

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

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The Honourable Patrick LeSage, Q.C. Commissioner

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Transcript of Proceedings  
before the Commission sitting  
at the Winnipeg Convention Centre  
Winnipeg, Manitoba

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Monday, July 17, 2006

Volume 1

INQUIRY PROCEEDINGS

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Mr. Jay Prober	For George Dangerfield
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Mr. S. Pinx, Q.C.	For the Association in Defence of the Wrongly Convicted

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1 MONDAY, JULY 17, 2006.

2 Upon commencing at 9:30 a.m.

3

4 THE CLERK: This commission of inquiry hearing  
5 is now in session. Please be seated.

6 THE COMMISSIONER: Good morning, one and all.  
7 What I have arranged is that the media will have  
8 five minutes in which to take shots from  
9 anywhere they wish within the confines of the  
10 hearing room, after which they will then be  
11 confined to fixed cameras. So for the next five  
12 minutes, put on your best Pepsodent smile and  
13 you may be on camera.

14 (Proceedings paused)

15 THE COMMISSIONER: Okay. I think the period has  
16 expired, so thank you very much.

17 Welcome all as we begin this inquiry. As I  
18 indicated to counsel earlier, this is a new  
19 experience for me and so I will expect guidance,  
20 direction, and correction when necessary as to  
21 whether or not I am straying off into a trial  
22 process as opposed to an inquiry process.

23 I want to thank everyone who has been  
24 involved to date for the extreme cooperation  
25 that you have shown to Commission Counsel and

1 through him to me and to the staff of the  
2 inquiry.

3 I know that when first you met in December,  
4 this date seemed a long way off and we were all  
5 sure that there would be no difficulty in  
6 meeting all of the time lines and having the  
7 appropriate interviews, statements taken, and  
8 the preparation for today. However, as we all  
9 know, like most things, the time, the amount of  
10 material and the issues that arose put a great  
11 strain on everyone who was involved. And I want  
12 to again say how appreciative I am that counsel  
13 has cooperated so fully so that we may be here  
14 today prepared to start the hearings, the viva  
15 voce hearings.

16 I realize there may be occasions where  
17 there may be some material that will be  
18 presented that you may not be able to quickly  
19 put your finger on. However, I hope that  
20 anything that will be presented during the  
21 course of the hearing, you will have been made  
22 aware of and have had copies provided to you.  
23 If that has not occurred, we will assure -- I  
24 assure you we will do our very best to rectify  
25 any such problems.

1           One of the things that is important is that  
2           we remember and always keep in mind the terms of  
3           reference, the Order-In-Council, which are  
4           relatively narrowly focused. This is not a  
5           re-trial, a re-hearing of the Driskell murder  
6           trial, it is an inquiry to look into the conduct  
7           of Crown Counsel who conducted and managed the  
8           trial of James Driskell, and the subsequent  
9           appeal and departmental reviews of his  
10          conviction, and consider whether that conduct  
11          fell below the professional and ethical  
12          standards expected of prosecutors at that time.

13                 Secondly, to inquire into whether the  
14          Winnipeg Police Service failed to disclose  
15          material information to the Crown before,  
16          during, or after James Driskell's trial, and if  
17          so, to consider whether the non-disclosure  
18          contributed to a likely miscarriage of justice  
19          in the prosecution against him. Depending on  
20          the results, the answers to those questions,  
21          which we won't have, of course, for some  
22          considerable time, it is then to give advice  
23          whether the conduct of Crown Counsel or members  
24          of the Winnipeg Police Service should be  
25          referred to the Law Society of Manitoba, or to

1 the Law Enforcement Review Agency, or an  
2 appropriate independent police service for  
3 review and possible investigation by those  
4 bodies.

5           There is what I might refer to as an  
6 ancillary issue -- perhaps ancillary is not the  
7 appropriate word -- but that is to consider the  
8 role of the RCMP laboratory regarding this case  
9 and to review any systemic issues that may arise  
10 out of its role, and then to give advice about  
11 whether any aspect of this case should be  
12 further studied, reviewed or investigated, and  
13 by whom, and to make systemic recommendations  
14 arising out of the facts of the case which the  
15 Commissioner considers appropriate.

16           The last matter is a matter that we won't  
17 really be dealing with at this time, but will be  
18 dealing with some time later, and that is to  
19 consider whether and in what way a determination  
20 or declaration of wrongful conviction can be  
21 made in cases like this, where the circumstances  
22 have unfolded as this one has. I would expect  
23 that that issue will be dealt with later on,  
24 after we have some, at least one or more papers  
25 published on the topic, and then probably will



1 end up having round table discussions, which I  
2 think they are now usually called, as opposed to  
3 viva voce evidence.

4 So I think it is primarily the first two  
5 issues that we need to keep focused on. And I  
6 trust that we will be able to do that, and I  
7 think if we do, we will stay on schedule -- not  
8 that it is the most important thing that we stay  
9 on schedule, but it is certainly desirable.

10 What I propose is that we will begin  
11 sittings each morning at 9:30, we will break for  
12 15 minutes at 11:15, and continue until -- I  
13 have forgotten what compromise we reached when  
14 last we were here, when we were going to have  
15 the lunch break? Some of you have a better  
16 memory than I.

17 MR. CODE: My note is 9:30 to 4:45 with lunch  
18 from 12:30 to 2:00.

19 THE COMMISSIONER: So that's what it will be.  
20 We will have lunch from 12:30 until 2:00, and  
21 then come back at 2:00 and continue until 4:45.

22 Now, already in my first 15 minutes up here  
23 I'm going to have to ask for an indulgence. I  
24 have a personal matter that I need to be back  
25 home for on Thursday evening, and so I'm hoping

1 to get the 5:15 flight, so I do hope that we can  
2 break a little bit early on Thursday afternoon.  
3 So now that I have been the first one to ask,  
4 the rest of you won't feel so embarrassed when  
5 you are asking for an accommodation. I would  
6 think if we broke at 4:30 or thereabouts -- I  
7 think the flight is at 5:30.

8 So, thank you very much. I will now call  
9 on Commission Counsel, Michael Code, to make an  
10 opening statement.

11 MR. CODE: Thank you, Mr. Commissioner.

12 I want to address a number of issues in the  
13 opening statement. First of all, I will speak  
14 briefly about our work plan and schedule. I  
15 will then speak briefly about the proposed  
16 witnesses and the issues as we see them at this  
17 stage. And then finally I will address the  
18 issue of witnesses who are not presently on our  
19 list, but who could potentially be called. And  
20 the rule 18/rule 27 problem, if I can call it  
21 that.

22 First of all, in terms of our work plan and  
23 schedule, you will recall that the government  
24 established this inquiry at the end of last year  
25 on December 7th, 2005, and they gave us until

1 December 31st, 2006 to complete our work. In  
2 other words, we were given essentially a full  
3 calendar year. And what we proceeded to do was  
4 to establish a work plan, which required a  
5 tremendous amount of cooperation from counsel in  
6 order to implement it, but the work plan was  
7 essentially to divide the year, the calendar  
8 year into four quarters.

9 The first quarter from January to March was  
10 devoted to assembling the Department of Justice  
11 file on the case and disseminating it to various  
12 parties who we anticipated would get standing,  
13 and reading it and absorbing it and starting to  
14 learn something about this case.

15 The second quarter began in early April  
16 with the standing applications. Nine parties  
17 were granted standing. And at that point they  
18 formally received the disclosure that had  
19 earlier been circulated, and they came under a  
20 disclosure obligation of their own to circulate  
21 to us any additional documents that were not  
22 already in the Department of Justice file that  
23 had been given to us when our mandate was  
24 established.

25 Also in that second quarter from April to

1 June, and actually into the first week of July,  
2 we conducted witness interviews in order to  
3 determine who should be called at the public  
4 phase of the inquiry. And that is what we have  
5 now just completed. The final witness  
6 interviews were conducted the week before last,  
7 and we have been trying to get the witness  
8 statements out in the last week after the  
9 completion of those interviews.

10 So we are now entering the third quarter  
11 phase, as we conceived of it, from July to  
12 September, in which the public hearings will  
13 take place. And we have five weeks scheduled in  
14 July and August, and then another sixth week in  
15 September.

16 And then finally the last quarter of the  
17 year, from October to December, is devoted to  
18 the writing of the report so that we can deliver  
19 on time at the end of the year.

20 To date I'm happy to report that our work  
21 plan is on schedule. There have been lots of  
22 stresses and strains, but we have managed to  
23 stay on schedule, and I hope to continue that  
24 trend. As you know, commissions of inquiry in  
25 this country have developed somewhat of a

1 reputation for not staying on schedule, and the  
2 public loses confidence in public inquiries that  
3 go on endlessly and don't come to a conclusion  
4 in a timely way. So we hope not to repeat that  
5 experience of some other public inquiries.

6 Like you, Mr. Commissioner, I would like to  
7 thank my colleagues at the bar who have been  
8 tremendously helpful in keeping us on schedule.  
9 Needless to say, there has been lots of ups and  
10 downs over the last six months, trying to get  
11 disclosure out in a timely way, trying to get  
12 witness interviews conducted in a timely way,  
13 and trying to get the witness statements out in  
14 a timely way. And needless to say, there has  
15 been many flaws, some performance has been  
16 better than others, and we all share some  
17 responsibility for both the isolated  
18 shortcomings, but more importantly the  
19 tremendous amounts of hard work that's been done  
20 by everybody to keep this enterprise on  
21 schedule. So I'm very appreciative to my  
22 colleagues.

23 Just yesterday I was on the phone with Mr.  
24 Prober finalizing George Dangerfield's witness  
25 statement, which Mr. Prober had just received on

1           midnight on Thursday, and here he was in the  
2           office on Sunday getting back to me with the  
3           final revisions in less than 48 hours. And that  
4           was illustrative of the kind of tremendous  
5           cooperation that I received from counsel, for  
6           which I'm extremely grateful.

7                     The massive amounts of documentation that  
8           we have had to absorb and the numbers of  
9           witnesses who needed to be interviewed have  
10          obviously made this a great challenge, but here  
11          we are, we are ready to go, and again I can't  
12          express my appreciation to my colleagues  
13          sufficiently in these words.

14                    Could I also thank the inquiry staff, under  
15          Mr. Giasson's direction, who have been a  
16          tremendous support to us. They were all in the  
17          inquiry offices over the weekend, working long  
18          hours to be ready for today, and I'm extremely  
19          grateful to them for their efforts. I think Mr.  
20          Giasson is probably the most efficient and  
21          effective person that I have ever met in my  
22          life, and it has just been a great pleasure to  
23          work with him and his staff.

24                    Could I then turn to the proposed witnesses  
25          and issues because, of course, the proposed

1 witnesses are driven by what we see as the  
2 principal issues that require investigation.  
3 Two weeks ago, on July 4th, we circulated a  
4 tentative list of witnesses to fill the five  
5 week period that we have scheduled in July and  
6 August. And we stress that it is a tentative  
7 list or proposed list, it may change as the  
8 evidence unfolds, and as I receive submissions  
9 and as you receive submissions from our  
10 colleagues, as to any witnesses they think we  
11 have missed or any witnesses they think are  
12 unnecessary.

13 We haven't published the witness list  
14 because of the fact that it is tentative at this  
15 stage, it is not a final list that's written in  
16 stone, but also to protect the privacy of the  
17 witnesses prior to their testimony and ensure  
18 that there is no possible interference with them  
19 before they come to give their evidence. Of  
20 course, once they give their evidence, they are  
21 in the public domain and they can be contacted  
22 by anybody. But until then, we feel we have  
23 some obligation to protect their privacy.

24 I will announce at the commencement of each  
25 week who the witnesses will be for that week so

1           that the media and public will have some notice  
2           as to what to expect during any given week. And  
3           if our friends in the media need any further  
4           information in order to arrange their schedules  
5           and appropriate coverage of the Commission, they  
6           can approach me privately and I will provide  
7           additional information to them to allow them to  
8           do their jobs properly.

9           We established the proposed witness list on  
10          the basis of our analysis of what appear to be  
11          the major factual issues in this inquiry based  
12          on the terms of reference which you've read out  
13          this morning in subparagraphs (a), (b), (c) and  
14          (d) of paragraph 1 of the Order-In-Council. As  
15          you pointed out, subparagraphs (e) and (f)  
16          relate to systemic issues that will be addressed  
17          in the September period, once we have the two  
18          expert reports that we have commissioned and  
19          have assembled panels to discuss those reports.  
20          So we are not focused on subparagraphs (e) and  
21          (f) at this stage, but on (a), (b), (c) and (d).

22          Our preliminary view is that there are four  
23          main factual issues, based on our review of the  
24          documentary record and our interviews of the  
25          witnesses, that need to be addressed by this



1 inquiry. And it is these four factual issues  
2 that have informed our witness list. So let me  
3 set them out, this isn't intended to be any kind  
4 of formal notice, but I thought it would be  
5 helpful to my colleagues and to the Commissioner  
6 if I set out what we see as the four primary  
7 issues. And, of course, this will assist my  
8 friends if they wish to bring a rule 27  
9 application to expand the witness list on the  
10 basis that we have missed some key issue or we  
11 are not focusing on the right issues.

12 So the four issues as see them are as  
13 follows: Number 1, was there non-disclosure of  
14 the financial benefits requested by the Crown  
15 witness Zanidean and/or non-disclosure of the  
16 financial benefits granted to Zanidean. This  
17 issue, to a lesser extent, involves the Crown  
18 witness Gumieny as well, but the significance of  
19 the factual issues in relation to Gumieny are  
20 much reduced compared to the factual issues in  
21 relation to Zanidean. I want to stress in  
22 relation to this first factual issue that the  
23 inquiry involves both the pre-trial and the  
24 post-trial period, and particularly the period  
25 while the appeal was pending after the trial.

1           And I also want to stress that it involves  
2           the negotiations with Zanidean, that is both  
3           what he was seeking and what he received. Since  
4           the two aspects of the negotiation, what the  
5           witness is seeking and what the witness actually  
6           gets, have slightly different relevance in terms  
7           of disclosure obligations. But we will be  
8           inquiring into both sides of the negotiation and  
9           ultimately will take the position, I suspect,  
10          that both sides of the negotiations are relevant  
11          and important for slightly different reasons.  
12          So that's the first issue, non-disclosure of the  
13          financial benefits requested and granted.

14                 The second factual issue is was there  
15          non-disclosure of the "charge immunity  
16          benefits," I'm putting that in quotation marks  
17          because it is obviously a term of art, but was  
18          there non-disclosure of the charge immunity  
19          benefits requested by the Crown witness Zanidean  
20          and non-disclosure of the charge immunity  
21          benefits granted to Zanidean. Once again, this  
22          factual inquiry involves both the pre-trial and  
23          post-trial phases, and again it involves the  
24          negotiations with Zanidean, that is what he was  
25          seeking and what he got because, once again,

1 both sides of the negotiations are relevant for  
2 slightly different reasons. That's the second  
3 area of factual inquiry.

4 The third area of factual inquiry is  
5 whether Zanidean's sworn testimony at the trial,  
6 especially on those first two issues, but not  
7 exclusively on those first two issues, was that  
8 sworn testimony materially false, incomplete, or  
9 misleading in such a way that there was an  
10 ethical obligation on Crown Counsel to correct  
11 the false, incomplete, or misleading evidence.

12 Although the main focus here is on the  
13 first two issues, the financial benefits and the  
14 charge immunity benefits, I want to stress that  
15 the focus is not exclusively on those areas.  
16 For example, Zanidean's testimony about the  
17 Swift Current arson itself is relevant to the  
18 third aspect of the inquiry. So that's the  
19 third issue, Zanidean's sworn testimony and the  
20 obligations on Crown Counsel that arose from  
21 that testimony.

22 The fourth issue is whether the forensic  
23 scientific evidence of the Crown witness, the  
24 Crown expert, Todd Christianson, whether that  
25 evidence was in accord with appropriate

1 professional standards. And that's a discrete  
2 issue that we will address in the last week.  
3 The first four weeks will be devoted exclusively  
4 to those first three issues. Some of it will  
5 spill over into the fifth week as well, I  
6 suspect.

7 The first three witnesses we intend to call  
8 this week, RCMP Officers Burton, Ferguson and  
9 Orr, are primarily, almost exclusively concerned  
10 with the second issue, the charge immunity  
11 benefits to Zanidean.

12 And I stress that these four factual issues  
13 are not the exclusive focus of the inquiry,  
14 there are other less significant issues and  
15 subsidiary issues within the four main issues.  
16 My intent was simply to set out what our primary  
17 focus is at this stage, and obviously as the  
18 evidence unfolds, that focus may shift and  
19 indeed may throw up new and additional issues  
20 that we hadn't anticipated.

21 Finally, could I briefly address the  
22 question of the witnesses who are not on our  
23 tentative list or proposed list? As you know,  
24 Mr. Commissioner, paragraph 4(b) of the  
25 Order-In-Council authorizes interviews by

1 Commission Counsel and goes on to require public  
2 testimony at this public hearing only where  
3 necessary, is the language of the  
4 Order-In-Council, and the necessity test is  
5 qualified as meaning necessary to issues of  
6 accountability, or credibility, or to ensure  
7 cooperation, so the three aspects of the  
8 necessity test in paragraph 4(b).

9 Consistent with this provision, rule 18 of  
10 the inquiry rules permits the filing of those  
11 witness interview statements in writing, without  
12 calling the witnesses, if they fall outside of  
13 those paragraph 4(b) necessity criteria, the  
14 three necessity criteria that I just mentioned.  
15 Obviously, by a process of deduction, my  
16 colleagues can look at our witness list and see  
17 who it is that we do not have a present  
18 intention to call at the public hearing, because  
19 their evidence is not perceived as falling  
20 within the paragraph 4(b) criteria. We propose  
21 at some point during the five weeks that we have  
22 scheduled, and I seek some guidance from my  
23 colleagues and from you, Mr. Commissioner, on  
24 this point, we propose at some point during the  
25 next five weeks to formally tender those witness

1 statements of the witnesses who we do not intend  
2 to call, but who we think necessarily are  
3 sufficiently useful that they should be filed as  
4 part of the formal inquiry record, together with  
5 any related documents. Obviously, we will do  
6 that on notice to the other parties so that they  
7 can consider their position and decide whether  
8 to apply, pursuant to paragraph 27 of the rules,  
9 to have any of these witnesses called.

10 So I simply seek some direction at this  
11 stage, with input from my colleagues, as to when  
12 we ought to do that part of the hearing  
13 exercise; that is to have us, as Commission  
14 Counsel, formally tender a package of statements  
15 that we ask to be admitted without public  
16 testimony pursuant to, as I say, rule 18 and  
17 paragraph 4(b) of the Order-In-Council.

18 There are two options here. We can do it  
19 either sooner or later. If we do it sooner in  
20 the five week period, then that gives us a  
21 little more time to schedule the witnesses in,  
22 in the event that there is a successful  
23 paragraph 27 motion by one of my colleagues. I  
24 suspect that that's an unlikely benefit, since  
25 it looks like we have got a pretty full schedule

1 for the five weeks anyway, but that is one  
2 possible procedural option.

3 The other procedural option is to do it  
4 somewhere towards the end of the five weeks,  
5 after we have given reasonable notice to the  
6 parties of whose statements we intend to tender  
7 pursuant to rule 18, and then allow my friends  
8 time to consider their position as to whether  
9 they want to bring a rule 27 motion.

10 From your perspective, Mr. Commissioner, I  
11 suspect it would be easier for you to apply the  
12 necessity test in paragraph 4(b) if it was done  
13 a little later in the five week period, once the  
14 evidence has had a chance to develop a bit and  
15 you have got a feel for how much you have  
16 learned from the witnesses you have heard, and  
17 whether it is truly necessary to hear the  
18 additional witnesses. But I leave that in your  
19 hands. And obviously I invite any comments,  
20 submissions from my friends as to when it is  
21 they would like to do this rule 18/rule 27  
22 exercise, if I can call it that.

23 Those are all of the submissions that I had  
24 in my opening statement, Mr. Commissioner.

25 THE COMMISSIONER: Counsel of interested

1 parties, you have heard the query that was  
2 expressed by Mr. Code, Commission Counsel,  
3 concerning the timing of filing of statements of  
4 persons who are not proposed to be called as  
5 witnesses. It may well be that it is premature  
6 for you to make any comments at this time, I  
7 don't know. I'm more than willing to hear any  
8 comments you have at this time, but if you  
9 wanted to just hold this matter down, raise it  
10 at any subsequent convenient time, I would be  
11 happy to entertain submissions then.

12 In addition, it may well be practical, if  
13 at some point in the next day or so, all of you  
14 and Commission Counsel sat down in an informal  
15 session and got some idea from Mr. Code as to  
16 what the parameters are, who exactly it is that  
17 he would be suggesting to tender by statements,  
18 and then maybe an informal discussion might help  
19 each of you to better focus as to whether or not  
20 you feel it would be beneficial to have them  
21 filed earlier or later, or at any particular  
22 time, or some at an earlier time, some at a  
23 later time, and/or what witnesses you may think  
24 at this time should be called to be examined, or  
25 ones that you may well say that you would like



1 to reserve your comments on that.

2 I guess simply what I'm saying is we are  
3 not bound by any structure of when you might  
4 make submissions on this issue. However, if  
5 anyone wishes to make any comment at this time,  
6 I'm more than willing to hear it.

7 Okay. Mr. Code.

8 MR. CODE: Before calling Inspector Burton as  
9 the first witness, can I make a brief statement  
10 introducing this week's evidence by way of  
11 overview so that we can understand where we are  
12 going with the proposed evidence this week?

13 As I stated, we propose to begin the  
14 evidence by calling three RCMP officers, or  
15 former RCMP officers, and they are as follows:  
16 First, now Inspector Burton, who is now based in  
17 Toronto, but at the relevant time in 1990 to  
18 1991, he was a young Constable in the Swift  
19 Current, Saskatchewan detachment of the RCMP.

20 Secondly, we will call former Constable  
21 Burton's boss at that time, now retired Staff  
22 Sergeant Ferguson, who was the head of the Swift  
23 Current detachment, in essence, the Chief of  
24 Police for Swift Current because the RCMP  
25 provide contract policing to Swift Current, so

1 he was the head of, in essence, a small town  
2 police force.

3 And thirdly, we will call now retired  
4 Sergeant Orr, who was a corporal at the relevant  
5 time here in Winnipeg working out of the D  
6 division source witness protection program. He  
7 was running the D division source witness  
8 protection program here in Winnipeg in 1991, and  
9 became the officer who dealt with the Winnipeg  
10 Police and with Director of Prosecutions Miller  
11 in relation to Zanidean's witness protection  
12 application.

13 We decided to begin with these three  
14 witnesses for simple reasons of chronology.  
15 That is the Swift Current RCMP investigation  
16 into an arson that had occurred in that city on  
17 July 8th, 1990, chronologically precedes the  
18 Perry Harder homicide investigation. As you  
19 know, Perry Harder's body was not discovered  
20 until September 30th, 1990. So the Swift  
21 Current arson investigation has about a two and  
22 a half month lead on the Winnipeg homicide  
23 investigation.

24 The two investigations, one in Swift  
25 Current in Saskatchewan, and one in Winnipeg,

1 here in Manitoba, eventually come to intersect  
2 and overlap, and run parallel to some degree.  
3 But it is the Swift Current investigation that  
4 starts first for about two and a half months, as  
5 I have said. So we felt it was logical in a  
6 simple chronological sense to begin at the  
7 beginning.

8 The Swift Current investigation eventually  
9 comes to focus on three key suspects, Carol  
10 Hayek, H-A-Y-E-K, nee Zanidean, is the chief  
11 suspect, the owner of the premises that are  
12 burned down, and remains the prime target of the  
13 investigation throughout. And her brother, Ray  
14 Zanidean, and James Driskell quickly become the  
15 focus of the investigation as the alleged  
16 perpetrators who carried out the arson on  
17 Hayek's behalf. So we simply want to trace the  
18 history of these two parallel investigations and  
19 how the Swift Current investigation of Zanidean  
20 and Driskell and Hayek comes to intersect with  
21 the Perry Harder homicide investigation here in  
22 Winnipeg.

23 Could I stress at the outset the importance  
24 of the documents? And this will be a theme with  
25 all of the witnesses called over the next five

1 weeks. Given that we are dealing with events  
2 that took place in 1990, in 1991, events that  
3 are now 15 to 16 years old, there will obviously  
4 be many failures of memory in the course of this  
5 inquiry. Even where some memory exists, the  
6 reliability of that memory will always be in  
7 issue. Accordingly, as often happens with  
8 historical cases, the best evidence is found in  
9 the contemporaneous documents, and we will trace  
10 the story of this Swift Current investigation  
11 far more through the documents than through the  
12 witnesses. The witnesses are really just a  
13 convenient vehicle for getting the documents  
14 before you, but I suspect you will find, as the  
15 witnesses themselves have repeatedly stressed to  
16 us, that all they can tell us is what is in the  
17 documents and they assume the reliability of the  
18 documentary account.

19 As a result, I have prepared a large book  
20 of documents, and this is the work that  
21 Commission staff have been heavily engaged with  
22 me over the last three days, and I will ask that  
23 this book of documents be marked as an exhibit  
24 at the outset so that it can be available to the  
25 media to follow along during the testimony of

1 Inspector Burton. It is styled "Book of  
2 documents for Commission Counsel's examination  
3 of Inspector Ross Burton and Staff Sergeant Ron  
4 Ferguson," and I will use it for the examination  
5 of both witnesses, and I ask that be marked as  
6 exhibit 1 in these proceedings. At that point  
7 it will become a public document and our friends  
8 in the media can follow along with the witness's  
9 evidence.

10 THE COMMISSIONER: Any comment from counsel  
11 about that? It will be exhibit 1.

12 (EXHIBIT 1: Book of documents for  
13 Commission Counsel's examination of  
14 Inspector Ross Burton and Staff Sergeant  
15 Ron Ferguson)

16 MR. CODE: I believe there are two copies at the  
17 back of the room that Mr. Giasson can make  
18 available to the members of the media.

19 Could I then call now Inspector Ross  
20 Burton?

21 ROSS BURTON, having first been duly sworn,  
22 testified as follows:

23 BY MR. CODE:

24 Q Officer Burton, do you have a copy of exhibit 1  
25 before you?

1 A Yes.

2 Q And you will notice that I have inserted at tab  
3 A-1, it is organized tab A, 1 through 50, and  
4 then tab B, 1 through 30, as we ran out of tabs  
5 over the weekend, Mr. Commissioner, we could  
6 only get tabs up to number 50 at the copy shops  
7 that were open.

8 At tab A-1, Officer Burton, we have  
9 inserted your interview statement, of the  
10 interview that Commission Counsel conducted with  
11 you in May, and the reason for that is I do not  
12 intend to examine you on everything covered in  
13 that statement. So could I simply ask you at  
14 the outset, have you had an opportunity to  
15 review the statement before it was put into  
16 final form and inserted in this book?

17 A Yes.

18 Q And are you content with its accuracy?

19 A Yes.

20 Q And wherever possible, I will skip over matters  
21 that can be skipped over, Mr. Commissioner, and  
22 simply allow his evidence to stand as in that  
23 statement.

24 I have also inserted your CV at tab A-3.  
25 You can skip over A-2, which is Staff Sergeant

1 Ferguson's statement. And I take it that that  
2 CV accurately sets out your background?

3 A That's correct.

4 Q And your current rank is inspector?

5 A Correct.

6 Q And I believe you were briefly an acting  
7 superintendent at the time of the interview in  
8 May?

9 A Correct.

10 Q And you have been an inspector for the last two  
11 years?

12 A Correct.

13 Q You are currently working with the integrated  
14 market enforcement team in Toronto?

15 A That's right.

16 Q And that's essentially a white collar securities  
17 fraud investigative team?

18 A Correct.

19 Q Now, the CV shows a rather impressive  
20 development of your career, going on to take a  
21 law degree and be called to the bar and obtain  
22 these promotions to -- you are promoted to  
23 sergeant in 2001, and then to inspector in 2004,  
24 and a corporal in 1998. I want to take you back  
25 into your rookie years, if I could call them

1           that, when you were a young Constable in  
2           1990/1991. I take it you did not have any of  
3           these impressive credentials at that time?

4    A       That's correct.

5    Q       You had joined the RCMP in 1982, and were  
6           serving in small towns in Saskatchewan, in  
7           particular in Swift Current from 1984 up until  
8           the time of the Hayek arson in 1990; is that  
9           correct?

10   A       That's correct.

11   Q       You had been in Swift Current for six years?

12   A       Correct.

13   Q       And your boss at that time was who?

14   A       Ron Ferguson, Staff Sergeant.

15   Q       And how experienced was he at that time?

16   A       I would say very experienced. I don't know his  
17           exact service at the time, it would have been 20  
18           years plus, and he came to us from North  
19           Battleford. He was in charge of the GIS section  
20           there.

21   Q       And the GIS section is what?

22   A       Essentially detectives, plain clothes.

23   Q       What kind of a boss was he? Was he a guy who  
24           liked to sit behind the desk and push paper or  
25           did he get out in the field and get his hands



1 dirty?

2 A He liked to work, yes.

3 Q And did he get involved in your investigations?

4 A Yes, he did.

5 Q How many investigators did he have in Swift

6 Current, how many plain clothes detectives,

7 officers who weren't on uniform patrol, did he

8 have available to investigate serious crimes?

9 A Just the two of us in one section.

10 Q You and one colleague?

11 A That's correct.

12 Q Perhaps you could move the microphone a little

13 closer to you, I'm having a little difficulty

14 hearing you.

15 So he has got two plain clothes detectives

16 investigating serious crime, and you say he is

17 helping out in the investigations?

18 A Correct.

19 Q And tell us about your relationship with him,

20 how did the two of you get along? What was your

21 attitude towards his involvement in your cases?

