

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

The Honourable Patrick LeSage, Q.C. Commissioner

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

Tuesday, July 18, 2006

Volume 2

INQUIRY PROCEEDINGS

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NO EXHIBITS MARKED ON JULY 18, 2006

1 TUESDAY, JULY 18, 2006

2 Upon commencing at 9:30 a.m.

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

5 THE COMMISSIONER: Good morning everyone. Go
6 ahead, Mr. Lockyer.

7 MR. LOCKYER: Good morning, Mr. Commissioner,
8 thank you.

9

10 BY MR. LOCKYER:

11 Q Inspector Burton, just to carry on where we left
12 off yesterday, could you tell us who it is you
13 sent, I'm not quite sure what you sent, but who
14 is it that you sent whatever you sent to, who
15 did you send it to?

16 A I sent a series of C237s to the criminal
17 operations officer for O Division, which is
18 Ontario, based in London.

19 Q All right. I'm not good at the lingo, so C237s
20 being what exactly?

21 A That's an investigation report which is normally
22 generated when you are sending information up to
23 senior management.

24 Q Did you create these C237s at that time, in
25 2003/2004, or were these C237s that you drafted

1 back in the '90s?

2 A 2003 through to 2006. They have been ongoing.

3 Q That's when you drafted them?

4 A Correct.

5 Q And were you drafting these on anyone's

6 instructions or on your own initiative?

7 A My own initiative.

8 Q When in 2003 did you start?

9 A I have to look, get the C237s here, but

10 basically when I saw the media coverage on the

11 Driskell matter in 2003, I generated the first

12 one.

13 Q I think that really began in late February,

14 early March of 2003, I'm just told March of

15 2003. So likely -- I mean, virtually

16 immediately or was there a fair time lag after

17 you read the news?

18 A I would have to get the reports, but I did the

19 first one when I saw the first media coverage.

20 Q And they went to -- is it O Division, is that

21 what you said?

22 A The Ontario headquarters, yes.

23 Q Which is in London?

24 A London, yes.

25 Q And how did they get there? Did you mail them

1 there or did you courier them there or what?

2 A Well, the initial copy goes electronically via
3 email, and then the signed hard copy follows in
4 internal mail.

5 Q And who were you emailing them to?

6 A The criminal operations officer.

7 Q And the name of him or her?

8 A He has changed. Currently it is Chief
9 Superintendent Norm Mazerol. I would have to
10 look on the 237, his predecessor received the
11 original ones, McLaughlin, John McLaughlin.

12 Q John McLaughlin?

13 A Yes, he was the original CROPS officer, and then
14 he left and he was replaced by Norm Mazerol.

15 Q Presumably, I mean, he would wonder what on
16 earth he was looking at. Would you have spoken
17 to him or anyone else in advance to sending out
18 the email, the initial email or emails?

19 A The 237, no, I just generated it and sent it
20 through channels.

21 Q So what is written in the documents would be
22 self-explanatory for the recipient?

23 A Yes.

24 Q You would have seen the document -- I understand
25 they are on their way here, likely today, if we

1 are lucky?

2 A They are being faxed this morning from London.

3 Q Good. And that's a file that, as far as we
4 know, has not been destroyed at all?

5 A No, it is intact.

6 Q You say you did this over a three-year period,
7 2003 to 2006?

8 A Correct.

9 Q What caused you to keep generating these
10 documents in the ensuing years?

11 A Every time I saw some type of news in the media
12 in terms of the original media regarding the DNA
13 and so on, and the call for the conviction to be
14 overturned, and then calls for an inquiry, then
15 the announcement that there was going to be an
16 inquiry, basically when I would see the news in
17 the media, I would send it up through the chain
18 of command just to alert them.

19 Q So more than anything, you were sending news
20 reports as much as anything?

21 A Initially, yes, a news report giving some
22 general background on what had transpired 16
23 years ago. The fact that I believed I was the
24 only one left in the force who really knew what
25 happened.

1 Q Yes?

2 A And essentially starting to initiate the
3 processes internally within the RCMP to deal
4 with the inquiry.

5 Q Before we -- sorry, did you finish?

6 A Yes.

7 Q Before we get to the idea of an inquiry, as you
8 pointed out, we have a man who is saying he
9 didn't commit the crime he is in prison for and
10 a process being undertaken in that regard. And
11 when you are sending the documents during that
12 period of time, what are your purpose, what is
13 your purpose or are your purposes in what you
14 are doing?

15 A Well, it is actually set out pretty clearly in
16 the documents.

17 Q Yes?

18 A I'm alerting the senior management to the fact
19 that I will likely provide testimony which will
20 be negative towards the Winnipeg Police Service
21 and potentially the Manitoba Crowns, that they
22 need to initiate certain processes in terms of
23 legal counsel, locating the files, the old
24 files, media strategy, that type of thing, the
25 processes necessary to deal with the matter.

1 Q Was there any purpose behind it in terms of,
2 once again, seeing if information that you had,
3 that you thought may never have been
4 communicated to Mr. Driskell, could be
5 communicated to him at this time?

6 A I don't want to speculate on that. I just
7 wanted to ensure that the evidence that I had
8 was made known to the relevant parties, and that
9 if there was an inquiry that I was called.

10 Q But that sort of begs the question, in the
11 2003/2004 period, one of the people who wanted
12 to know was surely Mr. Driskell, don't you
13 think?

14 A Well, I knew that, because the folks from your
15 office --

16 Q Right?

17 A -- Centurion had been calling.

18 Q But you weren't ready to give them any
19 information. You felt you had to go through
20 your higher-ups?

21 A I did have to, not that I felt.

22 Q Did you have any reason to think that your
23 higher-ups were communicating any of the
24 information that you had in your head, so to
25 speak, about the case to Mr. Driskell's --

- 1 A I knew they weren't.
- 2 Q Sorry?
- 3 A I knew that they weren't.
- 4 Q You knew they weren't.
- 5 A Correct.
- 6 Q How did you know that, because they told you?
- 7 A Because there was an inquiry anticipated, I was
8 directed to not talk to anyone.
- 9 Q And this is even during the period that
10 Mr. Driskell is still in jail trying to set
11 aside his conviction?
- 12 A This was in 2003. And I had seen the media
13 that, I believe it was the DNA had come out and
14 that he had been released. I think that was
15 around -- we will see the report, but I think
16 that was later in 2003 that I saw that, maybe
17 November or something.
- 18 Q It was late November.
- 19 A Yes, that's the first I saw.
- 20 Q At the time of his release is the first time you
21 saw it?
- 22 A Yes, I think the first 237, we will see when it
23 comes is in November, and that's the first time
24 I saw it in the media.
- 25 Q Even then, the conviction is still there, it

1 hasn't been quashed, he is just on a form of
2 release as a part of the process of trying to
3 set aside his conviction. You understood that?

4 A Correct.

5 Q And despite that status, the higher-ups in the
6 RCMP still didn't think it was appropriate to
7 release your information into the process, so to
8 speak, so it could be considered as a part of
9 Mr. Driskell's application to set aside his
10 conviction?

11 A I don't want to speak for the higher-ups, you
12 have to bring them here. I know that the
13 direction that I received was not to talk to
14 anyone. And as to their motives, I think you
15 would have to ask them.

16 Q Let me try and move you away from the personal
17 situation that you found yourself in for all of
18 those years, and try and look at it from the
19 point of view of someone in your position in the
20 future. Do you think that what happened, do you
21 think that the way it happened with you is
22 satisfactory to the process? Start with that:
23 Do you think we need to think about how to avoid
24 this kind of problem in the future, where there
25 is an officer with substantial information, a

1 junior officer, as were you at the time, with
2 substantial information that never gets to the
3 potentially aggrieved party, a man serving a
4 life sentence for a murder?

5 A Well, all I'm going to do here is offer my
6 evidence.

7 Q Right.

8 A And I will let the Commission speak to those
9 matters.

10 Q All right. Have you thought about it, though,
11 within the hierarchy of the RCMP, as to how
12 things could be changed so that this kind of
13 thing wouldn't happen again?

14 A Again, I'm not prepared to speak to that. I
15 just want to offer my evidence. Again, I will
16 leave that to the Commission. If they have some
17 recommendations in that regard, the Commission
18 will make it.

19 Q All right. Let me ask you this then: In the 15
20 years since 1991, or 16 years since 1990 when
21 things started with you, can you think of
22 anything within the RCMP structure that has
23 changed substantially that could avoid something
24 like this happening in the future?

25 A No, I'm not qualified to speak on that and I'm

1 not prepared to. That's something that I would
2 defer to senior management on.

3 Q I'm not quite sure what an inspector is. Does
4 that mean you are a part of management now,
5 presumably?

6 A Pretty low down.

7 Q Low down in management, all right.

8 A Yes.

9 Q Let me ask you this as sort of a final point on
10 it. Did you feel during those 15 years a
11 certain sense of frustration that your
12 information wasn't getting necessarily to the
13 right ears?

14 A I won't go that far because, quite frankly, I
15 didn't know. As I said earlier, I had a concern
16 in the back of my mind, but I wouldn't say that
17 I knew one way or the other that I was
18 frustrated.

19 Q And there was nowhere really for you to go with
20 your concern, other than to just keep it in your
21 head?

22 A I wouldn't say that either. I just had a
23 concern in the back of my mind. I didn't really
24 know how the thing had played out. I just
25 didn't know.

1 Q So what is coming today then is going to be a
2 series of emails and documents generated by you
3 that are -- to some extent set out the history
4 of your involvement in this case and also talk
5 about where the case might go from here, so to
6 speak; is that right?

7 A Correct.

8 Q I see. The other thing I wanted to ask you
9 about, sir, was this: I think you told us at
10 the end of yesterday that a part of the purpose,
11 and indeed today, behind what you were doing in
12 2003 and following was you were worried that
13 files relevant to this case from the 1991/92 era
14 might have been destroyed; right?

15 A I was concerned that they had been destroyed,
16 and I also wanted to start the process of
17 looking for them, because I thought they may
18 still exist in a number of locations.

19 Q Yes?

20 A Because the files had existed at Swift Current
21 City detachment, F Division headquarters in
22 Regina. There were aspects of the file at D
23 Division headquarters in Winnipeg and at
24 headquarters Ottawa. So essentially my initial
25 237s were also starting that process of trying

1 to find out if we could locate whatever was left
2 of the files, wherever they were.

3 Q Did you do some of the searching yourself?

4 A No, because I'm in Toronto, I have no control
5 over those other locations.

6 Q You didn't discuss your situation with Toronto
7 prosecutors, Department of Justice?

8 A No.

9 Q Do you know what the retention periods are, sir,
10 within the RCMP?

11 A No. What I know generally is the more serious
12 the file, the longer it is retained, that's the
13 general gist of the policy.

14 Q Would it be presumptuous of me to suggest, sir,
15 that at least from your perspective, it might be
16 helpful if files were retained longer than they
17 apparently were in this case?

18 A That's not for me to say. The Commission might
19 have some recommendations but that's not for me
20 to say.

21 Q All right. If I may, sir, I want to thank you
22 on behalf of Mr. Driskell for your involvement
23 in this case.

24 A Thank you.

25 MR. LOCKYER: Thank you, those are my questions.

1 THE COMMISSIONER: Does this mean no one else
2 has questions?

3 MR. PROBER: I have a couple, Mr. Commissioner.

4 BY MR. PROBER:

5 Q Good morning, Inspector Burton, my name is Jay
6 Prober and I'm George Dangerfield's lawyer at
7 this inquiry. I take it you know now that
8 Mr. Dangerfield was one of the prosecutors in
9 this matter?

10 A Yes.

11 Q I also take it you had no direct contact with
12 Mr. Dangerfield during the time you were
13 involved with the Swift Current arson and
14 Zanidean's involvement and the Winnipeg Police
15 Service involvement?

16 A That's correct.

17 Q You never met him, nor did you provide him with
18 any information about it, correct?

19 A Correct.

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

21 THE COMMISSIONER: Thank you, Mr. Prober.

22 BY MR. OLSON:

23 Q Inspector Burton, Bill Olson representing the
24 Attorney General of Manitoba and Crown Attorneys
25 still in the employ of Manitoba who may have

1 still had some involvement in these proceedings.

2 I, as Mr. Prober did before me, assume that you
3 had no contact with Greg Lawlor, who was
4 assisting in the trial of Mr. Driskell in June
5 of 1991?

6 A That's correct.

7 Q You never met him and never provided any
8 information to him that you are aware of?

9 A Correct.

10 Q I take it you also indicated in your response
11 to, I think to Mr. Lockyer yesterday, that you
12 had no participation in the decisions made by
13 Saskatchewan Justice in respect of the arson in
14 Swift Current?

15 A Correct.

16 Q And you, I assume, also then had no involvement
17 in any communications or interaction between
18 Saskatchewan Justice and the Department of
19 Justice in Manitoba as to how those matters
20 should be handled?

21 A That's correct.

22 Q Can I also assume, sir, that in your capacity as
23 a constable in Swift Current at the time, that
24 you had no direct knowledge of any disclosure
25 policies or practices of Manitoba Crowns in

1 handling trials in that year, in Manitoba?

2 A Correct.

3 MR. OLSON: Thank you, sir, those are my
4 questions.

5 THE COMMISSIONER: Thank you, Mr. Olson.

6 BY MR. ABRA:

7 Q Inspector Burton, my name is Doug Abra, I'm
8 acting for the late Bruce Miller who was
9 Director of Prosecutions in Manitoba at the time
10 of your involvement in this matter. You are
11 aware from the book of documents that you went
12 through yesterday with Mr. Code that there was
13 some correspondence from Mr. Quinney of the
14 Saskatchewan Department of Justice with
15 Mr. Miller?

16 A Correct.

17 Q Prior to having seen it through this Commission
18 with Mr. Code and so on, had you seen any of
19 that correspondence prior to this Commission,
20 sir?

21 A I saw the letter that's in the book of documents
22 that Mr. Quinney had written to Manitoba
23 Justice.

24 Q Okay. You saw it when, sir?

25 A Back when this all transpired.

1 Q Did you see any of Mr. Miller's letters of
2 response?

3 A No.

4 Q Okay. Was the only letter that you saw, if you
5 turn to tab 21 in the book, B-21, excuse me, the
6 letter from Mr. Quinney to Mr. Miller, dated
7 January 16th of 1992?

8 A No, this isn't the letter that I saw.

9 Q It is not?

10 A No.

11 Q So you have never seen that one before, prior to
12 this inquiry?

13 A No. I saw a letter authored by Mr. Quinney on
14 the matter, but it wasn't this one.

15 Q There is another one at tab 24, B-24, did you
16 see that one before?

17 A No. The one I saw I think referred to the
18 disclosure obligation under Stinchcombe, and I
19 don't know who that was addressed to.

20 Q I think that may be the one under tab 21, if you
21 look at page 2.

22 A No, I don't think this is it.

23 Q So this letter doesn't look familiar to you, in
24 any event?

25 A No. The one I remember was a shorter one and it

1 had notations internally by RCMP chain of
2 command before it got to me.

3 Q So it might have been a letter from Mr. Quinney
4 to F Division in Regina, as opposed to Mr.
5 Quinney's letter to Mr. Miller?

6 A No, it was directed to Manitoba Justice, but it
7 was a shorter letter. I just can't recall it
8 off the top of my head.

9 Q But the two that I have shown to you don't ring
10 a bell as being the ones that you saw?

11 A No.

12 Q You didn't see any replies that Mr. Miller may
13 have sent to Mr. Quinney?

14 A No.

15 Q And I assume you didn't have any discussions
16 with Mr. Miller about this matter?

17 A Correct.

18 Q As far as you were aware, this matter was being
19 dealt with by Saskatchewan Justice and Manitoba
20 Justice, which was out of your --

21 A Way over my head.

22 Q Way over your head, okay.

23 A Correct.

24 Q Now, I would like to take you, sir, to tab 37,

25 A-27.

1 A 27 or --

2 Q 37, I'm sorry. Now, this is a C237 that you
3 prepared?

4 A Correct.

5 Q And in it you refer to,

6 "Savage is a private investigator that is
7 presently employed by Driskell's defence
8 counsel."

9 Now when you refer to Savage, you are
10 talking about Brian Savage?

11 A Correct. He is named -- he is the person
12 mentioned in the report in paragraph 1.

13 Q And you understood him to be a retired RCMP
14 officer, or did you know that?

15 A Correct, that's indicated there.

16 Q And I understand from this notation that you
17 wrote the C237, it appears, May 28th of 1991; is
18 that right?

19 A Correct.

20 Q And you say, and I quote,

21 "About one month ago Savage called
22 Constable Burton and advised that Driskell
23 told him the following:"

24 And then you have referred in there to,

25 "Reath Zanidean hired Driskell to drive him

1 to Swift Current to burn a house owned by
2 Zanidean's sister that lives in Edmonton.
3 Hayek cleaned the house out just before the
4 fire. Hayek gave the key to Zanidean.
5 Driskell and Zanidean made it look like a
6 break and enter to the house and used
7 gasoline as an accelerant."

8 This is all information that Savage knew
9 when he came to see you?

10 A Correct. But he didn't come to see me, he
11 phoned me.

12 Q He phoned you?

13 A Correct.

14 Q Now, when you referred to Constable Burton in
15 the third person, in fact, you were the one that
16 he telephoned?

17 A Correct.

18 Q And you say it is about a month ago, so I assume
19 it was in April of 1991?

20 A It would have been roughly, yes.

21 Q And probably early April of 1991?

22 A Well, a month ago would have made it late April,
23 because this is written in late May.

24 Q I'm sorry, I'm looking at the wrong number. So,
25 it was sometime in -- but it was you say at

1 least a month before the May 28th date that you
2 referred to in the memo?

3 A Correct.

4 Q And in the telephone conversation that you had
5 with Brian Savage, he gave to you all of the
6 information that you have referred to under
7 2(a), (b), (c) and (d), or at least he was aware
8 of that information?

9 A Yes, and (e) as well on the next page.

10 Q And (e), thank you. And he advised you when he
11 telephoned that he was acting for Greg Brodsky
12 who was Mr. Driskell's lawyer?

13 A I don't know if he mentioned Brodsky or just
14 said his defence counsel.

15 Q He said that he was calling and carrying out an
16 investigation on behalf of Mr. Driskell's
17 defence counsel?

18 A That's what I have recorded here, so that's what
19 he would have said, yes.

20 Q Okay. And this is information that he gave to
21 you, not that you gave to him?

22 A Correct.

23 MR. ABRA: All right. That's fine, sir, thanks
24 very much. Thank you, Mr. Commissioner, I have
25 no further questions.

1 THE COMMISSIONER: Thank you, Mr. Abra.

2 BY MS. CARSELL:

3 Q Good morning, Inspector Burton. We have briefly
4 met, but for the record, my name is Kimberly
5 Carswell and I'm here representing the Winnipeg
6 Police Service.

7 You indicated in a number of your reports,
8 and I'm going to refer you at this point to tab
9 32, A-32, just as one example of the report --

10 THE COMMISSIONER: Sorry, Ms. Carswell, 32?

11 MS. CARSELL: A-32, Mr. Commissioner.

12 BY MS. CARSELL:

13 Q And in particular paragraph 18, where you talk
14 about the Winnipeg -- in other words, if
15 Winnipeg P.S. knew there would be conflicting
16 testimony then they would have known the
17 solution suggested above was not viable.

18 Winnipeg P.S. have set out to create a set of
19 circumstances which would result in our
20 investigation being unsuccessfully concluded
21 without charges. That's what you wrote,
22 correct?

23 A Correct.

24 Q And who else did you speak to in the Winnipeg
25 Police Service, sir? When I have gone through

1 your material, I note some contact with Sergeant
2 Mann, very brief contact at the beginning of
3 your investigation?

4 A Correct.

5 Q And then your dealings are exclusively with
6 Sergeant Anderson; is that correct?

7 A Correct.

8 Q So you didn't speak to anyone else in the
9 Winnipeg Police Service, did you?

10 A That's correct.

11 Q So the motive, as you call it, or circumstances
12 that were set up, to your knowledge, were set up
13 by Sergeant Anderson?

14 A That's correct, to my knowledge. I had no
15 knowledge to the contrary.

16 Q And you had no knowledge that the Winnipeg
17 Police Service, or their executive, or their
18 managers or higher-ups, as you have called them,
19 were involved in the setting up of these
20 circumstances; is that correct?

21 A That's correct.

22 Q In fact, you testified yesterday that you didn't
23 even speak to Anderson's partner, Paul, during
24 the course of this?

25 A Correct.

1 Q In fact, we know that if we go to tab B-11,
2 which is Inspector Wass' notation that a
3 complaint has been made through D Division to
4 the Winnipeg Police Service about the lack of
5 cooperation that you were receiving from the
6 Police Service, and in particular Sergeant
7 Anderson, it was after that complaint was
8 received by the Winnipeg Police Service that in
9 fact you received the material that is contained
10 at tab B-12 and B-13; is that correct?

11 A Correct, but I don't know that it matters, but
12 it wasn't really a complaint that was sent.

13 Q It was a concern about lack of cooperation?

14 A Yes. What happened there was the D Division
15 contract policing officer included Inspector
16 Wass' internal correspondence with his letter to
17 Winnipeg, which Inspector Wass hadn't wanted to
18 go forward. So when the Winnipeg Police Service
19 received that, they initiated an internal
20 investigation, so it was somewhat unintentional.

21 Q But, in any event, the result of however it got
22 there was that you started to get action on your
23 request; is that correct?

24 A Yes, the net effect was that it was a complaint.

25 Q Right. So once the higher-ups knew what was

1 going on, you got the cooperation you had been
2 asking for?

3 A Correct.

4 Q During yesterday's testimony and this morning,
5 you indicated, quite fairly, that you were
6 concerned that your memory is not specific and
7 that you are basing basically your recollection
8 on the reports that have been generated and
9 contained in this material. Would that be a
10 fair summary of your evidence?

11 A Exactly.

12 Q And you indicated at a number of points that you
13 had some difficulty with independent
14 recollection beyond that?

15 A Correct.

16 Q I take it there was a significant file, based on
17 your evidence, that you had something that was
18 sent in excess of two inches at one point, from
19 Sergeant Mann?

20 A When the file was concluded, it was two of those
21 brown accordion files that were probably each
22 maybe four inches or more thick. And that was
23 the protected A file, and then the protected B
24 file was probably an inch and a half, two inches
25 thick.

1 Q So we are dealing then with, estimating, about a
2 foot, about 12 inches or a foot of material if
3 we piled it all up?

4 A Close to it, yes.

5 Q And certainly in the fact that that material has
6 been purged by the RCMP, there would be reports
7 in there with details that are now lost; is that
8 fair to say?

9 A Correct.

10 Q And there are, it is possible then that there
11 are some significant details in the reports that
12 you can't remember because the file has been
13 purged and destroyed?

14 A That's possible, yes.

15 Q Now, in 2003, you indicated that you started to
16 notice this matter coming before the media, you
17 took the action once you noted, I take it, from
18 this morning's evidence that Driskell had been
19 released on an application pursuant to his 696
20 application, that you wanted to bring to the
21 attention of the authorities the material, get
22 them started on saving the file, and also make
23 them generally aware of what you knew of the
24 file. Would that be a fair summary of your
25 purposes?

1 A Correct, except I wasn't concerned about them
2 saving the file so much as trying to find what
3 was left.

4 Q When you started to prepare these C237s in 2003
5 and going forward, did you have any portions of
6 the old file available to you?

7 A No. I was stationed in Toronto and the files
8 were in Saskatchewan, Manitoba, and Ottawa --

9 Q All right.

10 A -- or what was left.

11 Q And you indicated to Mr. Lockyer this morning
12 that you were able to provide, and you will
13 forgive me if I didn't get it exactly down as I
14 was writing, but a general summary of the events
15 for your commanding officers or your higher-ups;
16 is that correct?

17 A Correct. And I made it clear to them that that
18 was out of my head and I wouldn't consider it
19 reliable. It was just to give them a general
20 flavour of the thing.

21 Q But you do obviously have some recollection of
22 what was happening or had happened during that
23 period of time?

24 A Yes, generally. It is when you get into dates
25 and who said what and when that I'm not going to

1 rely on my memory.

2 Q And I take it that these were materials that you
3 did not mention to anyone before yesterday,
4 other than your own internal higher-ups, it
5 certainly wasn't something that you discussed in
6 your interview with Commission Counsel or with
7 Mr. Gates?

8 A Correct. I frankly didn't see it as relevant.
9 They are not historical, substantive documents,
10 they are current documents dealing with the
11 process of the RCMP essentially preparing for
12 the inquiry.

13 Q But you have agreed with me that they would
14 contain a general summary, and certainly it
15 would be of interest, and you would understand
16 that as a lawyer, of interest to us to know what
17 your recollection of these events were?

