

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

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The Honourable Patrick LeSage, Q.C. Commissioner

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

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Thursday, July 20, 2006

Volume 4

INQUIRY PROCEEDINGS

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Mr. R. Wolson, Q.C.	For the Winnipeg Police Services and certain members
Mr. S. Pinx, Q.C.	For the Association in Defence of the Wrongly Convicted

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1 THURSDAY, JULY 20, 2006

2 Upon commencing at 9:00 a.m.

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

6 THE COMMISSIONER: Good morning, Mr. Wolson.

7 BY MR. WOLSON:

8 Q Staff Sergeant Ferguson, you were the Chief of  
9 Swift Current, basically?

10 A That's correct, sir.

11 Q And you had, how many people were working under  
12 you at the time that Officer Burton was at Swift  
13 Current, approximately?

14 A I had 20 RCMP officers, that included myself,  
15 one sergeant, two corporals, and the remaining  
16 people being constables, two of which were  
17 dedicated to perform plain clothes investigative  
18 duties. I had six clerical staff, I believe six  
19 jail guards, and that was my complement.

20 Q So it was a pretty large operation that you had  
21 going there in terms of the number of people at  
22 least?

23 A In terms for Saskatchewan Municipal Police  
24 Force, yes, it would be fairly large.

25 Q And I would think that you treated your staff

1 very fairly?

2 A I tried my best, sir, firm but fair I hope.

3 Q And I would think that you would help your  
4 junior police officers if they needed help or if  
5 you could help in anyway?

6 A Yes, I tried to do that, sir.

7 Q And I would think that you would be supportive  
8 of them?

9 A Certainly, if I felt that they deserved my  
10 support, yes, I did try to support my staff.

11 Q And if you had an issue with any one of them,  
12 you would deal with it privately?

13 A That is correct.

14 Q You wouldn't deal with it in a public forum,  
15 that's not the kind of guy that you are?

16 A No, certainly not, I didn't believe in that.

17 Q Now, the arson in 1990 in Swift Current was a  
18 very serious crime, in your opinion?

19 A Yes, that's correct, in my opinion it was, yes.

20 Q And given that, going back 15 years, we know  
21 today that the level of violence in our  
22 communities has escalated, but back then the  
23 arson was of prime importance in Swift Current  
24 in terms of investigation, wasn't it?

25 A At that time, of course, we have had homicides

1           there as well, but, yes, I considered it a  
2           serious offence. In the community, of course,  
3           and our city councillors and mayor considered it  
4           a very serious offence.

5    Q       And it could have had very tragic consequences?

6    A       Yes, certainly. There had been quite a large  
7           party next door and there was an explosion of  
8           the house, as well as the neighboring house had  
9           started to smolder, so the consequences could  
10          have been quite serious.

11   Q       Now, you said yesterday when you testified that  
12          the motive was financial, as corroborated by  
13          Mr. Driskell in his statement that you took from  
14          him in I think June of 1991?

15   A       Yes, certainly. That certainly corroborated  
16          financial information, and insurance evidence  
17          that we had collected as well, as previous  
18          insurance applications and payments.

19   Q       That statement that you took from Mr. Driskell,  
20          do you recall, because there seems to be no  
21          record of it, sending it to the Winnipeg Police  
22          Service, or would you have simply sent it up the  
23          chain and ultimately to Justice Saskatchewan?

24   A       I do not recall. Normally, I would have sent a  
25          copy because the cooperation with Winnipeg

1 Police Department of course was essential.

2 Q But you can't recall in this instance?

3 A I don't recall. I, of course, did send it up  
4 through channels to our top executive people in  
5 Saskatchewan.

6 Q Now, when you talked to Mr. Driskell and took a  
7 statement from him, and there is a note or a  
8 memo you made at tab 42, and you indicated at  
9 page 3 of tab 42 --

10 A Yes, sir.

11 Q And you were alert to this fact, that the motive  
12 you attributed to Mr. Driskell for making this  
13 statement was one of revenge for Mr. Zanidean  
14 having testified against him, and you put that  
15 in the second paragraph there; that's true?

16 A Yes. And it goes on to say,

17 "...and the hopes that our investigation  
18 would disclose a degree of perjury on the  
19 part of Zanidean and assist in subsequent  
20 appeals..."

21 So certainly I would say that the motive might  
22 have been twofold, yes.

23 Q All right. Now, you were directed yesterday to  
24 an October conversation that, October 1990, that  
25 Mr. Burton had with Mr. Anderson in Winnipeg.



1           You recall being directed to that yesterday?

2    A       Yes, I believe there was a couple of different  
3           references made.

4    Q       Right. And you, of course, learned of that  
5           phone call from either speaking to Mr. Burton or  
6           from some notes on the file?

7    A       Yes, either speaking to him directly or through  
8           a crime report submitted --

9    Q       And, of course, it goes without saying you  
10          didn't hear the conversation.

11   A       No, I did not.

12   Q       Any of the conversations that Officer Burton had  
13          with Sergeant Vandergraaf, you never heard any  
14          of them?

15   A       That's correct, I never heard any of them.

16          THE COMMISSIONER: Sorry, with Vandergraaf or  
17          Anderson?

18          BY MR. WOLSON:

19   Q       I am sorry, with Anderson?

20   A       I am sorry, the response is no, I did not hear  
21          with Anderson or Burton.

22   Q       You told the inquiry yesterday that it is common  
23          place, and certainly the way you ran your  
24          detachment, for one police service to help  
25          another if you possibly could?

1 A Yes, that's correct.

2 Q The conversation that took place, and I'm  
3 reading in part from tab 24, I will read it to  
4 you, page 2.

5 A Yes, sir.

6 Q The conversation at least as recorded by  
7 Officer Burton, and I will add to it because  
8 there is some more information.

9 "Anderson was advised that Zanidean is a  
10 witness in a homicide prosecution as he  
11 observed Driskell execute a Crown witness  
12 in relation to another prosecution.

13 Anderson requested that we keep..."  
14 And by that I take it you would mean Swift  
15 Current, you would interpret that as Swift  
16 Current?

17 A Yes, I would gather that.

18 Q "...keep this information in confidence.  
19 and hold off on pursuing Zanidean as it  
20 will endanger the prosecution of Driskell."

21 And we have heard in other instances the words  
22 "hold off at this time" were included, and we  
23 also know from other instances that, and of  
24 critical importance to Swift Current, was that  
25 Officer Anderson told Officer Burton that

1           Zanidean had admitted to the arson in Swift  
2           Current with Driskell. That is the information  
3           you had learned?

4    A       Yes, that was my understanding, sir.

5    Q       So, for the Winnipeg Police officer to tell you  
6           that they had information from Zanidean that he  
7           had committed, with another, an arson in your  
8           jurisdiction was the right thing to do. You  
9           wanted that type of cooperation from other  
10          forces?

11   A       Yes, absolutely.

12   Q       Now, the request to keep it in confidence,  
13          that's something that you would think is  
14          reasonable?

15   A       I would think that reasonable, yes, sir.

16   Q       And the request to hold off at this time, that's  
17          something that you would think may be  
18          reasonable, but it would require further  
19          discussion at Swift Current's end?

20   A       Yes, it would require guidance from our more  
21          senior officers, but as related earlier, our  
22          senior officer, my immediate senior officer, and  
23          our intent, and we did continue with the  
24          investigation, the hold off was in attempting to  
25          locate Mr. Zanidean.

1 Q All right. Now, if for a moment, and I ask you  
2 to do this for this exercise, you accepted  
3 Sergeant Anderson's view of the conversation,  
4 and Officer Burton said to him that he would  
5 hold off, that would be improper for him to do  
6 that, Sergeant Burton, wouldn't it?

7 A Sorry, did you say that would be proper?

8 Q That would be improper for him to do that, to  
9 have an agreement with a Winnipeg Police Officer  
10 without taking it up the chain of command, that  
11 would be wrong?

12 A That would be wrong. Constable Burton would not  
13 have that authority.

14 Q Certainly. And, of course, he would be censured  
15 for that if that came to be, he would be  
16 criticized for that?

17 A Certainly, yes.

18 Q Now, when you get that kind of information,  
19 Zanidean admits to doing an arson with Driskell,  
20 and that's one thing, and secondly, hold off at  
21 this time with your pursuit of Zanidean, you  
22 would think that that could call for some  
23 questions from Swift Current such as, do you  
24 have an admission from Zanidean in writing?

25 A Correct.

1 Q Do you have a signed confession from Zanidean?  
2 You would want to know that?

3 A Yes, correct.

4 Q That would assist your investigation?

5 A That is correct, as well as other -- yes,  
6 certainly.

7 Q You would want to know, for instance, if you  
8 were going to take it up the chain of command,  
9 you would want to know Sergeant Anderson's  
10 reason for saying hold off at this time? That's  
11 something that you would want to ask him,  
12 wouldn't you?

13 A I would assume, yes.

14 Q Or is it just common police sense that if  
15 someone is a witness in a murder, that you might  
16 as a courtesy hold off your pursuit of a  
17 witness? Is that common police sense or would  
18 that require some questions to find out more  
19 information?

20 A Certainly, it would require clarification. And  
21 again, it would require enough input from the  
22 requesting officer to take forward, again, to my  
23 supervising officer.

24 Q And what you would expect then is, in the spirit  
25 of cooperation you would expect, first of all,

1 Sergeant Anderson and Constable Burton to have  
2 some kind of plan for further discussion?

3 A Certainly.

4 Q You would expect that if your Burton had to take  
5 it up the chain of command, that you would have  
6 an answer and you would have to communicate that  
7 answer back to Winnipeg?

8 A That's correct. I have to take that answer to  
9 my supervisors, superiors.

10 Q Yes. Then you would have to, you would want to,  
11 in the spirit of cooperation, get the answer  
12 back to Winnipeg?

13 A Absolutely.

14 Q Now, that was pretty significant information  
15 because you had been investigating -- when I say  
16 you, Swift Current -- had been investigating  
17 this arson for a number of months, and this was  
18 pretty blockbuster information, if I can use  
19 that expression, to learn that now you had a  
20 suspect?

21 A That is very correct, yes, sir.

22 Q Now, we've learned that a protected B file was  
23 opened on this case?

24 A That is correct.

25 Q And I take it that it would have been opened

1           because, number one, you are dealing with an  
2           outside police force on a fairly sensitive  
3           matter, a witness to a potential homicide. That  
4           would be one reason?

5    A       That certainly would be one of the reasons, yes.  
6           I think probably the most significant reason was  
7           the issues of immunity and the Witness  
8           Protection Program.

9    Q       Sure. And that's why you would want to have a  
10           protected B file open, because that's important?

11   A       Yes, that would be the prime reason. The fact  
12           that we were dealing with an outside police  
13           agency wouldn't necessarily create a B, a  
14           protected B.

15   Q       So it is a potential issue of, a potential  
16           protected person?

17   A       That is correct, yes.

18   Q       Now, a number of months went by before there was  
19           another conversation, we've learned. Nothing  
20           happened in -- and I take it when you take it up  
21           the chain of command to decide what to do, the  
22           request was a fairly pressing matter. We would  
23           like you to hold off at this time, or we are  
24           involved in a homicide, that's a pretty pressing  
25           matter, you would think?

1 A Yes. Again, the main issue was, is this a  
2 protected witness and will he be offered  
3 immunity? That was the whole issue of awaiting  
4 information to clarify those two positions.

5 Q Well, you would expect, for instance, you would  
6 expect at least questions to be asked from your  
7 end? You would want to know this?

8 A Yes, exactly. And I believe those efforts were  
9 continually being done to clarify that.

10 Q Well, we have no note of that. There is no  
11 indication of that in the files at all. And I  
12 take it today you don't have an independent  
13 recollection of that? You don't remember that  
14 today as we sit here, do you?

15 A No, I had no personal contact and I can't recall  
16 personally.

17 Q Now, there is a second call that Mr. Code drew  
18 your attention to that we have heard about on  
19 April 5th, 1991. And at that call, and it is  
20 not horribly controversial, Sergeant Anderson  
21 said to your -- was it, at the time was he a  
22 Corporal Burton?

23 A No, he was a Constable.

24 Q -- said to Constable Burton that the Winnipeg  
25 Police wanted to put Zanidean in witness



1 protection, and there were threats made against  
2 him. So obviously, at least that's the  
3 information that we know of that call in part.  
4 There was -- now things were materializing and  
5 you started to realize you for sure may be  
6 dealing with a protected person, under the  
7 Witness Protection Plan, at least that was the  
8 idea; right?

9 A Yes, that would be the reason of requesting  
10 protection of a witness. And I do recall in the  
11 report, or I do recall reading correspondence to  
12 the effect that threats apparently had been  
13 made. Where the information about the threats  
14 came, I have no idea, I would assume from  
15 Mr. Zanidean.

16 Q Well, there is, just so there is no mystery  
17 about it, at the same tab, tab 24, a little more  
18 than halfway down the page --

19 A Sorry, which page?

20 Q Tab 24, page 2?

21 A Yes, sir.

22 Q About halfway down the page there is an excerpt  
23 from a C237 prepared by Constable Burton which  
24 outlines the call. And I don't think that I  
25 have to spend a lot of time with it, except to

1 say to tell you that that information came up,  
2 the information about wanting to put him in  
3 witness protection?

4 A Yes, that information was relayed to Constable  
5 Burton, yes, sir.

6 Q And your understanding, at least from what you  
7 said yesterday, was, when you put a person in  
8 Witness Protection Program, charging that person  
9 becomes a major problem, and you indicated  
10 yesterday it is against your understanding of  
11 the policy of witness protection?

12 A Yes, correct.

13 Q Again, I'm going to put a proposition to you and  
14 I want you to accept it for a minute. If  
15 Anderson says that there was a discussion  
16 between he and Constable Burton, on April 5th,  
17 and then a concurrence a couple of days later  
18 that Constable Burton said, we won't pursue  
19 Zanidean, or words to that effect, if that were  
20 to happen, that would be wrong, Constable Burton  
21 wouldn't have had the authority to make that  
22 kind of communication. You would agree with  
23 that?

24 A I would agree that Constable Burton would not  
25 have the authority to take that upon himself.

1 Q Again, if that were to happen and it were to  
2 become known, Constable Burton would be censured  
3 for that? He would be criticized for that?

4 A Yes.

5 Q And I tell you that Constable Burton has a  
6 different view of that conversation, I don't  
7 want to mislead you in any way. But we are told  
8 from that conversation, according to Constable  
9 Burton, this is how he notes it in his C237.

10 "The matter was discussed with Tom  
11 Anderson. It was agreed that the only  
12 viable solution would be not to charge  
13 Zanidean."

14 A And what date was that again, sir?

15 Q You can see it on the same page, page 2, where  
16 it says "my 237, 91/04/19," are you with me  
17 there?

18 A Yes, I am.

19 Q If you skip by the first paragraph of a number  
20 of sentences and go to the middle paragraph.

21 "The matter was discussed with Tom  
22 Anderson. It was agreed that the only  
23 viable solution would be not to charge  
24 Zanidean."

25 Do you see that?

1 A Yes.

2 Q And then --

3 A Yes, I do believe that there is, that is just  
4 part of an excerpt taken from a whole paragraph  
5 that is found in another crime report, which  
6 then relates dependent on his entry into the  
7 witness program.

8 Q I'm going to take to you that in a minute.

9 A This is just two sentences, sir, of a complete  
10 paragraph.

11 Q I know, but unfortunately this C237, we only  
12 have certain excerpts from it, we don't have the  
13 whole one, unfortunately, today. So if in  
14 fact --

15 A I believe I do, sir.

16 Q You have the 237 in its entirety?

17 A That completes that paragraph.

18 Q Well, I'm going to --

19 A As I say, this is only two sentences out a  
20 complete paragraph, sir. And it does change the  
21 context, it certainly does abbreviate the quotes  
22 of the conversation.

23 Q Are you then referring to -- just for purposes  
24 of clarification, move to tab 32, if you would  
25 please, but keep your hand on the other tab,

1           sir?

2    A       All right.

3    Q       Go to tab 32, page 5.  This is a report of

4           Constable Burton.  Are you there, page 5?

5    A       Yes, I see the paragraph.

6    Q       And is that the paragraph that you are talking

7           about?

8    A       Yes.

9    Q       Okay.  Except those C237s are two different

10          reports, apparently, according to Constable

11          Burton.  But leaving that aside --

12   A       Yes, sir.

13   Q       -- this paragraph talks about a consensus

14          between Burton and Anderson.  Do you see that?

15   A       Yes, a consensus is certainly not a final

16          decision.

17   Q       All right.

18   A       A consensus is --

19   Q       An agreement between two people?

20   A       Well, it is a strategy.

21   Q       All right.  If the words were used -- and I

22          appreciate that much of this C237 or the

23          previous one are just parts of a whole report, I

24          understand that.

25   A       Yes, I would agree, sir.

1 Q But were you advised by Constable Burton, and  
2 going back to tab 24, for a second, were you  
3 advised by Constable -- I will wait until you  
4 get there, sir.

5 A I have got it.

6 Q Tab 24, second page, near the bottom. Were you  
7 advised that the matter was discussed with Tom  
8 Anderson, it was agreed the only viable solution  
9 would be not to charge Zanidean, were you told  
10 of that agreement? Were you told of it in those  
11 terms?

12 A I believe that is -- I certainly did read the  
13 report where the whole paragraph is stated.

14 Q But did he tell you, after you spoke, or after  
15 he spoke to Anderson, did he tell you that he  
16 had agreed with Anderson, as stated in the 237  
17 that's noted at page 2 of 24, that's all that I  
18 want to know, did he tell you that?

19 A I don't recall. I don't recall all of the  
20 verbal discussions that I had with him, sir.

21 Q He wouldn't have had the authority to make such  
22 an agreement. You would agree?

23 A No, he wouldn't.

24 Q And if that's what happened, he would be wrong  
25 and he would be censured for that?

1 A That is correct, yes, sir.

2 Q Now, it also says, while we are at the same  
3 paragraph, at 24 --

4 A Yes, sir.

5 Q -- page 2,  
6 "I advised Anderson that I would submit the  
7 above recommendation through channels."

8 A Exactly, yes, sir. And this is when I was  
9 meaning, sir, that he wouldn't have the  
10 authority but he would have to get approval from  
11 the higher authority to make that consensus, or  
12 to make that decision, I shouldn't use the word  
13 consensus.

14 Q Did he come to you and advocate or support that  
15 kind of suggestion? Did he do that with you?

16 A Not that I recall, sir.

17 Q No. Now, you had a meeting, we are told, if you  
18 turn the page to page 3?

19 A Yes, sir.

20 Q It says at the top of page 3 that you had a  
21 meeting with Inspector Preston?

22 A That is correct.

23 Q And that meeting was in April, I think it was  
24 April 15th it says?

25 A That is correct.

1 Q Now, let me ask you a minute about Preston, for  
2 a minute about Preston.

3 A Yes, sir.

4 Q Preston was a senior man?

5 A Yes, he was my commanding officer. He commanded  
6 about eight detachments in the southwest part.

7 Q He was experienced?

8 A Yes, very experienced.

9 Q He would know what the Witness Protection  
10 Program is?

11 A Yes, he would.

12 Q He would know that there is a difference between  
13 that and let's say keeping a witness under tabs  
14 for a week or two or a month or two, and not  
15 being formally in the program, he would know  
16 that difference?

17 A Yes, he would.

18 Q He is sophisticated in these matters? He has  
19 been around for a long time?

20 A He has been described as a very, very competent  
21 investigator, who gained most of his experience,  
22 I might say, in Manitoba.

23 Q All right. Did you go to the meeting with  
24 Preston with the view in mind that you would  
25 advocate the position that Anderson had asked



1 for, that the viable solution would not be to  
2 charge Zanidean -- or would be to not charge  
3 Zanidean?

4 A Absolutely not. My whole impression from  
5 beginning to end was to charge Mr. Reath  
6 Zanidean, and perhaps all three. But certainly  
7 I was most anxious, and I continued that right  
8 to the last day that I was involved in the  
9 investigation, that if it was not feasible to  
10 charge him with the 1990 arson, then I wanted to  
11 have him charged with the 1988 arson. And that  
12 was my position from beginning to end of this  
13 whole matter.

14 Q And I'm assuming that you would say of yourself  
15 that you are a law and order guy? That's what  
16 policing is all about, isn't it?

17 A Yes, that's correct.

18 Q Now, the upshot of that meeting with Preston,  
19 let me take you to tab 35 for a second, if I  
20 can, please?

21 A I'm going to need a few more fingers here, sir.

22 Q Well, you have a number, but you can leave 24  
23 and go right to the 35, if you don't mind. And  
24 sorry to have to take you back.

25 A That's quite all right, sir.

1 Q Now, the upshot of the meeting with Preston is  
2 set out here.

3 "I spoke with Corporal Orr, D Division,  
4 Crime Ops. Ray Zanidean is now under  
5 witness protection and out of the  
6 province."

7 He will remain in witness protection, it is  
8 in --

9 A I think it says,

10 "It will remain so until trial..."

11 Q "It will remain so until trial in June  
12 '91."

13 So it appears that you knew that the trial was  
14 in June of '91? You knew that Mr. Driskell --  
15 at least from this?

16 A At least from this, sir, yes.

17 Q Then there is an intention to relocate him again  
18 permanently.

19 "It would seem that the only course of  
20 action open to you now is to await the  
21 trial outcome and evaluate the situation."

22 So it was going to be a wait and see situation?

23 A With respect to immunity only.

24 Q For Ray Zanidean?

25 A That's correct.

1 Q That's what we are talking about?

2 A Yes.

3 Q Sure. You were certainly going to investigate  
4 and keep investigating this arson, but Ray  
5 Zanidean's issue regarding whether he would face  
6 the music for that arson was on a wait and see  
7 basis, according to this?

8 A Yes. And also the request as to whether or not  
9 Mr. Driskell would receive immunity, which this  
10 memo could certainly refer to as well.

11 Q All right.

12 A And at that time this was our main focus, was to  
13 seek immunity for the arson for Mr. Driskell. I  
14 was still anxious to continue with prosecution  
15 against Mr. Zanidean.

16 Q All right. We will get to that in due course.

17 Now, if there were then a wait and see,  
18 wait to the outcome and see what happens, you  
19 would expect that you would communicate that to  
20 Winnipeg, at least in the spirit of cooperation,  
21 you would expect that?

22 A Yes, that's correct.

23 Q But we have no record of that. You don't have  
24 an independent recollection of whether that  
25 happened or not?

1 A No, I don't have an independent recollection,  
2 sir.

3 Q So from that memo that you have open, it is  
4 clear that Preston had talked to Orr, direct  
5 communication; right?

6 A Right, sir.

7 Q There wouldn't be a need for someone in your  
8 detachment to then talk to Orr again and tell  
9 Orr that if he gets into the program, Zanidean,  
10 there are no charges, either charges or a  
11 witness, because Preston had done that, he had  
12 talked to Orr and communicated that?

13 A That is correct. And this is again one of the  
14 reasons, not only to keep him fully apprised  
15 that Inspector Preston would have made this  
16 call, but was to attempt to clarify some of the  
17 frustrations to determine was he in the witness  
18 protection plan or was he not? With Inspector  
19 Preston previously serving in Manitoba, and  
20 certainly because of his authority, we felt that  
21 that was the person to finally get an answer.

22 Q Sure. Now, when I read your statement, your  
23 interview with Commission Counsel, and you have  
24 had a chance to read it?

25 A Yes.

1 Q You indicate at page 8 of the statement -- you  
2 don't have to go there unless you feel a need  
3 to -- that you think in April, at least around  
4 the time that your second in command Upton had a  
5 conversation with Orr, you may have been away?

6 A Yes. And I base that, I have no record of when  
7 I took holidays, sir, but I base that on the  
8 fact that communications had been conducted with  
9 Upton, as opposed to myself, because he  
10 certainly knew of my interest and I guess -- he  
11 knew of my interest in this file and he also was  
12 aware that I wanted to be kept apprised.

13 Q And I take it that, even before you became aware  
14 that Upton had a conversation with Orr, and I  
15 will take you to that in one second --

16 A Yes.

17 Q -- and that conversation, at least noted in  
18 Orr's diary, was on the 12th of April. So that  
19 would have been before the Preston/Orr  
20 conversation. You can accept that from me?

21 A Oh, yes, certainly, sir.

22 Q Now, would Upton have had any authority to say  
23 to Orr that Swift Current was concluding their  
24 file regarding Ray Zanidean on April the 12th?  
25 Would he have had any authority to do that?

