

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

The Honourable Patrick LeSage, Q.C. Commissioner

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

Monday, July 24, 2006

Volume 5

INQUIRY PROCEEDINGS

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1 MONDAY, JULY 24, 2006

2 Upon commencing at 10:00 a.m.

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

5 THE COMMISSIONER: Good morning, everyone.

6 MR. LOCKYER: Good morning.

7 THE COMMISSIONER: First, on behalf of the court
8 reporter, Ms. Reid, she asked me to extend her
9 most sincere apologies for the delay in
10 commencing this morning. As you know, there are
11 two Ms. Reids who do the reporting, and one is
12 in the morning and the other is in the
13 afternoon. Well, she thought she was the
14 afternoon Reid and not the morning Reid, and so
15 she sincerely apologizes and deeply regrets the
16 inconvenience. I have accepted her apology.

17 THE REPORTER: Thank you, sir.

18 THE COMMISSIONER: Mr. Lockyer.

19 BY MR. LOCKYER:

20 Q Good morning, Mr. Commissioner.

21 Mr. Orr, presumably at some point you've
22 become aware of the fact that the relevant
23 people in the Winnipeg Police Service who dealt
24 with Mr. Zanidean, in one way or another, have
25 taken the position that you told them, one or

1 more of them, that for Mr. Zanidean to have an
2 outstanding charge in Swift Current was an
3 absolute bar to him going into the RCMP Witness
4 Protection Program?

5 A I can't answer that because I don't think I
6 would have done that.

7 Q Okay. Now, listen to the question. I say
8 you've become aware of the fact that that is
9 what they are claiming; is that right, sir?

10 A Yes.

11 Q Right. And how have you become aware of that,
12 sir?

13 A Just through the correspondence that I have
14 received on the file.

15 Q All right. And you were asked, on sort of two
16 or three occasions by Commission Counsel on
17 Friday, as to whether you would have told them
18 this. And your response seemed strangely
19 qualified. You said:

20 "I doubt very much I would have told them
21 that. I don't think I would have told them
22 that."

23 Do you remember giving that kind of answer,
24 sir?

25 A Yes.

1 Q And I'm wondering why you wouldn't state
2 definitively that you wouldn't have told them
3 that, given that if you had told them that, you
4 would have been giving them misinformation. I
5 don't get the point as to why you can't just
6 say, I didn't say that?

7 A Some possibilities. I would say that when I was
8 talking to them, it was the fact that a charge
9 would create more of a problem, but that
10 immunity, I can't recall saying that immunity
11 had to be on the table at all.

12 Q All right. I mean, you are still being fairly
13 qualified in the way you are answering this.
14 Are you saying, sir, you might have told them
15 that an outstanding charge could be a bar to
16 Zanidean entering the Witness Protection
17 Program?

18 A I don't think I would have said that, no.

19 Q I can't think why you would have said it. Why
20 would you have said it? It is like telling them
21 night is day and day is night. Why would you
22 have said such a thing, sir?

23 A I can't answer that because I probably would not
24 have said it.

25 Q Right. And that's the reason you wouldn't have

1 said it, because it wouldn't be true; right?

2 A True.

3 Q And when you gave your evidence to Commission
4 Counsel, sir, you didn't, at least the way it's
5 been recorded, you didn't seem to have any
6 qualifications. Just look at tab 1 of
7 Commission Counsel's books. You have that with
8 you?

9 A I do.

10 Q Looking at page 5, you say halfway down, the
11 beginning of the paragraph, you say, first of
12 all -- are you with me?

13 "However, the fact that Zanidean was being
14 investigated for the Swift Current was
15 not...",

16 "was not" being emphasized,

17 "...was not a serious impediment to his
18 entry to the program."

19 Do you see that?

20 A Yes.

21 Q So it's even apparently worth emphasis that it
22 wasn't a serious impediment even to his entry
23 into the program; is that right?

24 A True.

25 Q And then at page 8, sir, of the same interview,

1 halfway down, it reads as follows:

2 "In his January 9, 1992 report, Constable
3 Burton, quoting from an earlier April 19,
4 1991 report, states that during an April 5,
5 1991 telephone conversation Sergeant
6 Anderson told Burton that the Winnipeg
7 Police were trying to place Zanidean in the
8 Witness Protection Program but that 'the
9 witness protection coordinator in D
10 Division, i.e. Orr, advised that they would
11 not hide Zanidean as long as the writer,
12 i.e. Burton, was actively investigating him
13 with the possibility of charges pending.'
14 If Anderson said this to Burton, it is
15 inaccurate. An outstanding investigation
16 was an impediment in the sense of a
17 complication that had to be dealt with, but
18 it is not a disqualification. Orr
19 certainly never said otherwise to
20 Vandergraaf or Anderson, and he has no idea
21 where Anderson would have acquired this
22 erroneous understanding."

23 Do you remember saying that and approving
24 that in your interview with Commission Counsel?

25 A I do.

1 Q There is no qualification there, sir. In fact,
2 on the contrary, you make absolutely clear, in
3 fact, it is inconceivable that you could have
4 told that to Anderson or, indeed, any other --
5 Vandergraaf is correct, right?

6 A True.

7 Q Why the qualification a few minutes ago, sir? I
8 don't get it. Is it the fact that you have now
9 become aware of the positions taken, or thought
10 it through, the positions taken by Anderson and
11 Vandergraaf that you feel maybe you should
12 qualify your answer?

13 A No, not really.

14 Q All right. But what is it, really?

15 A It could have been how the explanation was
16 interpreted. I don't know.

17 Q Sorry, the explanation interpreted by whom? I
18 don't get you?

19 A By Sergeant Anderson.

20 Q Oh, you mean -- so you're saying that maybe they
21 misunderstood you when you said that it wouldn't
22 be a serious impediment, but it would be
23 something you would have to deal with?

24 A I don't recall the conversation so --

25 Q Now, in your description of Mr. Zanidean, sir,

1 on Friday, it became I think fairly apparent
2 that this wasn't someone that you apparently
3 took to yourself; is that right?

4 A True.

5 Q Doesn't seem to have taken to you necessarily
6 either?

7 A True.

8 Q He, from your perception, saw you, to use your
9 term, as a money tree; right?

10 A Yes, that was maybe his perception of it, yes.

11 Q Sorry, perhaps better put, he saw you as a
12 potential money tree?

13 A Exactly.

14 Q He viewed you as a money tree?

15 A Yes.

16 Q You may not have been one, but that's what he
17 thought he was going to do; right?

18 A Yes, sir.

19 Q And I think at one point you refer to him
20 wanting you to dance his dance, remember that?
21 I think you introduced the word "dance"?

22 A Yes.

23 Q I mean, in a sense, the way -- or another way of
24 putting it, the way Mr. Zanidean presented
25 himself to you was that he was -- here was a

1 person -- or he was a person that had
2 information for sale; isn't that right? You
3 want what I've got, you are going to have to pay
4 for it. That's how he was presenting himself?
5 A Through his lawyer, yes.
6 Q And directly, you had direct dealings with him
7 too?
8 A Yes.
9 Q So both through his lawyer and in person?
10 A The demands were mostly through his lawyer.
11 Q But he made demands to you personally, too?
12 A They were mostly -- he was told that -- when he
13 would make those demands, he was also told to go
14 through the Winnipeg City Police contact.
15 Q I'm not sure why you are reticent about
16 answering the question. He made the demands to
17 you directly as well sometimes?
18 A I can't remember.
19 Q Or presented himself in that way?
20 A In that way.
21 Q Perhaps that's a better way of putting it, to
22 you directly, yes?
23 A Yes.
24 Q You said on Friday, hopefully I took it down
25 right:

1 "His demands..."

2 meaning Mr. Zanidean's demands,

3 "...were constant. He wanted it done his
4 way. And every time he got something, he
5 wanted more."

6 Right?

7 A Yes.

8 Q Do you remember saying that on Friday?

9 A Yes.

10 Q It's a fair assessment of the man in his
11 dealings with you, both personally and through
12 his lawyer; is that right?

13 A Yes, and with his dealings with the City, the
14 City Police.

15 Q Indeed. I was going to ask you that. You saw
16 some of his dealings with Inspector Vandergraaf,
17 particularly the April 29th meeting after
18 Mr. Zanidean's return from Calgary, he took that
19 very kind of attitude, or that same attitude
20 with Inspector Vandergraaf; isn't that right?

21 A Yes.

22 Q I think you refer in your handwritten report of
23 the April 29th meeting, that's at tab 22 -- I
24 won't take you to it unless you want me to, but
25 just that's where it is -- to him getting into,

1 what you wrote down as being an extended
2 argument with Vandergraaf. Do you remember
3 that, sir?

4 A I do.

5 Q And it wasn't an extended argument about
6 politics in the Middle East. It was an extended
7 argument about money, wasn't it?

8 A Yes.

9 Q And it was during that meeting, when you were
10 alone with Mr. Kovnats and Mr. Zanidean, that
11 you first raised the idea of a cash settlement
12 in lieu of a Witness Protection Program?

13 A Yeah, a relocation, a relocation expense, a
14 relocation payment instead of the program, yes.

15 Q That's one way of defining it. A cash
16 settlement is another way of defining it?

17 A That's the way I was looking at it at the time.

18 Q Yes. Well, one would suspect Mr. Zanidean
19 looked at it from the perspective of getting
20 some cash; is that fair? You dealt with him
21 enough to know that?

22 A Yes.

23 Q And that's why you put this sort of carrot in
24 front of him, because you really didn't want
25 your force to continue to have a history with

1 this man if you could avoid it; am I right?

2 A We were still -- there was still the concern
3 about the protection of the witness. We knew
4 that, at that time, that he was not going to be
5 able to qualify for the Witness Protection
6 Program. There was still a concern about the
7 witness, so that's why the suggestion for the
8 relocation expense.

9 Q But it was also a way of getting him off your
10 back, wasn't it, or off the RCMP's back so that
11 they wouldn't have to protect him in the
12 future?

13 A Well, yeah, we wouldn't have dealt with him.

14 Q And that was how it was being presented to
15 Zanidean. Rather than put you in the Witness
16 Protection Program, we will give you a bunch of
17 money and that will --

18 A You can relocate yourself.

19 Q Look after yourself?

20 A And don't have to worry about all the --

21 Q Right. And as you told us again on Friday, this
22 was a plan that both Miller and Vandergraaf
23 thought was kind of a pretty good idea?

24 A Yes, they agreed.

25 Q Right. Had you discussed it with them, do you

1 remember, before April 29th, or did you tell
2 them about Zanidean's interest in it after you
3 spoke to Zanidean April 29th?

4 A I can't recall.

5 Q Yes. I don't really have a complete
6 understanding about the relationship between the
7 Winnipeg Police and you. In particular, you are
8 sort of the point man for this in this case,
9 right? You are the point man for both Zanidean
10 and Gumieny, right?

11 A Yes.

12 Q And I would imagine you had some relationship
13 with the Winnipeg Police?

14 A Some, not a lot.

15 Q And you had a relationship with them? You got
16 along with them? You had a professional and, to
17 some extent, personal relationship with some of
18 them, right?

19 A More professional.

20 Q So you weren't acting as an independent, a
21 person independent of them. You were acting
22 very much in concert with them as you were doing
23 your deals with Mr. Zanidean; am I right?

24 A Yes, and at their request.

25 Q Indeed. Even more so, not so much in concert,

1 but you were working for them as much as
2 anything; is that right?

3 A True.

4 Q At their request?

5 A At their request.

6 Q Pardon?

7 A At their request.

8 Q Yes. All right. So when you put all of this
9 together, sir, as sort of a sensible police
10 mind, it was apparent to you at least that this
11 chap, Zanidean, was a pretty dangerous sort of
12 witness that the Winnipeg Police Service was
13 working with. He was a man who had his own
14 interests at heart, to an extent that he was
15 getting into battles, both personally and
16 through his lawyer, with two separate police
17 forces, am I right, or representatives of two
18 separate police forces?

19 A I don't know if I would classify it as
20 dangerous. He was non-cooperative.

21 Q Well, you talked to Commission Counsel about how
22 these kinds of things can impact on a witness's
23 credibility. If you are given too much, it
24 can -- the more you give, the more it can impact
25 on a witness's credibility; right?

1 A Yes.

2 Q And if you consider the nature of the beast,
3 insofar as you were dealing with Mr. Zanidean,
4 you were dealing with someone whose credibility
5 was certainly something that you must have
6 come to question as you dealt with him. Am I
7 right?

8 A Not so much his credibility as his greed.

9 Q Greed. But if you consider greed as a motive to
10 then provide, say evidence that the Winnipeg
11 Police Service want, that would enable him to
12 fulfill his desire for greed, you can quickly
13 see how his greed could be seen to impact on his
14 credibility. Do you see that?

15 A Possibly, yes.

16 Q That's the kind of thing, sir, that would be
17 important information for Mr. Driskell's defence
18 counsel to have, don't you think?

19 A I would imagine, yes.

20 Q I want to look, sir, for a moment, as I develop
21 this, to the May 29, 1991 call that you received
22 from Mr. Murphy. Are you with me? It's at tab
23 20, if you want to refresh your memory.

24 Now, would you have known, sir, that just
25 two days before this, Mr. Zanidean had --

1 actually, three days before this -- had been
2 arrested out west. I forget exactly where.

3 MR. CODE: Cochrane.

4 BY MR. LOCKYER:

5 Q Right. I keep thinking he was in Cochrane.
6 There is a place in Ontario called Cochrane
7 too -- in Cochrane, Alberta, just three days
8 before this, but his handlers -- did you know
9 that, sir -- but actually the Alberta Police and
10 his handlers then picked him up and brought him
11 back to Winnipeg. Did you know that, sir?