18 A I guess the fact that I stipulated that it was
19 out of my head, that it was 16 years ago, and
20 that it should not be relied on, would make me
21 tend to think it wasn't that relevant here
22 today.

23 MS. CARSELL: Mr. Commissioner, as you know, we
24 understand that we are going to get that file
25 later today, so just a note that we may have

1 more questions coming out of this area I think.

2 THE COMMISSIONER: I would expect when that
3 material is filed there will be ample
4 opportunity for anyone to ask any further
5 questions.

6 MS. CARSELL: Thank you.

7 BY MS. CARSELL:

8 Q If I could direct you now then to tab B-30?

9 THE COMMISSIONER: Just before we go ahead,
10 there was something I was a little unclear
11 about, I just didn't hear it I guess. You
12 referred to the A files and the B files. Which
13 are the A files and which are the B files?

14 THE WITNESS: The protected A file is the arson
15 investigation.

16 THE COMMISSIONER: So they are the protected,
17 and then the B files are more like the current
18 ones?

19 THE WITNESS: The protected B are all of the
20 C237s that we have been discussing here. Pretty
21 much everything that you have seen here, with
22 the exception of those continuation reports, the
23 1624s. The C237s, A5s, a lot of the
24 correspondence. The letters were contained in
25 the protected B, because they dealt with the

1 immunity issue on Mr. Zanidean and the concerns
2 with Winnipeg Police Service. The protected B
3 has a higher security level, it is a more
4 confidential file.

5 THE COMMISSIONER: Okay. And I was a little
6 unclear, were there approximately two accordion
7 files in each?

8 THE WITNESS: The protected A was two accordion
9 files that I would say in total was about eight
10 inches thick, that was the arson file. The
11 protected B file was about an inch and a half to
12 two inches thick when it was done.

13 THE COMMISSIONER: So there was just one B file?

14 THE WITNESS: One protected B file, correct.

15 THE COMMISSIONER: Okay.

16 MR. CODE: If it assists at all,
17 Mr. Commissioner, by looking at the documents
18 book, if you look at the early tabs starting at
19 tab A-4 through to tab 20 or so, that's all
20 protected A, that's the local investigative
21 files, Swift Current. Whereas when you flip
22 forward to tab 32, the report on July 19, 1991,
23 about the whole immunity problem, you see at the
24 top the words "protected B" on top of it.

25 THE COMMISSIONER: Thank you. Sorry to

1 interrupt, Ms. Carswell.

2 BY MS. CARSELL:

3 Q Tab B-30, that's the report that you recently
4 saw that was generated by Inspectors Hall,
5 Ewatski, Sergeants Young and Scott. You were,
6 in your interview with Commission Counsel,
7 referred to some pages of that report and asked
8 to comment on them. I take it that the pages
9 that you were referred to are the pages
10 contained within this volume?

11 A I'm not sure. I would assume.

12 Q Okay.

13 THE COMMISSIONER: Commission Counsel did not
14 refer to anything that was not in exhibit 1.

15 MS. CARSELL: No, I understand that, but I'm
16 saying that this witness in his interview was
17 provided with certain pages, if you take a look
18 at, I believe it is at pages 5 and 6 of tab A-1,
19 he is provided with a copy of this report. And
20 I'm just asking the witness if these pages
21 represent what he was provided in the interview
22 with Commission Counsel? I'm assuming they are.

23 THE COMMISSIONER: Okay.

24 THE WITNESS: I don't have any page numbers,
25 they are cut off.

1 BY MS. CARSELL:

2 Q Well, the first page is 76, you see 77 on page

3 2, and then --

4 A You are at B-30?

5 Q At B-30, if you take a look at the second page

6 you can see that it is 77.

7 A You see, I don't have those numbers, my numbers

8 are cut off.

9 Q All right. In any event, you certainly saw page

10 78, which is the third page in?

11 A You are counting the title page?

12 Q No, I'm not.

13 A Okay. It starts with, "with the arson"?

14 Q With the arson.

15 A Okay.

16 Q And do you recall seeing that page?

17 A I just have to look at it here.

18 Q That's fine.

19 A Correct.

20 Q Now, if we go back to the first page of that

21 document and take a look at the third paragraph

22 up from the bottom, third full paragraph, it

23 indicates that they traveled to Swift Current to

24 interview you, that they were allowed to peruse

25 the file, the four volumes of related

1 documentation, as well as the restricted B file.

2 I take it those four volumes would have been the
3 files within the accordion files that you have
4 talked about, the two accordion files?

5 A Yes, there is a manila file folder and you can
6 generally fit about two of those in one
7 accordion file.

8 Q So they were given the entire A file, as well as
9 later the B file, and you have described the
10 phone calls that took place in order for that to
11 happen?

12 A Correct.

13 Q And then if you take a look at the paragraph
14 after that, they conclude that the arson
15 investigation was certainly conducted in an all
16 encompassing and extremely thorough manner, and
17 that you conducted the bulk of that
18 investigation. So there is certainly some
19 compliments to your investigative file within
20 the report; correct?

21 A Correct.

22 Q And then they go on and speak about the
23 difficulties involved in the investigation, the
24 concerns that you had about Sergeant Anderson?

25 A What page are you at now?

1 Q Just follow the script, because basically what
2 they do is they go through your concerns about
3 your dealings with Sergeant Anderson?

4 A I'm not sure where you are now.

5 Q If you start at the paragraph right after, at
6 the end of that first page, it says "according
7 to the RCMP file."

8 A Okay.

9 Q All right. And you follow through that and you
10 see that what they are doing is they are in
11 essence laying out some of your dealings with
12 Anderson, obviously not all of them in the
13 detail that you have, and your dealings with
14 Mr. Savage, and indicating the RCMP, or your
15 view of what took place in those discussions.
16 Would that be a fair summary of what happens?

17 A No.

18 Q No?

19 A No. The paragraph at the top of the next page
20 says,

21 "Indicated Burton agreed to this, that he
22 would proceed against Zanidean when the
23 murder trial was concluded."

24 That's incorrect. I said I would continue
25 with my investigation and submit the

1 recommendation through channels. So that first
2 part is incorrect.

3 Q And second last page, which is page 79, that
4 number is cut off, and I don't know if you
5 can -- you can see,

6 "He indicated to us...,"

7 Third paragraph down,

8 "...that he still believes Anderson has
9 been deceitful and dishonest with him."

10 Correct?

11 A Correct.

12 Q In the first paragraph as well they say you
13 accused Anderson of being "deceitful and
14 dishonest in his dealings with him," being your
15 dealings with Anderson?

16 A Correct.

17 Q And that you felt that Anderson was using the
18 threat of prosecution as a lever to ensure that
19 Zanidean would testify against Driskell?

20 A I have no recollection or record of ever saying
21 that.

22 Q All right. Certainly your report, which we have
23 at tab 29, wouldn't contain everything that you
24 said to them?

25 A I just have to look. Is that A-29?

1 Q That's B-29, the document immediately before the
2 one that we have just been referring to?

3 A B-29?

4 Q B-29.

5 A And what was your question?

6 Q My question is, you have indicated to me that I
7 don't have a record of saying that to them. And
8 my question to you is, does B-29 contain
9 everything that you would have said to them in
10 the interview?

11 A Verbatim, no.

12 Q No. So it is possible that you said something
13 like this, because it is certainly along the
14 same theme as the other things that you've said?

15 A No, I disagree with you, sorry.

16 Q Perhaps you can explain that then?

17 A That's a completely different theory.

18 THE COMMISSIONER: Perhaps what?

19 BY MS. CARSELL:

20 Q Perhaps you can explain the source of this
21 disagreement?

22 A It says,
23 "He feels Anderson was using the threat of
24 prosecution as a lever to ensure that
25 Zanidean would testify against Driskell."

1 I have never indicated that in my reports,
2 nor do I have any recollection of ever saying
3 anything along those lines. That's quite
4 different from what is stated throughout my
5 file, quite different.

6 Q But we have already agreed that much of your
7 reports are missing, and that in your view there
8 may be significant material that has been
9 destroyed in the reports and you would not
10 recollect it?

11 A I'm just going to disagree with you. I did not
12 say that, is my position.

13 Q All right. You were asked yesterday by
14 Mr. Lockyer about your view of the purpose of
15 the review, and that's set out tab B-29 in
16 paragraph 10 in the investigator's comments;
17 isn't that correct?

18 A That's B-29?

19 Q B-29. For the next while we will be in
20 documents B-29 and B-30, the report of Ewatski,
21 Hall, Young and Scott, and your report of that
22 meeting.

23 A So investigator's comments, page 3?

24 Q It is the third page, it is at the bottom,
25 paragraph 10?

1 A Right.

2 Q You recall being asked about that and --

3 A Correct.

4 Q All right. It would be fair to say, based on
5 that same report at paragraph 2, the officers
6 told you what their purpose was in conducting
7 the review, because you have set it down at
8 paragraph 2, and I'm going to read it to you.

9 "Inspector Robert G. Hall and Inspector
10 Jack J. Ewatski attended the office at 1950
11 hours. Inspector Ewatski explained they
12 had been tasked by their Chief of Police to
13 conduct a complete review of their
14 investigation with respect to the Harder
15 murder. Writer provided them with our
16 files and they reviewed them in a
17 detachment room."

18 A Correct.

19 Q That's correct? So, what you are setting out in
20 section 10 are your personal opinions; correct?

21 A Yeah, as I say at the outset, I surmised.

22 Q Right. And going through that paragraph, if I
23 can read it, it is "I surmise, it would appear,
24 I feel, I suspect, leads me to believe, may be
25 the case, would tend to support this theory and

1 my impression." So what we take from paragraph
2 10 and all of those qualifiers are put in there,
3 is after your interview with Ewatski and Hall,
4 you embarked on some speculation about why they
5 were there?

6 A Correct.

7 Q Notwithstanding that they had already told you
8 why they were there?

9 A Correct.

10 Q I was a bit confused by something that you
11 indicated yesterday, Inspector Burton, and if I
12 have your evidence wrong, you can tell me. You
13 indicated that you didn't want to sit down with
14 Inspectors Hall and Ewatski alone; is that
15 correct?

16 A Correct.

17 Q Can you explain, given that they had explained
18 to you the stated purpose of their interview,
19 and the fact that you felt that it was also
20 taking a look at the conduct of the officers,
21 why you didn't want to sit down with them?

22 A There was several reasons. Frankly, at that
23 point my dealings with Winnipeg Police Service
24 had left me with distrust, quite frankly. Also,
25 the meeting had been arranged to take place

1 after that, when Staff Sergeant Ferguson was
2 back from holidays and we were to meet with them
3 together, and that was what had been agreed
4 upon. And they showed up unexpectedly in the
5 evening and phoned and wanted to meet, which was
6 not what had been arranged with my superiors in
7 Regina. So I found that quite odd that they
8 showed up unexpectedly, I think about close to a
9 week before the agreed upon date, when Staff
10 Sergeant Ferguson wasn't there, and were quite
11 insistent on meeting in the evening. I was
12 actually on duty, engaged in operational
13 matters, so I found it all a little odd.

14 Q Okay. And we've already established that your
15 dealings with the Winnipeg Police Service were
16 with one particular officer; is that correct?

17 A Correct.

18 Q And so you were prepared to taint the entire
19 Winnipeg Police Service with your dealings -- as
20 a result of your dealings with that one officer?

21 A I don't know if I was tainting them, I was
22 acting on direction that --

23 Q You said that as a result of your dealings with
24 the Winnipeg Police Service, you just said you
25 were distrustful of them. That was your first

1 stated reason.

2 A Correct. And I think you can see that that
3 opinion was shared up through the chain of
4 command, and my direction was that Staff
5 Sergeant Ferguson and I would meet with them
6 together on the date that was agreed. And then
7 that's not the way it transpired. So I
8 obviously had an obligation to report that
9 through the chain of command, which I did, and
10 then I received direction, which I followed.

11 Q All right. Now one of the things that
12 Mr. Lockyer pointed out to you yesterday was in
13 the homicide review report, that there is a
14 suggestion that some of the facts in the file
15 were inaccurate. Do you remember that?

16 A If you can refer me to it?

17 Q I will come back to that, I have to get my note,
18 I didn't note the page that Mr. Lockyer referred
19 to. But if I could refer you just to your own
20 report at tab B-29, while I look for that, if
21 you could take a look at paragraph 4? It
22 appears there that there is an indication in one
23 of your reports of some information that is
24 inaccurate, and you acknowledge that that likely
25 had come from Mr. Savage who was working for

1 Mr. Brodsky, as we know?

2 A Correct.

3 Q And my learned friend, Mr. Code, has just
4 assisted me by pointing out that that passage is
5 at page 79, the second last page of the tab. So
6 that may be where that comes from?

7 A Which paragraph?

8 Q The second paragraph at the top of the second
9 last page, Mr. Lockyer referred you to this
10 yesterday. Some of the opinions you had
11 expressed in the written reports were based on
12 inaccurate information. The information was
13 obtained not from the investigating officers but
14 from other sources such as the private
15 investigator hired by Mr. Brodsky. That's the
16 same as paragraph 4 in your report; correct?

17 A Whether the information is inaccurate or not, I
18 don't know, so I can't agree that it is
19 inaccurate. It may be.

20 Q All right. But certainly the information in
21 your file -- you acknowledge that to the best of
22 my recollection, information had come from
23 Savage as well?

24 A Correct. Whether it is inaccurate or not, I'm
25 not going to agree with that.

1 Q No, I'm not suggesting that you did. But that's
2 to me the obvious confirmation of that point in
3 that report, would you agree with that?

4 A Correct.

5 Q Take a look at paragraph 5 of your report now.
6 Again, Mr. Commissioner, at B-29. If I could
7 take you about halfway down, you indicate in
8 your paragraph,

9 "I explained that my opinion was just that,
10 a personal opinion, and is contained in a
11 protected B file."

12 Correct?

13 A Correct.

14 Q And we know from your interview with Commission
15 Counsel, that's contained at tab A-1, that the
16 initial reason at least for setting up that
17 protected B file was as a result of your first
18 telephone conversation in October with Sergeant
19 Anderson, which lead you to have disquieted
20 feelings, so you decided at that point that a B
21 file should be opened; correct?

22 A Correct.

23 Q And that protected B file was one where you
24 understood that you could place your opinions
25 and that they would not then become public;

1 correct?

2 A No.

3 Q If I read through paragraph 5, the sentence
4 immediately following the one that I just read
5 says,

6 "I explained that these files are a
7 protected data bank, and numerous attempts
8 through judicial process to gain access to
9 them have been unsuccessful."

10 A Correct.

11 Q So it struck me when I read this, Inspector
12 Burton, that your expectation at the time, or
13 your understanding at the time would have been
14 that the opinions in the protected B file would
15 not be available through judicial process?

16 A No. What I said, if you continue on, was that
17 if an inquiry were held, they would be reviewed
18 by our legal branch in Ottawa and legal counsel
19 for the RCMP, and essentially whatever was to be
20 released or what I was to disclose, I would take
21 their direction.

22 Q All right. But let's just go, and I've read
23 this paragraph very closely, as you might
24 imagine. It is the Winnipeg Police Service
25 officers who tell you that the inquiry rules may

1 result in that file being exposed to public
2 view?

3 A Correct.

4 Q And it is at that point, after they have
5 provided you with that information, that you
6 indicate that in all likelihood these files
7 would be reviewed by our legal branch in Ottawa?

8 A In other words, they may be disclosed, they may
9 not, that is why I say --

10 Q But certainly until the Winnipeg Police Service
11 officers told you that in their experience that
12 protected B may not keep the files out of the
13 public view, it was your view that they would be
14 kept out? You say that attempts, numerous
15 attempts through judicial process have been
16 unsuccessful?

17 A I disagree with you, that's not what I said
18 there. Essentially I said they may be
19 disclosed, they may not, it will be subject to
20 review.

21 Q I'm reading directly from your words. They
22 read,

23 "I explained that these files are a
24 protected data bank and numerous attempts
25 through judicial process to gain access to

1 them have been unsuccessful."

2 Have I read anything there incorrectly?

3 A Correct, you just need to continue on.

4 Q I understand. Then we have,

5 "Both officers pointed out that the rules

6 of evidence at public inquiries are

7 decidedly different from those of court."

8 Have I read that correctly?

9 A Correct.

10 Q "They further noted that their, Winnipeg

11 P.S. experience with public inquiries was

12 that even the rules that are in place tend

13 to be liberally applied."

14 I have read that correctly?

15 A Correct.

16 Q "As such, there was a good possibility that

17 I could be required to express such an

18 opinion."

19 Again, I have read it correctly?

20 A Correct.

21 Q "I advised that if a public inquiry were

22 held, then in all likelihood these files

23 would be reviewed by our legal branch in

24 Ottawa and legal counsel for the RCMP would

25 be present at the inquiry."

1 A Correct.

2 Q All right.

3 "I would take direction from them. The
4 bottom line is that I would say what I am
5 required to say."

6 A Exactly.

7 Q And if you take a look at the report at tab
8 B-30, and the paragraph third down?

9 A On which page?

10 Q Page 79, second last page, and I'm going to read
11 it to you. It says,

12 "He indicated to us he still believes
13 Anderson had been deceitful and dishonest
14 with him, but if he was called to an
15 inquiry he may say something to the
16 contrary, depending on what instructions he
17 receives from higher authorities in his
18 force."

19 And that's the line you took objection to?

20 A Correct.

21 Q But if I read your report, the last line of that
22 paragraph is, after seeking legal counsel,

23 "The bottom line is, I would say what I am
24 required to say."

25 A Correct, they are two different things. The

1 statement from Inspectors Ewatski and the other
2 fellow --
3 Q Hall.
4 A -- or Hall indicate that I would, my take on it
5 is I would lie because I would say something to
6 the contrary. In fact, my statements in my
7 report are the correct ones. That I would take
8 direction from our legal people and I would
9 disclose what I'm allowed to. Those are two
10 very different things, very different.
11 Q You wouldn't be surprised that they take
12 exception with your view?
13 A No.
14 Q You would agree with me that when you take a
15 look at how apparently frank they were in their
16 report at tab B-30 about your concerns, in fact,
17 they quote many of the most frank things you say
18 about Anderson in the report, there is no reason
19 for them -- they don't appear to be hiding
20 anything?
21 A I will leave that to the Commission to decide.
22 I just want to get my evidence.
23 Q I understand that you want to get your evidence.
24 A Correct.
25 Q If you take a look at the notation at the bottom

1 of your report, tab B-29, this is written by a
2 Staff Sergeant Somers, is that correct? Last
3 page of your report, page 4, there is a note
4 there from F Divisional Criminal Operations, a
5 Staff Sergeant Somers?

6 A Can I just interrupt? That's directed to F
7 Division Criminal Operations and it is from
8 Staff Sergeant Somers, and you will notice it
9 says AOC. He is the acting officer commanding
10 for Swift Current subdivision in place of
11 Inspector Preston at that time.

12 Q And were you familiar with Staff Sergeant
13 Somers?

14 A Yes.

15 Q He is a senior officer?

16 A Staff Sergeant, a senior Staff Sergeant, he is
17 not a commissioned officer.

18 Q He was a senior member?

19 A Yes, non-commissioned officer.

20 Q Yes, I understand. And had investigative
21 experience, I take it, to get where he was?

22 A Correct.

23 Q Paragraph 2, after reviewing your report, he
24 indicates that your comments are somewhat
25 speculative?

1 A Correct.

2 Q All right. I suggest to you that in going
3 through your reports there is a fair degree of
4 speculation by you in a number of reports.
5 Would that be a fair comment?

6 A Correct.

7 Q In fact, you didn't hesitate to put your
8 personal opinion in the reports?

9 A They are not my personal opinions, they are my
10 professional opinions.

11 Q All right. If I can go back then, you describe
12 them as personal opinions in paragraph 5 of tab
13 B-29.

14 A Okay.

15 Q You say,

16 "I explained my opinion was just that, my
17 personal opinion."

18 A Okay, we will call it my personal professional
19 opinion then.

20 Q Have you had an opportunity to see retired Staff
21 Sergeant Ferguson's statement to Commission
22 Counsel contained at tab A-2?

23 A I know it is in there, but I haven't looked at
24 it.

25 Q And he gives his impressions of you as an

1 officer, or a police member, and he describes
2 you as very serious, intelligent and well
3 educated. He had a tendency to perhaps be
4 overly suspicious, but this is a common trait in
5 police officers. Would you agree with that
6 assessment?

7 A I don't know if overly suspicious or just
8 suspicious -- it is a policeman's nature.

9 Q But certainly you were suspicious not only of
10 what the Winnipeg Police Service was doing in
11 this investigation, but of others as well; is
12 that correct?

13 A What do you mean by others?

14 Q Others who were involved in this matter, in
15 particular, Mr. Brodsky?

16 A I can't say that.

17 Q I refer you then to tab B-14, and this is the
18 case overview investigator's recommendation out
19 of the Swift Current detachment file, B-14, page
20 8. Do you have page 8 of B-14?

21 A Yes.

22 Q Second paragraph on that page reads,

23 "If Hayek does not cooperate then I
24 personally would prefer option one with
25 respect to Zanidean. My reasons are these.

1 I believe that Zanidean and Sergeant
2 Anderson have colluded to prevent the RCMP
3 from charging Zanidean with arson. I
4 believe that Driskell and Mr. Brodsky have
5 colluded to prevent the RCMP from charging
6 Driskell, while at the same time charging
7 Zanidean with the ultimate purpose being to
8 have Driskell acquitted on the murder."

9 Those are your words?

10 A Correct.

11 Q So you had suspicions about more than just
12 Winnipeg Police Service officers in this
13 process?

14 A I don't know if in their case I would call it a
15 suspicion. They were pretty -- they weren't
16 trying to hide what their goal was, was my
17 impression.

18 Q You believed that they were setting you up?

19 A No, I was clear on what their intent was.

20 Q But you refer to them as colluding?

21 A Yes.

22 MS. CARSELL: Thank you. Those are my
23 questions.

24 THE COMMISSIONER: Just before I start, I'm just
25 catching up on my notes.

1 MR. WOLSON: I was going to just ask, I think
2 I'm now almost the last one standing, as they
3 say. If we could, I know it is early, but take
4 the morning break and then I could put my
5 material on Mr. Lockyer's desk. He has allowed
6 me to do that, and I appreciate that.

7 THE COMMISSIONER: Okay. Absolutely, we will
8 adjourn for 15 minutes.

9 MR. WOLSON: Thank you, sir.

10 THE CLERK: All rise. This Commission of
11 Inquiry is now in recess.

12 (Proceedings recessed at 10:37 a.m. and
13 reconvened at 10:55 a.m.)

14 THE CLERK: All rise. This Commission of
15 Inquiry is now commenced. Please be seated.

16 MR. WOLSON: I'm ready to start, but I see
17 Mr. Code is not here, I think he had to do
18 something over this break and he is not back.

19 So --

20 THE COMMISSIONER: He actually indicated that he
21 had to go and get his glasses. But, Mr. Dawe,
22 you are quite capable of carrying on I believe.

23 MR. DAWE: My understanding is he will be back
24 any minute now.

25 THE COMMISSIONER: Go ahead and start.

1 MR. WOLSON: I know one day when I was counsel
2 in the Sophonow Inquiry, Justice Corey insisted
3 that we start on time, and I got to the inquiry
4 at one minute after 9:00 and he had started
5 without me, so this is carrying on in that
6 theme.

7 THE COMMISSIONER: I'm glad I have such a good
8 model. Just a matter of curiosity, what year
9 was that inquiry?

10 MR. WOLSON: I think it was 1990 -- 2000, I
11 should say, 2000/2001, I believe. I'm thinking
12 of 1990 of the arson.

13 THE COMMISSIONER: Yes.

14 MR. WOLSON: So you would like me to carry on?

15 THE COMMISSIONER: Please do.

16 BY MR. WOLSON:

17 Q Mr. Burton, by 1990 you were eight years as a
18 member of the RCM Police?

19 A Correct.

20 Q You had been assigned the Hayek investigation
21 right on the day of the fire, according to the
22 file?

23 A No, that's not correct.

24 Q It is not correct?

25 A No.

- 1 Q I'm going to take you to A-4 of the document
2 book. Are you there, sir?
- 3 A Yes.
- 4 Q Page number 3, under the date 90/07/08,
5 8:00 o'clock in the morning, point 9,
6 "Constable Scott contacted Constable Upton
7 who referred the matter to Constable Burton
8 of City GIS. Constable Burton requested
9 either Ken Webb or Bill Campbell be
10 contacted as they had the arson course."
11 Were you not put in charge at that time?
- 12 A No, because I was on GIS, they thought I was an
13 arson investigator, which I wasn't. So I
14 referred them to the two arson investigators in
15 Swift Current.
- 16 Q But you quickly became, or quickly you came to
17 be in charge of the investigation?
- 18 A I think it was about a week, week and a half
19 later.
- 20 Q Now, you knew, by the way, that this arson, this
21 fire, this explosion occurred at 3:06 in the
22 morning, according to the documents which are
23 filed under tab 4 of the exhibit A?
- 24 A Correct.
- 25 Q Of document book A, I should say.

