
4 I would get four or five phone calls in a row,
5 and I would never have the stupid file numbers,
6 so I would flip them around, flip the white
7 slips over. And then I would have to go back
8 and sit down and write those things in, and then
9 grab all of these white things, rip them off,
10 get a whole pile of those stupid things, and go
11 then you would walk to accounting when you had a
12 chance, or have someone else go to accounting
13 when you had a chance and put them in.

14 Q Well, you see, what I haven't been able to
15 understand while looking through your time
16 records, and I've been through them, and
17 according to my information, you have 5.7 hours
18 of what you call miscellaneous.

19 A Yes.

20 Q For which there is no description whatsoever?

21 A Yes.

22 Q You have 32.6 hours of meetings, for which you
23 have no indications of whom you met with or what
24 you were meeting about or what was discussed?

25 A Um-hum.

1 Q And you have 27.2 hours of telephone calls where
2 you haven't recorded who you talked to or for
3 what purpose. Does that sound about right?

4 A I didn't add it up.

5 Q Okay. But you agree with me that all you used
6 to put in, obviously, according to looking at
7 these things, was that you attended a meeting.
8 You didn't put in who you attended it with, or
9 you talked on the telephone, and most of the
10 time you didn't put in who you talked on the
11 telephone with; is that right?

12 A Not necessarily.

13 Q Well, there is some entries where have you got
14 who you talked to, but there are a great many
15 entries related to meetings and telephone calls
16 where you haven't got any indication at all?

17 A Well, you're asking the question in a different
18 way.

19 Q Well, why don't we go to the first page.

20 A Why don't you hear the answer?

21 Q Go ahead.

22 A When I would write out the slips, the
23 handwriting was so bad that the secretaries
24 couldn't decipher what to put. I might write in
25 something. Like if I had a meeting, I might put

1 "meeting with Abra," for example, but if they
2 couldn't tell my handwriting of Abra, they had
3 to get the time entered, because it would take
4 months with me, because that's my one downfall
5 that I've had for many, many years, so the staff
6 would just say, because there was a number, they
7 could do, they could put the date, the time and
8 the file, but they couldn't read the
9 handwriting, but at least they could put in the
10 fact that there was a meeting and it occurred on
11 a certain date. And that's what they would use.
12 So I would put certain things down, and they
13 wouldn't get them typed into the machine.

14 Now, at that point, I was one of I think
15 seven partners, and I couldn't instruct -- you
16 know, they had a system and we used to have
17 arguments about the system. I used to say, I'm
18 more system than your system.

19 Q Mr. Kovnats, that's fine, I am not interested in
20 your internal politics.

21 A Let me finish.

22 Q What I'm asking you is that the whole purpose of
23 that slip system was for lawyers to be able to
24 write on it who they spoke to, and there was
25 also enough room to put on those slips what the

1 conversation was about. And most lawyers did
2 that. Obviously, you didn't?

3 A I don't to this day.

4 Q No. But then, also, I gather, because you don't
5 have any notes, all of the meetings that you
6 attended and all of the telephone calls that you
7 made with respect to this entire Zanidean
8 matter, you made no notes; right?

9 A I made very few notes.

10 Q Well, have you got any? The reason you finally
11 dictated those memos in June at Mr. Brodsky's
12 suggestion was you had no notes whatsoever of
13 what you had done for the previous six or seven
14 months. Am I correct?

15 A No.

16 Q What notes do you have, sir?

17 A I don't have them today. I would have been
18 able, had I thought of it, and we didn't keep
19 the time slips, we used to keep those time slips
20 in little boxes. I could have brought those
21 time slips and I could have probably deciphered
22 what I did from time to time. I do not have
23 those available 15 years later.

24 Q So you had the time slips?

25 A On the time slips there would have been some

1 notations, like those little white slips, there
2 would have been some notations, some notes.
3 But, unfortunately, that those time slips
4 weren't kept with the file, they were kept in a
5 bundle. They were kept in bundles and boxes.
6 And because it's 15 years ago, they're gone.

7 Q Okay. So the time slips are gone. What about
8 when you went to meetings, don't you make notes
9 when you go to meetings of what everybody's
10 talking about?

11 A Not always.

12 Q Do you ever?

13 A Probably less than 50 per cent of the time.

14 Q And you didn't in any of these cases because we
15 certainly have, in this case, because we haven't
16 seen any notes that you made at all of any of
17 the meetings that you allege that you attended?

18 A Excuse me, when I say I attended something, I
19 didn't allege anything. If I say I went to a
20 meeting, I went to a meeting.

21 Q Well, let's take a look at the time sheet.

22 A The time sheets, as I have explained to you,
23 there is no extra time recorded, but there was
24 lots of time not recorded, it appears. And,
25 frankly, there's documents showing that,

1 including letters that don't show up, which
2 means that they didn't even enter that time.
3 I'm not in a position to go back and correct the
4 staff of 15 years ago. I can tell you today
5 that I have the same issues with time keeping,
6 but I try to keep track of my time and I bill by
7 my time or I bill by the file. A lot of my
8 files are set fee files, so it isn't as
9 important for me to keep track of the time.
10 This was a time file and I would make notes.

11 Q It is not the time I'm concerned about --

12 THE COMMISSIONER: Mr. Kovnats, I know you are
13 trying to be helpful and I know you are trying
14 to be accurate, but if you could try to be a
15 little more pointed in your answers?

16 THE WITNESS: Okay. Sorry.

17 THE COMMISSIONER: Thank you.

18 BY MR. ABRA:

19 Q The point I'm making, Mr. Kovnats, I'm not
20 concerned about the time entries and how much
21 they total. What I am concerned about is that
22 most of these time entries don't tell us who you
23 met with, or who you talked with on the
24 telephone, and we haven't got any notes of any
25 meetings that you had, or any telephone

1 conversations that you had in order to deal with
2 all of this evidence that you are now giving
3 about things you are so sure about, like all of
4 the times that you talked to Bruce Miller and
5 what you discussed.

6 A No. There are no notes available, at this time,
7 in my possession, to tell you what I talked
8 about on any given day.

9 Q And are you telling us that you made notes at
10 the time?

11 A I'm telling you that I filled in time slips.

12 Q That's not what I asked you. What I asked you
13 was, sir, whether or not when you had meetings
14 or telephone conversations, you made notes?

15 A I don't think I did.

16 Q Okay. And then when you dictated those memos in
17 June, some of which related to events that were
18 at least six months old, you were just going by
19 your recollection of what you thought had
20 happened?