22 A We got along really well, and I welcomed -- I

23 asked him to get involved because of his

24 experience in plain clothes investigation.

25 Q That's what he had come from in North

1 Battleford?

2 A Yes, he was a lot more experienced than I was.

3 Q The initial parts of your statement at tab A-1  
4 set out a helpful discussion of your note taking  
5 and report writing practices. These essentially  
6 two types of reports, the 1624, which was really  
7 your daily notebook, and the C237 was anything  
8 that had to go up the chain of command to senior  
9 officers, I'm not going to cover any of that  
10 with you. That's all set out there accurately,  
11 is it, Inspector Burton?

12 A Correct.

13 Q And similarly, the hierarchy within the RCMP is  
14 set out there. You have the local detachment  
15 headed up by Staff Sergeant Ferguson. You have  
16 then got a subdivision headed up by Inspector  
17 Preston, and you have then got a division  
18 command in Regina headed up by Inspector Wass;  
19 is that correct?

20 A He wouldn't head it up, he would be the first  
21 rung in the ladder at division headquarters.

22 Q Wass was the first rung in the ladder?

23 A Correct.

24 Q He was who Preston reported to?

25 A Correct.

1 Q And Inspector Preston's subdivision was based  
2 locally in Swift Current, but it wasn't part of  
3 the local detachment?

4 A No, he covered -- essentially that quarter of  
5 the province was his, that lower quadrant.

6 Q So he had a lot more than Swift Current that he  
7 was responsible for?

8 A Yes.

9 Q All right. With that background in mind then,  
10 could I ask you to turn to tab A-4. And what I  
11 want to take you through here are some ten  
12 documents from tab A-4 to A-13 that essentially  
13 are a snapshot of your investigative file in  
14 relation to the Hayek arson. These are -- it is  
15 nothing resembling a complete file, but they are  
16 some of the highlights of the early stages of  
17 the investigation.

18 First of all, you were put in charge of  
19 this investigation; is that correct?

20 A Correct.

21 Q And were you familiar with the early steps in  
22 the investigation, essentially the first two  
23 weeks of it I'm focused on here, up until tab  
24 A-14 is when Zanidean's name first comes up on  
25 July 27th, so I want to have you focus initially

1 on the first 17 days of the investigation in mid  
2 July. Were you familiar with the investigative  
3 steps taken in that period?

4 A Yes, I was.

5 Q All right. And using these documents, if I  
6 could just highlight a couple of points and ask  
7 you if they accurately set out what happened in  
8 the investigation. At tab A-4, we have a  
9 Mrs. Douglas Hallam calling in in the middle of  
10 the night at 3:06 on July 8th saying there has  
11 been an explosion which woke her up. Have I  
12 read that accurately?

13 A Correct.

14 Q Is that in fact what happened?

15 A Yes.

16 Q And if you turn over the page, we get the first  
17 investigative report as a result of  
18 Mrs. Hallem's call about this explosion, and at  
19 paragraph 2, it is asserted that the fire  
20 completely gutted the building; is that  
21 accurate?

22 A Correct.

23 Q Paragraph 3, it is asserted that the neighbors  
24 immediately told you that there had been prior  
25 attempts to burn the building down; is that

1 accurate?

2 A Correct.

3 Q Paragraph 4, another neighbour corroborates

4 Mrs. Hallam, that in fact it was an explosion

5 which shook her residence?

6 A That's correct.

7 Q Paragraph 5, another neighbour corroborates

8 that, yes, indeed it was a explosion?

9 A That's right.

10 Q Paragraph 6, a red gas can was conveniently left

11 behind --

12 A Yes.

13 Q -- floating in the basement?

14 A Yes.

15 Q I take it that lead you to suspect an arson

16 fairly early on?

17 A Yes, that was a clue.

18 Q And similarly in paragraph 6 you immediately

19 learned that the owner of the house is a member

20 of the Zanidean family?

21 A Correct.

22 Q And I take it that was a well-known family in

23 Swift Current, was it?

24 A Yes.

25 Q Turning to tab 5, you get even more clues. It

1 turns out there is a number of empty gas cans  
2 scattered around the area?

3 A Yes.

4 Q And sizeable holes have been cut in the walls to  
5 facilitate ventilation?

6 A Correct.

7 Q Again, I take it, and this is all in the very  
8 first day of the investigation, this obviously  
9 looks like an arson to you?

10 A Yes, very much so.

11 Q Paragraph 18, the manager of Frontier Realty  
12 advises you about the previous fire, it was in  
13 1988, and in fact you have got a file opened on  
14 it, which lead the previous insurer to drop  
15 Ms. Hayek because of the suspicious nature of  
16 the fire; is that correct?

17 A Correct.

18 Q You then proceed to do a CPIC check and you come  
19 up with several files where Ms. Hayek has made  
20 various insurance claims?

21 A Yes.

22 Q That got reported to the police?

23 A Correct.

24 Q And over the page, you pull the previous arson  
25 file from 1988, in which the conclusion was that

1 the fire appeared to be the result of an arson?

2 A That's right.

3 Q And was Ms. Hayek the owner of the house at that

4 time?

5 A Correct.

6 Q Paragraph 21, you speak to the owner of Century

7 21 Realty, who tells you that the house has been

8 listed for over a year and the sale price has

9 been coming down?

10 A That's correct.

11 Q It looks like she is having difficulty selling

12 the house?

13 A Yes.

14 Q Tab 6, you speak to the insurance adjuster, and

15 he tells you that he had spoken to Ms. Hayek a

16 mere five days before the fire, in response to

17 another claim of hers, and he had told her that

18 the only coverage she had was for fire loss?

19 A That's correct.

20 Q Paragraph 25, one day after the fire, this is

21 now on the 9th of July, you obtain her insurance

22 policy and establish that indeed she was insured

23 and the insurance policy was about to expire on

24 August 31st, approximately a month and a half

25 after the fire; is that correct?

1 A Correct.

2 Q And that became an important fact somewhat later  
3 when you learned that Zanidean was asserting  
4 that he believed the house was not insured --

5 A Yes.

6 Q -- and that it had been a revenge arson as  
7 opposed to an insurance arson. So it wasn't too  
8 difficult for you to establish that indeed there  
9 was insurance, I take it?

10 A That's right.

11 Q Tab 7, simply your investigators set out the  
12 details about these ventilation holes cut in the  
13 walls and the closets, and the details about the  
14 two gas cans. In particular we learn that one  
15 was a camp fuel tin and one was a red plastic  
16 gas can; is that correct?

17 A That's correct.

18 Q And again these details become important later  
19 on when you get Mr. Driskell's statement in  
20 which these kind of investigative facts  
21 corroborate a great deal of what is found in  
22 Mr. Driskell's statement; is that correct?

23 A That's correct.

24 Q Tab 8, you see at paragraph 42 that the  
25 investigation begins to operate on the premise



1           that Hayek had hired an arsonist?

2    A    Correct.

3    Q    And I take it that was because she lived in

4           Edmonton, and had not been seen in Swift Current

5           for a number of days prior to the fire?

6    A    That's correct.

7    Q    And finally at paragraph 46, another small

8           investigative fact that becomes important later

9           on, at paragraph 46 you note that a telephone

10          was found at the scene outside of the northeast

11          window of the basement?

12   A    Yes.

13   Q    And again that becomes important later as

14          Mr. Driskell gives you a statement in which he

15          asserts that there had been an attempt to take

16          the telephone with them, and then when they got

17          blown over by the explosion it was dropped --

18   A    Correct.

19   Q    -- or something to that effect. All right. Tab

20          9 is an example of many telexes that we find in

21          the file, that you send out to various divisions

22          nearby, asking other RCMP divisions to check

23          their records for an arsonist with a similar MO

24          because of the -- if you look at the last line

25          of the telex,

1                   "CN has history of insurance fraud and no  
2                   doubt hired the culprits."  
3    A    Correct.  
4    Q    CN refers to who?  
5    A    Captionally noted, which would be Hayek.  
6    Q    Carol Hayek?  
7    A    Correct.  
8    Q    And this is your telex and Staff Sergeant  
9           Ferguson's telex?  
10   A    Correct.  
11   Q    And again it shows your operating premise, as  
12           the second week of the investigation, that Hayek  
13           has hired the arsonist and you are looking for  
14           the perpetrators?  
15   A    Correct.  
16   Q    And tab A-10, you establish that the property  
17           was indebted or encumbered to the tune of about  
18           \$35,000. I think it later turns out it is a  
19           little bit more than that, it is about 37,000;  
20           is that correct?  
21   A    Correct.  
22   Q    And she had been -- I think you eventually  
23           established she paid 68 for it and she was  
24           asking somewhere in the 50s eventually.  
25           Tab 11, you establish that the house was

1           vacant, that she had given the tenant notice to  
2           move out at the end of June; is that correct?

3    A       Correct.

4    Q       That is in paragraph 74.  And then in paragraph  
5           78 you establish through the real estate agent  
6           that Hayek was desperate to get rid of the house  
7           and that she would have taken 53 to \$54,000 for  
8           it, just slightly more than the insurance value  
9           of 50,000; is that correct?

10   A       Correct.

11   Q       And finally in paragraph 80 you establish that  
12           she had disconnected the gas and the power?

13   A       Correct.

14   Q       So we have a vacant house that she is desperate  
15           to get rid of, and she has evicted the tenant  
16           shortly before the fire.  Was all of that useful  
17           circumstantial evidence to you in your  
18           investigation?

19   A       Yes.

20   Q       Paragraph tab A-12, more information about the  
21           real estate history of the house; at paragraph  
22           85, again the various real estate agents who  
23           have listed the property.  It is asserted that  
24           she has gone through about every real estate  
25           agency in town, who have had it for one time or

1 another, and no one is interested in purchasing  
2 the residence. Is that correct?

3 A Correct.

4 Q In paragraph 86 you establish that in the  
5 previous arson in 1988 she had removed two  
6 pictures of her daughter immediately prior to  
7 the fire, and you describe that is a classic  
8 sign of an owner perpetrated arson?

9 A Correct.

10 Q And you conclude at paragraph 87 that she has  
11 been losing money on the property for years and  
12 will lose even more if she sells it?

13 A Correct.

14 Q And finally paragraph 89, over the page, she had  
15 it listed for about three months prior to the  
16 1988 arson?

17 A That's right.

18 Q Again, was all of this helpful circumstantial  
19 evidence in relation to the issue of motive and  
20 whether or not it was an insurance fraud?

21 A Yes.

22 Q The last tab before we finally come to Ray  
23 Zanidean is tab A-13, and this is where you do a  
24 history of her prior insurance claim, her claims  
25 history, and the conclusions that there appear

1 to be three prior claims that are believed to be  
2 fraudulent, that caused the police to open  
3 investigative files in relation to insurance  
4 fraud by Hayek; is that correct?

5 A Correct.

6 Q So, we are now on July 20th. Could you sum up  
7 for us what your conclusion was as a result of  
8 this preliminary first 12 days of investigation  
9 as to what the motive was for this crime?

10 A Essentially that she was burning the house down  
11 to get the insurance money because she couldn't  
12 sell it and she was losing money on it.

13 Q All right. Could you also sum up for us how the  
14 Swift Current detachment viewed this crime?  
15 Give us a sense of its relative gravity in the  
16 scale of Swift Current crime, unlike Toronto or  
17 Winnipeg crime, was this a big deal or a small  
18 deal?

19 A A big deal -- at that time it was a community of  
20 17,000 people, a pretty quiet place, so  
21 something like this, a house blowing up, that  
22 was a big deal.

23 Q Now, the phase of the investigation I want to  
24 turn to at this point is, having established  
25 this pattern of circumstantial evidence as to

1 the motive and having your views about the  
2 gravity of the crime, the only real issue here  
3 for you, it appears to me, is to find the  
4 perpetrator; is that accurate --

5 A Correct.

6 Q -- who had been hired to carry this out. And  
7 you see, from my reading of the file, that the  
8 focus of the investigation begins to settle on  
9 the Zanidean family. Am I reading the file  
10 accurately in that regard?

11 A Yes, you are.

12 Q You essentially undertake a full scale  
13 investigation of the various members of this  
14 family because of the belief that the crime was  
15 likely committed by somebody within her family?

16 A That's correct.

17 Q And it is that theory that leads you to Ray  
18 Zanidean on July 25th, starting at tab 14, and I  
19 want to take you through four tabs here, 14, 15,  
20 16 and 17, that show you -- show how you came to  
21 hone in on Ray Zanidean and discover his  
22 whereabouts here in Winnipeg.

23 First of all, at tab A-14 we see various  
24 Zanidean family members being interviewed, in  
25 particular a Joe Zanidean and a Frank Zanidean.

1           And then at paragraph -- Joe is in Regina, Frank  
2           is in Calgary, and then in paragraph 112, Ray  
3           Zanidean's name comes up and you are not sure  
4           where he is residing. He had resided in Swift  
5           Current at one time, but you are trying to find  
6           him; is that correct?

7    A       Correct.

8    Q       Turning to tab 15, you interviewed Joe Zanidean  
9           in Regina, a telephone interview, his name has  
10          been blacked out but I have seen underneath the  
11          editing, and it is clearly Joe from Regina who  
12          gives you a call. And he tells you that Tom or  
13          Ray are probably responsible; is that correct?

14   A       Correct.

15   Q       They are the two bad actors in the family, if I  
16          could put it that way?

17   A       Yes.

18   Q       Tab 16 you have a more fulsome report of the  
19          interview with Joe. He gives you a complete  
20          family history virtually of the three branches  
21          of the family. And you learn from him that Ray  
22          is in Winnipeg; is that correct?

23   A       Correct.

24   Q       And over the page, the second page at tab 16,  
25          you learn some further bad character

1 information, if I can call it that, about Ray.  
2 This comes from Sam, paragraph 127?  
3 A Correct.  
4 Q Sam tells you that Ray and Ali are really bad  
5 actors, and that Ray has been living in Winnipeg  
6 for the past ten years. And you then speak to a  
7 Constable Champion who had dealings with Ray and  
8 Ali and Tom several years ago, and she describes  
9 them as individuals that you don't turn your  
10 back on; is that correct?  
11 A That's correct.  
12 Q And do you a motor vehicle search and you find  
13 what appears to be a current address in Winnipeg  
14 for Ray Zanidean?  
15 A Correct.  
16 Q And at paragraph 128 again, what that leads you  
17 to do is send a CPIC message to the Winnipeg  
18 Police Department asking that Ray be  
19 interviewed?  
20 A Correct.  
21 Q This is all happening on July 27th, as I read  
22 this report, some 19 days after the fire?  
23 A That's right.  
24 Q And finally the last tab in this sequence at  
25 A-17 is the actually telex itself; is that



1 correct?

2 A That's correct.

3 Q This is what you call a CPIC telex that goes out  
4 to a particular police force?

5 A Yes, that's right. That was pre-email days.

6 Q So this is a telex over CPIC to the Winnipeg  
7 Police Service?

8 A Correct.

9 Q From yourself?

10 A That's right.

11 Q And you set out briefly the history of the  
12 arson, that it is an obvious arson done by a  
13 professional. And then in the last part of the  
14 paragraph, the last third of the telex, you set  
15 out Zanidean's name and the believed address for  
16 him on Harriet Street here in Winnipeg, and you  
17 describe him as one of your most likely  
18 suspects; is that right?

19 A Yes, that's correct.

20 Q And you ask the Winnipeg Police to locate him  
21 and establish his whereabouts at the time of the  
22 fire?

23 A Correct.

24 Q What do you mean by that, establish his  
25 whereabouts? What are you asking the Winnipeg

1 Police to do in real terms here?

2 A Track him down and interview him eventually.

3 Q Again, the date this goes out is July 27th, a  
4 full two months before the Perry Harder homicide  
5 investigation gets underway; is that correct?

6 A That's correct.

7 Q All right. Now, if you skip over the next two  
8 tabs, which just provide further background, and  
9 go to tab A-20, it appears that your July 27th  
10 telex bears fruit within less than two weeks  
11 because you have a report on August 8th of  
12 receiving a call back from Winnipeg. Could you  
13 tell us about that call, please?

14 THE COMMISSIONER: I am sorry, what tab is this?

15 MR. CODE: Tab A-20.

16 BY MR. CODE:

17 Q First of all, this kind of report and the kinds  
18 of reports that we have been looking at, are  
19 these what you referred to in your witness  
20 statement as in essence the notebook kinds of  
21 reports, what you call 1624s?

22 A That's correct.

23 Q So these are all 1624s where you are basically  
24 keeping a daily log of all of the developments  
25 on the local investigative file?

1 A That's right.

2 Q These are not reports that are going up the  
3 chain to superior officers?

4 A That's right, yes.

5 Q So at A-20 we have a 1624 that records your  
6 telephone call from Sergeant Mann. Tell us  
7 first of all, was it your practice when you got  
8 a telephone call like this on the case that had  
9 some useful investigative information that you  
10 would do a 1624 to your file at that time?

11 A Correct.

12 Q So tell us about the call from Mann, what can  
13 you recall about it?

14 A I don't recall independently, I'm just really  
15 working off the report here, I don't recall the  
16 actual discussion independently.

17 Q All right.

18 A Just that he conveyed the information that I  
19 have recorded there.

20 Q If we could look at what you have recorded,  
21 there is two points I wanted to bring to your  
22 attention. First of all, he gives you an  
23 address on Thames Avenue which is different than  
24 the address that you had given him. You had  
25 given him an address on Harriet Street?

1 A That's right.

2 Q So it appears that he has tracked down the  
3 actual residence, as opposed to the one that you  
4 found in the motor vehicle records, or is that  
5 the inference that you drew?

6 A That's correct.

7 Q And the second point I wanted to ask you about  
8 is, he advises that he will interview him today.  
9 What did you understand that to mean?

10 A That he had located him and spoken with him.

11 Q And he also tells you that he is going to check  
12 the hospitals for you to see if there was --  
13 presumably what you had asked in the telex was  
14 to determine whether anybody had gone into the  
15 hospital as a result of the explosion.

16 A That's correct.

17 Q He appears to be taking some investigative steps  
18 on your behalf, is that the way you read this?

19 A Yes.

20 Q And would you assume that he would have some  
21 kind of an investigative file as a result of the  
22 work that he was doing on your behalf?

23 A Yes.

24 Q Could you tell us generally what is the practice  
25 and protocol between police forces where a crime

1 in your own jurisdiction, that there appears to  
2 be evidence of it in another jurisdiction, do  
3 you just go into the other jurisdiction yourself  
4 or do you ask them for help in the manner that  
5 you are doing here?

6 A What I did here, if it is their jurisdiction,  
7 they do the work on our behalf.

8 Q And the other jurisdiction is expected to  
9 cooperate. Do they generally cooperate?

10 A Yes.

11 Q Why is it that one police force helps out  
12 another -- if I can ask a stupid question?

13 A Basically reciprocity. When they need our help,  
14 they will get it, and when we need their help,  
15 we get it.

16 Q Is there also a duty on police officers to  
17 enforce the law?

18 A Yes.

19 Q So what was the result of this August 8th  
20 development where we seem to have an interview  
21 set up?

22 A Basically, at that point I was waiting to hear  
23 back from him as to the results of the interview  
24 and the hospital checks.

25 Q Did you hear back from him?

1 A No, I didn't.

2 Q As we know, the next development from your  
3 interview is the phone calls you receive in late  
4 October from the Winnipeg Police Service. So we  
5 have about a two and a half month gap in the  
6 story here, from August 8th until October 25th,  
7 when you get your next telephone call. And to  
8 try to fill that gap where there is silence in  
9 the file basically, I have inserted at tab 21,  
10 the interview that Inspectors Hall and then  
11 Inspector Ewatski conducted of Sergeant Ian Mann  
12 when they conducted their review of the Harder  
13 homicide in June of 1993.

14 Have you had a chance to review that  
15 interview of Sergeant Mann?

16 A Yes, I just read it yesterday for the first  
17 time.

18 Q And there -- if I could put a couple of points  
19 from it to you to see if they refresh your  
20 memory, if you look at page 2 of that interview,  
21 they see your July 27th CPIC message and appear  
22 to have some concerns about the absence of any  
23 response, so they ask Mann about it at the  
24 bottom of page two, and then over on the top of  
25 page 3, he acknowledges that he did have a file

1 with notes in it, but that he was told to get  
2 rid of all of his paper work when he left crime,  
3 which presumably means the Crime Division. So  
4 he doesn't have any file in 1993, two years  
5 later, when he comes to be interviewed by  
6 Inspectors Hall and Ewatski. I guess it is  
7 three years later, since we are going back to  
8 the summer of 1990.

9 So he is testifying from recollection, or  
10 being interviewed from recollection, and at the  
11 bottom of page 3 he asserts that he went to the  
12 address a couple of times, but Zanidean was  
13 never home. So he explains that the interview  
14 never succeeded because Zanidean wasn't home.  
15 Do you recall ever being told that?

16 A No, I wasn't.

17 Q Did Mann report back to you to that effect?

18 A No, he didn't.

19 Q Then over at the top of page 4, he acknowledges  
20 that you sent the complete file, the  
21 investigative file to him; is that correct?

22 A Correct.

23 Q We will come to that shortly. It is,  
24 chronologically it happens in the next couple of  
25 months, but he acknowledges receiving the file

1 from you and I take it you have a recollection  
2 of sending him a file?

3 A I have a 1624 to that effect, a note in the  
4 file.

5 Q All right. And he acknowledges having telephone  
6 contact with you at the bottom of page 4.

7 A That's correct.

8 Q Do you have a recollection of telephone contact  
9 with him?

10 A I don't recall the actual conversations. I'm  
11 really just relying on my reports.

12 Q But your reports show that you did have  
13 telephone contact?

14 A Yes, I rely on my reports and would say that I  
15 did.

16 Q Then over at page 5 again he asserts that he  
17 went around to Zanidean's address a number of  
18 times but was never able to contact him?

19 A Correct.

20 Q And again, you didn't receive a report back to  
21 that effect?

22 A No, I did not.

23 Q Finally, at page 6, he shows what happens in  
24 October that leads to the calls that you  
25 ultimately receive in October, and that is he



1 explains that he is sharing space at the Public  
2 Safety Building with the homicide unit and he  
3 hears the homicide officers talking about  
4 Zanidean, and because of the unusual name, they  
5 start chatting about him, and Mann tells the  
6 homicide officers that he is looking for them on  
7 an arson. You see in the middle of page 6,

8 "I was informed that he was a witness in a  
9 murder investigation."

10 And then dropping down a line,

11 "The indications were that they knew where  
12 he was, so rather than step on anybody  
13 else's investigation, I said, well, okay, I  
14 have got the file I think, or the  
15 information, if you guys can look after  
16 that end and notify the RCMP in Swift  
17 Current that you guys are looking after it,  
18 then the members in Swift Current will no  
19 longer be contacting me as they have been  
20 in the past for their investigation."

21 And is that consistent with what appears to have  
22 happened in the follow-up, that Mann passes over the  
23 arson investigation to the homicide officers?

24 A That's the way it appeared to me, yes.

25 Q And he says at the bottom of page 6 that he

1 thinks it was Tommy Anderson that he spoke to,  
2 and in the middle of page 7, he says he had no  
3 further involvement once he had passed it over  
4 to Anderson.

5 A Correct.

6 Q So what is set out by Mann there is generally  
7 consistent with your understanding of what  
8 happened; is that fair?

9 A That's fair.

10 Q All right. So who is it who calls you first in  
11 October? Is it Mann who calls you or is it  
12 Anderson who calls you? Your witness statement  
13 covers this at pages 3 to 4, that you receive  
14 what you describe as a cryptic call from Mann  
15 advising that Anderson will be calling you; is  
16 that correct?

17 A Correct.

18 Q And in that -- what do you mean by cryptic?

19 A Just that he would be -- I'm relying on the file  
20 now -- just that Anderson would be contacting me  
21 in regards to the matter. There was really no  
22 further information.

23 Q All right. And sure enough, you then two days  
24 later get a call from Anderson; is that correct?

25 A That's correct.

1 Q Now, your account of this call, which is  
2 important, both the October call with Anderson  
3 in 1990 and the April call with Anderson in  
4 1991, are both important and are really the core  
5 of your evidence. But it is set out in  
6 considerable detail here in your witness  
7 statement and in your various reports, so I'm  
8 just going to highlight a few aspects of it. We  
9 have got about two pages where you describe the  
10 call in considerable detail in your witness  
11 statement; is that correct?

12 A That's correct.

13 Q First of all, in terms of your reports about  
14 this call, did you make one of these  
15 contemporaneous 1624s in the investigative file  
16 at the time of Anderson's call to you?

17 A That's correct.

18 Q And that would have been like the one that we  
19 saw at tab 20 of Mann's call?

20 A Correct.

21 Q Could you tell us, secondly, whether the call  
22 was of sufficient importance or whether the  
23 content of it made it such that it would become  
24 the subject of a C237, that is a report to more  
25 senior officers?

1       A       That's correct.

2       Q       And why is it that you would turn this 1624 into  
3               a C237?

4       A       The fact that our suspect was involved in a  
5               murder investigation and the request to hold off  
6               on pursuing him, for those two reasons.

7       Q       All right. Now, as your counsel has explained  
8               to us and as is set out in your witness  
9               statement, a great deal of the file has been  
10              lost or destroyed, and we don't have these  
11              reports, the contemporaneous 1624s or C237s, but  
12              what we do have are subsequent reports that  
13              purport to quote verbatim from the  
14              contemporaneous reports?

15      A       That's correct.

16      Q       And if I could take you to tab 24, to show what  
17              I'm talking about here to the Commissioner, tab  
18              24 is a report dated January 9, 1992?

19      A       That's correct.

20      Q       It is originally dated 1991, but you can tell  
21              from the contents of it that you are responding  
22              to an October 8th, '91 report, you must have  
23              simply got the year wrong at the start of the  
24              calendar year; is that correct?

25      A       Yes, it is just a typo.

1 Q Now, in that report, if you turn to the second  
2 page of it, at the very top of the second page  
3 you see a statement, "my C237 dated November 15,  
4 1990 refers," and then in quotation marks you  
5 set out the Anderson phone call. Am I reading  
6 that correctly?

7 A That's correct.

8 Q So what you are doing there is you are quoting  
9 from a C237 that was still in the file as of  
10 January 1992?

11 A That's correct.

12 Q Do we know when it is that these documents get  
13 lost or destroyed? They obviously had survived  
14 for some 14 months by the time you were writing  
15 this report. Was there a document retention  
16 cycle for them? How long were they kept in  
17 existence?

18 A There is in policy, I don't know what it was  
19 offhand, it could be two, five, ten years, it  
20 depends on how serious the offence is, and then  
21 they purge the files.

22 Q All right. By the time you are writing this  
23 report in January of 1992, there is a dispute  
24 that had broken out between you and Anderson,  
25 and there is a lot of acrimony and accusations

1 going back and forth, so I'm not as interested  
2 in the January 1992 report as I am in the  
3 contemporaneous report. Could you tell us at  
4 the time that you wrote the C237 on November 15,  
5 1990, that's quoted at the top of page 2, was  
6 there any acrimony between you and Anderson, was  
7 there any history of disputes or dislike when  
8 you were writing that C237?

9 A No, I wouldn't say that. I would say I was  
10 suspicious at that point.

11 Q Is the report that's set out there accurate?

12 A That I generated, yes.

13 Q The C237 that you generated?

14 A Yes.

15 Q What is the purpose for writing that C237?

16 A Well, to report to the senior management,  
17 because it is a significant event and if we  
18 have -- and/or if we have concerns about the  
19 matter.

20 Q So you were reporting to your senior officers  
21 about a significant development?

22 A Correct.

23 Q Would there be any reason to misstate what  
24 Anderson had said to you, exaggerate or twist it  
25 in any way?

1           A       No.

2           Q       And what you say that Anderson said to you is  
3                   that he advised that Zanidean is a witness in a  
4                   homicide prosecution, as he observed Driskell  
5                   execute a Crown witness in relation to another  
6                   prosecution. Anderson requested that we keep  
7                   this information in confidence and hold off on  
8                   prosecuting Zanidean as it will endanger their  
9                   prosecution of Driskell. Have I read that  
10                  accurately?

11          A       You said pursuing --

12          Q       Hold off on pursuing Zanidean?

13          A       Correct.

14          Q       Do you have a present recollection of what  
15                  Anderson said at that point?

16          A       No, not right out of my head. I'm relying on my  
17                  reports that I made at the time.

18          Q       All you can tell us is that you made a report at  
19                  the time and it was your duty to make it  
20                  accurately.

21          A       That's correct.

22          Q       Now, there is one other subsequent report where  
23                  you essentially repeat the same quote but you  
24                  add a little bit more detail. Could I take you  
25                  to that one other report? We find it at B-14,

1           it happens later in the chronology, in the  
2           post-trial period, November 18, 1991. And you  
3           are providing a case overview, investigative  
4           report again to senior officers. This one is  
5           actually going to Regina, to the CROPS officer  
6           in Regina, is that correct?

7           A       That's correct.

8           THE COMMISSIONER: Sorry, Mr. Code, I'm --

9           MR. CODE: At B-14.

10          BY MR. CODE:

11          Q       And there is a covering memo attaching your  
12           report and the -- it is called case overview,  
13           protected B, and if you turn to page 3 of it is  
14           where we find the summary again of the call with  
15           Anderson. You see about three quarters of the  
16           way down page 3, you refer to the October 27th  
17           call. And could you tell the Commission what it  
18           was you would have been using then, exactly a  
19           year after the call in November of 1991, to make  
20           this report to senior officers?