1 A No. But, again, if you go to the other sentence  
2 in the paragraph of that crime report, as I  
3 recall, he again has the presence of mind to  
4 state that "if" he is entered into the Witness  
5 Protection Program.

6 Q Let's go to that tab then for a second, if you  
7 would, please?

8 A Yes, sir.

9 Q 33, please, sir. Tab 33, do you have the entry  
10 91/04/12?

11 A Yes, I do.

12 Q All right. And according to what Sergeant Orr  
13 wrote, 10:55, would you go there, please?

14 A Yes, I see it.

15 Q "Call Swift Current detachment further to  
16 my call on the 4th of April. At that time  
17 I spoke with second in command of the  
18 detachment, Sergeant Upton, and explained  
19 the situation regarding Zanidean as per the  
20 note in part 7."

21 And I tell you that note is a witness protection  
22 note, a witness protection application.

23 "Zanidean and Driskell were probably  
24 responsible for burning Zanidean's sister's  
25 garage. Sergeant Upton explained that he

1           would have Constable Burton, the file  
2           investigator, call me."

3           Are you reading along with me?

4    A       Yes, I am, sir.

5    Q       "As there was no call, I talked to  
6           Sergeant Upton again. Swift Current will  
7           be concluding their file and Ray Zanidean  
8           is no longer wanted for questioning."

9           Do you see that?

10   A       Yes, I see that. When I made that earlier  
11           statement about Sergeant Upton, adding in the  
12           next paragraph if he was, that came from a crime  
13           report, sir, and I don't recall what tab or  
14           what -- but I'm sure that you are aware of that  
15           particular crime report.

16   Q       Well, there is another report I'm aware of on  
17           May 30th, but that's not with Upton, so I'm not  
18           aware of another conversation with Upton and  
19           Orr.

20           MR. CODE: It is the preceding tab, tab 32, page  
21           3.

22           THE COMMISSIONER: Tab 32, page 3 I think is  
23           what Mr. Code said.

24           MR. WOLSON: Paragraph 10.

25           THE WITNESS: Yes, and that's what I was

1 referring to, sir. I have never seen, prior to  
2 attending, I have never seen any notes, of  
3 course, from Corporal Orr. So I don't know what  
4 he, what was communicated to him and I don't  
5 know what he may have understood from the  
6 communication.

7 BY MR. WOLSON:

8 Q We will have Orr here and he can tell us at  
9 least his end of it. His evidence is coming.

10 A Yes, sir.

11 Q Let me ask you this, going back to tab 33.

12 A Yes, sir, go ahead.

13 Q If in fact Upton said Swift Current will be  
14 concluding the file and Ray Zanidean is no  
15 longer wanted for questioning, that would not  
16 be -- he would not have the authority to say  
17 that?

18 A Absolutely not.

19 Q Now, we had your Constable Burton here  
20 yesterday, and the day before, and the day  
21 before that, he was here for a little bit of  
22 time.

23 A Right, sir. And I'm hoping this is not going to  
24 be a repeat.

25 Q It won't be at my end, in any event.



1 A Thank you, sir.

2 Q But let me ask you this: Having regard to what  
3 Preston and Orr had talked about, in the memo  
4 that I took you to at tab 35, and you don't have  
5 to go there again unless you need to refresh  
6 your memory.

7 A No, that's fine, sir.

8 Q Okay. There would be no need for Constable  
9 Burton, in a conversation with Sergeant Orr, to  
10 tell Orr that there would be no proceedings  
11 against Zanidean, either as a witness or an  
12 accused, if he is accepted into the program,  
13 there would be no need for Burton to have that  
14 conversation in light of what we know about the  
15 conversation that took place between Preston and  
16 Orr?

17 A Probably not, no.

18 Q As a matter of fact -- and I tell you so that  
19 you know, and I'm going to refer you to tab  
20 39 -- officer Burton doesn't recall speaking to  
21 Orr, but in any event, and I'm going to read  
22 this to you, tab 39, page 2, if you will,  
23 please?

24 A Yes, sir.

25 Q And I want to refer you to the 30th of May, '91,

1 do you see that?

2 A Yes, sir.

3 Q "Call received from Constable Ross Burton,  
4 Swift Current who advised that there would  
5 be no proceeding against Zanidean either as  
6 a witness or an accused if he is accepted  
7 into the program."

8 A That is correct.

9 Q "At the present time they have an  
10 admission from Driskell, Zanidean's sister  
11 set up the arson by providing the key and  
12 suggesting the B & E. She also cleaned out  
13 the valuables. This information is coming  
14 from ex-Staff Sergeant Savage who is  
15 looking for Zanidean for Driskell's  
16 lawyer."

17 A Yes, sir.

18 Q "Constable Burton requests the information  
19 on charges not being laid against Zanidean  
20 be withheld from everyone because they  
21 really wanted to obtain a statement from  
22 Driskell and nail the sister."

23 A Yes.

24 Q When I put that to Constable Burton yesterday,  
25 he said, I wouldn't have said that, because in

1 his view that would be an act of  
2 insubordination. And that's -- he is now an  
3 inspector, so he would know, right? He knows  
4 what insubordination is?

5 A Yes, I would assume so. I would hope so, sir.

6 Q Let me ask you, it doesn't sound like your  
7 knowledge of Inspector Burton as he is now, that  
8 he would -- you described him as being very  
9 cautious?

10 A Yes.

11 Q It doesn't sound like the now cautious Inspector  
12 Burton who would be committing an act of  
13 insubordination, that's inconsistent with the  
14 guy that you know?

15 A It certainly would not help in  
16 self-preservation, no, sir.

17 Q It is not in keeping with your understanding of  
18 him?

19 A Of his character, that's correct, yes.

20 Q Now, you talked yesterday about problems in  
21 communication, obviously, that Swift Current  
22 really didn't know for sure whether or not  
23 Zanidean was in the Witness Protection Program.  
24 There had been, I take it, miscommunications?  
25 You would say that in hindsight?

1 A Miscommunications, misunderstandings, certainly  
2 there was a lot of confusion over the issue,  
3 absolutely.

4 Q And that's one of the problems when there aren't  
5 interoffice or inter-force memos, because two  
6 people can have a conversation and they take  
7 different things from the conversation. That's  
8 just human nature, isn't it?

9 A Yes, absolutely.

10 Q Now, going back to something that I mentioned a  
11 little while ago with you, your arson, Swift  
12 Current's arson, the 1990 arson, you were, as a  
13 responsible police officer, and your men and  
14 women working under you, being responsible, you  
15 were investigating that arson to solve the  
16 crime, obviously?

17 A Yes, that is correct.

18 Q Your investigations weren't being driven by any  
19 lawyers, your investigation was being driven by  
20 the fact that it is a serious crime and you  
21 wanted to solve it?

22 A That is correct.

23 Q And the cautious Inspector Burton, as he is  
24 today, wouldn't tell someone that the  
25 investigation for the arson is driven by Greg

1 Brodsky? That wouldn't be the right thing to  
2 say? Of course not?

3 A Absolutely not.

4 Q Let me take you to tab 48 for a second, and I  
5 can tell you I'm on the very last question or  
6 two, you will be happy to know from me.

7 A Yes, I have 48, sir.

8 Q If you would go to the second page, well, let's  
9 go to the first page first. 91/07/16 is the  
10 marking in the report.

11 A Yes, sir.

12 Q Second page of that report?

13 A Yes, I have it sir.

14 Q "According to Ross Burton, Swift Current  
15 detachment, Brodsky is forcing the RCMP to  
16 investigate the arson to force a new trial  
17 as they are claiming Zanidean perjured  
18 himself..."

19 THE COMMISSIONER: Just a little slower, please.  
20 BY MR. WOLSON:

21 Q Let me back up.  
22 "According to Ross Burton..."  
23 Are you with me there?

24 A Yes, I have it.

25 Q "...Swift Current detachment..."

1 A Yes, sir.

2 Q "...Brodsky is forcing the RCMP to  
3 investigate this arson, to force a new  
4 trial as they are claiming that Zanidean  
5 perjured himself on the stand."

6 Do you see that?

7 A Yes, I do.

8 Q Let me stop there. That doesn't sound to you --  
9 and I can tell you as well, just so that you  
10 know, I don't want to mislead you, Constable  
11 Burton doesn't recall that discussion and I  
12 don't think accepts it, but I don't believe he  
13 accepts it either. So you should know that?

14 A Yes, sir.

15 Q But those words don't sound like the cautious  
16 Inspector Burton now that he is, it doesn't  
17 sound like him, does it? Not your knowledge of  
18 him, you would agree with that?

19 A I would agree with that, but I would not totally  
20 disagree with the motive or intent, certainly  
21 that sounds reasonable.

22 Q Well, your --

23 A One of the motives.

24 Q Your investigation wasn't because of Greg  
25 Brodsky?

1 A No, absolutely not.

2 Q Now, at that time in July, there was no promise  
3 of immunity, that you know of, for either  
4 Zanidean or Driskell? It hadn't gone up the  
5 chain of command?

6 A That is correct, there had been no formal entry  
7 into the Witness Protection Program.

8 Q It doesn't sound like, again your cautious  
9 Inspector Burton as he is now, Driskell has  
10 apparently received immunity from prosecution  
11 due to his life sentence on the murder charge?

12 A No.

13 Q There was no immunity?

14 A No, there was no immunity.

15 Q A cautious man wouldn't say that?

16 A No, that is very true, and it is an incorrect  
17 statement.

18 MR. WOLSON: Thanks for your help.

19 THE WITNESS: Thank you very much, sir.

20 THE COMMISSIONER: Any re-examination, Mr. Code?

21 MR. CODE: Yes, I was waiting for Mr. Gates.

22 THE COMMISSIONER: Mr. Gates indicated that he  
23 doesn't have any questions.

24 MR. CODE: Thank you.

25

1 BY MR. CODE:

2 Q Thank you for that indulgence, Mr. Commissioner.  
3 Just a couple of questions in re-examination.

4 A Yes, sir.

5 Q Going back to cross-examination yesterday of my  
6 colleagues Mr. Lockyer and Mr. Prober, they  
7 asked you a couple of questions, both of them  
8 coming at it slightly differently, but relating  
9 to a somewhat similar theme. Mr. Lockyer  
10 suggested to you that it would be helpful to  
11 have some independent Manitoba Crown available  
12 who you could go to instead of having to go up  
13 the chain of command to disclose the kind of  
14 material that you had in your investigative  
15 file. And Mr. Prober came at it a little more  
16 directly. He said, did you ever just pick up  
17 the phone and call the Manitoba Crown yourself  
18 directly instead of going through the chain of  
19 command? And there was an implication in both  
20 lines of questioning that there was something  
21 inadequate about the way in which you went about  
22 it. And I just wanted to test that proposition  
23 with you in re-examination.

24 A Yes, sir.

25 Q And we are talking essentially about your memo



1 at tab 43, if you want to have that available to  
2 you, that's what the focus was on in both of  
3 their cross-examinations in this area. And you  
4 will remember that's the memo --

5 A Yes, I have it here.

6 Q It is the memo that concludes by asking that the  
7 matter go up to the CROPS officer in Regina and  
8 that there be liaison between the two justice  
9 departments. You see the concluding  
10 recommendation?

11 A Yes, sir, I do.

12 Q And is it fair to say that that memo on  
13 July 4th, very quickly leads to your meeting two  
14 weeks later on July 17th in Regina?

15 A Yes, sir.

16 Q And is it also fair to say that the outcome of  
17 that July 17th meeting in Regina, as documented  
18 in the memos in exhibit 1, is that a phone call  
19 was put in to Richard Quinney?

20 A Yes, sir, that's my understanding.

21 Q By your senior officers in Regina?

22 A Yes, sir.

23 Q And is it also not correct that Mr. Quinney was  
24 the most senior Crown official in Saskatchewan  
25 and a man of unquestioned integrity?

1 A Absolutely.

2 Q And is it also not correct that Mr. Quinney  
3 responded to the problem that you had dropped  
4 into his lap by writing these two rather clear  
5 and candid letters at tabs B-21 and B-24 to his  
6 counterpart in Manitoba?

7 A That is correct.

8 Q So the net effect of the course that you took  
9 was to do exactly what Mr. Prober and  
10 Mr. Lockyer were seeking, namely, to get the  
11 matter clearly in the hands of senior Manitoba  
12 Justice officials?

13 A Yes, sir.

14 Q My colleague, Ms. Carswell, asked you a line of  
15 questioning about protected B reports and to  
16 whether the kinds of information that goes into  
17 a protected B file would be disclosed to the  
18 Crown?

19 A That is correct.

20 Q And your answer was an unequivocal yes. Do you  
21 recall that?

22 A Yes, I do.

23 Q And I wanted to ask you to look at the memo at  
24 tab B-18 to illustrate your point. Have you got  
25 B-18 open there?

- 1 A Yes, I do.
- 2 Q Where you see Inspector Preston forwards a memo,  
3 a report of Constable Burton's that's gone  
4 through you and been signed off by you and sent  
5 up to Preston?
- 6 A That is correct.
- 7 Q And you see the -- and Preston sends it on to  
8 the F Division CROPS officer, Inspector Wass?
- 9 A Yes, I do.
- 10 Q And you see the handwritten notes on the bottom  
11 of that memo about how it is passed on to  
12 Richard Quinney?
- 13 A Yes, I do, sir.
- 14 Q Discussed with him at a January meeting?
- 15 A Yes, I do, sir.
- 16 Q And culminates in his letters to Mr. Miller?
- 17 A Yes, I do, sir.
- 18 Q And that report that's being forwarded on to  
19 Mr. Quinney, and then ultimately the  
20 information, it goes on to the Manitoba Crown,  
21 is the memo at A-24 in which Burton quotes  
22 extensively from his C237s?
- 23 A That is correct, sir.
- 24 Q And are those C237s all documents in a protected  
25 B file?

- 1 A That is correct, sir.
- 2 Q And so we see there the illustration of the  
3 point that you are making, that all of this  
4 protected B information in the C237s is passed  
5 on to Mr. Quinney, and through him to  
6 Mr. Miller; is that correct?
- 7 A That is correct.
- 8 Q Finally, a couple of questions arising out of  
9 Mr. Wolson's cross-examination this morning. He  
10 put tab 24 to you?
- 11 A Yes, sir.
- 12 Q Officer Burton's recollections on page 2, the  
13 excerpts of his C237s?
- 14 A That is correct.
- 15 Q And in particular he took you to the bottom of  
16 the page and he focused on that middle  
17 paragraph?
- 18 A Yes, sir.
- 19 Q You see the three paragraphs quoted from the  
20 C237 at the bottom of the page?
- 21 A Yes, I do.
- 22 Q And he read the two sentences in the middle  
23 there?
- 24 A That is correct.
- 25 Q And looking at those two sentences in isolation,

1 he asked you whether they would be improper,  
2 wrong, subject of censure. And you agreed that,  
3 as set out there, that that would be the subject  
4 of censure?

5 A Yes, sir.

6 Q What I want you to do is not to just look at  
7 that, those few sentences, I want you to look at  
8 the three paragraphs together in their full  
9 context?

10 A Right.

11 Q And read all three of them together and tell me  
12 whether there is anything improper in there that  
13 would lead to censure?

14 A No. If you took that part of the sentence only,  
15 then perhaps it would be improper and unethical  
16 of Constable Burton. But when you read the  
17 whole paragraph, and all three paragraphs,  
18 including not just the two sentences but the  
19 remainder of the paragraph, no, there was  
20 nothing irregular or improper about it.

21 Q When you look at the middle paragraph in  
22 isolation, it looks like he has made a decision  
23 not to charge Zanidean and with no reasons set  
24 out for it?

25 A Yes, I see that.

1 Q Whereas when you look at the three paragraphs  
2 together, it is in the context of a protected  
3 witness who they are trying to get into the  
4 Witness Protection Program, and he is saying it  
5 is merely a recommendation that I'm going to  
6 take up through the chain of command.

7 A Absolutely, and that's the last sentence on that  
8 page.

9 "I will submit the above recommendation  
10 through channels."

11 And this was advised to Sergeant Anderson by  
12 Constable Burton.

13 Q So that C237 would have gone through your hands?

14 A Absolutely.

15 Q You would have signed off on it?

16 A That is correct.

17 Q Is Burton the least bit vulnerable to censure  
18 here?

19 A Not at all.

20 Q He then took to you tab 33, where we have  
21 Corporal Orr's notes, and I take it you don't  
22 hold any brief for the accuracy of Corporal  
23 Orr's notes?

24 A No, I wouldn't know.

25 Q But, in any event, looking at this entry at

1 11:07.

2 "Swift Current will be concluding their  
3 file and Ray Zanidean is no longer wanted  
4 for questioning...".

5 Do you have any idea what that "... " means?

6 A I have no idea.

7 Q So, again, looking at this somewhat cryptic note  
8 with its "...", Mr. Wolson got you to agree,  
9 understandably, that if that's what Upton had  
10 said, if that's all he said, that would have  
11 been beyond his authority; is that correct?

12 A Yes.

13 Q Again, it looks like he is making a completely  
14 de-contextualized decision to terminate the  
15 proceedings against Zanidean when he would have  
16 no authority to make that decision?

17 A Yes, sir.

18 Q If you flip back to the previous tab that  
19 Mr. Wolson didn't take you to, it has a much  
20 fuller account of the apparently same  
21 conversation, it is unclear, because the dates  
22 are two days off, but it is the same subject  
23 matter, it is the same parties --

24 A Yes, sir.

25 Q -- Upton and Orr?

1 A That is correct. That's page 3, sir, is it?

2 Q Yes. It is about triple hearsay here, this is

3 Anderson reporting to Burton, presumably what

4 Orr has told Anderson about the conversation?

5 A Yes, sir.

6 Q In any event, it has got a lot more detail to

7 it?

8 A Yes.

9 Q When you read that full context about the

10 conversation, is there anything improper beyond

11 Upton's authority?

12 A No, there is not.

13 Q Because he has put it again in the context of a

14 man who, at this point the understanding is he

15 is already in the Witness Protection Program and

16 he is simply saying it is likely the ultimate

17 decision will be not to charge him?

18 A Yes, sir.

19 Q And there is nothing improper about that?

20 A No.

21 Q Is Upton the kind of man that would do things

22 that were completely beyond his authority?

23 A Not in an instant like this, sir, no. Certainly

24 he was second in command -- or was in command

25 when I was not there.



1 Q Was there anything about your experience with  
2 him that would lead you to believe that he would  
3 do something like the way Orr has set it out in  
4 this very cryptic note in tab 33 that would be  
5 clearly beyond his authority?

6 A No, again, I take it to be contradictory between  
7 the cryptic notes of Orr and the paragraph 10,  
8 as you said, sir, that was submitted a couple of  
9 days later, where it says that Sergeant Upton  
10 had stated that we would likely not do so,  
11 however, that decision would rest with the  
12 investigator. And that Inspector Preston called  
13 Corporal Orr to discuss the possibility of not  
14 charging Zanidean.

15 Q Again, this report at tab 32 is one that goes  
16 through your hands and you sign off on it?

17 A That is correct, sir.

18 Q And when you saw the fuller version of the  
19 conversation, you didn't haul Upton in to your  
20 office and discipline him, I take it?

21 A No, not at all.

22 Q Lastly, Mr. Wolson repeatedly referred to the  
23 now cautious Inspector Burton. Was his  
24 character at the time cautious or not cautious,  
25 back in 1990 to 1991?

1     A     He was always a very, very cautious man in his  
2           investigations.  And as I mentioned in  
3           examination yesterday, sir, I had used a poor  
4           choice of words perhaps when I said overly  
5           suspicious.

6           THE COMMISSIONER:  I think when Mr. Wolson was  
7           using that term "now cautious," he meant, he was  
8           referring to Staff Sergeant Ferguson's different  
9           description from overly superstitious --  
10          sorry -- overly suspicious to overly cautious.  
11          And that's what Mr. Wolson --

12          MR. CODE:  You may be right.  Thank you very  
13          much.

14          THE WITNESS:  Thank you, sir.

15          THE COMMISSIONER:  Staff Sergeant, I have a  
16          question that I'm sure Ms. Carswell would ask if  
17          I invited her to.  I took her question about the  
18          protected B file to be that in the normal course  
19          of a prosecution, would the protected B file go  
20          to the Crown Attorney?  In other words, just to  
21          use as a hypothetical, supposing Zanidean and/or  
22          Driskell and/or Hayek had been charged with  
23          arson, when the file was prepared for the Crown  
24          Attorney in that case, or any other case in  
25          Swift Current in 1990/1991, would the protected

1 B file information, in the normal course, go to  
2 the Crown Attorney for that prosecution?

3 THE WITNESS: Yes, sir, it would. I'm sorry if  
4 I was misleading.

5 MS. CARSELL: That was my question,  
6 Mr. Commissioner, and I believe the witness did  
7 answer in that way. It wasn't about the  
8 excerpts. Did the file get there, and I was  
9 satisfied that he indicated it did.

10 THE COMMISSIONER: I was just -- I thought  
11 Mr. Code's question in re-examination was being  
12 too specific about the circumstances of sending  
13 it on to Mr. Quinney and so --

14 THE WITNESS: Thank you, Mr. Chairman.

15 THE COMMISSIONER: Thank you very much for your  
16 patience. Thank you for assisting us. You are  
17 free to go.

18 THE WITNESS: Thank you, sir.

19 MR. CODE: It was the only illustration that I  
20 had at hand that the sensitivity of the  
21 information not being something, to keep it away  
22 from the Crown.

23 THE COMMISSIONER: Good morning.

24 THE CLERK: Do you wish to swear on the Bible or  
25 to affirm?

1 THOMAS ALLAN ORR, being first duly sworn  
2 testified as follows:

3 MR. CODE: Good morning, Sergeant Orr.

4 The first step, Mr. Commissioner, as with  
5 the previous witness, if I could ask that the  
6 book of documents prepared for Sergeant Orr's  
7 evidence be marked as the next exhibit, exhibit  
8 3, and it can be made publicly available at the  
9 back of the room.

10 THE CLERK: Exhibit 3.

11 (EXHIBIT 3: Book of evidence of Sergeant  
12 Orr)

13 MR. CODE: I believe Madam clerk has the two  
14 copies for the media.

15 BY MR. CODE:

16 Q Sergeant Orr, have you had a chance to review  
17 your interview summary at tab 1 of the exhibit  
18 book?

19 A Yes, I have.

20 Q And did you have a chance to review it before it  
21 was finalized?

22 A Yes, I did.

23 Q When it was in draft form?

24 A Yes.

25 Q And I take it you adopt it as accurate?

1 A Yes, I have, sorry.

2 Q You are content with its accuracy?

3 A Yes.

4 Q Which will allow me to skip over certain parts  
5 of it and try and keep this as focused as  
6 possible.

7 A Certainly.

8 Q For example, it sets out your career with the  
9 RCMP at page 1, and could I simply focus on your  
10 Witness Protection Program expertise as being  
11 the area that we are most interested in here  
12 today.

13 You began doing work in that particular  
14 field in 1984?

15 A Yes, it was around 1984.

16 Q And this is a particularly specialized area of  
17 police work; is that fair?

18 A Yes, it was, and it was in kind of the beginning  
19 stages of it, so yes.

20 Q It was in its infancy in 1984, and you were in  
21 there on the ground floor?

22 A Somewhat, yes.

23 Q And in 1989, five years later, you actually took  
24 up the formal position of Source Witness  
25 Protection Coordinator?

1 A True.

2 Q Effectively putting you in charge of the program  
3 for the Province of Manitoba, since the local  
4 police forces didn't have a program of their  
5 own; is that fair?

6 A That's true.

7 Q So the Manitoba Police Forces would come to you  
8 with their witness protection applications for  
9 witnesses in their cases, and you would consider  
10 them for the national RCMP program?

11 A I would start the initial process, yes.

12 Q And you would have to send it up the line to  
13 Ottawa?

14 A Yes.

15 Q The final approvals always came through Ottawa?

16 A Through the criminal operations officer on to  
17 Ottawa, yes.

18 Q So they go from you to the local CROPS officer  
19 in Winnipeg, and then on to Ottawa?

20 A Yes.

21 Q So by the time Zanidean's application comes  
22 along in early 1991, you had approximately seven  
23 years experience in this area of policing?