21 A That's correct.

22 Q Okay. Now, when you --

23 A Excuse me, that's not totally correct. As
24 you'll notice in one of the memos, I instructed
25 my secretary to look up a date, or I said I

1 would look up the date. I don't know and I
2 can't tell you today, but my habit quite often
3 is to dictate and also give instructions in
4 dictation. And then those instructions get
5 carried out and added into the dictation,
6 because that's the way I work.

7 Q Well, I'm not as concerned about the dates, sir,
8 as I am what you've put in the memos and their
9 accuracy. And is it your evidence that those
10 memos that you dictated in June of 1991, some of
11 which go back as much as six months, were
12 dictated totally off the top of your head from
13 what you believe you remembered happening?

14 A I think the answer to that is no.

15 Q Well, then you tell me what you did use?

16 A It is not what I believed I remembered, it is
17 what I remember happening. You used the word
18 "believed."

19 Q Oh, you didn't like my use of the term believed?

20 A That's correct.

21 Q So you had a photographic memory of everything
22 that happened six months before?

23 A No, Mr. Abra. Did you read my --

24 THE COMMISSIONER: No, Mr. Kovnats, you are not
25 allowed to ask questions.

1 THE WITNESS: Mr. Abra, I made it very clear in
2 my statement to the Commission that I was
3 relying on memory. I was relying on the -- and
4 that those memos had never been edited by me to
5 make sure that they are 100 per cent correct. I
6 believe them to be, if you want to use your word
7 "believe," about 99 per cent accurate. I am not
8 going to say that I could remember six months
9 later every single detail. And I made that
10 clear in my statement to the Commission. I
11 didn't want anyone to think that I was making a
12 claim that I have a photographic memory or that
13 I was 100 per cent accurate on every single
14 point.

15 BY MR ABRA:

16 Q Mr. Kovnats, again, I think the question's quite
17 simple. When you dictated those memos, was it
18 what you remembered happening or did you have
19 anything to refer to?

20 A At the start of the memo, the first memo, I want
21 to deal with each memo separately, on the
22 June 2nd memo that I started on June 2nd and
23 finished on the 3rd, the part that I dictated on
24 June 2nd was strictly from memory, sitting in my
25 home, I didn't have the file with me. I don't

1 know for sure whether I looked at the file on
2 the 3rd when I finished dictating the memo. I
3 finished it the next day, as I indicated to you.
4 Q I see.
5 A The next two memos that I dictated were right
6 after the events occurred.
7 Q The third one?
8 A The second and third memos --
9 Q All right.
10 A -- were dictated right after the events
11 occurred.
12 Q One thing I found interesting was on June 10th,
13 page 3 of your time sheets --
14 A Yes.
15 Q -- there's a whole flurry of activity?
16 A Yes.
17 Q Two meetings, three telephone calls. Now,
18 that's well after you've met with Mr. Brodsky
19 and he has advised you it might be an idea for
20 you to start doing some memos. You didn't do
21 any memo related to everything that you did that
22 day, did you?
23 A I don't know. I can't find it today, that's for
24 sure.
25 Q I see. Now, let's go to the December 4th letter

1 that you sent to Mr. Miller?

2 A I don't believe I sent Mr. Miller a letter on
3 December 4th.

4 Q I said 14th.

5 A I'm sorry, I thought you said 4th. Which tab is
6 that?

7 Q It's tab 7.

8 Now, you told Mr. Olson that you didn't
9 think that it was necessary to put in the letter
10 that the contents of the letter were to confirm
11 a meeting that you had had with Mr. Miller and
12 what you understood to be an agreement that had
13 been made?

14 A No, that's not what I said to him. What I said
15 was I didn't have to detail it in as much
16 detail, it wasn't a final contract.

17 Q Well, what I don't understand is, in a
18 three-page letter where you've set out 14, 15
19 terms, quite specifically, that nowhere do you
20 use the expressions that you had discussed them
21 previously with Mr. Miller or that you had -- or
22 that these were agreements that the two of you
23 had made. There's no mention of having
24 discussed it with Mr. Miller and there's no
25 mention of any agreements. What you do indicate

1 in it is that you talked to your clients. And
2 I'm suggesting to you, sir, what happened was
3 when you talked to Mr. Miller, and you started
4 listing a bunch of things off, he said, look,
5 write to me and we will deal with it. And I'm
6 suggesting to you, sir, that there was never any
7 agreement on the part of Mr. Miller as it
8 related to the contents of this December 14th
9 letter?

10 A Then you would be suggesting wrong, sir.

11 Q I would?

12 A Yes, sir.

13 Q I see. Well, you tell me why there's no
14 reference in there to your having discussed this
15 with Mr. Miller or why there was -- your
16 perception is that there was an agreement made
17 between the two of you when you haven't said
18 that in the least?

19 A Because I discussed it with Mr. Miller. I met
20 with Mr. Miller, and we had an agreement, sir,
21 except for the points that I told you earlier
22 that Mr. Miller had not agreed to. There were
23 two or three points in here that I had added,
24 that's why I didn't say "as we had agreed." If
25 I only wrote what we had agreed, if I had done

1 that, then I would have said that. And in
2 retrospect, I will be more -- it has taught me a
3 lesson, I will be more careful. But we had an
4 agreement, but we did not agree upon number 9,
5 and there is another one, there were two points
6 in here that we had not agreed upon.

7 Q I see.

8 A And I would not be presumptuous and say, oh, we
9 have agreed on everything and then add in things
10 we had not agreed on, sir.

11 Q Do you have any notes from that meeting with Mr.
12 Miller of the items that you discussed in order,
13 for the purpose of framing this letter?

14 A I would have to look at my other book. I don't
15 believe I do, but I have to take a look.

16 Q I'm wondering where these 14 or 15 points come
17 from if you didn't have any notes to discuss
18 them with Mr. Miller before you did the letter?

19 A Because once I did the letter, I have thrown
20 away my notes.

21 Q You're alleging that you had notes?

22 A No, when I prepare a letter, not notes, but when
23 I'm saying to you is this: I go to prepare an
24 agreement or a letter or something, I start off
25 and I take some foolscap and I take some broad

1 notes down, then I refine it and then I dictate
2 it. When I dictate it, I throw away the notes
3 that I used in preparing my letter.

4 Q Mr. Kovnats, so you're telling me, lots of
5 lawyers do that when they are doing something
6 individually, but in this case you're telling us
7 that you had a meeting with Mr. Miller?

8 A Yes.

9 Q And that you discussed a number of items?

10 A Yes.

11 Q All of these items that are in this letter?

12 A Yes.

13 Q And you're telling us --

14 A No, pardon me, not all of the items in the
15 letter.

16 Q Well, you correct me then?

17 A I told you, the two items relating to the alarm
18 system I think it was. I have to go through the
19 letter again.

20 Q Well, leave those two alone. Let's talk about
21 the other 13?

22 A Yes.

23 Q You and Miller discussed those?

24 A Yes.

25 Q And you have no notes whatsoever related to

1 those discussions?