21          A       I would have been relying on the 1624s and the  
22           C237s.

23          Q       And at that time they would have still been  
24           intact in the file?

25          A       Correct.



1 THE COMMISSIONER: Sorry, I may be -- the third  
2 page?

3 MR. CODE: C-14, page 3, page 3 of the  
4 attachment, there is a covering memo.

5 THE COMMISSIONER: Yes.

6 MR. CODE: And then there is a lengthy document  
7 called case overview, investigator's  
8 recommendations. It is at page 3 of that  
9 document, two-thirds of the way down the page.  
10 Have you got page 3 of the attachment? The  
11 numbering is at the top of the page.

12 THE COMMISSIONER: That's right, I was looking  
13 for the third page in. Yes.

14 BY MR. CODE:

15 Q October 27, and what you state in this report is  
16 that on October 27th, 1990, Sergeant Anderson  
17 contacted Constable Ross Burton of the Swift  
18 Current detachment. Sergeant Anderson advised  
19 that Zanidean had blown up his sister's house.  
20 Sergeant Anderson explains Zanidean's situation  
21 as a witness and requested that we not pursue  
22 Zanidean at this time as it would endanger their  
23 prosecution of homicide. Have I read that  
24 accurately?

25 A Yes.

1 Q And the latter part of it essentially replicates  
2 exactly the quote that we saw in the earlier  
3 report from the C237, but what essentially has  
4 been added here, two things. First of all, we  
5 get the date of the call, which wasn't in the  
6 previous report, is that correct?

7 A I would have to look back.

8 Q I assure you, it is not there.

9 A I will take your word for it.

10 Q You get the date of the C237, we don't get the  
11 date of the actual call.

12 A Okay, that's correct.

13 Q And secondly, what has been added is the fact  
14 that Zanidean is the perpetrator of the arson.  
15 Sergeant Anderson tells you that it was Zanidean  
16 who blew up the house?

17 A Correct.

18 Q Again, that's not set out in the earlier one.  
19 Do those additional facts refresh your memory at  
20 all as to what Anderson told you, or again are  
21 you simply relying on the report?

22 A I'm relying on the report.

23 Q Do you recall Anderson telling you the basis for  
24 the assertion that Zanidean was the perpetrator?

25 A I have nothing in the reports at that time, so

1 I'm -- based on my reports, he did not.

2 Q And you have got no recollection of it one way  
3 or another.

4 A No independent recollection, no.

5 Q Now, what we know from looking at the Winnipeg  
6 Police Service file is that the basis for that  
7 assertion by Anderson is found in two notebook  
8 entries, that if you go back to the tabs we were  
9 in, in the A section of the book, tab A-22 and  
10 A-23 have got the two notebook entries, if I  
11 could draw them to your attention and ask you a  
12 couple of questions about them.

13 A-22 is Sergeant Paul's notebook of his and  
14 Anderson's interview of Zanidean on  
15 October 10th. This is the second day, Zanidean  
16 comes in on October 9th for the first time and  
17 this is the second day, October 10th, where they  
18 have him now down at the station, after they do  
19 an interview on October 9th out in the suburbs  
20 somewhere. And on the 10th he comes into the  
21 station and this is Sergeant Paul's note of what  
22 he says -- if you turn to the second page of the  
23 note, Paul's writing is fairly legible. About a  
24 third of the way down the page he says,

25 "Ray then states that there could be a

1                   problem with his credibility in court. I  
2                   ask him why. Ray's response is, well, Jim  
3                   and I got involved in something this summer  
4                   in Saskatchewan.

5                   Q What are you involved in? What were you  
6                   involved in?

7                   A We blew up a house in Swift Current, a  
8                   relative's place."

9                   And then over the page Sergeant Paul notes,  
10                  I informed Ray that we will make inquiries with  
11                  Saskatchewan on that matter. And he says, we  
12                  will let you know at a later date.

13                  So did Sergeant Anderson tell you that  
14                  they had a notebook oral, as it is often  
15                  referred to in the trade, or a notebook  
16                  admission from Zanidean acknowledging his  
17                  complicity in the Swift Current arson?

18                  A No, he did not.

19                  Q Did he send you a report of it?

20                  A Not at the time.

21                  Q Did you eventually receive a report of this?

22                  A Yes, about a year later.

23                  Q At tab A-23 we have Sergeant Anderson's notebook  
24                  of a subsequent conversation with Zanidean, some  
25                  two weeks later, this is on October 29th, and

1           they revisit the subject. And this is in fact  
2           two days after the phone call with you. They  
3           followed up with you on the October 27th call,  
4           according to your records, and then two days  
5           later they revisit the issue with Zanidean?

6           THE COMMISSIONER: Sorry, if we can just go  
7           back? All right. The notes from Sergeant Paul  
8           in A-22 were October 10th, and now we are going  
9           to Sergeant Anderson's, and what date do you say  
10          this is?

11          MR. CODE: October 29th. I haven't given you  
12          all of his notebook for October 29th. This is  
13          approximately two weeks later.

14          BY MR. CODE:

15          Q       I believe that Driskell is about to be arrested,  
16                I think he is arrested on October 30th, if I'm  
17                not mistaken, but it is shortly after the first  
18                telephone call to Constable Burton. And it is  
19                the second time the investigating officers have  
20                dealt with this Swift Current issue. The first  
21                time, Zanidean volunteers it as being a problem  
22                with his credibility; the second time it is the  
23                police officers who raise it with him. You see  
24                at the top of the page, Sergeant Anderson  
25                introduces the topic saying, Ray, "you told us

1           before about that house in Swift Current." I  
2           just want to highlight a couple of passages here  
3           and ask you whether you were informed of these  
4           developments. In the middle of that first page,  
5           Zanidean asserts the motive for the arson was  
6           revenge. He says, "it was my sister's house,  
7           she caused me some problems, it was revenge. I  
8           thought she had no insurance and she would lose  
9           money," he says. And then over the page, so he  
10          asserts this idea of a revenge motive as opposed  
11          to an insurance fraud, that it is a crime by him  
12          against his sister as opposed to a crime by his  
13          sister with him. And then over the page,  
14          Anderson challenges him on that explanation, the  
15          second entry at the top of the second page, he  
16          says,

17                        "And you went all the way out there to burn  
18                        her house because you were mad at her?"

19          And Zanidean says,

20                        "Yeah, I never made any money on it."

21          So he sticks to this revenge theme. And then in  
22          the middle of that second page he says,

23                        "What do you think will happen to me?"

24          And Anderson's response in the middle of the second  
25          page refers to the fact that he has called you, he

1     says,

2                     "I don't know, Ray. We have notified Swift  
3                     Current police and they are investigating  
4                     and, you know, you are on your own, we  
5                     cannot help you out with any of that."

6                     Sergeant Anderson tells me that's the  
7                     translation of that very difficult note. He  
8                     says when Ray asks what do you think will happen  
9                     to me over that, Anderson responds, I don't  
10                    know, Ray, we have notified Swift Current police  
11                    and they are investigating, and, you know, you  
12                    are on your own, we cannot help you out with any  
13                    of that. And Zanidean says at the bottom of the  
14                    page,

15                    "I probably shouldn't have told you. I  
16                    will just have to suffer the consequences."

17                    And Anderson replies over the top of the  
18                    page,

19                    "That's right, Ray, you will."

20                    So, again, were you provided with a copy of  
21                    this notebook or a report of the contents of  
22                    this second conversation with Zanidean about the  
23                    Swift Current arson?

24     A     No.

25     Q     In particular, were you told that he was

1           asserting that the motive for the fraud was  
2           revenge and not an insurance fraud?

3       A     No, not by Winnipeg Police Service, no.

4       Q     Was there information in your file that  
5           contradicted that assertion?

6       A     I don't recall off the top of my head. I know  
7           that at some point that comes out in the file.

8       Q     I mean, essentially he is saying -- I guess what  
9           I am getting at here is he is asserting that his  
10          sister wasn't involved, that he is committing a  
11          crime against his sister.

12      A     Correct.

13      Q     Was that consistent with your investigative  
14          file?

15      A     I'm not sure how to answer that.

16      Q     Was that consistent with the facts that you had  
17          learned in the course of your investigation?

18      A     I guess we really didn't know at that point. My  
19          theory was he had been contracted to do the job,  
20          and what I knew from Winnipeg was that he had  
21          done it, as a result of that call in October,  
22          that he was involved.

23      Q     I'm not focusing on Zanidean one way or the  
24          other --

25      A     Okay.



1 Q -- because obviously the best evidence of  
2 Zanidean's involvement is in the officer's  
3 notebook. I'm talking about Hayek's involvement  
4 and the assertion that his sister was the victim  
5 of this crime; is that consistent with your  
6 investigation?

7 A Well, I don't know -- like, my theory was that  
8 she had contracted with somebody to commit the  
9 arson, so I never really viewed her as a victim.

10 Q It sure doesn't look that way to me.

11 A No, from my perspective, no, I never did.

12 Q And finally this assertion by Anderson to  
13 Zanidean that he was on his own in relation to  
14 the Swift Current business, was that note of  
15 what he told Zanidean on the 29th consistent  
16 with what he was telling you on the 27th?

17 A No, because he was asking me not to pursue him.

18 Q All right.

19 THE COMMISSIONER: I see it is now 11:15, if  
20 this would be convenient, or whatever is  
21 convenient.

22 MR. CODE: This is a very good spot.

23 THE COMMISSIONER: We will take a 15 minute  
24 break.

25 THE CLERK: All rise. This Commission of

1 Inquiry is now recessed.

2 (Proceedings recessed at 11:15 a.m.

3 and reconvened at 11:30 a.m.)

4 BY MR. CODE:

5 Q Officer Burton, I have taken you to your two  
6 reports which refer back to the October  
7 telephone call with Sergeant Anderson. I now  
8 want to take you to the two accounts we have  
9 from him about the call or calls, whether it was  
10 one call or two calls. He seems to have it as  
11 two calls, but in any event, I'm more interested  
12 in the substance of it than whether it was one  
13 call or two calls.

14 The two accounts of Sergeant Anderson are  
15 somewhat different, so I want to put both of  
16 them to you. First of all, the first one is in  
17 his notebook at tab A-23. You recall that we  
18 were in that tab going over Zanidean's  
19 statement, his notebook statement, or notebook  
20 oral about the Swift Current arson on  
21 October 29th. And then you see a notebook, the  
22 last two pages of that tab, you see a heading  
23 "October 30," in the middle of the second to  
24 last page?

25 A Yes.

1 Q So the notebook continues on the next day, on  
2 October 30th, and here is Sergeant Anderson's  
3 note of his call to you. And it appears on  
4 October 30th. He makes a retrospective note  
5 about the earlier call on the 27th. You see  
6 that at the bottom of the page? "Swift Current  
7 city detachment," that's DET, he tells me.

8 "Swift Current city detachment notified of  
9 Ray's involvement in Swift Current arson on  
10 November 27th, 1990."

11 So essentially consistent with the report  
12 that we read to you of your own before; is that  
13 correct?

14 A Correct.

15 Q He calls you on the 27th and he tells you that  
16 Zanidean is the perpetrator in your arson. So,  
17 so far his notes are consistent with your  
18 report; is that correct?

19 A Yes.

20 Q It carries on in the last line there, it says  
21 advises, it is hard to read that, "and advises  
22 Constable Burton is investigating officer." So  
23 he appears to make a note of a conversation with  
24 the -- it may not be with you. Then at the top  
25 of the next page, and Anderson's recollection is

1           this is a second call on the 30th, he actually  
2           speaks to you and he states, his note on the  
3           last page is,

4                     "Burton confirmed he is handling. I inform  
5                     him of our dealings with Ray Zanidean, and  
6                     comments to us that he and Driskell  
7                     responsible for their arson."

8                     It is a little bit difficult to read that  
9                     middle note there. But essentially he advises  
10                    you that Zanidean has made comments to them that  
11                    he and Driskell are responsible for your arson.  
12                    And does that assist you as to whether or not  
13                    that information was passed on to you at this  
14                    time?

15        A        Well, it is consistent with my reports, but I  
16                    have no independent recollection of this.

17        Q        Again, it is completely consistent with what we  
18                    see in your reports; is that not fair?

19        A        Yes.

20        Q        So, again, his notes appear to line up fairly  
21                    nicely so far with your reports. And then  
22                    carrying on, the last note,

23                    "Burton advises no evidence to confirm, but  
24                    investigation will continue."

25                    Burton advises,

1 "No evidence to confirm, but investigation  
2 will continue."

3 Again, is that generally consistent with  
4 your recollection of the call or your note of  
5 your reports of the call?

6 A Yes, it is.

7 Q So it appears that Anderson's notebook entry is  
8 perfectly consistent with your reports of this  
9 call; is that fair?

10 A That's fair.

11 Q Let's look at the second version of it. At tab  
12 A-25, two tabs on, we get a report that was  
13 prepared a full year later, in October of 1991.  
14 In other words, a year after the telephone  
15 calls, and this report is prepared in response  
16 to a RCMP complaint about essentially, in a  
17 nutshell, about Anderson's alleged failure to  
18 assist in your investigation. So it is long  
19 after the event, and it is after some  
20 difficulties have developed in the relationship,  
21 and here is what he says at the bottom of page 1  
22 about this same phone call. You see at the  
23 bottom of page 1, the letter,

24 "On the 27th of October, 1990, I telephoned  
25 Swift Current and provided details of

1                   Zanidean's arson admission. I was told  
2                   that Constable Ross Burton was in charge of  
3                   the investigation, but I was unable to  
4                   speak with him on that date."

5                   So he clarifies his view that there were  
6                   two separate calls.

7                   Then the important note is over the page,  
8                   top of page 2,

9                   "On the 30th of October I telephoned  
10                  Constable Burton and he confirmed that he  
11                  was in charge of the investigation. I  
12                  discussed the situation with him and he  
13                  indicated that the entire Zanidean family  
14                  was being interviewed with respect to the  
15                  arson. He said that there was no other  
16                  evidence against Ray Zanidean at that  
17                  time."

18                  Any difficulty with the report to that  
19                  point?

20           A        No.

21           Q        Again it is generally consistent with your file?

22           A        Yes.

23           Q        And then the sentence that's underlined in this  
24                  copy, again as follows:

25                  "Constable Burton made a suggestion to

1                   which I readily agreed. He offered to  
2                   delay their pursuit of Ray Zanidean until  
3                   after he testified at our murder trial. He  
4                   also said he would somehow flag Zanidean's  
5                   name on RCMP intelligence files so that no  
6                   other RCMP officer investigating their  
7                   arson would pursue him. I told Constable  
8                   Burton that we had made no deals with Ray  
9                   Zanidean, and we would not make him privy  
10                  to this agreement."

11                 Have I read that accurate?

12         A        Yes, you have.

13         Q        Does that part of the report accord with your  
14                  file and with your recollection of your  
15                  discussion with Sergeant Anderson?

16         A        No.

17         Q        Did you make a suggestion to Sergeant Anderson,  
18                  as he puts it, that you delay your pursuit of  
19                  Zanidean until after the murder trial?

20         A        No.

21         Q        Is there any indication in your file, in your  
22                  reports, to that effect?

23         A        No.

24         Q        Did you tell Sergeant Anderson, or did you reach  
25                  an agreement with Sergeant Anderson, as he

1 describes it, that you would ensure that no  
2 other, at least try to ensure that no other RCMP  
3 officer would try to pursue Zanidean?

4 A No.

5 Q Is there any indication in your file to the  
6 effect that you made such an agreement?

7 A No.

8 Q Now, none of that is in Constable Anderson's  
9 notebook, I know, but I felt I had to put it to  
10 you, because he does allege that this was part  
11 of the conversation.

12 Going back to your files then to see if the  
13 subsequent conduct of the file is consistent  
14 with any such agreement to delay the pursuit of  
15 Zanidean and make sure that nobody else pursues  
16 him, have you had a chance to review the  
17 subsequent steps taken on your file to test the  
18 actual contents of the file against this  
19 allegation of what you said to Anderson?

20 A Yes, I have reviewed the file with that in mind.

21 Q All right. If I could take you to a couple of  
22 file reports and ask you to advise the  
23 Commissioner whether these reports are  
24 consistent with Anderson's suggestion as to what  
25 you had agreed to in that phone call.



1                   First of all, if you look at tab 26, the  
2                   next tab, this is one of these regular 1624s, I  
3                   guess, where you sort of update the file; is  
4                   that correct?

5           A        Correct.

6           Q        And this is your note, is it?

7           A        Correct.

8           Q        When we see RB, Constable, that's you?

9           A        That's right.

10          Q        And the note on November 4th, which is a mere  
11                   four days after the call, what Anderson says was  
12                   an October 30th call, you note no reply from  
13                   Winnipeg to date; is that correct?

14          A        That's correct.

15          Q        And what does that refer to? What is the reply  
16                   from Winnipeg that you were awaiting?

17          A        The interview of Ray Zanidean and the hospital  
18                   inquiries.

19          Q        In other words, what Sergeant Mann had  
20                   undertaken to do?

21          A        Correct.

22          Q        And is that consistent with an agreement not to  
23                   pursue Zanidean?

24          A        No, it is not.

25          Q        Next tab, tab A-27. We are now two weeks

1 further on, we are in the middle of November,  
2 November 20th. You interview Hayek -- sorry,  
3 not Hayek, you interview Hayek's former  
4 hairdresser -- I would have thought always a  
5 very good witness to go and interview in a case  
6 like this?

7 A Yes.

8 Q She gives you a rather valuable little  
9 statement, doesn't she?

10 A Yes.

11 Q She tells you that Hayek, three to four days  
12 before the fire, had told you that she would  
13 like to burn the house down.

14 A That is correct.

15 Q I guess you felt you had a fairly compelling  
16 piece of evidence implicating Hayek in the arson  
17 at that point?

18 A Yes.

19 Q And I take it that obviously is inconsistent  
20 with the assertion of Zanidean in Anderson's  
21 notebook, that Zanidean did it all on his own to  
22 get revenge?

23 A Correct.

24 Q More importantly at tab 28, for our purposes, we  
25 have an interesting telex on October 14. So six

1 weeks after your call with Anderson, you are  
2 sending a telex to Edmonton asking them to  
3 obtain the phone tolls for any calls on Hayek's  
4 phone to Manitoba, and in particular to  
5 Winnipeg, in the month before and after the  
6 offence? Do you see that?

7 A Yes.

8 Q Did I summarize that accurately? You were  
9 looking for the telephone traffic on Hayek's  
10 phone?

11 A Correct.

12 Q Immediate before and after the arson,  
13 specifically Winnipeg?

14 A Yes.

15 Q Why was it that you were interested in the  
16 telephone traffic between Hayek and Winnipeg  
17 before and after the arson?

18 A The theory was she would be talking to Ray  
19 Zanidean to plan the arson and discuss it  
20 afterwards.

21 Q And did this particular line of inquiry that you  
22 embarked on in December 14, and it takes some  
23 time for you to get those tolls, but you  
24 eventually get them through a Winnipeg search  
25 warrant, did this turn out to be a particularly

1 fruitful line of inquiry?

2 A From reviewing the reports, yes, it showed phone  
3 traffic during that period that was of interest.

4 Q You succeeded in showing a very strong  
5 telephonic link between Hayek's phone and  
6 Zanidean's phone in Winnipeg immediately before  
7 and after the arson?

8 A Correct.

9 Q And again, is that line of investigative inquiry  
10 consistent with the Anderson assertion that you  
11 had reached an agreement with him not to pursue  
12 Zanidean?

13 A No.

14 Q Tab A-29, the next tab, this is your 1624  
15 recording the sending of the entire  
16 investigative file to Sergeant Ian Mann,  
17 including the 1988 arson file; is that correct?

18 A Correct.

19 Q And why were you following up -- you had given  
20 Mann this telex that we saw back at tab 17 in  
21 July, and now you are following-up, sending him  
22 the entire investigative files, indeed both  
23 files. What was the reason for giving him the  
24 entire investigative file?

25 A To interview Ray Zanidean.

1 Q And the 1624 indeed states that's the purpose,  
2 to facilitate the interview?

3 A That's correct.

4 Q And you state that Ray would be a good suspect  
5 for the 1988 arson?

6 A That's correct.

7 Q And is that reflective of an agreement with  
8 Anderson, some six weeks earlier, not to pursue  
9 Zanidean?

10 A No.

11 Q Tab 30, we get the actual covering letter that  
12 goes with the investigative files which you send  
13 to Sergeant Mann?

14 A Correct.

15 Q And it spells out that you are sending him both  
16 investigative files, the 1988 and the 1990  
17 arson, and you state in the letter, the  
18 concluding sentence,

19 "Ray Zanidean would be a good suspect in  
20 the first arson as well. Once  
21 circumstances permit, please interview Ray  
22 Zanidean regarding this arson also."

23 A Correct.

24 Q And the reference to this arson also, I take it  
25 means that you are anticipating an interview in

1 relation to both of the arsons.

2 A That's correct.

3 Q And the qualification, "once circumstances  
4 permit," what does that refer to?

5 A Well, all of the goings on in the file  
6 essentially.

7 Q Meaning?

8 A Well, everything that was going on. From my  
9 position the sooner he can interview him, the  
10 better, basically.

11 Q The material that you are sending to him,  
12 perhaps you can assist us, the size of these  
13 files that he is getting; would it include the  
14 kinds of reports that we reviewed early on at  
15 tabs A4 to A13?

16 A That and more. It would be the arson  
17 investigator's reports and Ident reports and so  
18 on.

19 Q How big a file would it have been?

20 A At that point it would have been getting  
21 there -- it would have been a couple of inches  
22 thick probably at least, or more.

23 Q Now, the other aspect of this is the  
24 investigative files that you sent to them. So  
25 your entire investigative file is now

1           essentially in the custody and possession of the  
2           Winnipeg police service; is that correct?

3       A     That's correct.

4       Q     And did that include material that contradicted  
5           the suggestion that this was a revenge arson as  
6           opposed to an insurance fraud arson?

7       A     Yes.

8       Q     The kind of material that we have been reviewing  
9           this morning?

10      A     Exactly.

11      Q     Tab A-31 is the last in this sequence of post  
12           Anderson telephone call file memos, if I can  
13           call them that. Again this is now we are into  
14           January in the new year, January of 1991, you  
15           say, "awaiting action from Winnipeg police  
16           service." What is the action that you are  
17           awaiting?

18      A     The interview of Zanidean and again the hospital  
19           reports, inquiries.

20      Q     And is that file report consistent with an  
21           agreement not to pursue Zanidean?

22      A     No.

23      Q     All right. That concludes my examination of you  
24           in relation to the October phone call, which is  
25           the first important part of your evidence.

1           The second important part of your evidence,  
2           as you know, is the April phone call. If we can  
3           move into that period of the investigation that  
4           involves this further intervention from Sergeant  
5           Anderson where he calls you again, now for a  
6           second time.

7           Can you tell us, first of all, that  
8           previous tab, tab A-31, you asked for a lengthy  
9           diary date. Can you explain what these diary  
10          dates are? What is it that you are asking for  
11          there, and who are you asking for it from?

12         A       That would go to Sergeant Upton, who is the  
13          operational NCO under Sergeant Ferguson.

14         Q       The name there was Upton?

15         A       Yes, Sergeant Greg Upton, he was the Ops NCO.  
16          He reviewed all of the files and then he  
17          reported to Ron Ferguson.

18         Q       U-P-T-O-N?

19         A       Yes, Greg Upton.

20         Q       So what are you asking Sergeant Upton to do?

21         A       Normally you would update a file or he would  
22          want to see an update at least once a month or  
23          every two weeks, depending how serious the file  
24          was. So in situations like this where you are  
25          awaiting action, you just put in a request for



1 an extension because you haven't had a reply.

2 Q And why was it a lengthy diary extension that  
3 you were asking for?

4 A I don't recall offhand. I don't have any  
5 independent recollection of why I would have  
6 asked for a lengthy one.

7 Q Were you aware by this point that there had been  
8 a trial date set for Driskell's trial or for the  
9 Perry Harder homicide trial? I'm talking now  
10 into February?

11 A I would have to check the reports to see when I  
12 became aware of that. I'm not sure off the top  
13 of my head. That may be why, but I would have  
14 to review the material to know for sure.

15 Q There is a motion in court in front of Chief  
16 Justice Hewak in early February where they set  
17 the date, Mr. Dangerfield and Mr. Brodsky go to  
18 court, and Chief Justice Hewak sets a date in  
19 the first week of June. I'm wondering whether  
20 that had anything to do with your requesting a  
21 lengthy diary date?

22 A Again, it may have, but I would have to go  
23 through the material to see when I found that  
24 out. I'm just not sure off the top of my head.

25 Q There is no question that Anderson has told you

1           that Zanidean is an important prosecution  
2           witness in the Driskell case?

3        A     That's correct.

4        Q     So you know that the homicide officer's concerns  
5           about him is linked to the Driskell prosecution?

6        A     Correct.

7        Q     All right. So, the next significant development  
8           is, according to your witness statement at tab  
9           1, is the second phone call you get from  
10          Sergeant Anderson; is that correct?

11       A     Correct.

12       Q     And again we have a very lengthy recitation of  
13          this call in your witness statement at tab 1.  
14          It is covered over about three pages, pages 6 to  
15          9. So, I'm going to again try to highlight a  
16          couple of the significant aspects of it rather  
17          than repeating everything that's there. Again,  
18          this is one of these situations where we have  
19          lost the contemporaneous reports; is that  
20          correct?

21       A     That's correct.

22       Q     Both the 1624s and the C237s?

23       A     Correct.

24       Q     Would this have been a sufficiently important  
25          call that you would have made a 1624?

1 A Yes.

2 Q At the time?

3 A Yes.

4 Q And would it have been the kind of matter that  
5 you would have reported up the chain of command  
6 in a C237?

7 A Yes.

8 Q And why is that?

9 A Because of the importance of the case and what  
10 was going on within the case, these matters with  
11 Winnipeg.

12 Q And the further development that happens in this  
13 call, according to both you and Anderson, and  
14 yours and Anderson's account of this call are  
15 not all that different, is the issue of witness  
16 protection programs gets raised in this call?

17 A Correct.

18 Q Is that correct?

19 A Yes.

20 Q And is that another reason it made it  
21 particularly sensitive and a matter that would  
22 have to be reported up the chain of command?

23 A Yes.

24 Q At the time that you drafted these subsequent  
25 reports, which again is our way of

1 reconstructing what was said in this call, did  
2 you have -- was the file still intact?

3 A Yes.

4 Q You had access to your 1624s and your C237s?

5 A That's correct.

6 Q So again there are two accounts that we have in  
7 your reports of this particular conversation  
8 from two different C237s that you quote from?

9 A Yes.

10 Q The first one, the more detailed one, is back at  
11 tab A-24, the same document that we referred to  
12 before. If you could go back to tab A-24, and  
13 again at page 2, the October call was at the top  
14 of the page, and the April call is at the bottom  
15 of the page.

16 A Correct.

17 Q You see about two-thirds of the way down the  
18 page, just past the half, it says, "my C237  
19 dated April 19th?"

20 A Correct.

21 Q And it is referring back to an April 5th call.

22 A That's right.

23 Q So this report, the C237 to your senior officers  
24 is being written two weeks after the call. What  
25 would have been the basis for the C237?

1       A       It would have been the 1624s, the continuation  
2               reports on the file.

3       Q       And what you state there is that,

4               "On April 5th, call was received from Tom  
5               Anderson of Winnipeg homicide. He advised  
6               they wanted to put Ray Zanidean under the  
7               witness protection program as individuals  
8               associated to Driskell were actively trying  
9               to kill him at present."

10              And if I could pause there for a moment and  
11              advise you that we see in Sergeant Anderson's  
12              file a supplementary report dated April 5, that  
13              shows exactly what is being asserted here, that  
14              there has been a recent alleged threat to  
15              Zanidean's life. So, the first two sentences  
16              there line up nicely with Anderson's file. Were  
17              you aware of the threat beyond what you were  
18              told here?

19       A       Just what I was told in the report.

20       Q       "They had already located him at two locations  
21               where he was hidden. The witness protection  
22               coordinator in D division," who is Corporal Orr  
23               who we will hear from later this week, "advised  
24               that they would not hide Zanidean as long as the  
25               writer was actively investigating him with the

1 possibility of charges pending."

2 He asserts to you that Orr has advised them  
3 that they would not hide Zanidean in the witness  
4 protection program as long as you were actively  
5 investigating him with the possibility of  
6 charges pending.

7 A Correct.

8 Q Does that accurately set out what Sergeant  
9 Anderson told you?

10 A Correct.

11 Q And again, we know from the rest of the file  
12 that we will come to later this week, that  
13 indeed there was active attempts to get Zanidean  
14 into witness protection going on at this time,  
15 so your report is generally consistent with  
16 parts of the -- other parts of the file.

17 Do you recall whether Anderson told you  
18 that a pending investigation was a complete  
19 impediment to witness protection, that it was an  
20 absolute bar, or did he say that it was simply a  
21 problem that could be worked with, could be  
22 dealt with?

23 A I don't have an independent recollection, just  
24 what I put in the reports.

25 Q So you don't have any sense of how serious a

1           problem this was for them?

2       A       No, just what I have recorded there.

3       Q       All right. And then you have done a little bit  
4           of editing from your C237 here; is that correct?

5       A       Correct.

6       Q       So we see the dots and then you say,

7           "The matter was discussed with Tom  
8           Anderson. It was agreed that the only  
9           viable solution would be to not charge  
10          Zanidean."

11          And then there is a little bit more  
12       editing.

13          "I advised Anderson that I would submit the  
14          above recommendation through channels."

15       A       Correct.

16       Q       Does that accurately set out the gist of what  
17          you told him, subject to the bit of editing?

18       A       That's right.

19       Q       Did you have any reason to misstate the  
20          conversation or to exaggerate or twist it in any  
21          fashion in this report to your senior officer?

22       A       No.

23       Q       The conclusion of the report here is that you  
24          are going to recommend this through channels.

25          What does that involve?

1           A       C237 would go to Staff Sergeant Ferguson, and  
2                    then to Inspector Preston, the officer  
3                    commanding for the subdivision, and then to  
4                    Inspector Wass, the contracting police officer  
5                    at headquarters in Regina.