12 A No, sir, I didn't know that.

13 Q Are you sure you didn't know that? I am
14 surprised you wouldn't be briefed on it if you
15 are working in concert and in conjunction with
16 the Winnipeg Police Service, that this was going
17 on and causing them problems?

18 A There would have been something in my file if I
19 had known that.

20 Q And did you know, sir, that on May 27th, the day
21 after he was brought back, the day after his
22 arrest in Alberta, brought back by Anderson and
23 Paul, he got into -- or rather his counsel was
24 down at the police station with Zanidean. Crown
25 counsel was there, Mr. Dangerfield. Vandergraaf

1 was there, I think I'm right in saying.

2 Anderson and Paul were certainly there. And
3 that there was a rather unseemly, I will just
4 use that word, dispute between Mr. Dangerfield
5 and Mr. Kovnats because of Mr. Zanidean's
6 excessive demands?

7 A I wasn't aware of that.

8 Q You weren't aware of that either?

9 A No.

10 Q So when Mr. Miller called you on May 29th, you
11 didn't know that in the previous two or three
12 days the Manitoba Justice and the Winnipeg
13 Police Service had come to appreciate, if not
14 earlier, but certainly by then, that they were
15 into some potentially huge problems with
16 Mr. Zanidean being a witness at Mr. Driskell's
17 trial. You didn't know that?

18 A I didn't know that, no.

19 Q Did you know, sir, at least when you were called
20 on May 29th by Mr. Miller, that Mr. Driskell's
21 trial was due to start in a week? You probably
22 would have known that, wouldn't you? The timing
23 would have been important to you?

24 A I'm not positive if I knew it or not.

25 Q Common sense that you would have known it, isn't

1 it, sir?

2 A Could have been.

3 Q Right. I mean, because when Miller calls you,
4 he has got a tremendous sense of urgency in his
5 call, has he not, to you? This isn't, hi, how
6 are you doing, oh, by the way. This is a call,
7 Detective Orr, we have got some serious problems
8 here and I need your help quick. Isn't that
9 what he told you, in effect?

10 A I'm not sure how the conversation went at all.
11 I'm just going from the notes that I wrote down.

12 Q Well, why don't you look halfway down the first
13 page of tab 30? Miller told you he had been
14 given one day to respond, do you see that? That
15 certainly would seem to have indicated to you
16 that there was a sense of urgency about this?

17 A True.

18 Q Right. So is that sort of bringing it back to
19 you, sir, that Miller is calling you saying, oh,
20 I need your help, let's move, you've got to move
21 fast, in effect? I'm saying he used those
22 words.

23 A He may have said that he had one day to respond,
24 but --

25 Q And it would make sense, sir, whether you

1 remember it or not, but Miller has said to you,
2 this chap's trial starts in a week, I mean, this
3 is our most important witness.

4 A I don't know.

5 Q Common sense he would have told you that
6 perhaps?

7 A I don't know.

8 Q Did you get that sense, sir, on May 29th, that
9 you had better move quick or they had a murder
10 prosecution in trouble?

11 A I told him I would do what I could.

12 Q But you moved fast, didn't you?

13 A Obviously, on this.

14 Q You reacted immediately, right?

15 A Yes, I made a phone call right away.

16 Q Right. On the immunity issue?

17 A Yes.

18 Q And certainly when Mr. Miller called you on
19 May 29th, sir, he sure didn't act as if he and
20 the Winnipeg Police Force already believed that
21 Zanidean had immunity, did he?

22 A No.

23 Q On the contrary, he acted as if Zanidean did not
24 have immunity; right?

25 A That's why he wanted the phone call to Swift

1 Current.

2 Q Right, got it. So any claim that Manitoba
3 Justice ever believed Zanidean had immunity
4 would seem a little hard to maintain in light of
5 what Miller's telling you on May 29th; correct?

6 A Correct.

7 Q And one might think that Manitoba Justice would
8 work closely with the Winnipeg Police Service
9 investigators because, certainly that's your
10 indication, that all of these matters are
11 proceeding, is it not?

12 A Yes.

13 Q Yes. So it would seem pretty surprising that
14 the Winnipeg Police Service didn't also know
15 that this chap was not being given immunity;
16 correct?

17 A Supposition, I suppose, yes.

18 Q And nothing the Winnipeg Police Service said to
19 you around this time, and you were dealing with
20 them around this time, ever suggested to you
21 that they thought Zanidean had been given
22 immunity? Am I right, sir?

23 A True.

24 Q Did you say true?

25 A True.

1 Q True. Thank you. And what you then did is
2 completely, a completely logical reaction to
3 Miller's call. You set about seeing if, indeed,
4 you can get Zanidean immunity, because that's
5 what Miller has told you he wants one week
6 before the trial; right?

7 A No. I had nothing to do with whether he was
8 getting immunity or not.

9 Q Well, you set about seeing if he was getting it,
10 right, pursuant to Miller's request?

11 A Yeah, to call and find out what Swift Current
12 was doing.

13 Q Right. And on May 30th you spoke to Burton. I
14 think you tried to reach him on the 29th, or you
15 did reach someone on the 29th. You spoke to
16 Burton on May 30th; am I right?

17 A Yes.

18 Q And what Burton did is he put the ball back into
19 your camp; isn't that right?

20 A True.

21 Q He said, look, Orr, if you give him witness
22 protection, then we won't proceed; right?

23 A True.

24 Q So he has essentially played the ball back to
25 you saying, give him witness protection. He has

1 got his immunity, right?

2 A True.

3 Q And you never did give witness protection,
4 correct?

5 A No, I did not.

6 Q You never did hear further from Swift Current
7 that immunity was being granted, correct?

8 A No, I did not.

9 Q So I guess it would come as an immense surprise
10 to you, given your role in this and your central
11 role in the dealings with Zanidean, and your
12 involvement as recently as May 29th and
13 May 30th, to know that on June 11th, according
14 to Anderson and Paul, they tell Zanidean he has
15 got immunity. Does that surprise you?

16 A Yes.

17 Q So we have just moved along 12 days. According
18 to Anderson and Paul, that's when they told
19 Zanidean he had immunity, June 11th, just 12
20 days after your call from Miller saying, has he
21 got immunity? And you are essentially getting
22 back to Miller and saying no. That's what you
23 must have done, right?

24 A True.

25 Q And according to Anderson and Paul, sir, they

1 told Zanidean he had this immunity after he
2 testified on June 11th. You follow?

3 A Yes.

4 Q Did you know that, by the way?

5 A No, I did not.

6 Q You didn't know that. Which might strike one as
7 very odd, because Zanidean, on May 29th, through
8 Miller, as far as you knew, was demanding it
9 before he testified; right?

10 A True.

11 Q So if the Winnipeg Police Service thought he had
12 it, it makes you say to yourself, doesn't it,
13 why would they not tell him then? Because
14 that's what he's demanding, immunity before he
15 testified. Instead of making him the happy
16 witness that you talk about in one of your
17 reports, they seem to have made him a very
18 unhappy witness if, indeed, they didn't give him
19 immunity before he testified?

20 A Possibly.

21 Q Well, did you know any of this was going on?

22 A No, I did not.

23 Q Mr. Orr, I mean, here you are in the thick of
24 things with Zanidean, and it seems that, at
25 least as far as the Winnipeg Police Service is

1 concerned, you might be almost irrelevant to
2 what's going on. I mean, here we've got the
3 Winnipeg Police Service not doing the very thing
4 that Miller seems to want done on May 29th.
5 They have, according to them, a belief that he
6 has been given immunity, that they don't give it
7 to him until after he testifies. It seems a
8 little strange in light of Miller's call on
9 May 29th. And then the very fact that they are
10 giving him immunity when, according to you,
11 there is no such thing in existence. You have
12 every reason to think not after May 29th and
13 May 30th. Do you get the point?

14 A Yes, I do.

15 Q Did you know, sir, that you were sort of out of
16 the loop, so to speak, as far as the Winnipeg
17 Police Service were concerned? They just seemed
18 to be acting independently of you?

19 A I suppose.

20 Q No, did you know that at the time?

21 A No.

22 Q Did you have any suspicion of that?

23 A No, I did not.

24 Q I mean, certainly we have heard from Burton,
25 sir, that he had all sorts of suspicions as to

1 how the Winnipeg Police Service were dealing
2 with him. Did you have suspicions about how
3 they were dealing with you?

4 A No, not at all.

5 Q So you thought, at the time at least, that they
6 were dealing with you up front?

7 A Yes.

8 Q The Winnipeg Police Service and Manitoba
9 Justice?

10 A Yes.

11 Q Did you get at least a sense, sir, that where
12 the Winnipeg Police Service were concerned,
13 through Vandergraaf primarily, and where
14 Mr. Miller was concerned directly in his
15 dealings with you as well, that on the one hand,
16 pursuant to that report you wrote, they wanted
17 Zanidean to be happy; right? He was an
18 important witness on a homicide prosecution?

19 A True.

20 Q On the other side, as I think you told
21 Commission Counsel on Friday, the problem with
22 making him too happy was that it could have a
23 serious impact on his credibility when he
24 testified; correct?

25 A Correct.

1 Q Of course, a way around that problem, sir, when
2 you think it through, would be to give him
3 everything he wants. But if defence counsel
4 doesn't know that he has got everything that he
5 wants, then it won't undermine his credibility.
6 Do you follow the point?

7 A Yes.

8 Q Right. And did you know, sir, or have any
9 reason to believe that these attempts to make
10 Zanidean happy was something the defence was
11 never advised of?

12 A I didn't know that.

13 Q Did you see any obligation on yourself, sir, to
14 make sure that the defence had some knowledge
15 that Mr. Driskell, at Mr. Driskell's trial, that
16 Manitoba Justice and/or the Winnipeg Police
17 Service were making Mr. Zanidean happy?

18 A No.

19 Q You didn't feel any obligation on your part?

20 A No, I did not.

21 Q Why not?

22 A It was a Winnipeg City Police case. We were
23 just being requested to provide assistance.

24 Q So does that mean, in effect, sir, you would
25 have assumed that any disclosure obligations

1 would have been met by the Winnipeg Police
2 Service and/or Manitoba Justice?

3 A Yes.

4 Q And then, sir, this whole issue of
5 Mr. Zanidean's immunity, which by June 11th for
6 your information he has been told he has by the
7 Winnipeg Police Service officers, rears its head
8 again later that summer; am I right?

9 A Referring to?

10 Q Well, you get involved July of '91. Remember,
11 you came back into the equation as to whether or
12 not he had immunity. Do you remember that?

13 A This tab?

14 Q I am going to take you to the tab. I am just
15 asking a general question. Do you have a memory
16 of that?

17 A No, I don't.

18 Q I think it came back to you?

19 A I don't recall it. It's in the file.

20 Q I want to take you through a couple of tabs in
21 this regard, sir. If we start with tab 37,
22 which I think Mr. Code referred to but didn't go
23 into in any depth. It's a handwritten memo to
24 Corporal Scowby from DISCO. And, I'm sorry, I
25 can't remember for the life of me what DISCO

1 stands for? DISCO is -- DISCO is what?

2 A That's a D1560, I believe.

3 Q That doesn't take me any further, I'm sorry.

4 A No.

5 MR. LOCKYER: DISCO stands for, someone help me
6 out? I know we've heard what it stands for?

7 MR. CODE: I think it's division intelligence
8 service.

9 THE COMMISSIONER: Yes.

10 MR. LOCKYER: It's something to do with the
11 RCMP.

12 THE COMMISSIONER: Mr. Gates, do you know what
13 DISCO stands for, sir?

14 MR. GATES: It is not DISCO, it's DISLO.

15 MR. LOCKYER: Okay. DISLO, what does it stand
16 for?

17 THE COMMISSIONER: Now help us out with the next
18 step?

19 MR. GATES: It's division intelligence, and I'm
20 sorry, I don't know what the "S" stands for.

21 MR. DAWE: I think Burton's evidence was it was
22 divisional intelligence service commanding
23 officer.

24 BY MR. LOCKYER:

25 Q I kind of preferred DISCO, sir. Anyway, you can

1 see on July 11th of 1991, Mr. Driskell is now a
2 convicted murderer, all right, sir? This trial
3 is now over and Mr. Zanidean has testified. And
4 it's addressed to Mr. Scowby, who presumably his
5 first name is Brian, is it?

6 A Yes, it is.

7 Q All right. And you'll notice on page 1 it says:

8 "Call Orr/H.Q."

9 Headquarters, right?

10 A Yes.

11 Q And on page 51, or page 2, there is a reference
12 to you as well in this handwritten memo. Do you
13 see that?

14 A Yes.

15 Q And this memo is about the fact that now --
16 well, what's the status, in essence, of the
17 potential prosecution of Mr. Zanidean for the
18 arson, right? And at the bottom of 152, sir, we
19 have a reference to Mr. Zanidean, or the issue
20 of immunity, should I say. Do you see that?

21 "Winnipeg Police Department..."

22 Do you see this? Look and see where I am, right
23 at the bottom of 152?

24 A Yes.

25 Q "...promise - immunity from prosecution..."

1 and I can't for the life of me read the next two
2 words. Something should happen.
3 MR. CODE: Nothing should happen.
4 BY MR. LOCKYER:
5 Q "Nothing should happen."
6 Do you see that?
7 A Yes.
8 Q And then the next line,
9 "Sister - issue of..."
10 and I can't read that word,
11 "...known arsonist.",
12 issue of?
13 MR. CODE: Hiring.
14 BY MR. LOCKYER:
15 Q Oh, issue of hiring?
16 MR. CODE: Known arsonist.
17 BY MR. LOCKYER:
18 Q Yes, okay. Do you see that, sir?
19 A Yes.
20 Q Now, presumably, whether or not you remember it,
21 you were a part of this particular memo. I
22 can't believe DISLO is sending a memo to Scowby
23 without you having been consulted in advance.
24 Is that fair, a fair assumption? I mean, you're
25 the one on the ground, so to speak, where

1 Zanidean is concerned?

2 A This is between members in the F Division.

3 Q But if you look at the next tab, sir, I think
4 the next tab is your handwriting, is it not?

5 A Yes, it is.

6 Q Right. And this is a matter of five days later,
7 July 16th, '91, sir, when you are sort of
8 summarizing what's been going on in terms of
9 whether or not -- or what's going on in terms of
10 Zanidean's position qua an arson charge coming
11 out of Swift Current. Am I right?