24 A In various areas, yes.

25 Q And you carried on in it for another six years

1           until 1997, when you were promoted to Sergeant;  
2           is that correct?

3    A       Yes, it is, yes.

4    Q       So you spent a total of 13 years working in the  
5           witness protection line of police work?

6    A       Yes.

7    Q       And the only other general introductory question  
8           that I wanted to ask you in this area, before  
9           turning to Zanidean's application, is if you  
10          could just assist the commission by giving us a  
11          general explanation of the distinction between  
12          local, informal interim protection arrangements,  
13          which are quite common place in policing work,  
14          and the formal RCMP program with permanent long  
15          term relocation?

16   A       In some instances it is necessary to take a  
17          witness who may be an applicant to the program  
18          or may be an important witness, and just take  
19          him to another location, an interim location  
20          that's outside of what we consider the threat  
21          area. This is RCMP I'm talking about, not any  
22          City Police case. With the RCMP cases, we would  
23          take them out to an interim area, put them up in  
24          a hotel room, ensure that they were comfortable  
25          there while the process was going on. The

- 1 process was quite lengthy. There was a number  
2 of documents to be completed and whatnot.  
3 Usually there was a trial to go through.
- 4 Q The application process for the formal RCMP  
5 program you are talking about?
- 6 A Yes.
- 7 Q So these kinds of interim measures, were they  
8 much more common place than the actual  
9 successful application to the formal program?
- 10 A Yes, they would be used more often.
- 11 Q Nothing unusual about police forces getting a  
12 witness out of town temporarily pending a trial?
- 13 A Definitely.
- 14 Q Whether it is RCMP or anybody else, it goes on  
15 all of the time?
- 16 A To put them in safe areas, yes.
- 17 Q Whereas the application process that you were in  
18 charge of, this formal Ottawa approval process  
19 was a much more rigorous long-term exigent of  
20 criteria and processes; is that fair?
- 21 A Yes, it required quite a bit of additional  
22 paperwork.
- 23 Q And strict standards?
- 24 A Very.
- 25 Q You are making a long-term commitment to



1 somebody to look after them for a long period of  
2 time?

3 A Yes.

4 Q All right. Turning to Zanidean's application,  
5 it is the next tab in the book of tab 2, and we  
6 have an unredacted copy of it from my colleague,  
7 Ms. Carswell, the Winnipeg Police still have  
8 their full unredacted copy which is the one that  
9 I have set out at tab 2.

10 Where did that form come from?

11 A It would have been delivered to us from the City  
12 Police, the completed form would have.

13 Q The completed form would have come from the City  
14 Police after they filled it out?

15 A Yes.

16 Q But where did the initial blank form come from  
17 that the City Police were working from?

18 A As I stated previously, witness protection was  
19 kind of in its infancy and a number of different  
20 divisions used different documents to take the  
21 information about the witness from the various  
22 police offices. And in this case, this one came  
23 from K Division, from Alberta.

24 Q So it was developed in Alberta. You thought it  
25 was a good form and made use of it?

- 1 A It had been passed around, and yes, we thought  
2 it was a good form and made use of it.
- 3 Q So you provided it to Winnipeg when they came to  
4 you to request an application on behalf of  
5 Zanidean?
- 6 A Yes.
- 7 Q And do you recall which officer from Winnipeg  
8 you would have given it to and who you were  
9 dealing with on this?
- 10 A Mostly I dealt with Staff Sergeant Vandergraaf,  
11 Bill Vandergraaf.
- 12 Q So it is likely Vandergraaf who you gave it to  
13 and who delivered it to you when it was  
14 completed?
- 15 A I would think so, I'm certainly not certain.
- 16 Q I only said likely, I appreciate you are not  
17 sure of it. But he is the person you were  
18 dealing with principally?
- 19 A Yes.
- 20 Q Now in terms of the date when you received it,  
21 it is an undated document, but I believe by  
22 reference to your notes at tab 3 you are able to  
23 draw reasonable inference as to approximately  
24 when you would have received it. Is that fair?
- 25 A Probably prior to the 21st of March, yes.

1 Q Because what your note of March 21st says is  
2 that you have had numerous previous calls about  
3 the matter and that it is time to get the thing  
4 moving. And so you proceed to set up a meeting  
5 with Mr. Kovnats for a couple of days hence?

6 A Yes.

7 Q And from all of those circumstances, you draw  
8 the inference that by that point you would have  
9 had the application in hand?

10 A Yes.

11 Q You wouldn't have proceeded to have a  
12 substantive meeting with Mr. Kovnats without the  
13 completed application in hand?

14 A True.

15 Q So, assuming you received it some time in mid  
16 March, this is the initiating document that  
17 starts the process, as I understand it; is that  
18 correct?

19 A That's true.

20 Q And if the application moves through the various  
21 hurdles and steps and moves on to fruition,  
22 there are two other major documents that get  
23 prepared in the course of the application?

24 A There are.

25 Q And those are known as an MOU, or memorandum of

1 understanding?

2 A Yes.

3 Q And that is essentially a funding agreement  
4 between the RCMP and the applicant agency that's  
5 providing the monies?

6 A Yes, it is.

7 Q And the funding agency is not the police force,  
8 but rather is the Justice Department?

9 A Yes.

10 Q So, the MOU would be an agreement between  
11 Manitoba Justice and the RCMP, in which Manitoba  
12 Justice sets out the amount of money they are  
13 willing to commit to this application?

14 A True.

15 Q And the reason for that is because the RCMP is  
16 not the funding agency for witness protection  
17 except in its own cases?

18 A Yes.

19 Q If it is a case that comes out of a municipal  
20 police force or a provincial police force, the  
21 funding has to come from the province?

22 A True.

23 Q Was there ever an MOU developed in Zanidean's  
24 application?

25 A No, there was not.

1 Q And the third document that has to be prepared  
2 if the application is to proceed to fruition is  
3 referred to as an LOA, or letter of agreement;  
4 is that correct?

5 A That's correct.

6 Q And that is a form of contract, I hesitate to  
7 call it a contract because I know there is  
8 issues as to whether it gives rise to  
9 contractual obligations, but it is a document  
10 signed by the individual applicant and the RCMP  
11 setting out the mutual obligations?

12 A True.

13 Q And was there ever an LOA signed in Zanidean's  
14 case?

15 A No, there was not.

16 Q Was the application ever sent up the chain to  
17 the CROPS officer and to Ottawa for approval?

18 A No, it was not.

19 Q So, in other words, it was an application that  
20 was virtually stillborn, it never went beyond  
21 the beginning stages?

22 A The initial stages.

23 Q Now, this initial meeting with Kovnats,  
24 Mr. Zanidean's lawyer, that you set up on the  
25 21st, takes place on March 25th. If you could

1           turn to tab 5, I believe you have got a  
2           contemporaneous continuation report of the  
3           meeting?

4    A    Yes.

5    Q    And just, if I could pause there to ask you a  
6           general question about your report keeping  
7           practices. We see this style of continuation  
8           report throughout your file, and do I take it  
9           that these were in reality your notes?

10   A    Yes, definitely.

11   Q    You didn't have a separate notebook that you  
12           kept notes in?

13   A    No, not at all.

14   Q    Your notes went on to the file in the form of a  
15           contemporaneous continuation report?

16   A    Yes.

17   Q    So the meeting with Kovnats, or the phone calls  
18           on the 21st, you would make this report up in  
19           your handwriting at the time or shortly  
20           thereafter?

21   A    Yes, exactly.

22   Q    And the meeting on the 25th, as I understand it,  
23           is not the -- Kovnats' client and his wife are  
24           not present, this is just you and Kovnats? Your  
25           first meeting with Zanidean occurs about a week

1 later?

2 A Yes, this is just with Mr. Kovnats.

3 Q Now, the discussions that take place at that  
4 meeting are extensively set out in your  
5 interview at tab 1. So I am not going to go  
6 over it and repeat all the details with you, I  
7 just want to highlight a couple of points that  
8 emerge out of it and make sure that the  
9 Commission understands your evidence on them.

10 First of all, as I understand your  
11 statement and from reading your file, it is  
12 clear that at this meeting you had a copy of  
13 Kovnats' December 14th letter to Mr. Miller, a  
14 letter that had been sent about three months  
15 earlier, four months earlier almost; is that  
16 correct?

17 A That's correct.

18 Q There is a copy of it in your file and it has  
19 got your annotations on it; is that correct?

20 A That's correct.

21 Q And we find that at tab 4. Is that your file  
22 copy of Mr. Kovnats' letter to Mr. Miller?

23 A Yes, a copy of it, yes.

24 Q And the handwritten notes in the right-hand  
25 column beside each of Mr. Kovnats' 15 items is

1 your handwriting?

2 A Yes, it is.

3 Q And upon reading that letter, again, as I  
4 understand your evidence in your statement, it  
5 became clear to you that Mr. Kovnats and his  
6 client, Zanidean, were labouring under a  
7 significant number of misconceptions about the  
8 Source Witness Protection Program?

9 A Definitely.

10 Q Is that fair?

11 A That's true.

12 Q You said definitely, did you?

13 A That's true, yes, sorry.

14 Q I'm not hearing all of your answers, the  
15 microphone maybe is a little too far away or  
16 your voice is dropping.

17 And the need to correct those  
18 misconceptions became the main subject of the  
19 meeting; is that fair?

20 A That's true.

21 Q And you set that out in your note at tab 5, that  
22 he had the view that the RCMP was going to act  
23 as financial benefactor, real estate agent and  
24 car salesperson is the way you phrased it in  
25 your note, that he thought the RCMP was going to



1           become the great mother of all of his needs; is  
2           that fair?

3    A       That's true.

4    Q       So you set about trying to correct these  
5           misconceptions by going through Mr. Kovnats'  
6           shopping list and telling him what you could do  
7           and what you couldn't do?

8    A       True.

9    Q       Is that a summary of what happened?

10   A       Yes.

11   Q       And just to illustrate the point, for example,  
12           on the very first page, items 1 and items 3 deal  
13           with the disposal or the sale of his house and  
14           the purchase of a new house. And Kovnats has a  
15           number of very specific demands about how to  
16           dispose of the house and to get a new house.  
17           And you have written "Crown" beside both of  
18           those, 1 and 3?

19   A       Yes.

20   Q       What did you mean by that? Whose responsibility  
21           was it to work out these demands about the  
22           house?

23   A       That would have to be between Mr. Kovnats, his  
24           client and the Crown, or whoever was going to be  
25           paying for this relocation, if it went.

1 Q The RCMP wasn't going to have anything to do  
2 with disposing of his house?

3 A No.

4 Q You would simply relocate him to a new location  
5 and set him up there; is that correct?

6 A That's true.

7 Q If you look at item 7, it is another example  
8 where you have got a note on the second page  
9 that he wanted a new job in the new location  
10 that was equal to this CPR job that he felt he  
11 was entitled to as a brakeman for the CPR. Had  
12 he ever actually been a brakeman for the CPR, to  
13 your knowledge?

14 A Not to my knowledge.

15 Q But, in any event, his entitlement to that kind  
16 of job, you have a note beside that one. Could  
17 you assist us with that? I think it says.

18 "Witness protection will assist up to..."

19 A "...up to relocate."

20 Q What is the implication there?

21 A We will assist in getting, like we would assist  
22 in getting employment, but not necessarily in  
23 the line that he was demanding or asking for.

24 Q It would depend on where he was relocated and  
25 what was available?

- 1 A Definitely.
- 2 Q And what he was qualified to do?
- 3 A Yes.
- 4 Q Item 10, the sale of his existing car and the  
5 purchase of a new car, was that anything that  
6 you were going to have anything to do with?
- 7 A No, we would not.
- 8 Q You weren't in the car selling and buying  
9 business, I take it?
- 10 A No.
- 11 Q All right. So you pushed that one back to  
12 Mr. Miller in the Crown's office?
- 13 A True.
- 14 Q Item 14 is the last illustration of this  
15 exercise that you went through that I want to  
16 take you to. The new identity will be some  
17 place in B.C. where house pricing is equivalent.  
18 So he has got his desired location where he  
19 wants to move to and have an equivalent house.  
20 And what was your response to that?
- 21 A That's not up to the relocate, that's up to  
22 the -- that would be up to witness protection,  
23 and a lot would depend on the threat assessment  
24 in the various areas.
- 25 Q As I understand, the RCMP decides where he

1           should be moved to depending on the nature of  
2           the threat?

3    A       Yes.

4    Q       You can't pick your location.  You can't say I  
5           would like to go to Florida, please, for the  
6           rest of my life?

7    A       Yeah, true.

8    Q       But Zanidean clearly had a desire to move to  
9           B.C., as I read this.  That was in there from  
10          the start and was always there?

11   A       Yes.

12   Q       So, the upshot of the meeting is we end up with  
13          a whole long list of matters where you push  
14          Kovnats back to the Crown and tell him, the RCMP  
15          doesn't deal with these, these aren't witness  
16          protection issues, these are financial matters  
17          for you to negotiate with the Crown?

18   A       Prior to any entry into the program, yes.

19   Q       Now, there were items on the list that you  
20          identify as being properly matters of witness  
21          protection, and again just to illustrate a  
22          couple of those, items 13, 14 and 15, you have  
23          got witness protection beside both 13 and 14,  
24          and 15 you have it as a joint Crown witness  
25          protection responsibility.  Is that correct?

1 A That's true.

2 Q And 13 is a change of identity, 14 is relocation  
3 at a place where you believe he would be secure,  
4 and 15 is start-up costs. Have I summarized  
5 those?

6 A Yes.

7 Q And those are traditional matters that are dealt  
8 with in witness protection programs; is that  
9 correct?

10 A Number 15 would have been dealt with as part of  
11 the memorandum of understanding.

12 Q These would all go into the MOU with the funding  
13 agency, and then into the LOA with the  
14 individual?

15 A Yes.

16 Q And in relation to those matters that were  
17 properly within your jurisdiction that you could  
18 deal with and provide, if he was an appropriate  
19 candidate, did you explain to Mr. Kovnats that  
20 the witness protection arrangements that the  
21 RCMP would set up that were not in the nature of  
22 contractual guarantees, but rather there was a  
23 large measure of discretionary RCMP control over  
24 these kinds of items?

25 A Yes, that would have been true.

1 Q And the reason I'm bringing this out is because  
2 we know from Mr. Kovnats that this became one of  
3 his bones of contention, he uses the language of  
4 guarantee a lot in his correspondence. And if I  
5 could take you to tab 6, where we see the  
6 standard form LOA -- is that correct, the  
7 document at tab 6 is your standard form LOA?

8 A Yes, it is.

9 Q And I put the redacted version that comes out of  
10 the policy manual in the front, and then we have  
11 got an unredacted version that we got, I think,  
12 out of your file. I hope I'm not doing anything  
13 wrong by putting it in there. Mr. Gates looks  
14 shocked.

15 If you look at the unredacted version of  
16 the last two pages of tab 6, you see  
17 paragraph -- there are two or three references  
18 to a very significant element of RCMP  
19 discretionary control; is that fair?

20 A Yes.

21 Q And just to review them quickly with you,  
22 paragraph 3,

23 "I understand and acknowledge that the RCMP  
24 will provide me with special protective  
25 services considered good and sufficient at

1 the sole discretion of the RCMP, subject to  
2 the following conditions:"

3 And one of the key conditions is B,

4 "It is my responsibility to cooperate with  
5 the RCMP in the provision of these special  
6 protective services by..."

7 and the first item is,

8 "Avoiding willful or negligent acts that  
9 might jeopardize my security."

10 Did those kinds of provisions become problematic  
11 with Mr. Zanidean as matters progressed?

12 A Did they become?

13 Q Did they become problematic?

14 A Yes, they did.

15 Q And you came to form the view that he was not  
16 the kind of candidate who could live under a  
17 provision like 3(b), 3(b)1; is that correct?

18 A Yes, that's correct.

19 Q And dropping down to the end of that page, items  
20 (g) and (h), two further conditions that stress  
21 the discretionary control of the RCMP.

22 "Item (g) Maintenance assistance payments  
23 referred to in sub paragraph 4(a) of this  
24 letter of acknowledgment may be subject to  
25 adjustment at the sole discretion of the

1 RCMP should my financial circumstances  
2 change.

3 (h) The special protective measures  
4 referred to in paragraph 4 of this letter  
5 of acknowledgment are entirely gratuitous  
6 and may be terminated at any time at the  
7 sole discretion of the RCMP."

8 Did those kinds of provisions become problematic  
9 in terms of Mr. Kovnats' expectations of what he  
10 thought he was getting into with his client when  
11 he came to you? Were these matters that had to  
12 be explained to him?

13 A They became more problematic in his dealings  
14 with the Winnipeg City Police than they did  
15 with -- because we had not been really involved  
16 with him as far as money goes.

17 Q Was there a theme in the negotiations, and I'm  
18 talking in a very general high level here, we  
19 will go into the sort of chronological  
20 progression in a moment, but approaching it at a  
21 very high level, was from a theme throughout the  
22 discussions of promises and guarantees, whereas  
23 what you were offering in the program was a  
24 large measure of RCMP discretion and control?

25 A Yes, that's true.



1 Q And that Kovnats had the sense and his clients  
2 had the sense that promises or guarantees had  
3 been made that were not being fulfilled?

4 A They had the misconception, I would put it, that  
5 we were going to be, as you said, the great  
6 money tree. But, yeah, it wasn't going to  
7 happen.

8 Q All right. Going back then to the meeting at  
9 tab 5, if I could ask you to turn up your note,  
10 your continuation report at tab 5. The to do  
11 list that you set out at the end of your meeting  
12 to get this thing organized is, the very first  
13 item on your to do list is,

14 "Check with Bruce Miller to see if he and  
15 Mr. Kovnats have come to an agreement re  
16 house and vehicle, also on costing."

17 Have I read that accurately?

18 A Yes.

19 Q And I take it from that that you knew Miller was  
20 the point person who was in charge of the  
21 negotiations for Manitoba Justice?

22 A Yes, obviously.

23 Q And that he was the person who you had to get  
24 the MOU settled with? Costing refers to the  
25 MOU, does it?

1 A Yes.

2 Q And your final item on your to do list is to  
3 prepare and forward an MOU for approval; is that  
4 correct?

5 A Yes.

6 Q So the whole business of Kovnats and Miller  
7 agreeing on what the funding ceilings were going  
8 to be, and then putting it into an MOU, was  
9 something that had to come from them first, or  
10 was it something that would come from you?

11 A They would have to tell, they would have to let  
12 the RCMP know what they were willing to finance,  
13 should he go into relocation.

14 Q So the steps here, I'm just trying to understand  
15 the sequencing here from your note. You want to  
16 check with Miller as to whether he and Kovnats  
17 have reached an agreement on costing?

18 A Yes, reach the agreement on costing so we could  
19 go ahead with an MOU.

20 Q You also want him to get rid of the house and  
21 the vehicle, because that's not anything that  
22 you are going to have anything to do with?

23 A That was up to them, yes.

24 Q They have got to do whatever they are going to  
25 do about that. But my focus is on the funding

1 issue, the costing issue, as you call it, the  
2 MOU. Are the steps here, am I understanding  
3 this correctly that Kovnats and Miller would  
4 reach agreement on what was satisfactory to  
5 them, as between Manitoba Justice and their  
6 witness, and then they would tell you what the  
7 funding levels were that they had agreed to?

8 A That they agreed on, yes.

9 Q And you would then put that into an MOU?

10 A Prepare the MOU, yes, right.

11 Q Again, was that something that was ever  
12 completed? Was there ever an agreement between  
13 Kovnats and Miller as to the funding levels that  
14 would be supported under the Witness Protection  
15 Program that allowed you to then draft an MOU?

16 A No, that was never completed.

17 Q All right. As a result of this meeting when  
18 sort of a reality check takes place in which you  
19 inform Mr. Zanidean's lawyer as to what is  
20 available and what is not available under the  
21 program, did they ever come back to you and say,  
22 all right, Corporal Orr, we have heard it from  
23 you, we are satisfied, we want into the program?  
24 Did they ever make a clear definitive decision  
25 that they wanted admission to the program on the

1 terms that you were setting out for them?

2 A No, not at all.

3 Q And certainly we know from your statement that  
4 the RCMP, on its side, never came to a position  
5 where they felt they could appropriately let him  
6 into the program?

7 A Exactly.

8 Q So you essentially had two parties that neither  
9 of them really ultimately made a commitment to  
10 dance with each other? You are nodding your  
11 head?

12 A Yeah, true.

13 Q Now, the last topic emerging out of these  
14 preliminary discussions and out of a review of  
15 the application -- incidentally, I'm not going  
16 to take you through all of the detailed  
17 financial requests and relocation and security  
18 requests set out in the application, I think  
19 they all speak for themselves. But the one  
20 aspect of the application and of Mr. Kovnats'  
21 letter that we haven't touched on yet, that I  
22 want to deal with before moving into the actual  
23 chronology of the negotiations, is the whole  
24 question of immunity from criminal jeopardy that  
25 is mentioned both in Kovnats' letter and in the

1 application. So could I refresh your memory on  
2 those items, Sergeant Orr? If you have his  
3 letter at tab 4, the 15 point shopping list, it  
4 is item 8 that refers to immunity. Is that  
5 correct?

6 A True.

7 Q Where he says,

8 "As a result of the new identity, any other  
9 matters outstanding against Ray of which  
10 the Crown is currently aware will not be  
11 proceeded with, either in this or any other  
12 provinces."

13 And he develops a security rationale for why he  
14 thinks there should be a complete immunity from  
15 all outstanding matters.

16 So I take it you read that and you put a  
17 question mark in the margin beside it?

18 A Yes.

19 Q And at tab 2 in the actual application there is  
20 a much more extensive reference by the Winnipeg  
21 Police Service to this aspect of the problem.  
22 Tab 2 is the application. And there is  
23 pagination in the bottom right-hand corner, if I  
24 could use that, the larger numbers in the 400s  
25 in the bottom right-hand corner. At page 477,

1           you have page 477, there is a part 5 of the form  
2           that says assurance, undertakings already made  
3           to the witness?

4     A     Yes.

5     Q     Do you have that?

6     A     I do.

7     Q     And just the last paragraph there says,

8           "We have made no promises to the witness

9           with respect to immunity from any

10          prosecution, with respect to his role in

11          the Swift Current arson investigation...",

12          which is the specific matter that everybody is

13          aware of,

14          "...we have informed him that we notified

15          Swift Current RCMP who are investigating

16          independently and without any request of

17          favour by us."

18          I take it you read that when that came in?

19     A     Yes, I would have.

20     Q     And the status of the investigation there

21          appeared to be that it was ongoing and

22          independent without any interventions from the

23          Winnipeg Police; is that correct?

24     A     Correct.

25     Q     And then moving forward to page 481, there is a

1 much more extensive discussion. The same tab,  
2 page 481 at the bottom is the bottom pagination,  
3 this is part 7 of the form. And part 7 sub 4  
4 specifies,

5 "Summarize information divulged by the  
6 witness with respect to other criminal  
7 activity. Include possible charges,  
8 identify accused or potential accused  
9 persons, describe significance of these  
10 charges."

11 So the whole issue of outstanding criminal  
12 jeopardy is a common place matter that gets  
13 dealt with in witness protection applications;  
14 is that fair?

15 A That's true.

16 Q It has got a whole section devoted to it in the  
17 form, and that's because it is relevant to  
18 security issues?

19 A Yes.

20 Q And under (c), there is a lengthy discussion  
21 about the Swift Current arson, and I don't want  
22 to read all of that with you, but the last three  
23 or four lines are relevant.

24 "We have told him that we notified the RCMP  
25 and the outcome of the investigation rests

1           with them. In the meantime, however,  
2           Zanidean's lawyer has requested of  
3           Mr. Bruce Miller, Crown Attorney, complete  
4           immunity from prosecution and a written  
5           guarantee stating the same prior to the  
6           murder trial. This delicate matter has not  
7           yet been resolved."

8           Did you read that when that came in, in the  
9           form?

10        A     Probably, yes.

11        Q     And you see further up in -- so Kovnats'  
12           position is to demand complete immunity, and  
13           further up in that paragraph, just ahead of the  
14           passage I read, there is a reference to a  
15           discussion with Constable Burton, who confirms  
16           that they are investigating. He is the local  
17           officer in Swift Current.

18                   "Constable Burton has agreed not to pursue  
19                   Zanidean at this time but will continue  
20                   investigation once our trial is concluded."