2 A No. When I dictated the letter, I would have
3 thrown out the foolscap.

4 Q Did you make the notes when Miller was sitting
5 there?

6 A I don't know whether he was sitting there or
7 when we were on the phone, but, yes, I made the
8 notes and I would have had the foolscap going
9 with me when I was talking to Miller. Whether I
10 can say that we were sitting together or on the
11 phone together, I would have made the notes when
12 I was talking to Mr. Miller.

13 Q So you're telling us that the way that you
14 practice law is to sit across the table from
15 another lawyer and make notes of a conversation
16 that the two of you are having, and then do a
17 letter that doesn't say further to our meeting,
18 or further to our discussions, or further to our
19 agreement, you just send a letter that reads
20 like this one and then you throw the notes away.
21 Is that how you practice law?

22 A Yes.

23 Q And that's how you practiced law back in 1990?

24 A Yes.

25 Q I see.

1 A I actually do a little better now, but even then
2 I throw away the notes. When I'm dealing with
3 people I trust, I don't sort of keep it. If I'm
4 dealing with certain people, I tell you, I would
5 write a letter a lot differently. And I wish I
6 had today.

7 Q But did you ever think that the people that you
8 are dealing with might have some problems
9 trusting you? And I don't say you personally,
10 but if they see you making notes, they assume
11 that it's an accurate reflection, and then they
12 get the letter that doesn't say what they
13 thought it did, or what they had agreed to? And
14 you can say, oh, well, I threw the notes away,
15 but that's what we talked about. Don't you
16 think that's a bit of a problem?

17 A No.

18 Q You don't?

19 A No.

20 Q No?

21 A Mr.Abra, I'm not involved in much litigation.
22 My agreements go through. My practice runs
23 fairly smoothly. And I don't end up in a lot of
24 fights with this sort of thing. Quite frankly,
25 when I deal with people, I deal with them in a

1 straightforward fashion and things get done.

2 Q Well, what disturbs me, though, Mr. Kovnats, is
3 that you've made so many accusations against
4 Mr. Miller, in dealing with him over a period of
5 six months, of which you have absolutely no
6 record.

7 A Mr. Abra, Mr. Miller is not here.

8 Q I'm quite aware of that.

9 A I was at the point, in June of 1991, I was ready
10 to write a letter to the Law Society complaining
11 about his conduct. I was that disappointed. I
12 consulted with another lawyer about it. It's in
13 my memo. I had never -- that to me is one of
14 the worst things you can possibly do, I was that
15 upset. When I started dealing with
16 Mr. Miller -- I am not making any accusations, I
17 am giving evidence as to what happened at given
18 times. I am not accusing him of anything. If
19 you want to take them as accusations, that's
20 your characterization.

21 Q Mr. Kovnats --

22 A I am going to finish my answer in full. I
23 swore, pardon me, I affirmed because I didn't
24 know whether the Bible had both new and old
25 testament, that's why I affirmed. But I

1 affirmed to tell the whole truth and I'm going
2 to do it. I was so upset by what had happened,
3 I had to -- I had the competing interests of
4 what I felt should be done with Mr. Miller, and
5 I told him that, and I had to worry about my
6 client's interest.

7 Q So when you say you were upset, what were you
8 upset about, what went on at the Public Safety
9 Building?

10 A Oh, I was upset about that, too.

11 Q Well --

12 A I was upset with Mr. Miller, in constant
13 promises to get me a letter, couldn't get me a
14 letter, for a period of almost six months I
15 didn't have a letter from the man confirming
16 certain things.

17 Q Mr. Kovnats, there is not one letter on your
18 file to Mr. Miller, or to anyone else, saying we
19 had an agreement and nobody's doing anything to
20 honour this agreement. In fact, when you
21 finally wrote on June 4th of 1991 --

22 MS. CARSWELL: Which tab, Mr. Abra?

23 MR. ABRA: I'm just looking for it.

24 MR. OLSON: 35.

25 MR. ABRA: 35, I was going all around it.

1 BY MR. ABRA:

2 Q Even in this letter, whereby this time you're so
3 upset with Mr. Miller, because he has gone back
4 on every deal that you think they have made and
5 every promise that he has made to you, not once
6 do you say in that letter, we agreed to this six
7 months ago and you're still not doing anything
8 about it. We had an agreement, you're not doing
9 anything about it.

10 And after the blow-up at the Public Safety
11 Building when you were so furious and accused
12 Mr. Miller of not fulfilling his deal in front
13 of Mr. Dangerfield, you didn't write to
14 anybody --

15 A No, I did not.

16 Q -- to say that I had a deal with Bruce Miller
17 and he is reneging on it, did you?

18 A No.

19 Q No. Have you got any explanation for why not?

20 A Yes. Bruce gave me his word, yet again, and I
21 waited, yet again. Read my memo.

22 Q Well --

23 A When you write a letter, sir --

24 Q Mr. Kovnats, you are not answering my question.

25 A I just did.

1 Q What I asked you was, you said you were so
2 furious with Bruce Miller by this time because
3 he reneged on what you perceived to be a deal?

4 A Yes.

5 Q And you were furious when you left the Public
6 Safety Building, you wanted nothing more to do
7 with George Dangerfield, you were going to
8 report Mr. Miller to the Law Society?

9 A No, I didn't say I was going to, I said I
10 considered it.

11 Q Well, you considered it, sorry. But you didn't
12 write to anybody to say, I've got a problem with
13 Bruce Miller, he's not fulfilling my -- or you
14 didn't even write to Bruce Miller and say, we've
15 had a deal for six months and you haven't done
16 anything about papering it or fulfilling it.
17 You didn't do any of that, did you?

18 A No, I did not do it in a letter.

19 Q And even when you wrote to --

20 A I told him, though.

21 Q Well, you say you told him. And on June -- you
22 have no notes of having told him?

23 A I told you that I told him. My memo that I made
24 in June says that I told him.

25 Q A memo that was made well after most of these

1 events took place?

2 A Well, I reminded him in June for sure, that's at
3 least contemporary at least.

4 Q I go back, Mr. Kovnats, to your June 4th letter
5 at tab 45 of book 2, nowhere in that letter do
6 you say that this was a deal we made a long time
7 ago, please fulfill it?