6           Q       You are in charge of this investigation. It is  
7                    your case, the Hayek arson, and you are  
8                    recommending no charges against Zanidean as a  
9                    result of the predicament that the Winnipeg  
10                   homicide officers are in. Why does that  
11                   decision of yours, as the investigating officer,  
12                   not to charge him, have to go up through these  
13                   channels?

14          A       Those are the rules.

15          Q       What rules are those?

16          A       The RCMP policy.

17          Q       We will come to those when Corporal Orr comes to  
18                    testify on Wednesday, and there are indeed a  
19                    fairly elaborate policy on the subject that we  
20                    will file at that time, Mr. Commissioner.

21                    Now, there is a second account of this call  
22                    that's a little bit less detailed, but if you  
23                    could hold your hand in that A-24 account for a  
24                    minute and then flip forward to A-32 and just  
25                    compare the two, I think you will get some help



1 with the editing that you have done by looking  
2 at this. At A-32, the very last page of it,  
3 page 5, you will see a quote again from a C237,  
4 this is a different C237, this one was made on  
5 April 7th, a mere two days after the call. It  
6 looks like you sent two C237s up dealing with  
7 the call. So this is the earlier one. And the  
8 quote from it -- it sets out the agreement or  
9 the consensus that you have reached with  
10 Anderson. There is no question at this point  
11 you have reached an agreement with Anderson; is  
12 that fair?

13 A Well, in theory, in principle.

14 Q You use the word agreed in both of these  
15 reports?

16 A Yes, but subject to approval.

17 Q Absolutely, your agreement is that you are going  
18 to recommend it?

19 A Yes.

20 Q I'm not saying that you are going to pull the  
21 investigation at this point, you are simply  
22 recommending it, but you have an agreement to  
23 made a recommendation?

24 THE CHAIRMAN: Mr. Code, can you refer me again,  
25 it is tab 32?

1 MR. CODE: And it is page 5 of the report, this  
2 is the report that's done in the summer, the  
3 July '91 report, and the very last page, just  
4 before Burton's signature at the end, there is a  
5 paragraph 17, where he quotes. The indented  
6 quote is from the C237 that he writes on  
7 April 7, 1991. So this is actually the earlier  
8 of the two C237s as opposed to the one back at  
9 tab 24, is that correct, Officer Burton?  
10 THE WITNESS: Correct.  
11 BY MR. CODE:  
12 Q And the quote there begins,  
13 "The matter was discussed with Tom  
14 Anderson. It was agreed that the only  
15 viable solution would be to not charge  
16 Zanidean."  
17 Have I read that accurately?  
18 A Yes.  
19 Q If you go back to the report at tab 24, you see  
20 that exact same quote there; is that correct?  
21 A Correct.  
22 Q So, it appears that the later C237 on the 19th  
23 of April is simply quoting from the earlier one,  
24 at least at that part; is that fair?  
25 A Yes.

1 Q And then on the earlier one at tab 24, you have  
2 got some editing at this point, and what carries  
3 on at tab 32 appears to fill in the editing,  
4 what you have edited out, is that correct?

5 A Yes.

6 Q "His testimony against Driskell for the  
7 execution would likely convict him. Once  
8 convicted, Driskell would likely provide  
9 evidence implicating Zanidean and his sister,  
10 Carol Hayek, for the arson and insurance fraud  
11 in order to get even. Hayek is the person that  
12 orchestrated and stood to gain financially from  
13 the offence and, therefore, is the primary  
14 target in this investigation."

15 Have I read that accurately?

16 A Yes.

17 Q Is that likely what was edited out back at tab  
18 24?

19 A Yes.

20 Q And then if we continue back at tab 24, you then  
21 carry on, the conclusion paragraph is, "I  
22 advised Anderson that I would submit the above  
23 recommendation through channels."

24 A Correct.

25 Q So have I stitched those two reports together in

1 a reasonable manner?

2 A I would say yes.

3 Q Again, turning to Sergeant Anderson's account of  
4 this second call, the April 5, 1991 call, we  
5 have no account of it whatsoever in his notebook  
6 and we have no contemporaneous report from him  
7 about this rather important call. But what we  
8 do have, again, is his subsequent report in  
9 response to the RCMP complaint, the same one we  
10 looked at before at tab A-25 that he drafts in  
11 the fall of 1991.

12 So if I could ask you to turn to tab A-25,  
13 and review his account of this second call. And  
14 again, you will recall the first call, the  
15 October call, is at the top of page 2, and if  
16 you skip a paragraph and go to the middle of  
17 page 2, you have the discussions in March and  
18 April, and you see a long paragraph there in the  
19 middle of page 2 that begins with his attempts  
20 to get Zanidean into witness protection, in  
21 March and April?

22 A Yes.

23 Q And his discussions with Corporal Orr in those  
24 first two sentences. And then the third  
25 sentence he refers to his April conversations

1 with you. And again he has it as two separate  
2 phone calls, whereas I take it your reports  
3 appear to refer to only one, is that correct?

4 A That's correct.

5 Q So leaving aside that detail and turning to the  
6 substance, he says,

7 "During the first conversation I explained  
8 the dilemma, and I believe he had already  
9 spoken to Corporal Orr. In any case, he  
10 had given the matter thought and he  
11 immediately offered to withdraw their  
12 pursuit of Zanidean entirely. He explained  
13 that he had planned to interview James  
14 Driskell after the murder trial in an  
15 effort to gain evidence against both  
16 Zanidean and his sister, but that he would  
17 only charge his sister. Approximately one  
18 week later I phoned Burton again to ensure  
19 that his proposal was agreed to by his  
20 superiors, and he assured me that his  
21 detachment commander had approved. And I  
22 reminded him that we would not make  
23 Zanidean privy to this arrangement until  
24 after he testified."

25 Have I read that accurately?

1 A Yes.

2 Q Right now if we could leave aside some of the  
3 flavour or the detail for a minute and look at  
4 the big picture, I take it that the general  
5 tenor of this, that there was an agreement  
6 between you and Anderson, subject to approval  
7 from senior officers, to entirely withdraw the  
8 pursuit of Zanidean is generally consistent with  
9 your reports; is that correct?

10 A Subject to approval, yes.

11 Q He makes it clear it is subject to approval as  
12 do you.

13 A Yes.

14 Q That's why he says there had to be a second  
15 phone call, because you didn't have the  
16 authority to make the agreement. But that the  
17 substance of what you are agreeing to with him  
18 is to end the pursuit of Zanidean on the Swift  
19 Current arson?

20 A Yes, proper approval.

21 Q And the basis for that is what he describes as  
22 the dilemma, the dilemma being that they are  
23 trying to get him into witness protection; is  
24 that correct?

25 A Correct.

1 Q And he asserts in the first two sentences that  
2 Orr had told them that he wouldn't qualify for  
3 the program if he was subject to the arson  
4 investigation?

5 A Correct.

6 Q And again that's consistent with your report in  
7 a general way?

8 A Yes.

9 Q I know you take issue with the suggestion that  
10 you immediately offered to do this, that you  
11 were eager, that is some of the flavour of it,  
12 but that general substance of it is consistent  
13 with your report; is that correct?

14 A That's correct.

15 Q He describes it as an arrangement that he has  
16 made with you, and you describe it as an  
17 agreement. Again I take it that's generally  
18 consistent; is that correct?

19 A Correct.

20 Q And he refers to it as an agreement to not  
21 charge him entirely, in other words, it is a  
22 permanent state of affairs, again is generally  
23 consistent with your report that if he was now  
24 in witness protection, you wouldn't charge him.

25 A Correct.

1 Q So I take it the part of this that you don't  
2 agree with is that he called you back to get  
3 assurance that you had approval from senior  
4 detachment commanders?

5 A That's right.

6 Q You have no record of that?

7 A That's correct.

8 Q Indeed, what the records show, which we will  
9 come to in a minute, is that your senior  
10 detachment commanders did become involved and  
11 they essentially took charge of the matters  
12 themselves with a kind of wait and see approach?

13 A That's correct.

14 Q So, you challenge the second phone call?

15 A Yes.

16 Q Was there any discussion about not informing  
17 Zanidean about this arrangement?

18 A Again, I will rely on my reports and I saw  
19 nothing in my reports to that effect. That I  
20 offered -- except his one request there to keep  
21 the matter in confidence, which I believe was  
22 the October call. That was just a general  
23 statement, but beyond that, nothing.

24 Q He asked you to keep it in confidence because of  
25 the potential danger to the prosecution. I



1 think at that point there had been no disclosure  
2 of the fact that Zanidean -- in fact, I know  
3 there had been no disclosure. Driskell had just  
4 been charged and disclosure is withheld until  
5 the preferred indictment comes later in  
6 November. So, the fact that Zanidean is a  
7 witness, a Crown witness, a protected Crown  
8 witness, had not been disclosed to anybody in  
9 October when that call was made. I suspect  
10 that's the context for the keeping it in  
11 confidence in October?

12 A I'm not sure. He didn't elaborate on why. He  
13 said just to keep it in confidence and that was  
14 it, according to my report.

15 Q Turning then to the next steps, the follow-up,  
16 because according to both you and Anderson there  
17 has to be some follow-up here. You are a junior  
18 constable making a serious decision here on a  
19 major case and everybody seems to agree it has  
20 to go up the chain of command. So the best  
21 account again of your follow-up steps we find in  
22 your report back at tab 24, where you appear to  
23 still be quoting from contemporaneous reports,  
24 in particular from this April 19, C237. If you  
25 could go back to tab 24, we stopped at the

1 bottom of page 2, which is the conclusion of  
2 Anderson's call to you.

3 At the top of page 3 -- am I reading that  
4 correctly, that the first two paragraphs at the  
5 top of page 3 are direct quotes from the  
6 contemporaneous C237? Do you see how the  
7 quotation marks close off at the end of the  
8 second paragraph? Tab 24, the top of page 3.

9 A Yes.

10 Q So those two paragraphs are simply a continuing  
11 quote from the April 19th, C237?

12 A That's correct.

13 Q You are referring to events on April 11th and  
14 April 16th in those two paragraphs that are in  
15 the week following Anderson's call?

16 A That's right.

17 Q And these are events that are prior to the  
18 drafting of this C237. What would you have used  
19 as the basis for inserting these into your C237  
20 on April 19th?

21 A I would have used the 1624 continuation reports  
22 that are done daily.

23 Q Let's see what the steps are that you took,  
24 according to this report. On April 11th Staff  
25 Sergeant Ferguson made arrangements to meet with

1 Inspector Preston. So that's your City police  
2 chief meeting with the subdivision commander?

3 A For the area, right.

4 Q For the whole area. To discuss the matter on  
5 the 15th of April. On the 15th of April, Burton  
6 and Ferguson met with Preston. The matter was  
7 discussed and Inspector Preston advised that he  
8 would contact Corporal Orr and discuss the  
9 matter further.

10 Have I read that accurately?

11 A Yes.

12 Q So, you and Ferguson go up the street to meet  
13 with the divisional commander and he essentially  
14 takes it over, is that the resolution of it?

15 A That's correct.

16 Q And was Inspector Preston -- again we are  
17 getting more senior in the chain of command.  
18 Again what kind of an officer is he? Is he a  
19 guy who spent his life behind a desk or did he  
20 have a lot of investigative experience?

21 A He had a lot of investigative experience in  
22 Manitoba. He came from -- he was with Winnipeg  
23 GIS. Did a lot of murders.

24 Q Did you have respect for him as a man with real  
25 investigative experience and knowledge beyond

1           yours?

2       A     Yes.

3       Q     Was he a man that dealt with witness protection  
4           problems before, to your knowledge?

5       A     Not to my knowledge. But I assume he would have  
6           in that role, in his prior role.

7       Q     Doing homicides in Manitoba?

8       A     Yes.

9       Q     The next paragraph.

10                "On April 16, 1991 Inspector Preston spoke  
11               with Corporal Orr who advised that Zanidean  
12               is now under the witness protection program  
13               and is out of province. After the trial he  
14               will be relocated permanently. In view of  
15               this, the only course of action open to us  
16               is to await the trial outcome and evaluate  
17               the situation then."

18               Have I read that accurately?

19       A     Yes.

20       Q     Again, how would you have learned what Preston's  
21           decision was, based on his conversations with  
22           Orr?

23       A     By way of what we call a round trip or internal  
24           memorandum. We refer to it as an A5, an  
25           interoffice type of thing.

1 Q And, in fact, if you look at your note that  
2 immediately follows, you advise that you are  
3 actually attaching the A5 that you received from  
4 Inspector Preston, and we will come to that  
5 document in a minute. But it appears that when  
6 you fill out your C237 on April 19th, you are  
7 essentially quoting from Preston's April 16th  
8 internal A5, is that correct?

9 A That's correct.

10 Q And Preston's resolution of the matter is  
11 different from what you were recommending, or am  
12 I reading that wrong? Your conversation with  
13 Anderson on April 5 and Preston's resolution of  
14 it eleven days later on April 16 are different,  
15 are they not?

16 A Yes.

17 Q You were recommending a permanent termination of  
18 the pursuit of Zanidean, and what Preston says  
19 is, well, we are going to await the trial  
20 outcome and evaluate it at that time?

21 A That's right.

22 Q He is not committing to any agreement not to  
23 charge him?

24 A That's right.

25 Q So, in essence, your recommendation got

1 rejected, as I read this?

2 A Yes.

3 Q Had you had any prior experience with witness  
4 protection and what it involved?

5 A None.

6 Q All right. If we could turn to Inspector  
7 Preston's A5 then, where his resolution of the  
8 matter on April 16 is set out, we find that at  
9 tab A35. And I should state at this time,  
10 Mr. Commissioner, that I'm grateful to my  
11 colleague, Mr. Gates, who, when I discussed the  
12 matter with him last night and pointed out this  
13 redacting or editing that the RCMP had done to  
14 the first three lines of Inspector Preston's  
15 memo, given the importance of this memo I asked  
16 him if he would revisit the editing decision  
17 that he had made, and he kindly agreed to  
18 reverse that decision as he felt it wasn't well  
19 taken at the time, or it was well taken at the  
20 time, but in light of what he now knows about  
21 the file, he has lifted the editing. So you  
22 should have a full, unedited version and I hope  
23 all of my colleagues have that now as well. Do  
24 you have the unedited version before you,  
25 Officer Burton?

1 A Yeah, I do.

2 Q Do you recognize this as the A5 that you were  
3 relying on when you prepared your report?

4 A Yes.

5 Q And you can see on Mr. Gates' photocopy we have  
6 the date on it, April 16. On the original  
7 photocopy at tab 35, the date is cut off. But  
8 this would appear to be the one that you  
9 appended to your report; is that correct?

10 A That's correct.

11 Q And what Preston says is he memorializes his  
12 conversation with Corporal Orr and he says, "Ray  
13 Zanidean is now under witness protection," and I  
14 don't know if your copy is better than mine, but  
15 does he appear to put those words in quotation  
16 marks?

17 A Yes.

18 Q He doesn't say the witness protection program,  
19 does he?

20 A No.

21 Q With formal capital letters or anything, he says  
22 witness protection in quotation marks. Do you  
23 take anything from that?

24 A My take on it would be he may not be referring  
25 to the formal, what we call the source witness

1 protection program.

2 Q Were you -- at this time in 1990 when you were a  
3 young constable were you alive to these  
4 distinctions between the formal source witness  
5 protection program and temporary relocation  
6 under a form of witness protection? Were these  
7 nuances matters that you were alive to at the  
8 time?

9 A No.

10 Q Would Preston likely have been alive to them?

11 A I would say yes.

12 Q You see, when we go back to your report and  
13 Anderson's report of the conversation, what both  
14 of you are talking about in your reports, is  
15 witness protection program with capital W,  
16 capital P, capital P, the formal program, both  
17 of your reports use that language. It seems to  
18 refer to the actual source witness protection  
19 plan, correct?

20 A Correct.

21 Q And Preston is not using that same language?

22 A No.

23 Q He carries on.

24 "He will remain so until trial in

25 June 1991, then it is their intention to



1 relocate him again permanently."

2 Have I read that correctly?

3 A Correct.

4 Q So there appears to be a two step process. You  
5 have got some form of witness protection now,  
6 and then after the trial there is an intention  
7 to relocate him permanently as a second phase of  
8 it. Am I reading that accurately?

9 A That is the way it appears to me.

10 Q And then the final concluding paragraph is the  
11 one that you appear to quote in your own report  
12 at tab 24. It would seem that the only course  
13 of action open to you now is to await the trial  
14 outcome and evaluate the situation then?

15 A Correct.

16 Q And is that what you have quoted in your report  
17 back at tab 24?

18 A Yes, it is.

19 Q So that's an illustration of how the C237s --  
20 you are simply re-circulating pre-existing  
21 reports?

22 A That's right.

23 Q Now when he says the only course of action open  
24 to you now, who is he directing this internal  
25 memo to?

1       A       It is going to Ron Ferguson and I both. That's  
2               Ron's title at the top, the IC of Swift Current,  
3               but it would be to both of us.

4       Q       I simply wanted to establish, the IC of Swift  
5               Current is your boss, Staff Sergeant Ferguson?

6       A       Correct.

7       Q       All right. So, as far as you were concerned,  
8               was that the resolution of the April  
9               intervention by Sergeant Anderson, that the  
10              conclusion of it was that you were going to wait  
11              and see the outcome of the trial?

12      A       That's correct.

13      Q       And then you would evaluate the situation at  
14              that time?

15      A       Correct.

16      Q       And did that get communicated back to Anderson?

17      A       I believe it did later, in my reports, I would  
18              have to refer to them.

19      Q       I mean, we know that Orr has further involvement  
20              and we will hear from Corporal Orr on Wednesday,  
21              but do you recall having a further conversation  
22              with Anderson, as he asserts there is a  
23              follow-up call with you?

24      A       I would have to refer to my reports.

25      Q       Sorry?

1 A I would have to refer to my reports as to the  
2 exact chronology of that.

3 Q Do you have any report of a second call from  
4 Anderson where you informed him of Preston's  
5 decision?

6 A Oh, that second call, no.

7 Q Anderson says he calls you back and you assure  
8 him that your recommendation has been approved  
9 by your detachment commander. And what I'm  
10 asking you is, is that consistent with Preston's  
11 resolution of the matter?

12 A You will have to run that by me again.

13 Q Look at tab 25.

14 A Okay.

15 Q Anderson's report. He says he calls you back.  
16 "He assured me that his detachment commander had  
17 approved," approved your recommendation to  
18 entirely bring an end to proceedings against  
19 Zanidean.

20 A I have no record of that, no.

21 Q And is that consistent with Preston's internal  
22 memo at tab A-35?

23 A No.

24 Q So, for you to say that to Anderson, you would  
25 have been contravening Preston's instructions?

1 A Correct.

2 Q Is that a wise thing for young constables to do,  
3 to be insubordinate to their superior officers?

4 A No.

5 Q Now. Again, if we look at the file to see the  
6 next steps that you took on it or the steps that  
7 you took in the intervening months, I would like  
8 to do the same exercise we did with Anderson's  
9 report on the October call. Have you found  
10 anything in the subsequent steps taken on the  
11 file after April that indicate that you had  
12 reached, and your divisional commander had  
13 reached, an agreement with Anderson to entirely  
14 end your pursuit of Zanidean?

15 A No.

16 Q And if we look at, for example, tab A-35, you  
17 have another one of these file extension  
18 reports. And you justified the -- the extension  
19 is until the end of June; is that correct?

20 A A-35?

21 Q 36.

22 A That's correct.

23 Q Extension until the end of June. That would be  
24 after the Driskell trial; is that correct?

25 A That's correct.

1 Q Were you aware of the Driskell trial dates by  
2 now, do you think?

3 A Yes.

4 Q End of May?

5 A Yes, I was.

6 Q And you state as the justification for the file  
7 extension.

8 "No action can be taken by Winnipeg police  
9 service until the last week of June."

10 Have I read that accurately?

11 A Correct.

12 Q And what was the steps that you were waiting for  
13 the Winnipeg police service to take?

14 A It would have been the interview of Ray  
15 Zanidean.

16 Q And is that file extension for that purpose  
17 consistent with an agreement to permanently and  
18 entirely end your pursuit of Zanidean?

19 A No.

20 Q We see that you and Staff Sergeant Ferguson also  
21 discussed the possibility of giving immunity to  
22 Driskell in this ensuing month, in the month  
23 leading up to the trial, and in the course of  
24 those discussions about whether to give immunity  
25 to Driskell, there is also consideration as to

1           whether to give immunity to Zanidean; is that  
2           correct?

3       A     Correct.

4       Q     If I could just quickly refer to those memos.  
5           We find them at the next three tabs.  At tab 37  
6           is your request for consideration of immunity  
7           for Driskell, is that correct?  At least it is a  
8           report of Ferguson's discussions with Mr.  
9           Brodsky's investigator about the possibility of  
10          immunity for Driskell?

11      A     Correct.

12      Q     And then at tab 38, we get Ferguson's memo about  
13           that issue in which he talks about the  
14           possibility of giving immunity to both Driskell  
15           and Zanidean in order to support charges against  
16           Hayek; is that correct?

17      A     Correct.

18      Q     He says it may not be necessary to give immunity  
19           to Zanidean, as he is to be relocated under the  
20           witness protection plan --

21      A     Correct.

22      Q     -- in Paragraph 2.  So again, does that memo  
23           indicate that there was already an agreement in  
24           place that Zanidean would not be charged?

25      A     That would indicate that there was not.

1 Q And finally tab 39 we get Constable Orr's notes,  
2 and these are notes of a discussion with you on  
3 May 30th. If you look at the second page, tab  
4 39, he has a contemporaneous note. And again I  
5 take it that these are like your 1624s, these  
6 are contemporaneous RCMP notes and phone calls?  
7 A Whether he made them contemporaneously, I don't  
8 know. They should be.  
9 Q It is described as a continuation report. Is  
10 that the same kind of report as what you call a  
11 1624?  
12 A This is a 1624, yes.  
13 Q You don't have a 1624 of this phone call, do  
14 you?  
15 A I don't recall ever speaking with him.  
16 Q I know you don't recall speaking with him, but  
17 more to the point, you don't have a 1624 of the  
18 phone call to help you recall?  
19 A Yes.  
20 Q So, again, if there was such a call and such a  
21 report, we have lost the report, as we have many  
22 others in this file; is that correct?  
23 A Correct.  
24 Q And what he says very simply in this note of the  
25 May 30th phone call, he says.

1 "Call received from Constable Ross Burton,  
2 Swift Current, who advised that there will  
3 be no proceedings against Zanidean either  
4 as a witness or accused if he is accepted  
5 under the program."

6 Have I read that correctly?

7 A Yes.

8 Q And is that consistent with your understanding  
9 of Inspector Preston's wait and see approach to  
10 this matter?

11 A Yes.

12 Q And also consistent with what Staff Sergeant  
13 Ferguson says at tab 38, that it may not be  
14 necessary to extend witness immunity to Zanidean  
15 if he is relocated under witness protection.

16 A Correct.

17 Q So the position, as I understand it, you were  
18 taking is that if after the trial he is  
19 permanently relocated under a witness protection  
20 program, as almost a de facto matter, you would  
21 not pursue it.

22 A That's right.

23 THE CHAIRMAN: Mr. Code, we are at 12:35 now.

24 MR. CODE: If I could just ask two questions,  
25 then it will be a perfect time.



1 THE CHAIRMAN: Certainly.

2 MR. CODE: In fact, I don't even need to ask  
3 these questions, I have asked them already. I'm  
4 moving on to my final heading, so that's  
5 perfect.

6 THE CHAIRMAN: Thank you, we will adjourn  
7 until --

8 MR. CODE: Mr. Wolson wanted to address you.

9 THE CHAIRMAN: Certainly.

10 MR. WOLSON: May it please you,  
11 Mr. Commissioner, when I cross-examined this  
12 witness, because I received the document book  
13 only this morning, and I'm not taking issue with  
14 that at all, I used the documents that I  
15 received months ago. They are the same  
16 documents, some of them. There are some  
17 documents I will refer to that aren't in the  
18 material, so I would ask you and counsel to have  
19 the RCMP disclosure books, 1, 2 and 3; the D  
20 division RCMP disclosure, 1, 2 and 3; and the D  
21 division disclosure book, in other words, the  
22 Orr book; the Swift Current file book; of  
23 course, the statement to commission counsel by  
24 this witness, as well as the re-investigation  
25 report by Ewatski and Hall. And I may refer as

1 well to the body pack tape book, which I believe  
2 is book 12, and book 15 which was the  
3 cross-examination of Mr. Zanidean.

4 So I plan to refer to those books as  
5 opposed to the book that was provided this  
6 morning.

7 And then the other issue, of course, is the  
8 examination, order of the cross-examinations. I  
9 have talked to some counsel. It is my proposal  
10 that I go last, with the exception of  
11 Mr. Burton's counsel pursuant to the rules, and  
12 I make that submission to you because in a legal  
13 sense this witness is adverse to my client,  
14 particularly Mr. Anderson, and in that regard I  
15 would ask that I go at least as late in the  
16 process as I can. So that would mean his  
17 counsel would be after me, pursuant to rules, if  
18 you would accede to my request.

19 THE CHAIRMAN: As a matter of fact, the order of  
20 cross-examination is something that I had given  
21 some thought to, but very peripheral I suppose,  
22 or superficial, and I had jotted down a list.  
23 Unfortunately I didn't bring the list with me.  
24 But in any event, it was not meant to be a  
25 determining list. So what I would hope is that

1           counsel, amongst themselves, can more or less  
2           agree to the order. But having regard to those  
3           whose client is in a position of adversity vis a  
4           vis the testimony of the witness, obviously  
5           going later in the range.

6           MR. WOLSON: Yes. And unless I hear otherwise  
7           from my friends behind me, I will just assume  
8           they agree with my position. And if not, we  
9           will find out I'm sure and deal with it in your  
10          presence.

11          MR. CODE: I must say I discussed this matter  
12          with Mr. Wolson yesterday, and I told him I  
13          would certainly support his position. A common  
14          sense view of Inspector Burton's evidence is  
15          that Mr. Wolson should go last, subject to Mr.  
16          Gates, of course, pursuant to the rules, being  
17          able to go last. I think there is no question  
18          that, in fairness to Mr. Wolson and his clients,  
19          he should be the last cross-examiner and the  
20          others can line up any way they want in front of  
21          him, as far as I'm concerned. Perhaps Mr.  
22          Lockyer should go first. I suspect that he  
23          tends to like Inspector Burton's evidence.

24          THE CHAIRMAN: And the other thing I would say  
25          to counsel, if you can decide amongst

1 yourselves, you can change the order with  
2 different witnesses as obviously it would be  
3 appropriate. And so I would ask you to, to the  
4 best you can, agree amongst yourselves. If you  
5 can't, I will be arbitrary. So, we will adjourn  
6 until two o'clock.

7 (Proceedings recessed at 12:42 and  
8 reconvened at 2:00 p.m.)

9 THE CLERK: All rise. This commission of inquiry  
10 is now commenced. You may be seated.

11 BY MR. CODE:

12 Q Officer Burton, we have now reached the  
13 post-trial period in June 1991. And I want to  
14 cover with you the events of June and July that  
15 leads into your third set of calls with Sergeant  
16 Anderson July calls. We have dealt with October  
17 of '90 and April of '91. And the third and last  
18 set of any significant calls that you have with  
19 him are the July ones.

20 So if I could just lead into that by  
21 reminding you of the documents that you've  
22 produced or that you and your colleague Ferguson  
23 produced in the days and weeks leading up to  
24 those July phone calls. So I am in the  
25 immediate post-trial period in late June, early

1 July of 1991. And the most important document  
2 generated by you in that time period is the  
3 report that's found at tab A44. This appears to  
4 me to be the most important one dated July 7,  
5 1991. So approximately three weeks after the  
6 trial, and approximately a week before your  
7 calls with Sergeant Anderson that are just  
8 coming up, you produced this investigative  
9 report that sets out a number of  
10 recommendations. Do you see that?

11 A Yes.

12 Q And you are familiar with this document, I take  
13 it?

14 A Yes.

15 Q And to summarize it for you, and tell me if I am  
16 summarizing it fairly, rather than reading  
17 through the whole document, it is four pages, as  
18 I read this, you take a very forceful law  
19 enforcement view of this matter, the Swift  
20 Current arson, that it is now time to move ahead  
21 and lay some charges. And you are strongly in  
22 favour of charging all three of the main  
23 culprits and not giving anybody immunity. Is  
24 that a fair summary of it?

25 A Yes. If it's possible, yeah.

1 Q And your rationale for taking that view is  
2 partly your assessment of the gravity of the  
3 offence that you set out at page 2; is that  
4 correct?

5 A Correct.

6 Q And partly your sense of the strength of the  
7 evidence and investigative tactics that you take  
8 the view that what should at least be attempted  
9 is to put the compelling body of evidence that  
10 you've gathered to Hayek and see if you can get  
11 a confession from her that implicates all three  
12 of them and allow you to proceed against all  
13 three of them. That's your strategic goal, is  
14 that fair?

15 A That's correct.

16 Q And no discussion of immunity, if at all  
17 possible?

18 A Correct.

19 Q All right. The one other point I note from this  
20 document is that you appear to be aware now of  
21 this new intervening event, which is Zanidean's  
22 testimony under oath at the Driskell trial about  
23 this alleged revenge motive. Do you see that at  
24 the bottom of page 2 where you summarize the  
25 current state of the evidence at your paragraph

1 4D at the bottom of page 2?

2 A Correct.

3 Q "Zanidean admitted under oath during the  
4 murder trial that himself and Driskell burn  
5 the house. Zanidean states he burned the  
6 house for revenge. Zanidean is obviously  
7 trying to protect his sister."