12 A Yes.

13 Q Do you want to quickly peruse that three-page
14 memo of yours, sir? I am not going to ask you
15 specific questions about it, just that it is all
16 about Mr. Zanidean and the arson?

17 A Yes.

18 Q Right. And that, one would assume, has likely a
19 direct correlation to what's being written on
20 tab 37, especially when on the bottom of page 1
21 it says "Call Orr/H.Q." Headquarters, right?

22 A Yes.

23 Q So I think it's probably fair to say that these
24 two documents are linked. And then, sir, a day
25 after you do your July 16th memo, and I say a

1 day after -- could you look at tab 40? That's
2 in your handwriting, tab 40, am I right?

3 A Yes.

4 Q And I read the date as 91/07/17; am I right?

5 A Yes.

6 Q Because one could say it is the 12th or the
7 13th, but it is the 17th. So it is a day after
8 the memo you wrote at tab 38 that you write
9 another memo, and you have written at the top:

10 "Based on yesterday's information, I
11 contacted Bruce Miller and explained the
12 situation to him."

13 Logically, you are explaining the situation
14 about Zanidean and the arson charge, your
15 present knowledge of it; right?

16 A Yes.

17 Q That you've --

18 A Based on this.

19 Q That you've done the day before?

20 A Yes.

21 Q "He was quite concerned, especially about
22 the possibility of Zanidean being proven as
23 an incredible witness."

24 Do you remember that, sir? Do you remember him
25 calling you and having this concern?

1 A I don't recall the actual conversation, no.

2 Q That Zanidean will be undermined for the
3 prosecution, they don't say how, but in some way
4 could be proved as an incredible witness?

5 A As I say, I don't remember the conversation. I
6 just have it written down.

7 Q The fact that you have written that down, sir,
8 would you have written it during the call or
9 written it down afterwards?

10 A Probably after.

11 Q So, obviously, a highlight of the phone call was
12 Mr. Miller's worry that if Zanidean continued to
13 be pursued, it was going to undermine his
14 credibility as a witness to the extent of making
15 him an incredible witness; right? Is that
16 word -- actually, it looks like you put
17 uncredible; am I right?

18 A Yes.

19 Q Have you written incredible or uncredible?

20 A Uncredible.

21 MR. LOCKYER: All right.

22 THE COMMISSIONER: As a matter of fact, I think
23 when I made a note of it yesterday, I did write
24 "incredible", but it should be "uncredible".

25 MR. LOCKYER: Yes.

1 THE COMMISSIONER: I'm sorry.

2 MR. LOCKYER: I am not sure I was working on
3 this yesterday.

4 THE COMMISSIONER: On Thursday, and I have it in
5 my notes that I had put "incredible," and I had
6 wondered about that.

7 BY MR. LOCKYER:

8 Q When you had this conversation with Mr. Miller,
9 sir, were you aware that it was now a post-trial
10 position? I am sure you would have been, but
11 maybe not, that Mr. Driskell is now a convicted
12 murderer?

13 A Perhaps.

14 Q Do you think you might have said to Mr. Miller,
15 well, Zanidean is past history, what are you
16 worried about now?

17 A No.

18 Q But is that your general sense, as it shows in
19 that particular memo, sir, that the people you
20 were dealing with in this case, where
21 Mr. Zanidean was concerned, had this perennial
22 worry that what was being done for Zanidean,
23 what was being demanded by Zanidean, the extent
24 to which his demands were being met, the extent
25 to which, as fast as you gave with the one hand,

1 he demanded more, that the people you were
2 dealing with were worried that this could
3 undermine the credibility of an important
4 witness in a homicide case?

5 A Not in this particular instance. Like, in
6 dealing with some type of people in the Witness
7 Protection Program, you find a lot of the same
8 thing, more, more, more, so it is not uncommon.

9 Q Okay. I think you missed the question, sir. I
10 am only interrupting you for that reason. The
11 question really focused on the authorities that
12 you were dealing with, Winnipeg Police Service
13 and Manitoba Justice, their concern was that
14 they were worried about undermining the
15 credibility of an important witness on a future
16 homicide trial, and in the case of Mr. Miller, a
17 past homicide trial, because July 17th it's
18 happened and it's over?

19 A I can't comment on what they were worried about.

20 Q Well, one might have thought that in dealing
21 with them and talking to them and meeting them
22 in various places, sir, that you might have been
23 able to comment on that simply by what they have
24 said to you, whether they were worried?

25 A No, I can't.

1 Q I want to move on to Mr. Gumieny, now.

2 You were involved in dealings with
3 Mr. Gumieny as well; is that right?

4 A Yes.

5 Q Yes. And Mr. Gumieny, sir, testified on Friday,
6 June 7th of 1991. I'm giving that you as a
7 piece of information. All right? And according
8 to you, and I'm sure it's right, he went into
9 the Witness Protection Program on June 10th of
10 1991, the following Monday, so a day after the
11 weekend, after he testified. Do you follow me?

12 A Okay.

13 Q And that appears, sir, if you just look at tab
14 15 of the book of documents, I think you
15 actually refer to that point. I'm not sure if I
16 can find it quickly, but I have a note that
17 that's where it appears.

18 MS. CARSWELL: Sorry, Mr. Lockyer, what tab?

19 MR. LOCKYER: 15, but I can't find it here.

20 MR. WOLSON: Tab 15 of your documents.

21 MR. LOCKYER: Okay, thanks. You go to tab 15
22 of -- oh, you don't have that. Oh, I have some
23 books of materials that I would like to use
24 during my questioning of Mr. Orr.

25 THE COMMISSIONER: Certainly.

1 MR. LOCKYER: Could they be marked as an
2 exhibit?

3 THE COMMISSIONER: I have two books here and
4 they will be Exhibit 4A and 4B.

5 MR. LOCKYER: Could they be given to Mr. Orr?

6 THE COMMISSIONER: Yes.

7 MR. OLSON: Which is which?

8 MR. LOCKYER: What do you mean, which is which?

9 MR. OLSON: Which is 4A and 4B?

10 THE COMMISSIONER: Yes, I should have said that.
11 Yes, the principal one will be 4A and the
12 supplemental tab will be 4B.

13 (EXHIBIT 4A: Book of Documents for Mr.
14 Driskell's counsel cross-examination of T. Orr,
15 Supplemental Book 1)

16 (EXHIBIT 4B: Supplemental book of
17 documents 2)

18 BY MR. LOCKYER:

19 Q If you just go to tab A, sir, the thicker one,
20 you will see at the commencement of the document
21 that it is written by you. Do you see that? It
22 says from Orr. Do you see that, sir?

23 A Yes.

24 Q You have written:

25 "On June 10, 1991, John Edward Gumieny..."

1 presumably that's an address,

2 "...signed an LOA and entered the SWP

3 program as an assistance to WPD. He, his

4 spouse and two children..."

5 et cetera, et cetera. Do you see that?

6 A Yes.

7 Q Now, Mr. Gumieny wasn't asked this question, but

8 presumably if he had been asked at trial whether

9 or not he was in the Witness Protection Program,

10 he could have answered no and been truthful; am

11 I right?

12 A True.

13 Q Do you know, sir, if that has anything to do

14 with the timing of putting him into the Witness

15 Protection Program, so that he could

16 legitimately --

17 A That's the case, you wouldn't put them into the

18 program, generally would not put them into the

19 program --

20 Q Before?

21 A -- before the trial.

22 Q All right. And he was moved to Ottawa; is that

23 right, sir?

24 A Yes.

25 Q And according to the documents put together by

1 the Department of Justice in Ottawa, on
2 Mr. Driskell's application for Ministerial
3 Relief in 2003, 2004, 2005, over the period of
4 time that Mr. Gumieny was being dealt with, he
5 received at least, and I say at least, \$21,530
6 from, I don't know, whoever was giving him the
7 money. Does that surprise you, that figure?
8 The Department of Justice in Ottawa put together
9 a bunch of documents that it would take me two
10 hours to take you through, but they put them all
11 together and came up with that figure, and they
12 said "at least".

13 A It would surprise me.

14 Q Did you say it would or it wouldn't?

15 A It would.

16 Q The reference to that, Mr. Commissioner, is if
17 you look at the investigative summary prepared
18 by Mr. McNairn, on behalf of the Criminal
19 Convictions Group in Ottawa, to pages 292, you
20 will see how he has come to those figures. He
21 has actually, what's the word, done a shopping
22 list to show how he gets to that amount.

23 THE COMMISSIONER: Right.

24 MR. LOCKYER: I will be referring to that
25 amount, indeed, the bulk of it.

1 THE COMMISSIONER: I have read that. I have
2 forgotten exactly where it was and what the
3 amount was?

4 BY MR. LOCKYER:

5 Q \$21,530 at least, and I say at least, sir,
6 because we understand that Mr. Gumieny's RCMP
7 file has been lost, am I right, or destroyed?

8 A Destroyed.

9 Q Destroyed. So we are trying to glean, from the
10 documents that are left here and there, what we
11 can about how much was paid to Mr. Gumieny. And
12 that's what can be shown from documents
13 surviving or found in different places, all
14 right. So if you can just accept as a fact
15 \$21,500 was received by Mr. Gumieny before and
16 after he testified at Mr. Driskell's trial. And
17 you will see some of these figures coming out as
18 we go along. Whose money was that, sir?

19 A That would be from Justice.

20 Q Manitoba Justice?

21 A Manitoba Justice.

22 Q Exclusively?

23 A Yes.

24 Q You chaps wouldn't have paid any of it?

25 A It was all on a pay-back basis. Like we would

1 maybe pay for the --

2 Q I see.

3 A -- pay for the materials, or the accommodations,
4 or whatever, and then charge it back to Manitoba
5 Justice.

6 Q Now, pre-trial Mr. Gumieny was not nearly as
7 difficult as Mr. Zanidean; am I right?

8 A No, he was not.

9 Q And who was your contact in Manitoba Justice in
10 your dealings with Mr. Gumieny? We don't seem
11 to have that in our materials, perhaps because
12 the file's lost, or destroyed I should say.

13 A I can't recall whether it was Mr. Miller or -- I
14 can't recall.

15 Q Where Mr. Miller is concerned, circumstances --
16 and I'm sorry, I don't have a copy of this, but
17 it's at page 504 of the binder, which is
18 reference 63(d), part 2.

19 MR. LIBMAN: Manitoba Justice disclosure.

20 BY MR. LOCKYER:

21 Q You may have heard that through Manitoba
22 Justice's disclosure, sir. On July 13th, 2004,
23 Mr. Miller, by this time Mr. Justice Miller,
24 wrote a letter to Judge Enns in which he said,
25 and it's at page 504, and I quote. He is being

1 asked -- perhaps I should just introduce this by
2 saying he is being asked a series of questions
3 by Judge Enns to which Mr. Miller is responding.
4 And he says and I quote:

5 "With specific reference to John Gumieny, I
6 had no personal involvement with him or the
7 arrangements for having him placed in
8 witness protection. I was only involved in
9 making witness protection arrangements for
10 Reath Zanidean."

11 A Yes.

12 Q So it wasn't Miller. So if it wasn't Miller,
13 who was it? I mean, Miller, accepting the truth
14 of what Miller has written there, I appreciate
15 that's what we are doing, and it may be that
16 that's not what Miller says, but let's assume
17 for a minute it is Miller.

18 A I can't recall. I cannot recall.

19 Q One person --

20 A I know I dealt with Miller with Zanidean, but I
21 can't recall who the contact person was with
22 Justice for Gumieny.

23 Q One person whose name appears from time to time,
24 sir, in the documents and whose -- and I'm
25 talking pre-trial here -- and whose handwriting

1 appears in some of the documents is Mr. Lawlor,
2 Gregg Lawlor. Do you know who he is?

3 A I know him.

4 Q Do you remember to see him, if you talked to
5 him?

6 A Yes. But I don't know if he was involved in it.

7 Q But you're not saying he wasn't, you are just
8 saying you don't know whether he was or he
9 wasn't?

10 A No.

11 Q And can you think of anybody who it could have
12 been, sir, up there that you dealt with? I
13 mean, you said you hadn't done it that often,
14 dealt with the Winnipeg Police Service, and I
15 guess the Winnipeg prosecutor in regard to this
16 type of dealing. I'm sort of surprised that you
17 can't remember who it was that you dealt with on
18 Gumieny?

19 A Sorry.

20 Q You don't know?

21 A I don't know.

22 Q If we could look, sir, at a couple of documents.
23 And now if you could move to the supplemental
24 book, which is 4B, I just want to take you
25 through a number of documents in this regard

1 where Mr. Gumieny is concerned. If you look at
2 tab 1, sir, of the supplemental book. You'll
3 see there what we're looking at. Just to help
4 you out, we are looking at a letter from
5 Inspector Bell, Winnipeg Police Department, to
6 Bruce Miller, all right, regarding the --
7 regarding the case:

8 "RE: James Patrick Driskell, First Degree
9 Murder".