- 1 A Correct.
- 2 Q 3:06 in the morning?
- 3 A Correct.
- 4 Q And it doesn't take an arson investigator or
5 someone from the Fire Commissioner's office to
6 know that when there is an arson, or when there
7 is a fire, the danger is that the surrounding
8 houses, if it is in a residential area, may be
9 affected?
- 10 A Correct.
- 11 Q Depending on the wind, depending on whether
12 there is an explosion, a neighboring house could
13 catch fire?
- 14 A Correct.
- 15 Q And you have heard of cases where an arson has
16 started in one house, but there is a casualty in
17 the neighboring house. We all know of those
18 types of instances.
- 19 A Correct.
- 20 Q So -- and this was a residential area?
- 21 A Correct.
- 22 Q There are houses in the vicinity of the burned
23 house?
- 24 A Correct.
- 25 Q So, your concern, an immediate concern of a

1 police officer would be the safety of people in
2 the adjoining, or in the houses next door, the
3 neighboring houses. That would be an immediate
4 concern, wouldn't it?

5 A What context are you talking? This fire, or
6 myself generally as a policeman, or --

7 Q Any arson in a residential area, one would be
8 concerned for the safety, not only of the
9 occupants of the house where the fire took
10 place, but in the neighboring houses as well?

11 A Correct.

12 Q Particularly at 3:06 in the morning, when you
13 would expect the neighbors may be sleeping?

14 A Correct.

15 Q And it wouldn't really matter whether in the
16 neighboring house there were six people who were
17 having a party and were drunk, or whether there
18 was a husband and wife and two children who were
19 sleeping, the danger is still there, isn't it?

20 A Correct.

21 Q So you are involved in this case early on.

22 A It is indicated in these reports when I took
23 over.

24 Q But you are involved from a fairly early level?

25 A I think it was about a week and a half later I

1 was assigned the file.

2 Q And it would be important to interview the
3 neighbors, wouldn't it?

4 A Correct.

5 Q Because you would want to know whether or not
6 anyone saw anything suspicious?

7 A Correct. I think that was done by the two
8 investigators, Constables Scott Caudle and
9 Burns.

10 Q And what you found out at tab 4, second page,
11 point number 3, one of the neighbors, Doug
12 Armstrong, was adamant that the fire was as a
13 result of foul play.

14 "Armstrong stated repeatedly on several
15 other occasions attempts had been made to
16 burn the residence and that they finally
17 succeeded."

18 A Well, I didn't find that out, Constable Caudle
19 did.

20 Q Well, you found it out by reading the file?

21 A Correct.

22 Q What I say you found it out, your police service
23 found it out?

24 A Correct.

25 Q As part of their investigation, of which you

1 ultimately headed the investigation?

2 A That's correct.

3 Q So that information became known to you?

4 A Correct.

5 Q And as the investigation went along, at a very
6 early stage your investigators found out that
7 the house was insured?

8 A Correct.

9 Q As a matter of fact, the insurance company had
10 been contacted to find out, to determine that
11 there was a policy on the house. You know that
12 from reading the file?

13 A I recall that from yesterday, yes.

14 Q You found out that your arson experts
15 determined, without question, at a very early
16 time that this was in fact an arson?

17 A That's correct.

18 Q And if you look at tab 5, A-5 of the document
19 book filed yesterday, if you look at point 20,
20 you will see that a PIRS check, the kind of
21 check you talked about yesterday, had been
22 conducted, and you found that the owner of the
23 residence where the fire took place had a
24 history with the department, your Swift Current
25 department?

- 1 A Correct.
- 2 Q Now, just a general question, I'm sure you would
3 agree with me, policemen learn from asking
4 questions, that's pretty basic and fundamental
5 for a police officer?
- 6 A Correct.
- 7 Q That's something that you are taught and that's
8 something that you learn on the job?
- 9 A Correct.
- 10 Q And you are no stranger to asking questions, you
11 did it from day one, that's how you became an
12 experienced investigator, you asked things if
13 you didn't know; right?
- 14 A Correct.
- 15 Q And you asked people, if situations arose you
16 wouldn't shy away from asking about a situation
17 to learn. You would agree with that?
- 18 A Correct.
- 19 Q If you turn to tab 6 of A, the first entry on
20 the page, 90/07/09. So we are just a day after
21 the fire; right?
- 22 A I will have to look at that.
- 23 Q The fire was on the 8th?
- 24 A That's correct.
- 25 Q So the day after, point 22,

1 "Caption amended: Carol Hayek, suspicious
2 fire."

3 A That's correct.

4 Q And it was learned, and you know from reading
5 the file and assuming conduct of this case, at
6 point 25 on the same page, that Carol Hayek had
7 used another name when she obtained insurance,
8 she used the name of Khaira Zeineddine?

9 A Correct.

10 Q And it appears on the application form, halfway
11 down that paragraph about seven lines from the
12 bottom, it appears that this application did not
13 list her past insurance claims that is requested
14 on the form; right?

15 A Correct.

16 Q So there were starting to be all kinds of
17 suspicions that Carol Hayek had torched this
18 house or was involved in the arson?

19 A Correct.

20 Q And then just a nice additional tidbit in your
21 case, at point 26, the second page of A, tab 6,
22 you learn that the Zanidean family is having a
23 reunion in Swift Current at the time of the
24 fire?

25 A Correct.

1 Q On the next tab, tab 7, 90/07/08, that's again a
2 day after the fire, under point number 30, you
3 talk to -- your investigators talk to
4 Mrs. Armstrong, the neighbour to the south.

5 A Actually that's the day of the fire, 90/07/08.

6 Q All right. Even better, the day of the fire,
7 point number 30, it indicates here that
8 Mrs. Armstrong, the neighbour to the south,
9 stated that Carol Hayek owned the building;
10 right?

11 A Correct.

12 Q She says that there had been a fire in the
13 house, the same house, two years earlier; right?

14 A Correct.

15 Q So on the very date of this fire, your
16 investigators and you, of course, assume conduct
17 of the file, you were building a fairly strong
18 case against Carol Hayek?

19 A Correct.

20 Q Not only for this misconduct, this criminal
21 offence, but for one perhaps two years earlier?

22 A Well, a strong circumstantial case at that
23 point.

24 Q Certainly. What you didn't have at that point
25 is some kind of inculpatory remark by Carol

1 Hayek that would make her eligible for being
2 charged, right, you were missing that?

3 A Correct -- well, among others things.

4 Q You had a motive, you thought. You were
5 developing a motive in any event; right?

6 A Correct.

7 Q You had some very suspicious circumstances to
8 build a circumstantial case, but you needed to
9 have some inculpatory remark added by Carol
10 Hayek that would really add fuel to a
11 prospective prosecution?

12 A Among other things, I mean, the forensic
13 evidence.

14 Q The forensic evidence you knew wasn't going to
15 an issue. There was ample forensic evidence of
16 arson?

17 A I'm talking in terms of incriminating, it is
18 always nice to have fingerprints or something of
19 that nature.

20 Q Of course it is, but it is pretty well a
21 no-brainer once the person makes an
22 incriminating comment?

23 A Yes.

24 Q Right?

25 A Sure.

1 Q You learned at tab 11 of A, point number 78, you
2 learned on the 18th of July, about four lines
3 in, the real estate agent said that Hayek was
4 desperate to get rid of the house, get rid of
5 the property; right?

6 A Correct.

7 Q So the case was sailing along.

8 A Circumstantially.

9 Q Circumstantially, of course, because you didn't
10 have those inculpatory remarks yet.

11 A Or other evidence, yes.

12 Q Of course. There is never such a thing -- or
13 maybe you disagree with me -- as an absolutely
14 perfect case. You sometimes have to make the
15 best that you can with what you have as a police
16 officer, and you have done that many times I'm
17 sure.

18 A Well, you have to meet the threshold.

19 Q Yes. Tab number 12, point number 86, your
20 investigation team learned that in the '88 fire
21 that two portraits of her daughter had been
22 removed from the residence; a classic sign of an
23 owner perpetrating arson, as items of strong
24 sentimental value are often removed. Do you
25 agree with that?

1 A Correct. This is actually when I became
2 involved here on the 19th, this is my first
3 1624.

4 Q So that may be your note?

5 A It is, because it says, if you go to the next
6 page it says R.B. at the bottom.

7 Q Sure.

8 A That's when I got involved.

9 Q All right. Fair enough. So you now realize
10 that in the '88 -- and the '88, by the way, now
11 you are calling it an arson; right?

12 A Correct.

13 Q You also learned that, this is your comment as
14 well,
15 "Three weeks after the original
16 offence...",
17 This is halfway through point 7,
18 "...Hayek reported \$10,000 worth of jewelry
19 stolen from the original offence. This is
20 a good example of a greedy criminal who
21 can't get enough of a good thing."

22 A Correct.

23 Q It is also noted that you write that the agent
24 from the '88 fire, the insurance agent, is
25 thinking of cancelling her policy?

1 A Correct.

2 Q Now, I'm sorry to have to do this,
3 Mr. Commissioner, but I have to go to the Swift
4 Current arson book. I will do my best not to do
5 this very often, and I have limited my use of
6 other materials. You have that file in front
7 you, sir, the Swift Current detachment
8 investigation file?

9 A Pages 1 to 112?

10 Q Pages 1 to 112, at the top it says "Documentary
11 disclosure from the RCMP," and at the bottom,
12 "Swift Current detachment investigation file?"

13 A Yes.

14 Q I'm going to take you to page 57, and the pages
15 are noted at the bottom. Let me back up for a
16 minute to page 52 -- I'm sorry to do this. And
17 this book, the numbers go from back to front, so
18 the numbers are descending in order in the book,
19 but let's look at page 52. You were talking,
20 although it is in August, there was a discussion
21 about a polygraph for Carol Hayek; true?

22 A Correct.

23 Q But I just jumped ahead of myself a bit, so let
24 me take you to page 98 of this Swift Current
25 book. Now, you have point number 52, you see

1 that?

2 A Correct.

3 Q 90/07/15, the 15th of July, this is when you
4 learn -- when I say you, your investigators of
5 which you are in charge -- learn that Ali
6 Zanidean is now considered a suspect in your
7 case?

8 A Correct.

9 Q And when I referred you some time, or just a few
10 minutes ago to the polygraph, you have got a
11 note, or someone has written a note here, is
12 this your note at the bottom of page 98? Is
13 that your handwriting?

14 A No, that's Staff Sergeant Ferguson.

15 Q Okay. And by the way, while we are on him for a
16 second, he was an experienced investigator?

17 A Yes.

18 Q You value his judgment?

19 A Yes.

20 Q You value his assessment of people?

21 A Yes.

22 Q He has a sense of people, doesn't he?

23 A I don't know how far I can get into that. I
24 mean, he is a good investigator.

25 Q I'm not asking you to tell me he is a

1 psychologist, but you had a good feeling about
2 Ferguson, he seemed to have a pretty good take
3 on things?

4 A He is an experienced investigator.

5 Q You agree with my statement to you that he had a
6 pretty good take on things?

7 A What do you mean by "things"? I mean, I can
8 tell you he is a good police investigator.

9 Q Good judge of people's character?

10 A I don't know about that.

11 Q You don't know about that?

12 A He is a good police investigator. He came from
13 Battleford GIS, I was on Swift Current GIS.

14 Q But you are not prepared to concede that he is a
15 good judge of character, from what you have seen
16 of Staff Sergeant Ferguson?

17 A He is a solid police investigator.

18 Q You are not answering my questions.

19 A I'm answering it the best that I can.

20 Q Is he a good judge of character, based on your
21 knowledge of him and based on your work with
22 him?

23 A Yes, I would say I don't have a lot of
24 experience with him judging character, I just
25 have experience with him doing police work.

1 Q In any event, Ferguson writes on page 98,
2 "Consider Carol Hayek for a polygraph and
3 brother Ali if you can get more info to
4 make him a suspect."

5 You see that?

6 A Correct.

7 Q Then let me take you to page 57 of the same
8 report, the Swift Current file, paragraph 136,
9 which is 90/07/30. Do you see that at the top?

10 A Correct.

11 Q It is actually your report?

12 A Correct.

13 Q And it says, point 136, Constable Olthuis
14 talking about -- you are talking here about Ali,
15 right?

16 A Correct.

17 Q "Ali got his phone bill and advised the
18 call was made at 5:04. Olthuis took a
19 glance at the phone bill and noticed the
20 previous call on the bill was made the
21 previous day at 1354 to Hayek's number."

22 So that's something that a policeman was
23 sort of looking over a person's shoulder and
24 they saw a call which may be incriminating,
25 that's why that note is there; right?

1 A I don't know the date. I don't see the date
2 here just offhand of the call.

3 Q Let me continue on.

4 "Olthuis advised that when he asked Ali for
5 a statement, he was reluctant to provide
6 one. Once he consented, he was then quite
7 particular about what went in it. When
8 first being spoken to, Ali was talking
9 about other matters and spoke normally.
10 When he started discussing the arson, Ali
11 developed a noticeable stutter and was
12 fidgeting with his hands."

13 Those are usually telltale signs for a
14 policeman that something may not be just right?

15 A Right, or he is under stress.

16 Q You thought it was a significant sign, did you
17 not?

18 A It was a sign that he was under stress. The
19 source of that stress, whether he was being
20 dishonest or he just found it stressful to give
21 a statement, that's hard to say.

22 Q Well, it caused you at point 137 to make the
23 following statement:

24 "This particular morning was a perfect time
25 for Ali to set the fire, since if he was

1 caught in the neighborhood he could just
2 say he was on his way to pick up his aunt
3 in the next block."

4 A Correct.

5 Q Are you generally a kind of suspicious guy?

6 A As we discussed earlier, I think all policemen
7 are, it is their nature.

8 Q What would one say -- one would say are you
9 overly suspicious?

10 A I wouldn't say -- I would say I'm about average
11 for a policeman.

12 Q Okay. Now, you thought that this was an arson,
13 for good reason, true?

14 A Correct.

15 Q You thought that the Zanidean family, being
16 Middle Eastern, would keep the arson in the
17 family, so to speak?

18 A Correct.

19 Q And therefore the family and Carol Hayek were
20 suspect, some of the family more than others?

21 A Correct.

22 Q The good news for you, or a piece of good news
23 is that at tab 18, you will see going back to
24 the document book, A-18, the good news for you
25 is that Carol Hayek was willing to take a

1 polygraph. Point 3 of tab 18-A, Hayek has
2 consented to submitting to a polygraph exam.

3 A Correct.

4 Q And as a police officer, the polygraph is
5 certainly a valuable instrument; true?

6 A Well, it is not admissible in evidence, so it is
7 just an investigative tool.

8 Q Absolutely it is not admissible ordinarily in
9 evidence, but it is a valuable tool to sometimes
10 eliminate suspects; true?

11 A Correct.

12 Q Sometimes, even more importantly, the
13 polygrapher, when he interviews the subject for
14 whom he is performing a polygraph, sometimes he
15 is able to get a confession from that person.
16 You have seen that?

17 A Correct.

18 Q Sometimes before or after the polygraph, true?

19 A True.

20 Q And what you stated at point 3 on A-18, last
21 line,

22 "Once Hayek failed the polygraph test, it
23 is felt she may confess as to who is
24 responsible for the arson."

25 And if possible you would want the

1 polygrapher to ask Hayek about Ali; right?

2 A Correct.

3 Q So you were quite satisfied that she was going
4 to fail the exam?

5 A I speculated.

6 Q All right. Now, you also say in paragraph 3
7 that the strongest suspect is Hayek's brother,
8 Ali. I'm reading from about four lines from the
9 bottom of point 3.

10 A Correct.

11 Q He showed up at the fire about an hour after?

12 A Correct. Yes, correct.

13 Q And then you say,
14 "Family members in Saskatchewan, Alberta
15 and Manitoba have been interviewed without
16 success."
17 Who was interviewed in Manitoba?

18 A I would have to review the file. I certainly
19 couldn't tell you that off the top of my head.

20 Q I couldn't find anybody from Manitoba. And when
21 you say interviewed, are you talking about by
22 Swift Current?

23 A I just don't know. I would have to review the
24 file.

25 Q I see. I thought you had reviewed the file

1 prior to your testimony.

2 A A lot of it is missing and a lot of this,
3 frankly, I haven't read.

4 Q You haven't read the file?

5 A Just what was presented to me, provided to me.

6 Q You haven't read the Swift Current detachment
7 file in preparation for your testimony? It is
8 your file.

9 A Well, from what I can see, about three quarters
10 of the file is missing for starters. There is
11 things that I haven't read. Like, for instance,
12 I was provided the other day with Staff Sergeant
13 Ferguson's statement, I didn't read that, things
14 like that.

15 Q I see. So, would this be your suspicious side
16 again coming out; once Hayek failed the
17 polygraph test, she may confess?

18 A I don't know if that's suspicious, it is just
19 speculating on how the investigation may
20 proceed.

21 Q All right. Now, a couple of weeks prior to your
22 conversation with Tom Anderson in October of
23 1990, at page 38 of the Swift Current file, you
24 get the results of the polygraph?

25 A Is it tab 38 or page 38?

1 Q Sorry, I'm going now to the Swift Current
2 file -- sorry to have to take you there. Look
3 at the bottom of the page, page 38, there is a
4 stamp there.

5 A Okay, yes, I have got it.

6 Q At the top it says 90, October 17?

7 A Correct.

8 Q October 17th, 1990, so we are talking about ten
9 days to two weeks before you talk to Tom
10 Anderson of the Winnipeg Police Service; right?

11 A I believe so, yes.

12 Q And unfortunately your speculation didn't bear
13 fruit because the operator of the polygraph
14 says,

15 "It is my opinion based on the polygraph
16 examination that the above mentioned
17 subject..., "

18 And that is Carol Hayek,

19 "... was telling the truth to the following
20 questions. Question: Did you participate
21 with anyone in setting the fire to your
22 house in Swift Current? No. Question:
23 Did you plan with anyone to have your house
24 burn down in Swift Current? No. Question:
25 Did you know your house in Swift Current

1 was going to burn before it actually
2 happened? No."

3 A Correct.

4 Q That took you back a little bit, because you had
5 in your own mind and on paper some
6 circumstantial evidence that Hayek either did
7 this fire or had someone do it on her behalf;
8 true?

9 A Correct.

10 Q So, the commercial theory that this fire
11 occurred for monetary reasons took a little hit
12 with that polygraph result. You would say that?

13 A Correct.

14 Q But despite that, and certainly appropriately
15 so, she remained a suspect; true?

16 A Correct.

17 Q And there are cases, I have had them, and I'm
18 sure you have too, where people have passed the
19 polygraph but were subsequently charged and or
20 convicted?

21 A I haven't had cases, but I'm aware of them.

22 Q Sure. Now, as I look through the Swift Current
23 file, and we've been going through it, and a
24 good part of it is excerpted and put in
25 Mr. Code's document book, but as I look through

1 the file, the early part of the file -- and
2 again the early part is at the back and it goes
3 from right to left as you are reading the
4 book -- but as I look at the file, you start,
5 whoever starts off, way back at page number 112
6 of the Swift Current file, starts off
7 numerically with the number 1. Do you see that?

8 A Correct.

9 Q And then if you turn the page to 111, you have
10 got 2 through 8 sequentially; right?

11 A Correct.

12 Q And then if you turn the page to 110, 9 through
13 12. And as I read this book, it seems to go
14 that way for a good part of the book. True?

15 A I will take your word for it. I would have to
16 go through it to say.

17 Q I appreciate that, I tell you that's so for a
18 good part of this book, and the numbers just
19 continue on sequentially. Now, why is that?

20 A The numbers stamped in the bottom, the 110, 111,
21 112?

22 Q I'm not worried about those. Those were likely
23 put on by someone else. I'm concerned about the
24 numbers, as you look at the pages there would be
25 a date and a time, let's look for instance at

1 page 110, I think you are there now, numbers 9,
2 10, 11, 12; do you see that?

3 A Correct.

4 Q It is all sequentially, so whoever makes an
5 entry into the Swift Current file is doing it
6 sequentially; right?

7 A Correct.

8 Q Is that to keep the file in good order?

9 A Exactly.

10 Q And what is this called, let's look at page 110,
11 is that a 1624?

12 A Correct.

13 Q So that's a 1624, made either contemporaneously
14 or fairly contemporaneously; right?

15 A Correct.

16 Q And you know as a policeman, it is basic
17 training that you ought to make contemporaneous
18 notes?

19 A That's correct.

20 Q If you look, for instance, at page 104 of the
21 Swift Current book, you see again sequentially
22 28 through 34, and it all follows along
23 sequentially. Do you see that? Now, what I
24 would like to know, you say that a good part of
25 the Swift Current file is missing?

1 A Correct.

2 Q It is interesting to note that the parts that
3 are missing, or at least two of the parts that
4 are missing, your 1624 contemporaneous note of
5 your October call with Mr. Anderson, Sergeant
6 Anderson, that's missing?

7 A I think you will find, I think it is even in my
8 statement, I said there were two methods of
9 record keeping, one was I would make 1624s and
10 rely on those, and the other was that I would
11 build a C237 over a series of days.

12 Q Go ahead. Don't let me cut you off.

13 A I think that's right in my statement.

14 Q Would the 1624 be the first document?

15 A I guess the answer to your specific question is,
16 on the October call, was it built, done by
17 building a C237 over a series of days, or making
18 contemporaneous 1624s and then using those. My
19 answer would be it is 16 years ago and I don't
20 remember.

21 Q But you would normally, for an important
22 occasion, make a 1624 first, wouldn't you?

23 A I wouldn't say that.

24 Q You wouldn't say that?

25 A No. If I'm building a C237 at a time, I would

1 continue building it over a series of days, and
2 I think if you look at the C237s you will see
3 that.

4 Q I would like to, but we don't have the C237s of
5 your calls, do we? Do we have the C237 of your
6 October call in its entirety?

7 A I would have to look back in the records. I
8 know that some are missing and that some were
9 directly quoted in subsequent C237s, and that's
10 all that's there.

11 Q I'm asking you, are you aware -- you have now
12 looked for these things -- do you have your
13 entire 237 of the phone call, of either phone
14 call in October or April with Sergeant Anderson?

15 A Again, I would have to look.

16 Q I don't think they are there.

17 A Okay, I will take your word for it.

18 Q Thank you. So then let me ask you, as I look at
19 this book, the Swift Current detachment book,
20 and it seems to me that the most important -- by
21 the way, one of the most important factors that
22 you were looking for, which you hadn't had yet,
23 was either a statement, an inculpatory remark by
24 Carol Hayek, that would be one thing you
25 certainly would have liked to have had; true?

1 A I know she made an inculpatory statement, it is
2 in the 1624s.

3 Q That was later on and we are going to get to
4 that. Commission Counsel took you there. But
5 I'm talking about in October let's say. By that
6 time, and take my word for it, at least that I
7 have looked at the file, there hadn't been an
8 inculpatory statement yet by Carol Hayek. You
9 would have liked to have that, true?

10 A I will take your word for that.

11 Q Thank you, sir. You would like to have had
12 that.

13 A True.

14 Q The other thing that you didn't have is you
15 didn't have anyone else admitting to the crime,
16 you didn't have one of the Zanidean family
17 admitting to the crime?

18 A Correct.

19 Q Certainly you would have liked to have had, and
20 you would have thought it very, very, very
21 important to have an admission from a Zanidean
22 family member that he torched the house. That
23 would be critical, right?

24 A I wouldn't say that. I would want an admission
25 from the person responsible, whether it was them

1 or someone else.

2 Q Of course you would.

3 A Correct.

4 Q So you get a call from Anderson, you say it is
5 October 27th, right?

6 A Correct.

7 Q And he tells you that they know that Zanidean,
8 Ray Zanidean is responsible for this arson. He
9 tells you that, words to that effect?

10 A We will have to look at the report to see
11 exactly what he said.

12 Q We are going to do that, believe me. But he
13 basically tells you, in summary fashion, this is
14 the first time you've got somebody who is
15 admitting the offence. You have got Ray
16 Zanidean now, Tom Anderson tells you about Ray
17 Zanidean. He does, doesn't he?

18 A I would like to look at the report before I
19 agree to say exactly what he said, if you don't
20 mind?

21 Q Let me ask you this -- we are going to go to
22 your reports, believe me we will -- there is no
23 question that he provided you with some
24 information about Ray Zanidean? You will give
25 me that --

- 1 A Correct.
- 2 Q -- without looking at the report, you know that?
- 3 A Correct.
- 4 Q And you would expect, that's the first time you
5 have heard of it, that you would make a 1624,
6 wouldn't you?
- 7 A It would depend on the nature of the
8 information. As I said, in some cases I
9 contemporaneously generated a C237. And as we
10 discussed, with this particular phone call,
11 because of the importance of the call in terms
12 of involving a witness in a murder case, issues
13 of not pursuing the investigations,
14 investigation, and my concerns, my speculative
15 concerns with Sergeant Anderson, I generated a
16 237, which I believe is missing now. I would
17 have to look at the material.
- 18 Q It's missing.
- 19 A Okay.
- 20 Q But there is no question that the C237, as a
21 result of the call, that would go in the
22 protected B file?
- 23 A Correct.
- 24 Q The protected B file is a locked file.
- 25 A Correct.