8 A Correct.

9 Q And I take it from that conclusion on the last  
10 line that you did not accept Zanidean's sworn  
11 evidence as having been truthful?

12 A Correct.

13 Q Based on the investigative facts that you've  
14 discovered?

15 A Exactly.

16 Q And your colleague, your boss, Staff Sergeant  
17 Ferguson, seemed to take a similar view of the  
18 case. If we look at his memo written around the  
19 very same time in the previous tab, tab 43, it  
20 is actually written three days before yours. In  
21 that very -- in the first page of Staff Sergeant  
22 Ferguson's memo, his paragraph 2 takes the view  
23 that:

24 "There is sufficient evidence to charge all  
25 three of them"?

1 A Correct.

2 Q "With a conspiracy"?

3 A That's correct.

4 Q And he raises, as well, concern about the  
5 perjury issue, if I can call it that, which is  
6 what he calls it. You see at the bottom of page  
7 2 that:

8 "There is now this additional  
9 complication, Zanidean's apparent perjury  
10 at the Driskell trial when he testified  
11 about the arson."

12 Do you see that?

13 A Yes.

14 Q And his concern over the page, as I read it, is  
15 that a failure to charge could be seen as a  
16 cover-up. You see at the top of page 2 his  
17 point B, he says:

18 "Failure to respond judicially could be  
19 construed as an attempt at concealing  
20 evidence similar to the Donald Marshall  
21 case."

22 A Yes. I see that.

23 Q So as I read these two memos at tab A43 and A44,  
24 your stance in the immediate post-trial period  
25 was, at least for the two of you, the local



1 officers in Swift Current in charge of the case,  
2 your stance was very much pro-prosecution, to  
3 move ahead with this case and charge everybody,  
4 if at all possible?

5 A Correct.

6 Q And, if anything, Zanidean's alleged perjury had  
7 increased the impetus for taking that view of  
8 the case?

9 A That's correct.

10 Q The one other development in this immediate  
11 post-trial period that I wanted to draw to your  
12 attention is that the various officers involved  
13 in the RCMP appear to want to determine this  
14 issue of whether Zanidean was or was not in the  
15 formal witness protection programme. Do you  
16 remember that becoming an issue in this time  
17 period?

18 A Yes.

19 Q In the sense that now the trial is over and the  
20 way it had been left back in April, according to  
21 your memo and Preston's memo and your  
22 conversations with Orr, was that you were going  
23 to see if he was entered into the formal  
24 programme after the trial; is that correct?

25 A Correct.

1 Q If you look at Burt -- Ferguson's memo. This  
2 one we are on at tab 43, which is just two, two  
3 and a half weeks after the trial, he appears to  
4 assume that Zanidean is in the witness  
5 protection programme. Do you see at the first  
6 page his paragraph 2A he says:

7 "Reath Zanidean is a protected witness  
8 under the witness protection plan."

9 A Correct.

10 Q And over the page, at page 2, he repeats it  
11 again in his letter C. Paragraph 2C he says:

12 "Should Reath Zanidean be charged with  
13 arson or conspiracy, would he be removed  
14 from the witness protection plan?"

15 This issue was raising a complication for you if  
16 you were to charge him?

17 A Correct.

18 Q Does that reflect the assumption that you and  
19 Ferguson were making at this time that he was,  
20 in fact, in the formal witness protection  
21 program?

22 A That's correct.

23 Q Okay. And then what we see, as increasingly  
24 senior officers get involved in Regina -- I  
25 should pause. I should say one last point about

1 Inspector Ferguson's memo at paragraph 43 is he  
2 is raising all of these very difficult issues  
3 about whether a failure to charge would be seen  
4 as a concealing of evidence similar to the  
5 Donald Marshall case. And these issues about if  
6 you charge Zanidean you have to remove him from  
7 the witness protection program. And he fairly  
8 wisely, in his concluding paragraph says:

9 "We have got to move this up the chain to  
10 the F division CROPS office and to  
11 Saskatchewan Justice and Manitoba Justice."

12 A That's correct.

13 Q Have I summarized the gist of his memo  
14 accurately?

15 A Yes.

16 Q That the two of you were in favour of charging,  
17 but at the same time you were astutely  
18 acknowledging a number of very difficult issues  
19 and requesting advice from the senior levels of  
20 the RCMP and from Saskatchewan and Manitoba  
21 Justice?

22 A Correct.

23 Q So what we see in the ensuing memos is, as you  
24 had asked, the senior CROPS officers in Regina  
25 get involved. And one of the first things they

1 do is they clarify this business of whether  
2 Zanidean is in or out of witness protection. So  
3 if I could just direct your attention to three  
4 memos here. At tab 46, first of all, you see a  
5 memo from somebody who is called "the DISCO" or  
6 "DISCO". I am sure that is not ever referred to  
7 as "the disco" in the RCMP. But who is the  
8 DISCO?

9 A Well, I believe that's an acronym for the  
10 division intelligence section.

11 Q In Regina?

12 A Regina, yeah.

13 Q And he is reporting to somebody called Corporal  
14 Scovey?

15 A Yeah.

16 Q Who is another Regina fellow, was he?

17 A I believe he was with criminal operations at the  
18 time.

19 Q And the CROPS office is the senior criminal  
20 operational office in division headquarters in  
21 Regina?

22 A Yes.

23 Q And you see the covering note that says:

24 "Brian, please see" -- the attached --  
25 "see me re attached correspondence".

1           And it says: "Call Orr".

2                   And then over the page, the attached notes  
3           appear to refer to a call to Orr, who we know is  
4           the source witness protection coordinator in  
5           Winnipeg. See at the bottom of that second  
6           page, it refers to a July 9th call to Orr?

7           A       Yes.

8           Q       And at the very first note over the page, the  
9           third and last page on this tab, it says:

10                   "Zanidean not in RCMP witness protection  
11                   program."

12           Is that correct?

13           A       Correct.

14           Q       It says:

15                   "RCMP involved in initial interviews, but  
16                   not taken into the program (unreasonable  
17                   demands)."

18           A       That's correct.

19           Q       And then further down it says:

20                   "Zanidean may have been given money to  
21                   relocate self by Winnipeg City Prosecutor  
22                   (relocation fee) promises made RCMP not  
23                   prepared to keep."

24           Have I read those notes accurately?

25           A       Yes.

1 Q And then the final note of interest, it says:

2 "Winnipeg PD promise immunity from  
3 prosecution (check this)."

4 And then I think it says:

5 "(nothing should happen)".

6 So it appears from this memo that head office in  
7 Regina concludes that Zanidean's not in the  
8 witness protection program, that the RCMP  
9 wouldn't take him in?

10 A Correct.

11 Q And if you look at the next tab 47, very  
12 similar, this is Scovey, the first recipient of  
13 the first memo, recording a phone call with Orr  
14 himself a week later on the 15th of July. He  
15 requests clarification from Orr. And over the  
16 page, the second page of the memo, it says:

17 "Corporal Orr, to his knowledge, has been  
18 told by Winnipeg PD that no promises were  
19 made to Zanidean with respect to the arson  
20 investigation."

21 And then it says:

22 "Zanidean is not in the witness protection  
23 program after interview with Corporal Orr."

24 And then, finally:

25 "Mr. Bruce Miller, Manitoba Crown

1                   Prosecutor, is somehow involved. Who knows  
2                   if he made promises to Zanidean."

3                   So then, again, it appears that Regina has  
4                   clarified that Zanidean is not in the witness  
5                   protection program?

6           A        Correct.

7           Q        And then, finally, tab 48 is the last one of  
8                   this series, Corporal Orr's notes in the  
9                   Winnipeg protection office, the fellow who  
10                  would have been taking him in, if he had been  
11                  brought in, sets out his continuation report  
12                  of his various phone calls with Scovey and  
13                  Marcella. Who was Marcella, by the way, Staff  
14                  Sergeant Wayne Marcella?

15          A        I am not sure if he was CROPS or Source Witness  
16                  Protection in Regina.

17          Q        And he is, again, a head office officer in  
18                  Regina?

19          A        Headquarters.

20          Q        At the division headquarters?

21          A        That's correct.

22          Q        And you see on the last page of Orr's notes, the  
23                  third and last page of this tab, he says:

24                         "I was able to advise my counterpart in  
25                         Regina"...

1           which would suggest the point that you are just  
2           making that Marcella is his counter-part, the  
3           Source Witness Protection officer.

4                     "that Zanidean was not part of the  
5           protection plan. From my conversation with  
6           Mr. Miller today it, would appear the  
7           Manitoba AGs will be paying out a \$20,000  
8           relocation payment to Zanidean."

9           Have I read that accurately?

10          A     Yes.

11          Q     So it appears that, by the middle of July,  
12                Regina has sorted out that Zanidean is not in  
13                witness protection and is likely to be simply  
14                paid a cash fee; is that correct?

15          A     Correct.

16          Q     And that information that clarifies Zanidean's  
17                status, and whether or not that's an issue for  
18                you at the investigative level who appear to  
19                want to charge him, was that communicated down  
20                to you at the local office in Swift Current that  
21                the witness protection program was not an  
22                impediment to you?

23          A     It eventually came to me through the chain of  
24                command.

25          Q     All right. And, in fact, if we look at your own



1 memo at Tab 32, you appear to have learned  
2 that -- well, in fact, you actually record it in  
3 a -- in one of your own reports that on  
4 July 16th you learned that through Orr,  
5 presumably, as you say, it being passed down  
6 through the chain of command. We know that on  
7 July 16th that Orr is passing this information  
8 on to Marcella. And your report seems to say  
9 that on the 16th you learned that yourself; is  
10 that correct?

11 A Yeah.

12 Q You have your report at Tab 32 from July 19th?

13 A Yeah. I don't know if I learned it on the  
14 16th or the intervening three days. It would  
15 have filtered down between the 16th and the  
16 19th.

17 Q It appears from that report that on the 13th of  
18 July that Zanidean and his wife had been picked  
19 up in Swift Current itself. They were  
20 obviously passing through your jurisdiction.  
21 And his wife, Susan Fergus, is charged with  
22 impaired driving. And she claims that they are  
23 both in the witness protection program and they  
24 are immune from criminal process; is that  
25 correct?

1 A Correct.

2 Q So Regina clears up this status issue. And you  
3 clear it up locally because of this impaired  
4 driving issue?

5 A Correct.

6 Q The final development here in this period, I  
7 wanted to draw it to your attention before  
8 turning to the phone call with Sergeant  
9 Anderson, is that your recommendation that we  
10 saw in Ferguson's memo that this whole matter  
11 requires serious high-level attention from  
12 justice officials in the two justice  
13 departments, if you'll recall, that was the  
14 recommendation that Ferguson made in his report  
15 at tab 43, that that gets acted on. And you  
16 see a number of memos at tabs 49. For example,  
17 A49, right at the end of tab A, and then at B1  
18 at the beginning of tab B. Refer to a meeting  
19 that gets held on July 17th in Regina where that  
20 is the very conclusion of the meeting that you  
21 are gonna bump this up to Richard Quinney in  
22 Saskatchewan Justice. Do you see that at tab  
23 A49? And it's also at tab B1?

24 A Correct. Yeah, I see it.

25 Q Both of those memos at A49 and B1 refer to a

1 meeting taking place on July 17th in Regina.

2 You and Ferguson both attended?

3 A That's correct.

4 Q And the conclusion of that meeting, as I read  
5 these two memos, is that you are to complete  
6 your investigation. And then, in the meantime,  
7 Inspector Wass is going to brief Richard  
8 Quinney; isn't that correct?

9 A Correct.

10 Q And in the report at B1, we actually have a note  
11 of Wass's call to Quinney. And he ends up  
12 speaking to a Murray Brown in the Justice  
13 Department; is that correct?

14 A Correct.

15 Q That final note at tab B1 on the second page,  
16 that's Wass' note, is it?

17 A It appears to be. That looks like his initials  
18 at the bottom.

19 Q And Quinney was on holidays, so you spoke to  
20 Murray Brown about the situation. He says:

21 "The problem of immunity will not be  
22 considered until all of the facts are  
23 known."

24 Have I read that accurately?

25 A Yes.

1 Q So the upshot of this meeting on July 17th in  
2 Regina, that you and Ferguson attend with your  
3 senior CROPS officers, is that Quinney -- that  
4 Justice is going to be briefed. And in the  
5 meantime, you are going to conclude your  
6 investigation. And it appears that the justice  
7 officials agree with that, that the whole  
8 immunity problem can't be grappled with until  
9 you know all of the facts from the  
10 investigation?

11 A Correct.

12 Q Richard Quinney, incidentally, was he somebody  
13 who was known to you? Had you ever met him?

14 A I hadn't met him, but I knew who he was.

15 Q And his position was?

16 A He was the acting executive director of  
17 Saskatchewan Justice.

18 Q He was the most senior criminal justice  
19 prosecution official in the province?

20 A Correct.

21 Q That's the functional equivalent of the ADM or a  
22 DPP; is that correct?

23 A Correct.

24 Q Now, this meeting, you actually have got a  
25 report. If you go back to your report at A32 to

1            simply confirm your own notes about that  
2            report -- about that meeting, I'm sorry, are set  
3            out at tab A32. You see on page 4 you refer to  
4            the meeting, paragraph 12, page 4?

5            A        Correct.

6            Q        On July 17th you set out the participants in the  
7            meeting and the investigation is discussed in  
8            detail. An investigation work plan was  
9            presented?

10          A        That's right.

11          Q        And who presented that investigation work plan?

12          A        It would have been, well, myself and Staff  
13          Sergeant Ferguson. I think he actually  
14          presented it at that meeting.

15          Q        And consistent with your -- if we look at that  
16          investigation or operational work plan, as it's  
17          called, that the two of you presented to the  
18          senior officers at the July 17th meeting,  
19          it's -- where we find it is at tab B1. It's  
20          appended to the Hluska and Wass memo. Have you  
21          got tab B1 there?

22          A        Yes.

23          Q        We've looked at Wass' note about his call to  
24          Quinney's office. But the main memo there is  
25          written by a fellow whose initials are TWH, who

1 is designated as a staff sergeant chief reader?

2 A That's correct.

3 Q We know that to be staff sergeant H-L-U-S-K-A?

4 A That's correct.

5 Q And he's a senior officer in Regina

6 headquarters?

7 A He is a staff sergeant. And he is the chief  
8 reader, which means he is the chief reviewer of  
9 operational files in the province.

10 Q That's an interesting title to give him. But,  
11 in any event, in the second paragraph of this  
12 memo he says:

13 "Staff Sergeant Ferguson reviewed the case  
14 and provided a copy of his 'operational  
15 work plan' which will be followed as this  
16 investigation is continued."

17 Have I read that accurately?

18 A Yes.

19 Q And it's attached to his memo. You see the  
20 typed document, a one-page occupational work  
21 plan?

22 A Yes.

23 Q And the objective of it is stated succinctly:

24 "To successfully conclude two major crime  
25 incidents, being the arson to the home of

1 Carol Zanidean in 1988 and 1990, to gather  
2 sufficient evidence to support charges of  
3 conspiracy and arson against the main crime  
4 principals that would ensure justice has  
5 been served."

6 Have I read that accurately?

7 A Yes.

8 Q And is that consistent with the objective, the  
9 investigative goal that we saw that you and  
10 Ferguson appeared to have back in your memos at  
11 tabs 42 and 43 -- I'm sorry, at tabs 43 and 44  
12 that you had written a couple of days earlier?

13 A Correct.

14 Q Again, a very pro law enforcement, charge the  
15 main culprits to the extent that you can?

16 A Yes.

17 Q All right. So I think we have set the context  
18 for your -- these final calls that you have with  
19 Anderson in July that are of any significance.  
20 And the calls with Anderson, there is two of  
21 them; is that correct?

22 A Yes.

23 Q At this point you actually have quite a  
24 contemporaneous report?

25 A I will have to look at the reports.

1 Q It's at Tab 32. If you look at Tab 32, you see  
2 your report is dated July 19th. And you refer,  
3 on the first page, paragraph 4, to a call from  
4 Anderson on the 16th. And you also refer on  
5 page 3, paragraph 9, you were called on the  
6 18th. So you appear to have two telephone calls  
7 with him, one on the 16th and one on the 18th.  
8 And you prepared this report on the 19th. Am I  
9 reading that accurately?

10 A That's correct.

11 Q So the two phone calls are sandwiched around  
12 that July 17th meeting in Regina; is that  
13 correct?

14 A Exactly.

15 Q The first one you speak to him just before, and  
16 the second one you speak to him just after?

17 A That's correct.

18 Q And your report is prepared the day after the  
19 second one and three days after the first one.  
20 And, again, could you tell us what would be the  
21 basis for this report? First of all, what kind  
22 of a report is this? Is this one of the ones  
23 that goes up the chain of the command or just  
24 one that goes on the file?

25 A This is a C-237, which goes up to Regina through



1 the chain of command.

2 Q And what would you have based your accounts of  
3 these two phone calls on?

4 A It would have been based on a 16-24s which I  
5 would have done right after the calls were  
6 completed.

7 Q And have you had a chance to review your summary  
8 of the two phone calls as set out in these  
9 reports?

10 A Yes.

11 Q And are those summaries of the phone calls  
12 accurate?

13 A Yes.

14 Q Would you have had any reason to mislead or  
15 misstate what Anderson said to you when  
16 reporting to your senior officers?

17 A No.

18 Q If we look at the content of the two calls,  
19 then. The first call, the one that's the day  
20 before the meeting in Regina, you initially, on  
21 page 2 of the report, paragraphs 4 and 5, you  
22 talk about your attempts to obtain the body pack  
23 transcript, which is a topic that I haven't  
24 covered with you before. But essentially what  
25 that deals with is the fact that you had learned

1 through Mr. Brodsky and his investigator,  
2 Mr. Savage, that there was body pack evidence at  
3 the Driskell trial of Zanidean and Driskell  
4 having discussions about the arson; is that  
5 correct?

6 A That's correct.

7 Q And you are trying to obtain this as, obviously,  
8 a useful piece of evidence in your criminal  
9 case?

10 A Exactly.

11 Q So moving on from that to the immunity issue  
12 which we have been focusing on, which was dealt  
13 with at paragraph 7 on page 3, I am going to  
14 read the two paragraphs there that deal with the  
15 discussion of the immunity issue.

16 "Sergeant Anderson was advised that  
17 Zanidean might be charged with the 1988 and  
18 1990 arsons."

19 I take it that's consistent with the  
20 pro-prosecution stance that you and Ferguson were  
21 taking at this time?

22 A Correct.

23 Q "He advised that Zanidean had stated to  
24 him after the murder trial that if he was  
25 charged he would go to the media and state

1                   that he only told Winnipeg Police Service  
2                   'what they wanted to hear' regarding the  
3                   murder so that Driskell would be acquitted  
4                   on appeal or a new trial ordered."

5                   Have I read that accurately?

6           A       Yes.

7           Q       In essence, a threat that if you charged him  
8                   with the Swift Current arson he would go to the  
9                   media and destroy the Driskell murder  
10                  conviction?

11          A       Exactly.

12          Q       And paragraph 8:

13                         "Sergeant Anderson indicated that he would  
14                         be speaking with Miller and Dangerfield  
15                         regarding the possibility that Zanidean may  
16                         be charged. They may contact Saskatchewan  
17                         Justice in this regard."

18                  Does that accurately summarize the first phone  
19                  call with Anderson prior to your meeting in  
20                  Regina?

21          A       Yes.

22          Q       The second phone call at paragraph 9, the day  
23                   after your Regina meeting. Again, you deal  
24                   briefly with the transcript body pack issue in  
25                   paragraph 9. And then at paragraph 10 you turn

1 to the immunity issue; is that correct?

2 A Correct.

3 Q And, again, if I could read this with you:

4 "Sergeant Anderson also stressed that part  
5 of the deal for Zanidean's testimony was  
6 that he would not be charged for the 1990  
7 arson. They made this representation based  
8 on my statement that I would recommend  
9 this."

10 This is referring back to your statement on  
11 April 5th, I take it; is that correct?

12 A Correct.

13 Q "And Sergeant Upton's conversation with  
14 Corporal Orr on April 10th in which he  
15 indicated that we would likely not be  
16 charging Zanidean for the 1990 arson. At  
17 the time that Corporal Orr contacted  
18 Sergeant Upton, he advised them that  
19 Zanidean was already under the Witness  
20 Protection Pprogram, and he was concerned  
21 about us surfacing him for the arson.  
22 Sargeant Upton had stated that we would  
23 likely not do so. However, that decision  
24 dealt with the investigator. Constable  
25 Burton was not aware that Zanidean was

1 under the Witness Protection Pprogram until  
2 April 16th when Inspector Preston called  
3 Corporal Orr and discussed the  
4 possibilities of not charging Zanidean, and  
5 learned that this was the case. Previous  
6 C-237 dated April 19, 1991 refers."

7 Have I read that accurately?

8 A Yes.

9 Q And what you are summarizing there, of course,  
10 at the end, is the position set out in your  
11 early C-237 that's quoted, as we saw this  
12 morning, at tab 24; is that correct?

13 A That's correct.

14 Q Where you set out Inspector Preston's resolution  
15 of this matter on April 16th and your call with  
16 Anderson on April 5th?

17 A Correct.

18 Q Where your recommendation, in essence, gets  
19 overruled by Preston?

20 A That's right.

21 Q And then over the page, finally, the last  
22 paragraph of -- paragraph 11 about this call:

23 "Sergeant Anderson advised that they were  
24 not aware of the 1988 arson and had,  
25 therefore, made no deals with Zanidean in

1                   this regard. In view of this, they have no  
2                   concern with Zanidean being charged with  
3                   that arson."

4                   Have I read that accurately?

5           A        Yes.

6           Q        So that to sum up, the essence of the second  
7                   phone call is Anderson tells you that there was  
8                   a deal for immunity for Zanidean on the Swift  
9                   Current charges?

10          A        That's correct.

11          Q        And he had made that deal on the basis of the  
12                   communications in April with you and Corporal  
13                   Orr's communications with Sergeant Upton?

14          A        That's correct.

15          Q        And we have already dealt with the last part of  
16                   this report that sets out your meeting in Regina  
17                   on the 17th. And at paragraph 15, you sum up  
18                   the conclusion of that meeting, which is that  
19                   you are to complete your investigation and then  
20                   the two justice departments will confer and make  
21                   a decision in relation to this whole immunity  
22                   problem?

23          A        That's correct.

24          Q        Now, Sergeant Anderson's account of these two  
25                   calls, once again, we have no contemporaneous

1 notes or reports from him, but we do have his  
2 subsequent October 8, 1991 report in response to  
3 the complaint. So if you could go back to tab  
4 95 and pick that up again. We have already been  
5 through it in relation to the October 1990 and  
6 April 1991 calls. So the last part of it at  
7 page 3 deals with the July calls. And in the  
8 middle of page 3, he states -- he describes  
9 the first of the two calls.

10 "On the 16th of July 1991, I received a  
11 phone call at home from Constable Burton.  
12 During a long conversation with him, he  
13 told me his colleague, Staff Sergeant  
14 Ferguson, had interviewed Driskell and  
15 obtained a statement in which he  
16 implicated Zanidean in the arson he told us  
17 about, as well as another arson which  
18 occurred earlier and of which we were not  
19 aware. He went on to say that superior  
20 RCMP officers in Regina had overruled Swift  
21 Current officers and had decided to charge  
22 Zanidean. Constable Burton was most  
23 apologetic and expressed disbelief that his  
24 superiors considered their arson more  
25 important than our murder. He attributed

1           this strange decision to his superior's  
2           lack of investigative experience and  
3           suggested that I must also be familiar with  
4           the ridiculous decisions of higher-ranking  
5           officers. I told Constable Burton that we  
6           were already informed -- we had already  
7           informed Zanidean of the immunity which had  
8           become part of his negotiations with our  
9           Justice Department. I also expressed my  
10          dissatisfaction with this turn of events.  
11          Constable Burton suggested that we leave  
12          further discussions regarding the issue to  
13          the Justice Department of Saskatchewan and  
14          Manitoba. He provided me with the name of  
15          Richard Quinney, Director of Prosecutions  
16          in Saskatchewan, and I agreed."

17          So just pausing there with that account of the  
18          July 16th call, before we move on to the second  
19          call on July 18th, do you agree with that  
20          description of the substance of your call with  
21          Anderson on July 16, 1991?

22          A     No.

23          Q     And, in particular, is there any truth to this  
24          suggestion that you were against charging  
25          Zanidean and you had been overruled by senior



1 officers in Regina?

2 A No.

3 Q In fact, what the file seems to show, as I read  
4 it, is that you and Ferguson were very much in  
5 favour of charging?

6 A That's correct.

7 Q And the position of the Regina officers was --  
8 it appeared was neither pro nor con at this  
9 point. They simply instructed you to  
10 complete the investigation. And they would  
11 take advice from Justice and decide  
12 accordingly?

13 A That's correct.

14 Q And, in fact, no decision had been made one way  
15 or the other. I suppose that's the third point  
16 here, that nobody had been overruled because no  
17 decisions have been made, is that fair?

18 A That's fair.

19 Q And I take it, also from your description of  
20 Inspector Preston, that these superior officers  
21 did not lack investigative experience?

22 A That's correct.

23 Q Indeed, they had much more investigative  
24 experience than you, is that fair to say?

25 A Yes.

1 Q Now, the one thing, though, in this description  
2 that does appear to be consistent as between  
3 your two reports, again, remembering that the  
4 account we have just reviewed from you, is  
5 that both you and Anderson, as I read this, are  
6 consistent on the view that immunity had  
7 become part of the negotiations, as Anderson  
8 puts it, or as you put it, it was part of the  
9 deal?

10 A Correct.

11 Q Again, just to be completely accurate about the  
12 language you use, you say that:

13 "Anderson stressed that part of the deal  
14 for Zanidean's testimony was that he would  
15 not be charged with the 1990 arson."

16 And Anderson's language is that:

17 "We had already informed Zanidean of this  
18 immunity which had become part of his  
19 negotiations with our Justice  
20 Department."

21 Is there any difference of substance, as you see  
22 it, between those two descriptions of whether  
23 there was or wasn't an immunity deal?

24 A Sorry, you lost me there.

25 Q Is your language, used in your report at Tab 32,

1 intended to convey any difference in substance  
2 to Anderson's language, tab 25? He says:

3 "The immunity had become part of the  
4 negotiations."

5 And you say -- the language you use is that:

6 "Anderson stressed that part of the deal  
7 for Zanidean's testimony was that he would  
8 not be charged for the 1990 arson."

9 A Correct, yeah.

10 Q And now my question to you is there is a slight  
11 difference in the language there. Were you  
12 intending to convey any difference in substance?

13 A In substance, no.

14 Q All right. Turning to Anderson's discussion of  
15 the second call, which is much briefer at page 4  
16 on the next page, the bottom of page 4, he again  
17 begins the discussion with a brief reference to  
18 the transcript issue. And then the third  
19 sentence of that paragraph at the bottom of page  
20 4:

21 "He also indicated at this time that he had  
22 voiced our opposition to charging Zanidean  
23 to his superiors."

24 In other words, this is the representation that  
25 you and Ferguson were opposed to charging

1           Zanidean. He passed that on to his superiors, is  
2           that how you understand that?

3           A     Yes.

4           THE COMMISSIONER: I'm not sure where you are  
5           here.

6           MR. CODE: I'm at tab 25 of the Anderson report.

7           THE COMMISSIONER: Yes.

8           MR. CODE: At page 4 at the bottom of the  
9           paragraph dealing with the second phone call:

10                    "On the 18th of July 1991 I telephoned  
11                    Constable Burton."

12           THE COMMISSIONER: Yes.

13           BY MR. CODE:

14           Q     There is just a brief reference to the immunity  
15           issue at the end of that paragraph.

16                    "He also indicated at this time that he had  
17                    voiced our opposition to charging Zanidean  
18                    to his superiors."

19           So, once again, he is characterizing you and  
20           Ferguson, the local experienced Swift Current  
21           investigators, as being anti-charging and the  
22           management types in Regina as being  
23           pro-charging. Is that how you understand  
24           this?

25           A     Yes.

1 Q "He said that they have asked him to  
2 complete his investigation and again  
3 suggests that the matter be left with  
4 Saskatchewan and Manitoba Justice  
5 Departments. I agreed and the conversation  
6 ended on friendly terms."

7 Now, that last part of it again seems to be a  
8 point that's consistent between you and Anderson,  
9 that both of your accounts of these phone calls  
10 appear to be in accord that the matter was now  
11 being pushed up to Justice Department officials  
12 to resolve the whole problem of immunity for  
13 Zanidean?

14 A Correct.

15 Q All right. The last part of my examination,  
16 Officer Burton, you will be glad we are getting  
17 to the end here, is I want to deal with the  
18 conclusion of the story which, as we all know,  
19 ends up with a no-charge decision, that nobody  
20 gets charged in relation to the Swift Current  
21 arson; is that correct?

22 A Correct.

23 Q And the -- most of this story takes place at  
24 levels above you in Regina with senior RCMP  
25 officers conferring with senior Department of

1 Justice officials; is that correct?

2 A That's correct.

3 Q And so I will just quickly take you through the  
4 documents. This part of the story is all at tab  
5 B. Tab A essentially concludes the contacts  
6 with Anderson about the immunity business. And  
7 at tab B we have got the conclusion of the  
8 story. If you turn to tab B2, this fellow,  
9 Corporal McMillan, writes a memo complaining  
10 about the lack of cooperation from the Winnipeg  
11 Police; is that correct?

12 A Correct.

13 Q And he's in the Regina office?

14 A That's correct.

15 Q He's in the CROPS office?

16 A That's correct.

17 Q And what, at this point, the instructions have  
18 been to conclude the investigation and wrap it  
19 up so that they can make a decision about  
20 charging. And he's expressing the view that  
21 there was a lack of cooperation from the  
22 Winnipeg Police Service?