8 A No, I did not say that in those words.

9 Q No.

10 MR. ABRA: Excuse me, Mr. Commissioner, if I may
11 just have a moment, please?

12 THE COMMISSIONER: Certainly.

13 BY MR ABRA:

14 Q Now, you met twice with Mr. Whitley and
15 Mr. Miller?

16 A I believe it was twice, I would have to check.

17 Q In June?

18 A Pardon?

19 Q In June?

20 A No.

21 Q Sorry, in January?

22 A In January I met with Bruce, and then I think
23 either February or early March.

24 Q What was discussed in those two meetings with
25 Mr. Miller and Mr. Whitley?

1 A We were discussing the Witness Protection
2 Program.

3 Q Yes. What did you discuss?

4 A Putting my client in the Witness Protection
5 Program -- the first meeting we discussed more
6 than just the Witness Protection Program, I am
7 trying to remember.

8 Q Well, what did you discuss, that's what I'm
9 asking you?

10 A Well, let me finish.

11 Q I am asking you specifically what did you
12 discuss?

13 A I am trying to give you the answer.

14 Q Okay. Go ahead.

15 A We discussed my client's safety. We discussed
16 his need for safety, the need for protection. I
17 don't remember whether we discussed anything
18 about immunity, I don't think we did. We were
19 discussing the money matters at that time, and
20 the house deal and his protection.

21 Q Did you make any notes of the meeting?

22 A No.

23 Q None at all?

24 A I don't believe we did.

25 Q Now, those meetings were held when, according to

1 your time sheets?

2 A Well, the one in March was held on the 20th.

3 Q What about the two in January?

4 A No, I said there was one in January.

5 Q The one in January, I'm sorry, sir, go ahead.

6 A Where is my notes, my memo -- the 22nd day of

7 January.

8 Q How do you know?

9 A Well, when I dictated my memo from my so-called

10 belief memory, I said the 22nd of January. And

11 when I looked at the time sheet for the 22nd of

12 January, I have a meeting written down.

13 Q The memo was dictated when?

14 A June.

15 Q Six months after January 22nd?

16 A Yes.

17 Q How do you know that's the meeting you have with

18 Whitley and Miller?

19 A Do we have to go over this again?

20 Q Yes.

21 A Yes. I remember going to meet them. They kept

22 me waiting an hour. And in June of 1991, I

23 remember the date.

24 Q I see.

25 A And my time slip backs it up.

- 1 Q And you have no notes of what was discussed?
- 2 A I have no notes of what was discussed.
- 3 Q Okay. What was the next one? The next one was
- 4 the one that's shown --
- 5 A In March.
- 6 Q -- on March 20th?
- 7 A Yes.
- 8 Q Where you actually say a meeting with Stu
- 9 Whitley and Bruce Miller?
- 10 A Yes.
- 11 Q What was discussed at that one?
- 12 A We were discussing the ongoing issue of -- oh,
- 13 by then we were talking about the house.
- 14 Q Yes.
- 15 A We were also talking about -- I think there had
- 16 been, there were some issues about his allowance
- 17 or his living expenses or whatever. And I am
- 18 trying to remember what else. You are asking
- 19 me -- I can't remember everything that was
- 20 discussed today.
- 21 Q At either of those, or any of those meetings,
- 22 did you ask them about this letter December 16th
- 23 with all of the terms that you had put in it?
- 24 A Yes.
- 25 Q You did?

1 A Oh, I can't say for sure, I know I was asking
2 constantly about it, I can't say on what days.
3 I know I was asking again, and again, and again,
4 and again, please get me a letter.

5 Q Did you make any notes?

6 A No, sir, we know that I have not made notes.

7 Q I see. Can we take it as a fact that you didn't
8 make any notes throughout this entire period
9 until you dictated those memos, is that a given?

10 A I wouldn't say I didn't make any notes, but I
11 made very few notes other than what was noted on
12 the time slips.

13 Q I see.

14 A And I would have had access to those time slips
15 back then, but I don't have access to them
16 today, 15 years later. There would have been
17 jottings on those time slips in those days, but
18 now I just use a one paper system. We got rid
19 of those.

20 Q Now, are you aware of the fact, did it come up
21 in discussions, that you were aware of, or did
22 Mr. Zanidean tell you that the RCMP in Swift
23 Current had indicated a willingness not to
24 proceed with any charges against Mr. Zanidean if
25 he went into the Witness Protection Program?

1 A That was my understanding even earlier than
2 that, but yes, my understanding was that he
3 would not be charged with Swift Current.

4 Q So, effectively, if he went into the Witness
5 Protection Program, he would have had the
6 immunity that he wanted?

7 A No question.

8 Q Right. And Mr. Miller wanted him to go into the
9 Witness Protection Program because he thought it
10 was a better arrangement, it would be more
11 protection for him, and it would give him the
12 immunity that he wanted; right?

13 A He indicated, Mr. Miller indicated to me that he
14 thought it would be better for Ray to be in the
15 Witness Protection Program, it would be better
16 for him overall.

17 Q Yes.

18 A Yes, no question.

19 Q It would be better for him overall because it
20 would be better protection and it would give him
21 the immunity?

22 A I don't know that those words were used, but I
23 remember him favouring, as I indicated before,
24 favouring the Witness Protection Program with
25 the RCMP.

1 Q All right. But notwithstanding that the Witness
2 Protection Program would have given him
3 everything that he wanted, Mr. Zanidean wanted
4 more?

5 A That's not correct.

6 Q He didn't want the Witness Protection Program,
7 but he wanted the immunity?

8 A That's not correct, sir.

9 Q Well, what did he want?

10 A He wanted to be moved to B.C., but the Witness
11 Protection Program wouldn't give him everything
12 that he wanted, by the phrasing of your
13 question. If you read the December 14th letter,
14 that's what he wanted.

15 Q Yes.

16 A The Witness Protection Program would not
17 accommodate all of his desires.

18 Q Yes.

19 A Even though he had been assured of that, and
20 that's reflected --

21 Q Well, I said --

22 A And that's reflected again in, I think it's
23 number 40, Mr. Orr's memo, he had been promised
24 all sorts of things and the Witness Protection
25 Program would not deliver everything that he

1 felt he was promised.

2 Q Well, we are not going to go back to the
3 November 16th letter or memo. You've told us
4 your side of the story, we will save that for
5 argument.

6 The bottom line is there is nothing in that
7 letter that reflects that there was any
8 agreement between you and Miller's agreement as
9 to anything, nor is there anything in that
10 letter that indicates it was even discussed
11 between you and Mr. Miller. So we will save
12 that for argument before the Commissioner.

13 But, in any event, you do agree that if
14 Mr. Zanidean had seen fit to go into the Witness
15 Protection Program, he would have had the
16 immunity and he would have had the protection.
17 The only thing he wouldn't have had was that he
18 couldn't choose where he wanted to go?