21           It appears to be, according to the Winnipeg  
22           Police Service view of the matter, an agreement  
23           in place, sort of a stand-still agreement until  
24           the trial is concluded, at which point they will  
25           re-evaluate it. And we have seen some



1 documentation to that effect. Is that correct?

2 A That's what it appears as.

3 Q So this is the information that you had going in  
4 about this whole Swift Current matter, that  
5 there was sort of a temporary stand-still  
6 agreement in place, but that Kovnats and  
7 Zanidean were demanding more, they wanted  
8 complete immunity and a written guarantee, and  
9 that Miller was dealing with Kovnats on this  
10 point. Was that your understanding?

11 A Yes.

12 Q And it was a delicate matter that had not yet  
13 been resolved.

14 So what I want to ask you generally, on  
15 this whole topic of outstanding charges and  
16 requests by Crown witnesses for immunity on  
17 outstanding charges, I take it that it is not  
18 unheard of in the criminal justice system to  
19 extend favours to helpful Crown witnesses in  
20 relation to outstanding charges? We do this  
21 from time to time. It is sometimes referred to  
22 as a patch; is that correct?

23 A True.

24 Q So this wasn't unknown to you, these kinds of  
25 discussions that were going on?

1 A No.

2 Q And the question I want to ask you is, what was  
3 the position of the Source Witness Protection  
4 Program as to the impediment that outstanding  
5 charges or possible charges, as it is referred  
6 to in the form, represented, what kind of an  
7 impediment were they to the application  
8 proceeding?

9 A It would be a logistical impediment. Especially  
10 if someone was going into the program and they  
11 were under charge, then maybe the application to  
12 the program would be delayed, or else his  
13 initiation into the program would be delayed  
14 while the court case was taken care of. If  
15 there was a jail term after, same thing would  
16 happen.

17 Q So you could potentially delay the application  
18 until the criminal matters had been disposed of?

19 A Yes.

20 THE COMMISSIONER: But you wouldn't necessarily  
21 have to, would you?

22 THE WITNESS: Delay them?

23 THE COMMISSIONER: Yes.

24 THE WITNESS: No, not necessarily. But the  
25 problem was, especially with a name change, if

1           you had a name change and someone was jailed,  
2           then they are going to jail under -- and chances  
3           are they would be known by the old name, et  
4           cetera, et cetera.

5           BY MR. CODE:

6       Q     Assuming you couldn't resolve --

7           THE COMMISSIONER: It is a trivial thing, but  
8           the word Source Witness Protection Program, what  
9           does the word "source" mean and why is it used,  
10          or is it?

11          THE WITNESS: Yeah, in some cases, in some  
12          instances a human source may provide information  
13          and he may be identified. So they too might  
14          have to be accepted into the program to get them  
15          away from the threat area. So it was a source  
16          witness protection.

17          THE COMMISSIONER: All right.

18          MR. CODE: Source refers presumably to an  
19          informant, somebody who doesn't become a  
20          witness, who doesn't come out from under their  
21          cover, who may have to be protected.

22          THE WITNESS: Yes.

23          BY MR. CODE:

24       Q     Assuming you can't delay it, and let's use this  
25           case as an example, we have -- Driskell is in

1 custody, a trial date has been set for the first  
2 week of June, the case is proceeding.  
3 Zanidean's outstanding jeopardy is in  
4 Saskatchewan on a case still being investigated,  
5 where the facts are still being developed.  
6 Driskell's trial is going to proceed before  
7 Zanidean's charge ever gets dealt with.

8 Is the existence of outstanding charges  
9 that have not been disposed of, or outstanding  
10 possible jeopardy to charges that have not been  
11 disposed of, is that a complete bar to entry  
12 into the Witness Protection Program?

13 A No, it is not.

14 Q How do you manage that problem then?

15 A As I said earlier, if the program, if it is  
16 ongoing, then it becomes a little bit more  
17 logistically difficult to get them into the  
18 program immediately because of this court case  
19 that's pending. But steps could also be taken  
20 to protect the witness until he had to appear  
21 for whatever charge he was up against.

22 Q Take steps in relation to the kind of court  
23 appearance, try and have court proceedings  
24 in-camera, that kind of thing, is that what you  
25 are talking about?

1 A Yes. And to make sure that he was escorted in  
2 to the court case and then escorted out, unless  
3 there was a correction term.

4 Q And what if he is placed in custody, if he is  
5 convicted and sentenced to a custodial term, are  
6 there arrangements --

7 A Then again you have to bring in more people into  
8 the circle that know about him being in the  
9 protection program, and work through Canada  
10 Corrections to try and get him in a place that  
11 there is less of a threat level.

12 Q You try and get him to serve his sentence in a  
13 location where none of his former associates  
14 might run into him?

15 A Yes.

16 Q So if you can't resolve the outstanding charges  
17 it becomes a problem for you, but it is a  
18 problem that you have got ways of dealing with  
19 is the way I understand your evidence; is that  
20 correct?

21 A That's correct.

22 Q And indeed in your statement at tab 1, you put  
23 the matter rather forcefully. You said,  
24 "Since the people who seek entry to the  
25 Witness Protection Program are rarely model

1 citizens, barring people with outstanding  
2 charges from the program would effectively  
3 put the program out of business."

4 Is that an accurate statement?

5 A That's an accurate statement, yes.

6 Q And I take it, it is well known in police  
7 circles that the people in witness protection  
8 often are somewhat unsavory?

9 A Yes.

10 Q And that outstanding charges is not a complete  
11 impediment?

12 A No, it is not.

13 Q It just makes your job a little more difficult?

14 A Yes.

15 MR. CODE: This would be a perfect time to  
16 break.

17 THE COMMISSIONER: We will break for 15 minutes.

18 THE CLERK: All rise. This Commission of  
19 Inquiry is now in recess.

20 (Proceedings recessed at 10:55 a.m. and  
21 reconvened at 11:10)

22 THE CLERK: All rise, this Commission of Inquiry  
23 is now recommenced. Please be seated.

24 BY MR. CODE:

25 Q Now, still on this general topic of witness

1 protection and immunity from outstanding  
2 charges, I take it that it is self-evident that  
3 witness protection in and of itself does not  
4 confer immunity; is that correct?

5 A No, it does not.

6 Q Again, if we go to tab 6 to standard form LOA,  
7 it spells it out in paragraph 3(d). If you have  
8 tab 6 open again using the unredacted form at  
9 the back of the tab, 3(d) says,

10 "I have been informed that my assistance to  
11 the RCMP, and the provision of these  
12 protective measures to me by the RCMP, does  
13 not at any time exempt me from criminal  
14 responsibility for my actions."

15 Is that standard form clause always included in  
16 witness protection matters?

17 A Yes, it.

18 Q And we see in this case, there is a report in  
19 the Swift Current files that we went through  
20 with Officers Ferguson and Burton, where  
21 Zanidean and his wife were passing through Swift  
22 Current and were stopped for suspected impaired  
23 driving, and there appeared to be a  
24 misconception that because they asserted they  
25 were in witness protection, they were immune

1 from criminal process. Was that ever the  
2 subject of discussions with Zanidean and his  
3 wife and his lawyer?

4 A I don't know. That's the first of ever heard of  
5 it.

6 Q You never reached the point of the LOA with  
7 them, so that misconception may not have been  
8 the subject of expressed discussions?

9 A True. True.

10 Q And also on this subject of immunity for Crown  
11 witnesses, the RCMP has an express policy on  
12 this subject, does it not?

13 A They do.

14 Q And if you look at tab 5, Mr. Gates has produced  
15 the policy for us that was in force at the  
16 relevant time period. And if you again use the  
17 Bates stamp numbers in the bottom right-hand  
18 corner and turn to page 70, it is a very  
19 lengthy --

20 A Tab 7.

21 Q Tab 7, page 70, very, very lengthy policy on --  
22 human sources is the title of the policy. But  
23 at page 70 we have a title, "Commission of  
24 Offences by Sources." Do you have that page  
25 open?



1 A I do.

2 Q It is letter "I" within the policy, Commission  
3 of Offences by Sources, and under paragraph  
4 1(c),

5 "A source cannot be guaranteed immunity  
6 from prosecution except by the appropriate  
7 Attorney General or the Department of  
8 Justice."

9 Was that the RCMP policy, that if you wanted  
10 immunity, it had to involve discussions with the  
11 justice departments?

12 A Yes, it did.

13 Q Beg your pardon?

14 A Yes.

15 Q Dropping down after the redacting, to paragraph  
16 1(e) I think it is, where the policy deals with  
17 immunity first, and then in case you thought  
18 that discretion not to charge was something  
19 different than formal immunity, they deal with  
20 that separately.

21 "Police discretion not to lay charges but  
22 to divert the offender to another agency or  
23 to give a warning is separate and distinct  
24 from the action of withholding charges  
25 because the offender offers to provide

1 information that may lead to solving or  
2 preventing a more serious crime."

3 Now, that's essentially what Zanidean was asking  
4 for in this case, is that not correct? He  
5 wasn't asking for discretion to divert him or  
6 give him a warning, he was asking for the  
7 withholding of charges because of the favours,  
8 the benefits that he was offering to the Crown  
9 by providing valuable evidence; is that correct?

10 A That's my understanding.

11 Q So this would be the applicable policy that we  
12 were under, if it was a mere withholding of  
13 charges. The policy up above would be the  
14 discretion, the policy we would be under if it  
15 was formal immunity by the Attorney General.  
16 And in relation to that kind of withholding of  
17 charges, what the policy says as we carry on,  
18 "This withholding of charges is not a  
19 police discretion but is a decision to be  
20 made in the public interest by the CROPS  
21 officer or delegate, after consultation  
22 with agents of the Provincial Attorney  
23 General or Department of Justice Canada."  
24 So the relevant practice and policy in the RCMP  
25 at the time was that even a mere discretion to

1 withhold charges as a benefit to a Crown witness  
2 had to go up to the CROPS officer at divisional  
3 headquarters and involve consultation with the  
4 Department of Justice; is that correct?

5 A That's correct.

6 Q And we heard a great deal about that over the  
7 last three days from Inspector Burton and Staff  
8 Sergeant Ferguson. So, with that background in  
9 mind as to the way the program operated, and the  
10 applicable policies that were in place within  
11 the RCMP at the time, could I take you to two  
12 accounts, one by Sergeant Anderson and one by  
13 then Constable Burton where they discuss the  
14 impact of the Witness Protection Program on the  
15 Crown witness, Reath Zanidean.

16 The first one, Sergeant Anderson's version  
17 is at tab 8. And this is in the early spring of  
18 1991 when the application was before you, had  
19 been received by you. And you see at tab 8,  
20 page 2, in the middle of the page, a paragraph  
21 that starts with the words,

22 "During March and April, 1991..."

23 Do you have that?

24 A Yes, I do.

25 Q "During March and April, 1991..."

1 I'm not going to read the whole paragraph,  
2 "...Sergeant Paul and I made efforts to  
3 facilitate Zanidean's entry into the RCMP  
4 Witness Protection Program."

5 And we know that that is true.

6 "We learned from Corporal Tom Orr of D  
7 Division that Zanidean would not qualify  
8 for the program if he was the subject of  
9 the RCMP arson investigation."

10 I don't think that we need to read the rest of  
11 the paragraph, it is that second sentence that  
12 obviously impacts on you and your evidence.

13 What is your response to that account by  
14 Sergeant Anderson of what he says you advised  
15 him?

16 A I can't remember the specific conversation, but  
17 to say that he would not be entered into the  
18 program because of that charge, I don't think  
19 so. Like, I could have explained the logistical  
20 problems of him being under charge, et cetera,  
21 but to say out and out that he would not get  
22 into the program because of this, I would not  
23 think so.

24 Q He says that he would not qualify, that it is an  
25 absolute bar. Would you have used that language

1 with Sergeant Anderson or would you have left  
2 him with that impression? Did you explain the  
3 matter in a way that could have left him with  
4 that impression?

5 A I don't remember the conversation, as I said.  
6 But like I say, I doubt very much, like having  
7 dealt with witness protection for the number of  
8 years that I had, and knowing what I did about  
9 it, I doubt very much that I would have said  
10 that it is an absolute bar.

11 Q So, according to your evidence, this is an  
12 overstatement of what you should have said and  
13 what you think you likely said; is that a fair  
14 way of putting it?

15 A Yes.

16 Q But it is possible that in discussing the  
17 impediments to the program that outstanding  
18 charges would have caused, he may have simply  
19 misunderstood you and put it at a higher level  
20 than he should have; is that fair?

21 A That's fair.

22 Q Because there is no doubt that this was an  
23 impediment, the outstanding charges were a  
24 problem that had to be dealt with?

25 A Certainly.

1 Q All right. And if we look at Constable Burton's  
2 version of it, then Constable Burton at tab 14,  
3 page 2, and this of course is double hearsay, he  
4 is reporting on what Anderson told him what you  
5 told Anderson, so we have a second layer of  
6 unreliability here because of the double hearsay  
7 aspect of it. But bearing in mind that, it is  
8 at page 2. At the bottom of page 2 you see a  
9 reference to an April -- tab 14 -- at the bottom  
10 of page 2, tab 14, do you see a reference to the  
11 April 5th call with Anderson? It is a quote  
12 from a C237 dated April 19th. It starts,

13 "On April 5th, call was received from Tom  
14 Anderson."

15 THE COMMISSIONER: This is the third paragraph  
16 from the bottom, where it says -- just above it  
17 says my 237 dated 91/04/19.

18 THE WITNESS: Okay, I have it.

19 BY MR. CODE:

20 Q Do you have it?

21 A Right.

22 Q If you could just read that paragraph. It is  
23 obviously the last sentence that impacts you and  
24 your evidence.

25 "The Witness Protection Program coordinator

1 in D division..."

2 That's you I take it?

3 A Yes.

4 Q "...advised that they would not hide  
5 Zanidean as long as the writer was actively  
6 investigating him with the possibility of  
7 charges pending."

8 Again, it is not significantly different from  
9 Anderson's version of it. Anderson says would  
10 not qualify, Burton says will not hide as long  
11 as he was the subject of an active outstanding  
12 investigation. So I take it that your response  
13 to that version of the conversation is the same  
14 as to Sergeant Anderson's version of it?

15 A Yes, it would be.

16 Q It is certainly not what you should have said to  
17 him and you don't think that's what you said to  
18 him?

19 A No, that's true.

20 Q It is possible there was simply a  
21 misunderstanding?

22 A Yes, possibly.

23 Q Now, the last preliminary matter that I want to  
24 ask you about, about the general nature of  
25 witness protection, is back in the policy at tab

1           7, if you could go back to the policy? And I  
2           want to ask you again a general question: In  
3           witness protection negotiations, was the quantum  
4           or the generosity of the witness protection  
5           benefits a matter that the RCMP was sensitive to  
6           because of concerns that excessive generosity or  
7           being overly generous might have a bearing on  
8           the witness' credibility? Is that a general  
9           policy concern that you had in witness  
10          protection matters? Do you understand my  
11          question?

12        A     No, I don't.

13        Q     Let me be more blunt about it. If you pay the  
14          guy too much, it starts to look like a reward  
15          for testimony rather than witness protection; is  
16          that fair?

17        A     Yes.

18        Q     If you look at tab 7, page 82, you may have  
19          forgotten these policies, Sergeant Orr. And I'm  
20          sure you read them every day and took them home  
21          to bed with you and memorized them. But if you  
22          look at page 82, we have the policy directly on  
23          that point. I don't think it takes a genius to  
24          figure this out, but do you have page 82 using  
25          the numbering at the bottom of the pages?



1 A I do.

2 Q And the heading in the policy manual is "Source  
3 Witness Protection Special Measures." And the  
4 last one of these special measures in 1(h) at  
5 the bottom of the page, it starts out,

6 "Each request for protection must be  
7 carefully assessed."

8 Do you see that?

9 A Yes.

10 Q And this is dealing with your field, with the  
11 actual witness protection application, is it  
12 not?

13 A It is.

14 Q And the first one of those matters to carefully  
15 assess is,

16 "The RCMP meets its obligation to a source  
17 witness but is not overly generous as this  
18 could affect the credibility of the  
19 person's testimony."

20 Was that the policy at the time?

21 A Yes, it was.

22 Q And is that a matter of simple common sense,  
23 that if the financial benefits are overly  
24 generous, it ceases to look like witness  
25 protection and starts to look more like a reward

1 or an award for testifying?

2 A Yes.

3 Q And you see a note at the bottom there, at the  
4 very end of the page before the redacting, it  
5 says.

6 "Note: Awards, operational expenses and  
7 fees for agent services are not part of  
8 special protective measures and must be  
9 dealt with separately."

10 The phenomenon of rewards, offering rewards for  
11 witnesses, is a completely separate aspect from  
12 witness protection, is it not?

13 A This would not refer to witnesses so much as  
14 agent sources.

15 Q That as well, absolutely. So the witnesses, the  
16 way we deal with them is we provide protective  
17 measures. Informant and agents, we sometimes  
18 give them awards or rewards; is that your point?

19 A That's true.

20 Q So these negotiations that were going on between  
21 Kovnats and Miller about the quantum of the  
22 financial benefits that the Department of  
23 Justice was willing to agree to, that would  
24 become embedded in the MOU, as I understand the  
25 process, were matters that had to be carried out

1 with sensitivity because of the relationship to  
2 credibility if they became overly generous. Is  
3 that a fair statement?

4 A That's true.

5 Q All right. Let's turn to the narrative now and  
6 trace through the history of what happens to  
7 Mr. Zanidean.

8 After your first meeting with Kovnats on  
9 March 25th, and you have your to do list, we  
10 have dealt with all of that back at tab 5. I  
11 now want you to move forwards, we are at tab 10.  
12 The next significant development is on  
13 April 5th, about ten days after your meeting  
14 with Kovnats, Sergeant Paul gets a call from  
15 Reath Zanidean regarding a threat. And you see  
16 the supplementary report of Anderson and Paul  
17 set out there at tab 10?

18 A Yes.

19 Q And the threat is a note left under his  
20 windshield wipers, and it is described there.  
21 And he has misplaced the note, so the note has  
22 never been seen. And immediately arrangements  
23 are made by the Winnipeg Police, do you see that  
24 second to last paragraph? They put him into a  
25 safe hotel to immediately provide temporary

1 protection. Is that an illustration of the kind  
2 of informal witness protection measures that all  
3 police forces engage in when trials are pending,  
4 that is quite distinct from formal witness  
5 protection programs?

6 A Yes, it is.

7 Q And then further you note that they are looking  
8 to make arrangements to move him out of town,  
9 more long term arrangements pending the trial.  
10 Is that correct?

11 A That's correct.

12 Q This report, you will note if you look at the  
13 date on the bottom of it, it is written on  
14 April 10th, five days after Zanidean reports the  
15 threat to Sergeant Paul. It appears Sergeant  
16 Anderson writes this report. And you see his  
17 conclusion as of the April 10th time frame when  
18 he is writing the report. The very last  
19 paragraph of it he says,

20 "Zanidean has since been placed under the  
21 Witness Protection Program..."

22 capital WPP,

23 "...and will be moved to a safe location in  
24 Canada to await the upcoming trial."

25 Is that statement accurate, to your knowledge?

1 A No, it is not.

2 Q Never any point when he was placed under the  
3 witness protection, to your knowledge?

4 A No, he was not.

5 Q And certainly the temporary arrangements that  
6 were made pending the trial to move him to  
7 Calgary, that we are about to come to, did not  
8 involve placing him under the Witness Protection  
9 Program?

10 A Certainly not.

11 Q So once again, Sergeant Anderson is either  
12 overstating the matter here or he is labouring  
13 under a misconception?

14 A True.

15 Q Now, again, just dealing with reporting  
16 practices, this report that we find at tab 10,  
17 where Sergeant Paul and Sergeant Anderson report  
18 on a threat and on the witness protection  
19 measures they take to manage that threat, and  
20 they put it all into a contemporaneous  
21 supplementary report; is that normal police  
22 practice in your experience, that when these  
23 kinds of events occur and these kinds of  
24 measures are taken, that police forces generally  
25 will prepare a supplementary report recording

1           it?

2    A       For their file, for the respective police  
3           forces' file, yes.

4    Q       They are of sufficient importance to merit the  
5           preparation of a supplementary report like this?

6    A       Yes, they are.

7    Q       So I take it, in the course of your work in this  
8           area, you have seen many police forces dealing  
9           with witness protection matters, and you would  
10          have seen many reports of this nature? There is  
11          nothing unusual about this report?

12   A       If you are referring to RCMP reports, like  
13          chances are we would not have received the  
14          Winnipeg City report at all.

15   Q       No, no, I'm not suggesting that you received it,  
16          but when you are reviewing witness protection  
17          files, when a police force submits a witness  
18          protection application to you and you are doing  
19          a threat assessment, do you review these kinds  
20          of supplementary reports? I suppose what I'm  
21          asking you, and I will cut to the chase here, is  
22          this all hush-hush and you have to have  
23          whispered discussion about it, or do police  
24          forces prepare supplementary reports setting out  
25          these kinds of matters?

1 A Usually they would, for their own files, what  
2 they put in the files, what they put in their  
3 files, we have no control of. So for them to do  
4 a supplementary report like this for their file,  
5 definitely.

6 Q Definitely what?

7 A Yes, they would probably have to.

8 Q That's all I'm getting at. I'm not interested  
9 in what you see or don't see. I'm talking about  
10 good police practices, ordinary police  
11 practices?

12 A True.

13 Q Now, you get involved in this a few days later,  
14 the threat is reported to Sergeant Paul on  
15 April 5th, and a few days later we see you  
16 becoming involved, and your continuation report.  
17 And needless to say, your file is full of  
18 reports like this; is it not correct?

19 A True.

20 Q You set out the threat in your continuation  
21 report, the fact of the threat at tab 9, and the  
22 communications with Sergeant Vandergraaf in  
23 terms of the steps that were taken to deal with  
24 it, it is a matter on which you want to report  
25 to your file? Is that correct?

1 A That's true.

2 Q And the points I want to note at tab 9 are, the  
3 way it comes in to you is not from the local  
4 police, but from Mr. Kovnats. He phones you on  
5 the 8th of April; is that correct?

6 A That's correct.

7 Q And he still seems to think that you are going  
8 to provide immediate interim relocation, that  
9 that's part of the service that you are  
10 offering, and you push him back to the Winnipeg  
11 City Police; is that correct?

12 A True.

13 Q So these interim measures being taken for  
14 Zanidean pending the trial were not your  
15 responsibility, they were the Winnipeg Police  
16 responsibility?

17 A They were.

18 Q Because as far as you were concerned, he wasn't  
19 in your program yet, you didn't even have a  
20 commitment from him that he wanted to be in your  
21 program?

22 A True.

23 Q Secondly, you see in the second note, later on,  
24 on the 9th, we are now four days after the  
25 threat has been received, or four days after it



1 has been reported, Mr. Zanidean wants to go to  
2 Calgary, requests a suite in a hotel for the two  
3 months before the trial, plus incidental  
4 expenses and the cost of a rented car. And I  
5 take it that was all being communicated to you  
6 by Sergeant Vandergraaf?

7 A Yes.

8 Q Is this again another illustration of  
9 Mr. Zanidean seeking to choose his destination  
10 as opposed to the police force choosing the  
11 destination on the basis of the threat  
12 assessment?

13 A In this case, yes.

14 Q And his reason why he wanted to go to Calgary,  
15 you eventually learned, was because his wife was  
16 visiting there with her brother and he wanted to  
17 go join her?

18 A Yes.

19 Q Sergeant Vandergraaf asks of you a fairly modest  
20 request, as I read the note, he simply asks you  
21 to appoint a contact person in Calgary who will  
22 be a conduit for getting the money to Zanidean,  
23 the support money for him while he is  
24 temporarily relocated; is that correct?

25 A That's correct.

1 Q He is not asking you to immediately place  
2 Zanidean in the formal Source Witness Protection  
3 Program?  
4 A No, he is not.  
5 Q So on April 9th, there is no misunderstanding  
6 between you and Vandergraaf as to what is being  
7 asked for is simply a contact person. So when  
8 Anderson writes his report the next day, on the  
9 5th -- on the 10th of April, he appears to be  
10 saying something inconsistent with what  
11 Vandergraaf is saying to you here; is that fair?  
12 A That's fair. It was just going to be in a  
13 straight assistance to.  
14 Q And lastly, at the bottom of that tab 9, the  
15 arrangements are made for Zanidean to come in  
16 and see you, because you need to conduct your  
17 formal interview for the application with him  
18 before he leaves for Calgary; is that correct?  
19 A Completion of the personal history form, yes.  
20 Q You had met with Kovnats but you had not yet met  
21 with Zanidean?  
22 A True.  
23 Q And if this witness protection application was  
24 to move forward to the next stages, you needed  
25 to interview him and fill out a form?