- 1 Q So, if anybody were looking at the arson and
2 they didn't have the protected B file, they
3 wouldn't know anything about Zanidean.
4 Certainly you would make a note of it in your
5 Swift Current A file?
- 6 A No.
- 7 Q You would just keep it under lock and key, that
8 other members don't have access to, only the
9 higher-ups in Swift Current?
- 10 A Myself -- well, Staff Sergeant Ferguson, I
11 believe Sergeant Upton had a backup key.
- 12 Q You would want to put it in the Swift Current
13 file, if Tom Anderson told that you Ray Zanidean
14 had an involvement in this case, you would want
15 to put that in the file so that anyone looking
16 at the file, if you were on holidays, would see
17 this? That makes sense, doesn't it, sir?
- 18 A That's not what I did.
- 19 Q Oh, you remember now?
- 20 A I just told you that I developed a C237, which
21 is missing.
- 22 Q You told us before that you didn't know whether
23 you did a 1624 or not. Now are you saying that
24 you didn't do a 1624?
- 25 A No, what I said was I generated a C237 that's

1 missing.

2 Q Are you telling this inquiry then that you

3 categorically did not prepare a 1624 and put it

4 in the Swift Current file? Is that what you are

5 saying?

6 A No, I'm saying I don't recall --

7 Q You don't remember.

8 A It was 16 years ago, and I'm saying in this

9 particular case the nature of the discussion was

10 such that a C237 would have been generated, and

11 was, and is missing.

12 Q Okay. Well, if you look at the Swift Current

13 file, page 41, there is a note 90/09/25 on the

14 date. Do you see that? Page 41 of the Swift

15 Current file, page 41 at the bottom, do you have

16 that, sir?

17 A Yes.

18 Q 41 at the bottom, up on the top left it says

19 09/09/25?

20 A Correct.

21 Q Number 142 paragraph?

22 A Correct.

23 Q "No reply from Edmonton polygraph, diary

24 date extension please."

25 A Correct.

1 Q So that's September 25th?

2 A Correct.

3 Q The next page in this file is now 90 -- that's

4 page 40. Are you there with me? Remember you

5 are going from back to front in this book.

6 A Correct.

7 Q Page 40, you are now at point 143, 90/11/04?

8 A Correct.

9 Q What happened between 90/09/25 and 90/11/04?

10 A I would have to refer to the protected B file,

11 there may be correspondence in there.

12 Q We don't have the protected B file, it is

13 missing.

14 A I think a lot of the file is intact, I think

15 just certain C237s were missing.

16 Q Yours?

17 A Correct.

18 Q Well --

19 A Well, they are all mine except for a few from

20 Staff Sergeant Ferguson, some of mine, not all

21 of them by any means.

22 Q So you see it goes from page 41, 142, to page

23 40, 143, the 1624s don't miss a beat, but we are

24 missing several weeks, aren't we?

25 A I don't know what you mean by missing.

1 Q We are missing in this book, we are missing
2 1624s for several weeks.

3 A Why would you say that?

4 Q Well, they are not here.

5 A I don't understand what leads to you say that?

6 Q Well, 90/09/25, there is 142, and then we go to
7 90/11/04, 143, and there is several weeks
8 between the September 25th and the November 4th,
9 you will give me that?

10 A It may be that nothing happened on the file, it
11 may be that correspondence was generated on the
12 protected B.

13 Q What happened on the file was your call, you had
14 a very important call from Sergeant Tom
15 Anderson?

16 A Which was on the protected B.

17 Q How do we know that? Where is it?

18 A It is referred to in the documents.

19 Q Where is the whole 237 report? You don't have
20 it.

21 A You will have to talk to F Division CROPS in
22 Regina, D Division headquarters and national
23 archives.

24 Q Are you saying that the 237s exist but we don't
25 have them?

1 A I'm saying you have to talk to them. That's
2 totally out of my control, the document
3 retention of files.

4 Q We are told they are destroyed.

5 A Well, there you go. It is beyond my control.

6 Q Sure. Because if you made a 1624, if you made a
7 1624 it can't really be missing, because when
8 you look at page 41, we are at 90/09/25, 142,
9 and then several weeks later, 90/11/04, 143, it
10 carries on sequentially?

11 A I never said I made a 1624.

12 Q So obviously you didn't.

13 A I say I don't recall. I say there was
14 correspondence generated on the protected B
15 file. That's the best answer that I can give
16 you.

17 Q Sure. Now on the issue of missing files, and
18 you have been taken there by other counsel, you
19 did have this meeting with Officers Hall and
20 Ewatski; right?

21 A Correct.

22 Q Tab 30, B. And I guess I need not repeat what
23 my colleagues have said, that's tab 30, B, page
24 79, which is the second last page in that book.
25 You see the last page is 80, and that's properly

1 numbered, but 79 was not numbered. Just so that
2 you and I are on the same page, you have that,
3 sir? The page before 80 on tab 30 B?

4 A Yes.

5 Q Where in the third paragraph there is a
6 discussion about the restricted B file?

7 A Correct.

8 Q By the way, you are prepared to say, and you
9 have said it already, that the words written on
10 page 79 by Hall and/or Ewatski are wrong?

11 A Which words?

12 Q The words involving you --

13 A You will have to be specific.

14 Q Let's start here, the second paragraph:

15 "We conducted an interview with Constable
16 Burton. He gave us a brief review of his
17 involvement in this matter. We concluded
18 that some of his opinions he expressed in
19 his written reports were based on
20 inaccurate information."

21 Is that true or not true?

22 A We already covered that, and I said that I had
23 no knowledge that the information was
24 inaccurate, just that it came from sources other
25 than the investigating officers.

1 Q Is that statement of Hall and Ewatski, as far as
2 you are concerned, true or untrue?

3 A With the exception of the statement that it is
4 inaccurate information, it is true that
5 information came from Mr. Brodsky and Brian
6 Savage, the private investigator he had
7 employed.

8 Q Let's look at the next paragraph, the one that
9 you have taken issue with.

10 "He indicated to us that he believes that
11 Anderson has been deceitful and dishonest
12 with him, but if he was called to an
13 inquiry, he may say something to the
14 contrary, depending on what instructions he
15 receives from the higher authorities in
16 this force."

17 That implies that you may be dishonest and
18 you take strong issue with that?

19 A Correct.

20 Q So these words of Hall and Ewatski are untrue?

21 A Correct.

22 Q That's a nice way of saying that they are lies.

23 A Whatever.

24 Q Whatever.

25 "When questioned about this response he

1 stated that although these opinions may be
2 documented in the restricted B file, this
3 file may not be available for use or when
4 the inquiry is called."

5 A Correct.

6 Q Lo and behold, the restricted B file is not
7 available. We don't have it?

8 A I think portions of it are not. I think a lot
9 of it is here -- I don't think, I know a lot of
10 it is here. It is in the materials that
11 Mr. Code provided.

12 Q The full account of your discussions with Tom
13 Anderson are not here, are they?

14 A That's a different question.

15 Q Well, they are not.

16 A But that's a different question than the one you
17 just asked me.

18 Q Aren't those in the restricted B file?

19 A Correct.

20 Q They are not in a 1624, are they?

21 A I'm just making the point -- you said the
22 protected B file is not here, that's not
23 correct. The C237 relating to that conversation
24 is missing, although quotes from it are
25 contained in other C237s.

1 Q Well, the C237s, contemporaneous C237s in their
2 entirety regarding the conversations with
3 Sergeant Tom Anderson are not here, are they?

4 A Correct.

5 Q Let me ask you this; when Hall and Ewatski came
6 to see you, was that 1992?

7 A I would have to look. Actually tab 29 is my
8 C237 on that, it shows '93, May 17.

9 Q '93?

10 A Yes.

11 Q So in 1993, you have seen from reading the
12 excerpts in tab 30, that Hall and Ewatski spend
13 some time looking at the protected B file?

14 A Correct.

15 Q And the protected -- or the A file as well, the
16 Swift Current file?

17 A They were both Swift Current files.

18 Q And at that time, 1993, there was certainly talk
19 of an inquiry?

20 A Correct.

21 Q Why then wouldn't these files have been kept,
22 and why didn't you recommend these files be kept
23 when you knew the chance of an inquiry was
24 there, because it was raised with Hall and
25 Ewatski, or is that not your job?

1 A Well, you are assuming that I didn't recommend
2 that.

3 Q Well, did you?

4 A Yes.

5 Q You recommended to whom?

6 A To the people at Swift Current City detachment.

7 Q Who? Who is at Swift Current City -- Preston?

8 A No, he is at subdivision. I can tell you what I
9 did.

10 Q Who is at Swift Current City?

11 A I'm just trying to think who was in charge. We
12 went through a number of commanders there.
13 Staff Sergeant Ferguson was gone. I'm not sure.
14 There was about -- we went through about two or
15 three after Ron, and I can tell you that I told
16 them not to destroy the files. I can also tell
17 you that I took a plain piece of paper and I
18 wrote on it in big letters, "do not destroy,"
19 and I put it around each volume with elastics.
20 And that's all I could do and then I left.

21 Q So you did that fairly contemporaneous with your
22 interview with Hall and Ewatski, right?

23 A No.

24 Q I'm not asking for the exact date, but at some
25 point?

1 A No, I did it just before I left, when I was
2 transferred out.

3 Q When did you leave?

4 A Oh, boy, I'm not -- a few years later.

5 Q All right. And I'm not going to -- I don't
6 think anything rests on the exact day that you
7 left, but --

8 A It was years.

9 Q Some years after, when the file still existed,
10 because you put some kind of marking around them
11 that these files shouldn't be destroyed.

12 A Well, it still existed because it was still
13 inside the retention period. I don't recall the
14 exact specifics, but as I indicated to
15 Commission Counsel, there is internal RCMP
16 policy on how long you retain files.

17 Q Let's leave policy aside for a second. You've
18 told Commissioner LeSage that after the Hall and
19 Ewatski interview, when you appreciated that an
20 inquiry may well happen, you made a request, an
21 obvious request that the 1624s and the 237s
22 which comprised the A and B protective files be
23 kept?

24 A Correct.

25 Q They weren't?

- 1 A Correct.
- 2 Q Does that surprise you that --
- 3 A No.
- 4 Q It doesn't surprise you?
- 5 A No, the RCMP is a rule driven organization.
- 6 Q A rule driven?
- 7 A Rule driven, policy driven, and policy said
8 after a certain time they would be destroyed,
9 and I expect that's exactly what they did.
- 10 Q So even in light of a pending inquiry, the rules
11 would take place and they would destroy the
12 file, even though you recommended they don't?
- 13 A Well, the inquiry wasn't pending then, it was
14 speculation. I can imagine they would have went
15 into the file room, saw the note, and that's the
16 first thing they would have run through the
17 shredder, quite frankly.
- 18 Q Okay. So by the time that Sergeant Tom Anderson
19 called you -- and by the way, do you know for
20 sure that it was on the 30th of -- sorry, the
21 27th of October as opposed to the 30th?
- 22 A I know it was because I rely on my records. Do
23 I specifically recall that out of my head now?
24 No, I'm relying on my records.
- 25 Q All right. We will come back to that. By that

1 time, by the time he called you, which you say
2 was the 27th of October --

3 A Correct.

4 Q -- you had a lot of suspicions about Carol
5 Hayek?

6 A Correct.

7 Q You had Ali as a prime suspect, according to
8 your notes?

9 A I think there was a number of the family
10 members.

11 Q I'm talking about Ali first, you had him as a
12 prime suspect?

13 A I think we surfaced three of them, we covered
14 that yesterday, that we thought may have done
15 it. I don't know if I would call him a prime
16 suspect. He was one of the three most likely
17 within the family. I'm sure we brought that out
18 in the documents yesterday.

19 Q She has -- Hayek by this time has passed the
20 polygraph?

21 A Correct.

22 Q And you still hadn't had an inculpatory comment
23 from Hayek, which was coming, by the way, but
24 you hadn't had it yet?

25 A I'm going to take your word on that. I would

1 have to look at the documents.

2 Q You can. We will go there soon.

3 A Sure.

4 Q And you get this call from Tom Anderson out of
5 the blue, you weren't expecting it?

6 A No, that's not true. Sergeant Ian Mann called
7 in advance and advised that he would be calling.
8 It is documented in the file. That's here, we
9 looked at that yesterday.

10 Q What you don't have, you didn't know what
11 Anderson was going to tell you?

12 A Correct.

13 Q Let me ask you, how long was that conversation
14 that you had with Anderson on the 27th?

15 A I don't recall.

16 Q Are we talking about one minute, five minutes,
17 ten minutes, how long?

18 A I would be guessing.

19 Q Well, you were there and you said you have an
20 independent memory of the October 27th call.
21 That's what you told Commission Counsel?

22 A No, I think I said I'm relying on my records as
23 to the dates and the call and that. I have
24 never claimed independent --

25 Q So you have no independent memory of the 27th of

1 October call; is that right?

2 A No, I rely on my reports as to the date and the
3 exact discussions.

4 Q All right.

5 A It was 16 years ago.

6 Q So you will agree with that statement then, you
7 have no independent memory of the October 27th
8 call, you rely on your notes. Is that an
9 accurate statement? Is my statement accurate,
10 sir?

11 A No, I know that a call took place. When you ask
12 me the exact date and exactly what was said, I
13 have to refer to the records. Do I know that he
14 called me some time in there and we had a
15 discussion? Yes. Do I know the date --

16 Q What is your sense today as to how long the call
17 took? You were on the call, you recall that he
18 called you; what is your sense as to how long
19 that call was?

20 A I just don't remember. I'm not going to guess.
21 I just don't remember.

22 Q And what you have then today, when you say you
23 rely on your notes, you have two things, you
24 have a November 18, '91 overview that you wrote;
25 right?

- 1 A Yes, it is not a contemporaneous document.
- 2 Q There are no contemporaneous documents --
- 3 A There are, but it is missing.
- 4 Q No, no, but I'm talking about here, we are
- 5 talking now. The only two documents that you
- 6 can show us at this inquiry are ones found at
- 7 B-14, which was produced by you on
- 8 November 18th, 1991?
- 9 A Yes. And I just want to -- I'm not representing
- 10 that's a contemporaneous document.
- 11 Q No, no, I'm not suggesting that it is. As a
- 12 matter of fact, it is made more than a year
- 13 after you had this conversation with Tom
- 14 Anderson --
- 15 A Correct, exactly.
- 16 Q But your only account of it, your first account
- 17 of it was November 18, 1991, one year after the
- 18 fact, tab 14-B?
- 19 A No, that's not correct. There is a C237 which
- 20 quotes the missing C237 which I believe was, if
- 21 I recall from yesterday, was made on
- 22 November 15th, shortly after the call, and then
- 23 a subsequent C237 quotes that one in terms of
- 24 the call.
- 25 Q What I'm suggesting to you is that there are no

1 contemporaneous C237s in full tact that we have
2 available to us today. You know that, don't
3 you?

4 A Correct.

5 Q You have some excerpts which you put in your
6 accounts, but they are only excerpts, they are
7 not the full 237.

8 A Correct.

9 Q But from your memory you have produced at tab
10 B-14 an overview?

11 A No, that's not correct.

12 Q From your memory and from what you had available
13 to you at the time?

14 A Not from my memory.

15 Q So your memory didn't take part, it was only
16 from what you had available to you?

17 A You have to realize that those files were still
18 intact then, it was only a year later. And I
19 would have drawn from those directly.

20 Q Yes, but you see if I had, for instance -- hear
21 me out for second -- if I had the full 237 of
22 your call with Tom Anderson, the full one, then
23 I would know exactly from your perspective what
24 happened at that call; right?

25 A Correct.

1 Q You would know as well.

2 A Correct.

3 Q We don't have that.

4 A Correct.

5 Q We only have excerpts available to us now, just

6 a few lines of excerpts.

7 A Correct.

8 Q You will give me that?

9 A Yes.

10 Q And in your overview, I've read it many times,

11 at B-14 you don't quote from a C237 or a 1624,

12 there is no direct quote in there, as I see it.

13 Do you agree with me?

14 A I have to look at it.

15 Q Take a quick read. For instance, by contrast,

16 if you look at document book A, page 24 --

17 A I would have relied on the files.

18 Q But there is no quotes in there, is there? You

19 will give me that, won't you?

20 A I will have to look at it a little further.

21 Unless you want to tell me there is, I will take

22 your word for it.

23 Q I'm telling you there isn't.

24 A Okay, I will take your word for it.

25 Q Thank you, sir. As opposed to tab A, tab A-24

1 where you actually do -- I will let you get
2 there, tab A-24.

3 A Okay.

4 Q Tab A-24 is your account in response to Sergeant
5 Anderson's October '91 letter, your response
6 '92, January 09. Do you see that at tab 24?

7 A Correct.

8 Q That is your response to his letter, right?

9 A Correct.

10 Q And in this response you actually quote from
11 your 237s. Look at page 2, for instance, you
12 have got a six line quote right at the top of
13 the page.

14 A Correct, that's the one that's missing.

15 Q Well, I guess the point that I would like you to
16 consider is this. That six line quote is just a
17 fraction of what is in that 237.

18 A That's speculation. I don't want to go there, I
19 don't recall.

20 Q Well, if you wrote a 237, you would probably
21 write it, when you are talking about an
22 important phone call, you would probably write
23 it in some detail, wouldn't you?

24 A I'm not going to speculate on that. I don't
25 recall what is in there.

1 Q You wrote it?

2 A Yes, 16 years ago.

3 Q You saw it, you saw it before you left Swift
4 Current?

5 A Right. I don't recall.

6 Q You will give me this, that there was more in
7 the report than simply this excerpted quote?

8 A There would have to be because you can see the
9 dots at the start of the sentence, which means
10 there was more prior to that, for sure.

11 Q How do we know what was in there? How do I
12 know, as counsel to some of these police
13 officers, how do I know what is in there? You
14 don't remember today, do you?

15 A No.

16 Q So when Commission Counsel, in examining you,
17 says to you, well, you have referred to your
18 237, you referred to part of your 237, you've
19 already told us that?

20 A In some cases. Some cases they are intact, most
21 of them are intact. And when they are not, I
22 refer to what is there, correct.

23 Q Well, they were intact, I take it, when you
24 wrote your letter in 1992, your memo in 1992 at
25 tab A-24, they were intact then?

1 A Correct.

2 Q What I'm saying to you is you refer to just --
3 you excerpted portions and put it in your
4 response, not the whole 237?

5 A Correct.

6 Q Right. And today we wouldn't know, because you
7 don't know what is in those reports, in their
8 entirety?

9 A Exactly.

10 Q Nor do you have an independent recollection?

11 A Exactly.

12 Q So while Tom Anderson, it has been stated in
13 questioning you that he has no contemporaneous
14 notes, at best what you had available to you in
15 1991 when you wrote the overview, and what you
16 have when you wrote your response in 1992 -- in
17 1992 you have some excerpts that you included in
18 your response; that's the best you have, some
19 excerpts?

20 A When I wrote the responses I had the entire
21 files.

22 Q But you included in them just some excerpts?

23 A Correct.

24 Q Having the entire file is kind of meaningless if
25 we don't know -- if this inquiry doesn't know

1 what is in the file, because you can't tell us.
2 You have already said that, sir.
3 A That's for the inquiry to decide. I don't want
4 to offer an opinion on that.
5 Q Well, you don't have to offer an opinion. You
6 can't tell us, you have already told us that?
7 A Again --
8 Q You can't tell us what was in the 237s.
9 A That's different from your last question.
10 Q You can't tell us that, can you, sir?
11 A I can't tell you what is in the portions that
12 are missing. I can tell you what is in the 237s
13 that are here today.
14 Q I understand that. We can read them.
15 A Correct.
16 Q I want to go to your interview with Commission
17 Counsel. That's found at tab A-1 -- sorry, A-1.
18 What you told counsel at page 4, under the
19 heading "October 27, '90 telephone call from
20 Anderson," what you told Mr. Code:
21 "Anderson first called Burton on the 27th,
22 1990. Burton probably produced a
23 contemporaneous 1624 report of this call
24 but that report is missing."
25 Are you telling us today that you didn't

1 prepare a 1624?

2 A I think the key word there is "probably."

3 Q Well, what I don't understand, and we were over
4 this before, when I took you to the Swift
5 Current book, when you look at the sequential
6 numbering, and you look at the sequential
7 numbering from September -- you recall I had you
8 there a little while ago?

9 A What page are you referring to now?

10 THE COMMISSIONER: You are referring to pages 40
11 and 41, which I think are in the break from
12 September 25, '90 to the 4th of November, '90.

13 MR. WOLSON: Thank you, sir.

14 THE WITNESS: Okay, I'm there.

15 BY MR. WOLSON:

16 Q If you had produced a 1624, then the -- and we
17 know we have about five or so weeks that are
18 missing, whether something happened in this case
19 or it didn't, we do know one thing, this call
20 from Tommy Anderson came to you in late October;
21 right?

22 A The 27th, correct.

23 Q Of 1990?

24 A Correct.

25 Q That's in the time period between page 40 and

1 page 38 -- I am sorry, page 41, 90/09/25,
2 September 25th, and the next page, page 40,
3 90/11/04, November 4th; right?

4 A Correct.

5 Q Between those two dates Tom Anderson called you?

6 A Correct.

7 Q The sequential numbering system that you have
8 employed would indicate that you didn't make a
9 1624, otherwise it would be here sequentially
10 numbered.

11 A I tried to explain that to you earlier, the
12 numbers stamped at the bottom --

13 Q No, I'm talking about the numbers at the top.

14 A Again, if I can finish; the numbers in magic
15 marker in the top right corner, you will see
16 199.

17 Q Yes?

18 A Those are the detachment file. The numbers
19 stamped on the bottom, I don't know where they
20 are from, they could have could be from the
21 archives in Ottawa, whoever. Those are of no
22 significance to me. They weren't made at the
23 time. The ones that matter are the ones in the
24 top right corner. And actually I see it goes
25 from 199 to 201, which tells me that page 200 is

1 missing.

2 Q So 200 -- are you suggesting 200 would be the
3 1624 call from Tom Anderson, the 1624 call that
4 you made?

5 A No, I'm just suggesting that it is missing.

6 Q But sequentially the numbers just continue, 142
7 to 143?

8 A I'm just noting that there should be a page 200
9 here. I'm not drawing any conclusions. I just
10 thought I should point that out to you.

11 Q Let's look at the bottom of page A-1 4, your
12 statement. Are you with me now?

13 A Page 4?

14 Q Yes. Talking about the call of October 27, last
15 line,

16 "Sergeant Anderson confirmed that Ray
17 Zanidean had in fact committed the arson
18 but Burton is not sure if Anderson told him
19 the basis of this assertion, Zanidean's
20 admission."

21 Do you see that?

22 A Correct.

23 Q "Burton definitely...",

24 And it is underlined,

25 "...did not know at this point the Winnipeg

1 Police had two pieces of evidence
2 inculcating Zanidean."

3 Is that true?

4 A Correct.

5 Q You didn't know that there was an admission from
6 Zanidean?

7 A I know it was documented in the C237 that I
8 quoted the excerpt from.

9 Q Was there an admission from Zanidean?

10 A Are you asking me if I knew it then?

11 Q Absolutely?

12 A As I said, I'm relying on the C237 excerpt,
13 which doesn't refer to that, so I did not know
14 that then.

15 Q You didn't know it?

16 A Correct.

17 Q So you didn't know then of an admission from
18 Zanidean?

19 A I think the best is to look at the excerpt of
20 the conversation, that's what he said to me,
21 that's what I can bring to the commission today.

22 Q That's at A-24 I think you are referring to,
23 aren't you?

24 A I'm not sure.

25 THE COMMISSIONER: I think it is A-24.

1 BY MR. WOLSON:

2 Q A-24, do you have A-24 there, sir?

3 A Yes.

4 Q Keep your finger in your statement at page 5, if
5 you don't mind?

6 A Sure.

7 Q And your 237 at page 2 of A-24, is that the 237
8 that you are referring to at the top of the
9 page?

10 A Yes, that's the missing one.

11 Q But it is excerpted here.

12 A Yes.

13 Q "Anderson advised that Zanidean is a
14 witness in a homicide prosecution as he
15 observed Driskell execute a Crown witness
16 in relation to another prosecution.
17 Anderson requested that we keep this
18 information in confidence and hold off on
19 pursuing Zanidean as it will endanger their
20 prosecution of Driskell."
21 That's all you can tell us today about that
22 conversation, I take it?