19 A No, that's not the only thing. He wouldn't have
20 been able to -- if you go to my December 14th
21 letter, which I would like to refer you to --
22 THE COMMISSIONER: Just for the record, tab 7.
23 THE WITNESS: He would have had item number 1,
24 item number 2, item number 3, item number 4,
25 item number 5, item number 6. Item number 7, he

1 would not have had necessarily. Item number 8,
2 he would have had. Item number 9, which was
3 new, wouldn't have been part of it. Item number
4 10 was not going to be part of it.

5 BY MR. ABRA:

6 Q This was a shopping list that Mr. Zanidean had
7 given to you, wasn't it?

8 A No. There was a larger shopping list
9 originally. This is what Miller and I had
10 agreed, save and except for the alarm systems.
11 All right, that was 9 and 12, those were the two
12 items that had not been agreed to before.

13 Q Again, at the meeting that you have no notes of?

14 A No. It wasn't only at the meeting, it was as a
15 result of the meetings and the telephone calls.

16 Q Of which you have no notes?

17 A Of which I can't find -- no, at this point I
18 don't have any notes.

19 Do you want me to finish the rest of the
20 letter or just stop?

21 Q No, that's fine, sir. Although many of --
22 you'll agree with me the numbers 1 through 4
23 were actually accomplished, number 5 was
24 accomplished?

25 A Wait a minute. 1 was accomplished, 2 was

1 accomplished, 3 was accomplished, 4 was never
2 accomplished, 5 was accomplished.

3 Q Well, they were accomplished to the extent that
4 you got paid after negotiating your fees with
5 the Crown. You were paid by the Crown?

6 A I was never paid properly by the Crown.

7 Q When you say you weren't paid properly, that's
8 because they threatened to tax your account?

9 A Absolutely not, sir. The reason I --

10 THE COMMISSIONER: Absolutely not is good.

11 THE WITNESS: Absolutely not, sir.

12 BY MR. ABRA:

13 Q You negotiated a settlement with respect to your
14 fees?

15 A I was coerced into a settlement with respect to
16 my fees because of my professional obligations
17 to my client.

18 Q But your fees were paid by the Crown, you agreed
19 to the amount?

20 A I was coerced into the amount by the Crown based
21 on the fact that I had an obligation to my
22 client, Mr. Zanidean.

23 Q Did you accept the amount?

24 A Under duress, and I told them so.

25 Q I see. And then he did get the \$20,000 and he

1 used that figure to move elsewhere. So,
2 effectively, Mr. Zanidean, then, if he had gone
3 into the Witness Protection Program, could have
4 had the immunity he wanted, but he made the
5 decision to take the lump-sum payment in lieu of
6 the Witness Protection Program; is that right?

7 A He also had the immunity he wanted.

8 Q Well, that's what I'm asking you, sir. He knew
9 it was not part of the lump-sum settlement that
10 immunity would be considered?

11 A It was agreed verbally, I've never had it in
12 writing, but he had his immunity. They never
13 prosecuted him either, so he had his immunity,
14 didn't he?

15 Q Well, we won't get into that. That's another
16 issue.

17 MR. ABRA: If I might just have a moment,
18 Mr. Commissioner?

19 THE COMMISSIONER: Yes, absolutely.

20 BY MR. ABRA:

21 Q Now, Mr. Olson asked you about that, or
22 Mr. Gates, one of the two, asked you about the
23 January 12th letter that you got from
24 Mr. Garson?

25 MR. GATES: June.

1 BY MR. ABRA:

2 Q Or June, I am sorry, I get my Js mixed up.

3 In that letter, that was the retainer
4 letter that you had been wanting for some
5 considerable period of time; right?

6 A Yes, sir.

7 Q Confirming the arrangement for Mr. Zanidean;
8 right?

9 A It was supposed to be I guess my retainer
10 letter. What page is that on?

11 MS. CARSWELL: Tab 39.

12 BY MR. ABRA:

13 Q Tab 39, thank you. Now, this letter, in
14 essence, the content of it had been communicated
15 to you months before by Mr. Whitley and
16 Mr. Miller?

17 A No, sir.

18 Q It hadn't?

19 A No, sir.

20 Q What hadn't been?

21 A The idea that they anticipated that it would
22 take approximately 30 hours.

23 Q All right. What else?

24 A That full paragraph,

25 "It is requested that your statement of

1 account give details of the nature of the
2 services performed...",
3 et cetera.

4 Q Let's deal with the first paragraph, sir. The
5 billing accounts, I'm not as concerned about.
6 In particular what I'm concerned about, it says
7 and I quote in the second sentence:

8 "It is understood that at the wish of your
9 client you will be involved throughout the
10 proceedings to attend with him in court
11 when he testifies. Based on past
12 experience it is understood...",
13 and it goes on to the 30 hours?

14 A Yes.

15 Q Now, this letter actually was sent the day after
16 Mr. Zanidean testified?

17 A Yes.

18 Q But isn't it true that you were aware of the
19 fact that the agreement provided that you could
20 go to court with Mr. Zanidean when he was
21 testifying?

22 A My original understanding, as I've indicated
23 before, was that I was to go to him to court.

24 Q Yes.

25 A Mr. Miller, within a week before the court date,

1 told me that my services would not be required
2 there. I confirmed that with Mr. Zanidean.
3 Q You confirmed that with who?
4 A Mr. Zanidean.
5 Q With Mr. Zanidean?
6 A Yes.
7 Q I see. Well, did Zanidean say he didn't want to
8 you go?
9 A He said that I would not be required at court.
10 Q So it was Zanidean's decision --
11 A I don't think it --
12 Q -- that you not go?
13 A I don't know whether it was or it wasn't. I
14 don't want to speculate.
15 Q But he confirmed it wasn't necessary for to you
16 go?
17 A Yes. I've said that before today, a number of
18 times.
19 Q Now, you also testified that Mr. Miller told you
20 that he did not want Mr. Zanidean to see
21 Mr. Brodsky?
22 A That's correct. I don't know whether I said
23 that he wanted to see him. He indicated that it
24 would be better that he not see him. I don't
25 know whether he used the word "want" or

1 whatever. I don't know the words used in the
2 conversation.

3 Q Well, according to Mr. Brodsky, sir, and the
4 memorandum that he has prepared related to
5 various matters, at tab 33, page 404, the third
6 page, he met with you at your home?