10 And in it is a discussion by Mr. Bell of
11 arrangements on behalf of Mr. Gumieny. If you
12 look at page 3, you are mentioned there. See
13 that, right -- oh, sorry, look at page 1. This
14 letter is about Gumieny, paragraph 2:

15 "One of our main witnesses in this case is
16 a John Edward Gumieny."

17 Do you see that?

18 A Yes.

19 Q And then the balance of the letter is about him.
20 And at page 3 it introduces you, just to bring
21 you into the mix:

22 "I have spoken to Cpl. Thomas Orr..."

23 in other words, Inspector Bell was saying this,

24 "...of the RCMP Witness Protection Division
25 who advised me they are willing to assist

1 us on this matter."

2 So that ties you in, do you see that? One
3 presumes that Bell back in -- this is pre-trial,
4 I hasten to add -- December 20th of 1990 is, one
5 would assume, relating the truth; right? So you
6 are in the loop as early as December of 1990,
7 these arrangements are being made, if not
8 earlier. Do you see that?

9 A Yes.

10 Q And it's interesting to see that Miller, despite
11 what he told Judge Enns, certainly already has
12 some involvement it would seem with Mr. Gumieny,
13 if only by way of receiving this letter; is that
14 right?

15 A True.

16 Q And the next tab is indeed from Mr. Miller. If
17 you look at tab 2, regarding dealings with
18 Mr. Gumieny where he has sent -- and I don't
19 think your name as such appears on this
20 document, but it may well be that you were
21 familiar with it. That on February -- and
22 obviously there are a lot of documents missing
23 here, we are just playing with what we have
24 found, given the destroyed file. Do you follow
25 me?

1 A Yes.

2 Q And this is dated February 1, 1991, and it's a
3 memo to Mr. Miller, again about Gumieny, saying
4 we need funds. And, in fact, it is easy to
5 determine from reviewing the cover of the
6 letter, or at least it says at the bottom "RE:
7 Gumieny". Do you see that? And attached to
8 that page, sir, is a document that seems to
9 relate directly to this memo. And I can tell
10 you, I think as a fact, that it's in
11 Mr. Lawlor's handwriting, the Crown, where that
12 same \$400 or, circumstantially, the same \$400 is
13 being demanded. It begins,
14 "See Bruce...",
15 which I presume would be Bruce Miller:
16 "...re Gumieny - needs assistance."
17 And then near the bottom it says,
18 "May lose him as witness."
19 Do you see that, sir, or,
20 "May lose him as wit."
21 Do you see that?

22 A Yes.

23 Q "Wit" presumably being witness?
24 "Thinking of getting lawyer. Need \$400."
25 Now, given that you're the RCMP chap involved

1 with Gumieny, sir, would it seem likely that you
2 were aware of what was going on at this time,
3 where Gumieny was concerned, in February of
4 1991?

5 A I could have been aware of what was going on,
6 but not necessarily what was happening when he
7 was being protected by the City Police.

8 Q Well, as I pointed out several times, we have a
9 real sparseness of documents pre-trial where
10 Mr. Gumieny is concerned. They build up a bit
11 after the trial's over. But do you remember,
12 sir, if you cast your mind back, the very same
13 concerns regarding Zanidean, if we don't keep
14 this guy happy we are going to lose him -- seem
15 to, at least on one point, on the very limited
16 records that we have, we only got three
17 documents I think that relate to Gumieny
18 pre-trial, one of them, bingo, we've got the
19 very same issue where they are worried about
20 losing Gumieny as a witness if he doesn't get
21 what you might consider to be a measly \$400.
22 Did you know that?

23 A No.

24 Q But it does seem to demonstrate a commonality of
25 concern between the two key witnesses against

1 Mr. Driskell, that these chaps are in a sense
2 for sale, don't you think, sir?

3 A That's probably true in about 90% of our cases,
4 yes.

5 Q And the kind of thing, to keep going back to it,
6 that the defence counsel would just love to
7 know, right? I mean, wouldn't you love to know
8 just -- I know you are not a lawyer, but try to
9 be a defence lawyer for 10 seconds -- wouldn't
10 you love, to be a defence lawyer, and to know
11 that they are worried they are going to lose one
12 of their main witnesses for \$400? Don't you
13 think you would love to know that?

14 A I would imagine.

15 Q Especially when they find out that he ended up
16 getting more than \$21,000, don't you think you
17 would like to know that, as a defence lawyer?

18 A Yes.

19 Q Yes. Tab 3, sir, is again pre-trial.

20 MS. CARSWELL: Which book?

21 MR. LOCKYER: Same book, just moving along.

22 THE COMMISSIONER: 4B.

23 BY MR. LOCKYER:

24 Q Correct. And it's a May 30th letter, sir, to
25 you from The Commissioner of the RCM Police,

1 Chief of Police. Is this the chief of the RCMP
2 as a whole?

3 MR. GATES: City chief.

4 MR. PROBER: The city chief.

5 MR. LOCKYER: Of the Winnipeg Police, sorry.

6 MR. PROBER: We will get that geography for you
7 yet.

8 THE COMMISSIONER: They are being unfair. They
9 are being very unfair to you, Mr. Lockyer.

10 BY MR. LOCKYER:

11 Q I appreciate that. And I understand that
12 Mr. Gumieny was on his way to Ottawa shortly
13 after this letter was drafted. So Mr. Stephen,
14 who is the Chief of Police here, writes this
15 letter to you about Mr. Gumieny being a part of
16 the Witness Protection Program; right? That
17 they have even predicted the date of his
18 evidence precisely to June 10th of 1991. And
19 then at number 5 on page 2 they talk about the
20 kind of support he is going to get. Do you see
21 that, sir? And indeed elsewhere too, that tab 5
22 deals particularly with the monetary side of
23 things, do you see that? Not tab 5, item 5,
24 sorry. Do you see that on page 2?

25 A Yes.

1 Q And then there's a handwritten memo attached to
2 it where -- is that in your handwriting? I am
3 trying to think whose handwriting that is. I
4 think I'm right in saying that it's Mr. Miller's
5 handwriting, but I may be wrong, so I should be
6 careful of that. But I am not quite sure why
7 it's attached to this tab. Somehow -- I'm
8 sorry, I've got to think about that over recess,
9 Mr. Commissioner.

10 If you look at the next tab, sir, do you
11 have a memory of that letter coming to you? I'm
12 just trying to show, in a sense, that you are in
13 the loop on Gumieny. That's really the purpose
14 of this exercise at the moment.

15 A It would have gone into the file.

16 Q Right. You would have read it, and you would
17 have read that you were very much the point man
18 for Gumieny, am I right, at this time? The
19 point man for the RCMP --

20 A Yes.

21 Q -- is what I mean?

22 A Yes.

23 Q I didn't mean point man for the Winnipeg Police,
24 but point man for the RCMP?

25 A Yes.

1 Q If you look at the next tab, sir, you will see
2 what this document is. And bear in mind again,
3 the files have been destroyed so we don't have
4 the raw material that created this document in
5 May -- on May 29th of 1992. So we have moved on
6 a year now, the trial has been over for almost a
7 year. And what we've got here is the RCMP
8 seeking reimbursement from Manitoba Justice for
9 the monies paid out to Mr. Gumieny. Do you see
10 that, sir?

11 A Yes.

12 Q \$16,901.52?

13 A Yes.

14 Q And it's interesting, when you look at that
15 document, sir, that's not far off the \$21,000
16 that the Department of Justice came up with from
17 Ottawa. Remember?

18 A Yes.

19 Q If you look at that, sir, it's entirely unclear
20 whether it's the one and only payment, but it's
21 certainly a payment. If you look at page 2, and
22 look at the allowance given to Mr. Gumieny, look
23 at the entry for June 11th of 1991, sir? His
24 accommodations for a period of one month,
25 June 11th to July 8th is \$2,600 and change.

1 That's expensive accommodation. His allowance
2 for that same period is \$4,400 and change. That
3 seems like a pretty nice allowance for a month,
4 and accommodation for six months is \$5,000 and
5 change. Do you see that?

6 A Yes.

7 Q Does that ring a bell with you, sir, that these
8 kinds of monies were going to Mr. Gumieny?

9 A Yes.

10 Q Now, I've taken you through what we have, sir,
11 of the payments to Mr. Gumieny pre-trial, or
12 pre-evidence I guess is the key date, June 7th
13 for the key date for Mr. Gumieny. And now I
14 want to look at the period thereafter. I
15 understand, sir, that in the months and years
16 following Mr. Gumieny's evidence at trial that
17 he kept reappearing with more demands; is that
18 right, sir?

19 A Yes.

20 Q You know you played a significant role from the
21 RCMP side of things in dealing with those
22 demands; is that right?

23 A Yes.

24 Q Again, you were the point man?

25 A Yes.

1 Q And insofar as you understood, there were people
2 in Manitoba Justice and/or the Winnipeg Police
3 Department -- sir, who was it that you came to
4 understand were involved in dealing with
5 Mr. Gumieny's post-conviction, meaning
6 post-Driskell conviction, demands?

7 A Again, I don't get the question. Who was
8 involved?

9 Q Yes. Who in Manitoba Justice and from the
10 Winnipeg Police Department did you understand
11 were involved in dealing with Mr. Gumieny's
12 post-conviction demands?

13 A I can't recall.

14 Q If I suggested to you, sir, for example,
15 Mr. Dangerfield, would that ring a bell?

16 A It could very well be.

17 Q If I suggested to you Mr. Miller, sir, would
18 that ring a bell?

19 A I'm not sure.

20 Q Manitoba Justice?

21 A I just can't recall, I'm sorry.

22 Q All right. Again, I ask you to think back, sir,
23 given some of the things that carried on in the
24 ensuing couple of years, it might have been
25 expected that you would remember some of the

1 dealings that were going on, but you just -- you
2 don't have a memory of it?

3 A No, sir.

4 Q And who was involved in some of the things that
5 were being said? No?

6 A No, sorry.

7 MR. LOCKYER: Mr. Commissioner, is this a good
8 time to break?

9 THE COMMISSIONER: Certainly.

10 MR. LOCKYER: Because it does work well for me.

11 THE COMMISSIONER: Certainly, we will break for
12 15 minutes.

13 THE CLERK: All rise. This Commission of
14 Inquiry is now in recess.

15 (Proceedings recessed at 11:13 and
16 reconvened at 11:32 a.m.)

17

18 THE CLERK: All rise. This Commission of
19 Inquiry is now recommenced. Please be seated.

20 MR. LOCKYER: He ran away, Mr. Commissioner, it
21 seems.

22 THE COMMISSIONER: Oh, not too far.

23 BY MR. LOCKYER:

24 Q So, Mr. Orr, I'm now focusing on post-trial
25 developments with Mr. Gumieny. And most of the

1 documents I am going to refer to, you were
2 involved it seems in some way or another. There
3 is the odd one you are not. By the way, just
4 before I do that, Mr. Commissioner, I was going
5 to explain that that attached document at tab 3,
6 4B --

7 THE COMMISSIONER: Yes.

8 BY MR. LOCKYER:

9 Q And if you look at the second page of tab 3, in
10 other words the second page of the letter from
11 the Chief of Police, Mr. Stephen, to Mr. Orr,
12 you will see he has written, it's the second to
13 last sentence,

14 "Mr. Bruce Miller, Director of Winnipeg
15 Prosecutions, has approved the above plan
16 and the incorporated changes."

17 In fact, the next page I thought was in
18 Mr. Miller's handwriting. I think I can say
19 with some degree of certainty that it's in
20 Mr. Miller's handwriting and relates back to
21 that approval of Mr. Miller. And this is, of
22 course, bearing in mind what Mr. Miller wrote to
23 Mr. Enns back in July of 2004.

24 If we can then move on, sir, to the
25 post-conviction involvement in a more detailed

1 level, and that's really working through 4A. I
2 am going to be going to 4A for a while. And if
3 you look first, sir, at tab 2, I believe I'm
4 right in saying this is in your handwriting. Am
5 I right?

6 A No, it's not.

7 Q Oh, I'm sorry. You're referred to on it I think
8 as -- I'm not sure what you are. Attention SWP
9 coordinator, do you see that at the top?

10 MS. CARSWELL: Which exhibit are you on?

11 MR. LOCKYER: Tab 2.

12 MS. CARSWELL: Tab 2 of which exhibit now?

13 BY MR. LOCKYER:

14 Q Exhibit A, I have moved off of Exhibit A.

15 A It is not me, it's the Winnipeg Police, "SWP
16 coordinator" is moved in there.

17 Q Oh, all right. Are you named in there somewhere
18 or is there a reference to you? Are you "crim
19 ops D"?

20 A I was in criminal operations, but this isn't
21 mine.

22 Q Okay. Well, I am going to take you through it,
23 sir, and see if it means anything to you, this
24 document, because we are going to see documents
25 that come after this that do have you directly

1 involved in what seems to be happening at this
2 point in time. This document's dated October 11
3 of '91, sir, and it's addressed to the officer
4 in charge of CROPS A Division."

5 A being in?

6 A Ottawa.

7 Q Ottawa. And it's from the officer in charge of
8 CROPS, presumably in D Division. Does that make
9 sense to you?

10 A Yes.

11 Q And it says:

12 "For your information..."

13 and most of the blanks are just Mr. Gumieny's
14 name, it's just a matter of logic that it is.
15 So what it says is,

16 "Gumieny just phoned Crown Attorney,
17 Mr. George Dangerfield, Winnipeg. He
18 expressed the following concerns. The..."

19 MR. GATES: "...duplex".

20 BY MR. LOCKYER:

21 Q "...duplex he is living in is not
22 suitable, et cetera. The area is
23 surrounded by drug dealers. He does not
24 get along with his handler. He had
25 expected payment today. Handler is away so

1 now he has to stay home this weekend.