23 A Correct.

24 Q Do you know whether that excerpt that I have
25 just read is complete in your 237?

1 A As I said, it is obvious it isn't, because it
2 starts with a series of dots which indicates
3 that it is part of --

4 Q Do you know today what else Anderson told you,
5 that you haven't included in this document A-24?

6 A What I can say is, anything of significance
7 would have been included.

8 Q So therefore -- sorry, I don't want to cut you
9 off.

10 A Based on what I know here, that's what he told
11 me. Again, I can't go back independently, out
12 of my head, I would just be speculating. I
13 wouldn't even be doing that, I just can't
14 recall.

15 Q So therefore you say to Commission Counsel at
16 page 5, where I had you keep your finger in, at
17 the top of the page, you definitely did not know
18 that Winnipeg Police had two pieces of evidence
19 inculpatng Zanidean, that is an admission from
20 Zanidean? You definitely didn't know that?

21 A Again, I'm basing that on the progression of
22 documents that we went through yesterday, and if
23 you go through them you can see when the
24 information surfaces. So that's why I am saying
25 that in my statement relying on my reports.

1 MR. WOLSON: Excuse me, Mr. Commissioner.

2 BY MR. WOLSON:

3 Q There are two accounts now that we have
4 available to us so far. We have got your B-14,
5 November '91 account, that's your overview,
6 B-14. And we have got your A-24, your response
7 to Anderson's letter. Those are the two
8 accounts, and I think clearly Commission Counsel
9 and you acknowledge that in your statement.

10 A I will take your word for it.

11 Q Thank you, I appreciate that.

12 Now when you go to page 3 of B-14, you have
13 the words, last paragraph,

14 "Anderson contacted Constable Burton on the
15 date noted. Anderson advised that Zanidean
16 had blown up his sister's house."

17 But you didn't know whether that was an
18 admission from Zanidean, is that what you are
19 saying in your statement?

20 A Again, there may be documentation through here,
21 and I'm not going to guess out of my head.

22 Q Well, you were told by the police that
23 Zanidean --

24 A What I would guess there is that I had that
25 report available at the time, that information

1 was in there and it is now gone.

2 Q But you were told by the police, by Tom
3 Anderson, that Zanidean blew up his sister's
4 home, that's what you were told. Are you saying
5 that you didn't know that it came from Zanidean
6 by way of an admission or a confession; is that
7 what you are saying?

8 A I'm saying what I said in the report. I mean --

9 Q But you made a statement, your statement said
10 you didn't know.

11 A Correct.

12 Q I don't know the basis for that statement?

13 A As I said, probably when I prepared this
14 overview, that report was available and that was
15 in there, and now it is missing. That's all I
16 can say.

17 Q But it was also missing when you spoke to
18 Commission Counsel?

19 A I don't follow you now?

20 Q Well, you told Commission Counsel at page 5 of
21 your interview, A15, Burton definitely, and it
22 is underlined, did not know at this point
23 Winnipeg Police had two pieces of evidence
24 inculpatng Zanidean, that is an admission from
25 Zanidean. So you told Commission Counsel that

1 you didn't know that Zanidean had made an
2 admission, on October 27th when you talked to
3 Anderson, is that accurate?

4 A I'm just flipping back to the other page.
5 Again, that's two different things, that he had
6 blown up the house and that there was an
7 admission are two completely different things.

8 Q I see. So you didn't know it?

9 A I'm relying on my records, as I said. What I
10 said in there I said, and I'm just making the
11 point here that those are two different things,
12 between him making an admission and Anderson
13 having knowledge that he committed the arson are
14 apples and oranges.

15 Q Let me refer to you tab 32 of A. Tab 32 of A is
16 a report that you generated, true, or signed off
17 on it at least?

18 A Correct.

19 Q July 19, 1991?

20 A Correct.

21 Q Let me take to you point 16 on page 4. Just
22 before I take you there, to put it in context,
23 you had a meeting with a number of the senior
24 people involved, you had a meeting -- look at
25 point 12, you had a meeting on the 17th of July

1 with Ferguson, Wass, Hluska and Scowby?

2 A Correct.

3 Q And then point number 16:

4 "Several significant points were emphasized
5 at the meeting. When Winnipeg Police first
6 provided the information that Zanidean had
7 admitted to committing this arson with
8 Driskell..."

9 That was your account of it then, sir. You
10 had an admission, and you told the boys when you
11 met with them on the 17th, not only an admission
12 but who was responsible, Zanidean with his
13 co-perpetrator Driskell; right? That's your
14 note?

15 A Correct.

16 Q How come when you prepare your overview on
17 November 18th, 1991, tab B-14, and how come when
18 you prepare your response to Tom Anderson on
19 January, in January of 1992, you don't put in
20 there on either of those accounts regarding your
21 account of the October 27th phone call that you
22 had an admission right then and there, that
23 Zanidean, the police told you, had admitted to
24 committing the arson with Driskell. It is not
25 in there. Why not?

1 A I just have to say at this point, and I raised
2 it with my counsel yesterday and asked him to
3 raise it with Commission Counsel, these are
4 records from 16 years ago, and you are right now
5 referring to four different records at once, and
6 I can only look at one, and then I need to
7 review them all to address your question. So
8 I'm not going to try and do that here.

9 Q Do you want some time? We are heading -- it is
10 almost 12:30. Why don't you take some time to
11 review your records and then I can question you
12 appropriately. I don't want to take advantage
13 of you.

14 A It is difficult because they are a book here and
15 I can only look at one at a time, and quite
16 frankly, you just lost me on that last question.

17 Q I will come back to it, I promise you that. Why
18 don't you take some time, whatever time you
19 need, and I'm sure the Commissioner will give
20 you reasonable time, because your evidence is
21 important, and then I will return to my
22 questioning.

23 THE COMMISSIONER: I was going to suggest, Mr.
24 Wolson, I wonder if you could just do the
25 chronology of what you are referring to, because

1 you are referring to -- and I think I follow
2 what you are doing, but it can be confusing,
3 because you are referring to A-1, A-24, A-32,
4 B-14 and --

5 MR. WOLSON: It sounds like a bingo game, and I
6 understand that it is confusing because, quite
7 frankly, the documents can be confusing. But
8 let me just create the scene for you so you have
9 it when you do your review.

10 THE COMMISSIONER: I think what you are saying
11 is that, in your statement, Inspector, you say
12 that you didn't know that they had two pieces of
13 evidence. And we will talk about, at this
14 point, about what knowing and evidence is. And
15 then Mr. Wolson is asking you about your reports
16 of -- I won't get these chronological -- but the
17 A-24 report of January 9, '92, the A-32 report,
18 of 19th of July, '91, and the B-14 report of
19 November 18, '91. Is that --

20 MR. WOLSON: That is so, sir.

21 THE COMMISSIONER: If I haven't confused you
22 more --

23 THE WITNESS: I kind of stopped listening part
24 way through. I see my counsel writing furiously
25 so --

1 MR. WOLSON: And on that point, I don't want you
2 to stop listening --

3 THE WITNESS: I mean, it just got really
4 confusing.

5 MR. WOLSON: But what I'm going to suggest to
6 you, and please take this opportunity to think
7 about this, if I'm confusing you, and that's not
8 my goal, I promise you, please stop me and ask
9 me to either explain my questions or -- I'm only
10 happy, too happy to do that. I don't want you
11 to turn off, I want you to listen. So thank
12 you.

13 THE WITNESS: Sure.

14 THE COMMISSIONER: Thank you. And I also want
15 to repeat again what I said yesterday morning,
16 and that is that unfortunately, because of a
17 personal commitment, purely personal, I am
18 leaving on Thursday on the 5:10 flight, and I
19 have been advised that that means that I should
20 break at 3:30. I apologize for that. I'm more
21 than willing to try and make up the time,
22 because we will lose about an hour, at any other
23 time in the morning, shorter lunches or -- I
24 don't want to sit longer days, but --

25 MR. WOLSON: As a matter of fact, knowing the

1 traffic, I might even leave a few minutes before
2 that.

3 THE COMMISSIONER: That's as long as it takes me
4 to get to the airport in Toronto.

5 MR. WOLSON: We are getting there here too.

6 MR. CODE: Mr. Commissioner, can I advise that
7 the documents book for the next witness after
8 next, Sergeant Tom Orr, was circulated in the
9 morning recess. All my colleagues have it well
10 in advance, and any additional documents that
11 they wish to put to Sergeant Orr, I would ask
12 that they do us the courtesy of bringing
13 photocopies for their colleagues as is normally
14 done in litigation.

15 THE COMMISSIONER: 2:00 o'clock.

16 THE CLERK: All rise. This Commission of
17 Inquiry is adjourned.

18 (Proceedings recessed at 12:30 and
19 reconvened at 2:00 p.m.)

20 THE CLERK: All rise. This Commission of
21 Inquiry is now commenced. Please be seated.

22 MR. CODE: Could I have a brief indulgence? I
23 just have Staff Sergeant Ferguson here and I
24 need to know whether -- Mr. Wolson tells me he
25 will be the rest of the day, so if I could

1 excuse Staff Sergeant Ferguson.

2 THE COMMISSIONER: Okay. I noticed the witness
3 taking a deep breath after you said that.

4 MR. WOLSON: I am sorry to inform everyone of
5 that. I am sure it is not pleasant to listen to
6 me. But, more importantly, I want to listen to
7 the witness.

8 THE COMMISSIONER: All right. As long as we
9 stay on the terms of reference, that's fine.

10 MR. WOLSON: I believe I will be there. That's
11 what I'm here for. May I start,
12 Mr. Commissioner?

13 THE COMMISSIONER: By all means, please
14 continue, Mr. Wolson.

15 BY MR. WOLSON:

16 Q So when we left off, I had thrown,
17 unfortunately, and in hindsight, too many things
18 at you at the same time, so let me back up.

19 I had first asked you, and I'm assuming
20 you've had occasion to look at your reports and
21 so forth over the lunch hour?

22 A Correct.

23 Q Okay. So when we left off, I started this whole
24 area at page 5 of your statement. And starting
25 with line 1 at page 5, where you say:

1 "Burton definitely did not..."
2 and that's underlined,
3 "...know at this point the Winnipeg Police
4 had two pieces of evidence inculpatating
5 Zanidean, an admission from Zanidean and
6 inculpatory statement."
7 So I then said to you: Is that an accurate
8 statement? And you indicated that it was. And
9 then I referred you to, as you'll recall, tab
10 32?
11 A Correct.
12 Q Which is your report, a July report, as I
13 recall?
14 A Correct.
15 Q July 19th, 1991?
16 A Correct.
17 Q Where you state, and this is after the meeting
18 with the higher-ups in the department, Scowby
19 and Hluska and Ferguson and Wass, where you
20 stated what you did at point 16?
21 A Correct.
22 Q And what you state at point 16, to me, was as
23 follows:
24 "When Winnipeg Police Service first
25 provided the information that Zanidean had

1 admitted to committing this arson with
2 Driskell...",
3 right? So we are taking about when you got your call
4 from Anderson, right?

5 A Yeah.

6 Q Because you then go on to say:

7 "...they had asked us to hold off pursuing
8 Zanidean at that time."

9 Did you want to respond to that? I didn't want to
10 cut you off?

11 A No, it's all right. What I did was I took the
12 four documents you referred to --

13 Q Yes?

14 A -- and I just wrote the excerpts on one page,
15 just to save myself switching.

16 Q Oh, sure, that's fine. Whatever is convenient
17 for you.

18 A And that made it a lot easier. And then I
19 understood your point.

20 Q Okay. So you have my point then --

21 A Yes.

22 Q -- that it's clear when the Winnipeg Police
23 first spoke to you, Sergeant Anderson is the
24 fellow that spoke to you, he told you that he
25 had an admission from Zanidean that Zanidean had

1 committed an arson with Driskell?

2 A Correct.

3 Q Now, why does that -- first of all, that's
4 inconsistent with your statement to Commission
5 Counsel, and I don't --

6 MR. CODE: That's simply not a fair way of
7 putting it. I don't think it's inconsistent
8 in the slightest. But in any event, it's not
9 the way to question on a prior consistent
10 statement.

11 MR. WOLSON: Well --

12 THE WITNESS: I think I can address it,
13 Mr. Commissioner.

14 THE COMMISSIONER: Yes, go ahead.

15 THE WITNESS: I think, in all honesty, it is
16 just simply whoever transcribed the -- it is
17 actually not my statement. It's a summary.

18 BY MR. WOLSON:

19 Q What's that, it's a summary?

20 A It's a summary of my interview with Commission
21 Counsel.

22 Q Okay.

23 A I think what's happened here is Commission
24 Counsel provided me with the summary and asked
25 me to review it for any errors.

1 Q Yes?

2 A And I did. And I identified a number. And
3 you've raised a good point here. I can see that
4 I missed an error.

5 Q Okay.

6 A And I think it's probably just a typo by whoever
7 transcribed it.

8 Q What's the error that you missed?

9 A The summary done in May of this year is
10 essentially quoting from the C237 of '91,
11 July 19th. And it looks like essentially
12 someone repeated a phrase, transposed it from
13 one sentence to the next, where it says -- I
14 will just take you to it at tab A-1.

15 Q Page 5?

16 A Well, it would be page 5 at the top.

17 Q Yes, that's where we are looking at.

18 A Where it says i.e., where it says "an admission"
19 I believe that should read "a written admission
20 or statement". I believe counsel was taking
21 that from the 237, and that would be consistent
22 with the 237. Because if you actually read the
23 first sentence before that, they are
24 contradictory.

25 Q Okay. So what you meant -- and that's fine. I

1 accept that what you meant was that you didn't
2 know that the Winnipeg Police had a written
3 statement?

4 A Correct, for the body pack evidence.

5 Q Well, we will deal with the body pack in a
6 minute.

7 A Okay.

8 Q We are talking about a written statement first.
9 That's one of the two pieces?

10 A Correct. Because if you read those two
11 sentences, the one before says,

12 "Sergeant Anderson confirmed that Ray
13 Zanidean...",

14 this is the bottom of page 4,

15 "...had in fact committed the arson, but
16 Burton is not sure if Anderson told him the
17 basis for that assertion (i.e. Zanidean's
18 admission)."

19 And here's the contradiction.

20 "Burton definitely did not know at this
21 point that the police had two pieces of
22 evidence inculpatating Zanidean."

23 Now, this is essentially quoting the 237 of July 19,
24 1991, but it is misquoted, i.e. an admission
25 from Zanidean, but it should have referred to

1 the written statement.

2 Q Okay. Is there a written statement from
3 Zanidean?

4 A The only thing I've seen, and I just saw it two
5 days ago, was the notes in Sergeant Anderson's
6 notebook.

7 Q Not a written statement?

8 A Well, that's -- as I say, that's all I've ever
9 seen.

10 Q Well, the point is there is no written statement
11 signed by Mr. Zanidean, is there, to your
12 knowledge?

13 A To my knowledge, I've never seen one.

14 Q Yes. So if you never had it, it's because there
15 wasn't one?

16 A Correct.

17 Q Yeah.

18 A In fact, what resulted in the so-called
19 complaint against Sergeant Anderson was our
20 inability to get the body pack transcripts and
21 the statement.

22 Q Okay. Now, when I take you to tab 32, then, and
23 I show you point 16,

24 "When Winnipeg Police Service first
25 provided the information that Zanidean had

1 admitted to committing this arson with
2 Driskell...",

3 that part, do you see that?

4 A Correct.

5 Q That never appears in your overview of this case
6 that you wrote in November of 1991 found at tab
7 B-14. It's not in there at all, is it?

8 A Correct.

9 Q Nor does it appear on tab, or in your account in
10 reference to Tom Anderson's October '91 letter,
11 you responded in 1992, January; right?

12 A Correct.

13 Q It doesn't appear in there either?

14 A Correct.

15 Q So clearly, if I have your evidence, your two
16 accounts of the October phone call from Tom
17 Anderson to you, that is your two accounts, one
18 in November of 1991, the overview, and your
19 response in 1992, you don't mention anything
20 about that in there, do you? You've read them
21 now. There is nothing in there about that
22 statement?

23 A Correct.

24 Q How do you remember that statement? How do you
25 remember the fact that Tom Anderson told you

1 that Zanidean made an admission to the arson of
2 his sister's home, and that he committed the
3 arson with Mr. Driskell? How do you remember
4 that?

5 A Well, my C237 of '91, July 19th, refers to the
6 fact that he did not advise of the evidence
7 obtained by way of the body pack worn by
8 Zanidean, nor did he advise that he had a
9 written statement from Zanidean which related
10 the events surrounding the arson.

11 Q No, but --

12 A I am just answering. This information was
13 originally provided by Savage.

14 Q Well, I know what the rest of that says, and we
15 will talk about that in a while. But the point
16 I make is, you start off paragraph 16 by saying
17 that Tom Anderson told you that Zanidean
18 admitted to an arson, along with Driskell, and
19 the arson was Zanidean's sister's house. Where
20 does that come from?

21 A It's in that report.

22 Q Where did you get that from? Is that from
23 memory?

24 A I don't follow you.

25 Q You wrote this report in July 19, 1991. Where

1 did you get that information? Where does it
2 come from? Does it come from a 237 that you had
3 somewhere?

4 A I mean, there is so much missing. You are
5 asking me to speculate. The answer is I don't
6 know. It's in there, that's it. I mean --

7 Q But it's not in your overview of November of
8 1991 and it's not in your further information of
9 1992?

10 A Correct.

11 Q So where does this information come from? We
12 know it came from Sergeant Anderson, but where
13 did you note it?

14 A Again --

15 Q You don't know?

16 A A lot of files are missing. I don't know. You
17 are asking me 16 years later.

18 Q And then when I look at your statement at tab
19 24, your memo at tab 24, A-24, where you do
20 refer to your 237 at page 2 of the statement, do
21 you see that?

22 A Yes.

23 Q You're referring to a 237 which was written
24 about, according to you, 18 days after the
25 conversation that you had. It was written

1 90/11/15, November 15th --

2 A Correct.

3 Q -- of 1990. Your discussion with Tom Anderson

4 was on the 27th of October?

5 A Correct.

6 Q You couldn't remember the whole conversation

7 over two weeks later, could you?

8 A I didn't say that. I said there is a lot of

9 documents missing. And that these documents

10 that are here were created based on other

11 documents or were created contemporaneously, I

12 don't know what the case was with that C237. I

13 just have no memory of that. I can't help you.

14 Q Well, but that C237 was made by you 18 days

15 after the conversation, you'll give me that?

16 A Correct.

17 Q You don't know whether that was written from

18 memory or from notes of a 1624, you don't know?

19 A It wouldn't have been written from memory.

20 Q Well, it would have been written from a 1624,

21 then?

22 A There would have been other documentation or

23 that would have been -- I would have been

24 creating that on an ongoing basis, as was

25 indicated in my summary from Commission Counsel.

1 In any event, the call would have been
2 documented immediately, I can say that.

3 Q Well, what else was said in that call?

4 A Again, I don't know. The documents are
5 missing. I can only tell you what's recorded
6 here.

7 Q So you can only testify to what you recorded.
8 Anything else that may have been said, you can't
9 remember today?

10 A Correct.

11 Q So if Tom Anderson comes to this inquiry and
12 says things that you don't have recorded, you
13 can't dispute them because you don't have it
14 written anywhere as to what was said, other than
15 what you have noted and told us about today?

16 A Well, that's a pretty broad statement. I don't
17 think I can really answer that.

18 Q Well, all you can say is you can't tell us
19 anything that you didn't record?

20 A You would have to be specific about what he's
21 saying.

22 Q Well, there was more -- there were more things
23 said than you've recorded is what I'm saying to
24 you.

25 A I mean, you have to be specific. I can't answer

1 that.

2 Q Were there more things said than you recorded,
3 sir?

4 A I know some of my records are missing. Whether
5 there is more than was recorded --

6 Q Let me ask you, in the materials which you have
7 prepared from 2003 forward, that you told us
8 about yesterday when Mr. Lockyer was asking you
9 questions, have you now received those?

10 A Yes. Mr. Gates is nodding yes at the back.

11 Q Would you have had any 237s or 1624s then?

12 A No. And that's why I made it clear that those
13 were created -- it was a very general overview
14 created from my memory and that it was not
15 reliable.

16 Q Okay. And we will take a look at those I'm sure
17 sometime today.

18 Do you recall whether or not, when you had
19 a conversation in October with Sergeant
20 Anderson, whether Sergeant Anderson -- the
21 discussion was not to pursue Zanidean at this
22 time or until after the trial of Mr. Driskell,
23 do you know?

24 A I am going to have to refer to the document.

25 Q But do you know?

1 A Again, I will have to refer to the document.

2 Q Because in one of your accounts you have "at
3 this time" and in the other account you don't
4 have those words noted. Do you know today?

5 A Do I know what?

6 Q Do you know today whether the discussion was "at
7 this time" or whether the discussion was not to
8 pursue him at all?

9 A I am just relying on whatever the records say.
10 Do I know off the top of my head, no.

11 Q If you look at B-14, just to put it in context,
12 the last paragraph when you talk about the call
13 of the 27th of October, you say:
14 "Sergeant Anderson had advised that Zanidean had
15 blown up his sister's house."

16 A Correct.

17 Q In other words, he is telling you of an
18 admission that Zanidean made; correct?

19 A Correct.

20 Q You say:

21 "Anderson explained Zanidean's situation as
22 a witness."

23 What did he say?

24 A Again, I just have to refer to the reports. We
25 can go back and look at them.

1 Q Well, there is no report of that?

2 A What I recorded in the conversation, again, that
3 excerpt, that's my knowledge at this point.

4 Q Well, what you recorded is found -- and I'm
5 sorry to have you do this, but unfortunately
6 they are in different books. Why don't you keep
7 out A-24, put it next to the book you've got out
8 now. You are looking in B-14. Now take a look
9 at A-24. Do you have A-24 there?

10 A I have the excerpt written out here. I think
11 that's what you are going to refer to.

12 Q Okay. So the excerpt from your 237 says,
13 "Anderson advised Zanidean as a witness in
14 a homicide as he observed Driskell execute
15 a Crown witness in relation to another
16 prosecution. Anderson requested that we
17 keep this information in confidence, hold
18 off on pursuing Zanidean, it will endanger
19 the prosecution of Driskell."

20 That's the only note that you have from your 237,
21 right?

22 A Well, I --

23 Q That's the only note that you have recorded that
24 we can refer to?

25 A Well, okay.

1 Q There may be more, but it is, unfortunately, no
2 longer available?

3 A Correct.

4 Q So there is two things that come to mind. In
5 that quote there is nothing there about you not
6 pursuing Zanidean at this time. Those words
7 don't exist in the six lines that I quoted from,
8 do they, "at this time"?

9 A Correct.

10 Q But they do exist in your overview, B-14, the
11 last paragraph, five lines from the top?

12 A Correct.

13 Q Which is it?

14 A Again, as we have discussed this previously,
15 that at that time I had the benefit of the
16 intact files and now I don't.

17 Q So we don't know today?

18 A No. I had the advantage of the complete files
19 when I completed that overview and I don't
20 today, as we have discussed this morning.

21 Q And as well, while we have the two books out,
22 when you look at the page 3 of A-14, I'm sorry,
23 of B-14, it says,

24 "Sergeant Anderson explains Zanidean's
25 situation as a witness."

1 Right?

2 A Correct.

3 Q But does your quote on your May 24th -- I'm
4 sorry, on the A-24 quote at page 2, you've got
5 that written out, don't you, your 1992 account?
6 Does that assist you as to what Anderson said
7 about Zanidean as a witness?

8 A Again, all I can say is I had the complete files
9 when I did that as well. So I don't today. I
10 had the benefit of the intact reports.

11 Q Yes. But we don't have those, so what I'm
12 trying to find out --

13 A And I can't recall it.

14 Q -- is what Anderson said to you. And you can't
15 remember today, can you, today?

16 A No. I am relying on the reports.

17 Q Could Anderson have said to you something to the
18 effect, or could you have said to him: Hold off
19 until after the trial?

20 A I'm not going to speculate. I am just going to
21 rely on my reports.

22 Q But your report is absent that?

23 A Correct, or most of it. There is an excerpt and
24 that's it. It is what it is, I guess.

25 Q Okay.

1 THE COMMISSIONER: Well, actually, there is the
2 one reference in A-24 about "that we hold off on
3 pursuing Zanidean".

4 MR. WOLSON: Yes, I see that.

5 THE COMMISSIONER: I just thought your last
6 question was inconsistent with that.

7 BY MR. WOLSON:

8 Q And then in B-14 it's "not pursue him at this
9 time".

10 THE COMMISSIONER: That's right. One is "hold
11 off", and the other is "not at this time".

12 BY MR. WOLSON:

13 Q So what I'm suggesting to the witness, or I'm
14 asking is, was the conversation to the effect
15 of: Hold off until after the trial?