7 A Right.

8 Q Amongst the things that you discussed was that
9 you wanted to interview Zanidean?

10 A At which page are we talking about?

11 Q The third page of the memorandum.

12 A Okay.

13 Q And you had passed the request on to Bruce
14 Miller?

15 A Yes.

16 Q Who told you that he would have Mr. Zanidean
17 call you the next day. And I suggest to you the
18 reason that he was to call you was to set up a
19 meeting to meet with Brodsky?

20 A No, sir, that was not the reason he was to call
21 me. The reason he was to call me was I was
22 supposed to receive daily contact from him.

23 Q Well, what Mr. Brodsky has dictated in his memo
24 is that he be allowed to -- that you told
25 Mr. Brodsky that you had passed on your request

1 that he be allowed to meet with his client, who
2 was Mr. Zanidean, in his presence, to Bruce
3 Miller, who said that his client would call him
4 at 2:00 tomorrow, June 3rd, 1991.

5 "I told him that I wanted to talk with him
6 tonight. The case was starting tomorrow."
7 And you then told him that you couldn't get
8 ahold of Mr. Zanidean.

9 Now, I don't see anything in that memo that
10 suggests that you told Mr. Brodsky that
11 Mr. Miller doesn't want to you see Mr. Zanidean?

12 A I don't know that it was at that moment that I
13 knew that Mr. Miller didn't want Mr. Zanidean to
14 meet with Mr. Brodsky. I could not -- the
15 reason that my client would call me at 2:00
16 tomorrow was that we were to have daily calls.
17 That's in number of the documents, sir.

18 Q Did you ever pass on to Mr. Brodsky that
19 Mr. Miller had told him that he couldn't see
20 Mr. Zanidean?

21 A I don't think that Mr. Miller used the words
22 that he would forbid it, I don't think that he
23 could, because we discussed the fact that there
24 was no property in a witness. But I believe
25 that Mr. Miller's indication to me was that it

1 would be better that he not meet with him.

2 Q Did he say why?

3 A I don't recall.

4 Q I see.

5 A You know, part of the problem is that we are
6 going back some 15 years.

7 Q Well, I quite recognize that, sir. That's the
8 reason notes are often helpful.

9 That's fine, Mr. Commissioner. Thanks very
10 much, sir, I have no further questions.

11 THE COMMISSIONER: Thank you, Mr. Abra.

12 MR. WOLSON: Mr. Commissioner, it's just shy of
13 1:10. We have 20 minutes left, and I'm going to
14 be well in excess of 20 minutes. My preference
15 would be not to have my cross-examination split
16 up over the weekend, and this is a long weekend
17 so it's about four days. I would rather have
18 the flow in one session. And for that reason, I
19 would prefer do it on Tuesday morning, when we
20 return. That would be my preference, if you
21 would allow that. We are going to have to come
22 back, in any event, with this witness. And
23 after me, of course, Mr. Code may have some
24 re-examination.

25 MR. CODE: I wonder if Mr. Tapper has any

1 cross-examination on behalf of Mr. Whitley that
2 could use the time. I'm very concerned about
3 next week, because the two witnesses next week,
4 Mr. Brodsky and Chief Ewatski, have both got
5 serious problems in their calendar and we have
6 to get them completed on the days assigned.

7 MR. TAPPER: I want to remain consistent,
8 Mr. Code.

9 MR. OLSON: Perhaps Mr. Tapper should introduce
10 himself to everyone.

11 THE WITNESS: May I speak, Mr. Code? I have had
12 another two days of my life taken away by this
13 situation. I am booked next week. I would
14 prefer if we could extend the time now and just
15 get this finished once and for all.

16 Everyone else in this room, I think, all of
17 the counsel in this room are certainly getting
18 paid, I am not. And this is taken away from my
19 practice and my time. If we could extend the
20 time a little bit today and get this finished, I
21 would appreciate that. I don't think it's an
22 unreasonable request of someone in my position.

23 THE COMMISSIONER: Mr. Wolson, I think I'm going
24 to have to ask that you begin your
25 cross-examination.

1 MR. WOLSON: Are you prepared to allow me to
2 finish it today, sir?

3 THE COMMISSIONER: The court reporter will have
4 been here for a full two hours, and without a
5 break, we would have to, I think, have a lunch
6 break and then come back. I can accommodate
7 that. It's not my preference, but I can, if
8 that's what the majority here would prefer.

9 MR. WOLSON: May I ask this, sir, if the
10 majority does not want to do that and we do have
11 to come back next week, could we --

12 THE COMMISSIONER: Let me just say this. The
13 flow I don't think is going to mean a whole lot
14 at the end of this inquiry.

15 MR. WOLSON: All right. Thank you, sir.

16 BY MR. WOLSON:

17 Q Good afternoon, Mr. Kovnats. You and I go back
18 a long way.

19 A Yes.

20 Q You know that I'm acting for members of the
21 Winnipeg Police Association.

22 A Yes.

23 Q I would be correct in stating that you're not
24 experienced in dealing with criminal accused who
25 have lengthy records for acts of dishonesty?

1 That's not your bailiwick?

2 A Absolutely not.

3 Q Did you know that your client, Mr. Zanidean,
4 came to the attention of the Winnipeg Police
5 Service on this matter because he phoned to
6 volunteer information to Crime Stoppers
7 regarding the Harder murder investigation?

8 A I was made aware of that, yes.

9 Q Did he tell you that?

10 A Yes.

11 Q Did you know that he met with the police on
12 October 9th and provided them with a statement?

13 A I became aware of that, yes.

14 Q And he provided them statements on October 10th
15 and several after that. Did you know that there
16 were several statements? Did you know that from
17 your client?

18 A I learned some of that from my client in June of
19 '91.

20 Q All right. So when he came to see you in
21 November, when he came to talk to you, he hadn't
22 told you that?

23 A No.

24 Q Did he tell you that he had admitted to the
25 police that he was responsible for an arson in

1 Swift Current? Did he tell you those words when
2 he came to see you in November?

3 A I don't believe so.

4 Q Did he tell you that when he made statements to
5 the police, he would dictate the statements to
6 them, they would write them down, refer the
7 statement back to him for him to read, make any
8 changes that he wanted to make, and then sign
9 it? Did he give you -- did he tell that you?

10 A No.

11 Q Did you know that he had, as time went on,
12 threatened Corporal Orr?

13 A No.

14 Q So I'm assuming, then, he was selective in what
15 he told you? There were things that he didn't
16 tell you that you're either finding out now or
17 you found out months after the fact?

18 A Certainly months after the fact. And, you know,
19 he didn't tell me everything.

20 Q What he told you in terms of its accuracy, you
21 would agree, would depend on whether or not he
22 was telling you the truth? That's common sense,
23 isn't it?