1 A Yes.

2 Q And at tab 12, we see that interview takes  
3 place. If you flip forward to tab 12 at the  
4 top, he actually comes in that same day that  
5 Vandergraaf is talking to you on the phone, on  
6 April the 9th, Vandergraaf or somebody  
7 facilitated him coming into your office and you  
8 do the interview; is that correct?

9 A That's correct.

10 Q Again, as I read the note, you explained the  
11 program to him. And did this, once again, like  
12 your previous meeting on the 25th of March,  
13 involve the setting aside of preconceptions or  
14 misconceptions and explaining to him exactly  
15 what the program could offer him?

16 A Yes, it would have.

17 Q The next day after Vandergraaf's call on the  
18 10th, the day that Sergeant Anderson writes his  
19 report, we have you still at tab -- I am sorry,  
20 we have to go back to tab 11 -- you send a  
21 message to the Calgary RCMP setting up this  
22 arrangement that Sergeant Vandergraaf has asked  
23 you to set up; is that correct?

24 A That's true.

25 Q The message is directed to K Division?

- 1 A Yes.
- 2 Q And I take it that's Calgary, is it?
- 3 A Yes, it is. Edmonton, sorry.
- 4 Q It's Edmonton, K Division?
- 5 A K Division is Alberta, headquarters in Edmonton.
- 6 Q But it covers Alberta?
- 7 A Yes.
- 8 Q And you also copy it to Ottawa, your messages?
- 9 A Yes.
- 10 Q Again, the points that you make in this memo or  
11 in this message are relatively clear. First of  
12 all, you make clear in the very first paragraph  
13 that the formal Witness Protection Program  
14 application relates to the post-trial period?
- 15 A Yes.
- 16 Q Secondly, you make clear that Zanidean's choice  
17 of location, namely Calgary, is driven by the  
18 fact that his wife is currently there, it is not  
19 being driven by any security considerations.
- 20 A True.
- 21 Q And thirdly, you indicate that all the City  
22 Police are requesting at this time is a contact  
23 person?
- 24 A Yes.
- 25 Q Consistent with Vandergraaf's discussions with

1           you, it is no more than a contact person.

2    A       Yes.

3    Q       Finally, at the bottom of the message, the last  
4           line, you make clear that Zanidean and his  
5           spouse will decide on their future requirements  
6           with the program. And what is the point you  
7           were trying to make there?

8    A       I don't believe they had agreed to go into the  
9           RCMP program at that point, for whatever reason.

10   Q       They still hadn't made a commitment on their  
11           part to even proceed with the application; is  
12           that fair?

13   A       Exactly.

14   Q       The next tab, tab 12, if you go -- we already  
15           dealt with the first entry at tab 12, the  
16           April 9th entry. The April 10th entry you  
17           simply have Vandergraaf advising you that  
18           Zanidean is leaving for Calgary on Friday, with  
19           his two dogs, and suggesting a payment  
20           arrangement of \$700 a month for two months. Is  
21           that correct?

22   A       True.

23   Q       Two days later, if we flip to the next tab, tab  
24           13, the financial arrangements have changed. As  
25           you get -- if you look at page 2, we will come

1 back to page 1, it relates to your call to Swift  
2 Current. Let's just deal with the finances  
3 first.

4 You see at page 2, tab 13, Vandergraaf  
5 calls you in the afternoon and the authorization  
6 has been increased to \$2,000 per month for  
7 accommodation, and \$50 per day for meals and  
8 incidentals. So the financial benefits were  
9 increased somewhat?

10 A Yes, they were.

11 Q And if there was any doubt whatsoever about  
12 whether this was formal entry into the Witness  
13 Protection Program or merely temporary  
14 assistance with a contact person, you actually  
15 get a letter that same day, April 10th, that we  
16 have at tab 17. Could you turn to tab 17? The  
17 Acting Chief of Police, Klippenstein sends you a  
18 letter, and in the concluding paragraph he says,  
19 page 2 of the letter, tab 17,

20 "We are also requesting that you keep your  
21 file open on Zanidean for possible  
22 implementation of a secure name change in  
23 the future."

24 I take it that would be an aspect of formal  
25 witness protection?

1 A It would have, yes.

2 Q "We fully understand that this interim  
3 plan is not formally sanctioned by the RCMP  
4 and amounts simply to assisting the  
5 Winnipeg Police."

6 I take it that view set out there was consistent  
7 with your view of the matter?

8 A Definitely.

9 THE COMMISSIONER: Sorry, Mr. Code, what tab is  
10 this?

11 MR. CODE: Tab 17, the letter from Chief  
12 Klippenstein, the last paragraph, two sentences.  
13 The first sentence he says he wants them to keep  
14 the file open for possible future witness  
15 protection measures. But in the meantime the  
16 second sentence is the present arrangement, he  
17 describes as an interim plan not formally  
18 sanctioned by the RCMP, it amounts simply to  
19 assisting the Winnipeg Police.

20 THE COMMISSIONER: Yes.

21 BY MR. CODE:

22 Q So Klippenstein's view of it and Vandergraaf's  
23 view of it and your view of it all seem to be  
24 that this was not witness protection, this was  
25 just temporary assistance?

1 A It was not witness protection, no.

2 Q And Anderson's view of it in the April 5th memo  
3 was inconsistent with that where he describes it  
4 as formal witness protection -- sorry,  
5 April 10th memo, I think, I said April 5th.

6 A True.

7 Q Why is it that a Chief of Police writes a letter  
8 like this to formalize the arrangement and put  
9 it in writing in this way? What is the purpose  
10 of this letter? It is sent to your boss,  
11 Callens, and to your attention. Is this  
12 standard practice in these kind of arrangements  
13 to make it clear what the terms are?

14 A What the terms are, yes, definitely.

15 Q If you look at the first page of the letter, it  
16 also sets out some interesting background  
17 information. You see in the second paragraph  
18 that the alleged threat apparently was received  
19 on April 4th, the day before it was reported to  
20 the police. Is that correct?

21 A Yes.

22 Q And there is also, in the third paragraph it is  
23 made clear that Zanidean has not yet decided on  
24 whether he wants a change of identity upon  
25 completion of the prosecution. Is that correct?



1 A True.

2 Q And that's consistent with your own  
3 understanding that he had not yet made a  
4 commitment to the program?

5 A Yes.

6 Q And there is also further information about the  
7 choice of Calgary as his preferred destination,  
8 because that's where his wife presently was  
9 visiting with her brother. That is set out in  
10 the letter; is that correct?

11 A That's correct.

12 Q All right. The next development, again just  
13 walking you through the documents, and I take  
14 it, Sergeant Orr, that these kind of detailed  
15 chronology of the steps taken on what days is  
16 not something that you would have any  
17 independent recollection of?

18 A No, sorry, I don't.

19 Q And the documents are therefore helpful to you  
20 in reconstructing this?

21 A That's how I'm doing it, yes.

22 Q So six days later after the letter from  
23 Klippenstein, Sergeant Vandergraaf writes a  
24 letter both to you and your boss Callens, and  
25 that's at tab 18. And his letter describes the

1 arrangement as a form of witness protection,  
2 without capitalizing witness or protection. And  
3 do I take it that that letter again is  
4 consistent with your understanding of the  
5 arrangement?

6 A Yes.

7 Q Tab 19, we see the first signs of trouble coming  
8 out of Calgary. The OIC of Calgary Support  
9 Services sends a memo to his source witness  
10 protection coordinator, setting out a series of  
11 requests for additional expenses coming from  
12 Zanidean and his wife. Is that correct?

13 A That's correct.

14 Q And he asks the simple question, who is paying  
15 for these? Is that correct?

16 A That's correct.

17 Q It is a little bit difficult to read this, but  
18 we have gone over it with you before. And the  
19 particular requests that Zanidean and his wife  
20 were making is they want to put their dogs into  
21 boarding now, having shipped them out to  
22 Calgary, they now want to put them into  
23 boarding, and somebody has written "no" beside  
24 that. Whose writing is that, do you know? Do  
25 you see the writing in the right-hand side?

1 A That would be mine.

2 Q That's yours?

3 A Yes.

4 Q And the second one is for medical expenses, she  
5 is seeing a specialist who wants her to pay  
6 cash, and there is a request for medical  
7 expenses because of the, presumably it is some  
8 uninsured service, and there is a "no" beside  
9 that. Whose writing is that?

10 A That's my writing.

11 Q And the third request is for dental expenses,  
12 and again there is a "no" beside that. Is that  
13 your writing again?

14 A It is.

15 Q And then the fourth request goes on over a  
16 couple of pages, he wants assistance in picking  
17 up his UIC cheque and his wife's disability  
18 cheque from the Winnipeg Post Office. And you  
19 eventually make arrangements for the Winnipeg  
20 Police to do that; is that correct?

21 A That's correct.

22 Q So the relocation to Calgary results in some  
23 further additional expenses that Zanidean wants  
24 covered.

25 Again, stepping back and looking globally

1 at the three or four months that you spent on  
2 this file, was this illustrative of the way in  
3 which this matter proceeded?

4 A It was a constant all the way through, yes.

5 Q And what was the constant throughout?

6 A The demands, Mr. Zanidean's demands for more.  
7 Every time something -- he got something from  
8 the City Police, he wanted more. He wanted it  
9 done his way, not anybody else's way sort of  
10 deal.

11 Q All right. And we will see more illustrations  
12 of that as we go along. This was the first one  
13 that had come up. Now, this, because the memo  
14 ends up in Ottawa somehow and results in the tab  
15 20, you get this --

16 THE COMMISSIONER: Tab 19, is there a date on  
17 that?

18 MR. CODE: Yes, it is a little difficult to  
19 read, but it is in the top right-hand corner  
20 under the stamp, it is April 17th. It is within  
21 a couple of days of arrival in Calgary. It  
22 looks like Zanidean goes out -- in terms of the  
23 date that we have, Vandergraaf says on the 10th  
24 that he is going out on in the Friday, so  
25 probably he arrives within a couple of days of

1 the 10th, and the request gets sent on the 17th.

2 BY MR. CODE:

3 Q The next tab, tab 20, we get a response from  
4 Ottawa, somewhat vigorous response; is that fair  
5 to say?

6 A It is.

7 Q Ottawa thinks you are off policy here in even  
8 being involved in this, it appears, and they,  
9 without going through this, it is a fairly long  
10 memo, if I could quickly summarize it and you  
11 tell me if my summary is fair.

12 They, first of all, tell you to follow the  
13 manual. Is that a fair summary of the first  
14 paragraph?

15 A Yes, it is.

16 Q And, second of all, the next paragraph, they  
17 tell you to submit a formal application and a  
18 threat assessment; is that correct?

19 A That's correct.

20 Q Of course, you hadn't submitted the application  
21 because the client hadn't asked you to, he  
22 wasn't yet sure whether he wanted to, and you  
23 didn't have a MOU, in any event?

24 A Or a formal request.

25 Q And in terms of a threat assessment, you hadn't

1           done a threat assessment because, again, it  
2           hadn't reached that stage; is that fair?

3    A       Yes.

4    Q       You have to say yes or no.

5    A       Yes, I did, sorry.

6    Q       You are nodding your head yes.

7    A       Yes, that was fair.

8    Q       You never did a threat assessment?

9    A       No.

10   Q       Over the page, the second page, he wants a MOU  
11       and a LOA. Again, you hadn't reached that  
12       stage?

13   A       That's correct.

14   Q       And then the middle paragraph on the second page  
15       is of some interest because it comes back to our  
16       topic of immunity. This fellow at headquarters  
17       says that the submissions to headquarters have  
18       to cover all problematic issues and how they  
19       will or have been resolved. And one of those  
20       problematic issues, to illustrate the point, is  
21       outstanding charges; is that correct?

22   A       That's correct.

23   Q       Again, that was something that -- the way he has  
24       described it here is generally consistent with  
25       the way you viewed it, that it is a problematic

1 issue that had to be addressed and resolved in  
2 some fashion?

3 A That's correct.

4 Q And then finally, on the last page he describes  
5 this as a relatively simple assistance case  
6 that's now blossoming into something else. Is  
7 that correct?

8 A That's correct.

9 Q So your agreement to provide a contact person is  
10 now becoming a species of witness protection  
11 demands, or of financial benefits?

12 A It was, yeah, and I think that was all subject  
13 to that original memo from K division, or the  
14 fax from K division.

15 Q That's what they are responding to?

16 A Yes, with all of the demands, yes.

17 Q All right. Now, in fairness to you, you respond  
18 to Ottawa at tab 21 by making it clear that you  
19 understand all of this and you didn't need that  
20 little lecture reminding you of policy. And you  
21 send a very clear memo at tab 21, it would be  
22 hard to be clearer than this, in which you say,  
23 "Zanidean is not..."  
24 underlined,  
25 "...repeat not..."

1 underlined,

2 "...part of witness protection program at  
3 this time."

4 Was that your very clear view of the matter at  
5 this time?

6 A Exactly.

7 Q Again, it is quite inconsistent with Sergeant  
8 Anderson's descriptions that we have seen; is  
9 that fair?

10 A That's fair.

11 Q And in particular in this memo you go on to say  
12 that you haven't even got a request yet from  
13 him, he hasn't formally committed to it. Is  
14 that correct?

15 A That's correct.

16 Q And in terms of the actual expenses, the  
17 specific expenses, these medical expenses, the  
18 dog expenses, dental expenses, you basically say  
19 those are Zanidean's responsibility. Is that  
20 correct?

21 A That's correct.

22 Q But you would be happy to help out with making  
23 arrangements for him to get his government  
24 cheques picked up for him by the Winnipeg  
25 Police?



1 A Yes.

2 Q All right. Now having gone through this sort of  
3 history of Zanidean's status in April, when he  
4 is temporarily relocated to Calgary, can I now  
5 come back and pick up the issues of your  
6 communications with the Swift Current RCMP?  
7 Because at the same time all of these interim  
8 arrangements are being made for him in Calgary,  
9 there are a number of calls between you and the  
10 Swift Current RCMP discussing the status of the  
11 current arson charges; is that correct?

12 A That's correct.

13 Q The current arson investigation. And the first  
14 of those calls is described at tab 13. If you  
15 go back to that tab where we looked at page 2 of  
16 that note, but not at page 1. In your note for  
17 April 12th, you in fact describe two phone calls  
18 to Swift Current; is that correct?

19 A Yes.

20 Q And the first call is on April 4th, so what we  
21 have here, the 10:55 note is an April 12th note  
22 of an April 4th call. Is that fair?

23 A Yes.

24 Q So you are reflecting eight days later on an  
25 earlier call you made where you spoke to Upton

1 and you set out the substance of the call in  
2 which you read him part 7 of the application and  
3 explain the difficulties that you and the  
4 Winnipeg Police have with Zanidean as a result  
5 of this outstanding criminal jeopardy. Is that  
6 a reasonable summary?

7 A Yes, sir.

8 Q And just to remind you of that, part 7 passage  
9 that you are reading to him, it is the same one  
10 we looked at earlier in tab 2 at page 481, is  
11 that correct, or it is likely that that's what  
12 you were referring Sergeant Upton to, where  
13 there is a detailed description of the status of  
14 the Swift Current charges. Do you have that,  
15 tab 2 at page 481, where it is described as  
16 Constable Burton having put this stand-still  
17 agreement in place not to pursue Zanidean at  
18 this time, but to await the outcome of the  
19 trial?

20 A True.

21 Q But that Kovnats is demanding complete immunity  
22 and that this delicate matter hasn't been  
23 resolved. So is that the passage in part 7 that  
24 it would be logical for you to pick up the phone  
25 and have a discussion with Swift Current about?

1 A Yes.

2 Q Because this is a problem in the application, to  
3 use the language of the Ottawa memo, a problem  
4 that has got to be resolved in some fashion  
5 before the application can proceed?

6 A That's true.

7 Q You have to have a plan for how you are going to  
8 deal with this and set it out in the  
9 application?

10 A Yes, exactly.

11 Q So that's the reason for your call, is you are  
12 trying to get the application moving along by  
13 addressing this issue that's squarely raised in  
14 part 7 of the application?

15 A Yes.

16 Q Is that correct?

17 A Yes, it is, and to find out more about the  
18 actual investigation itself, because all I had  
19 so far was just the written material, I hadn't  
20 spoken to anybody about it.

21 Q You can't begin to work out a plan to resolve  
22 the problem unless you know something more about  
23 the investigation?

24 A Exactly.

25 Q Now, Upton makes clear to you that he is not the

1 investigator on the file and that you should  
2 speak to Constable Burton; is that correct?

3 A That's correct.

4 Q And after eight days of waiting for a call back  
5 from Burton, you place a second call on the  
6 12th?

7 A Yes.

8 Q And it is at that time, when you make the second  
9 call on 12th, that you make the note about the  
10 first call on the 4th; is that correct?

11 A That's correct.

12 Q And the note of the second call on the 12th is,  
13 in fact, much shorter and fairly cryptic, if you  
14 would allow me to say that, compared to the note  
15 of the earlier call on the 4th; is that fair?

16 A That is fair.

17 Q It is just one line, it says,

18 "Swift Current will be concluding their  
19 file and Ray Zanidean is no longer wanted  
20 for questioning..."

21 Could you tell us what the "... " signifies?

22 A I have no idea, just writing it at the time and  
23 I don't know.

24 Q Perhaps you could help us, is this a verbatim  
25 note of the entire second conversation with

1 Upton, or is it a fairly cryptic summary of it?

2 A No, it would be a fairly cryptic summary of it.

3 Q You were trying to set out the gist of what you  
4 had understood without setting out all of the  
5 context and process and whatever else might have  
6 been said?

7 A Because it was referring to the application to  
8 the program, I just took down the part -- or  
9 probably wrote down the part that meant the most  
10 for the program, and that's the fact that he was  
11 no longer wanted.

12 Q Is it fair to say that Sergeant Upton would have  
13 likely said more to you than what is set out  
14 here in this very brief note?

15 A Yes, sir, I would imagine.

16 Q And that he would have likely described to you  
17 the process required under RCMP policy to deal  
18 with a matter like this, and the process that  
19 Swift Current intended to follow, and the  
20 reasons why they were taking this position; is  
21 that fair?

22 A Yeah -- yes, it is, but I just, I can't remember  
23 the phone call at all.

24 Q You have no present memory of the phone call?

25 A None at all.

1 Q It looks like all you recorded here is the  
2 bottom line; is that fair?

3 A That is.

4 Q And is that what the "... " is intended to  
5 signify, that there is more to this than your  
6 note?

7 A Could very well could be.

8 Q The literal words that you use is that he is no  
9 longer wanted for questioning. It doesn't say  
10 that he is not going to be charged, it says he  
11 is no longer wanted for questioning. What did  
12 you intend to signify by that? Do you have any  
13 memory of what that was meant to mean?

14 A No. I could just take it from what I wrote down  
15 in the note, and that's that he was no longer  
16 wanted in connection with that arson.

17 Q So you took it as a decision that they didn't  
18 want to pursue him and charge him?

19 A I did.

20 Q Is it possible that what Upton said is that this  
21 is all contingent on him being admitted to the  
22 witness protection program and that the decision  
23 will only be made after the trial is over, after  
24 it is referred up through the proper channels to  
25 the CROPS officer in consultation with the Crown

1 Attorney in accordance with RCMP policy.

2 A Did you say is it possible?

3 Q Yes, is it possible that Upton would have  
4 explained all of that to you?

5 A Yes.

6 Q I take it, if an RCMP detachment was informed  
7 about an important Crown witness who there was a  
8 plan in place to try and get him into the  
9 Witness Protection Program, if the local RCMP  
10 detachment had a charge against that witness,  
11 the fact that they would be sensitive to witness  
12 protection issues and try to accommodate those  
13 issues wouldn't surprise you?

14 A Not at all.

15 Q Indeed, if it had been a local Winnipeg charge,  
16 it would have been fairly straightforward to  
17 withdraw the charge as a benefit to the witness;  
18 is that correct?

19 A Yes, with the agreement of the Provincial Crown.

20 Q Yes, and full disclosure of the benefit that was  
21 being extended?

22 A True.

23 THE COMMISSIONER: But in a case like this where  
24 no charges had been laid, would it require the  
25 consent of the Crown, or do you know?

1 THE WITNESS: If he was under investigation, it  
2 wouldn't have required the consent of the Crown,  
3 it would have been just the investigators that  
4 could have made that determination.

5 BY MR. CODE:

6 Q If you go back to the policy at tab 7, it is  
7 quite clear that it is a police decision, this  
8 is at page 82 -- sorry, that's the credibility  
9 one, it is at page -- it is after consultation  
10 with the Crown, Mr. Commissioner, is the  
11 relevant policy. It is at page 70, where the  
12 withholding of charges as a benefit to a witness  
13 is a decision that has to be made at the level  
14 of the CROPS officer, after consultation with  
15 agents and the Provincial Attorney General. So  
16 it clearly would be a police discretion, I  
17 think, as a matter of law, but the policy  
18 requires the decision to be made at a fairly  
19 high level and consultation to occur with the  
20 AG, which I think is consistent with Ferguson's  
21 evidence.

22 Was that your understanding of the policy?

23 A Yes.

24 Q So at the conclusion of this call, having  
25 apparently solved your problem, because you



1 remember all that was in place on the face of  
2 the application was a stand-still agreement, and  
3 this now looked like somewhat more of a  
4 permanent solution to the problem; is that  
5 correct?

6 A It did.

7 Q Did you brief Miller and/or Vandergraaf about  
8 this development, the impediment that you had  
9 been discussing with them had been resolved?

10 A I cannot remember if I did or did not. Because  
11 I was looking at this from a witness protection  
12 standpoint and the completion of the various  
13 documents and whatnot, I might not have.

14 Q You clearly had some discussions with them, or  
15 at least according to Sergeant Burton, Constable  
16 Burton and Sergeant Anderson's versions of their  
17 conversations, there appears to have been some  
18 discussions with you about the impact of witness  
19 protection on Zanidean and his status in the  
20 Swift Current matter. And you had clearly  
21 followed up on that by placing these two phone  
22 calls. Would it have been logical for you to  
23 report back to them?

24 A Report back to Mr. Miller?

25 Q Miller or Vandergraaf, or Anderson, whoever you

1 had been talking to about this impediment and  
2 the gravity of the impediment, whether it was a  
3 complete bar or merely a difficulty that had to  
4 be overcome, you had solved one of the problems  
5 in the application. It was their application.  
6 Is it logical that you would have got back to  
7 them?

8 A I don't know whether it would have been logical  
9 to get back to them or if I just wanted this for  
10 my file purposes.

11 Q Your file purposes being?

12 A If we had to, or when this proceeded to the  
13 point where you had to set out a plan with  
14 Ottawa, send in our report to Ottawa, instead of  
15 having to go through the steps that would be  
16 taken if he were charged, then with this  
17 information I would have just said no, they are  
18 not interested in him anymore, so it is a one  
19 line thing instead of a number of pages of  
20 reports. So that could have been just for the  
21 witness protection end of it.

22 Q The information clearly was useful to you for  
23 the reasons that you have just set out, that if  
24 the application is going to go forward to  
25 Ottawa, you have got to deal with this problem

1           that's plainly set out on the face of the  
2           application in part 7, and you have to have a  
3           plan for dealing with it, and now you have got  
4           your plan. So I can understand how the  
5           information clearly has utility to you in  
6           forwarding the application if that step is  
7           reached. But you knew that Kovnats and Miller  
8           were carrying on these negotiations, did you  
9           not? You had sent Kovnats back to Miller. Your  
10          to do list on March 25th was to go back to  
11          Miller and resolve all of the outstanding  
12          issues. So you knew there was a negotiation  
13          going on there; is that fair?

14        A     That's true.

15        Q     That was ultimately hopefully going to lead to  
16              an MOU?

17        A     Yes. Was I concerned about it, as far as the  
18              witness protection end of it goes? No. It was  
19              either done or it wasn't completed.