23 A Correct.

24 Q And we know this ultimately leads to the  
25 complaint. But just to carry on at tab B3, we

1 see the Regina officers -- this is a letter from  
2 Chief Superintendent Egan, he's one of the CROPS  
3 fellows in Regina?

4 A He's the CROPS -- the officer in charge of  
5 criminal operations, he was.

6 Q And he is sending the entire investigative file  
7 to Saskatchewan Justice, to the Executive  
8 Director of Public Prosecutions, Miss Gunn?

9 A Correct.

10 Q And asking for advice on the matter, consistent  
11 with yours and Ferguson's recommendations?

12 A Yes.

13 Q So we have now got the entire investigative file  
14 in the hands of Saskatchewan Justice as of  
15 August 8th. At tab 4 we have a helpful little  
16 internal memo from Inspector Wass in which he  
17 succinctly sets out on one page the five issues  
18 that they are grappling with; is that correct?

19 A Correct.

20 Q And, again, this is a senior officer in Regina?

21 A Yes.

22 Q Who is now dealing with this file?

23 A Correct.

24 Q And they are struggling with the immunity  
25 issues. Was Zanidean offered immunity by the

1 Winnipeg Police? Was it offered by the Manitoba  
2 Attorney General? Did Swift Current imply that  
3 there was immunity? And did Corporal Orr  
4 somehow mislead or misinform anybody about the  
5 witness protection program?

6 A Correct.

7 Q So they are trying to unravel the whole factual  
8 problem of was there or wasn't there immunity,  
9 in essence?

10 A Yeah, exactly.

11 Q If we jump ahead to tab B6, we have again this  
12 problem with cooperation. You've got a fellow  
13 named Corporal Atras who writes this  
14 continuation report trying to get the body pack  
15 tape from Sergeant Anderson. And Anderson  
16 advises him that he will have to wait until the  
17 appeal period is over. Is that how you read  
18 that memo in the middle of tab 6?

19 A Yeah, that's correct.

20 Q That Driskell's appeal is pending and you want  
21 to get ahold of the body pack. And Anderson is  
22 apparently telling Atras to wait until the  
23 appeal period is over. He is also saying, at  
24 the note at the bottom of the page in that memo,  
25 that there is not much detail in the transcript



1            anyway regarding the arson?

2            A        That's correct.

3            Q        Would that continuation report have been passed  
4            on to you in Swift Current?

5            A        I'm not sure.

6            Q        Perhaps if I just take you to the next tab, the  
7            information in it appears to be passed on to  
8            you. Because at tab 7 we have your report that  
9            Atras speaks to you on September 3rd. And you  
10          set out at that long paragraph in the middle of  
11          tab 9, oh, about a third of the way down the  
12          page, there is a note:

13                    "Anderson advised that he would discuss  
14                    this with his superiors. However, he did  
15                    not feel that they would be willing to  
16                    release it until the appeal was complete  
17                    with respect to the murder."

18          And that's the body pack transcript again?

19          A        Correct.

20          Q        Tab 8 is another memo of yours in and around  
21          this time, a little further into September now,  
22          September 12th. And, again, you note in the  
23          middle of the page at tab 8 that Anderson still  
24          hasn't provided the body pack transcript.

25                    "I advised Corporal Atras that I found it

1                   strange that Sergeant Anderson would be  
2                   withholding this because of the appeal."

3                   Have I read that accurately?

4           A       Yes.

5           Q       Did that reflect your views of your need to get  
6                   this body pack tape and the reasons that were  
7                   given for not giving it to you?

8           A       Yes.

9           Q       At tab 9 we see a discussion of the disciplinary  
10                   complaint that then gets made against Sergeant  
11                   Anderson.  This is your -- an October 7th phone  
12                   call that you actually had with Anderson in  
13                   which you discuss the complaint with him.  And,  
14                   again, without reading through the whole memo,  
15                   if I could simply summarize it for you there,  
16                   there seemed to be two aspects to the complaint,  
17                   two pieces of evidence that you are seeking from  
18                   Anderson.  The first is the body pack which you  
19                   discuss in that first long paragraph.  The  
20                   transcript of the body pack that you have been  
21                   trying to get from him.

22                   And then in the second paragraph, in the  
23                   middle of the page, at tab 9, you remind him  
24                   that he still hasn't sent you the notebook  
25                   orals of Zanidean's admissions to the officers.

1 So the gist of the complaint appears to be the  
2 failure to turn over these two pieces of  
3 incriminating evidence relating to your arson,  
4 is that accurate?

5 A That's correct.

6 Q Now, that conversation, you will note, is on  
7 October 7th of 1991. And that, as we know, is  
8 the day immediately prior to Anderson's  
9 preparation of the October 8th memo. So this  
10 memo at tab 25 that we have extensively been  
11 referring to, where Anderson sets out his  
12 account, is written the day after you discuss  
13 the complaint with him; is that correct?

14 A I guess I'll have to look.

15 Q Go back to tab 25, A25. Really the only place  
16 where we have an account from Sergeant Anderson  
17 of his three sets of phone calls with you is  
18 dated October 8, 1991?

19 A Correct.

20 Q And your memo at tab 9 is the day before,  
21 October 7, 1991?

22 A That's correct.

23 Q All right. Tab 12, if you could jump over a  
24 couple of tabs here, to speed things up. Tab 12  
25 you get -- on October 11th, three days after

1 Anderson prepares his report to Inspector Johns  
2 in response to the complaint, we get the first  
3 piece of evidence that you have been seeking,  
4 the notebook orals; is that correct?

5 A I never got the copies of their notebooks, just  
6 this report.

7 Q I appreciate that. And the report, actually, it  
8 quotes the first notebook statement, the one in  
9 Sergeant Paul's notebook. It does not quote the  
10 one in Sergeant Anderson's notebook, the second  
11 one, is that fair?

12 A That's correct.

13 Q So if you get the October 10th notebook oral  
14 verbatim out of Paul's notebook where -- or  
15 at least it is more or less verbatim. It  
16 doesn't give you the original Zanidean  
17 statement in quotes about there could be a  
18 problem with his credibility in court, although  
19 it is summarized there. But the second notebook  
20 statement on October 29th is not set out in full  
21 form. It is sort of summarized in that last  
22 paragraph; is that correct?

23 A That's correct.

24 Q And as you say, the notebooks aren't provided  
25 themselves?

1 A Correct.

2 Q But in any event, you get a report dated  
3 October 7th, 1991, the day before the  
4 October 8th report; is that correct?

5 A That's correct.

6 Q And it's a full year after the conversations  
7 have taken place?

8 A That's correct.

9 Q But, in any event, you have now got this piece  
10 of evidence that you've been seeking. And at  
11 tab B13, on October 23rd, a couple of weeks  
12 later, it looks like you get the transcript of  
13 the body pack. Because this is a letter  
14 enclosing the transcript of the body pack to  
15 Ellen Gunn, the Director at Saskatchewan Public  
16 Prosecutions; is that correct?

17 A Correct. We thought this was the one.

18 Q So within a couple of weeks of the complaint,  
19 you get action on both fronts. And you get  
20 the two pieces of evidence you've been  
21 seeking?

22 A If memory serves me, this turned out not to be  
23 the transcript.

24 Q Well, you're right. There's problems about  
25 whether this is the right transcript or not.

1 But within another month or so, you've got the  
2 transcript?

3 A Correct.

4 Q I didn't want to get into that level of detail.

5 A Sorry.

6 Q But within a short time after the complaint,  
7 you've got the two pieces of evidence you were  
8 looking for in substance. It is not perfect,  
9 but you've essentially got it, is that fair?

10 A Yes, that's fair.

11 Q Tab B14, then, you and Ferguson sent your final  
12 recommendations about charging up the chain of  
13 command. And this is November 18, 1991?

14 A Correct.

15 Q And, again, without going through this  
16 exhaustively, this is the document, the  
17 case-over reviewer's recommendation document.  
18 If you turn to page 7 of it, you essentially  
19 reiterate what you said in your July 7th  
20 recommendation. Again, it's this  
21 pro-prosecution, pro-law enforcement position:  
22 Let's charge the main culprits and let's not  
23 talk about immunity at all?

24 A Correct.

25 Q You, in fact, just quote out of this July 7th

1 report?

2 A Exactly.

3 Q And, indeed, your case has become stronger  
4 since then. You've now got additional  
5 evidence?

6 A Yes.

7 Q And Ferguson, in his covering report, if you go  
8 back to the front of that tab, tab 14, his  
9 covering note, he agrees with you, but he also  
10 seems to think that there should be -- that  
11 Driskell's evidence would be helpful. And he  
12 tends to support immunity for Driskell to make  
13 an even stronger case?

14 A That is correct.

15 Q So as I read this tab B14, your pro-charging  
16 position, if I can put it that, has not changed  
17 since -- over the last couple of months and  
18 would appear to be inconsistent with the  
19 position attributed to you by Sergeant Anderson  
20 that you were against charging?

21 A Correct.

22 Q In the July 16th phone call?

23 A Exactly.

24 Q B15, in December your case gets even better.  
25 You finally get the search warrant executed in

1 Winnipeg by Corporal Atras. And he seizes the  
2 phone -- the telephone tolls of the two  
3 girlfriends, Driskell's phone records, his  
4 girlfriend Byrns and Zanidean's records through  
5 his girlfriend Fehr or his wife Fehr, and both  
6 of them show incriminating phone calls, is that  
7 fair?

8 A That's fair.

9 Q Driskell's got a collect call to his girlfriend  
10 on the morning immediately after the arson at  
11 11:47 a.m. The arson is in the middle of the  
12 night. And he phones his girlfriend collect  
13 from Brandon; is that correct?

14 A Yes.

15 Q And that's consistent with the statement that he  
16 had given you?

17 A Yes.

18 Q And, more importantly, Carol Head in Edmonton,  
19 Zanidean is calling her -- or the Zanidean/Fehr  
20 telephone is calling her repeatedly immediately  
21 before and immediately after the arson?

22 A Correct.

23 Q Especially afterwards. So your circumstantial  
24 case just got a little bit better, I take it?

25 A Yes.



1 Q Tab 16, B16, you set out your analysis of the  
2 body packs. And this was consistent with your  
3 view that there was a little bit more delay in  
4 getting those body pack transcripts. But by  
5 mid-December you've received them and analyzed  
6 them. And you excerpt, in this helpful little  
7 report, the two key conversations; is that  
8 correct?

9 A Correct.

10 Q And both of them are -- tend to implicate  
11 Zanidean and Driskell in the arson, is that  
12 fair?

13 A Yes.

14 Q And the second one of the two is particularly  
15 important, intending to implicate Carol Head, as  
16 well as they are complaining about her not  
17 having paid them the full amount?

18 A Exactly.

19 Q And, again, that discussion about them being  
20 short \$800, 7 for Zanidean and 1 for Driskell  
21 is, again, a little corroborating detail of  
22 Driskell's statement?

23 A Yes.

24 Q Supporting Driskell's version of the arson?

25 A That's correct.

1 Q B17 and 18 we get the -- what leads up to  
2 your -- your final report about this whole  
3 immunity issue. At tab 17 Inspector Wass passes  
4 along Anderson's October 8, 1991 memo. The one  
5 we have been spending most of our time on back  
6 at tab 25, A25, where Anderson sets out his  
7 account of the immunity deal in his conversation  
8 with you. And Inspector Wass asks you to  
9 respond to it?

10 A Correct.

11 Q That's tab B17. And then at tab B18, you turn  
12 it around for him. Within two days you've got  
13 the response back to him. Preston sends your  
14 response back. And your response, of course, is  
15 the document we've been spending most of our  
16 time with you, that's the A24 memo. The  
17 January 9, 1992 memo; is that correct?

18 A Correct.

19 Q So the two competing versions of what happened  
20 at tab 24 and tab 25, that we've referred to  
21 extensively, are now in the hands of the -- of  
22 Inspector Wass, the senior CROPS officer in  
23 Regina; is that correct?

24 A The contract policing officer.

25 Q I'm sorry. The memo at tab 18 goes to F

1 division CROPS, criminal operations, attention  
2 Inspector Wass?

3 A Yes.

4 Q And the notes on it are of real interest here.  
5 I'm sure this is not anything that you had  
6 anything to do with, but if I could just read  
7 them into the record and ask you if this appears  
8 to be accurate. You see the two handwritten  
9 notes with the initials on it? And perhaps you  
10 could help us. This is at tab B18?

11 A Correct.

12 Q Can you identify the initials there, the two  
13 handwritten notes?

14 A Well, there is four. One is Hluska. The top  
15 right is CPO, contract policing officer, that's  
16 Inspector Wass. And the middle one on the  
17 right, I believe that's the CROPS officer Egan.

18 Q That's Egan?

19 A Yeah. And the very bottom one, I don't know  
20 what that is.

21 Q It's Egan and Hluska that I am most interested  
22 in because those are the two that say something.  
23 Hluska's note says:

24 "Mr. Quinney was provided with a copy of  
25 this correspondence during the RCMP Sask

1 Justice meeting."

2 Have I read that accurately?

3 A Correct.

4 Q That's Hluska's note?

5 A Yes.

6 Q And then Egan's note is:

7 "In discussion with Richard Quinney

8 January 13, '92."

9 Have I read that accurately?

10 A Yes.

11 Q So it would appear that the two duelling memos

12 at tabs 24 and 25 get put before Quinney, that's

13 Saskatchewan Justice, for his resolution of this

14 whole immunity problem, is that your reading of

15 this?

16 A Correct.

17 Q And then at tab B19, B 320 and B21 we get

18 Quinney's resolution of the matter. If I could

19 just quickly review those three documents with

20 you. At tab B19, we get a handwritten report

21 of a meeting with Quinney, apparently on

22 January 15th, where he decides that no charges

23 are to be laid. And the second page of the

24 memo, he refers at the bottom of the first page

25 to:

1           "Quinney called me after lunch to advise  
2           that he had called Miller, Manitoba AG  
3           office, to discuss the matter. The  
4           Manitoba AG" --

5           I am not quite sure what that says:

6           "indicated that he would appreciate our  
7           position."

8           And then over the page concern about how the  
9           matter was handled. And then we have redacting  
10          here. Which, again, my colleague, Mr. Gates, has  
11          kindly reconsidered and given you the un-redacted  
12          version of it, which I am grateful to, because it  
13          is of some importance, the note that has been  
14          lifted here. It says:

15          "Mr. Miller seemed to feel Corporal Tom  
16          Orr,"

17          who is the witness protection fellow here in  
18          Winnipeg,

19          "our witness protection coordinator in D  
20          division caused a great deal of the problem  
21          that developed."

22          And then it carries on:

23          "At the same time, Mr. Quinney told Miller  
24          about the statement of Driskell taken by  
25          Sergeant Ferguson. And that, for the most

1 part, Driskell's story was corroborated by  
2 the investigation. Quinney asked that the  
3 statement be compared point by point to the  
4 investigation details on the file. When  
5 this is done, he will provide the same to  
6 Miller."

7 So have I read that accurately?

8 A Yes.

9 Q And does that accord with your recollection of  
10 what came out of this meeting with Quinney on  
11 the 15th of January, was this attempt to analyze  
12 Driskell's statement to the investigators and  
13 compare it to the investigative facts point by  
14 point to determine whether Driskell was really  
15 telling the truth about the arson or whether  
16 Zanidean was?

17 A I don't know about the meeting with Quinney.  
18 But I know that's the process we undertook, the  
19 direction I got, so I would assume that's what  
20 happened.

21 Q All right. And we see it referred to in the  
22 next tab in a little more detail. The body who  
23 is asked to conduct this review of the file is  
24 called DCIAS?

25 A Right.

1 Q Do you see that at tab 20? The OIC contract  
2 policing writes this memo, again about the same  
3 January 15th meeting. And the decision to have  
4 DCIAS conduct a review of the file. Who is  
5 DCIAS?

6 A Division of criminal intelligence analysis --  
7 analyst service.

8 Q Division criminal intelligence analysis?

9 A Analysis or analyst service, one or the other.

10 Q Analyst service. These are intelligence  
11 officers in the Regina head office?

12 A Correct.

13 Q And was the idea here, correct me if I'm wrong,  
14 that there be some independent group of police  
15 officers who would analyze your investigative  
16 file and see if you could come to the right  
17 conclusions?

18 A That's correct.

19 Q And, finally, at tab 21 we get Quinney's letter.  
20 It's circulated to the relevant police. Quinney  
21 follows up on the meeting with a letter to Mr.  
22 Miller in Manitoba dated the day after the  
23 meeting January 16, 1992. And, again, without  
24 going through it in detail with you, because  
25 this is obviously going on at levels well above

1           you. As I read it, there is four important  
2           points Mr. Quinney makes. First of all, in the  
3           first page at the bottom he states, he asserts,  
4           that the RCMP investigation concluded that  
5           Driskell's account of the arson was the true one  
6           and that Zanidean's account was false. Is that  
7           an accurate summary of the conclusions that your  
8           investigation reached?

9           A     Yes.

10          THE COMMISSIONER: Where are you reading from?

11          MR. CODE: Tab 21, Tab B21, the letter to  
12          Quinney that's appended to the covering memo  
13          circulated to the police.

14          THE COMMISSIONER: But where is that inclusion?

15          BY MR. CODE:

16          Q     At the bottom of page 1. The very first page of  
17          the letter, the very long paragraph at the  
18          bottom:

19                 "The RCMP police proceeded to do some  
20                 checking to determine whether or not  
21                 Driskell's statement might be correct. The  
22                 result of that investigation is they are  
23                 satisfied that Driskell's statement is  
24                 substantially correct. The motive for  
25                 burning the house in Swift Current was



1 reward as opposed to revenge."

2 And then over the page, to page 2 of the letter,  
3 Mr. Quinney asserts, in the first full paragraph,  
4 and this is very germane to you, he says:

5 "The RCMP police indicate that on July 16,  
6 1991 Sergeant Anderson advised them that  
7 Zanidean had stated to him after the murder  
8 trial that if he was charged with the  
9 arsons in Saskatchewan he would go to the  
10 media and state that he only told the  
11 Winnipeg Police Service 'what they wanted  
12 to hear' regarding the murder so that  
13 Driskell would be acquitted on appeal or a  
14 new trial would be ordered."

15 Have I read that accurately?

16 A Yes.

17 Q And does that accurately summarize what you set  
18 out in your July report about your telephone  
19 conversation with Sergeant Anderson?

20 A Yes.

21 Q And that report, of course, is at 32, A32. And  
22 Mr. Quinney has essentially quoted from that  
23 memo, correct?

24 A Correct.

25 Q So the two salient points that Quinney brings to

1 Miller's attention are, number one, that  
2 Zanidean's testimony at trial appears to be  
3 false on the motive issue for the arson. And  
4 that, number 2, that Zanidean has threatened  
5 that if you charge him with the arson he is  
6 going to go to the media and try to bring down  
7 the murder conviction. And then the next  
8 paragraph Mr. Quinney recommends that these  
9 matters be disclosed to defence counsel pursuant  
10 to the Stinchcombe decision; is that correct?

11 A Correct.

12 Q And, finally, he states, in the last paragraph  
13 at the bottom of page 2, his conclusion that:

14 "Zanidean is of the view that he was  
15 granted immunity from prosecution. No  
16 matter exactly how this came about, to  
17 prosecute him at this point would in my  
18 view result in a likely successful abuse of  
19 process."

20 So the legal conclusion was that Zanidean could  
21 not be prosecuted as a result of the -- these  
22 immunity discussions, if I could call them that,  
23 however they were to be resolved?

24 A Correct.

25 Q And, finally, the last set of documents. The

1 second to last set of documents, I'm sorry.  
2 Tabs B22, 23 and 24 all deal with the DCIAS, the  
3 criminal intelligence analysts, who look at your  
4 file. Two fellows by the name of Sergeant  
5 Thorpe and Corporal Dercash; is that correct?

6 A Correct.

7 Q And we get their report at tab 22. And it gets  
8 forwarded to you so that you can review it and  
9 ensure its accuracy?

10 A Correct.

11 Q According to the covering memo?

12 A That's correct.

13 Q You recall receiving this report?

14 A I don't specifically recall it. But I know that  
15 I did review it.

16 Q And you have to turn it sideways to read it.  
17 But the critical analysis is this chart starting  
18 three or four pages into it where they set out  
19 the details of Driskell's statement on one side,  
20 a column on the left-hand side. And they set  
21 out the corroboration, the independent  
22 corroboration, on the right-hand column; is that  
23 correct?

24 A Correct.

25 Q And this is where we get into the business about

1 the camping fuel can and the red plastic jerry  
2 can. And the telephone being outside. And the  
3 long distance phone call to his girlfriend. And  
4 the car that they borrowed. And all of the  
5 other supporting detail that lines up with  
6 Driskell's statement; is that correct?

7 A That's correct.

8 Q Tab 23, that report then gets forwarded to  
9 Quinney in a covering letter that says that  
10 you have approbated it. You have agreed with it;  
11 is that correct?

12 A Correct.

13 Q And tab 24, Quinney then passes it on to Miller  
14 on March 9, 1992, again affirming that it  
15 substantially corroborates Driskell's version of  
16 the arson as opposed to Zanidean's. And again  
17 reminding Mr. Miller of the appropriate  
18 disclosure obligation to Mr. Driskell's counsel  
19 in the concluding paragraph; is that correct?

20 A That's correct.

21 Q Now, we are almost done here. But,  
22 unfortunately, you and Ferguson weren't quite  
23 done with this file yet. That shows you how  
24 much you guys cow-towed to head office.  
25 Ferguson takes one final crack at it at tab 25;

1 is that correct? He is not about to give up  
2 yet?

3 A That's correct.

4 Q And he suggests that you attempt to interview --  
5 that the Hayek interview had been attempted but  
6 had failed. But he again suggests that the only  
7 recourse here at this point is to give Driskell  
8 immunity. You have substantially corroborated  
9 Driskell's statement, so there is independent  
10 corroboration of it. And he recommends charges  
11 being laid against Hayek and Zanidean on the  
12 basis of a grant of immunity to Driskell; is  
13 that correct?

14 A Correct.

15 Q And did he discuss that proposal with you before  
16 sending it up on March 23rd?

17 A Yes.

18 Q And were you in support or in favour of this one  
19 last attempt?

20 A Yes.

21 Q And you will see what happens is head office  
22 shoots it down in Regina. At tab 26 we get  
23 Hluska's memo on the 24th. And he doesn't think  
24 you can overcome the immunity problem with  
25 Zanidean. And he calls it:

1                   "Zanidean's implied or real immunity by the  
2                   Winnipeg Police Department."

3                   Is that correct?

4           A        Correct.

5           Q        And at tab 27, the big boss, Chief  
6                   Superintendent Egan, agrees with Hluska and  
7                   sends a letter to Quinney recommending that the  
8                   whole matter be terminated, that the  
9                   investigation should be concluded; is that  
10                  correct?

11          A        Correct.

12          Q        And, finally, at tab 28 Quinney writes back to  
13                   Egan saying that he agrees with Egan's decision?

14          A        Correct.

15          Q        And that puts the file finally to bed after  
16                   about almost two years of investigating?

17          A        That's correct.

18          Q        So as I read the record here, the people who  
19                   wanted to charge Zanidean were you and Ferguson.  
20                   And the people who ultimately decided not to  
21                   charge him were the senior officers in Regina,  
22                   supported by Richard Quinney?

23          A        Correct.

24          Q        Which is the exact opposite of what Anderson's  
25                   got you saying in the July 16th phone call; is

1           that correct?

2       A     Correct.

3       Q     Now, I put two tabs in here at the end, tab 29

4           and Tab 30, because they are discussed in your

5           witness statement. I am not going to go over

6           them with you. But if you go back to your

7           witness statement of tab A1, you see at the very

8           last page of it, page 15 of your interview, we

9           asked you to respond to this one passage in the

10          Hall and Ewatski report where they make a

11          comment or they have reported to attribute a

12          certain statement to you. And your report at

13          tab 29 fully responds to that. And I'm content

14          to leave that aspect of the matter in writing in

15          your statement without going over it with you.

16          But the two relevant documents are there,

17          Mr. Commissioner, that deal with that minor

18          issue.

19          That concludes my examination. Thank you very

20          much, Inspector Burton.

21          THE COMMISSIONER: We will take a 15-minute

22          break.

23          THE CLERK: All rise. This commission of

24          inquiry is in recess.

25          (Proceedings recessed at 3:25

1 and reconvened at 3:40)

2

3

4 THE CLERK: All rise. This commission of  
5 inquiry is now recommenced. Please be seated.

6 THE COMMISSIONER: Mr. Lockyer.

7 MR. LOCKYER: Thank you, Mr. Commissioner.

8 BY MR. LOCKYER:

9 Q Inspector Burton, as I've read your interview  
10 with Commission Counsel, as it's been recorded,  
11 my best summary of it goes something like this,  
12 that you think that in the early days of the  
13 investigation in the Perry Dean Harder murder,  
14 or in the first few months of it anyway, the  
15 Winnipeg Police Service jumped the gun and gave  
16 Mr. Zanidean immunity from prosecution on the  
17 arson in Swift Current; is that correct?

18 A That was my speculation at the time.

19 Q All right. Well, it's your -- since you call it  
20 speculation now, it was your speculation when  
21 you spoke to Commission Counsel, too, just a few  
22 weeks ago, wasn't it?

23 A Well, I relied on my reports made at the time.

24 Q I am not quite sure what you are saying. Are  
25 you now repudiating the thoughts that you had



1 before or are you maintaining them?

2 A Maintaining them, just saying that I rely on my  
3 reports created at the time.

4 Q I don't really understand that. You must have  
5 some memory of all of this, sir. It can't be  
6 every day that a PC gets into the kind of  
7 disputes and difficulties that you got into with  
8 more senior officers in another service, is it?  
9 It must be a pretty unusual event?

10 A Correct.

11 Q Or series of events?

12 A Yes.

13 Q I imagine it was a one-off for you in your  
14 career, probably, wasn't it?

15 A I would say yes.

16 Q So surely it wouldn't be unfair of me to suggest  
17 to you that you have a pretty good memory of  
18 what went on back in '90, '91, '92, and indeed  
19 '93, with respect to Zanidean, whilst you may  
20 not have a perfect memory of it?

21 A My memories are general. But to get up here and  
22 testify from my memory would be wrong.

23 Q But your general memory, even now, is very much  
24 that you were of the opinion that the Winnipeg  
25 Police Service jumped the gun and gave Zanidean

1 immunity on an out of jurisdiction charge; is  
2 that right?

3 A Yes.

4 Q On a very serious charge, as far as you are  
5 concerned?

6 A Correct.

7 Q In Swift Current pretty well as serious as it  
8 gets, I should think?

9 A Yes.

10 Q And then that they did that without -- and  
11 presumably knowingly, without any official  
12 sanction from the powers that be in  
13 Saskatchewan; is that right?

14 A Again, that was my speculation.

15 Q That was your belief?

16 A At the time when I first raised it, it was  
17 speculation, after the initial call on the 27th  
18 of October.

19 Q Okay. You are back in 1990 now?

20 A Correct.

21 Q But as things progressed, it became more and  
22 more your belief, is that right, sir? Well, you  
23 expressed it in enough reports.

24 A Yeah. I mean, eventually, yes.

25 Q Yes. It's what you told Commission Counsel a

1 matter of weeks ago?

2 A Yeah.

3 Q Same thing, right?

4 A Correct.

5 Q And it would seem that the whole thing kind of  
6 blew up in July, particularly if we look at that  
7 July 16th, 1991 phone call that you had with  
8 Anderson; is that right, sir?

9 A I would have to look at the reports. Because  
10 when you get into dates, you are going to lose  
11 me.

12 Q All right. Well, the July 16th call, sir,  
13 that's at tab 26 of the first lot of documents,  
14 A, if you will, A-26. And that's the phone call  
15 that you had with Anderson where -- sorry,  
16 that's Anderson's version of it. Sorry, your  
17 version of it is at tab 32. That's the call, if  
18 I can just remind you, where Anderson told you  
19 that -- first of all, you told him that the  
20 powers that be in Saskatchewan were not agreeing  
21 to immunity for Zanidean. And Anderson told  
22 you, amongst other things, that if Zanidean now  
23 gets charged with that arson, he is probably  
24 going to the media. And he has told the  
25 Winnipeg police officers that -- sorry, and tell

1 the media that he told Anderson and Paul simply  
2 what they wanted to hear regarding the murder.

3 Remember that?

4 A Correct.

5 Q Right. And if you look at that tab 32, sir,  
6 it's at page 3 of that report that you wrote on  
7 July 19th. You make that statement that  
8 Anderson told you, and I quote, this is item 7  
9 on page 3, that Zanidean had said to him,  
10 meaning Anderson,

11 "...that after the murder trial that if he  
12 was charged, he would go to the media and  
13 state that he only told Winnipeg Police  
14 Service what they wanted to hear regarding  
15 the murder so that Driskell would be  
16 acquitted on appeal or a new trial  
17 ordered."

18 And Anderson then said he would speak to  
19 Miller and Dangerfield regarding the possibility  
20 that Zanidean may be charged. Remember that,  
21 sir?

22 A Well, I remember it because I recorded it.

23 Q Right.

24 A But I don't have independent memory of those  
25 specifics.

1 Q Well, do you remember Anderson being worried,  
2 sir, that the conduct of the Saskatchewan RCMP  
3 might cause Mr. Driskell's murder conviction to  
4 be overturned? It doesn't seem a hard thing to  
5 remember?