24 A Yes, that's common sense.

25 Q When he went to testify in court, you had talked

1 to him at least sometime in advance of his
2 evidence?

3 A Yes.

4 Q You had impressed upon him the importance of him
5 telling the truth?

6 A Yes.

7 Q You expected he would tell the truth?

8 A Yes.

9 Q But you saw yesterday, when Mr. Code referred
10 you to some evidence that was presented, his
11 evidence, that he wasn't being truthful?

12 A I believe the word I used, I actually saw
13 some -- the first time I saw the transcript was,
14 if I'm not mistaken, the second week of May of
15 this year?

16 Q Yes.

17 A And I said I would have answered the questions
18 that way and that I thought he was mistaken in
19 some of his answers.

20 Q Well, put it this way; if the man would lie
21 under oath, you might say of that man he may lie
22 to you? That possibility or probability may
23 well exist. You would agree with that
24 statement?

25 A If a man, we're not talking about my client

1 right now?

2 Q If Mr. Zanidean lied under oath, you would
3 accede that he may well tell you something
4 that's not true as well?

5 A It's possible. I don't know. I would expect
6 him to be honest with me.

7 Q You would also expect him to be honest with the
8 court?

9 A Yes.

10 Q So when he came to see you, he didn't say to
11 you, David, I made an admission regarding an
12 arson? He didn't say that to you, Zanidean?

13 A I don't believe so. I think what he told me was
14 that he made an admission about a crime, a
15 serious crime in Swift Current, but I don't
16 believe he told me it was arson.

17 Q And as time went on, and in particular after you
18 saw and met with Mr. Brodsky on June 2nd of '91,
19 you then started to make a note of your dealings
20 on this matter?

21 A Yes.

22 Q And as you've testified, your note, at least
23 your June 3rd note, which you dictated on
24 June 3rd, went back over a period of several
25 months?

1 A The one on June 2nd and 3rd, yes, went over
2 several months.

3 Q And what you were doing when you made that note
4 was to record, for purposes of the future, as
5 best you could recall at that time, what had
6 happened up to that date?

7 A Yes.

8 Q And you rely on that note as an accurate, as
9 best you can, as an accurate recollection of the
10 events?

11 A Mainly, yes. I maybe should have edited the
12 note right at the time, but I didn't.

13 Q Well --

14 A I actually took a copy of it to the lake to edit
15 it, but I didn't do it.

16 Q Well, leaving aside the editing for spelling or
17 grammar, the contents per se were intended by
18 you to memorialize the events?

19 A Yes.

20 Q And you rely on that note?

21 A Yes.

22 Q That's the note this that's your best
23 recollection of matters up to that time?

24 A Yes, sir.

25 Q And, of course, at that time you were recording

1 matters that had occurred, many of them, six
2 months in advance, going back to --
3 A Going six months prior.
4 Q -- six months prior?
5 A Yes, definitely.
6 Q Before I go to that note I want to ask you about
7 Corporal Orr. Now, I know you've testified to
8 your relationships with the Winnipeg Police
9 officers and to your relationships with
10 Mr. Miller, but you also had some meetings with
11 Corporal Orr?
12 A Yes.
13 Q Would you say of Corporal Orr that he was, or
14 appeared to you to be the expert in the Witness
15 Protection Program?
16 A I believe that's how he was referred to by
17 others for me.
18 Q And he would, I take it, give you information in
19 a straightforward fashion?
20 A Yes.
21 Q You were content, not necessarily, you weren't
22 happy with what he was saying, but you were
23 content with his honesty?
24 A Yes.
25 Q One of the things he told you very early on, and

1 there was no question about that, was that for
2 your client to get into the Witness Protection
3 Program, he had to be free of investigation or
4 charge; true?

5 A I don't know the words used, but that's the
6 basic intent, yes.

7 Q There is no doubt about it that if he were to go
8 into the Witness Protection Program, you
9 understood from Corporal Orr that he couldn't
10 have an outstanding criminal charge?

11 A That's right.

12 Q And you learned that very early on?

13 A Yes.

14 Q And you can say, in that regard, that if he had
15 chosen to go into the Witness Protection
16 Program, the issue of immunity would have taken
17 care of itself, you would have believed?

18 A Yes.

19 Q Do you know that Orr had had some dealings with
20 your client when you weren't there, that
21 Zanidean had called him, Zanidean had met with
22 him; did you know that?

23 A Not until now.

24 Q I see. Did you know that Orr was so frustrated
25 with your client, and this is the guy who you

1 say was a straight shooter, Orr was a straight
2 shooter with you?

3 A Right, yes.

4 Q He was a straight-up guy?

5 A I had no problems dealing with Constable Orr.

6 Q He was a straightforward person?

7 A I found that.

8 Q Yes. Do you know that -- I am just going to
9 read something to you, it's from exhibit 3, and
10 this is after some months of dealing with your
11 client. He wrote in September 19, 1991, of your
12 client. He said, I received a call from an
13 officer in another jurisdiction who was
14 inquiring about your client, and this is what he
15 said to the officer -- just for the record, it's
16 tab 41 of exhibit 3, Mr. Commissioner.

17 "I advised Sergeant Secondiak...",
18 this is the gentleman that was asking Orr for
19 information,

20 "...to use a hands-off approach with
21 Zanidean. I consider him unpredictable,
22 potentially violent should you do something
23 he does not agree with."

24 That was his assessment of your client by the
25 time he finished with him. And it seems that

1 people who were dealing with Zanidean were
2 getting very frustrated and concerned about him.

3 A That's what it appears.

4 Q Now, Corporal Orr would have had a lot more
5 involvement in dealing with people who had
6 criminal backgrounds and who were previously
7 charged with crimes of dishonesty than you would
8 have had at the time?

9 A Definitely.

10 Q When your client gave an admission to the police
11 of a serious criminal offence in Saskatchewan,
12 and we are told that this happened on
13 October 10th of 1990, of course, you weren't
14 there?

15 A No, I had no knowledge of it.

16 Q And you weren't there when the police responded
17 to him as to what they were going to do with
18 that information? You weren't there when that
19 occurred?

20 A No.

21 Q So you learned in part about that incident from
22 your client when you met him in November?

23 A Yes.

24 Q Now, when was the first time that Mr. Zanidean
25 called you regarding the matter that he wanted

1 to see you about, the issue of protection? When
2 did that occur?

3 A Shortly before the meeting on November, I think
4 the 13th. I don't know, within a few days
5 before that.

6 Q So he had made, and accept this for the purposes
7 of this question, we've heard, and I think it's
8 satisfactorily advanced to this inquiry, that
9 your client made the admission on October 10th,
10 but didn't see you for now approximately a month
11 and a bit after that to talk to you about the
12 Swift Current, or to talk to you about the
13 criminal offence in Saskatchewan?