20        Q     And on Kovnats' wish list this immunity issue  
21              was number 8 on his list. Would you not think  
22              it would be reasonable to brief the people who  
23              are carrying on the negotiation that this issue,  
24              that his point number 8 was resolved, and that  
25              you had asked for a report in writing out of

1 Swift Current. Kovnats wanted something in  
2 writing. Would that not have been an ordinary,  
3 courteous step to take, to keep your colleagues  
4 who were involved in this negotiation informed  
5 of this discussion that you had had on the 12th?

6 A It might have been, but I can't remember, I just  
7 do not remember whether I contacted them or not.

8 Q And there is nothing in your file, there is no  
9 continuation report or indication of your having  
10 briefed them or sent them a written report, or  
11 even had a phone call with them?

12 A And generally, if I would have had a phone call  
13 with them to tell them about it, I would have  
14 put something in the file.

15 Q Now, the one other document I need to put to you  
16 about this, these two phone calls with Upton,  
17 that according to your notes are on April 4th  
18 and April 12th, is the one report in the Swift  
19 Current file, indeed, I think it is the only  
20 report in the Swift Current file that refers to  
21 Upton having any involvement in the matter is  
22 the report at tab 39. Again, we are into the  
23 double hearsay problem, in fact this is probably  
24 triple hearsay, this one. This is Burton  
25 reporting on what Anderson told him about what

1           you presumably told Anderson about the Upton  
2           call. It tends to indicate that you did report  
3           back to Anderson about these calls, because  
4           unless Burton made this up, he says he is  
5           getting it from Anderson. So do you have tab  
6           39?

7    A       I do.

8    Q       July 19, 1991 report of Burton. If you turn to  
9           page 3 of the report, paragraph 10 at the  
10           bottom, you see, again to be clear, this is  
11           Burton setting out what Anderson is telling him  
12           in July, July 18th, some two, three months after  
13           you have had these phone calls with Upton. And  
14           Anderson is filling Burton in on the Upton calls  
15           with you. So Anderson had to get the  
16           information either from you or from Upton.

17                    "Sergeant Anderson also stressed that part  
18                    of the deal for Zanidean's testimony was  
19                    that he would not be charged for the 1990  
20                    arson. They made this representation based  
21                    on my statement that I would recommend  
22                    this..."

23           That's Burton's statement that he would  
24           recommend it, and it is quite clear that Burton  
25           was willing to recommend this up the chain of

1 command.

2 "...and Sergeant Upton's conversation with  
3 Corporal Orr..."

4 they have it as April 10th, slightly different  
5 from your dates,

6 "...in which he indicated that we would  
7 likely not be charging Zanidean for the  
8 1990 arson. At the time that Corporal Orr  
9 contacted Sergeant Upton, he advised him  
10 that Zanidean was already under the Witness  
11 Protection Program and he was concerned  
12 about us surfacing him for the arson.

13 Sergeant Upton had stated that we would  
14 likely not do so, however that decision  
15 would rest with the investigator."

16 So we get a much more fulsome account of the  
17 conversation between you and Upton than this  
18 very cryptic note of yours in your continuation  
19 report. And in particular, it is characterized  
20 as being related to his placement in the Witness  
21 Protection Program. Do you see that?

22 A Um-hum.

23 Q Can you assist us at all as to whether that more  
24 contextualized version of the conversation, and  
25 also not described as an ultimate final decision

1           that he will not be charged, but simply as a  
2           practical likelihood, is that much more fulsome  
3           contextualized account of the call possibly a  
4           summary of what may well have been said between  
5           you and Upton?

6    A       I have no idea.

7    Q       You have no recollection of the call.

8    A       No. But for me I would not have said that he  
9           was in the Witness Protection Program.

10   Q       I appreciate that. Again, we have the  
11           possibility of misunderstandings here, that  
12           depending on how well people are schooled in the  
13           nuances of witness protection, if Anderson could  
14           make a mistake about this, presumably Upton  
15           could have misunderstood when you were  
16           explaining the relative gravity of the problem,  
17           or the likelihood of him entering the program.  
18           But leaving that aside, the factual inaccuracy  
19           of him being under the program as opposed to  
20           there being a plan to try and get him into the  
21           program, is this a sensible context in which the  
22           conversation may have taken place? That it was  
23           the discussion with Upton stressed the linkage  
24           between charging him and his entry into the  
25           witness protection program?

1 A Sensible, yes, but as I said, I don't recall the  
2 phone conversation, so I don't know.

3 Q All right. Again, you will agree with me that  
4 if Burton has reasonably accurately recorded  
5 what Anderson told him, it would tend to suggest  
6 that you did get back to Anderson and debrief  
7 him on the phone call?

8 A Or to someone who got back to Anderson, as this  
9 took place a number of months after the phone  
10 call.

11 Q Unless Upton phoned Anderson, I suppose, but  
12 there is fairly slim likelihood of Upton knowing  
13 who Anderson is, I suspect here; is that fair?

14 A I am sure -- like with the time frame involved,  
15 certainly other people could have become --  
16 certainly other people could have known by that  
17 time that I had talked to --

18 Q You could have told Miller and Miller could have  
19 told Anderson?

20 A Definitely.

21 Q When you made the call on April 5th, sorry, the  
22 first call on April 4th, we know that Anderson  
23 calls Burton the very next day on April 5th, and  
24 then you place this third call on April 12th.  
25 So according to the records there appears to be



1           these three calls, your two calls sandwiched  
2           around a call from Anderson to Burton. And what  
3           I want to ask you is, is it possible that you  
4           and Anderson were communicating about this,  
5           about these matters, and taking a coordinated  
6           approach to the problem, you from the  
7           perspective of Witness Protection, Anderson from  
8           the perspective of his outstanding investigation  
9           and his witness?

10        A     I don't recall that.

11           THE COMMISSIONER: I thought I understood that  
12           your primary contact with Winnipeg Police  
13           regarding this was Vandergraaf?

14           THE WITNESS: Vandergraaf.

15           THE COMMISSIONER: Did you have many dealings,  
16           to your recollection, directly with Anderson?

17           THE WITNESS: No. I have been thinking about  
18           it, and I think I met him and his partner Paul  
19           initially, like when this was starting up, this,  
20           you know, they come into the office, this is  
21           what we have going on. And I believe that was,  
22           I met Sergeant Anderson but that was it. Most  
23           of my dealings throughout this was with  
24           Vandergraaf.

25           BY MR. CODE:

1 Q All right. The last call between you and the  
2 Swift Current people in this April time frame is  
3 your call with Inspector Preston. And is it  
4 fair to say that the results of the April 10th  
5 or 12th, whichever it was, phone call with  
6 Sergeant Upton are short lived, because a few  
7 days later, on April 16th, you get a call from  
8 Preston that is not consistent with the result  
9 that you had noted of your call with Upton; is  
10 that correct?

11 A That's correct.

12 Q And the call with Preston is found at tab 15,  
13 and while you had come away from the call with  
14 Upton, the second call with Upton, with the  
15 understanding that there would be no charges  
16 against Zanidean, the result of the call with  
17 Preston is that the matter is still very much up  
18 in the air and is the subject of ongoing  
19 discussions. Is that a fair summary?

20 A It is.

21 Q And given that Preston was considerably senior  
22 to Upton, he was two rungs above him on the  
23 ladder; is that correct?

24 A It is.

25 Q It is Preston's decision that governed here,

1           Preston's decision clearly superseded whatever  
2           it was that Upton said back on the 10th or the  
3           12th?

4    A       Definitely.

5    Q       And in the discussion with Preston there is no  
6           reference at all, at least according to your  
7           notes or Preston's notes, there is no reference  
8           to the prior calls with Upton at all, they don't  
9           appear to even be mentioned; is that correct?

10   A       That's correct.

11   Q       And was that because of the fact that whatever  
12           had transposed between you and Upton, who was  
13           not the investigator on the file, Preston had  
14           clearly been briefed on that matter, was up to  
15           speed on it and was taking charge on it?

16   A       That's what I gathered, yes.

17   Q       And we know from the Swift Current file that the  
18           day before he calls you, he has a meeting with  
19           the two principal investigators, Ferguson and  
20           Burton, who brief him fully on the matter. And  
21           he then picks up the phone and calls you as a  
22           result of the briefing that he has received from  
23           Ferguson and Burton. And you essentially brief  
24           him on the witness protection end of the  
25           problem; is that correct?

1 A True.

2 Q And what you say to him, if I can read the  
3 middle paragraph there of your notes,

4 "I discussed the matter with Inspector  
5 Preston and explained our situation to him,  
6 including Winnipeg City Police's desire to  
7 keep a happy witness. Included was the  
8 problem of their interviewing Zanidean once  
9 he became involved in the protection  
10 program and the possibility of difficulty  
11 should there be charges."

12 Again, is that a summary of the conversation or  
13 is that a verbatim quote of exactly what you and  
14 he were saying?

15 A Summary of the conversation.

16 Q The conversation went on for a period of time  
17 and you have summed up the gist of it there?

18 A Exactly.

19 Q And the reference you make to our situation  
20 including the Winnipeg City Police's desire to  
21 keep a happy witness, am I reading that  
22 accurately, that you are describing your  
23 handling of their application for witness  
24 protection, and describing this aspect of it as  
25 relating to the natural instinctive desire of an

1 investigator to keep his witnesses happy?

2 A That's true.

3 Q Again, this is simply common sense, the  
4 investigators want their case to go forward, and  
5 to have it successfully go forward with a  
6 difficult witness like Zanidean, you like to  
7 keep him happy?

8 A Yes, sir.

9 Q Beg your pardon?

10 A Yes, sir.

11 Q And you are identifying with that goal by  
12 describing it as our situation, and you are  
13 trying to help solve some particular aspects of  
14 the problem?

15 A Or get more of a handle on the situation for the  
16 pending report.

17 Q This was a problem for you, you describe it as a  
18 problem, you describe it as a difficulty. The  
19 two words you use is a problem and a difficulty,  
20 and you are trying to reach a resolution of the  
21 problem or the difficulty so that the  
22 application can go forward. This won't be an  
23 unresolved problem.

24 A Yes.

25 THE COMMISSIONER: Mr. Code, I see it is about

1 12:30, whenever it is convenient.

2 MR. CODE: If I can take him -- I can do that  
3 after the recess. This is fine.

4 THE COMMISSIONER: We will adjourn until  
5 2:00 o'clock.

6 THE CLERK: Clerk. All rise. This Commission  
7 of Inquiry is now adjourned until 2:00 o'clock.

8 (Proceedings adjourned at 12:32 and  
9 reconvened at 2:00 p.m.)

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

12 BY MR. CODE:

13 Q Sergeant Orr, we were dealing with the  
14 April 16th phone call from --

15 MR. WOLSON: Mr. Commissioner, I just notice  
16 that Mr. Abra is not here, this witness of  
17 course, does affect his client.

18 THE COMMISSIONER: I know Mr. Abra is here  
19 because I saw him out in the hallway.

20 MR. ABRA: I apologize.

21 THE COMMISSIONER: Accepted.

22 BY MR. CODE:

23 Q We were at the April 16th call where Inspector  
24 Preston phones you, after his meeting with his  
25 colleagues the day before to discuss the status

1 of the witness protection application, and the  
2 status of their chart, their investigation in  
3 Swift Current. And I took you to your note of  
4 that conversation at tab 15. And what I would  
5 like to do to finish up on this is take you to  
6 Inspector Preston's note of it, which is in  
7 exhibit 1. If I could have the clerk hand you  
8 exhibit 1, please, and have you look at tab 35?  
9 And there should be both a redacted and an  
10 unredacted version of this conversation at tab  
11 35. And obviously it is the unredacted version  
12 that I want you to look at. If you could take a  
13 minute to read that. It is quite a brief little  
14 two page paragraph note that he is sending back  
15 to Ferguson and Burton at the detachment,  
16 reporting back to them on his conversations with  
17 you.

18 Have you had a chance to read that?

19 A Yes, I did.

20 Q You will note right away in the first line that  
21 he states that Ray Zanidean is now under  
22 "witness protection," and he puts it in  
23 quotation marks and does not use the formal  
24 capitalization of Witness Protection Program  
25 that we see in other documents out of the Swift

1 Current office when there is an assumption that  
2 he is actually in the formal program. And does  
3 that assist you at all as to whether you  
4 explained to Inspector Preston the nuances of  
5 whether he was formally in the program or  
6 whether he was just in a form of witness  
7 protection, as Staff Sergeant Vandergraaf  
8 described it at one point? I guess I'm asking  
9 you, does the note cause you any difficulties or  
10 does it appear to be consistent with what you  
11 said?

12 A I don't know that I would say -- that I would  
13 have said that he was under the Witness  
14 Protection Program, meaning our Witness  
15 Protection Program.

16 Q He doesn't say that, though, does he?

17 A No. Maybe he is under some kind of protection  
18 program out of the province, yes.

19 Q At this point in April 16th, he is in Calgary?

20 A Yes.

21 Q And the situation in Calgary, where they have  
22 got him in a hotel while his wife visits her  
23 brother, I suppose, could be described as a form  
24 of witness protection, although it is very  
25 attenuated, they just essentially got him out of



1 town.

2 A Yes, true.

3 Q And he goes on and he said.

4 "It is their intention to relocate him  
5 after the trial. It is their intention to  
6 relocate him again permanently."

7 Again, is that a fair statement of what your  
8 intention was at that time?

9 A Yes, probably.

10 Q Again, it might have been more accurately to  
11 express it as a statement of hope as opposed to  
12 intention, but it is future oriented?

13 A True.

14 Q And his decision to await the outcome and  
15 evaluate the situation post trial is consistent  
16 with your note and your understanding that they  
17 were going to await the results of the trial and  
18 see whether he did succeed to get in the program  
19 or not, and then make their charging decision;  
20 is that fair?

21 A Yes.

22 Q Did you tell Inspector Preston that at this  
23 stage things were looking a bit uncertain for  
24 Zanidean, or had you arrived at the particularly  
25 negative view you eventually developed about

1           Zanidean's prospects for witness protection? Do  
2           you remember?

3    A       No, I don't really remember, but I don't think  
4           at this stage it would have been -- I would have  
5           made that or formed that opinion.

6    Q       It would have been a little bit prescient for  
7           you to be able to predict the outcome at this  
8           point?

9    A       Yes.

10   Q       It is fair to say that the difficulties that  
11           Zanidean gets into in Calgary that we are about  
12           to come to had a significant impact on jury  
13           evaluation of his suitability for the program.

14   A       Certainly.

15   Q       So as a result of this conversation with Preston  
16           on April 16, whether we look at your note of it  
17           or Preston's note of it, there was now clearly a  
18           prospect that Zanidean might be charged,  
19           depending on how things worked out in the post  
20           trial period. Is that fair?

21   A       Yes, sir.

22   Q       And that, of course, raised issues for Kovnats  
23           and Zanidean who were demanding pre-testimony  
24           immunity; is that fair?

25   A       Yes, I would imagine.

1 Q They wanted an agreement in place before he got  
2 into the witness box, as I read the documents;  
3 is that correct?

4 A True.

5 Q So what Preston was telling you was  
6 fundamentally inconsistent with the position  
7 that Kovnats and Zanidean had staked out?

8 A Yes, it would have been, because they wanted it  
9 done immediately and it doesn't happen  
10 immediately.

11 Q Given those opposing positions of Preston on the  
12 one hand and Kovnats and Zanidean on the other,  
13 is it likely or reasonable that you would have  
14 briefed Vandergraaf or Anderson or Miller about  
15 the outcome of this call?

16 MR. WOLSON: Mr. Commissioner, having regard to  
17 the witness' evidence that he only met Anderson  
18 once, the question is, would he brief Anderson,  
19 and we have already had that evidence from this  
20 witness. He only met him once at the very  
21 beginning.

22 THE COMMISSIONER: That is what he thought, and  
23 although I didn't understand that you were  
24 dogmatic in that, but you thought you had met  
25 him only once?

1 THE WITNESS: I believe so.

2 THE COMMISSIONER: So the question may not get  
3 anywhere, but --

4 MR. CODE: I'm not fussy about who it is, I'm  
5 talking about the prosecution arm and the police  
6 arm for whom this person was an important  
7 witness. And I know Ms. Carswell and Mr. Wolson  
8 act for different branches of the police force,  
9 but it is of no moment to me, I can assure you,  
10 whether it is Vandergraaf or Anderson or  
11 Miller.

12 BY MR. CODE:

13 Q My question to you is, is it sensible that you  
14 would have got back to them, is it reasonable  
15 that you would have got back to them to report  
16 on this development, impacted on their  
17 negotiations with their witness?

18 A I can't say one way or the other. Yes, it would  
19 be reasonable.

20 Q All right. And Preston was calling you because  
21 you were the local RCMP guy in Winnipeg who was  
22 engaged in this matter on behalf of the RCMP in  
23 Winnipeg?

24 A Yes.

25 Q He had no relationship with Miller or

1 Vandergraaf or Anderson? You are the one who  
2 had the relationship with them?

3 A Yes, sir.

4 Q So it would be sensible for Preston to rely on  
5 you to report back to them, rather than picking  
6 up the phone himself? Is that a fair  
7 assumption?

8 A It is an assumption, yes. I don't recall.

9 Q Well, you tell me, I don't know the culture of  
10 the force. If you are an inspector sitting in  
11 Swift Current and you have got a local charge  
12 there, and you have got your witness protection  
13 coordinator in Winnipeg who is negotiating with  
14 the Winnipeg Police and the Manitoba Justice  
15 Department about a witness protection  
16 arrangement, does it make sense that he would  
17 ask you to brief the authorities there on the  
18 outcome of your phone call, or is it more likely  
19 that he would take it upon himself to call them?  
20 What is the more reasonable conduit for that  
21 information to pass to the appropriate  
22 authorities?

23 A I cannot remember, but in an instance like this,  
24 whether I would pass the information on or not,  
25 I don't know. This was more pertinent to the

1 witness protection matter than it was to  
2 anything else that was ongoing outside of my  
3 purview, and whether I would have passed that on  
4 or not, I can't tell you.

5 Q Well, you've just told us before the lunch  
6 recess, it was pertinent to keeping the witness  
7 happy, is the way you framed it in your note of  
8 your previous conversation with Preston. Your  
9 note of your briefing of Preston is that the  
10 idea here is to keep Zanidean happy. And I  
11 think you agreed with me that's a natural  
12 instinct of a homicide investigator in a serious  
13 case, that you want to keep your witnesses,  
14 especially important and difficult ones --

15 A Any police force with a witness --

16 Q Yes. It is natural they want to keep them  
17 happy, and this development from your phone call  
18 from Preston is not going to keep them happy, I  
19 take it? He is now back in jeopardy?

20 A Now back under investigation, yes.

21 Q So my question is, you being the one who was  
22 engaged in this enterprise with them, what you  
23 referred to as our situation in your previous  
24 note, tab 15, would it be reasonable to assume  
25 that you would be the one who would communicate

1 back with them rather than Preston?

2 A If there was any communication back with them,  
3 it probably would have been through me, but as I  
4 stated, I don't recall.

5 Q I appreciate that. That's a fair answer.

6 All right. Let's get back to the  
7 chronology with Zanidean and try and get through  
8 this quickly, as we are basically just tracking  
9 the documents here.

10 What happens in late April, after these  
11 phone calls with Swift Current in early April,  
12 is that after barely two weeks in Calgary,  
13 Zanidean gets into a fight with the local  
14 police, he gets kicked out of his hotel, he  
15 can't get along with his RCMP contact, Sergeant  
16 Smith, and he shows up back in Winnipeg. Have I  
17 summarized it reasonably?

18 A Yes, sir.

19 Q And I take it these were not auspicious  
20 developments for a potential candidate for the  
21 Witness Protection Program?

22 A Not at all.

23 Q And they are summarized in your notes at tab 22.  
24 I won't go through it with you, I think I have  
25 succinctly set it out what one gleans from

1 reading those notes at tab 22.

2 The result, the upshot of all of this --  
3 and you learn of all of this on the 26th, which  
4 causes me to say he has barely been out there  
5 for two weeks -- the upshot is you have a  
6 meeting on the 29th, that is set out also at tab  
7 22 --

8 A Yes.

9 Q -- the bottom of the page. And it is  
10 essentially an all-party meeting, everybody who  
11 is involved in this Zanidean enterprise, if I  
12 can call it that, is there in the room. You  
13 have the two police agencies, Vandergraaf  
14 representing the Winnipeg Police, you  
15 representing the RCMP Source Witness Program,  
16 you have got Miller there representing the  
17 Attorney General, you have got Kovnats  
18 representing Zanidean, and you have Zanidean and  
19 his wife. So the whole group is there; is that  
20 fair?

21 A True.

22 Q Indeed, this appears to be the only meeting in  
23 your notes, as I read them, where everybody is  
24 in the same room?

25 A Yes.



1 Q And what breaks out immediately is an extended  
2 argument between Zanidean and Vandergraaf about  
3 his money problems, as they are described in  
4 your notes; is that correct?

5 A That's correct.

6 Q And summarize the gist of this for us, what is  
7 the argument here in a nutshell?

8 A It was just a continuation of Mr. Zanidean's  
9 request or demands for more all of the time,  
10 more money for this, more money for that. It  
11 was just a constant squabble, and whether he was  
12 getting the money he was supposed to from the  
13 city and that type of thing. I can't remember  
14 it specifically, but that's generally what it  
15 was about.

16 Q It is essentially an argument about the quantum  
17 of financial benefits that he is receiving?

18 A Exactly.

19 Q The very issue that the RCMP policy says relates  
20 to his credibility?

21 A Yes.

22 Q And after the argument -- there is a resolution  
23 reached it appears, as I read the bottom of the  
24 page and over to the top of the second page,  
25 that Kovnats and Miller reach an agreement on

1 certain of the expenses being requested, but  
2 there are additional requests that are still  
3 outstanding and that are going to have to be the  
4 subject of more ongoing discussions?

5 A Yes.

6 Q And those discussions, again, I take it are  
7 going on at the Kovnats/Miller level as opposed  
8 to at your level?

9 A Yes.

10 Q This would all be required to be worked out  
11 before you could have a MOU?

12 A Yes, and this is probably pertaining more to  
13 what he was getting while the City were paying  
14 for him to be out of town.

15 Q Good point, I completely stepped over that. We  
16 are not even at the MOU stage here, we are  
17 squabbling about this interim arrangement in the  
18 Calgary hotel?

19 A Yes.

20 Q And eventually Miller and Vandergraaf leave the  
21 room and leave Zanidean and Kovnats and his wife  
22 alone with you, and there is essentially a sort  
23 of a second meeting that takes place, described  
24 at page 2; is that correct?

25 A True.

1 Q And there is an important little development in  
2 this meeting, because as I read your notes, is  
3 that you put on the table the idea of, instead  
4 of talking about formal witness protection, why  
5 don't we consider a cash settlement, as you call  
6 it in the last line there; is that correct?

7 A Yes.

8 Q And could you explain to the Commission your  
9 logic there, as to why you were starting to turn  
10 towards this option? We see in the documents  
11 over the next month, throughout May and June,  
12 that the negotiations progressively move towards  
13 this position, which is where they end up. And  
14 this is an important meeting because this is  
15 where the seed gets planted on April 29th. So  
16 if you could explain the rationale to the  
17 Commission, that would be helpful?

18 A Basically, the applicant for the program was not  
19 going to get into the program, and so the RCMP  
20 would not become involved. However, with a  
21 threat assessment completed by the City Police,  
22 the province could pay him a relocation expense,  
23 just a one time relocation expense. A certain  
24 amount of money, he moves out, he doesn't have  
25 all of the restrictions that he would have had

1 to follow should he have entered the program.

2 There is no name change involved. Basically, he  
3 just gets out of the danger area.

4 Q So the idea of the one time payment is driven by  
5 your assessment that he is not going to get into  
6 the program?

7 A Yes, definitely.

8 Q Indeed, in your statement at tab 1, you are  
9 quite straightforward about this, at page 13 of  
10 the statement you said, after the experience in  
11 Calgary you were now quite sure that he would  
12 not be accepted into the program. Is that a  
13 fair summary of your assessment?

14 A Yes, it is.

15 Q He was simply the wrong personality for the  
16 program?

17 A Definitely the wrong type.

18 Q In fairness, on Zanidean's side and his wife's  
19 side, they still hadn't decided whether they  
20 wanted in?

21 A No, they had not. They are especially, I think  
22 throughout, reticent about the name change.

23 Q And they obviously didn't like the restrictions  
24 of even have having a contact person in Calgary,  
25 as they were getting into fights with this

1           fellow?