2 Gumieny also called Dangerfield last week
3 with concerns. If Gumieny calls again,
4 Dangerfield will advise to contact handler
5 and that his concerns passed on to SWP
6 Coordinator A division."

7 All right. So that's October 11th of '91, sir.
8 Mr. Gumieny is still in the Witness Protection
9 Program, am I right?

10 A Yes.

11 Q And we've now moved on several months from the
12 trial of Mr. Driskell?

13 A Yes.

14 Q Okay. The next tab, sir, is from, I believe I'm
15 right in saying, you to Mr. Dangerfield?

16 A Yes.

17 Q So you couldn't remember who you were dealing
18 with in some of these post-convictions with
19 Mr. Gumieny, but quite clearly one of the people
20 you were dealing with was Mr. Dangerfield; am I
21 correct?

22 A True.

23 Q And that's November 4th of '91, sir, and you
24 write to Mr. Dangerfield:

25 "Further to our previous discussions, my

1 counterpart in Ottawa advises that the
2 associated cost.."

3 in terms of moving Gumieny again, and I am
4 interpolating that,

5 "...would be a maximum of \$2,400."

6 And at the end of this memo to Mr. Dangerfield,
7 you ask:

8 "Please advise if the funds will be
9 allocated. Thanks, Tom Orr."

10 Right? Over the next page, I have just read to
11 the last line, the \$2,400 is now written in more
12 detail, and then you ask,

13 "Please advise if the funds will be
14 allocated? Thanks, Tom Orr."

15 Correct?

16 A Correct.

17 Q So, quite clearly you are now viewing
18 Mr. Dangerfield as being a direct participant in
19 dealings with Mr. Gumieny; am I right, sir?

20 A Yes.

21 Q And you actually ask him to give you the
22 authorization for the allocation of the funds;
23 am I right?

24 A True.

25 Q And then the next tab, sir, dated November 4th,

1 '91, is not one in which you were directly
2 involved, but clearly relates to what's been
3 going on. And indeed is dated -- is of the same
4 date as your memo we've just looked at to
5 Mr. Dangerfield, same date, November 4, '91. We
6 have Mr. Miller referring to your document:

7 "If I am interpreting Corporal Orr's
8 document properly, it appears to me as
9 though the \$2,400 figure is the highest,
10 total based on a worst case scenario."

11 And then you will see at the bottom two lines of
12 that page, perhaps I will read the paragraph:

13 "If that is correct, then the request for
14 approval of our additional funding is, on
15 its face, certainly not an unreasonable
16 one. This particularly, when one considers
17 that it is a means by which to accommodate
18 and appease Mr. Gumieny."

19 Signed by Bruce Miller, do you see that, sir?

20 A Yes.

21 Q So I know you weren't a direct participant in
22 this document, sir, but it seems that your
23 document to Mr. Dangerfield has moved over to
24 Mr. Miller, and Mr. Miller is now communicating
25 directly with Mr. Dangerfield. And that the

1 concern, at least to Mr. Miller, is to
2 accommodate and appease Mr. Gumieny, to use his
3 words?

4 A I guess so.

5 Q Is that the message that you got, sir, in these
6 post-conviction dealings with Mr. Gumieny, do
7 what you can to appease and accommodate him?

8 A Not do what you can, no. There was always
9 discussions about his demands and whatnot.

10 Q If we look over to the next tab, sir, we have
11 now moved on three days. And Mr. Miller once
12 more is basically recording what he has been
13 doing, and you're referred to.

14 "November 7th, '91. I spoke with
15 Mr. Dangerfield. He contacted Tom Orr, who
16 advised that approximately \$18,000 was
17 committed to Mr. Gumieny during the six
18 months of his participation in the WPP.
19 Furthermore, that amount has almost
20 entirely expended. I approve commitment of
21 further funding based upon materials
22 submitted by RCMP, my earlier memorandum to
23 George, and the undertaking of RCMP to
24 minimize costs."

25 So if we take that \$18,000 figure as accurate,

1 sir, you can see how, where the \$21,000 plus
2 comes from as an adjustment from Ottawa, sir?

3 A Yes.

4 Q And do you remember, sir, that you had direct
5 dealings with Mr. Dangerfield around this
6 time, during this difficulty with Mr. Gumieny
7 and in what turns out to be the month before his
8 Witness Protection Program came to an end?

9 A I don't recall it specifically, but from the
10 correspondence, yes, I must have.

11 Q If we then move on, sir, to the next tab. So,
12 in effect, there you were saying, it would seem,
13 that Mr. Dangerfield was giving Mr. Gumieny more
14 money. So the appeasement has come into effect?

15 A I believe that you have to put that into
16 context, though, because I believe at that
17 point the money had almost, and the six months
18 had almost expired. But I believe Mr. Gumieny
19 wanted to relocate himself and his family, so
20 the additional money was for a vehicle, a truck
21 and whatnot, so he could move away from Ottawa.

22 Q Above and beyond the previous?

23 A Above and beyond the previous.

24 Q Right. On the basis that he doesn't like living
25 around drug dealers?

1 A Exactly.

2 Q Mr. Gumieny has a past of being a drug dealer,
3 does he not, sir?

4 A I'm not sure.

5 Q In fact, Mr. Gumieny is in custody as we speak,
6 is he not, serving a seven-year sentence for
7 sexual assault; is that right, sir?

8 A I'm not sure.

9 Q If we move to the next tab, sir, you will see
10 "re John Gumieny", and we are on the same date.
11 THE COMMISSIONER: Just for the record, we are
12 now looking at tab 6 in 4A.

13 BY MR. LOCKYER:

14 Q Yes, Mr. Commissioner, same date as the previous
15 tab, sir. Same date, in other words, as
16 Miller's sort of memorandum to the file itself,
17 so to speak, November 7, '91. And you see it
18 says.

19 "This refers..."
20 this is you? This is your handwriting, right,
21 sir?

22 A Yes, it is.

23 Q "This refers to..."

24 I'm sorry, something secure fax, is it?

25 MR. CODE: Your secure.

1 BY MR. LOCKYER:

2 Q "...your secure fax of November '91."

3 It is addressed to "crim ops division," in other
4 words, crim ops in Ottawa, right?

5 A Yes.

6 Q "Mr. Dangerfield, representing Manitoba
7 Justice, authorized up to..."

8 and I suspect it says \$2,400,

9 "...for these expenses. The money has not
10 been authorized for expenditure on anything
11 but the costs associated to your message.

12 Expenses to be charged to the Project
13 Financial Code currently being used."

14 Is that right?

15 A Yes.

16 Q So, once again, sir, it's clear that you think
17 that Mr. Dangerfield is the chap that you're
18 dealing with, and seems to be the chap you are
19 dealing with; am I right?

20 A It appears so.

21 Q On a witness protection issue?

22 A Yes.

23 Q And the next tab, sir, points out something that
24 I have already pointed out to you, and is
25 designed for that purpose, that Mr. Gumieny's

1 witness protection was supposed to officially
2 come to an end on December 18 of 1991; is that
3 right?

4 A Yes.

5 Q Which is consistent with the notion that it was
6 to last for six months from June 10th, in fact,
7 of 1991?

8 A Yes.

9 Q As it turns out, sir, that's not the end of
10 Mr. Gumieny, am I right? We have got a whole
11 bunch more tabs, believe me, and they are all
12 post-December of 1991.

13 A Okay.

14 Q So there we go. If we look at -- move on, sir,
15 to tab 8. This is a memo from the officer in
16 charge of crim ops, D Division. And over to the
17 right of that you will see your own name. And
18 I'm not sure what your name means there. Does
19 it mean that's what you were, or does it mean
20 that you just got a copy of this? Do you see
21 your name?

22 A Yeah. Yes, I had sent it.

23 Q You had sent it?

24 A Yes.

25 Q Oh, this is your memo?

1 A Yes.

2 Q Is this your handwriting?

3 A Yes.

4 Q Oh, I'm sorry. I guess it's because you've done
5 block capitals. So this is your writing. I
6 hadn't realized this was your writing. And you
7 direct it to the director in Ottawa of the --

8 A Drug Enforcement Director.

9 Q Drug Enforcement Director. And that's because,
10 at this point you have become -- I don't know if
11 that is because, but I do know at this time
12 everyone has become aware of the fact that
13 Mr. Gumieny is now working for the RCMP drug
14 squad in Ottawa; is that right? He has got a
15 new job, so to speak? He has become an informer
16 for them. Were you aware of that? That's sort
17 of littered through these various notes that
18 that's what he had done. You don't remember
19 that?

20 A I remember him doing something like that.

21 Q Something you are not supposed to do, according
22 to your own rules of witness protection, am I
23 right?

24 A When you're in the program, yes.

25 Q Yes. And this memo, sir, that you've written

1 says at tab 8:

2 "Just to bring you up-to-date, Gumieny
3 signed a termination notice after being
4 given final payments."

5 Any idea what that was, how much?

6 A It could have been referring to the previous
7 material.

8 Q Possibly?

9 A Possibly.

10 Q Albeit those weren't given in relation to his
11 termination?

12 A It was around that time that he wanted to move.

13 Q Okay.

14 "On January 8, '92, I received a call from
15 Bruce Miller advising that a Senior Crown
16 had received a call from Gumieny..."

17 And I think, logically, that Senior Crown is
18 likely to be Mr. Dangerfield.

19 "...complaining that he did not receive any
20 assistance from the RCMP in his dealings
21 with welfare, did not receive help with
22 relocation, and intimidated he would go to
23 the press. The complaint was discussed
24 with Sergeant Puchniak and Corporal
25 Roussell (handler)..."

1 And that's presumably Gumieny's handler in
2 Ottawa.

3 "...and it was determined that the
4 complaints were unsubstantiated totally.
5 Miller was advised and said he would pass
6 the material on to his Crown. Other than a
7 concluding report from A Division, there
8 should be nothing further to report on this
9 relocate."

10 Sort of famous last words, that last line, sir.
11 But leaving that aside, do you have any
12 remembrance of this, that Bruce Miller is back
13 on the phone to you telling you that Gumieny is
14 complaining and threatening to go to the press?

15 A According to this, yes.

16 Q Do you have a memory of it?

17 A No, I don't.

18 Q You don't. Do you have a memory of being told
19 on more than one occasion of threats by Gumieny
20 to go to the press if he didn't get what he
21 wanted now, at this post-conviction,
22 post-termination, post Witness Protection
23 Program termination time?

24 A Yeah. If I remember correctly, there were a
25 couple of occasions where that did come up.

1 Q The next tab, sir, January 28th of '92, is
2 from -- your name's in it, but you are not a
3 part of the letter, so to speak. The Chief
4 Superintendent of the Winnipeg Police Service
5 is -- or a Superintendent for the Winnipeg
6 Police Service is writing to Bruce Miller.

7 MS. CARSWELL: That's the OIC.

8 THE WITNESS: No, that's OIC, criminal
9 operations.

10 BY MR. LOCKYER:

11 Q I'm sorry, that's the RCMP, my apologies.

12 A Yes.

13 Q So your man, so to speak, is writing to Bruce
14 Miller on January 28, '92. So we have moved
15 more than a month now past the termination date
16 of his witness protection, referring to the
17 relocation of John Gumieny at 2:30 yesterday.
18 So just for your information, we have moved on
19 two weeks from your previous memo, sir, at the
20 previous tab.

21 "At 2:30 yesterday, Corporal Orr received a
22 call from his counterpart in Ottawa.

23 Sergeant Puchniak said he received a phone
24 call from Gumieny, stating that he was
25 freezing and what were the RCMP going to do

1 about it. During the conversation Mr.
2 Gumieny advised he would be calling to
3 George Dangerfield to complain..."

4 THE COMMISSIONER: Mr. Lockyer, slow down a bit.

5 BY MR. LOCKYER:

6 Q "...and would also go to the press.
7 Reason was attempted with Mr. Gumieny,
8 explaining that the current location was
9 his choice, that arrangements had been made
10 to move him as per his request, but he
11 hadn't followed up, and so on, to no
12 avail."

13 So it sounds like he hadn't moved, despite
14 getting the \$2,400, if indeed that's what that
15 previous document was referring to, sir?

16 A I believe he had moved.

17 Q Oh, he had, all right.

18 "This letter is to notify you that there
19 may be media interest if Mr. Gumieny should
20 follow through with his threat, and to
21 advise Mr. Dangerfield possibly of more
22 complaint calls of the nature of ones
23 already received."

24 Now, presumably Callens would likely have spoken
25 to you before writing this letter; is that a

1 fair assumption?

2 A Yes.

3 Q And indeed he says that -- I'm sorry, I realized
4 I just read that to you -- and indeed he had,
5 yes. Indeed, you likely drafted this letter,
6 did you not?

7 A Quite likely.

8 Q Yes, indeed. Did you know, sir, that while
9 Gumieny is busy doing this, that he is sort of
10 six months behind Zanidean, who had already
11 started doing this very thing, threats to go to
12 the media and so on and so forth? Did you know
13 that, sir?

14 A Did I realize it?

15 Q Yes.

16 A Yes.

17 Q So you had been privy, although I don't really
18 have any documentation I don't think that shows
19 this, you have been privy to what Zanidean has
20 been busy doing after he testified, trying to
21 get more money out of the Winnipeg Police
22 Department, threatening to go to the press if he
23 didn't get it and, indeed, threatening to
24 recant. You were aware of that, were you? The
25 Winnipeg Police Department kept you up?