14 A He didn't come to talk to me about the criminal
15 offence in Saskatchewan. What he came to talk
16 to me about was getting him in to the Witness
17 Protection Program.

18 Q No. But that didn't occur until almost a month
19 after he had made this admission to the police?
20 If the admission was October 10th, he didn't
21 come to you until around the 13th or 12th of
22 November?

23 A That's correct.

24 Q I'm referring to your memo of the 2nd of June,
25 tab 3. Are you with me on that?

- 1 A Yes.
- 2 Q And you start off by what you said already,
3 "Ray Zanidean contacted our office in
4 either late November or early December 1990
5 and advised us he needed protection and
6 assistance for the Witness Protection
7 Program."
- 8 A Yes, it was November 12th, 11th, it was near
9 Remembrance Day.
- 10 Q All right. Given that it appears that you met
11 with Zanidean, Sergeant Anderson and Sergeant
12 Paul in your office on the 13th --
- 13 A Yes.
- 14 Q -- you say that that contact with you was in
15 close proximity to the 13th?
- 16 A Yes.
- 17 Q And I'm assuming, when you made a note for
18 billing purposes of that particular meeting, as
19 you've indicated already, there was time that
20 you noted for discussions with Zanidean alone?
- 21 A Yes. The meeting didn't last four and a half
22 hours.
- 23 Q Of course it didn't.
- 24 A No.
- 25 Q And that discussion may well have happened

1 before the meeting, or it may well have happened
2 after, or both?

3 A I can't tell you today whether it was before or
4 after or both.

5 Q And you say that the meeting took place in your
6 boardroom, reading from the second paragraph;
7 that's so?

8 A Yes.

9 Q Was Susan Fehr there?

10 A I can't remember. I indicated that earlier this
11 morning. I don't remember whether she was. I
12 don't think she was, but I can't remember.

13 Q "Ray Zanidean indicated to me that he had
14 admitted to committing arson in the
15 Province of Saskatchewan."

16 Well, that couldn't be correct?

17 A No, the wording there, "arson," this was
18 dictated six months later, and I have indicated
19 that in my statement to Commission Counsel.

20 Q So when you put the arson down, you are putting
21 in what you subsequently found out?

22 A That's right.

23 Q And you are plugging that in instead of "the
24 serious offence" in Saskatchewan?

25 A That's correct.

1 Q And he told you that the police had promised him
2 immunity from prosecution? That's what he told
3 you?

4 A That's what he told me.

5 Q I want to refer to an excerpt of his evidence,
6 and perhaps it could be the next exhibit?

7 THE COMMISSIONER: Okay. That will be exhibit
8 17.

9 (EXHIBIT 17: Excerpt of Zanidean's
10 evidence)

11 THE COMMISSIONER: Mr. Wolson, I see it is now,
12 unless this is going to be very brief, it's
13 about our lunch break time -- I shouldn't say
14 lunch break -- the break for the day, unless
15 counsel all agree that we should break for lunch
16 and then come back this afternoon.

17 Mr. Kovnats, I had perhaps a little hastily
18 indicated before that we could come back, we
19 might be able to come back this afternoon. But
20 I had entered into an understanding with all
21 counsel as to the hours that we would sit in any
22 given week, and we are at that period now. So,
23 as I say, unless everyone thinks that we should
24 continue after a lunch break, and assuming we
25 have an inquiry reporter for the afternoon --

1 MR. WOLSON: I've just consulted with a few
2 people, I haven't done it in a fashion that I
3 would ordinarily, but I don't think that is the
4 consensus. And, you know, when we had thought
5 of this 1:30 on Thursday, we added a caveat.

6 THE COMMISSIONER: I don't think you need to
7 convince me. I think I would be reneging on my
8 undertaking to counsel if I required them to
9 come back this afternoon.

10 THE WITNESS: Well, this puts me in a spot where
11 I am reneging on clients on Tuesday that have
12 been put off from today. My original subpoena,
13 which I was unhappy about, was going to be
14 Monday. So I have booked things. I have
15 rebooked them now. I have a hearing next week
16 which I have to have a client prepared for,
17 which I will not be in city over the weekend,
18 nor will he. This puts me in a very bad
19 position. I understand my obligations in law.

20 THE COMMISSIONER: Well, I don't know whether
21 counsel might be able to adjust your testimony.
22 Any suggestions?

23 MR. WOLSON: I would say that -- I know
24 Mr. Kovnats has some commitments because I've
25 heard him tell you that -- I would say that it

1 would be unlikely that we would be longer than
2 an hour on Tuesday, and he would likely be free
3 at about, free in the best sense, at about 10:30
4 on Tuesday.

5 MR. CODE: Mr. Lockyer is suggesting that we
6 start at 9:00, which strikes me as a good
7 suggestion, both in terms of conveniencing
8 Mr. Kovnats, to get him in and out, and also to
9 make sure that we get the next two witnesses on,
10 which is my concern.

11 THE COMMISSIONER: The assembled counsel?

12 MR. OLSON: I have no difficulty with 9:00,
13 Mr. Commissioner.

14 MR. ABRA: 9:00 is fine, Mr. Commissioner.

15 MR. PROBER: Absolutely.

16 MR. GATES: Fine, sir.

17 MS. CARSWELL: I'm prepared to go to 9:00. My
18 question is, are we still going to continue
19 through until 5:00 then, or 4:45?

20 MR. LOCKYER: Yes.

21 MS. CARSWELL: Well, I will agree, but I may
22 have some difficulties with some personal issues
23 because of commitments I've already made.

24 THE COMMISSIONER: Okay. Let's just say for now
25 that we will start at 9:00 a.m. on Tuesday

1 morning, and I appreciate the cooperation and
2 the understanding and consideration that each of
3 you are showing to the inquiry and to
4 Mr. Kovnats. And, Mr. Kovnats, I'm afraid
5 that's the best we can do.

6 THE WITNESS: I thank you.

7 THE COMMISSIONER: Thank you.

8 THE CLERK: All rise. This Commission of
9 Inquiry is now adjourned.

10 (PROCEEDINGS ADJOURNED AT 1:34 P.M.)

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COURT REPORTER'S CERTIFICATE

CECELIA REID and LISA REID, duly appointed
Official Examiners in the Province of Manitoba,
do hereby certify the foregoing pages are a true
and correct transcript of our Stenotype notes as
taken by us at the time and place hereinbefore
stated.

Cecelia Reid
COURT REPORTER

Lisa Reid
COURT REPORTER

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