16 A The conversations would be as recorded.

17 Q But you don't have them recorded, sir, that's
18 the whole point. You have parts of them
19 recorded, not all of them.

20 A The parts that are recorded are what they are.
21 I can't say any more than that. I mean they are
22 what they are.

23 Q Your view is that at no time did you volunteer
24 to hold off, as Anderson suggests you did. Your
25 view is that Anderson asked you if you would

1 hold off pursuing, that's a basic difference,
2 isn't it?

3 A Correct.

4 Q Now, you told Commission Counsel that after you
5 had this conversation with Anderson, you told
6 him at page 5 of your interview, the second
7 paragraph: "Burton recalls --" I will wait
8 until you get there.

9 A Okay.

10 Q The second paragraph of page 5?

11 A Correct.

12 THE COMMISSIONER: I'm sorry, which tab again?

13 MR. WOLSON: A-1, that's the conversation with
14 Commission Counsel. Page 5 of A-1,
15 Mr. Commissioner.

16 THE COMMISSIONER: Yes.

17 BY MR. WOLSON:

18 Q "Burton recalls that his October 27, 1990
19 conversation with Anderson immediately
20 aroused suspicions and that he went off to
21 Staff Sergeant Ferguson's offices and spoke
22 to him about his concerns."

23 That's true?

24 A Correct.

25 Q "His suspicions were based on Anderson's

1 manner of speaking."

2 A Correct.

3 Q What was his manner of speaking? Do you have a

4 note of it anywhere?

5 A No.

6 Q And you don't remember?

7 A Yes, I do.

8 Q You do remember?

9 A Yeah.

10 Q Well, what was his manner of speaking?

11 A He came across to me as a fast talker.

12 Q A fast talker?

13 A Yes.

14 Q And where did you make a note of that, at a

15 later time, to preserve it?

16 A I didn't.

17 Q So this is coming out for the first time 16

18 years later?

19 A Well, it's coming out here in my in-camera

20 testimony to the Commission Counsel.

21 Q That was 16 years after the fact?

22 A Correct. And they have recorded it here.

23 Q I see. So he sounded like a bit of a fast

24 talker, according to you?

25 A Correct.

1 Q And it was the manner of his speaking, it was
2 the content of the call. And the content of the
3 call was, from your position, a member of
4 another police service calls you. He says to
5 you that: We have information that Zanidean
6 admitted to arson with Driskell blowing up his
7 sister's house in Swift Current, and we have now
8 got Zanidean as a witness on a murder case,
9 would you hold off pursuing Zanidean? That's
10 the essence of the conversation that you've
11 noted, isn't it?

12 A And to keep it in confidence.

13 Q And to keep it in confidence?

14 A Correct.

15 Q And the content of the call aroused your
16 suspicion?

17 A Yes.

18 Q And just basic police instinct aroused your
19 suspicion as well, you noted?

20 A Correct.

21 Q Well, and right then and there, according to
22 your interview with Commission Counsel, your
23 suspicion -- I am reading halfway down the page,
24 the second paragraph of page 5, halfway down the
25 paragraph, your suspicion was that:

1 "The WPS homicide investigators had
2 promised Zanidean immunity on the Swift
3 Current arson in order to get his
4 evidence."

5 That's what you were suspecting?

6 A I don't know if it was exactly immunity, but
7 some kind of a deal that he not be charged, not
8 pursued, be given immunity, something of that
9 nature.

10 Q So based on that phone call, that was your
11 immediate suspicion or speculation?

12 A Speculation, correct.

13 Q So when the word you used was "your suspicion"
14 in page 5, it should be replaced with
15 "speculation"?

16 A That's fair.

17 Q Okay. And your additional speculation was, at
18 the bottom of the page,

19 "Once they learned that RCMP were actively
20 looking for Zanidean and considered him a
21 prime suspect, the WPS had a problem, so
22 Anderson had to ask Burton not to pursue
23 Zanidean."

24 A Correct.

25 Q That's an additional speculation. So you

1 speculated that from the -- I take it, based on
2 your 237 that you produced, that we've seen the
3 excerpt of it, it was a pretty brief
4 conversation?

5 A I don't recall how long. You mean the
6 conversation with Sergeant Anderson?

7 Q Yes.

8 A I don't recall how long that was.

9 Q Because if it wasn't brief conversation, then a
10 lot else would have been said that you can't
11 remember today?

12 A Well, the 237 is missing, so we only have the
13 one excerpt. But to ask me to then speculate on
14 the length or the content based on missing
15 documents, I cannot do.

16 Q As a matter of fact, you right away felt you
17 were being set up?

18 A Correct.

19 Q You don't think you were being overly
20 suspicious, then, as Staff Sergeant Ferguson
21 referred to you as an overly suspicious guy,
22 that you don't regard as being overly
23 suspicious?

24 A No.

25 Q No. Okay. Well, let me ask you, then, you are

1 a policeman, you told us this morning that you
2 learn from asking questions, that that's good
3 police work. Did you ask Anderson any questions
4 about what he was telling you? Did you, for
5 instance, say to Anderson: Well, Detective
6 Anderson, Sergeant Anderson, can you tell me how
7 us pursuing Zanidean would affect your
8 investigation? That's a pretty obvious question
9 to ask. Did you ask that?

10 A Again, I am relying on my records that remain.
11 And, again, I am not going to speculate on what
12 is or isn't in the missing reports from 16 years
13 ago.

14 Q You don't recall whether you asked a single
15 question?

16 A No.

17 Q Because there is no note anywhere when you give
18 your account on your -- your overview on
19 November 1991, your overview of the case, you
20 don't indicate that you asked any questions as
21 to how your investigation could interfere with
22 theirs?

23 A Correct.

24 Q It is not in there, you will give me that?

25 A Correct.

1 Q It is not in your account of 1992 when you
2 respond to Anderson, it's not in there, you will
3 give me that?

4 A I don't recall, but I will take your word.

5 Q It's not in there.

6 A Okay.

7 Q Because it seems to me that the most logical
8 thing in the world would be to ask some obvious
9 questions, that you as a police officer of eight
10 years would -- I mean, it would be just -- it
11 would be as natural as anything could be. When
12 you think about it today, you would agree with
13 me, wouldn't you?

14 A Again, I don't know the rest of the
15 conversation. The records are gone.

16 Q No. But you would agree with me today that
17 Anderson's request would call for necessarily
18 you or somebody asking some questions, would it
19 not?

20 A At some point.

21 Q Well, did you -- perhaps you were taken aback by
22 his call. Did you call him a day or two or five
23 or ten or twelve days later and ask those
24 questions? I don't think you did, did you?

25 A Again, the records are there.

1 Q Well, they are not there, that's the problem.

2 A Well, what's there is what we are going to have

3 to rely on.

4 Q What's there is incomplete --

5 A Correct.

6 Q -- from the RCMP's perspective, sir, is it not?

7 A Correct.

8 Q Did you take it to a higher source and say to

9 your superior, look it, I don't have the years

10 you do, Ferguson. Would you call the City of

11 Winnipeg and get to the bottom of this? That's

12 something, I think you would agree with me

13 today, might be reasonable under the

14 circumstances, would it not, sir?

15 A I don't know if I necessarily agree with all of

16 that. I mean, we responded. We received the

17 call. I'm content with the way we dealt with

18 it, so I am not going to say that I agree with

19 that. That's my answer.

20 Q Okay. Rather than ask a question, you just

21 assumed the worst?

22 A I speculated as to what --

23 Q You speculated the worst, rather than ask some

24 obvious questions?

25 A I don't follow your line there.

1 Q Well, the obvious question would be, sir, how
2 Mr. Anderson, Sergeant Anderson, would our
3 investigation interfere with yours? That's one
4 obvious question, is it not?

5 A Again, maybe that took place. I don't have the
6 records. I am not going to speculate.

7 Q Another obvious question would be, did
8 Mr. Zanidean make a statement, and if he did,
9 was it reduced to writing and signed by him?
10 Did you ask that question?

11 A I don't have the records. I know what's in my
12 records that remain and that's it so --

13 Q What remains is sparse?

14 A Yes. So, I mean, you can ask me those type of
15 questions. I can't answer them.

16 Q So as a final thought on that, and I am not
17 going to then belabour it further, as a final
18 thought, if it's not in your sparse records
19 today, you don't have a memory of that call?

20 A My memory is based on the records that are here.

21 Q And the records that are here, you've already
22 said, are sparse?

23 A Are incomplete.

24 Q Incomplete?

25 A Correct.

1 Q One of the complaints that you had of Anderson,
2 ultimately, was that he didn't tell you, when he
3 called you on October, you say the 27th, of the
4 existence of a body pack statement?

5 A Now, which document are you referring to?

6 Q Well, one of your concerns, you've uttered this
7 concern a number of times, and you uttered it to
8 Commission Counsel, I think it was at page 5 of
9 your statement, that you weren't told of the
10 existence of body pack --

11 A That's correct.

12 Q -- on the October call, right?

13 A Yes. That's in the May 2006 summary of my
14 interview.

15 Q Yes.

16 A And that appears to essentially be a quote from
17 the C237 of '91, July 19th.

18 Q And you can remember that today, that one of
19 your concerns, because you've read all of this
20 material, was that Anderson didn't tell you of
21 the existence of body pack evidence in October
22 when he spoke to you?

23 A I know because I read it in the record.

24 Q Okay. Do you know whether he knew that there
25 was any inculpatory remarks in the body pack in

1 October when he called you?

2 A I can't speculate about his knowledge. You are
3 going to have to ask him.

4 Q Sure. If you believe that one police force
5 should help another, and that's what you told us
6 yesterday, you accept that, don't you?

7 A Yes. I believe I referred to it as reciprocity.

8 Q Right.

9 A Correct.

10 Q Then why wouldn't you help Anderson when he
11 called you?

12 A I did.

13 Q You did?

14 A Yes, I did.

15 Q When he called you October, you say the 27th,
16 what help did you offer?

17 A I submitted his request through channels, as it
18 is documented here throughout the file.

19 Q And the channels came back that you couldn't
20 agree with his request?

21 A Well, there was a number of requests. There was
22 with regard to holding off on the investigation
23 and there was --

24 Q Well, let's talk about that one first. You
25 didn't do that, according to you? You didn't

1 hold off on the investigation, according to
2 you?

3 A Correct. Those are apples and oranges, though.
4 I made it clear to him, and it's clear
5 throughout the documents that we went through
6 yesterday, that his request, I agreed to submit
7 it through channels, but the investigation would
8 continue. I had no authority, as a junior
9 constable, to conclude a major criminal
10 investigation without authority from Regina.
11 That was covered extensively yesterday.

12 Q You were getting information, as time went on,
13 from a private investigator by the name of Brian
14 Savage?

15 A Correct.

16 Q Were you suspicious of what he told you?

17 A Again, I can only rely on the file. And I have
18 no indication in there of that. That's what I
19 am going to rely on.

20 Q He told you at one point that Driskell had worn
21 a body pack. Did you question him when he told
22 you that, that Driskell wore a body pack and
23 captured conversation with Zanidean? And that
24 Brodsky, the lawyer, had the body pack and would
25 get it to you. Were you --

- 1 A Okay. You are going to have to refer me to the
2 document. I am not prepared to admit things
3 without reviewing my records.
- 4 Q I'll come back to that. I have got it
5 highlighted, so we will come back to that.
- 6 A Sure.
- 7 Q When did you find out the so-called revenge
8 motive, that Zanidean said that the arson was
9 for revenge?
- 10 A Again, I would have to refer back to the
11 records.
- 12 Q When did you -- you see, I haven't seen a record
13 that indicates when you found that out. Do you
14 know when you found that out?
- 15 A Again, I would have to review the records.
- 16 Q Well, the records are incomplete.
- 17 A That may be so. But to give you an answer, I
18 would have to review the records to see if I
19 could answer that.
- 20 Q Let me ask you this, could it have been in the
21 October 27th call?
- 22 A I'm not going to speculate. I am prepared to
23 review the records we went through yesterday and
24 find an answer.
- 25 Q There is no record precisely of when you found

1 that out. So, therefore, I ask you, is it
2 possible that you found that out in the October
3 phone call from Sergeant Anderson?

4 A Again, I'm prepared to review the records and
5 give you an answer, but I am not going to throw
6 something out off the top of my head.

7 Q It's not in the records that we have, sir.

8 A Well --

9 Q Will you agree with me on that? If I tell you
10 that, will you agree with that statement?

11 A If you're telling me that that's the case, then
12 that's fine.

13 MR. CODE: Well, I think at some point
14 Mr. Wolson has got to take him to the records.
15 There are records that discuss the motive for
16 the arson. It is simply not correct to say
17 there are no records dealing with it.

18 BY MR. WOLSON:

19 Q Well, do you have a contemporaneous note of when
20 you found out about the revenge theory, do you
21 know?

22 A Again, I have to review the records to answer
23 that. So if you can take me to those, I would
24 be happy to look at them.

25 Q Well, let's look at the -- let's look at B-14.

1 In B-14, at page 3, you have a summary of the
2 October call. It's found in the last paragraph
3 of page 3 of B-14.

4 A Okay, got it.

5 Q Do you know whether or not, from reading that
6 summary -- because you've already told us that
7 there was much about the October 30th or 27th
8 call that is missing today?

9 A I don't think I said there is much. I just said
10 I don't know what's missing.

11 Q All right. Let's use your words, you don't know
12 what's missing?

13 A Correct.

14 Q Do you know whether or not, from reading this
15 paragraph at page 3, whether or not the revenge
16 theory was mentioned on the October call from
17 Anderson to you?

18 A I will just have to read it here. I don't know
19 from that record, no.

20 Q You don't know?

21 A No.

22 Q You next refer to it at page A-24, your
23 recollection of the call, at page 2?

24 THE COMMISSIONER: I'm sorry, I am missing the
25 gist of it here. But on that page that we were

1 just looking at, I see "revenge" referred to in
2 the sixth line from the top, seventh line from
3 the top. I see "revenge" referred to in the
4 sixth line from the bottom. Maybe I missed the
5 gist of the question.

6 BY MR. WOLSON:

7 Q Well, what I asked the witness was -- and look
8 at those two points that Mr. Commissioner has
9 referred you to.

10 A Correct.

11 Q Do you know whether or not -- from this
12 document, B-14, page 3, whether or not Sergeant
13 Anderson told you that there was a revenge
14 theory?

15 A No.

16 Q You don't know?

17 A What I know is on that date the revenge versus
18 economic motive was obviously known to me,
19 because I discuss it there on that date. When
20 prior to that it became known to me, again, I
21 would have to go through the records more
22 thoroughly.

23 Q Well, if it was known to you on that date, and
24 you didn't know anything about Mr. Zanidean
25 before that date in terms of any admission he

1 made, it must have come to light on that date?

2 A Again, I don't know that either without
3 reviewing the records.

4 Q Well, would you agree with me that you didn't
5 know anything about Zanidean committing an
6 arson, any admission from Zanidean, until you
7 were told by Sergeant Anderson, Ray Zanidean?

8 A On October 27 of '90, correct.

9 Q Right. So that would be the first time you were
10 made aware of it?

11 A Correct.

12 Q If, at that time, you knew that there was a
13 revenge theory versus a financial theory, then
14 you must have been told in that conversation
15 about the revenge motive of Zanidean?

16 A I can't get that out of my records, so I can't
17 agree to that, I'm sorry.

18 Q You can't say one way or the other?

19 A Correct.

20 Q The other record is found at A-24, page 2, where
21 you have an excerpt of your 237. But that's
22 just part of your 237, you've already told us.
23 I will wait until you get there.

24 A Okay.

25 Q There is nothing in there about the revenge

1 theory. But as you've told us before, you have
2 excerpted only -- it is just a part of the 237,
3 obviously?

4 A Correct.

5 Q Whether or not it was in the 237, the part that
6 we don't have, that isn't available today, you
7 can't say?

8 A Correct.

9 Q That's speculation?

10 A Correct.

11 Q While we're on that page, though, let me ask
12 you this question, you make a note at the top of
13 the page, and it's regarding the delaying -- the
14 request to delay the investigation. The
15 request, you say, comes from Anderson, right?

16 A Correct.

17 Q You make this note:

18 "As a matter of logical deduction, one
19 would have to wonder why I would offer to
20 delay our pursuit of Zanidean on the arson.
21 I had no knowledge of the circumstances of
22 the murder and would have no idea that
23 pursuing him would jeopardize their murder
24 prosecution."

25 A Correct.

- 1 Q You would have no idea unless you asked?
- 2 A Correct.
- 3 Q Did you ask?
- 4 A Again, the records are missing. We've already
5 covered that.
- 6 Q I see. What you -- ultimately, at the end of
7 the day, what you were concerned about, and
8 you've put it in a report, there was an apparent
9 conflict as between Zanidean's motive, that is
10 revenge, and your investigation, which you
11 thought the motive was not revenge, but it was
12 economic gain?
- 13 A Correct.
- 14 Q And, therefore, Zanidean would have not been
15 telling the truth about that?
- 16 A Correct.
- 17 Q You've read previously, because you had referred
18 to it in one of your memos, you had read the
19 cross-examination of Zanidean at some point when
20 he was cross-examined by senior lawyer Greg
21 Brodsky?
- 22 A You would have to refer me to that report.
- 23 Q Had you ever read the cross-examination of
24 Zanidean?
- 25 A Again, we would have to refer to the reports to

1 answer that. I don't recall.

2 Q You don't remember whether you read it or not?

3 A No.

4 Q Were you aware that when Zanidean testified on
5 the issue of immunity, Zanidean testified that
6 he expected to be charged for the arson, when
7 Zanidean testified in the murder trial, and that
8 there was no deal for immunity? Were you aware
9 of that?

10 A I have to refer to the record, but I think that
11 may be the case. But if you could refer me to
12 my records where it says that, I could confirm
13 that for you.

14 Q Well, it's a basic premise of your complaint, of
15 your concern, that this motive -- this dispute
16 as to motive, that's kind of basic to your
17 concern, wasn't it?

18 A Again, I believe what you are specifically
19 asking, that I did see that, but to confirm that
20 for you here, I would have to look back at the
21 records.

22 Q Okay. We'll do that in due course.

23 A Okay.

24 Q Now, I want you to look at tab A-25, please.

25 Tab A-25 is a memo that Sergeant Anderson wrote

1 to Inspector Johns regarding his entire
2 involvement with you on this matter, the
3 Zanidean matter. You've seen that memo because
4 that is the cause for you to write your response
5 at A-24?

6 A Correct.

7 Q Well, let's look at what he says, page 2, top of
8 the page:

9 "On the 30th of October, 1990, I telephoned
10 Burton and he confirmed that he was in
11 charge of the investigation."

12 Now, you take issue with the date, do you?

13 A Correct.

14 Q Did you confirm that you were in charge of the
15 investigation?

16 A Again, I can only rely on the records that I
17 have.

18 Q Were you in charge of the investigation?

19 A Yes.

20 Q "I discussed the situation with him. He
21 indicated the entire Zanidean family was
22 being interviewed with respect to the
23 arson."

24 Do you see that?

25 A Correct.

1 Q That's obviously a true statement because I've
2 looked at the file, and you've reviewed it
3 yesterday with Commission Counsel. You were
4 interviewing the entire Zanidean family?

5 A That's correct.

6 Q How would he know that if you didn't tell him?

7 A Exactly.

8 Q So you told him that?

9 A I'm assuming from his record.

10 Q But that doesn't appear in any of your records?

11 A Again, they're incomplete.

12 Q They're incomplete?

13 A Correct. Or they are missing, I should say.

14 Q Sure.

15 "He said",

16 this is again referring to Sergeant Anderson.

17 Line 4:

18 "He said there was no other evidence....",

19 he's talking about you.

20 "He said there was no other evidence

21 against Reath Zanidean at the time."

22 That's true, isn't it? You had nothing on Ray

23 Zanidean at the time? You had suspicions, but

24 no other evidence?

25 A Correct.

1 Q So you must have told him that? Where else
2 would he have gotten it from?

3 A Again, that's a logical conclusion. I am not
4 going to state that I recall telling him that.

5 Q Not only that, your records don't indicate that.
6 But you account that your records are
7 incomplete, or at least what we have today is
8 incomplete?

9 A I don't know that the records do or don't. I
10 just know that they are not complete.

11 Q Yeah.

12 "Constable Burton made a suggestion, to
13 which I readily agreed. He offered to
14 delay the pursuit of Zanidean until after
15 he testified at our trial."

16 Well, you disagree with that, and you've told us
17 that?

18 A Correct.

19 Q Last line:

20 "I told Constable Burton we had made no
21 deals with Reath Zanidean and would not
22 make him privy to this agreement."

23 So he told you that there were no deals. You can't
24 take issue with his statement that he says that?

25 A No.

1 Q Okay. Now, yesterday Mr. Code took you through
2 some documents. And he asked you whether or not
3 the documents were consistent with not pursuing
4 Ray Zanidean. Do you recall that?

5 A Correct.

6 Q Tab A-27. Now tab A-27 is important because,
7 for the first time, you have an inculpatory
8 comment which could be attributed to your
9 principal suspect, Hayek?

10 A Correct.

11 Q You have Doreen Williamson, at point 144 of the
12 tab, saying that she used words to the effect:
13 "she'd liked to burn the thing down", in
14 response to her building, right? The second
15 last line of 144:

16 "Hayek stated words to the effect she'd
17 like to burn the thing down."

18 A Correct.

19 Q And the thing that she was referring to was her
20 house?

21 A Again, I guess these are inculpatory, but they
22 are somewhat circumstantial.

23 Q As a matter of fact, even better, you had
24 somebody who heard that comment that Hayek had
25 made to Williamson and could corroborate it.

1 Because at 145, a lady by the name of Ann
2 Sirdar, S-I-R-D-A-R, said her exact words,
3 Hayek's words were,

4 "As far as I'm concerned, I'd like to blow
5 the fucking thing up."

6 A Again, I don't know if I classify that as
7 inculpatory or as circumstantial. Because it's
8 not like she said: I am planning to burn my
9 house, or that I did after the fact. I mean,
10 it's --

11 Q Well, these comments are made a few days before
12 an explosion. And we know there was an
13 explosion?

14 A Correct.

15 Q So if nothing else, they are very important in
16 your investigation?

17 A Correct.

18 Q Now, my friend asked you if this was
19 consistent with an agreement not to pursue
20 Zanidean. He asked you whether or not
21 continuing with the investigation of those two
22 people that I just read to you is consistent
23 with not pursuing Zanidean. And you said, no,
24 it's -- there was no agreement. You said that
25 yesterday, right?

1

2

(OFF THE RECORD DISCUSSION)

3

4

BY MR. WOLSON:

5

Q Mr. Code tells me he didn't ask that question.

6

I noted that he did. But in any event, let me

7

ask you this, pursuing these two -- speaking to

8

these two women is a pursuit of Carol Hayek,

9

isn't it? These two statements are attributable

10

to Carol Hayek?

11

A It's a pursuit of the investigation.

12

Q Right. Of Carol Hayek, in particular?

13

A Not necessarily. These women may have seen

14

somebody else or heard something --

15

Q But they didn't?

16

A We didn't know that until we talked to them.

17

That's why I wouldn't say that it is a specific

18

aspect of the investigation targeting her. It

19

is targeting the arson.

20

Q Okay. There's no question that Sergeant

21

Anderson didn't say to you, or you to him: Hold

22

off pursuit of the arson. It was hold off

23

pursuit of Zanidean, wasn't it?

24

A My records are what they are, and that's what I

25

am going to rely on. So if you want to refer

1 back to them, I can confirm what was said at the
2 time.

3 Q Well, let's look at B-14, page 3, last
4 paragraph:

5 "Sergeant Anderson explains Zanidean's
6 situation as a witness and requested that
7 he not pursue Zanidean."

8 A I'm sorry, what page are you at?

9 Q Page 3, last paragraph, about four lines from
10 the top:

11 "not pursue Zanidean."

12 You see that, don't you?

13 A Correct.

14 Q So it's clearly -- he didn't ask you, or there
15 was no discussion, about not pursuing the arson
16 case. It was Zanidean, in particular, according
17 to your note. And that's what you are relying
18 on, right?

19 A Correct. It's also in the C237 of '91,
20 July 18th at tab A-32.

21 Q Yes. It is "pursuit of Zanidean"?

22 A Correct.

23 Q Yes.

24 A Correct.

25 Q Now, tab 31A. Tab 31, that's the 31st of

1 January, 1991, correct?

2 A Correct.

3 Q You were asking for a lengthy diary date

4 awaiting police action, Winnipeg Police?

5 A Correct.

6 Q Instead of you would normally be required to do

7 something on the basis of every couple of weeks

8 or a month, you were asking for a lengthy

9 extension?

10 A Correct.

11 Q That is consistent with waiting until after the

12 trial of Mr. Driskell, which was to take place

13 in June of 1991?