1 A I'm not sure. I don't --

2 Q Well, obviously you are aware of some of it
3 because you just said you were?

4 A Yes.

5 Q So here we have Gumieny doing the same thing, at
6 least so far as going to the press is concerned.
7 Am I right?

8 A Yes.

9 Q And obviously a concern from this letter that
10 you drafted, likely at the very least, on the
11 part of the RCMP that he might go to the press.
12 Being forwarned is to be forearmed. Am I right?

13 A True.

14 Q The next tab, tab 10, the letter to Mr. Miller
15 that was sent by your Chief Superintendent, made
16 its way to Mr. Dangerfield through Mr. Miller,
17 who says:

18 "I attach a copy of a letter which I
19 received from Chief Superintendent
20 Callens."

21 There you go, forwarned is forearmed.

22 Mr. Gumieny, who appears to have taken a shine
23 to you, may be calling you again. You
24 presumably wouldn't have been aware of this
25 memo, sir, but it does seem from some of the

1 dealings that you have already been through
2 before this that Mr. Gumieny does appear to have
3 taken some kind of a shine to Mr. Dangerfield,
4 because he keeps calling. And that's your
5 information, am I right?

6 A True.

7 Q So as we're going through this, sir, from your
8 perspective it would seem that what's been going
9 on post-conviction with Mr. Gumieny, Mr. Miller
10 and Mr. Dangerfield are both in the thick of it.
11 Am I right?

12 A Yes.

13 Q If we move to tab 11, sir, we are looking now at
14 another memo from you. We have skipped now, for
15 at least more than a year, yes, more than a year
16 to April 22, 1993. And I'm just working off of
17 documents that we have, given, as I say,
18 Mr. Gumieny's files have been destroyed. And
19 Mr. Gumieny is back, so to speak. This is a
20 memo, sir, I believe from you; isn't that
21 right?

22 A Yes, it is.

23 Q To the officer in charge of CROPS in Ottawa?

24 A Yes.

25 Q And you are advising him, it's re Gumieny, that

1 you received a phone call from a Director of
2 Winnipeg Prosecution, Mr. Miller. So we are
3 once more back in your dealings with Winnipeg
4 Police. Oh, sorry, Manitoba Justice, my
5 mistake.

6 "...who advise that one of the Senior
7 Crowns from Manitoba Justice, Mr. George
8 Dangerfield, had received a call from
9 Gumieny. Gumieny advised that he also and
10 spouse..."

11 I think that says, am I right?

12 MR. CODE: "She".

13 BY MR. LOCKYER:

14 Q Oh, sorry,

15 "Gumieny advised that he/she and the spouse
16 were being followed and under surveillance.
17 Gumieny related that this probably had
18 something to do with the Driskell case that
19 made headlines in the Winnipeg newspaper
20 last month."

21 You became aware that the Driskell paper --
22 sorry, the Winnipeg Sun had done a series of
23 stories over three days on the issue of whether
24 or not Mr. Driskell had been convicted of a
25 crime he didn't commit?

1 A Okay.

2 Q Do you remember that?

3 A Yeah, I was aware of that.

4 Q That there was a foofaraw which led to, if you
5 remember, the Winnipeg Police doing a review of
6 the case?

7 A Yes.

8 Q And just for your information too, sir, and I
9 may take you to it shortly, tab 5 is one of
10 those stories, if you go to the supplemental
11 book 4B. In other words, that's just one of the
12 stories dated March 13, 1993. I'm going to come
13 back to it. I just, for the moment, I just am
14 pointing that out. And then you go on to say:

15 "He also...",

16 meaning Gumieny,

17 "He also indicated that there was some
18 connection with the drug dealers from the
19 north end of the city. Of course, he did
20 mention finances. The request for a
21 new..."

22 maybe location and identity, guesswork,

23 "...and the fact that he would relocate
24 himself.

25 Although finding the story hard to believe,

1 Mr. Miller requests we look into the
2 allegations and perhaps speak to
3 Gumieny..."

4 with a phone number.

5 "Other than the press looking for Gumieny,
6 there is very little threat against her/him
7 should they remain in your..."

8 I'm sorry, I can't read that word.

9 A Province.

10 Q "...in your province. The allegations are
11 groundless. He could be advised to
12 obtain..."

13 I don't know what it says.

14 "Please advise the outcome of your
15 discussions/review so I can advise
16 Mr. Miller."

17 So, once again you've heard from Mr. Miller.
18 He's told that you Gumieny has been in touch
19 with Dangerfield and, in effect, he has told you
20 Gumieny wants money again; is that right?

21 A Yes.

22 Q I might say, sir, just for your information,
23 that the documents up until tab 10 were all
24 post-conviction, pre Mr. Driskell's appeal,
25 right, documents that Mr. Driskell's counsel may

1 or may not have had some interest in. You would
2 think he might have had some interest in them,
3 don't you think, Mr. Gumieny's post-conviction
4 demands?

5 A I don't know.

6 Q I'm sorry?

7 A I don't know whether they would have or not.

8 Q Fair enough. But now we are post-appeal. I'm
9 sorry, I think now I should point out the
10 timing to you. Actually, having said that, I
11 don't know whether the Supreme Court of
12 Canada -- he didn't go to the Supreme Court of
13 Canada, right?

14 So we are now post-appeal, and Mr. Gumieny
15 is now once again demanding help.

16 If we now go to the next tab, sir, tab 12,
17 what we have is a memo from one of Mr. Gumieny's
18 Winnipeg Police handlers, pre Mr. Driskell's
19 trial. There were two Winnipeg Police officers
20 assigned to handle, and when I say handle, I
21 mean in every manner, interview, deal with,
22 guard, stay with, take him to court, officers
23 whose names were Osborne and Williams, Sergeants
24 Osborne and Williams. I imagine you came to
25 know them, if not before this case, during this

1 case. Am I right?

2 A Yes, I believe I did meet them before.

3 Q It makes some sense. Just as you came to know
4 Anderson and Paul, as a result of this case, if
5 not before this case. Am I right, sir?

6 A Yes, I knew them too.

7 Q Yes. Are you in touch with any of these people
8 now?

9 A No.

10 Q No. And this memo, sir, dated May 18th of 1993,
11 so it is just a matter of three weeks after your
12 previous memo, is prepared by one of those
13 Winnipeg Police handlers. If you look at the
14 top, it seems to have made its way to a number
15 of people. Inspectors Hall and Ewatski, do you
16 see that, top left-hand corner, Chief Henry,
17 Deputy Chief Klippenstein. And I think that's
18 your handwriting, your signature on the
19 handwriting "Chief Henry"?

20 A No.

21 Q No?

22 A No, this is a Winnipeg City memo.

23 Q And this memo, do you know if you got it?
24 Perhaps we should take you through parts of it.
25 "The following is submitted for your

1 information concerning the a/m material
2 witness in the Perry Dean Harder murder
3 investigation and current review of this
4 matter by this department."

5 That would be the Perry Dean Harder homicide
6 review. Do you know what he's talking about
7 there?

8 A Yes.

9 Q "On May 18th the writer..."
10 meaning Osborne,

11 "...while in a capacity of Sergeant 1 in
12 Division 11 detectives had occasion to
13 receive a phone call from Mr. Gumieny. It
14 was immediately obvious that John was very
15 hostile and asked the writer for the name
16 of the ex-RCMP member that was
17 investigating this matter for the accused
18 Driskell."

19 That wouldn't be you, sir? That would
20 presumably be Mr. Savage.

21 "On querying as to why he wanted this, John
22 stated he was being screwed around by the
23 RCMP at his location as well as the
24 Winnipeg Police. He related that
25 Inspectors Hall and Ewatski had been out to

1 see him a couple of weeks ago, (John stated
2 13 days), and that through discussions with
3 them as well as Crown Attorney, G.

4 Dangerfield, it was agreed he and his
5 family would be moved. To date this hasn't
6 happened and he has some concerns for him
7 and his family."

8 Now, at this point, sir, we've really moved on,
9 what, 17 months from the termination of any
10 obligations owed to Mr. Gumieny; am I right?

11 A Yes.

12 Q The bottom paragraph:

13 "It was obvious that John is extremely
14 upset. He stated that if he doesn't get
15 what's promised to him that he will contact
16 Driskell's lawyer and the investigator
17 hired by the lawyer and relate that he was
18 coaxed into fabricating some of his
19 evidence, unless he receives what was
20 promised to him."

21 Did you become aware, sir, that Gumieny was
22 threatening to do that?

23 A No, I did not.

24 Q And interestingly enough, sir, the person
25 reporting the threat is the very person who

1 would have to have been the person who had
2 coaxed him into fabricating his evidence, if we
3 assume for a moment that he had been so coaxed,
4 because Osborne was one of a team of two
5 officers who dealt with Gumieny from day one.
6 And as best I can tell, no one else dealt with
7 him at all. But you never became aware that one
8 of the primary -- one of the two primary people
9 who had dealt with Gumieny pre-trial was
10 receiving this threat from Gumieny?

11 A No, sir, I did not know.

12 Q But you knew potentially by this time that
13 Zanidean had already, independently, made the
14 very same threat to his handlers; is that right,
15 sir? You said you knew Gumieny was causing
16 problems, you weren't quite sure what they were,
17 am I right, post-conviction?

18 A Post-conviction or pre-conviction?

19 Q Post-conviction Zanidean. I thought we had
20 already been through this. You were aware that
21 Zanidean had already been making similar
22 problems for the Winnipeg Police and you had
23 become aware of it?

24 (DISCUSSION OFF THE RECORD)

25

1 BY MR. LOCKYER:

2 Q Right. I wasn't necessarily talking about a
3 specific incident, but I thought prior to
4 recess, post-recess, you had acknowledged that
5 during my cross-examination?

6 MR. CODE: A general awareness.

7 BY MR. LOCKYER:

8 Q Yes. That's what I'm saying, a general
9 awareness that Zanidean was causing problems
10 too?

11 A A general awareness.

12 Q Okay. That's what you said before. In fact, I
13 think you actually said he was threatening to go
14 to the media. I think you had a memory of that
15 too; is that right?

16 A I think he was threatening to go to the media
17 all the way from the start of the thing, so it
18 was just --

19 Q Okay. We have never seen that in any of your
20 memos, for what it's worth, any of your
21 pre-trial memos that is. Anyway, moving on, he
22 then says:

23 "I advised John I would attempt to contact
24 Inspector Hall and Ewatski and advise them
25 of his current situation to enable them to

1 handle it, as these officers had the last
2 contact with John."

3 Meaning Gumieny, right? Do you see that? And
4 then we have the Deputy Chief speaking to
5 Dangerfield to determine whether he has made
6 or -- do you see this handwriting, what I'm
7 reading from, the handwritten memo?

8 A Yes.

9 Q "...to determine whether Dangerfield has
10 made or is aware of any promises made to
11 further assist this witness with his
12 financial affairs, and secondly, is there
13 any reason why he is concerned about this
14 witness going to the media?
15 Mr. Dangerfield indicated he has no
16 intentions of, and is not aware of anyone
17 else intending to provide Gumieny with any
18 financial assistance. He is not aware why
19 anybody should be concerned about Gumieny
20 speaking to the media, other than he can
21 tell them things which would put the
22 police/justice in a bad light even if it
23 could be established to be a lie. I will
24 take no action today."

25 Do you see that, sir?

1 A Yes.

2 Q And we are going to see, as we go along, that
3 Mr. Dangerfield seems to change his tune a
4 bit, as things move along here, if the Deputy
5 Chief of the Winnipeg Police has accurately
6 recorded his conversation there with
7 Mr. Dangerfield. Now, you don't have a memory
8 of knowing that this threat was being made by
9 Mr. Gumieny, sir?

10 A No, I don't.

11 Q If we then move to the next document, sir, I
12 understand that it's prepared by you. And what
13 you're doing here is you are forwarding a memo
14 of yours; is that right, sir? If you look at
15 the ensuing pages, that's your handwriting, is
16 it not?

17 A Yes, it is.

18 Q Yes, to the director of the SWP in Ottawa. And
19 this is May 28th, so it's all part of the same
20 process, I think it's fair to assume, that we
21 have been reading about in the previous tabs of
22 your memo and Detective Osborne's memo, do you
23 follow me, where Gumieny is now making more
24 demands and you are trying to react to them?

25 A All right.

1 Q All right. Do you see that?

2 A Yes.

3 Q And what you send is a memo, sir, a memo that
4 you've prepared which, rather annoyingly, you
5 have to start at the back of it and go forward,
6 so to speak, rather than forwards going
7 backwards. So if you go to the last page of tab
8 13, you've made an entry for May 27th of '93 and
9 you've written:

10 "As can be seen, by the latest flurry of
11 messages, Gumieny has raised his head
12 again.

13 On May 25, '93, I received a call from
14 George Dangerfield who has been speaking to
15 Gumieny and to his current handler
16 Constable Poitevan. Dangerfield feels
17 there is a threat arising from the family
18 of the spouse and that compensation should
19 be provided to Gumieny."

20 So you see how I suggested that Mr. Dangerfield
21 seems to have changed his tune from the memo
22 handwritten by the Deputy Chief on the previous
23 tab?

24 A Yes.

25 Q Right. Go backwards, or forwards rather a

1 page -- backwards rather a page, at the top:

2 "Fax received from A, bottom line, George
3 Dangerfield has been promising assistance
4 for the past month arising from his phone
5 calls with Gumieny.

6 As a result of this fax..."

7 We don't seem to have that fax, unfortunately,
8 that you have received from A, but that's what
9 it told you, in effect, do you follow?

10 A Yes.

11 Q "As a result of this fax, I called Bruce
12 Miller and read it to him. To say the
13 least, he was quite annoyed with the
14 contents of the A division telex. He felt
15 the matter had been concluded with the
16 signing of the termination notice and did
17 not consider any threat as a serious one.
18 There was other discussion. However,
19 Mr. Miller requested a copy of the A
20 division telex so he would have something
21 to work with. He further advised that
22 should a payment of some sort be made, it
23 would be solely because of the..."