2    A       Yes, true.

3    Q       And as you explain in your statement, the whole  
4           idea of witness protection requires police  
5           officers coming around and checking up on you on  
6           a regular basis?

7    A       Yes, definitely, handlers available all of the  
8           time.

9    Q       So when you put this cash settlement option on  
10           the table at the April 29th meeting, how did  
11           Kovnats and Zanidean and his wife respond?

12   A       I think positively initially. Like they -- I  
13           believe they liked the idea.

14   Q       And is it fair to say, again by way of overview,  
15           before we go to the actual documents for the  
16           next month, that throughout the ensuing month of  
17           May and into June, all the other major parties  
18           in this negotiation came on side? Vandergraaf  
19           was on side with the cash settlement option, was  
20           he not?

21   A       Yes.

22   Q       And Miller comes on side towards the end of May?

23   A       Yes.

24   Q       And, of course, you were on side and your boss,  
25           Inspector Callens, was on side?

1 A Yes, definitely.

2 Q All right. The next step, and we can deal with  
3 this fairly briefly, is that arrangements are  
4 put in place to send Zanidean and his wife back  
5 to Calgary; is that correct?

6 A Yes.

7 Q And we see those at tabs 23 and 24, that you put  
8 a plan in place, and Vandergraaf puts a plan in  
9 place to send him back to Calgary and again put  
10 him up in a hotel temporarily, pending the  
11 trial. He demands a new contact person at tab  
12 24 because he doesn't like Sergeant Smith's  
13 attitude, he says, as I read tab 24?

14 A Yes.

15 Q And you were not very warm to that suggestion  
16 and you rejected it?

17 A True.

18 Q But this plan to send him back to Calgary falls  
19 apart for one reason or another, it is not  
20 entirely clear, and he ends up not going back to  
21 Calgary, he stays in Winnipeg?

22 A Yes.

23 Q And in the course of this plan to send him back  
24 falling apart in these days in early May, if you  
25 look at tab 24, there is yet another important

1 little development in terms of your assessment  
2 of Zanidean's suitability. If you look at your  
3 note for the 9th of May, tab 24, you see the  
4 last note at the bottom of the first page, for  
5 14:40 in the afternoon, that you have a phone  
6 call with Vandergraaf, and you have received a  
7 call from Zanidean at 2:00 o'clock who has had a  
8 discussion with you about his plans, and  
9 Vandergraaf informs you that this was entirely  
10 news to him as he had not been advised of any  
11 changes, he did not know where Zanidean was. Is  
12 that what Vandergraaf informed you?

13 A Yes.

14 Q So were you in a situation where the witness was  
15 in some form of protection, ostensibly in  
16 Winnipeg, in the city where the alleged threat  
17 existed, and the officer in charge of the  
18 investigation didn't even know where he was?

19 A True.

20 Q And I take it that concerned you or disturbed  
21 you that this was wrong, it wasn't a healthy  
22 situation for a witness protection arrangement?

23 A Exactly.

24 Q Is that fair?

25 A Yes.

1 Q So once again, you had the sense that you did  
2 not have a particularly suitable candidate who  
3 was capable of working well with his police  
4 handlers; is that fair?

5 A Exactly, yes.

6 Q And Vandergraaf's frustration with the state of  
7 affairs is seen at the next tab, tab 25. He  
8 sends you a letter, it is to your chief but  
9 copied to you, and sets out in essence the same  
10 point that you have just made. In the second  
11 sentence of that letter at tab 25 he said,

12 "It appears that Zanidean is circumventing  
13 both police agencies and is dealing  
14 directly with Mr. Miller through his  
15 lawyer. Mr. Miller supplied Zanidean with  
16 funds to carry him until May 14, 1991."

17 Did you understand Vandergraaf's letter to be to  
18 the same effect as the evidence you have just  
19 given, that this was becoming a bit of a sham  
20 witness protection, because he wasn't dealing  
21 with the police forces who were supposed to be  
22 protecting him?

23 A Well, by this time the actual witness protection  
24 end of it, the RCMP witness protection end of it  
25 was dying down somewhat. Because we didn't



1 think he was a suitable candidate for the  
2 program, the relocation payment had been  
3 advanced, like the idea of a relocation payment  
4 had been advanced, so this is kind of winding  
5 down. This material, when it comes in, is quite  
6 surprising.

7 Q So you've got no witness protection application  
8 that is seriously moving forward in terms of  
9 long term settlement at this point?

10 A No, sir.

11 Q Long term resettlement or relocation. In terms  
12 of temporary interim protection, he is in the  
13 alleged threat area, he is right there in  
14 Winnipeg now, and the police don't even know  
15 where he is?

16 A Yes.

17 Q He is circumventing them, to use Vandergraaf's  
18 words, and he is simply being given money by  
19 Miller, it appears?

20 A It would appear that way, yes.

21 Q So is there any witness protection in place at  
22 all at this point, to your knowledge?

23 A No, unless they said he had him in an apartment  
24 or a house somewhere, but I don't know that.

25 Q Somewhere where Vandergraaf doesn't know where

1 he is?

2 A Exactly.

3 Q Tab 26, you send a memo on to your Calgary  
4 contact, Sergeant Smith, and again if there was  
5 any doubt possible about the status of these  
6 arrangements that you are trying to set up for  
7 Zanidean, that never happened in Calgary. In  
8 capital letters you say,

9 "THIS IS OUR ONLY INVOLVEMENT AT THIS  
10 TIME."

11 In other words, being a payment centre, you are  
12 just going to circulate the money.

13 "Zanidean has still to confirm his official  
14 entry into the program."

15 Does that succinctly summarize the status of any  
16 witness protection that's going on at that time?

17 A Yes, sir.

18 Q And he doesn't even go into this temporary  
19 arrangement you have set up for him in Calgary?

20 A No.

21 Q Tab 27, the next tab, Miller calls you to advise  
22 that Zanidean is not going to Calgary, on  
23 May 13th?

24 A Yes.

25 Q So, by mid May the plan to put him back in

1 Calgary has been abandoned. And is there any  
2 significance to the fact that again this  
3 information is not coming to you from the police  
4 handlers, who in principle might have been  
5 protecting him, it is coming to you from Bruce  
6 Miller? Did you take note of the way in which  
7 this information comes to you?

8 A Yes.

9 Q And did it seem --

10 A It seemed a little out of line.

11 Q Sorry?

12 A It seemed a little out of line.

13 Q Again, did it seem consistent with Vandergraaf's  
14 letter at tab 25, that Zanidean is circumventing  
15 the police?

16 A Yes.

17 Q And sort of related development, the very next  
18 day at tab 28, you talked to Vandergraaf who has  
19 been talking to Anderson, and the collective  
20 information that you get back from the two of  
21 them is that defence counsel, Mr. Brodsky, has  
22 got an ex-RCMP officer out there looking for  
23 Zanidean. And the upshot of this discussion  
24 about whether there should be any concern about  
25 this is set out in the second to last sentence

1 of your note.

2 "As Ray is not in the program and still in  
3 the city, Winnipeg Police Department do not  
4 perceive this as a problem."

5 They simply ask you to use your connections to  
6 alert anyone, within the RCMP, that he shouldn't  
7 be allowed to use his RCMP connections to get  
8 information out of the RCMP. Is that the only  
9 step that you took as a result of this?

10 A Yes, I wrote this memo for the OIC criminal  
11 operations.

12 Q To pass it on --

13 A To pass it on, yes.

14 Q Let it be known that the ex-RCMP officer  
15 shouldn't be exploiting any contacts he might  
16 still have in the force?

17 A Yes.

18 Q But in terms of any concerns about witness  
19 protection, no steps are taken as a result of  
20 this. It is simply stated that he is not in the  
21 program, he is still in the city, and the  
22 Winnipeg Police don't perceive there to be a  
23 problem?

24 A Exactly.

25 Q So again, it is consistent with -- the situation

1 that has developed is that essentially Zanidean  
2 is out of any protection arrangement at this  
3 point; is that fair to say?

4 A I don't know if he was outside of any protection  
5 arrangement within the city or with the City  
6 Police. I just know there was nothing involving  
7 the RCMP.

8 Q There is clearly nothing involving the RCMP, but  
9 is there any kind of temporary hiding of him by  
10 the police and guarding of him around the clock,  
11 that you were aware of, that's referred to in  
12 any of these reports?

13 A No.

14 Q In fact, what we know happens is Zanidean goes  
15 on the lam and heads out to the foothills and  
16 has to be picked up on a material witness  
17 warrant. Were you informed of that?

18 A No.

19 Q You had no involvement in the material witness  
20 warrant that's issued for him about a week after  
21 this, or ten days after this?

22 A No, sir.

23 Q I think it is on the 26th of May.

24 The next document at tab 29 is the following  
25 week, May 22nd, we are now within about ten days

1 of the trial commencing. Your boss, Chief  
2 Superintendent Callens, becomes concerned that  
3 this whole matter is languishing, and writes a  
4 letter to Deputy Chief Klippenstein to try and  
5 bring it to some resolution. Is that a fair  
6 description of the purpose of this letter?

7 A Yes, sir.

8 Q In fact, your belief is that you likely drafted  
9 this for Callens, and it reflects your  
10 collective views?

11 A Yes, sir.

12 Q And the paragraph that I'm particularly  
13 interested in is the second to last paragraph,  
14 where again you raise the cash settlement option  
15 as being perhaps the preferred way to go here.  
16 Is that correct?

17 A True.

18 Q And Callens was in agreement with that?

19 A Yes, he was.

20 Q Now, at the next tab we get an important  
21 development that I want to go through a little  
22 more carefully. And that is on May 29th, you  
23 receive a call from Miller advising you that  
24 Kovnats has given him an ultimatum saying, meet  
25 my three core demands, a house, a job and

1 immunity essentially, or else the consequences  
2 are that he would take steps to ensure his  
3 client's protection. It is unclear what that  
4 means. Did you understand what that would mean,  
5 what would the consequences be if his demands  
6 weren't met?

7 A No, I didn't have any idea what he meant.

8 Q Are you aware that two days before this phone  
9 call, there had been a bit of a Donnybrook down  
10 at the Public Safety Building where Zanidean had  
11 been brought back from the foothills in custody  
12 under a material witness warrant, and there had  
13 been a big shouting match at the police station  
14 between Kovnats and Dangerfield, and Kovnats was  
15 essentially threatening that unless he got his  
16 agreement, that he was going to advise his  
17 client to exercise his right to remain silent  
18 and simply appear in court pursuant to a  
19 subpoena. Had you been briefed on that  
20 development?

21 A No, sir, not at all.

22 Q The note of the phone call from Miller refers to  
23 a letter having been received, and we are not  
24 aware of any letter from Kovnats in and around  
25 May 29th. There is a letter in the following

1 week, but there is none that we are aware of in  
2 and around that time. Is it possible that  
3 that's simply an error in your note, that Miller  
4 may well have said that it was a phone call he  
5 had had with Kovnats, or a meeting that he had  
6 with Kovnats? I take it your notetaking isn't  
7 perfect?

8 A No, it is not perfect, but he must have said  
9 something to that effect or I wouldn't have put  
10 it in here.

11 Q I'm not questioning the substance of it, the  
12 substance is perfectly consistent with  
13 everything we know in the file. I'm just  
14 pointing out that we don't have such a letter?

15 A Okay.

16 Q And that it may simply be a mistake, I take it,  
17 the letter aspect of it as opposed to a phone  
18 call?

19 A Yes.

20 Q All right. The resolution of this is that  
21 Miller obviously has to deal with these house  
22 and job and financial issues. That's none of  
23 your responsibility; is that fair?

24 A Yes.

25 Q And in relation to those financial options, what



1 is important here again is you and Miller  
2 discuss the option of resolving those financial  
3 issues with a single payment; is that correct?

4 A Yes.

5 Q And this is our first reference to you  
6 discussing that aspect of the settlement  
7 eventually is arrived at with Miller. What was  
8 his response to it when you raised this with him  
9 on May 29th? Was he open to it?

10 A He was open to it, yes.

11 Q And in relation to the third demand, the  
12 immunity demand, he asks you to call Swift  
13 Current to look into that, the status of that  
14 aspect of it; is that correct?

15 A Correct.

16 Q And you agree to look into that third item for  
17 him, and he looks after the -- he obviously has  
18 responsibility for the first two items and the  
19 financial matters?

20 A Yes, sir.

21 Q So Miller's response to Kovnats' immunity  
22 demand, the third demand, was not to reject it  
23 out of hand, but to rather ask you if you would  
24 assist by looking into it?

25 A Yes, check and see what the standing was, yes.

1 Q He didn't say there is no way Kovnats is getting  
2 immunity, don't even worry about number three,  
3 it is right off the table. He asked you to get  
4 him some information that would help him on that  
5 item?

6 A Yes, sir.

7 Q The next day, we turn over the page, you put in  
8 a call that same day and leave a message, and  
9 then the next day, on the 30th, you get a call  
10 back from Burton. And I take it this is the one  
11 call or the only call in your notes where you  
12 recall speaking to Burton?

13 A Yes.

14 Q Again, it is not an independent recollection,  
15 but it is very much based on your notes?

16 A It is based on my notes, yes.

17 Q And he advises you, according to your note, that  
18 no proceedings will be taken against Zanidean if  
19 he is accepted into the Witness Protection  
20 Program; is that correct?

21 A That's correct.

22 Q And once again that note, like your note of your  
23 calls with Upton back in April, can you assist  
24 us as to whether that's a verbatim, complete  
25 account of the call, or is this simply a

1           succinct summary?

2    A       Just a summary.

3    Q       So he may well have spoken to you --

4    A       We may have discussed a number of areas.

5    Q       But in relation to this aspect of it, he may

6           well have talked to you about the process and

7           the context and the rationale for how this

8           decision would be arrived at ultimately in terms

9           of following RCMP protocol or whatnot, and the

10          considerations that they would take into

11          account; is that fair?

12   A       Yes, that's fair.

13   Q       Now both --

14          MR. WOLSON: Mr. Commissioner, the witness

15          answered that's fair in response to the

16          question. Fair in what respect? And my friend

17          is leading the witness. He is entitled to do

18          that, I understand, but the witness sort of

19          stopped in midstream.

20          MR. CODE: Let me explore it a little more,

21          Mr. Wolson, I'm happy to.

22          BY MR. CODE:

23   Q       You told us that the note is not verbatim or

24          complete, that there could have been other

25          discussions?

1 A Yes, could have been.

2 Q And is it logical to suppose that, in discussing  
3 a decision not to charge someone if they are  
4 accepted into the program, that the kinds of  
5 aspects that it would be reasonable to expect  
6 some discussion about would be, first of all,  
7 process, how is this process going to be arrived  
8 at in terms of RCMP policy, the business of does  
9 it have to go up to the CROPS officer, do we  
10 have to consult with Justice, those kind of RCMP  
11 rules driven considerations may have been the  
12 subject of discussion?

13 A They may have been. I can't recall, but they  
14 may have been.

15 Q I appreciate we are not in an area of  
16 recollection here, I'm simply asking you what  
17 would have been reasonable, knowing what you  
18 know about RCMP culture. The process that would  
19 lead to this decision may have been discussed;  
20 is that fair?

21 A Yes, definitely.

22 Q And secondly, another logical contextual topic  
23 that springs to mind when one reads this is the  
24 rationale for the decision, why a police  
25 detachment might be sensitive to this issue of

1 witness protection, that if he is accepted into  
2 the program, what are the difficulties going to  
3 be for us in charging him? Can we find him?  
4 Will we know what his identity is? Will we  
5 expose him? Those kinds of reasonable  
6 considerations that a police officer would take  
7 into account may well have been the subject of  
8 discussion; is that fair?

9 A Yes, it is fair.

10 Q Is there anything wrong with a police officer  
11 deciding that it is appropriate to exercise his  
12 discretion not to charge a valuable Crown  
13 witness, if that witness is accepted into the  
14 formal RCMP Witness Protection Program? Do you  
15 see anything improper or unprofessional about  
16 that? Is it a proper consideration for an  
17 officer to take into account in exercising  
18 charging discretion?

19 A If it is just during the investigational stage,  
20 like this one was, yes.

21 Q Nothing wrong with it, indeed RCMP policy  
22 expressly provides for it at page 70 of tab 7,  
23 does it not?

24 A Yes, it does.

25 Q And it simply says you have got to follow proper

1 processes? You have to say yes?

2 A Yes, definitely.

3 Q Is there any suggestion that Constable Burton  
4 was not going to follow proper process?

5 A No.

6 Q Given that by this point now, at the end of May,  
7 you and indeed it seems Miller, and certainly  
8 Callens, your superior officer, and Vandergraaf,  
9 who we know was on side on this, were all coming  
10 to the view that the cash settlement option was  
11 the better option here and this person was not  
12 going to be admitted into the program. Would  
13 you have briefed Constable Burton on those  
14 matters, on the status of your end of the  
15 matter? Would you explain where you were at  
16 with Burton?

17 A Whether I did or not, I don't know, I can't tell  
18 you.

19 Q All right.

20 A Because I just can't recall.

21 Q Fair enough. On the level of what is  
22 reasonable, would these be the kinds of matters  
23 that it would be reasonable for you to share  
24 with the colleague who was having to make  
25 charging decisions in relation to such a

1 witness?

2 A Yes, I might have commented that it, you know,  
3 could have been a moot point because the  
4 likelihood of him getting into the program was  
5 sliding.

6 Q All right. Did you report back to Miller as a  
7 result of this conversation? You recall the  
8 reason you call is because Miller asks you to  
9 step in and help him in dealing with Kovnats.  
10 Is it likely that you phoned Miller back?

11 A Yes, probably.

12 Q Again, we don't have a note of that phone call,  
13 do we?

14 A No. But as it was at the request of Mr. Miller,  
15 I can't see not getting back to him.

16 Q It is only sensible, isn't it?

17 A Right.

18 Q So it appears there were times when you had  
19 communications about these witness protection  
20 negotiations and the immunity negotiations,  
21 where you didn't make a note of the reporting  
22 back or the conversations?

23 A Yes, that's true.

24 Q I take it you have no recollection of the  
25 conversation with Miller, if there was such a

1 conversation?

2 A No, not at all.

3 Q It must have been apparent to you and Miller,  
4 though, on the level of generality here, that  
5 now you had a really serious problem, you had a  
6 witness who you were convinced was not going to  
7 get into the Witness Protection Program, you had  
8 investigating officers out in Saskatchewan who  
9 were taking the position that they wouldn't  
10 charge him if he was entered into the program,  
11 and you had Kovnats demanding immunity, so you  
12 essentially had three forces all pulling in  
13 opposite direction here as between Kovnats,  
14 Swift Current, and the negotiations in Winnipeg;  
15 is that fair?

16 A Yes, it is.

17 Q And what we see in your notes, when you have  
18 arrived at this significant conundrum here now  
19 on May 30th, where things are not going well in  
20 terms of this third demand of Kovnats', we get a  
21 gap in your notes from May 30th to June 19th.  
22 If you look at the third page of your notes  
23 there, we get a 20 day gap in the notebook where  
24 nothing is recorded. Is there any explanation  
25 for that, as to why the notebook goes silent at



1 this point?

2 A Not that I can think of. I may have been  
3 working on another file, on another matter  
4 altogether during that time, and there was no  
5 communications, so --

6 Q Instead what we get, the last note of  
7 significance in terms of these negotiations is  
8 the June 19th note, which really is in two  
9 parts, is it not? The bottom of the page we  
10 have a contemporaneous note of a 9:00 meeting,  
11 and at the top of the page we have a wrapped up  
12 note that goes back over the previous period of  
13 time for which there is no notes, and makes a  
14 kind of compendious summary of the intervening  
15 three weeks; is that correct?

16 A True.

17 MR. WOLSON: Which page?

18 MR. CODE: The last page of page 30.

19 BY MR. CODE:

20 Q And dealing with the first part, the compendious  
21 part of the preceding 20 days, there is  
22 reference to a number of occasions where you  
23 have received phone calls from Miller and from  
24 Zanidean. Is that correct?

25 A Yes, that's correct.

1 Q Those are the only calls that you note are calls  
2 with those two people?

3 A Yes.

4 Q No apparent contact of any significance with the  
5 police?

6 A Yes.

7 Q Again, somewhat consistent with the situation  
8 that seemed to be developing in May, of Zanidean  
9 dealing more directly with Miller and less with  
10 the police; is that correct?

11 A Yes.

12 Q The action, from your point of view, seems to be  
13 as between Miller and Zanidean. You are the  
14 point of the triangle with them.

15 You note one call from Zanidean where he  
16 threatens you on the 13th of June; is that  
17 correct?

18 A Yes.

19 Q I take it that was a further nail in his coffin  
20 in terms of any prospect of him getting into the  
21 witness protection?

22 A Definitely.

23 Q Not a good career move to threaten the witness  
24 protection coordinator?

25 A No.

1 Q And in relation to the calls with Mr. Miller, am  
2 I reading your note correctly, that over the  
3 course of these phone calls, consistent with  
4 your discussions with him back on the 29th, he  
5 is now moving closer and closer to the idea of  
6 the relocation fee?

7 A Yes, sir.

8 Q And you have come to the view that that's the  
9 position that he is going to recommend?

10 A Yes, sir.

11 Q And he is going to take that position. And in  
12 fact, we have a subsequent report from you.  
13 Perhaps I can jump ahead and refer you to it  
14 now. If you look ahead to tab 35, a couple of  
15 years later, but in 1993, while these events  
16 were still reasonably close in time to your  
17 memory, you write, or you draft a report for  
18 Inspector Callens, is that correct, in which you  
19 set out briefly in that middle paragraph your  
20 recollection that Miller ultimately abandoned  
21 the witness protection option in favour of the  
22 lump sum option?

23 A Yes, sir.

24 Q You say,

25 "...it was ultimately his decision not to

1            proceed with that method of security for  
2            the witness."

3            Was that your letter that you drafted for  
4            Callens?

5        A        Yes, quite likely.

6            THE COMMISSIONER:    Sorry, Mr. Code, what --

7            MR. CODE:    Tab 35.    This is a result of a media  
8            storm about the matter in the spring of '93,  
9            that we will hear more about later.

10          BY MR. CODE:

11        Q        But Callens is asked for the local, position of  
12            the local witness protection office on a number  
13            of matters.    And in the middle paragraph he  
14            writes,

15                    "Mr. Miller was actively involved in the  
16                    negotiations to have Mr. Zanidean enter our  
17                    Source Witness Protection Program, as  
18                    requested by the Winnipeg Police  
19                    Department, and it was ultimately his  
20                    decision not to proceed with that method of  
21                    security for the witness."

22                    Did that accurately reflect your views of  
23                    how the negotiations progressed, that Miller  
24                    ultimately rejected the Witness Protection  
25                    Program in favour of the relocation fee?

1 A Yes, sir.

2 Q And we see that reflected in your note of  
3 June 19th?

4 A Um-hum.

5 Q Of your conversations with him in early June, is  
6 that fair?

7 A Fair.

8 Q Again, is there any reason why there are no  
9 contemporaneous notes of these discussions in  
10 early June while the trial was going on? By  
11 June 19th the trial is over, isn't it?

12 A I wasn't following the trial so --

13 Q We know there is a lot of intensive negotiations  
14 in that first week in June, I will show you the  
15 correspondence in a minute. And it is obviously  
16 in and around that time that Miller is  
17 consulting with you. And my question is, is  
18 there any reason why you wouldn't have kept  
19 contemporaneous notes of those consultations?

20 A I can't say why I didn't do it. Like I say, I  
21 might have been tied up in another file, or  
22 anything like that, and just didn't take the  
23 time.

24 Q All right. Turning to the bottom of that page  
25 then, the actual contemporaneous note at tab 30,

1 the last page of tab 30 at the bottom of the  
2 page, the 9:00 o'clock meeting. This is the  
3 last meeting you attend where this witness  
4 protection negotiation is discussed; is that  
5 correct?

6 A Yes.

7 Q And your note, again the key development here is  
8 that the relocation fee is the main topic of  
9 discussion; is that fair?

10 A Yes, sir.

11 Q And again, that reflects the fact that by this  
12 stage all of the parties knew that witness  
13 protection was essentially off the table?

14 A Yes, sir.

15 Q And it appears from this note that the Winnipeg  
16 Police Service are not present and represented  
17 at this meeting?