14 A I was asked this yesterday. And I wasn't

15 sure --

16 Q But yesterday --

17 A -- of the reason.

18 Q If I tell you it was June 1991, you can accept

19 that?

20 A But what I said on this entry is I wasn't sure

21 the reason for the lengthy diary date request.

22 I don't have a memory of that.

23 Q Okay. But it is consistent with waiting until

24 after the trial. That's one interpretation, is

25 it not, sir?

1 A That's yours. I don't want to speculate on why
2 I put that there at the time.

3 Q Then at page 36 -- tab 36. A-36, 95/01/07, you
4 are asking for an extension until 91/06/30,
5 which happens to be after the trial of
6 Mr. Driskell, right?

7 A Correct.

8 Q Obviously, then, you are waiting until after his
9 trial?

10 A Again, I have to refer to the records. Because
11 I know at one point Inspector Preston gave
12 direction that we would await the outcome of the
13 trial. And we got a similar direction from
14 headquarters. So I would have to see where that
15 fell in the chronology to answer that.

16 Q I'll take you there shortly.

17 A Okay.

18 Q But reading that document is consistent with the
19 phone call of October 30th, or 27th you say, of
20 waiting to pursue Zanidean until after his
21 trial? That happens to be consistent, is it
22 not?

23 A I don't want to agree with that. I would like
24 to look at the records and see when I was
25 directed that we would wait until after the

1 trial.

2 Q Whenever you were directed, it's consistent with
3 the request, at least, that you were asked, you
4 say, on October 27th. That you can answer, I
5 take it?

6 A No. That may be, but I would like to look at
7 the records, please.

8 MR. CODE: If we are going to be fair to the
9 witness, it is in the immediately preceding tab,
10 what he is asking for.

11 BY MR. WOLSON:

12 Q And I am going to go there in a few minutes,
13 Mr. Code.

14 A So the answer is yes.

15 Q Yes. Yes, it's consistent with his request of
16 October 27th?

17 A No. Yes, I was given direction by my superiors
18 to await the outcome of the trial on April 16th,
19 '91.

20 Q Oh, you may have been given direction. But, in
21 effect, whether you were told by, whomever it is
22 you were told by, in effect, you were doing what
23 you say Anderson asked you to do, wait until
24 after the trial?

25 A No.

1 Q You weren't?

2 A I was doing what I was directed by my superiors
3 to do, period.

4 Q Did you ever -- in October '90, November '90,
5 December '90, January of '91, or February or
6 March, did you ever request to go to Winnipeg to
7 interview Mr. Zanidean?

8 A I have to review the records to see when that
9 request was made. I know it's in there, but I
10 don't know the date off the top of my head.

11 Q You made a request to go see Zanidean in
12 Winnipeg?

13 A Or, no, Driskell, sorry.

14 Q I'm talking about Zanidean, sir. Did you ever
15 make a request, or was there ever any discussion
16 about going to Winnipeg to interview Zanidean
17 after your phone call of October 27th with
18 Sergeant Anderson?

19 A The RCMP, myself attending?

20 Q Yes.

21 A No. We had asked Sergeant Mann from the
22 Winnipeg Police Service to do that.

23 Q And that wasn't working. You weren't getting
24 the results you wanted. You weren't getting an
25 interview with Zanidean. So if that wasn't

1 working, did you ever yourself, being the lead
2 investigator in the case, or Ferguson, being
3 your superior, was there a request to go to
4 Winnipeg to interview Zanidean? There wasn't,
5 was there?

6 A There wasn't. We were relying on Sergeant Mann
7 to do that.

8 Q Well, he wasn't doing it. You knew that?

9 A Well, the records speak for the progression of
10 events with Sergeant Mann, so we can review
11 that.

12 Q Did you ask the GIS in Winnipeg to go interview
13 Zanidean? That is did you ask the mounties --
14 you didn't even have to make a trip here. Did
15 you ask the mounties to go interview Zanidean?

16 A No.

17 Q I want to go to the April -- to the second call
18 that you had with Mr. Anderson, Sergeant
19 Anderson, which is April 5, I believe, is it
20 not?

21 A Can you refer me to the document and I'll look?

22 Q Well, I am going to first refer you to your
23 testimony yesterday where you did get an
24 April -- there was an April call between you and
25 Sergeant Anderson, was there not, sir?

1 A I believe there was on April 5th.

2 Q April 5th. And you said yesterday when you
3 testified the general tenor of that
4 conversation, this is your evidence yesterday,
5 was there was some kind of consensus or
6 agreement, subject to the approval of your
7 supervisors, to withdraw the pursuit of
8 Zanidean, always subject to the approval of your
9 supervisor?

10 A I don't have my testimony from yesterday. And
11 I am not even looking at the documents, so --

12 Q Do you remember yesterday? Do you remember what
13 you said yesterday?

14 A I'm not gonna --

15 Q I don't have the transcript of yesterday so --

16 A And neither do I. But if you want to refer me
17 to the document referring to that conversation,
18 I will be happy to look at it.

19 Q It was a question that Mr. Code had put to you.
20 And he asked you that question, and you answered
21 the question yesterday. Do you remember
22 answering the question?

23 A I don't pretend to remember everything I said
24 yesterday verbatim. So if we are going to hold
25 me to that, I would like to look at the document

1 and address what happened at the time based on
2 my records, if I could.

3 MR. CODE: Mr. Wolson is quite right that I did
4 ask that question. I asked it after putting the
5 document to him to refresh his memory.

6 BY MR. WOLSON:

7 Q Did you -- over the lunch hour, did you read
8 your two accounts? The one contained in book
9 B-14, which was your account, your overview,
10 November of 1991, did you read that over the
11 lunch hour?

12 A No. What I did over the lunch hour was I took
13 the four documents and the four tabs you were
14 referring to.

15 Q Okay.

16 A I excerpted the four specific quotes and wrote
17 them together on one page to get an
18 understanding of where you were going.

19 Q Okay. Then your two accounts, you might as well
20 open the books, take a look, are open at B-14,
21 page 4. And open tab 24 of A, page 2. You
22 might as well keep them open. Your first
23 account, which you gave in November 18 of 1991,
24 which is in B-4 -- 14, I should say -- is at
25 page 4, the first paragraph.

1 "On 91/04/05 Sergeant Anderson advised they
2 want to put Zanidean under the witness
3 protection program as individuals
4 associated with Driskell were trying to
5 kill Zanidean."

6 And then there is a line that's blocked out, blacked
7 out, you see that?

8 A Correct.

9 Q There is one line that's blacked out.

10 "Constable Burton submitted Sergeant
11 Anderson's request through the channels."

12 A Correct.

13 Q Let me stop you there then. There are four
14 lines in this account, three that we can read
15 and one that we can't, that deal with the call,
16 that relate to the call, true?

17 A In this document, yes.

18 Q And what you have there is very sparse
19 information. I'm not critical of you, but you
20 would agree with me, it's sparse?

21 A I would have to look at the original document to
22 agree with that.

23 Q Well, we don't have an original document. But
24 we have, again, in tab 24, A, which you have
25 your hand on, you refer to your -- three

1 quarters of the way down the page you refer to
2 your C237; right?

3 A Correct.

4 Q And that C237 was dated the 19th of April, two
5 weeks after the call?

6 A Correct.

7 Q So it's not a contemporaneous note. It's a note
8 prepared two weeks later?

9 A It may have been prepared as part of an ongoing
10 C237. There may have been other 1624s or C237s
11 that are now missing. I just can't say.

12 Q But the point is they are missing. We don't
13 have them. You haven't seen them. We don't
14 have them, as far as I know.

15 A If they existed, I don't have them here today.

16 MR. CODE: The earlier one is at A-32.

17 BY MR. WOLSON:

18 Q And your C237 of this date, under tab 24,
19 "On 91/04/05 call was received from Tom
20 Anderson of Winnipeg PS homicide unit. He
21 advised they wanted to put Ray Zanidean
22 under the witness protection program as
23 individuals associated to Driskell were
24 actively trying to kill him."

25 Which is very similar to what you wrote in your

1 overview?

2 A Correct.

3 Q "They had already located him in two
4 locations where he had been hidden. The
5 witness protection program in the D
6 Division advised they would not hide
7 Zanidean as long as the writer was actively
8 investigating him with the possibility of
9 charges pending."

10 A Correct.

11 Q Do you know whether that's your complete note in
12 your C237 of the April call, or is that an
13 excerpt?

14 A Well, you can tell it is because of the dotted
15 lines.

16 Q So it's an excerpt?

17 A Yes. You can see the three lines. And there is
18 the dotted lines, which means there is narrative
19 in between which is not there.

20 Q One moment, please. And Commission Counsel has
21 very kindly referred me to A-32, tab A-32. And
22 it is from your C237, and it's:

23 "The matter was discussed with Tom
24 Anderson. It was agreed the only viable
25 solution would be not to charge Zanidean.

1 His testimony against Driskell for the
2 execution would likely convict him. Once
3 convicted, Driskell would likely provide
4 evidence implicating Zanidean and his
5 sister Carol for the arson/insurance fraud
6 in order to get even. Hayek is the person
7 that orchestrated and stood to gain
8 financially from the offence" --

9 A I'm just not with you here.

10 Q I'm sorry. A-32, last page, page 5.

11 A Okay.

12 Q Rather than read it into the record, because
13 it's been referred to already, why don't you
14 take a quick read of those ten or so lines?

15 THE COMMISSIONER: That's paragraph 18?

16 MR. WOLSON: It's just above paragraph 18, sir.

17 THE COMMISSIONER: Oh, okay, the indented part.

18 THE WITNESS: Yes. I think we covered this
19 yesterday and were mentioning that some of the
20 part had been taken out at tab 24, it appeared
21 to be here.

22 BY MR. WOLSON:

23 Q Quite so. But what I wanted to do --

24 A At tab 32.

25 Q -- is, keep your hand on both spots, if you

1 will. I am going to ask you this question, your
2 eight or so lines at tab 24, you see those?

3 A Correct.

4 Q Dealing with the April call, there are about
5 eight lines or so there, right?

6 A The April 5th call?

7 Q That's right, sir. And then if you add that to
8 what you see at tab 32, page 5, there's about
9 ten lines there of the C237; right?

10 A Correct.

11 Q Those two together are your account of that
12 call, the April 5th call, that's what we have
13 today?

14 A That's what remains. I don't know if there was
15 more.

16 Q That's what I want to ask you. Do you know
17 whether there was more?

18 A I don't because that 237 is not here today.

19 Q And if there was more, we don't know what it
20 said?

21 A Correct.

22 Q And you don't remember?

23 A Correct.

24 Q So from those two, Mr. Code, when he questioned
25 you yesterday, said to you that the basic tenor,

1 the bottom line of the April call was that there
2 was an agreement or a consensus, subject to
3 approval by your superiors, that you wouldn't
4 pursue Zanidean?

5 A There was an agreement to submit that, but I
6 would submit that through channels and see what
7 came of it.

8 Q And as to the exact words of Sergeant Anderson,
9 you can't tell us today?

10 A I am just relying on what's in these reports.

11 Q And what's in their reports, you say, may be
12 incomplete in terms of there may be more that's
13 not here today?

14 A Correct.

15 Q Do you know how long you talked to Anderson that
16 day?

17 A No, I don't.

18 Q Do you recall the questions you asked Anderson?

19 A I am strictly relying on the records that
20 remain.

21 Q So other than stitching those two 237s together,
22 that's all you can say about that call?

23 A Assuming that's all that's here, then yes.

24 Q Yes. And if other things were said, you don't
25 remember?

1 A Correct.

2 MR. WOLSON: Perhaps you want to take the
3 afternoon break. I have been at it for a while.

4 THE COMMISSIONER: Yes. This is a convenient
5 time. We will break for 15 minutes.

6 THE CLERK: All rise. This Commission of
7 Inquiry is now in recess.

8 (Proceedings recessed at 3:25

9 and reconvened at 3:40)

10 THE CLERK: All rise. This Commission of
11 Inquiry is now recommenced. Please be seated.

12 BY MR. WOLSON:

13 Q Have you, Inspector Burton, had a chance to read
14 over your two accounts, the one at tab 24, A,
15 and the B-14 account? Have you had a chance to
16 read those over in the last little while? I'm
17 referring them to you. But have you actually
18 read those two accounts?

19 A 24, and what was the other one?

20 Q A-24, which was your 1992, January response to
21 Mr. Anderson's letter, and B-14, which is your
22 November '91 overview; have you read them at
23 all?

24 A I've read them prior to the inquiry. I can't
25 say that I've read them in the last day or so.

1 Q So you've read them? I didn't hear what you
2 said?

3 A I've read them prior to the inquiry in the last
4 little while, but I haven't read them in the
5 last day or two.

6 Q Okay. If we break tonight and you are still on
7 the stand, it would be very helpful if you would
8 read them so that at least I don't have to keep
9 going back to them over and over again. You
10 will have a recent recollection of them, if you
11 wouldn't mind, please?

12 A I think you will find I will probably refer to
13 them.

14 Q I'm sorry?

15 A I think you will find that I will refer to them.

16 Q Well, I'm happy if you do.

17 A Okay.

18 Q Now, when you were interviewed by Commission
19 Counsel, at page 8 of the interview, tab A-1,
20 page 8, the second -- I'll wait until you get
21 there. Are you there, page 8?

22 A Okay.

23 Q The second paragraph, sir?

24 A Okay.

25 Q About four lines down from the top of the second

1 paragraph:

2 "During their April 5, 1991 telephone
3 conversation...",

4 and that's the April 5th conversation that Mr. Code
5 was talking to you about, your call with
6 Sergeant Anderson; you realize that? Do you
7 realize that?

8 A Correct. That's the one partially referred to
9 in the C237s.

10 Q Yes.

11 A Correct.

12 Q So just to put you on the right track:

13 "During their April 5, 1991 telephone
14 conversation, Burton outlined for Anderson
15 the RCMP theory that the arson was
16 financially motivated and had been
17 orchestrated by Hayek."

18 Do you see that?

19 A Correct.

20 Q Where did you get that from? I can tell you
21 that I've read your accounts of this, the B-14,
22 the A-24, and I can't see it in there.

23 A I will have to look back through the documents
24 to -- I know there was a C237 where that was set
25 out, but I don't recall specifically which one.

1 I will have to refer to them.

2 MR. CODE: It's A-32.

3 BY MR. WOLSON:

4 Q Does the 91/04/05 excerpt of page 5 of A-32, is
5 that where you get that from?

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

14 A I don't know if there wasn't another reference
15 elsewhere. To be honest with you, I would have
16 to go back through the documents.

17 Q I don't believe there is another reference.

18 A Okay. I'll take your word for it.

19 Q Well, let me ask you, then, what did you tell --
20 what did you tell Sergeant Anderson on the
21 April 5th call?

22 A All I can relate to you today is what's recorded
23 here. I have no independent recollection of the
24 call.

25 Q Do you know what Anderson said to you, other

- 1 than what you've recorded?
- 2 A No.
- 3 Q You didn't record the entire call?
- 4 A I can't say that because the reports are now,
5 some of them are missing.
- 6 Q In what we have, we don't have the entire call?
- 7 A Correct. But that's two different questions.
- 8 Q Thank you, sir.
- 9 A Thank you.
- 10 Q So as a result of the call, where there was some
11 kind of understanding between you -- I am
12 talking about now the April call, the April 5th
13 call, there was an understanding between you and
14 Sergeant Anderson that, subject to your taking
15 it up the chain of command, you would not pursue
16 Zanidean, that's sort of the bottom line of it
17 all?
- 18 A Yes. We agreed that it was a logical thing,
19 subject to approvals.
- 20 Q And then did you take it up the chain of
21 command?
- 22 A Yes.
- 23 Q Did you raise it with Staff Sergeant Ferguson,
24 for instance?
- 25 A Well, it was documented.

1 Q Okay. Let me take you then to tab 24, your
2 overview. I'm sorry, your response to the
3 letter of Sergeant Anderson of the 8th of
4 October, your 1992 overview. You say at the top
5 of page 3 that:

6 "On April 11th, Ferguson made arrangements
7 to meet with Inspector Preston to discuss
8 this matter."

9 And I take it the matter, then, was the request that
10 had been the basis of the discussion between you
11 and Anderson?

12 A Correct.

13 Q The meeting took place on the 15th?

14 A Correct.

15 Q And on the 16th of April you are advised that
16 Inspector Preston spoke with Corporal Orr, who
17 advised that Zanidean is now under the witness
18 protection program and is out of province.

19 "After this trial he will be relocated
20 permanently. In view of this, the only
21 course of action open to us is to await the
22 outcome of the trial and evaluate the
23 situation then."

24 A Correct. And that's quoted from tab 35.

25 Q So basically what you were going to do now, the

1 instructions you received were to wait and see?

2 A Correct.

3 Q Don't do anything?

4 A As it pertains to Zanidean.

5 Q That's right.

6 A Correct.

7 Q Don't do anything as it pertains to Zanidean?

8 A Correct.

9 Q And that's what you were going to do then,
10 nothing, as it pertained to Zanidean?

11 A Correct.

12 Q Now, that was the -- you found that out on the
13 16th of April, 1991?

14 A Correct.

15 Q Were you aware that second in command of the
16 detachment, Orr -- second in command of the
17 detachment, Upton, had spoken to Orr on the 10th
18 or 12th of April, just a few days before this
19 meeting?

20 A I know I became aware of that at some point.
21 And it is documented in one of my reports, if
22 you can refer me to it?

23 Q Well, let me take you to Tab 33, A-33. There
24 may be an issue that will come up later about
25 the specific date, whether it is the 10th or the

1 12th, but the note that is recorded here is
2 April 12, 1991. This is Orr now making his
3 notes. You see that, do you?

4 A Correct.

5 Q 10:55 on that day,

6 "Call Swift Current detachment further to
7 my call of the 4th of April. At that time
8 I spoke to second...",

9 "2IC" is second in command,

10 "...Detective Sergeant Upton..."

11 A He means the second in charge of the detachment.

12 Q All right, Sergeant Upton?

13 A Correct.

14 Q "And explained the situation regarding
15 Zanidean as per the note in Part 7."

16 And we will hear later the note in Part 7 is the
17 application for witness protection. But just to
18 proceed,

19 "Zanidean and Driskell were probably
20 responsible for burning of Zanidean's
21 sister's garage. Sergeant Upton explained
22 that he would have Constable Burton, the
23 file investigator, call me. As there was
24 no call, I talked to Upton again."

25 Do you see that?

1 A Correct.

2 Q What Upton then says, according to Orr,
3 "Swift Current will be concluding their
4 file and Ray Zanidean is no longer wanted
5 for questioning."

6 Right?

7 A That's what it says.

8 Q If that's so, just a few days later there's a
9 different attitude or a different direction
10 taken; right?

11 A No. I mean, I'm not agreeing with what Corporal
12 Orr wrote there. I'm just saying that's what's
13 recorded there. I think we should be clear on
14 that.

15 Q Well, I am assuming Orr is telling the truth.
16 But he will come to this inquiry and he will
17 tell us that.

18 A Well, I --

19 THE COMMISSIONER: We can't -- I know earlier
20 you had sort of alluded to, in a question, as to
21 whether a witness was telling the truth or not,
22 and this witness can't comment on that.

23 MR. WOLSON: And you're right, I don't want to
24 ask him that, either.

25

1 BY MR. WOLSON:

2 Q You see this note?

3 A Yes.

4 Q If this is an accurate note, then all you can
5 say is -- if this is an accurate note, what you
6 can tell us is that within a few days of this
7 note, a different direction was taken by Swift
8 Current?

9 A What I was trying to say was that what I have
10 documented in the records that remain of that
11 call differs.

12 Q So I say to you again, if this note is
13 accurate --

14 A I guess my point is, the records that I have
15 would indicate that it's not.

16 Q Well, we will deal with Orr on that, but just
17 accept this statement for a second.

18 A Well, I'm not willing to accept the statement
19 because it conflicts with my records of the
20 conversation between those two officers, so I
21 can't --

22 Q Well, you weren't there when the conversation
23 took place?

24 A I can only rely on my records. I wouldn't be
25 comfortable answering questions on the premise

1 that this is an accurate record.

2 Q But you weren't there when the conversation took

3 place?

4 A Correct.

5 Q You agree with me?

6 A Correct.

7 Q So the only two parties who can tell us what

8 happened in that conversation, unless it's

9 recorded, would be Orr or Upton; right?

10 A Correct.

11 Q Orr says at tab 33:

12 "Swift Current will be concluding their

13 file and Ray Zanidean is no longer wanted

14 for questioning."

15 That's what Orr records of Upton's statement?

16 A Correct.

17 Q You see that?

18 A Correct.

19 Q You don't have to agree that that's accurate.

20 But if it were accurate, then Swift Current

21 would take a different position just a few days

22 later?

23 A Now we are into a hypothetical, and I'll just

24 say I am not comfortable with that at all.

25 THE COMMISSIONER: Yes.

1 BY MR. WOLSON:

2 Q All right. Let me approach it from this point
3 of view. What you do know is that Swift Current
4 took a position, through Preston, that we have
5 read just a few minutes ago, that you were going
6 to do nothing regarding Zanidean until after the
7 trial and you would assess it then?

8 A I would just like to refer to Inspector
9 Preston's note. I think if you refer to his
10 note at tab 35, his direction was that:

11 "The only course of action open to you now
12 is to await the trial outcome and evaluate
13 the situation then."

14 He didn't say to do nothing, so I guess I will
15 take issue with that.

16 Q You are referring me to tab 35?

17 A Tab 35 is the internal A-5 memorandum that
18 Inspector Preston directed to Staff Sergeant
19 Ferguson and, in turn, it was passed on to me.

20 Q So we do know that Preston's view was that,
21 "It would seem the only course of action
22 open to you now is to await the trial
23 outcome and evaluate the situation then."

24 Right?

25 A Correct, that's what it says. But it doesn't

1 say do nothing.

2 Q Well --

3 A So I don't want to -- I don't want to agree to
4 that.

5 Q Okay. So, in effect, you are in a holding
6 pattern?

7 A In terms of the investigation, no, it continued
8 to move forward.

9 Q In terms of Zanidean?

10 A In terms of Zanidean, we were relying on
11 Winnipeg Police Service to assist us with the
12 investigation of Zanidean, in terms of the
13 transcripts, in terms of the interview, in terms
14 of the checks at the hospital.

15 Q Let me ask you this, did you -- I take it that
16 Preston is superior to you in terms of rank?

17 A Correct.

18 Q You take direction from him?

19 A Correct.

20 Q His direction was, as stated at tab 35.

21 "The only course of action open to you now
22 is to await the trial outcome."

23 Did you follow that direction?

24 A Yes. And I think that's all relating to the
25 whole issue of the Source Witness Protection,

1 which was --

2 Q Did you follow the direction?

3 A Correct. And as I say, that relates to the

4 Source Witness Protection. To expand that to

5 say that we did nothing on the investigation, I

6 am not willing to agree to that.

7 Q Okay. Were you aware of Preston's conversation,

8 other than what you have noted? We see it at

9 Tab 34, Preston's conversation with Orr, as

10 recorded by Orr. Were you aware of this? Is

11 that something that Preston talked to you about?

12 A Now you're talking about --

13 Q Tab A-34?

14 A Okay, that's Corporal Orr's?

15 Q Yes.

16 A I didn't see these until just the other day.

17 Q Were you briefed by Preston as to his

18 conversation with Orr?

19 A I was provided the A-5 at tab 35.

20 Q So that's what you have from that?

21 A Correct.

22 Q Now, in your interview with Commission Counsel

23 at page 9, A-1, did you tell Commission Counsel

24 that you don't recall ever talking to Orr?

25 A Correct. I still don't.

1 Q Now, at tab 37 you generate a report dated the
2 25th -- or the 28th of May, I should say?

3 A Correct.

4 Q And at that time you make a note on the first
5 page, paragraph 2:

6 "Savage is a private investigator that is
7 presently employed by Driskell's defence
8 counsel."

9 A Correct.

10 Q "About a month ago Savage called Burton
11 and advised that Driskell told him the
12 following: Ray Zanidean hired Driskell to
13 drive him to Swift Current to burn a house
14 owned by Zanidean's sister that lives in
15 Edmonton. Hayek cleaned the house out just
16 before the fire. Hayek gave a key to the
17 house to Zanidean, and Driskell and
18 Zanidean made it look like a break and
19 enter to the house and used gasoline as an
20 accelerant."

21 Now, if that information is true, that, of course,
22 supports your investigation that this was an
23 arson for money?

24 A Correct.

25 Q And at tab 3, or point 3 of the second page,

1 Savage calls you on the 28th of May and he tells
2 you,

3 "Driskell was willing to give a statement
4 now, provided he was granted immunity from
5 prosecution for the arson. If a statement
6 was not taken before 91/06/03, then he
7 would give one after his trial, which is
8 expected the last two weeks."