6 A In a general sense, yeah.

7 Q Pardon?

8 A In a general sense, yeah.

9 Q All right. That is a pretty general  
10 proposition, it seems to me. So you remember  
11 that?

12 A Yes.

13 Q Right. And then at page 5 of the same report,  
14 sir, you very much question the motives of the  
15 Winnipeg Police Service throughout your dealings  
16 with them. At paragraph 18 you say,

17 "My suspicion...",

18 That is one you have already expressed in this  
19 report,

20 "...if correct is significant, because if  
21 we were subsequently to charge Ms. Hayek,  
22 it would serve to corroborate Driskell's  
23 testimony regarding motive and would  
24 discredit Zanidean's testimony. In other  
25 words, if the Winnipeg Police Service knew

1           there would be conflicting testimony, then  
2           they also would have known that the  
3           solution suggested above wouldn't be viable  
4           as we would not be able to charge Hayek.  
5           Therefore, there is the possibility the  
6           Winnipeg Police Service may have, from the  
7           outset, attempted to a create a set of  
8           circumstances which would result in our  
9           investigation being unsuccessfully  
10          concluded without charges. The Winnipeg  
11          Police Service have been quite  
12          straightforward in expressing the hope that  
13          we don't lay charges and it may be that  
14          they have attempted to ensure this."

15                 That kind of sentiment on your part, that  
16          kind of theme on your part, I mean, you've read  
17          all of these reports in the recent past, sir,  
18          it's pervasive in your reports, is it not, in  
19          one form or another?

20          A        Correct.

21          Q        And it's pervasive not just for a period of,  
22          say, mid-July of 1991, but pervasive really  
23          through 1990, 1991, 1992, and indeed 1993, when  
24          you come to speak to Ewatski and Hall, isn't  
25          that right?

1 A Correct.

2 Q And are you aware, by the way -- I imagine you  
3 would have been, although I don't think you  
4 referred to it -- well, I suppose in a sense you  
5 do refer to it -- you were aware as of July,  
6 mid-July, that Mr. Driskell's trial had  
7 concluded and he had been convicted; is that  
8 right?

9 A That's right.

10 Q He had actually, just for your information, sir,  
11 been convicted a month before on June 14 of  
12 1991.

13 And am I right, sir, in suggesting to you  
14 that there seemed to be an element of panic on  
15 the part of Anderson that you were going to mess  
16 things up? Not so much you, but you and the  
17 rest of the people in Saskatchewan from the  
18 RCMP, were going to mess things up?

19 A Well, he was concerned. I don't know if I could  
20 call it panic. He would have to speak to that.  
21 He was concerned, based on what he stated to me  
22 and what I recorded in the reports, in my  
23 reports.

24 Q Mr. Code, Commission Counsel, took you through  
25 some of Anderson's versions of this July 16th

1 phone call, sir. And I thought -- it's at tab  
2 25. And, in particular -- sorry, wrong tab.  
3 THE COMMISSIONER: Page 3, the third paragraph.  
4 BY MR. LOCKYER:

5 Q Where he says, yes, at the bottom of page --  
6 sorry. Sorry, the trouble is there is two  
7 pages. There is one page number at the top and  
8 one page number at the bottom of the page. I  
9 have marked the page numbers and now I am a bit  
10 confused as to what I meant when I marked them,  
11 whether I was looking at the top or the bottom.

12 Perhaps I will leave that aspect of it for  
13 a moment, sir, and carry on like this. Am I  
14 right, sir, that as a consequence of all of  
15 this, you came to understand that Inspector Wass  
16 made a complaint, in essence, to the Winnipeg  
17 Police Service about the way the Winnipeg Police  
18 Service officers had conducted themselves in  
19 their dealings with you? And he did that in  
20 October of '91?

21 A Again, I would have to look through the  
22 documents for the date. But I do recall seeing  
23 documents in which he had communication with the  
24 D division contract policing officer in  
25 Winnipeg. And he sent something on to the



1 Winnipeg Police Service, but I would have to  
2 look at the report to confirm that date.

3 Q All right. But if you will remember, it was at  
4 tab 25 of A that you get the -- that there is a  
5 response, October 8th of '91, prepared by  
6 Mr. Anderson that ultimately makes its way to  
7 you, and you respond to that in turn. Do you  
8 remember that?

9 A Correct.

10 Q And it's in that document, sir, that, as I was  
11 pointing out and got a little lost in which tab  
12 I was in, and I've now worked it out, that  
13 Anderson gives his own versions of the call,  
14 particularly the calls with you of July 16th and  
15 July 18th; is that right, sir? If you look at  
16 page 3, for example, halfway down he has  
17 written,

18 "On July 16th I received a phone call at  
19 home from Constable Burton."

20 And Mr. Code has read this passage to you  
21 where you now advise him, very apologetically,  
22 that your superiors considered their arson --  
23 sorry, that your superiors have decided that  
24 they wanted to proceed with the arson charge,  
25 and according to Anderson, you were very much

1           opposed to this decision. Remember that passage  
2           being read to you?

3       A     Right. Correct.

4       Q     And then at page 6 of the same document, sir, it  
5           reads in the third paragraph, and again this is  
6           Anderson writing,

7                     "This matter is both complex and sensitive.  
8                     Although Zanidean was unaware of the  
9                     immunity issue prior to his testimony, he  
10                    now considers immunity part of the  
11                    protection deal struck with the Manitoba  
12                    Justice department. He no doubt considers  
13                    it a reward for testifying, and I expect an  
14                    unfavourable reaction from him when he's  
15                    charged."

16                   And that's not unlike, sir, albeit a  
17                   slightly watered down version of what you  
18                   wrote in your version of this call, where you  
19                   said Anderson told you that Zanidean had  
20                   essentially threatened to go to the media and  
21                   was going to tell them, in essence, that he had  
22                   lied at the murder trial, and just simply told  
23                   the jury what it was the police had wanted him  
24                   to say, right?

25       A     Correct.

1 Q So you've really got a watered down version of  
2 the same idea from Anderson in that report of  
3 October 8th, '91; is that right?

4 A Correct.

5 Q Now you then -- having received this, sir,  
6 that's sort of Anderson's response to  
7 Inspector Wass's complaint letter to the  
8 Winnipeg Police Service, and you are then --  
9 you essentially get this provided to you for  
10 your response to what it is that Anderson has  
11 had to say; am I right?

12 A Correct.

13 Q And your reply, sir, at tab 24, you really -- it  
14 might be fair to say you really didn't pull any  
15 punches in your response of January 9th, '92; is  
16 that right?

17 A Correct.

18 Q Written some 1, 2, 3 months after Anderson's  
19 report of October 8th the previous year. You've  
20 referred, and I am now looking at the first page  
21 of it, to the numerous falsehoods in Sergeant  
22 Anderson's statement?

23 A Correct.

24 Q Your words?

25 A Correct.

1       Q     You referred again, lower down on the same page  
2             to:

3                     "Since last year I have submitted numerous  
4                     investigative reports and spoken at several  
5                     meetings in which I've related  
6                     circumstances which have led me to believe  
7                     that Sergeant Anderson has been deceitful  
8                     and dishonest in his dealings with us in  
9                     regard to this matter."

10                    And then in your conclusion, sir, in your  
11                    report you say -- this is the bottom of 8 and  
12                    really takes us back to where I began  
13                    questioning you, you say,

14                             "To summarize...",  
15                    This is at 4 on page 8,

16                             "To summarize this situation, I believe  
17                             that Anderson had to extend a promise of  
18                             immunity to Zanidean with respect to the  
19                             arson in order to secure his testimony.  
20                             Because a decision on immunity would not be  
21                             forthcoming prior to trial, I believe  
22                             Anderson made representation to Zanidean  
23                             that immunity had been granted. I believe  
24                             that all of the confusion surrounding our  
25                             obtaining the body pack transcript was a

1 deliberate delaying tactic to conceal from  
2 us the true nature of the conversations  
3 contained therein."

4 And then you say:

5 "I noted that on a number of occasions in  
6 his statements Sergeant Anderson made  
7 personal attacks against me or falsely  
8 attributed statements to me. This action  
9 served no purpose in the matter and seemed  
10 merely intended to portray me in a bad  
11 light. I have a reputation as a very  
12 cautious and professional investigator.  
13 Considering my well known distrust of  
14 Sergeant Anderson, I think that my  
15 superiors can draw their own conclusions as  
16 to whether I would say anything to Anderson  
17 that would compromise me in any way."

18 Do you remember writing conclusions in that  
19 nature, sir --

20 A Correct.

21 Q -- in your response to Anderson's brief of  
22 October 8th, '91?

23 A Yes.

24 Q Now, I just want you to do a bit of talking now,  
25 Inspector Burton, if you would. You are an

1 experienced officer. Could you tell us what it  
2 is that caused you to come to such harsh  
3 conclusions about a person in the same  
4 profession as you, albeit not in the same force?  
5 What did Anderson say to you, what did he  
6 indicate to you, how did he deal with you that  
7 caused you to apply these kind of epithets to  
8 him?

9 A I can't pull it out of my head 16 years later.  
10 I just have to take you through the documents,  
11 as Mr. Code did. I couldn't even attempt to do  
12 that orally. I just have no direct, independent  
13 recollection of the dates and the things that  
14 were said and where and when. I would have to  
15 rely on the documents.

16 Q Well, you've read all of the documents recently,  
17 sir, so why don't you talk about what you've  
18 read from the documents as to how you came to  
19 draw those kinds of conclusions?

20 A I can't do that. I would have to refer to which  
21 document and which date, what he said and what I  
22 said.

23 Q Is it not in your memory, sir? I must say I'm  
24 surprised that these things seem to have escaped  
25 your memory, a one-off in your career and it

1 just seems to have faded to the degree that it  
2 has.

3 A Well, if I am going to give testimony, I have  
4 got to give specific on the dates of who said  
5 what and when.

6 Q That's not really what I'm asking you, sir. I  
7 am asking how you came to those kinds of  
8 conclusions? I am just trying to summarize your  
9 dealings with Anderson over the year or more  
10 that you had dealings with him?

11 A Again, that was over, as you said, about three  
12 years. And it was 16 years ago. And there is a  
13 lot of correspondence here.

14 Q Your dealings with Anderson were really only  
15 over a year, sir. Your dealings about what  
16 happened in the case went over three years, but  
17 your dealings with Anderson were essentially for  
18 a year.

19 A But a lot of these, like this document that you  
20 are referring to here, was quite sometime later.  
21 And for me to try to pull it together out of my  
22 head, I would be foolish, quite frankly. I have  
23 the documentation. And that's what I am going  
24 to have to rely on at this point. So, I mean, I  
25 can walk you through, it as Mr. Code did, but to

1           spew it out of my head is just not possible.

2           Q     Do you have a reluctance about being here today,  
3           sir?

4           A     No, not at all.

5           Q     You don't. I mean, I will just take you through  
6           some of the things that I think Mr. Code took  
7           you through this morning --

8           A     Okay.

9           Q     -- and try to highlight in my mind some of the  
10          more obvious things.

11          A     Okay.

12          Q     And I didn't live it, you did. And that is,  
13          first of all, it was a year or so before you  
14          finally got one of the two notebook entries  
15          which amounted to confessions by Mr. Zanidean to  
16          Officer Paul. You got the October 10th typed  
17          version?

18          A     Right.

19          Q     And then October 29th in the notes of  
20          Anderson when he got yet another confession  
21          from Zanidean. Was that one of the reasons?

22          A     I never actually got those from Anderson. I  
23          just actually saw those yesterday for the first  
24          time.

25          Q     No. But you finally -- I think Mr. Code took



1           you through it just before the break -- you  
2           finally did, at least, get a typed version of  
3           one of those sets of notes, those of Paul of  
4           October 10th?

5        A    Yeah.  The Anderson ones I never got.  I never  
6           received those.  Actually, I saw them yesterday  
7           for the first time, the ones from Anderson.

8        Q    Would that have helped your investigation along,  
9           sir, if you had had those back in October or  
10          perhaps November of 1990?

11       A    Yes.

12       Q    Tell me this, sir -- this is a little off  
13          point -- your request of Mann on July 27th of  
14          1990, would that request have been, do you  
15          think, readily accessible to other members of  
16          the Winnipeg Police Service?

17       A    Can you take me to that, because --

18       Q    Remember in July 27 of 1990 is the first time  
19          you made a request of the Winnipeg Police  
20          Service, and you directed it to a PC Mann or a  
21          Sergeant Mann, I am not sure what his title was,  
22          and asked him to go and find Zanidean and  
23          interview him.  Do you remember that?

24       A    If I could look at it, because the dates, there  
25          is no way I can pull those out of my head.

1 Q Tab 20 is Mann's reply of August 8th. But  
2 believe me, you had sent out your request on  
3 July 27th.

4 THE COMMISSIONER: There is tab 16 and tab 17.  
5 MR. LOCKYER: Is that right?

6 THE COMMISSIONER: 16 was a telex. 17 was an  
7 additional -- or the actual telex. One is a  
8 reference and the other is --

9 MR. LOCKYER: Thank you, Mr. Commissioner.

10 BY MR. LOCKYER:

11 Q Tab 17 is your telex.

12 A Correct.

13 Q Remember that? You were taken through that by  
14 Commission Counsel this morning.

15 A That's correct. But it wasn't directed to  
16 anybody specifically.

17 Q All right. But it ended up in the hands of  
18 Mann. And my question to you was, sir, would  
19 that request be readily accessible to a member  
20 of the Winnipeg Police Service, do you believe?

21 A Yes.

22 Q All right. So if we visualize, and I am not a  
23 policeman, never have been and God forbid never  
24 will be, but if we visualize Anderson and Paul,  
25 two senior officers in the Winnipeg Police

1 Service, encountering Zanidean and wanting to  
2 check him out, presumably your telex would  
3 quickly come to their notice if they went to the  
4 effort to check him out; is that fair?

5 A I don't know.

6 Q Would that be a reasonable conclusion, sir?

7 A I don't know how Winnipeg Police Service, you  
8 know, operates. I can tell you about the RCMP.

9 Q Well, why don't you, that's as good as anything.  
10 If a request was to be made like that of you and  
11 another officer in your unit is now  
12 investigating a chap about whom a request to you  
13 has been made, would they find out about the  
14 request to you pretty quickly?

15 A Generally what they would do, the system has  
16 changed, but back then it was called PIRS,  
17 police information retrieval system. When a  
18 message like this was received, it would be  
19 entered into the system. And anybody having any  
20 dealing with this subject would generally query  
21 the system and get a hit. But how Winnipeg  
22 Police Service, how their data systems work, I  
23 don't know.

24 Q If you go back, sir, to tab 16, just go back one  
25 tab, you'll see, as Mr. Code has just pointed

1 out, that your message was sent through CPIC,  
2 right?

3 A Correct.

4 Q So given that, and just from one's general  
5 knowledge of police forces, it would be  
6 reasonable to suppose that Anderson and Paul  
7 would have had, likely had ready access to that  
8 information a month or two later if they had  
9 checked out Zanidean on CPIC?

10 A That's a narrative traffic message, which means  
11 it is just sent and that's it, and it is  
12 received. It wouldn't remain on the system  
13 unless they entered it in their own -- unless  
14 they had some kind of a procedure within their  
15 force to enter him into their system. It's not  
16 like --

17 Q I understand.

18 A -- what you are thinking is the CPIC hit system  
19 where you enter people into the system. This is  
20 just a narrative traffic, because it was  
21 pre-email days and that's how we communicated  
22 then electronically.

23 Q But you say in your system it would have led to  
24 another officer having easy access to that  
25 information?

1 A Yes, it would have went on PIRS.

2 Q Right. And I guess it goes without saying, if  
3 someone like Zanidean came to you to provide you  
4 with information about a homicide, sir, one of  
5 the first things you would do is run him through  
6 to see who you are dealing with, at least from a  
7 police information point of you view?

8 A Correct.

9 Q Did you know, sir, that the claim of Anderson  
10 and Paul about Mr. Zanidean, they first came up  
11 with this claim that he may not be a credible  
12 witness, that he came up with this claim on  
13 October 10th? It was just a day after they met  
14 him. Did you know that, that they first  
15 encountered him the day before?

16 A I actually knew that from reviewing the  
17 materials that I received as a result of this  
18 inquiry.

19 Q I see. A second reason, sir, I am going to  
20 suggest to you, as I have been listening to what  
21 you had to say today, is a reason that you  
22 didn't trust Anderson, because you didn't,  
23 right?

24 A Correct.

25 Q Was because you realized really before, I am

1 going to suggest to you, before Driskell's  
2 trial, that these chaps in Winnipeg were going  
3 to offer Zanidean immunity, really, whatever  
4 you said. Didn't you get that sense early on,  
5 sir?

6 A I speculated to that effect early on.

7 Q At that time?

8 A Early on, yes.

9 Q Yes. And you picked that up just from their  
10 keenness in making Zanidean happy so that he  
11 would give them the information they wanted?

12 A That was part of it, yes.

13 Q I mean, they were pushing you to give him  
14 immunity; isn't that right?

15 A Yes.

16 Q I'm sorry?

17 A Yes.

18 Q Yes. And you initially said okay. I mean, you  
19 were dealing with more senior officers than you,  
20 albeit in a different force; correct?

21 A No. I said I would submit it through channels.  
22 I didn't say okay to it.

23 Q No, I am sorry, but you said in your own  
24 personal opinion that may be an acceptable  
25 proposition, but you were going to have to put

1           it up higher?

2       A     Correct.

3       Q     I see.  So you were, in a sense, giving in to  
4           their demands, insofar as it was within your  
5           powers, but making it clear to them it wasn't  
6           actually in your power?

7       A     Correct.

8       Q     And you got a sense they weren't happy with  
9           that, they wanted more.  They wanted it to be in  
10          your power?

11      A     Now, at what point in the process?  I mean, some  
12          of these things became apparent --

13      Q     I can't hear a word you're saying, I'm sorry.

14      A     Some of these things became apparent as time  
15          went on.

16      Q     Right.

17      A     So, you know, you would have to be very specific  
18          about that.  I mean, early on I --

19      Q     Well, you're the one with the mind.  Why  
20          don't you be specific to me rather than me  
21          trying?

22      A     Well, I would rely on my records.  And you  
23          can see the progression there, I think, fairly  
24          clearly, but I have to rely on my records.

25      Q     My sense of the progression, sir, is that you

1           became, and I think you said it this morning,  
2           you became, I think you said, suspicious,  
3           perhaps worried might be a better word, pretty  
4           early on in your dealings with these chaps,  
5           didn't you?

6        A     Yes.

7        Q     Is that one of the reasons that, albeit that  
8           we don't have the records now, that you made  
9           good records of your dealings with them, sir?

10       A     Yes.

11       Q     And the third matter which seems to have  
12           struck, certainly struck me more than  
13           anything else, that really caused you to  
14           question these -- the Winnipeg officers, was  
15           their apparent belief in Zanidean's expressed  
16           motive for the fire, namely to get back at  
17           his sister, when it was perfectly obvious to  
18           you that that wasn't what the fire was about at  
19           all?

20       A     Eventually that came out. But, again, I would  
21           have to refer to the reports. I know that came  
22           out not initially, but later on.

23       Q     I'm sorry, what came out? You mean what the  
24           Winnipeg Police Service Officers were saying?

25       A     The issue of the motive came out.



1 Q I thought you had worked that out about a week  
2 after the fire, sir?

3 A In my mind. But in terms of the discrepancy  
4 with Winnipeg Police Service, that came out much  
5 later.

6 Q Well, presumably you challenged their -- sorry,  
7 it wasn't really their version, but Zanidean's  
8 version of the cause of the fire, pretty early  
9 on, didn't you?

10 A Again --

11 Q It was completely opposite to what you  
12 believed was the cause or the motivation for the  
13 fire?

14 A Yeah, eventually that came out. I would have to  
15 refer to the reports to say when. Again, we  
16 went through that this morning.

17 Q I am going to suggest to you it was pretty well  
18 straight away, sir. You always appreciated -- I  
19 think everyone laughed this morning when, at one  
20 point when we were talking about the motivation  
21 for the fire, it was always apparent to you that  
22 the motivation for the fire was an insurance  
23 scam?

24 A For me personally, yeah.

25 Q Yes.

1       A       In terms of the conflict with Winnipeg, that  
2               came out much later, or later.

3       Q       And then eventually, although now we have  
4               moved to '91, post Mr. Driskell's conviction,  
5               you discover finally, after a lot of trying,  
6               that the body pack conversation that  
7               Mr. Zanidean had with Mr. Driskell was just  
8               more -- was more -- just merely provided more  
9               affirmation of your belief, if not certainty,  
10              that the motive for the fire was insurance  
11              related, am I right?

12      A       Correct. That's correct.

13      Q       Because when you read that body pack, it was  
14              quite obvious in the way it was presented by  
15              Zanidean when he was talking about it on the  
16              body pack; am I right?

17      A       Correct, by both of them.

18      Q       I mean, one doesn't usually get one's sister to  
19              pay you money for burning down a house against  
20              her will, so to speak; am I right?

21      A       Correct.

22      Q       And yet you had been told differently by  
23              Anderson in your dealings with him, in terms of  
24              the contents of that conversation; am I right?

25      A       Correct.

1 Q And those three things, certainly, it was my  
2 impression, more than anything, were the  
3 three factors that played in your mind that led  
4 you to say the kind of things that you said  
5 about Anderson come January of 1992; am I right,  
6 sir?

7 A Correct.

8 Q By the way, before Mr. Driskell's conviction, in  
9 other words before mid-June of '91, were you  
10 ever told by Anderson or Paul -- I guess you  
11 never spoke to Paul, actually; is that right?

12 A Correct.

13 Q Were you ever told by Anderson that Zanidean  
14 wasn't going to be told that he wouldn't be  
15 prosecuted for the arson in Swift Current?

16 A I have got to look at my reports again, because  
17 I would tell you as soon as you get --

18 Q Well, for what it's worth, there is no such  
19 statement in any of your reports.

20 A Okay, I will take your word for that.

21 Q Do you think if you had been told that you might  
22 have recorded it, sir?

23 A Absolutely.

24 Q There is also reference, and my friend raised it  
25 with you briefly, to Susan Fehr being stopped

1           for impaired driving in Swift Current in July of  
2           1991. Do you remember that?

3       A     If we could go to the report?

4       Q     Tab 32, sir, of A, page 2, item 2.

5       A     Correct.

6       Q     Lots of 2s.

7       A     Yeah.

8       Q     You see that?

9       A     Yes.

10      Q     When we, on behalf of Mr. Driskell, sir, were  
11           trying to make a presentation to the Justice  
12           Minister in Ottawa that he had been wrongfully  
13           convicted, we made several disclosure requests  
14           regarding that event when Susan Fehr was stopped  
15           for impaired driving by the Swift Current City  
16           Detachment -- "DET" means detachment,  
17           presumably -- detachment members. Have you ever  
18           found out anything about that? We never got any  
19           disclosure, sir. Have you ever found out more  
20           about that, her being stopped for impaired  
21           driving? Was she charged, for example, do you  
22           know?

23      A     I can't recall.

24      Q     Can't recall. Would a few -- would you be able  
25           to use your old dealings in that town, sir, to

1 be able to get any documents about that occasion  
2 when she was stopped for impaired driving, since  
3 all of my attempts in the past have been  
4 fruitless?

5 A They would be destroyed by now.

6 Q And you have no memory as to whether she was  
7 actually charged or not, and if so, what  
8 happened to the charge?

9 A Unless she got a criminal record check, if  
10 she was convicted, but I have no memory,  
11 no.

12 THE COMMISSIONER: Do charges go on CPIC?

13 THE WITNESS: You can query the criminal  
14 record on CPIC and it will be on there if she  
15 is a prohibited driver, while she is  
16 prohibited.

17 THE COMMISSIONER: But when a person is charged,  
18 does that go on CPIC at that time?

19 THE WITNESS: Yes.

20 THE COMMISSIONER: And then what happens to it?  
21 Let's assume they are not convicted?

22 THE WITNESS: They will be entered as charged.  
23 And if they are suspended for 24 hours, that  
24 will be entered. Then if they are acquitted or  
25 convicted, that entry comes off and it goes to

1           their criminal record if they are convicted.

2           But you can also query -- you could query

3           through CPIC then. I don't know now. I haven't

4           used CPIC in quite a while.

5           THE COMMISSIONER: Okay. Thanks.

6           BY MR. LOCKYER:

7           Q     There certainly must have been, when you heard  
8           about this -- I don't know who you heard about  
9           it from, do you? You are relating an event that  
10          happened a matter of six days before you wrote  
11          your report, so it would seem that you found out  
12          about it pretty quickly?

13          A     I'm sure the investigators dealing with Fehr  
14          would have contacted me in fairly short order.

15          Q     But I am wondering what would have caused them  
16          to contact you? Fehr wouldn't have known about  
17          you?

18          A     No. But the investigators would have known that  
19          I was investigating Zanidean. It's a small  
20          office, everybody knows what everybody else is  
21          dealing with.

22          Q     Sorry, so the Swift Current City detachment is  
23          an RCMP detachment, is it?

24          A     That's where I was stationed, yes.

25          Q     Okay. I hadn't realized that. I see.

1                   So you must have been getting a distinct  
2                   impression, at this point in time, that  
3                   Mr. Zanidean and his wife seemed to think they  
4                   have a little bit of a licence to steal, so to  
5                   speak, in a manner of speaking, right?

6           A       Well, I was getting the impression that they  
7                   were under the source witness protection  
8                   program.

9           Q       With a licence to get away with crime?

10          A       Well, she seemed to think so.

11          Q       Now, after all of this had gone by, sir, and  
12                   Mr. Code has taken you right through to the  
13                   1992 when it was finally decided that no one  
14                   was going to be prosecuted for the burning down  
15                   of the house in Swift Current in 1990. Your  
16                   next dealings with the case came about through  
17                   the police inquiry, so to speak, into  
18                   Mr. Driskell's conviction conducted in 1993; is  
19                   that right?

20          A       That would be the interview?

21          Q       Ewatski, Hall.

22          A       Correct.

23          Q       And on May 17th of 1993, sir, I think it was  
24                   then Sergeant Ewatski, now chief, and Inspector  
25                   Hall came and interviewed you. Am I right, was

1           that in Swift Current that they came and  
2           interviewed you? Were you still there?  
3        A     Yeah. They were both inspectors.  
4        Q     All right. And you were still in Swift Current  
5           then?  
6        A     Correct.  
7        Q     And if we -- you haven't been taken to it  
8           before, sir, but your report of your meeting  
9           with them is at second to last tab of the whole  
10          book. All right?  
11       A     29.  
12       Q     I think you've already got it out, 29, right.  
13           Who did you prepare this report for, sir? Was  
14           it just for your own information, so to speak,  
15           or was it for superiors?  
16       A     Superiors.  
17       Q     Was that on their instructions or your wisdom?  
18       A     Hopefully a little of both.  
19       Q     A little of both. All right. And tell me, sir,  
20           can you tell us, I mean, that's a little more  
21           recent than everything else that has happened,  
22           and again it can't be every day that you have  
23           two inspectors from another police force come  
24           and interview you. What was your general  
25           impression, sir, of what these two inspectors



1           were there for, what they wanted to know from  
2           you, and what they were trying to achieve by  
3           meeting with you?

4        A     Well, they showed up, actually, unexpectedly.  
5            They were supposed to come later when Ron  
6            Ferguson was there.

7        Q     Yes.

8        A     So I was reluctant to meet with them alone.  And  
9            there was a lot of -- not a lot, there were  
10           several phone calls that went to our  
11           subdivision.  And you can see the -- there is a  
12           forwarding minute there by Staff Sergeant  
13           Somers, who was the acting OIC.  Inspector  
14           Preston, I believe, had left at that point.  And  
15           I had not wanted to meet with them alone.  So  
16           there was calls to him, and then he made calls  
17           to headquarters in Regina.  This was all in the  
18           evening.  They phoned back and said to meet with  
19           them, so I did.

20                    When they sat down with me, I gave them the  
21           protected A file, which is the arson file, and  
22           they wanted the protected B file, which contains  
23           all of these C237s that we have been talking  
24           about.  And essentially, I didn't have the  
25           authority to give them that.  So more phone

1 calls went up to Staff Sergeant Somers, who was  
2 the acting inspector to Regina, came back and  
3 said give them that file, which I did. And  
4 they reviewed it, I think I say in here for  
5 two hours. And then I sat down and spoke with  
6 them.

7 Q And your conclusions are set out in the report  
8 that you prepared about that meeting; is that  
9 right, sir?

10 A Correct.

11 Q And if we go to page 2 of your report, you point  
12 out at the top that they noted that you had used  
13 pretty strong language in describing Sergeant  
14 Anderson as dishonest, deceitful, et cetera.  
15 That's presumably a reference to your  
16 January 9th, '92 report; right?

17 A Correct.

18 Q They explained to you that there was a  
19 possibility of a public inquiry into the  
20 Driskell murder investigation and conviction due  
21 to public and media attention that it was  
22 receiving; is that right?

23 A Correct.

24 Q And told you that you and Ferguson would be  
25 subpoenaed to testify?

1 A Correct.

2 Q And asked if you still felt the same way about  
3 Anderson, and you said you did?

4 A Yes.

5 Q All right. They pointed out -- when you said  
6 it was your opinion only, they pointed out that  
7 the rules of evidence of public inquiries are  
8 decidedly different from those of court, and  
9 that their Winnipeg experience with public  
10 inquiries was even the rules that are in place  
11 tend to be liberally applied, and as such there  
12 was a good possibility that you could be  
13 required to express your opinion. And here you  
14 are doing it, just as a matter of interest, so  
15 they were 13 years ahead of the game; right,  
16 sir?

17 A Yes.

18 THE COMMISSIONER: They were prescient.

19 BY MR. LOCKYER:

20 Q Prescient. And you told them if a public  
21 inquiry were held that in all likelihood these  
22 files would be reviewed by your legal branch in  
23 Ottawa and legal counsel for the RCMP would be  
24 present at the inquiry, and you would take  
25 direction from them; is that right?