24 MS. CARSWELL: Comment.

25

1 BY MR. LOCKYER:

2 Q "...comment made by his colleague. He will
3 be in touch.

4 Call received from Inspector Ewatski..."
5 who is now in the midst of preparing the
6 homicide, or researching for the homicide
7 review -- all right, that's just your
8 information -- and has interviewed, as we are
9 going to see, Gumieny a few days before.

10 "Call received from Inspector Ewatski, who
11 was advising me about their trip out west.
12 We discussed Gumieny and Inspector Ewatski
13 states the guy is phoning anyone he ever
14 had dealing with on the Winnipeg Police
15 Department demanding money or saying he
16 will go to the press with his story.
17 Inspector Ewatski states that as a result
18 of our letter of April 7, '93, they have
19 concluded a threat assessment and there was
20 no threat. Gumieny was advised this when
21 he last called and he hung up on Ewatski."

22 Next page:

23 "Call from Sergeant Dixon advising that
24 Gumieny was calling in a half hour and
25 requesting a response. I advised him to

1 tell Gumienny that the Director of Winnipeg
2 Prosecutions was reviewing the matter and
3 he would be told as soon as we were.
4 Just to backtrack a bit, when I was talking
5 to Mr. Miller, I explained that this was no
6 longer a witness protection matter as the
7 termination notice had been signed."

8 And, indeed, sir, it had been signed a year and
9 a half before, right?

10 A Yes.

11 Q "The matter of money was between he and
12 Gumienny and that we were acting as
13 intermediaries due to past involvement and
14 distance involved."

15 The following page, going down to the entry of
16 13:19, we are now on May 28th:

17 "During the past couple of hours I have
18 received calls from Miller who is not in
19 when I returned them, from Sergeant Dixon,
20 who advises that Gumienny is on his way out
21 to the street, and who has spoken to
22 Dangerfield who advised him that all was
23 okay from George Dangerfield.

24 Mr. Dangerfield called on behalf of Miller
25 and he was asking just what Gumienny wanted;

1 when...",

2 I think it would be,

3 "I started about..."

4 and then it is blank,

5 "...et cetera. Mr. Dangerfield nearly

6 apoplectic. How much did this SOB think he

7 was worth? Why should they pay him

8 anything, and on and on."

9 So Mr. Dangerfield, from your information, seems
10 to be going backwards and forwards on this as to
11 whether you should pay -- as to whether
12 Mr. Gumieny should get more money?

13 A Yes.

14 Q It depends who he is talking to.

15 "I explained as best I could that someone
16 had planted the idea of money in his head
17 and now he was banking on the Manitoba
18 Attorney General to back up the
19 conversation. Mr. Dangerfield stated that
20 Gumieny's troubles were a result of his
21 providing information to Poitevan in
22 Ottawa."

23 And that would be the drug information, right?

24 A Okay.

25 Q "I advised Mr. Dangerfield that any

1 information supplied by Gumieny certainly
2 had nothing to do with the current problem.
3 The whole incident was related to the
4 Driskell case was squarely on their
5 shoulders as we were acting only as a
6 messenger service. Mr. Dangerfield had
7 mentioned the sum of \$2,000..."

8 So Mr. Dangerfield, apoplectic as he may be,
9 seems to be considering some granting of money;
10 am I right?

11 A Yes.

12 Q "...but they did not want it to look as
13 though it came directly from them."

14 That's what you record, sir. Do you remember
15 that? That seems to me to be a pretty
16 significant entry on your part, that
17 Mr. Dangerfield wants \$2,000 paid to Mr. Gumieny
18 but he doesn't want it to be traceable to them,
19 or doesn't want it to look as though it came
20 directly from them. Do you remember that, sir?
21 It seems to me that that is something that you
22 might remember ten years later?

23 A No.

24 Q No.

25 "He wanted Gumieny to supply the bills to

1 the RCMP and they will be paid for."

2 That, of course, would be a way of avoiding
3 appearing to come from them, am I right? Them
4 being Mr. Dangerfield and his colleagues, right?
5 Do you see the point? It flows, you might say.

6 A Yes.

7 Q Yes.

8 "It was then I started talking about the
9 associated costs with the move and he went
10 ballistic."

11 It seems to be a memorable conversation with
12 Mr. Dangerfield, but you don't remember it,
13 Mr. Orr?

14 A No.

15 Q You don't.

16 "I told Mr. Dangerfield that if they wanted
17 to make a one-time payment of \$2,000, that
18 we would certainly look after that and
19 would bill his department accordingly."

20 So that's sort of the way around it. You write
21 the cheque in the name of the RCMP to
22 Mr. Gumieny, and this is sort of just taking
23 it -- I am trying to think of what
24 Mr. Dangerfield's concern is. Then if
25 Mr. Gumieny ever went to the media and

1 brandished this cheque, it would be from the
2 RCMP, not from Manitoba Justice; right?

3 A That was the way we worked it --

4 Q Right.

5 A -- in most of the cases, in all of the cases, we
6 would pay for the bills up front and submit the
7 bills to Manitoba Justice.

8 Q But if you go back to Mr. Dangerfield's concern,
9 it would give him deniability that that money
10 had come from Manitoba Justice because it is
11 signed by the RCMP?

12 A It is signed by the RCMP because there is always
13 a paper trail going back.

14 Q If you can ever get into it, sir.

15 A Yeah.

16 Q It took us twelve years to get into it. And I
17 think we were lucky then. All right. And it's
18 worth pointing out that this document, sir,
19 came, of course, through the RCMP. I am not
20 aware of any documentation coming out of
21 Manitoba Justice that would give us what
22 Mr. Dangerfield is telling you in this
23 conversation; right?

24 A I don't follow.

25 Q Well, it's thanks to the RCMP that we have this

1 document, that's the point I'm trying to make.

2 That's where it came from.

3 A Yes.

4 Q "Dangerfield..."

5 just carrying on where I left off,

6 "... was not prepared to authorize the

7 release of the money. He stated he would

8 get ahold of Mr. Miller and would call

9 back."

10 Some hours later -- or, sorry, I will go back to

11 where I'm at. An hour later, or less than an

12 hour later, George Dangerfield called but was

13 unable to get ahold of Miller, but has spoken to

14 someone who had the authority to release the

15 money. He did not mention any names, but he

16 said that they were not going to offer any

17 money. The reason was that the program was paid

18 for and there was no longer a threat and that

19 Manitoba Justice did not owe Gumieny anything.

20 "I advised Mr. Dangerfield that this was

21 kind of a late date for that decision, but

22 he reiterated that he could not authorize

23 anything and the discussions would resume

24 Monday."

25 You then contacted Sergeant Dixon in this regard

1 and then,

2 "...Sergeant Dixon advises that spouse and
3 child are on the street with the welfare
4 cheque in the mail. He was going to get a
5 reporter and spread the story. There was
6 going to be a public inquiry, et cetera."

7 Now, you memoed that conversation with
8 Mr. Dangerfield, or those two conversations with
9 Mr. Dangerfield, really quite extensively? Am I
10 right, sir, Corporal Orr, the ones I've been
11 through?

12 A Yes.

13 Q And do you think that might have been because of
14 the content of those conversations, sir?
15 Particularly the first one, that it was strange,
16 indeed, that you were getting a call from what
17 you understood to be a senior prosecutor, who
18 seemed to be concerned about deniability. Might
19 that have been why -- I know you don't remember
20 it -- might that have been why you memoed it so
21 extensively?

22 A No, it was just a fairly common practice of
23 mine --

24 Q All right.

25 A -- to make sure that everything was down on

1 paper.

2 Q Carrying on, sir, at 14:18.

3 "Sergeant Dixon advises Gumieny is wild, he
4 will get hold of Brodsky, he did not care
5 if Driskell was released or not."

6 So at least we have an inference there that
7 Gumieny's going to say something that amounts to
8 a recantation, you might think, otherwise one
9 might wonder how Driskell could be released. Do
10 you follow me, correct?

11 A Yes.

12 Q "Sergeant Dixon thought that
13 Mr. Dangerfield did not appreciate the
14 human aspects of what was happening in
15 Ottawa."

16 I think that would likely be reference to
17 Mr. Gumieny being on the street, right, that
18 would be the human aspect?

19 A Yes.

20 Q Yes.

21 "Gumieny was also going to the press."

22 At 14:40 there is a true flurry of activity
23 here, to steal a phrase from Commission Counsel
24 on Thursday, at 14:40,

25 "Bruce Miller called and is quite agitated.

1 He figures this is no less than extortion,
2 and what is to stop Gumieny from doing this
3 again? He wanted the opportunity to again
4 discuss the matter with Dangerfield. It
5 also seems that Miller has taken quite a
6 bit of what Dangerfield says as gospel."

7 This is your interpretation presumably of your
8 conversation; is that fair?

9 A True.

10 Q "Apparently Dangerfield is advised that,
11 during his conversation with Poitevan, he
12 was advised that all Gumieny was looking
13 for was the cost of a truck. When
14 questioned about the amount being in the
15 range of \$500, Poitevan replied yes."

16 And the call goes on, sir. At 15:20 you speak
17 to Miller again, but that was the extent of what
18 I wanted to take you to with respect to that
19 tab.

20 We then go to tab 137, sir. You don't have a
21 memory of all of that? You don't have a memory
22 of all of this?

23 A No.

24 Q Does it refresh your memory?

25 A No, just written down.

1 Q Does it refresh your memory? Does it cause you
2 to remember there was goings-on in 1993 where
3 you were talking to Dangerfield and Miller and
4 Dixon and there was, you know, a foofaraw?

5 A Yeah.

6 Q Gumieny is threatening to recant. Gumieny is
7 threatening to go to the media. It rings a bell
8 now, does it?

9 A Yes.

10 Q Okay. Tab 14, sir, we have Hall, Inspector Hall
11 writing to Mr. Miller. And if we just look at
12 the first page he is saying,

13 "In response to our telephone conversation
14 of Tuesday, June 1st, '93 regarding
15 Mr. Gumieny, please be advised of the
16 following:"

17 He explains that he and Ewatski have spoken to
18 Gumieny on April 29th of 1993, page 2, that
19 while in Ottawa -- they also spoke in Ottawa --
20 they also spoke with Constable Pat Poitevan of
21 the drug squad, who suggested that Gumieny was
22 dealing with Dangerfield in Ottawa, who, if the
23 media attention should resurface in Ottawa,
24 would put Gumieny's life in danger.

25 "...Poitevan suggested that Gumieny was a

1 paranoid individual at the best of
2 times..."

3 and that the work that he was doing for them --
4 "...in any event, the RCMP didn't indicate
5 that the work Gumieny was doing for them
6 was important enough for them to become
7 financially involved..."

8 pay him money essentially, and that that was the
9 job of the Winnipeg Police Department or
10 Manitoba Justice.

11 Do you see that? That's all in the top
12 paragraph at page 2.

13 A I think when he was referring to the work that
14 Gumieny was doing for them, that might have been
15 the information that he was supplying.

16 Q The drug information?

17 A Yes.

18 Q The bottom of the third paragraph, Hall receives
19 a third call from Gumieny. Right in the midst of
20 your memo, actually, two days before your memo
21 at the previous tab, May 28th, sir, he is
22 talking about on May 26th, he has got a third
23 call from Gumieny.

24 "He was irate and not in any mood to
25 reason. He wanted his move and wanted it

1 now. "

2 And he felt it was necessary to move. He was
3 again told his concerns had been brought to the
4 attention of executive and Mr. Dangerfield had
5 spoken to the RCMP on his behalf. Which is
6 true, he had spoken to you, right,
7 Mr. Dangerfield?

8 A Yes.

9 Q "He threatened if he didn't get what he
10 wanted he would go to the media. He as
11 well demanded the name of the private
12 investigator involved."

13 That would be Mr. Savage, ex-RCMP, right?

14 A Yes.

15 Q "He hung up on me."

16 And then the next page you have Hall calling
17 Constable Poitevan requesting a call which
18 happened. And Poitervan said that he was
19 frustrated in all that was going on with respect
20 to Mr. Gumieny. He was getting three different
21 versions of the story, one from Gumieny, one
22 from WPD and one from Manitoba Justice.
23 So the foofaraw is getting up into the
24 higher-ups in the Winnipeg Police Department,
25 that's what was going on at the time?

1 A Yes.

2 Q And which you knew at the time, or would you
3 have liked to have known that at the time?

4 A No.

5 Q Tab 15 is your memo. And you agree on June 4th
6 '93 to pay for Gumieny moving again. He wants
7 to move now to Thunder Bay. Do you remember
8 that, sir?

9 A Okay.

10 Q Agreed, that's a reasonable description of what
11 your memo is?

12 A Yes.

13 Q Okay. And then tab 16, sir, is a memo to you,
14 from the chief reader, in which it would seem,
15 if you look at the last entry on page 2, or
16 second to last entry, because a lot of it is
17 incomprehensible because of the blotting outs,
18 the second to last paragraph:

19 "Gumieny became upset and stated that since
20 no one is willing to help him, he will
21 drive to Winnipeg to see the media and try
22 to get on the Peter Warren show to tell his
23 story. He also stated that he would hide
24 the rental vehicle somewhere."

25 This is the one that you guys had paid for.

1 "He stated that he has a place and the
2 vehicle will be kept there until the end of
3 June."

4 Do you remember this, sir, the vehicle for which
5 you authorized payment?

6 A I don't remember that.

7 Q He doesn't want to give it back. And you will
8 see at the top of the same page 2,

9 "This date Corporal Tom Orr confirmed that
10 no more money would be advanced and the
11 rental vehicle had to be dropped off at the
12 rental agency in..."