9 A Correct.

10 Q So you are hearing things that -- even a month
11 before this document, according to what you've
12 written in there, you are hearing things from a
13 private investigator from Greg Brodsky about
14 evidence that may help your investigation?

15 A Correct.

16 Q So now you've got, in effect, a request for
17 immunity for Zanidean through Sergeant Anderson,
18 right? That was as a result of the April 5th
19 call?

20 A Correct.

21 Q You've got a request by Mr. Driskell's counsel,
22 or investigator for his counsel, for immunity
23 for Driskell if he would cooperate; right?

24 A Correct.

25 Q And all the while you have a very serious arson?

- 1 A Correct.
- 2 Q An immunity from prosecution, you would agree
3 with me, is something that you have to run
4 through the channels?
- 5 A Saskatchewan Justice.
- 6 Q Yeah. You have to take it upstairs?
- 7 A It goes through the senior management of the
8 RCMP criminal operations and then to
9 Saskatchewan Justice, if they support it.
- 10 Q Did you do that regarding Zanidean? Did you
11 run it up the channels to see whether or not
12 Zanidean was going to get some kind of
13 immunity?
- 14 A I think if you refer back to the documents we
15 were just looking at, that it went up to
16 Inspector Preston.
- 17 Q Yes.
- 18 A And we met with him. And he said that he was
19 led to understand that he was already in the
20 program, and that we would await the outcome of
21 the trial.
- 22 Q So no decision was made; right?
- 23 A Correct.
- 24 Q But you were apprised that he was already in the
25 program?

1 A I wasn't. Inspector Preston was.

2 Q And you ultimately heard that from Preston, did
3 you?

4 A I would have received his A-5, the one at tab
5 35.

6 Q So that was communicated with you?

7 A It was shared with me, yes.

8 Q Were you aware then that if somebody is in the
9 witness protection program, they could still be
10 charged with a criminal offence?

11 A I think if you refer to my statement to
12 Commission Counsel, or the summary of my
13 evidence, I indicated there that I wasn't
14 familiar with the Source Witness Protection
15 Program, and just accepted what was told to me
16 by -- let me just look at it. I can't recall.

17 Q You accepted what you were told by Sergeant
18 Anderson?

19 A I will have to look at it. At the bottom of
20 page A, tab A-1, the bottom of page 8, top of
21 page 9.

22 Q Your statement, yes?

23 A Well, the summary of my evidence.

24 Q Yes.

25 A It said -- well, it's really that whole

1 paragraph at the bottom of 8 and then it runs
2 into 9.

3 Q But, in effect, what you're saying is you
4 accepted what you were told?

5 A Yeah. What I say at the tail end of that
6 paragraph at the top of 9 is that it says:

7 "Burton had no experience with the witness
8 protection program and simply accepted what
9 Anderson and Preston told him. Burton does
10 not recall ever speaking to Orr."

11 Q Do you know whether or not somebody who is --
12 let's say if somebody -- from your policing at
13 the time, did you know if somebody was a stool
14 pigeon or gave informant evidence, did you know
15 about that? Had you encountered that before,
16 informant evidence?

17 A Yes. But Source Witness Protection I had never
18 dealt with before.

19 Q Okay. And did you know that if somebody who --
20 if an informant gives evidence and he later goes
21 to jail, he can be put in a segregated part of
22 the jail. Did you know that?

23 A Actually, I recall reading that in the documents
24 here. Corporal Brian Scowby from criminal
25 operations --

1 Q Yes.

2 A -- had mentioned that.

3 Q You didn't know that about segregation and about
4 putting somebody who would be in danger of the
5 prison population, did you know that?

6 A I don't know if I did or not, but I know that I
7 read it in here.

8 MR. WOLSON: All right. I just need one minute,
9 Mr. Commissioner.

10 THE COMMISSIONER: Certainly.

11 BY MR. WOLSON:

12 Q Do you recall calling Orr in Winnipeg?

13 A Well, as I just said previously, I have no
14 recollection of ever speaking with him.

15 THE COMMISSIONER: I'm sorry, I didn't hear the
16 name?

17 THE WITNESS: Corporal Tom Orr, who was the
18 witness protection fellow in Winnipeg.

19 BY MR. WOLSON:

20 Q Would you please look at tab 39, please, the
21 second page of tab 39, please? This is officer
22 Orr's notes, 91/05/30, 11:00:

23 "Call received from Constable Ross Burton,
24 Swift Current, who advised that..."

25 Do you see that?

1 A Correct. I see it.

2 Q "...who advised that there would be no
3 proceedings against Zanidean, either as a
4 witness or an accused, if he's accepted
5 into the program."

6 Did you say that to Officer Orr?

7 A I have no recollection of that and no record.

8 Q You don't take exception to that if Orr has it
9 in his notes?

10 A Yes.

11 Q You do?

12 A I have no record of that and I have no
13 recollection of ever speaking with him.

14 Q Are you telling this inquiry that you did not
15 call Orr and tell Orr what Orr has noted here:

16 "There would be no proceedings against
17 Zanidean, either as an accused or a
18 witness, if he is accepted into the
19 program"?

20 A I said I had no record of that and no
21 recollection of that. And this was brought to
22 my attention by Commission Counsel. And I
23 still have no recollection of ever speaking to
24 Tom Orr. That's the best answer I can give
25 you.

1 Q First of all, that would be contrary to the
2 instruction you received from Preston; right?

3 A I would have to look at when I got that
4 direction.

5 Q You got the direction from Preston in mid-April?

6 A Of '91?

7 Q Yes.

8 A Then it would be contrary, yes.

9 Q You would have had no authority to make this
10 call, if it's true?

11 A Correct.

12 THE COMMISSIONER: Just refresh my memory as to
13 what the direction was from Ferguson?

14 MR. WOLSON: The direction was to wait until
15 after the trial.

16 THE COMMISSIONER: Okay.

17 THE WITNESS: At tab 35.

18 THE COMMISSIONER: Yes, okay.

19 BY MR. WOLSON:

20 Q So it's absolutely contrary to what -- if this
21 call were made, if this is accurate, it's
22 totally contrary to what instruction you were
23 given; you agree with that?

24 A Correct.

25 Q At the present time the note records:

1 "They have an admission from Driskell that
2 Zanidean's sister set up the arson by
3 providing the key and suggesting the B&E."

4 Do you see that?

5 A Yes.

6 Q That's information that you had learned just two
7 days earlier from Savage, the investigator for
8 the prosecutor, right?

9 A Correct.

10 Q Orr says you told him that. You see it there,
11 do you?

12 A Correct.

13 Q "She had also cleaned out the valuables."
14 That's something you had learned two days
15 earlier from Savage?

16 A Correct.

17 Q Or you may have learned it at -- well, you made
18 a report of it two days earlier, the report that
19 I referred you to just a little while ago?

20 A Correct.

21 Q How else would Orr know that if you didn't tell
22 him?

23 A You'll have to ask him.

24 Q We will.

25 "This info was coming from ex-Staff

1 Sergeant Savage,..."

2 the note continues. That is who you got that
3 information from?

4 A Correct.

5 Q "...who was looking for Zanidean for
6 Driskell's lawyer."

7 Right?

8 A Correct.

9 Q "Constable Burton requests that the info
10 on the charges not being laid for Zanidean
11 be withheld from everybody else as they
12 would really like to obtain the statement
13 from Driskell and nail the sister."

14 Did you make that statement, those statements?

15 A I have no record of that statement and no
16 recollection of ever having spoken to Tom Orr,
17 ever.

18 Q Again, it would be totally contrary to the
19 direction you were given?

20 A Correct.

21 Q And if you did this, it would be not in keeping
22 with RCMP rules, a rule-driven organization?

23 A Actually, it would be insubordination.

24 Q Yes. There is nothing in that about that call
25 in either of your two accounts, the

1 November 1991 account, the overview. You can
2 accept when I tell you the May 30th call is not
3 in your 1991 November overview account found at
4 B-14?

5 A Okay.

6 Q It's not in your tab A-24 response to --
7 January 1992 response to Sergeant Anderson, not
8 in there either?

9 A Okay.

10 Q If Orr never made a note of that, we would never
11 know it, because you don't refer to it anywhere,
12 do you?

13 A Correct.

14 Q As a matter of fact, take a look at tab 24,
15 A-24, page 3. It's your note, page 3, third
16 line from the top.

17 "As an experienced investigator, one would
18 have to wonder why I would, in effect,
19 grant immunity to Zanidean, as Sergeant
20 Anderson claims, when I obviously know I
21 had no such authority."

22 Do you see that?

23 A Correct.

24 Q Now, Sergeant Anderson had claimed in his letter
25 of October 1991, that's at the previous tab, he

1 had claimed that you had volunteered, he never
2 asked, you volunteered to grant immunity to
3 Zanidean. You recall his claim?

4 A Correct.

5 Q And you're responding to his claim here when you
6 say, as you've said,

7 "As an experienced investigator, one would
8 have to wonder why I would, in effect,
9 grant immunity to Zanidean as Anderson
10 claims when I would obviously know that I
11 had no such authority. The fact that I
12 requested a meeting with my superiors to
13 discuss the possibility of requesting
14 immunity is ample evidence of that fact.
15 I have attached a copy of A-5 received from
16 Inspector Preston which confirms the
17 contents of the last two paragraphs."

18 A Correct.

19 Q So really what you're saying here is you never
20 carte blanche granted immunity to Zanidean in
21 your conversation with Sergeant Anderson on
22 April 5th?

23 A Correct. Just that I would submit it through
24 channels.

25 Q And you are saying now, as well, you never

1 granted immunity subject to him being accepted
2 into the witness protection program in a comment
3 to Orr on May 30th?
4 A Correct.
5 Q But they both suggest you did?
6 A Okay.
7 Q And in the case of one of them, there is a
8 contemporaneous or a fairly contemporaneous
9 note?
10 A Correct.
11 Q Now, I know that you are suspicious of the
12 Winnipeg Police Service because you've told us
13 that already?
14 A Correct.
15 Q You were suspicious of Anderson right from day
16 one?
17 A Correct.
18 Q Fast talking Tom Anderson, right?
19 A Correct.
20 Q You were suspicious of the now Chief Ewatski and
21 Inspector Hall when they came to see you. You
22 had some suspicions of them, too?
23 A I don't know if -- I was more speculating on
24 where Winnipeg Police Service was going with the
25 whole matter. I think I would have to look at

1 my comments.

2 Q Well, you were uncomfortable with them because
3 they came at a time when you weren't expecting
4 them? You have already told us that.

5 A Well, that's two different things, though, being
6 suspicion of them and being uncomfortable with
7 them coming early.

8 Q But, in general, you said you were suspicious of
9 the Winnipeg Police Service. I don't have the
10 transcript of that, but you said that?

11 A I would like to see that.

12 Q Well, I don't have the transcript of that, so I
13 can't tell you. But are you now suspicious of
14 Tom Orr, who makes a comment that you say didn't
15 happen? He's RCMP, isn't he?

16 A I think you'll find in the file that's been
17 faxed down here, that's going to be disclosed to
18 the counsel here I believe tomorrow, that I
19 comment on that there. So why don't you --
20 again, I will let my records speak for
21 themselves on that issue. You'll have them
22 tomorrow.

23 MR. WOLSON: Mr. Commissioner, I'm obviously,
24 then, going to need those records to continue my
25 cross-examination. It's almost 4:30. This is

1 an important point, and I want to continue with
2 this point.

3 THE COMMISSIONER: Yes. It's important. It's a
4 simple point, though, was he suspicious of Orr
5 as well.

6 BY MR. WOLSON:

7 Q Oh, not that. He says he comments on Orr -- let
8 me ask you. Is that right, do you comment on
9 the 30th of May phone call between --

10 A No. I was never aware of that.

11 Q Okay. I'm sorry, I thought he was.

12 A I can say generally, if you don't hold me
13 verbatim as to what I said in there. I said,
14 upon seeing the records, which I just saw in the
15 last month and a half or so when I received
16 them, and having reviewed the records and seeing
17 the limited information I did on Tom Orr's
18 actions, in one of the C237s that went up
19 recently, I recommended that D Division RCMP,
20 meaning Winnipeg, may want to look at the
21 material and become involved in the inquiry,
22 because I felt that the documentation that I had
23 seen, which did not include these 1624s, was
24 going to portray Corporal Orr in a very poor
25 light. And that was the first knowledge I had

1 in terms of Corporal Orr. And then I saw these
2 1624s you're referring to here just in the last
3 few days.

4 Q So you say -- are you saying -- I may have
5 mistaken what you said. If you turn to tab
6 39-A, the 91/05/30 phone call he purports to
7 have, the phone conversation that he purports to
8 have with you, that that's going to put him in a
9 bad light?

10 A I looked at the documents which were available
11 to me. And this 1624 I did not see until I got
12 these materials two days ago. I was made aware
13 by the Commission Counsel that Mr. Orr was
14 claiming that he had spoken with me.

15 Q Yes.

16 A But I hadn't seen this. But based on the
17 documents I saw in the materials that I had back
18 about a month and a half ago, on those alone I
19 was of the opinion that the Manitoba RCMP may
20 want to look at this because I felt that
21 Corporal Orr was going to be portrayed in a poor
22 light.

23 Q Either that, or you're portrayed in a poor
24 light, based on the 91/05/30 phone call that he
25 purports to have with you where, in effect, you

1 grant de facto immunity, subject to him,
2 Zanidean, getting in the witness protection
3 program?

4 A I will let the commission decide on that.

5 Q Sure. You were aware that Sergeant Ferguson
6 attended to Winnipeg to take a statement from
7 Mr. Driskell?

8 A Correct.

9 Q Did you give that statement to the Winnipeg
10 Police Service?

11 A I can't recall.

12 Q Or to the prosecutions in Manitoba?

13 A I can't recall.

14 Q Have you ever seen a document to that effect,
15 that it was sent to Winnipeg, in your review of
16 the documents that you've seen?

17 A Again, I would have to review the documents to
18 answer that. I'm not going to fire off an
19 answer off the top of my head. It may or may
20 not be. But I could tell you if we look through
21 the document.

22 Q I'm going to suggest, and I could be wrong on
23 this, but I haven't seen that kind of document.

24 A Well, I mean, anything that was sent to them
25 went through Mr. Quinney's office, Saskatchewan

1 Justice. So I guess, really, you are asking the
2 wrong person.

3 Q I see. Okay. So what would have happened was
4 you would have sent -- if somebody did send
5 Mr. Driskell's statement, it wouldn't go to
6 Winnipeg directly, it would go to Quinney --

7 A It would go --

8 Q -- or Saskatchewan Justice?

9 A It would go Sask Justice to Manitoba Justice,
10 correct.

11 Q If there's a charge forthcoming, let's say on an
12 arson case, does the prosecutor get the A file?
13 Now you have an A file, which is the detachment
14 file, and you have a protected B file, which is
15 a more secure document; true?

16 A Correct.

17 Q Does the prosecution get the A file?

18 A Are you talking back then?

19 Q Yes?

20 A Back then what we did on trials was prepared a
21 court brief, which was the responsibility of the
22 investigator, and that's what was presented to
23 the prosecutor.

24 Q I see. So they wouldn't get the A or the B
25 file. They would get a synopsis from you -- you

1 being, let's say, a police officer on a case?

2 A Correct. Unless they asked to look at the file,
3 in which case they would.

4 Q And if they asked to look at the file, would
5 they get the B file or the A file?

6 A They would get whatever they asked for.

7 Q I see. Now, at tab 44 you wrote a report.
8 A-44, that's your report, July 7th of '91?

9 A Correct.

10 Q And in this report, you start off at page 1.2,
11 paragraph 2:

12 "The writer has been assigned this file ten
13 days after the original offence and I have
14 been the sole investigator since."

15 You add an exception, that is Ferguson going to get a
16 statement from Mr. Driskell. And then you say:

17 "I've reviewed this entire file, bearing in
18 mind Staff Sergeant Ferguson's
19 investigation report of 91/07/04."

20 A Correct.

21 Q And then when you look at paragraph 3, page 2,
22 you say:

23 "I must, first of all, state that until I
24 read Staff Sergeant Ferguson's
25 investigation report of 91/06/30, I was not

1 aware that there was a house party in
2 progress next door to Hayek's house. This
3 was not stated anywhere in the initial
4 updates provided me when I assumed the
5 file. This fact causes me now to view this
6 file from a different perspective."

7 Do you see where I'm reading from?

8 A Correct.

9 Q "The explosion in Hayek's house sent
10 flying glass and debris into the
11 neighbouring yard. In addition, the
12 intense fire that followed almost ignited
13 the neighbouring house. This house was
14 only saved by the quick action of a fire
15 officer. Had this house..."

16 I am leaving a line or two out, it is not relevant.

17 "Had this house full of intoxicated people
18 caught fire, we could have had a multiple
19 homicide as opposed to an arson. The fact
20 that Driskell and Zanidean set this house
21 on fire under these circumstances further
22 demonstrates their total lack of concern
23 for human life, which they have already
24 shown by virtue of their having executed a
25 Crown witness, as outlined previously.

1 Under these circumstances I do not feel
2 that it would be morally or judicially
3 prudent to grant immunity to either of
4 these individuals at this time. Further,
5 I don't feel it is necessary to grant
6 immunity to either of them, as I shall
7 explain."

8 A Correct.

9 Q So one year after the fire, you take a different
10 view of the fire because there were some drunks
11 at a house in close proximity to the fire and
12 there could have been multiple homicides?

13 A Correct.

14 Q What difference would it have made if there had
15 been a man and a woman and two children sleeping
16 in the house next door? Because you would
17 expect that at 3:00 or 3:30 in the morning
18 people would be sleeping. What difference would
19 that make?

20 THE COMMISSIONER: Well, I'm not sure that's
21 really a fair interpretation. First of all, he
22 doesn't say "drunks", he says intoxicated. But
23 I read that as meaning they are being
24 vulnerable.

25 MR. WOLSON: Oh, absolutely, absolutely.

1 THE COMMISSIONER: So that's --

2 MR. WOLSON: Anybody at 3:00 in the morning --
3 let me put it this way.

4 THE COMMISSIONER: Just one second. What's your
5 point?

6 BY MR. WOLSON:

7 Q Well, my point is this, and I will make it to
8 the witness, at this hour of the night, anybody
9 in a neighbouring house would be vulnerable,
10 wouldn't they?

11 A In these circumstances, these individuals, I
12 would say, much more so.

13 Q If people were sleeping, they wouldn't be
14 vulnerable if there's an explosion?

15 A Well, less so than a house full of drunks that
16 are wandering in and out of the yard.

17 THE COMMISSIONER: I guess I still wonder,
18 excuse me for being a bit impatient, but what's
19 this furthering?

20 BY MR. WOLSON:

21 Q Well, this furthers this, sir, one year after an
22 arson, you've now come to a different conclusion
23 that the arson is more serious?

24 A Correct.

25 Q That would be totally inconsistent, by the way,

1 with your May 30, '91 call.

2 A Which call is that?

3 Q The call to Orr where you, in effect, are
4 suggesting to Orr that Swift Current is granting
5 de facto immunity to Zanidean if he is in the
6 witness -- if he gets into the witness
7 protection program. This kind of statement is
8 totally opposite that, isn't it?

9 A I've never acknowledged that call, that it took
10 place. In fact, my records indicate the
11 opposite.

12 THE COMMISSIONER: Again, that's more like a
13 submission, Mr. Wolson. His recollection is he
14 never made that call and they never spoke to
15 Orr.

16 MR. WOLSON: I understand what he's saying.

17 BY MR. WOLSON:

18 Q But now what you're doing, as of this date, as
19 of the 7th of July, you are now taking a
20 particularly hardline view on this arson,
21 because of this revelation?

22 A When you say "hardline", that's such a
23 subjective term that I am reluctant to agree to
24 it. I said what I said in the report. I guess
25 take it as it is.

1 Q And then you have, at page 3 of that report,
2 paragraph 5(c), you have at the top:

3 "I would suggest the following course of
4 action: C) A transcript should be obtained
5 of conversations between Zanidean and
6 Driskell which was taped by Driskell who
7 was wearing a body pack recording device.
8 Driskell's legal counsel Brodsky indicated
9 to Staff Sergeant Ferguson that they would
10 provide this in good time. Apparently in
11 this conversation Zanidean advises Driskell
12 he can't pay him for the arson because
13 Hayek hasn't got any insurance money."

14 Do you see that?

15 A Correct.

16 Q Did you ever get that kind of tape?

17 A The one that we thought was made by Driskell?

18 Q Yes?

19 A No.

20 Q And is the one that was made by Zanidean, that's
21 not what it says either, is it? What Brodsky
22 had been feeding you is not what the tape says?

23 A Well, first of all, there was confusion. And
24 there wasn't a tape, apparently, done by
25 Driskell. There was two by Mr. Zanidean. And

1 if you follow the documentation through, that's
2 clearly resolved.

3 Q Yes.

4 A Secondly, though, the narrative that is related
5 of what took place in the actual tape, once that
6 was sorted out, this narrative here, to my
7 mind --

8 Q Is different then?

9 A No. It accurately reflects what we eventually
10 found was in the transcript.

11 Q That he can't pay him for the arson because
12 Hayek hasn't got the insurance money, that's
13 what's in the tape?

14 A Again, we can refer to that. But there was a
15 discussion about they were both owed money and
16 that she hadn't paid him, that was the general
17 gist of it.

18 Q Okay. We will come to that in a short, in a few
19 minutes.

20 You were going to try and confront Hayek
21 again with the comments of Williamson and
22 Sirdar, tab 5(e)?

23 A Confront Hayek?

24 Q Yes.

25 A What I am saying there is approach them and try

1 to have them consent to having us disclose these
2 to Hayek. Because if you look back to the
3 original 1624, they didn't want --

4 Q They were reluctant?

5 A Yeah.

6 Q And what you said was you wanted to have Hayek
7 confronted with this information, that was your
8 goal?

9 A Well, I wanted to get them to consent to allow
10 us to do that, is what that paragraph says.

11 Q At that point, at point number 6 on the next
12 page, you thought this was an overwhelming case
13 against Hayek?

14 A In theory, if all of those things fell together.

15 Q I am going to suggest to you that you did, in
16 fact, tell Tom Orr what Orr says you told him on
17 May 30th. You say that's untrue?

18 A I've already said I have no recollection or
19 record of that.

20 Q You say it's untrue?

21 A I just gave my answer.

22 THE COMMISSIONER: You know, I'm not sure if you
23 are not just asking the question, the other end
24 of it, is Orr telling the truth? He has made it
25 very clear, at least I clearly understand him to

1 say that he has no recollection of ever speaking
2 to Orr, that he has no recollection of ever
3 having said those things.

4 BY MR. WOLSON:

5 Q I understand what the witness has said. But I
6 have certain positions that I want to put to him
7 for his response, and he can deny them if he
8 likes.

9 I'm going to suggest to you that you made a
10 mistake telling Orr that you were granting de
11 facto immunity to Mr. Driskell?

12 A That's a hypothetical based on something that I
13 am not acknowledging. I am just not willing to
14 go there.

15 Q And I'm going to suggest to you that what you
16 were now doing was covering your tracks, having
17 made a mistake?

18 A Again, that's your theory and I'm not going to
19 respond to it.

20 Q You disagree with those?

21 A I'm just not responding to it. It's a theory.
22 It's not a question.

23 MR. WOLSON: Mr. Commissioner, I have some more
24 to go. But having regard to your comments, I'm
25 certainly not looking to beat a dead horse, in a

1 manner of speaking. If perhaps overnight I can
2 review what I have and finish off tomorrow?

3 THE COMMISSIONER: Yes, that's fine. And we
4 will adjourn until tomorrow morning at 9:30.

5 MR. CODE: Mr. Commissioner, I canvassed counsel
6 in light of the fact that we are going to lose
7 an hour on Thursday, as to whether they are
8 willing to start a half hour early for the next
9 two mornings based on our discussions and nobody
10 objected. So I am suggesting that we proceed at
11 9:00 for the next two mornings to make up the
12 lost time. I think everybody's on side, if
13 that's agreeable.

14 THE COMMISSIONER: Well, I would be most
15 grateful if that were done, and I do appreciate
16 it. And so if that's agreeable, then we will
17 start at 9:00 tomorrow and Thursday. And I do
18 appreciate your courtesy.

19 THE CLERK: All rise. This commission of inquiry
20 is now adjourned.

21

22 (PROCEEDINGS ADJOURNED AT 4:42 p.m.)

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COURT REPORTER'S CERTIFICATE

CECELIA REID and LISA REID, duly appointed
Official Examiners in the Province of Manitoba,
do hereby certify the foregoing pages are a true
and correct transcript of our Stenotype notes as
taken by us at the time and place hereinbefore
stated.

Cecelia Reid
COURT REPORTER

Lisa Reid
COURT REPORTER

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