1           A       Correct.

2           Q       And then at 7, a little down the page, you say:

3                    "They then brought up the allegation being

4                    made by various sources that Zanidean had

5                    perjured himself on the stand at

6                    Mr. Driskell's murder trial with respect to

7                    his motive the arson. They asked me my

8                    opinion and I advised that the evidence

9                    obtained during our investigation indicates

10                  that Zanidean did perjure himself.

11                  Inspector Ewatski replied, 'they have to

12                  prove that'."

13                  Do you remember that, sir?

14          A       Well, I am relying on my records. But I

15                  recall it from my records, yes, and they are

16                  accurate.

17          Q       What do you think Inspector Ewatski meant? You

18                  are sitting there listening to him. What do

19                  you think he meant by "they have to prove that"?

20          A       I think you would have to ask him. I don't want

21                  to speculate as to that.

22          Q       Who is the "they," do you think?

23          A       I think you are best to ask him. I am just

24                  reporting what he said. I don't want to

25                  speculate on his intent.

1 Q I am sort of more interested because if he were  
2 to deny he said that to you, I am sort of  
3 interested in how you would have interpreted the  
4 "they"?

5 A I don't want to interpret what he meant. I  
6 think you can ask him.

7 Q But you wouldn't have written that down in  
8 quotes unless that was exactly what he said; is  
9 that right?

10 A That's correct.

11 Q And then on the final -- the next page, second  
12 to last page at item 10, you drew some  
13 conclusions. And you concluded, and this  
14 presumably was from the whole tenor of the  
15 meeting, is that right, sir, that you drew these  
16 conclusions?

17 A Correct.

18 Q And how long was the meeting?

19 A I believe I -- I don't know if I set this out in  
20 here.

21 Q I don't think you did, either. I am just asking  
22 you for your best memory, actually.

23 A No. I don't know offhand.

24 Q It was a couple of hours, three hours?

25 A I think they reviewed the documents for a couple

1 of hours and then we sat down and talked, but I  
2 don't recall how long it was.

3 Q Well, they were there and they told you, sort  
4 of officially as part of an inquiry into  
5 Mr. Driskell's conviction, as to whether it  
6 was a good conviction or not, am I right --

7 A That is what they said.

8 Q Or a wrongful conviction or not, if you like?

9 A Correct.

10 Q Were you aware, before they came presumably,  
11 that there had been a little bit of media  
12 interest in one of the local newspapers in  
13 Winnipeg?

14 A I think it was more than local. I'm aware  
15 that Staff Sergeant Ferguson commented to the  
16 media.

17 Q Yeah. But he was talking to the local media  
18 when he commented, sir?

19 A Yeah. I don't know who he spoke to, but I just  
20 know that it received a fair bit of media  
21 attention.

22 Q All right. So you knew about this before they  
23 came?

24 A Correct.

25 Q And you concluded, from the way the meeting

1                   went,

2                    "It would appear that the Winnipeg Police

3                   Service is attempting to determine if there

4                   are sufficient grounds to overturn the

5                   murder conviction of Driskell and if there

6                   are sufficient grounds for disciplinary

7                   action against their members. I feel the

8                   purpose of this is twofold. First, it

9                   appears they want to know what to expect

10                  in terms of witness testimony at a public

11                  inquiry. Secondly, if they find sufficient

12                  grounds exist to justify these actions,

13                  then I suspect their intention would be to

14                  preempt a public inquiry by taking action

15                  on their own accord and render a public

16                  inquiry moot. The very short time given to

17                  the two officers to complete their mandate

18                  leads me to believe this may be the case as

19                  they seem to feel that whether or not an

20                  inquiry is called should be determined in

21                  the near future. The recent spate of

22                  charges brought forward against their

23                  members under the direction of the newly

24                  appointed chief of the Winnipeg Police

25                  Service would tend to support this theory

1 as well. My impression is they are gauging  
2 public opinion to establish whether or not  
3 there is sufficient support for an inquiry.  
4 If not, then it seems they may simply let  
5 the matter rest."

6 Do you remember drawing those conclusions,  
7 sir?

8 A Yes.

9 Q One way of reading what you've written there is  
10 that they seem, as much as anything, concerned  
11 with the public relations rather than whether or  
12 not Mr. Driskell had been rightly or wrongly  
13 convicted. Is that a sense that you got from  
14 them?

15 A I think I will say, I said what I said.

16 Q Fair enough.

17 A I don't want to put a spin on it now.

18 Q Have you had a chance to read the review, sir,  
19 insofar as it relates to you, that those two  
20 officers prepared?

21 A I saw it when I met with the Commission Counsel  
22 about a month, a month and a half ago, and  
23 that's the first time I saw it. I only read a  
24 paragraph or two that related to me. I haven't  
25 read the report in its entirety.



1 Q If you look at -- you have it there on your  
2 right, sir.

3 A Yeah.

4 Q And, Mr. Commissioner, the registrar has one for  
5 you.

6 THE COMMISSIONER: I have a copy here, I  
7 believe.

8 BY MR. LOCKYER:

9 Q Some of the pages I am referring to, actually --  
10 sorry, you are right -- are at tab 30 at B, but  
11 not all of them. So for the assistance of other  
12 counsel, you don't actually have the entirety of  
13 the review here.

14 A Is this what you're talking about?

15 Q It is. Could you turn to page 78, please, sir?

16 THE COMMISSIONER: I may be wrong, I thought I  
17 had a copy of it.

18 MR. LOCKYER: I gave a copy to the registrar,  
19 Mr. Commissioner.

20 MR. CODE: Page 78 is at tab 30.

21 BY MR. LOCKYER:

22 Q Yes, it is. Are you there?

23 A I don't have any tabs in mine. I am just going  
24 to work of the document.

25 Q No. Page 78 of the document that you have, sir.

1 A Okay.

2 Q At the top,

3 "Discussion also took place with Sergeant  
4 Anderson who told the RCMP that Zanidean  
5 had indicated that if he was charged with  
6 the arson he would go to the media and tell  
7 them his testimony regarding the murder was  
8 a lie."

9 And we have seen that, right?

10 A Correct.

11 Q In slightly different form, but essentially  
12 that's the only reasonable interpretation of  
13 what you were told; am I right?

14 A Correct.

15 Q "Documentation suggests at this time the  
16 RCMP had asked for and not been given  
17 reports and transcripts that would assist  
18 them in their investigation and that  
19 Anderson appeared to be uncooperative in  
20 assisting them. Constable Burton also  
21 suggested he was of the opinion the RCMP  
22 investigation into the arson would prove  
23 Zanidean perjured himself on the witness  
24 stand regarding the arson. He suggested  
25 this would assist Brodsky in obtaining a

1                   successful appeal of the conviction. He  
2                   suggested the Winnipeg Police Department  
3                   had created a set of circumstances that  
4                   would ensure the RCMP arson investigation  
5                   would be scuttled."

6                   And that's a part of the theme that I began  
7                   with when I questioned you this afternoon,  
8                   correct?

9           A        Correct.

10          Q        That theme is there?

11          A        Correct.

12          Q        "He also suggested Sergeant Anderson told  
13                   him part of the deal for Zanidean's  
14                   testimony was that he not be charged for  
15                   the 1990 arson, but since nothing was said  
16                   about the 1988 arson, he was fair game to  
17                   be charged with that one."

18                   And all that's a fair commentary of what  
19                   you told Ewatski and Hall; am I right, sir?

20          A        Well, what they read, I don't know that we  
21                   verbally discussed that. They read all of my  
22                   reports. I think they are probably drawing a  
23                   lot of that from the reports.

24          Q        One or the other?

25          A        Yes.

1 Q Fair enough.

2 A Correct.

3 Q Bottom of the page, sir, last two lines,

4 "After reviewing this material it became

5 evident Constable Burton and Sergeants Paul

6 and Anderson have differing opinions as to

7 what occurred relating to the handling of

8 Zanidean. Burton goes as far as accusing

9 Anderson as being deceitful and dishonest

10 in his dealings with him. He feels

11 Anderson was using threat of prosecution as

12 a lever to ensure Zanidean would testify

13 against Driskell."

14 A slightly different focus on it, they are

15 saying we will prosecute you unless you

16 cooperate, as opposed to if you cooperate we

17 won't prosecute. Right, you follow?

18 A Yeah, that's the first I've seen that.

19 Q A slightly different slant.

20 A Correct.

21 Q "We conducted an interview of Burton and

22 he gave us a brief review of his

23 involvement in this matter. We concluded

24 that some of his opinions he expressed in

25 his written reports were based on

1           inaccurate information that was obtained  
2           not from the investigating officers but  
3           other sources such as the PI hired by  
4           Mr. Brodsky."

5           They don't define what inaccurate  
6           information it is that you had as a result of  
7           that. They then go on,

8           "He...",

9           meaning Burton,

10          "...indicated to us he still believes  
11          Anderson had been deceitful and honest with  
12          him but if he was called to an inquiry he  
13          may say something to the contrary,  
14          depending on what instructions he receives  
15          from higher authorities in his force. When  
16          questioned about this response, he stated  
17          that although these opinions may be  
18          documented in the restricted B file, this  
19          file may not be available for use if or  
20          when an inquiry is called."

21          Is that true, sir?

22          A     No.

23          Q     That's a fairly serious comment on your  
24                 integrity, is it not?

25          A     Yes.

1 Q When did you first find out that this had been  
2 written about your meeting, sir?

3 A When I saw it at the Commission Counsel's  
4 office, whenever that was, when I gave my in  
5 camera, I don't know, about a month and a half  
6 ago, somewhere in there.

7 Q Because if we go back to what you said, which  
8 might be said to relate to that passage in your  
9 memo, so we go back to 29, you said, and this is  
10 at page 2, sort of towards the bottom of item 5,  
11 you started talking about, that is Ewatski and  
12 Hall have started talking with you about there  
13 maybe being a public inquiry. And then you say.

14 "I advised that if a public inquiry were  
15 held, then in all likelihood these  
16 files...",

17 meaning the B files,

18 "...would be reviewed by our legal branch  
19 in Ottawa and legal counsel for the RCMP  
20 would be present at the inquiry, and I  
21 would take direction from them. The bottom  
22 line is that I would say what I'm required  
23 to say."

24 A Correct.

25 Q A somewhat different version from what they have

1 recorded, sir?

2 A Yes.

3 Q Which is the accurate version of the two?

4 A Mine.

5 Q They then say, sir, a couple of paragraphs down,  
6 going back to the report, if you would.

7 "Nevertheless after reviewing this aspect  
8 of the investigation...",

9 and this is the two inspectors from the Winnipeg  
10 Police Service talking,

11 "...it is evident an issue can be made as  
12 to how the Winnipeg Police Department dealt  
13 with Ray Zanidean. A strong suggestion may  
14 be made that some sort of a deal was struck  
15 with him in which he would be granted  
16 immunity from prosecution from the Swift  
17 Current arsons, plural, if he testified  
18 against Driskell."

19 That, of course, is the very belief that  
20 you came to hold during your dealings with  
21 Anderson and Paul; is that right, sir?

22 A Partially. I didn't suspect they had made an  
23 immunity deal on the original arson in 1988.

24 Q All right. Leaving aside that aspect, the rest  
25 of it is what you came to believe during your

1           dealings with Anderson -- I said Anderson and  
2           Paul, I should have just said Anderson. Am I  
3           right?

4       A     That's correct.

5       Q     Does that give you any comfort, sir, you got two  
6           inspectors from the Winnipeg Police Service  
7           coming along a year or two later and essentially  
8           drawing the same conclusion, or at least  
9           considering it a strong suggestion?

10      A     Well, whatever.

11      Q     At page 84, sir, of the same report, the last  
12           paragraph, Ewatski and Hall conclude,

13                    "In summary we form the opinion the issue  
14                    of Zanidean's involvement in the police  
15                    investigation and subsequent conviction of  
16                    Jim Driskell remains a concern. Numerous  
17                    questions were identified relating to his  
18                    evidence, the circumstances surrounding his  
19                    involvement with the police as well as his  
20                    credibility. Another area that concerns  
21                    us...",

22                    and I don't think that really concerns you,  
23           that's a telephone call he made subsequent to  
24           Mr. Driskell's conviction. And the top of the next  
25           page,



1 "Obviously we would like to challenge  
2 Zanidean on these statements, but without  
3 his cooperation these questions will remain  
4 unanswered. The impact of these unanswered  
5 questions certainly casts a cloud of  
6 concern over various aspects of the  
7 investigation and court proceedings, and  
8 the prime concern which relates to the  
9 issue of perjury will be addressed in  
10 another portion of this report."

11 Which of course again is really quite  
12 supportive of the views that you had formed, is  
13 it not, sir, back in 1990, 1991?

14 A Correct.

15 Q If we then go to the other portion of this  
16 report, sir, referred to at the end there of  
17 page 161, they are talking about the idea of a  
18 perjury charge premised on Zanidean's claim that  
19 he burned down the house to get revenge on his  
20 sister. Do you follow?

21 A Yes.

22 Q As opposed to burning down the house for his  
23 sister, okay?

24 A Okay.

25 Q The last paragraph on that page Ewatski and Hall

1 write:

2 "It is impossible to speculate how the  
3 pursuit of Zanidean on this type of charge  
4 would affect him, but based on his past  
5 behaviour it is assumed he would not take  
6 it very well. The committee believes, due  
7 to his volatile unpredictable nature,  
8 Zanidean would expound on a litany of  
9 suggestions, accusations, and allegations  
10 that would act as fodder for the media to  
11 feed on. We are certain they would attempt  
12 to cast a shadow of doubt and suspicion on  
13 the investigation."

14 Now, if we think that through, it seems to  
15 me that, first of all, that brings back to mind  
16 what Anderson had told you on July 18th in his  
17 phone call -- sorry, July 16th in his phone call  
18 to you that if they now turn around and  
19 prosecute Zanidean for arson, he is going to go  
20 to the media and tell them he just said what the  
21 police wanted him to say; right?

22 A Correct.

23 Q Doesn't that bring that back to mind, sir?

24 A Yes.

25 Q And, as well, it also brings back to mind what I

1           asked you about your own conclusion on this  
2           meeting that you had with Inspectors Ewatski and  
3           Hall, that perhaps their primary goal was to  
4           avoid, or was to undermine media interest in  
5           Mr. Driskell's case rather than really be  
6           interested in whether Mr. Driskell had been  
7           rightfully or wrongly convicted?

8           A     I don't know if I said that. I would have to  
9           look.

10          Q     You certainly implied it towards the end of your  
11          conclusion. Remember I asked you and you said  
12          you would rather just leave it be as to what you  
13          said?

14          A     Correct.

15          Q     Now, did you then -- these feelings of disquiet,  
16          if I can put it that gently, that you had, right  
17          up, really, from 1990 to 1993, they seem to have  
18          got stronger as time went on; am I right?

19          A     Correct.

20          Q     Did they ever dissipate, sir, or did they stay  
21          with you thereafter, so to speak?

22          A     I would say they stayed with me, I would say.

23          Q     And after you spoke to Inspectors Ewatski and  
24          Hall in 1993, sir, when did you next hear from  
25          anyone about this case?

1       A       It would have been some point in 2003, I  
2               believe, I was getting calls from you folks.  
3               There was a fella from Project Centurion.  
4       Q       Yes. Reverend Jim McCloskey?  
5       A       I believe so -- ex-naval intelligence or  
6               something like that --  
7       Q       Indeed --  
8       A       -- or something like that.  
9       Q       -- that's what he was.  
10      A       I remember he called to discuss this whole  
11              issue.  
12      Q       U.S. naval intelligence, I hasten to add, right?  
13      A       Yes. And I had calls from Disclosure, CBC,  
14              wanting to discuss it around that time.  
15      Q       Did you discuss it with either of them, sir?  
16      A       No. I sent it all up. It went up through the  
17              chain of command. And the direction was not to  
18              speak with anybody and to refer them to media  
19              relations in Ottawa.  
20      Q       Did you ever get any requests from what might be  
21              called authority figures, sir, police or  
22              prosecutors?  
23      A       No, not at that time.  
24      Q       Okay. Not at that time. Then what time did  
25              you?

1       A       Well, when this started to materialize, then I  
2               started getting calls from Commission Counsel  
3               and so on.

4       Q       Okay.  So have you had any contact with the  
5               authorities, so to speak, in Winnipeg, sir,  
6               since 1993 right up to the present day, police  
7               and/or prosecutors?

8       A       No.

9       Q       And during this period, sir, were you familiar  
10              with the fact that Mr. Driskell was continuing  
11              to proclaim his innocence of the murder of  
12              Mr. Harder?

13      A       I was following it through the media.

14      Q       So you were maintaining an interest in it?

15      A       Yes.

16      Q       Okay.  And did you assume, in your own mind,  
17              Inspector Burton, that the information to which  
18              you were privy in your dealings with Sergeant  
19              Anderson, in particular, had likely never come  
20              to the attention of Mr. Driskell or counsel on  
21              his behalf?

22      A       I can't say I assume that, I just don't know.

23      Q       Did you worry about it, let's put it that way  
24              then?  Did it concern you that information that  
25              you had might never have got to Mr. Driskell in

1           any form?

2       A     Yes.

3       Q     I mean, for example, Mr. Code, Commission

4           Counsel, one of the last things he did in his

5           examination-in-chief of you, was take you

6           through a couple of letters that Mr. Quinney had

7           written to Winnipeg senior prosecutors, or a

8           Winnipeg senior prosecutor urging him to act

9           according to the Stinchcombe obligations,

10          remember that?

11       A     Correct.

12       Q     And of course you didn't know whether or not

13          that had happened and, indeed, were worried that

14          hadn't happened; is that right, sir?

15       A     Yes.

16       Q     And I forget when it was, but in the meantime,

17          you yourself have become a lawyer, fair?

18       A     Yes.

19       Q     , True?

20       A     That's correct.

21       Q     Sorry, when was it, 2002?

22       A     I would have to look.

23       Q     You have to look? Good heavens!

24       A     I rely on sticky notes. A few years ago.

25       Q     A few years ago.

1 A Yeah.

2 Q Fair enough. And presumably you likely knew  
3 about Stinchcombe before then, but you certainly  
4 knew about it after you embarked on a law  
5 degree; is that right, sir?

6 A Correct.

7 Q All right. So there you are, you've got your  
8 concerns, you are out of Swift Current now.  
9 Where are you now, in Toronto, move into, say,  
10 the year -- I can tell you Mr. Driskell's case  
11 sort of came back into a media focus really in,  
12 I, suppose, in 2003, February, March of 2003.  
13 Do you remember there was a lot of interest when  
14 some DNA results came back, sir?

15 A Yes.

16 Q Okay. And I think I'm right in saying that was  
17 really the time that it hit the media again,  
18 after 1993, sort of a bit of a ten-year hiatus  
19 there. By this time you are a lawyer, and you  
20 are an inspector or a sergeant, or what you are  
21 at this point in time, in 2002?

22 A Sergeant.

23 Q Okay. At least you know when you got made an  
24 inspector; is that right?

25 A Yes.

1 Q Okay. And you worried that information that you  
2 have hasn't got to Mr. Driskell or his counsel.  
3 You have certainly seen nothing in the media to  
4 indicate that it has; is that right?

5 A Correct.

6 Q But you didn't do anything, right? Or did you?

7 A Well, I guess what I will say is I did all I  
8 could.

9 Q What does that mean? What did you do?

10 A I very clearly and thoroughly documented what I  
11 know, documented my concerns, and did my best to  
12 ensure that it went to the people it should.

13 Q But you were worried in 2003, 2004,  
14 particularly, I'm going to suggest to you, that  
15 the powers that be that you had properly briefed  
16 had not done what they should have done, am I  
17 right?

18 A I can't say that I --

19 Q You were worried?

20 A I can't say that I know that. I had a concern  
21 in the back of my mind.

22 Q Worried?

23 A But to say that I know that, no.

24 Q I didn't suggest that you did. You were worried  
25 that they hadn't?



1 A It struck me as a possibility.

2 Q And you didn't take any further action then; is  
3 that right?

4 A Correct.

5 Q If we think this through, sir, in a systemic  
6 sense, okay?

7 A Um-hum.

8 Q That someone -- and by this time you are a  
9 fairly senior officer, you are not a rookie PC  
10 that Mr. Code referred to at the beginning of  
11 your examination-in-chief, you've moved up the  
12 ranks, you've got a fair degree of status by  
13 this time in 2003, 2004.

14 A Correct.

15 Q What could you have done, if you had said to  
16 yourself, look, you had said to yourself, look,  
17 Burton, I know that this information hasn't been  
18 communicated to Mr. Driskell. There is  
19 Mr. Driskell languishing in jail saying he is in  
20 there for something he didn't do. My  
21 information would surely be of assistance and it  
22 is something he should know about., Why wouldn't  
23 you talk to Mr. McCloskey when he calls you, go  
24 to your superiors and insist that they do  
25 something, speak to a prosecutor in Toronto?

1           Why wouldn't you, why wouldn't you do something  
2           like that?

3       A     I had generated a number of C237s, when I became  
4           aware of the events in 2003, I was in Ontario at  
5           that point.

6       Q     I was just around the corner from you, sir.

7       A     Yeah.

8       Q     Two blocks.

9       A     And criminal operations in Ontario "O" division  
10          created a file. And between then and now, I  
11          have forwarded a whole series of C237s outlining  
12          the history, my involvement.

13      Q     When did you do this, sir?

14      A     Starting in 2003, when I started to see the  
15          media.

16      Q     Have you told anyone this before?

17      A     What do you mean by anyone?

18      Q     I don't think, maybe I'm wrong, did you tell  
19          Commission Counsel this?

20      A     No. Because they are current reports. They are  
21          not historical.

22      Q     I was certainly unaware of it until I am  
23          listening to you speaking now, sir, and I'm  
24          interested in what you are telling us, sir. Go  
25          ahead.

1       A       Yes. I basically outlined my involvement and the  
2               history of the thing, and those went up to the  
3               criminal operations officer in "O" division,  
4               Ontario, and they were circulated to the  
5               criminal operations officers in "D" division  
6               which is --

7       Q       Which division?

8       A       D division is Manitoba and F division is  
9               Saskatchewan, and they also went up to  
10              headquarters in Ottawa. And I made known  
11              essentially my role and the evidence I might  
12              have to offer to assist.

13      Q       Wow. Well, good for you, sir, and I mean that  
14              sincerely. Mr. Commissioner, I am completely  
15              taken by surprise. It is a good time to break.  
16              I was going to finish, but I did not expect  
17              this.

18              THE COMMISSIONER: It is so tempting to have you  
19              finish.

20              MR. LOCKYER: Well, this is just something that  
21              I want to think through.

22              THE COMMISSIONER: Of course you do, and we are  
23              one minute to closing time.

24              MR. LOCKYER: Well, that's what I was wondering,  
25              because otherwise, you know --

1 THE COMMISSIONER: That's fine.

2 MR. LOCKYER: -- until the witness said this.

3 THE COMMISSIONER: That's fine.

4 BY MR. LOCKYER:

5 Q Could I just ask the witness if he has immediate  
6 access to these materials that he is talking  
7 about? Do you have them with you?

8 A No.

9 Q You didn't bring them with you?

10 A No.

11 Q So they are in Manitoba, Saskatchewan, and  
12 Toronto, all three?

13 A And London, that's the Ontario headquarters.

14 Q Okay.

15 A They were distributed from Ontario. I just sent  
16 them to my headquarters and then they  
17 distributed them further.

18 Q Your headquarters being Toronto at that time?

19 A London.

20 Q London, sorry.

21 A I work in Toronto. The headquarters for Ontario  
22 is London. So they receive it and then they  
23 distribute it to Manitoba, Saskatchewan and  
24 headquarters in Ottawa.

25 Q And this is 2003, 2004 you did this?

1 A It's been going on from then up until now.

2 Q And it was borne out of a real concern that you  
3 may have information relevant to Mr. Driskell's  
4 claim of wrongful conviction?

5 A Yeah. My concern was that I think pretty much  
6 everyone that was involved on our side has  
7 retired except me.

8 Q Yes.

9 A And I suspected the files might have been  
10 destroyed. I knew that a lot of it would be  
11 held at division in Regina, and possibly  
12 elsewhere. So I wanted to ensure that everyone  
13 was aware of that.

14 Q And did it also involve discussions with  
15 prosecutors, sir, be it in Toronto, London,  
16 Saskatchewan or Manitoba?

17 A No. The first I heard was from Mr. Gates, who  
18 is appointed as counsel for the RCMP. And then  
19 subsequent to that I spoke with Commission  
20 Counsel. And when I first heard from Mr. Gates,  
21 I made him aware of the two files from Swift  
22 Current that we were looking at this morning.

23 Q But we've never seen -- we haven't seen the  
24 documents that you generated in 2003, 2004 at  
25 all?

1 A Well, from 2003 until now I have copies of  
2 everything that I generated, and it was sent  
3 forward to our headquarters in Ontario and  
4 London. It's pretty much --

5 Q And have you that with you?

6 A No.

7 Q I thought you just said you did.

8 A No. But it's really just summarizing a lot of  
9 what's in here.

10 Q Right.

11 A Because nobody was really familiar with this  
12 event anymore, that's still serving, so it was  
13 just to bring them up to speed and give them a  
14 flavour for what was going on and what I knew  
15 and what I could offer.

16 Q And it made you feel better, because once again  
17 you had fulfilled your obligations to make sure  
18 the superior officers knew what you knew?

19 A Correct.

20 MR. LOCKYER: Can we break there?

21 THE COMMISSIONER: Certainly. Certainly. We  
22 will resume tomorrow at 9:30. Mr. Wolson, I  
23 wonder, if it wouldn't be too greatly imposing  
24 upon you, if overnight you could try and see  
25 those documents that you hope to refer to, to

1 see if they are in Exhibit 1. To the extent  
2 that they are, it would be very helpful for all  
3 of the rest of us.

4 MR. WOLSON: I plan to do that.

5 THE COMMISSIONER: Thank you very much.

6 MR. WOLSON: But what concerns me now is that  
7 tomorrow, I am not sure exactly when, I will  
8 endeavor to cross-examine this witness, but now  
9 we know that there is more information. And  
10 that's a concern. And I suppose what we should  
11 do, at least as between counsel, is have a brief  
12 meeting and see where that's going to take us,  
13 because that may be an issue. I know that  
14 Mr. Lockyer may be interested. I certainly am,  
15 and others here may be as well, and whether we  
16 can get the documents while he is here, so  
17 perhaps we can discuss that.

18 THE COMMISSIONER: Yes. I'm sure that that may  
19 well be of interest, although I also took it  
20 from what he said that it really was his attempt  
21 to recreate what his memory still retained of  
22 these events and to try to put it into a  
23 context, so that none of it would be original  
24 information, but not suggesting for a moment  
25 that it may not be helpful and relevant.

1 MR. WOLSON: I think it may be.

2 MR. CODE: I wonder, Mr. Commissioner, if I  
3 could just add to the question you raised. If  
4 my colleagues have documents they wish to put to  
5 Inspector Burton that are not in Exhibit 1, it  
6 would certainly greatly facilitate the marking  
7 of exhibits if they could bring copies of any  
8 additional documents that they want to put to  
9 the witness in a cross-examination book, or  
10 whatever they want to call it, if they are not  
11 in Exhibit 1, so that we could then mark the  
12 additional documents as an exhibit. Otherwise,  
13 we are going to be in a -- we simply have to  
14 bring everything we have got from the disclosure  
15 and somehow work out a system to mark exhibits  
16 afterwards, which is going to be very  
17 complicated.

18 THE COMMISSIONER: Yes, Ms. Carswell.

19 MS. CARSWELL: Yes, Mr. Commissioner, I will  
20 also try to go through the book tonight. I  
21 would also suggest if Commission Counsel -- and  
22 I know it is very difficult -- could give us the  
23 documents in advance, then we would have some  
24 reasonable opportunity to prepare our book of  
25 documents and distribute any documents that we



1           wouldn't. When we get it the day of, it really  
2           makes it impossible to try to listen to the  
3           testimony and try to piece it together that  
4           night in multiple copies. I don't have support  
5           staff available tonight.

6           THE COMMISSIONER: I certainly share your  
7           concerns. However, as I think, as I indicated  
8           at the beginning in my opening comments, when  
9           this process first began in December, we all  
10          thought this would be lots and lots of time to  
11          get everything organized. And I can tell you  
12          that I have had Mr. Code working night and day.

13          MS. CARSWELL: I'm not faulting Mr. Code, I know  
14          that they are working exceptionally hard.

15          THE COMMISSIONER: And I know they will make  
16          every effort, we will make every effort to get  
17          as much to you as soon as possible, because I  
18          agree with your concerns.

19          MR. WOLSON: I was just going to say, sir, it's  
20          almost an impossibility to go through all of the  
21          books. If the documents that I am going to  
22          refer to aren't in the books already, aren't in  
23          Mr. Code's document book, I doubt whether I  
24          would have the time or the staff to find the  
25          materials, to copy them and to put them in some

1 kind of booklet form. I simply don't have the  
2 resources to do that. So I'm going to have to  
3 refer to either the documents that we already  
4 have in the book, which you've asked me to do,  
5 and that's reasonable, but otherwise I may have  
6 to stray, and perhaps at some point staff of the  
7 Commission can find those documents, copy them  
8 and put them in some kind of book. I don't know  
9 about other counsel, but it's an impossible  
10 demand, there is just no time to do it, quite  
11 frankly.

12 THE COMMISSIONER: I know we will all do our  
13 best. And I thank you all for a very long day.  
14 Thank you, Inspector, and see you tomorrow  
15 morning at 9:30.

16 THE CLERK: All rise. This commission of  
17 inquiry is now adjourned.

18 (PROCEEDINGS ADJOURNED AT 4:54 P.M.)

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OFFICIAL EXAMINER'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.

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Cecelia Reid  
Court Reporter

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Lisa Reid,  
Court Reporter

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