18 A No, sir, they were not.

19 Q It is you, Miller and Kovnats, essentially the  
20 three of you; is that right?

21 A Yes, that's true.

22 Q And the idea of the relocation fee is attractive  
23 to the Zanidean side, but they are still  
24 clinging to the promises that they feel they  
25 were given early on; is that a fair summary of

1 the meeting?

2 A Yes, sir.

3 Q They are not willing to give up on what they  
4 took to be early promises extended to them by  
5 the Winnipeg Police Department; is that right?

6 A I couldn't say that it was extended to them by  
7 the Winnipeg Police Department. Mr. Zanidean  
8 was not the most truthful person in the world,  
9 and what he told his lawyer may be --

10 Q I'm not suggesting for a minute that they did  
11 make those promises. I'm simply saying that's  
12 the negotiating position that Mr. Kovnats is  
13 taking?

14 A Yes.

15 Q Although this relocation fee is attractive, he  
16 still feels that these promises were made to  
17 him, to his client?

18 A Yes.

19 Q But his position is that those promises flowed  
20 from the Winnipeg Police?

21 A Yes.

22 Q All right. The last exchange of correspondence  
23 between Kovnats and Miller during this period,  
24 the early June period, I've included the letters  
25 at tabs 31 and 32, simply for the purpose of

1 asking you whether you were privy to the  
2 exchange of correspondence between them?

3 A No, sir, I was not.

4 Q You are certainly not copied on the letters.  
5 But it may well have been the context for  
6 Miller's phone calls to you in early June, when  
7 these negotiations were going on, he was  
8 consulting with you; is that fair?

9 A Fair.

10 Q Now if you look at Kovnats' letter, June 4th,  
11 his last letter during the negotiations phase,  
12 again, he has a shopping list of demands, it is  
13 not 15 as the first letter was, it is now 12,  
14 but in substance they are much the same. And  
15 you see he is now suggesting the lump sum  
16 payment at point 6 as well, and he is asking for  
17 \$30,000 in cash. So he is clearly open to that  
18 position consistent with your evidence. But  
19 what I wanted to point out to you is that in his  
20 letter he twice refers to you. At paragraph 8,  
21 do you have page 2 of the letter, paragraph 8?

22 A Um-hum.

23 Q "As per our telephone conversation, it is  
24 my understanding that you are convening a  
25 meeting with Tom Orr of the RCMP and that



1 my client, yourself and Tom Orr will be in  
2 attendance at that meeting in order to  
3 finalize all matters."

4 And then on the last page of the letter he again  
5 refers to you,

6 "I hope that you will be able to set up the  
7 meeting with Tom Orr in an expeditious  
8 fashion."

9 Do you recall why it is that they specifically  
10 wanted you present in order to finalize all  
11 matters?

12 A No, and I don't remember even being asked to  
13 attend any meeting.

14 Q No, you are, you are present at the meeting on  
15 the 19th. I don't --

16 A This is June 4th, all right.

17 Q This is two weeks before the meeting takes  
18 place, and Kovnats is requesting expressly that  
19 you be there in order to finalize all matters.  
20 So you don't recall why the invitation is  
21 extended to you but not to the Winnipeg Police,  
22 to attend that final meeting, why it was thought  
23 that you could be helpful, expeditious?

24 A Other than they may have some questions like  
25 what would we do in such and such an instance,

1 perhaps that's the reason.

2 Q If you look at the letter, the one issue that  
3 Kovnats consistently harps on, he repeats it  
4 three times, is the immunity issue. Is that  
5 correct?

6 Let me show you the passages. Paragraph 3  
7 where he is asking for a full witness protection  
8 agreement, part of that witness protection  
9 agreement, his sub 5 is an undertaking that,  
10 "There will be no recriminations for my  
11 client's past in that the new identity will  
12 keep him insulated from any of his past  
13 activities."

14 Mr. Kovnats has this idea that relocation and  
15 change of identity, per se, should extend  
16 immunity to his client. You see that first  
17 reference to immunity there in paragraph 3?

18 A Yes.

19 Q And in paragraph 6 when he introduces the lump  
20 sum payment option, it is a bit of a trap for  
21 him because he is not in witness protection now  
22 with change of identity and relocation, so the  
23 immunity card is not quite as powerful. But he  
24 insists on it, he says that what has got to go  
25 with the cash payment is that he would want to

1           ensure that none of his past activities would  
2           come back to haunt him, in paragraph 6, do you  
3           see that?

4    A       Yes.

5    Q       It is clearly a second reference to immunity, is  
6           it not?

7    A       I would believe that, yes.

8    Q       And then finally in paragraph 12, he asks for a  
9           letter from the Crown and the police, the local  
10          police, the City Police.

11                 "They have no information which could  
12                 result in my client being charged with an  
13                 offence under any statute."

14                 Again a clear reference to immunity, is it  
15                 not, or wanting an assurance that they had  
16                 nothing that could lead to charges?

17   A       It looks that way, yes.

18   Q       So my question to you is, was that the reason  
19           why you were there, because you had been the  
20           point person dealing with the Swift Current  
21           arson in this series of phone calls you had had  
22           in April and May, with Upton, Preston and  
23           Burton, about the status of those charges; was  
24           that the reason for them wanting you to be there  
25           for the final discussions?

1 A It could have been.

2 Q I know you have no recollection, Sergeant Orr  
3 but --

4 A Just in my notes, the notes state that I got a  
5 call from Bruce saying there is going to be a  
6 meeting so -- this is the first time I have ever  
7 seen this.

8 Q The letter, I think we went through it with you  
9 in the interview, but in any event, it doesn't  
10 matter. If you go back to tab 30, the way the  
11 tasks got divided up between you and Miller,  
12 when Kovnats listed his three demands, is that  
13 Miller asked to you help out with number 3, the  
14 immunity issue and you did. So I'm simply  
15 asking you, is it rational or reasonable to  
16 assume that as the person who had been speaking  
17 directly with the Swift Current officers, that  
18 may have been the reason for your attendance at  
19 the ultimate meeting?

20 A It could have been. But if there was going to  
21 be an immunity, any immunity offered, it had to  
22 be between the Provincial Crowns anyway, and  
23 between the provinces.

24 Q I'm not suggesting that you could offer him  
25 immunity for a minute. Obviously, it was a

1 matter between Saskatchewan Justice and Manitoba  
2 Justice to negotiate in the proper way. All I'm  
3 suggesting is, you were a person who had  
4 information about it that would be of  
5 assistance, first hand information as opposed to  
6 second hand information?

7 A Yes, sir.

8 Q All right. The last couple of documents at tab  
9 33, we have a report prepared by Sergeants Paul  
10 and Anderson of a very significant development  
11 that happens on June 20th, the day after your  
12 meeting. There is a major fight between  
13 Zanidean and his handlers that results in  
14 ranting and raving and arguing. And Zanidean,  
15 this is summarized at the bottom of the report,  
16 Zanidean threatening to go to the press and tell  
17 the press his testimony had all been lies. And  
18 then at the very bottom of the page, on the 21st  
19 of June, this leads the Winnipeg Police to  
20 conclude the temporary protection they had been  
21 offering to Zanidean immediately before and  
22 immediately after his testimony. So, in  
23 essence, he is turfed out of even this interim  
24 hotel based protection that they had arranged  
25 for him during and after the trial.

1           Was this brought to your attention, this  
2           development that happened the day after your  
3           meeting?

4    A    No, not at all.

5    Q    You notice the report is dated September 23rd,  
6           1993, it is not prepared until over two years  
7           after the events, there is no contemporaneous  
8           report of these developments. The report is  
9           only produced as a result of the Hall and  
10          Ewatski review two years later in 1993.

11           Is this a matter that should have been  
12          brought to your attention, that you should have  
13          been informed of, in light of your role in this  
14          matter?

15   A    Yes. Yes, I would say it should have been  
16          brought to our attention, because it would have  
17          put the final nail in the idea of the witness,  
18          the National Witness Protection Program.

19   Q    You would have just closed your file at that  
20          point; is that fair?

21   A    Yes, sir.

22   Q    The next day, June 21st, at tab 34, Mr. Miller  
23          sends a letter to Kovnats, and I would like you  
24          to read this carefully and assist us if you can.

25           First of all, do you recall seeing this

1 letter? Was it shown to you or shared with you  
2 in any fashion? You are clearly not copied on  
3 it, but do you recall seeing it at the time?

4 A No, never seen it.

5 Q And he appears to describe a completed agreement  
6 that's been arrived at, two days after your  
7 meeting and one day after the blowup when he has  
8 been essentially kicked out of any form of  
9 protection. And could I read in particular the  
10 third paragraph,

11 "The plan arranged for your client is one  
12 that has been worked out with the police.  
13 It is one with which your client is  
14 comfortable."

15 Do you see that in the third paragraph, at tab  
16 34?

17 A Yes.

18 Q And my question to you is, who are the police  
19 who reached this arrangement with Zanidean in  
20 and around June 21st, to your knowledge?

21 A Could be referring to the idea of the relocation  
22 payment. If that was the case, then it would  
23 be -- the plan worked out with the police was,  
24 let's go with this relocation payment; or other  
25 than that, I don't know if he was talking to

1 members of the City Police or not.

2 Q I will come to the relocation payment in a  
3 minute, because I want to talk about the  
4 substance of this. I'm talking more about form  
5 here. He appears to be saying that there is an  
6 agreement that's been reached between the client  
7 and the police. He is writing to Kovnats and  
8 talking about something that's been worked out  
9 between the police and the client. And I'm just  
10 asking if you have any knowledge of what  
11 happened between the 19th and 21st? Did  
12 somebody cut a deal with Zanidean in that time,  
13 to your knowledge?

14 A No, not to my knowledge.

15 Q If it was police, which police force and which  
16 police officers? Was it you and the RCMP?

17 A No.

18 Q Did you have anything to do with this final  
19 arrangement with Zanidean?

20 A No, sir.

21 Q Did the RCMP, to your knowledge, have anything  
22 to do with this final arrangement with Zanidean?

23 A No, sir.

24 Q Was this arrangement arrived at the June 19th  
25 meeting, the last meeting you attended?



1 A I don't believe it was, no.

2 Q Your note of that meeting clearly indicates  
3 there was no resolution at the end of that  
4 meeting?

5 A Exactly.

6 Q It looked like everybody was moving towards this  
7 cash payment option but there was no agreement  
8 yet; is that fair?

9 A That's fair.

10 Q And in terms of the substance of the letter, the  
11 last two paragraphs on that first page state,  
12 "This letter simply confirms the Justice  
13 Department of Manitoba, in accordance with  
14 our witness protection practice, it is  
15 committed to funding the relocation of your  
16 client. It is understood that the costs of  
17 relocation incidental to this plan will not  
18 exceed \$20,000."

19 And as you read that, what I want to ask you  
20 simply is, is that the Witness Protection  
21 Program or is that a cash settlement?

22 A No, that's a cash -- that's a relocation  
23 payment, that's nothing to do with a Witness  
24 Protection Program.

25 Q All right. So it looks like Kovnats offered

1 30,000 in the June 4th letter, and Miller is  
2 coming back in the June 21st letter with 20,000.  
3 Is that a fair reading of it?

4 A Yes, sir.

5 Q All right. The final chapter in your dealings  
6 in this matter is the July discussions with the  
7 F Division CROPS officers in Regina, where there  
8 is a little flurry of activity on your part,  
9 where the F Division in Regina is getting  
10 increasingly involved in this matter as a result  
11 of memos that Burton and Ferguson have been  
12 sending them in late June, early July. And we  
13 get these memos at tabs 36, 37, 38 and 39, where  
14 various people in Saskatchewan speak to you.  
15 I'm not going to go through these tabs with you  
16 in detail. If I can summarize for you what  
17 emerges out of 37, 38 and 39, is that they  
18 consistently state that you informed them that  
19 Zanidean is not in the Witness Protection  
20 Program; is that correct?

21 A That's correct.

22 Q At least in this time period, it appears that  
23 whatever misunderstandings there might have been  
24 before, by July it is unequivocal that you are  
25 consistently telling them he is not in the

1           Witness Protection Program.

2     A     Yes, sir.

3     Q     And it is in your notes and it is in their notes  
4           and there is no conflict.

5     A     He has never been in the Witness Protection  
6           Program.

7     Q     At least we finally got good clear communication  
8           about that point once the trial is over.

9           Now, the only one of these documents that I  
10          do want to go into in a little bit more detail,  
11          and these are the last two documents that I will  
12          refer to, are your own notes of your  
13          conversations at tabs 38 and 40. So if I could  
14          just have you turn to tab 38?

15          And again, this note we get at July 16th at  
16          tab 38, is this another one of these summary  
17          notes where you are pulling together a lot of  
18          material from the preceding couple of weeks? I  
19          think the last note of any substance we have had  
20          from you was on the June 19th meeting?

21     A     Yes, sir.

22     Q     And that was back at tab 30, we had your note on  
23           the last page of the June 19th meeting. And now  
24           we are almost a full month later, July 16th, and  
25           you start the note by saying during the past

1 couple of weeks you have had contacts with these  
2 fellows in F Division CROPS. Is that correct?

3 A That's true.

4 Q And you proceed to summarize a lot of  
5 information over the last few pages. That's not  
6 contemporaneous, if I'm reading this correctly,  
7 you are summing up what you have learned over  
8 that past period of time?

9 A Yes.

10 Q All right. And could I just highlight three  
11 points here. On the first page, tab 38, the  
12 second paragraph on the first page, you state,

13 "The last we heard..."

14 and they are obviously talking about the Swift  
15 Current arson and its status,

16 "The last we heard on that was noted on  
17 page 16 of my written notes entered on  
18 May 30th, indicating there would be no  
19 prosecution if Zanidean was accepted into  
20 the Witness Protection Program."

21 And my question to you is simply that that note  
22 is once again consistent with the position that  
23 you had been getting out of Swift Current, both  
24 from Preston on April 16th and from Burton on  
25 May 30th; is that correct?

1 A That's correct.

2 Q So for the third time you have now stated what  
3 your understanding was of Swift Current's  
4 position, and there is nothing illogical or  
5 improper about that position, if I understand  
6 you?

7 A Yes, sir.

8 Q Over the page, second page of your notes, you  
9 set out at the top a paragraph about Burton, if  
10 I could read this with you.

11 "According to Ross Burton, Swift Current  
12 Detachment, Brodsky is forcing the RCMP to  
13 investigate this arson to force a new trial  
14 as they are claiming Zanidean perjured  
15 himself on the stand. Driskell has  
16 apparently received immunity from  
17 prosecution due to his life sentence on the  
18 murder charge."

19 Just a couple of points about that paragraph.  
20 First of all, are you documenting a  
21 contemporaneous phone call with Burton on  
22 July 16th in that note?

23 A That was the only time that I spoke to Burton.

24 Q The only time you spoke to him was when?

25 A A phone call on whatever date that was.

1 Q It is on the previous page, if you flip back to  
2 the first page of the notes, you have got the  
3 date there, page 16 of your written notes  
4 entered on May 30th. So you are referring back  
5 to that phone call?

6 A Yes.

7 Q So this is a note on July 16th where you are  
8 summarizing what you recall of what Burton said  
9 to you approximately two months previously, on  
10 May 30th?

11 A When I was talking to Scowby or Marcella, yes.

12 Q So you are briefing Scowby and Marcella on what  
13 you recall of what Burton said on May 30th; is  
14 that fair?

15 A That's fair.

16 Q So the note of what you understood from Burton,  
17 if you go back to your contemporaneous note on  
18 May 30, which if you just want to --

19 A Just before you do shift -- like "according to  
20 Ross Burton," now this could be what I'm being  
21 told by Marcella and Scowby, it is not coming  
22 from my conversation.

23 Q It was exactly the point that I was going to try  
24 and assist you with. If you go back to tab 30  
25 and look at your call on May 30th, there is

1 nothing in it about this business about what  
2 Brodsky is doing or what, in particular what  
3 Zanidean testified to at the trial; is that  
4 correct?

5 A Yes.

6 Q Because, of course, at the time of that May 30th  
7 note, Zanidean hadn't testified yet, he hadn't  
8 even got into the box?

9 A True.

10 Q And the suggestion that Driskell had received  
11 immunity is in fact a complete misstatement, it  
12 is complete misinformation, Swift Current had  
13 never given Driskell immunity. Is that correct?

14 A Yes, I wasn't sure what he was referring to  
15 there.

16 Q It appears that this is information filtering  
17 through Marcella about what he believes from  
18 Burton?

19 A Yes.

20 Q And if that last sentence is completely in  
21 error, as I can assure you it is, Driskell has  
22 apparently received immunity from prosecution, I  
23 take it you are not able to vouch for the  
24 accuracy of the double hearsay from Marcella?

25 A No.

1 Q Finally, on the last page, I was able to advise  
2 my counterpart in Regina that Zanidean was not  
3 part of the protection plan, consistent with  
4 their reports that that's exactly what you are  
5 telling them. And then you add a new piece of  
6 information.

7 "From my conversation with Mr. Miller  
8 today, it would appear that Manitoba AGs  
9 will be paying out a \$20,000 relocation  
10 payment to Zanidean."

11 And that is a contemporaneous note, is it?

12 A Yes, it is.

13 Q As Miller told you, on July 16th, that they had  
14 reached an agreement to pay the \$20,000?

15 A Yes.

16 Q And that's the first confirmation that you had  
17 received of that? You hadn't received the  
18 June 21st letter?

19 A No, that's the first confirmation that I heard  
20 of it.

21 Q Finally, tab 40 is the next day, July 17th, you  
22 see if you look at the end of tab 38, if you go  
23 back to the second to last page at tab 38, this  
24 is the context for your note the next day. You  
25 see at tab 38, the second page at the bottom,



1           there is going to be a big meeting in Swift  
2           Current, in Regina the next day on July 17. And  
3           the CROPS coordinator in Regina and the Swift  
4           Current officers are all going to get together  
5           with a big meeting on July 17th, is that  
6           correct, to discuss a possible plan of action?  
7           Do you see that?

8    A       What tab are you on?

9    Q       I am at tab 38, the bottom of page 2. Obviously  
10           Marcella and Scowby, one of them has told you  
11           that there is going to be a meeting on the 17th,  
12           in Regina, to discuss a plan of action in  
13           relation to the Swift Current arson?

14   A       Yes.

15   Q       Do you see that?

16   A       Yes.

17   Q       CROPS officers as well as the local officers  
18           from Swift Current?

19   A       Yes.

20   Q       You speak to Miller after receiving that  
21           information. You see at the end of tab 38 you  
22           say you had another call with Miller, you put in  
23           a second call to him to discuss the information  
24           just received?

25   A       Yes.

1 Q And then if you go to tab 40, on the 17th, the  
2 day of the meeting in Regina, where the  
3 Saskatchewan officers are going to decide on  
4 their plan of action, you note that you  
5 contacted Miller again, this is now the third  
6 call to him in the last two days, and explained  
7 the situation to him. In other words, you  
8 explained what is happening in Saskatchewan; is  
9 that fair?

10 A Yes.

11 Q "He was quite concerned, especially about  
12 the possibility of Zanidean being proved as  
13 an incredible witness."

14 Could you assist us as to what it was that he  
15 was concerned about? Can you elaborate at all  
16 as to what the basis of the concern was?

17 A There was something about a transcript of taped  
18 conversations, I believe, but --

19 Q You come to that in the next paragraph. I'm  
20 more interested in this business about what the  
21 concern was about Zanidean being proven as an  
22 incredible witness. What was the basis of that,  
23 what was the context of that?

24 A I'm not sure, I can't recall.

25 Q Let me see if I can assist you. What we see

1 from these discussions that you are having with  
2 the Regina and Swift Current officers in mid  
3 July, as they prepare for their meeting on the  
4 17th, is that you have now made clear to them,  
5 repeatedly, that Zanidean is not in the Source  
6 Witness Protection Program. And that had been  
7 the key bar to them proceeding, had it not?  
8 They had repeatedly said to you that if he is in  
9 the Witness Protection Program, we won't  
10 proceed; is that correct?

11 A That's correct.

12 Q So that bar had been removed, and now here we  
13 are in the post-trial period, they understand  
14 finally with clarity that he is not in the  
15 Witness Protection Program. And so the upshot  
16 of these conversations you have been having with  
17 Marcella and Scowby is that there is now a  
18 realistic possibility that he could be charged.  
19 Is that fair?

20 A That's fair.

21 Q And it is also clear that, as a result of the  
22 briefings from them about Zanidean's testimony,  
23 that they have told you that there is a real  
24 issue as to Mr. Zanidean perjured himself on the  
25 stand when testifying about the arson. Is that

1 correct?

2 You see back at tab 38, the information  
3 from the trial that Marcella or Scowby is  
4 passing on to you, is that there is a claim,  
5 Brodsky is making a claim that Zanidean perjured  
6 himself on the stand?

7 A Yes.

8 Q Is the concern that you and Miller are  
9 discussing here that if Swift Current proceeds  
10 with its arson charges, that Zanidean's perjury,  
11 alleged perjury at the trial will come out? Is  
12 that what it means where it says the possibility  
13 of Zanidean being proven as an incredible  
14 witness?

15 A Could be, I'm not sure.

16 Q In any event, Miller was concerned about the  
17 outcome, if that was the outcome, that he would  
18 be shown to be incredible in his testimony?

19 A And suggested that Swift Current, the  
20 investigators get ahold of Mr. Lawlor.

21 Q He wants there to be some kind of consultation  
22 between Lawlor about getting production of these  
23 body pack transcripts?

24 A Yes, sir.

25 MR. CODE: Those are all of my questions. Thank

1           you very much.

2           THE COMMISSIONER: It is 24 minutes after 3:00,  
3           I don't know whether anyone wants -- we would  
4           normally go for another six minutes. Does  
5           anyone want to? Mr. Libman, what about you?

6           MR. LIBMAN: Mr. Commissioner, we can break now  
7           and Mr. Lockyer would be ready to go on Monday  
8           morning.

9           THE COMMISSIONER: It could be your chance to be  
10          a star.

11          MR. LIBMAN: I will leave that to Mr. Lockyer.

12          MR. CODE: I thought we could have a pithy Jay  
13          Prober cross-examination to finish off the day.

14          MR. PROBER: Thanks, Mr. Code, but I'm going to  
15          wait for Mr. Lockyer. It is in the best  
16          interests of my client, from what I have been  
17          told.

18          THE COMMISSIONER: Mr. Code, you had mentioned  
19          earlier about the tremendous effort that the  
20          staff at the inquiry office had put into getting  
21          this material together. And I know when I left  
22          last evening, they were still there, and I  
23          understand were there until 5:00 o'clock this  
24          morning, some of them, and they were there when  
25          I went in about quarter to 8:00 this morning.

1 MR. CODE: I'm very glad you reminded me of  
2 that, because I asked if they could all be  
3 present this afternoon because I wanted to  
4 express the incredible gratitude I have for the  
5 heroic work that the Commission staff put in  
6 over the last few days to get the  
7 Anderson/Paul/Vandergraaf book of documents  
8 together, which has been a mammoth undertaking.  
9 And I understand that my colleagues have all got  
10 those documents now. They have been  
11 distributed. And they had all asked me to make  
12 a real effort to have them available so they  
13 could spend the weekend at the lake reading  
14 them. I understand there are some rather good  
15 lakes around here and they needed some reading  
16 material. So we were there until 11:00 o'clock  
17 last night, Jonathan and I, completing the  
18 index. And Kathy Karamchand stayed until about  
19 4 or 5:00 in the morning, completing the  
20 photocopying and binding, or getting it started.  
21 And Mr. Giasson was in there first thing this  
22 morning with all of the staff, cracking the  
23 whip. And they worked incredibly hard, and I  
24 wanted to thank them so much for that incredible  
25 effort which has made counsel's job so much

1 easier. Thank you very much.

2 THE COMMISSIONER: And I certainly second that  
3 commendation.

4 Well, members of the staff, thank you  
5 again, and thank you, counsel, all, and  
6 witnesses. I think we had a fairly productive  
7 week, four day week, and I hope it continues to  
8 be as productive as we go along, and I hope that  
9 I'm able to keep going. The rest of you are all  
10 young folks, you can do it, but I have a little  
11 more trouble. Thank you very much and see you  
12 on Monday morning.

13 THE CLERK: All rise. This Commission of  
14 Inquiry is adjourned to July 24th at 9:30 a.m.  
15 (Proceedings adjourned at 3:30 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.

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Cecelia Reid  
COURT REPORTER

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Lisa Reid  
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