13 I think it is Thunder Bay. Do you remember
14 this, sir?

15 A Yes.

16 Q Yes. I thought you might, because I think
17 Gumieny ended up -- he didn't get the vehicle
18 back to the rental agency?

19 A For quite some time.

20 Q It ended up costing you an enormous amount of
21 money, I think we are going to see that. If you
22 move to the next tab, sir, tab 17, you want
23 Manitoba Justice to repay you for this expense.
24 Do you see that? It's from you to A Division?

25 A Yes.

1 Q And this all goes back to, it would seem, to you
2 having paid for it, likely because Dangerfield
3 wanted the RCMP to be paying this money, not
4 Manitoba Justice. Do you remember that memo of
5 yours in that regard? And now you want the
6 money back from Manitoba Justice?

7 A Well, right now I am questioning --

8 Q Whether they are going to pay it?

9 A Right now I am questioning the drop-off.

10 Q Right.

11 A I am getting more information from D Division.

12 Q At tab 18, sir, Mr. Ayers -- who is RCMP, am I
13 right?

14 A Yes.

15 Q -- is writing to Mr. Miller saying, referring
16 him to, if you look at the first entry, to the
17 numerous phone calls during the month of June
18 between yourself, Mr. Miller and the Witness
19 Protection Coordinator, Corporal Orr.
20 I think it would be more accurate to say the
21 numerous phones calls between you and
22 Mr. Dangerfield, but whatever. You were advised
23 that an arrangement was reached, at which point
24 you agreed to pay the cost of a moving truck for
25 Gumieny for his move. And then you stated at

1 that page:

2 "The necessity for the move remains
3 questionable and Gumieny's motive depended
4 on which party he was speaking to. The
5 demand for the move at the time was actual,
6 however, complete with threat of adverse
7 press."

8 Suggesting it that may have been the motivation
9 for approving it. And then you say that they
10 want to know whether your department will accept
11 financial responsibility for the rental of the
12 vehicle, and please contact Orr in this regard.
13 I imagine you drafted this letter; is that
14 right, sir?

15 A Probably, yes.

16 Q And the next page tells us how much it cost,
17 \$2,874. Do you see that at the same tab?

18 A Yes.

19 Q All right. And at tab 19, sir, we have moved on
20 and it is July 14, 1993. And we have, again,
21 Superintendent Ayers writing to Whitley setting
22 out the history of what we've just been to,
23 referring to page 1 of you receiving a phone
24 call from Mr. Miller about Mr. Dangerfield's
25 dealings with Mr. Gumieny. Do you see that?

1 A Yes.

2 Q Mr. Gumieny's phone call to Mr. Dangerfield that
3 he was interviewed by Ewatski and Hall, I am on
4 page 2 now, May 25th,

5 "...Dangerfield called Corporal Orr
6 advising him he felt there was a definite
7 threat against Gumieny arising from the
8 spouse's family association."

9 And asking Gumieny, in the interview, to find
10 out what he was asking for in terms of moving
11 fee and allowance. And in the bottom paragraph,
12 Mr. Dangerfield had been promising Gumieny
13 assistance in the last month in their phone
14 calls, however, Gumieny wasn't receiving
15 anything.

16 Do you see that, sir, page 2? Are you with me?

17 A Yes.

18 Q The next paragraph, that Miller was obviously
19 annoyed by this.

20 "He felt the matter had been concluded with
21 the signing of the Termination Notice and
22 that no further threat had arisen. He
23 stated that should a payment of some sort
24 be made, it would be solely because of the
25 comments made by his colleague."

1 Meaning Mr. Dangerfield.

2 "On the 28th of May, matters reached a head
3 in Ottawa as Gumieny was being evicted from
4 his house. Sergeant Dangerfield called Orr
5 to advise him that Gumieny had apparently
6 been speaking to Dangerfield on that
7 date..."

8 THE COMMISSIONER: Mr. Lockyer, slow down a
9 little bit, please.

10 BY MR. LOCKYER:

11 Q Sorry.

12 "...and was told that Orr was okay and he
13 would be looked after. On 13:19 hours Mr.
14 Dangerfield called Corporal Orr on behalf
15 of Mr. Miller, asking just what the hell
16 Gumieny wanted. During this conversation,
17 Dangerfield mentioned some \$2,000 could be
18 supplied to Gumieny, however, it could not
19 be made to look as though it was a payment
20 from Manitoba Justice."

21 Sounds like Superintendent Ayers has your memo
22 of May 28th when he -- or perhaps I should say
23 you have your memo of May 28th when you draft
24 this letter; is that right, sir?

25 A I don't believe I drafted this letter.

1 Q Oh, don't you?

2 A No, I don't think so.

3 Q Oh, don't you? Why do you say that? I am not
4 challenging you, I am just wondering what it is
5 about it that makes you say this?

6 A It is just, with a lengthy memo like this going
7 to Mr. Whitley, I would say that Superintendent
8 Ayers would have written this one himself after
9 a file review.

10 Q Fair enough. And the file review would almost
11 certainly then, just by looking at this, have
12 included your memo, lengthy memo of May 28th
13 that we have been through; right?

14 A Fair enough.

15 THE COMMISSIONER: Mr. Lockyer, we are getting
16 close to a break, whenever it's convenient.

17 MR. LOCKYER: Yes, Mr. Commissioner, perhaps I
18 will finish this tab.

19 THE COMMISSIONER: Okay.

20 BY MR. LOCKYER:

21 Q Which is this letter.

22 "Mr. Dangerfield stated he could not
23 personally authorize the expenditure but
24 would call back soon. At 14:05 Mr.
25 Dangerfield called back stating that the

1 money would not be authorized as Manitoba
2 Justice did not owe Gumieny anything. Due
3 to a threat by Gumieny to go to the media,
4 numerous additional calls were made
5 culminating with Mr. Miller's call to
6 Corporal Orr's at 15:20 authorizing the
7 cost of a rental truck and mileage only."
8 And concluding with -- well, no, if you look
9 down, Mr. Miller was eventually advised
10 May 31st, and it was obvious he wasn't pleased.
11 Sorry, I will leave that. That speaks for
12 itself. And then the last line, sir:
13 "I'm requesting reimbursement from your
14 department for the rental costs of the
15 \$2,874.29 paid towards Mr. Gumieny."
16 So that's an attempt to get the money back.
17 And, once again, we see the document that shows
18 that amount of money having been spent; am I
19 right?
20 A Yes.
21 MR. LOCKYER: This would be a good time then,
22 Mr. Commissioner.
23 THE COMMISSIONER: Thank you.
24 MR. LOCKYER: I will be another -- I have one
25 more area to go. I have another 15 minutes or

1 so and I will be finished.

2 THE COMMISSIONER: Okay. We will adjourn until
3 2:00 o'clock.

4 THE CLERK: All rise. This Commission of
5 Inquiry is now adjourned until 2:00.

6 (Proceedings recessed at 12:35 p.m.
7 and reconvened at 2:00 p.m.)

8 THE CLERK: This Commission of Inquiry is now
9 recommenced. Please be seated.

10 BY MR. LOCKYER:

11 Q Just as a matter, sir, I made reference this
12 morning to the two or three stories in the
13 Winnipeg Sun back in March of 1993; do you
14 remember that?

15 A Yes, you did.

16 Q And the internal inquiry that resulted from
17 that, and I understand that you were interviewed
18 as a part of that internal inquiry; is that
19 right?

20 A I don't remember being interviewed about that.

21 Q We do have an interview document --

22 A Yes, I saw that.

23 Q -- purporting to be your interview. And I think
24 we have also heard already, sir, that on
25 April 27th, Inspector Ewatski as he then was,

1 and Inspector Hall interviewed John Gumieny,
2 which lead to your involved shortly thereafter
3 in May, which we went through this morning,
4 where Gumieny called the RCMP, the RCMP called
5 you. And I understand that ultimately that lead
6 you to speaking to Inspector Ewatski on the
7 phone; is that right?

8 A Yes.

9 Q And I want to put before you, sir, a document,
10 that the registrar has a copy of, that you
11 prepared on May 5th, 1993, sir. You only have
12 the one? Sorry, we are short.

13 Actually, for everyone's information, the
14 last tab of Commission Counsel's book has the
15 one page from this six-page document, and I'm
16 going to be referring to that page ultimately.
17 But earlier on in the document at page 2, sir,
18 you will see at 10:45, this is a continuation
19 report prepared by yourself in your handwriting;
20 is that right?

21 A Yes, it looks it.

22 Q And at page 2, you will see at 10:45, you say
23 you spoke to Inspector Jack Ewatski. Do you see
24 that?

25 A Yes.

1 Q And if you go to the end, the last page, sir,
2 this is a part of your discussion with
3 Mr. Ewatski, so it is a continuation of that
4 conversation. And you say,
5 "We were also able to discuss..."
6 and this is the last page of the last tab of
7 Commission Counsel's book, Mr. Commissioner.
8 " We were also able to discuss John
9 Gumieny. And Inspector Ewatski stated that
10 they had tracked him down in..."
11 I think that's likely Ottawa or Thunder Bay, I'm
12 not sure which, my timing, I'm not quite sure,
13 maybe Thunder Bay,
14 "...living in a trailer court."
15 A Court.
16 Q "He was surprised that Jamie Duncan..."
17 that's a private investigator working on her own
18 for Mr. Driskell at the time,
19 "...had not found him..."
20 meaning Gumieny,
21 "...as yet as they..."
22 Winnipeg Police Department
23 "...had little difficulty. Inspector
24 Ewatski stated that they had some very
25 pointed questions to ask Zanidean as it

1 appeared he knew more about the murder, et
2 cetera, than what he had advised police.
3 In fact, there was a possibility that
4 Zanidean was involved in the murder
5 itself."

6 Do you have a memory of that conversation, sir,
7 with Inspector Ewatski?

8 A No.

9 Q He was saying that the man who you had been
10 asked to put into witness protection might well,
11 in fact, or could be the person, could have
12 actually been involved in the murder itself?

13 Sorry, I have just been corrected. The first
14 line should read,

15 "We were also able to discuss Zanidean, and
16 Inspector Ewatski stated that they had
17 tracked him down somewhere out west living
18 in a trailer court."

19 So it is all about Zanidean. It doesn't change
20 my question in the sense that do you remember
21 this conversation wherein Inspector Ewatski
22 makes a rather interesting point?

23 A I don't recall the conversation, no.

24 Q Do you recall ever hearing from an officer that
25 there was a possibility or it was their view

1 that there was a possibility that Zanidean was
2 actually involved in the murder of Perry Dean
3 Harder?

4 A I can't recall it, but if I wrote it down, then
5 that is the information that I was given.

6 MR. LOCKYER: All right. Thank you, sir.
7 That's all.

8 MR. GATES: Thank you. Mr. Commissioner, I'm
9 actually not going out of order, but Mr. Prober
10 has kindly allowed me to inject myself just to
11 clarify for the Commission the status of the
12 RCMP files that relate to the Source Witness
13 Protection Program. There were four files.
14 There were two headquarters files, one relating
15 to Zanidean, one relating to Gumieny. Both of
16 those files have been produced to the Commission
17 and all of my friends have copies of those
18 files.

19 In addition to that there were two files
20 from D Division, or Manitoba, again, one
21 relating to Zanidean, one relating to Gumieny.
22 The Zanidean file exists, was not destroyed as
23 part of normal file retention process, and has
24 been disclosed. The Gumieny file, that is
25 Corporal Orr, or then Corporal Orr's file

1 relating to Mr. Gumieny was destroyed as part of
2 the normal RCMP process.

3 So when my friend, Mr. Lockyer, took
4 Sergeant Orr to tab number 13, of exhibit 4-A,
5 the exhibit that was entered this morning, you
6 will see, Mr. Commissioner, that exhibit is two
7 things. One it is a memo from Sergeant Orr,
8 Corporal Orr as he then was, to Ottawa. And at
9 the last sentence of the typed part of the memo
10 it refers to him having attached his 1624s that
11 were prepared relating to the incident that he
12 was reporting on. All of the rest of those
13 documents, sir, that are in, that my friend,
14 Mr. Lockyer, has produced at tab 13, only exist
15 because they were sent to headquarters. Those
16 handwritten reports would have been part of
17 Corporal Orr's file relating to Mr. Gumieny that
18 was destroyed.

19 I just raise that so you are clear, sir, on
20 where the records are coming from.

21 THE COMMISSIONER: Thank you, Mr. Gates.

22 MR. LOCKYER: If you look at the index, we tried
23 to identify in fact where each document came
24 from --

25 THE COMMISSIONER: Okay.

1 MR. LOCKYER: -- as best we can.

2 MR. PROBER: When you are ready,
3 Mr. Commissioner?

4 THE COMMISSIONER: Yes.

5 BY MR. PROBER:

6 Q Good afternoon, Mr. Orr. You and I know each
7 other.

8 A Yes, we do.

9 Q You may not know that I'm representing
10 Mr. Dangerfield at this Inquiry, so I tell you
11 that at the outset.

12 I just have a few questions. The money
13 paid to Gumieny, in this case, is money paid for
14 witness protection, that is relocation, moving
15 expenses, that sort of thing; correct?

16 A Yes.

17 Q It is not money paid to get his testimony;
18 correct?

19 A Definitely not.

20 Q And you understand the difference between paying
21 a witness in terms of protecting the witness, or
22 paying expenses for the witness in terms of
23 protecting the witness, and making an award
24 payment, for example, to an agent who may be
25 testifying for the RCMP, correct, or the City

1 Police for that matter?

2 A Correct.

3 Q And you are probably aware of a recent case in
4 Winnipeg where an agent was paid, or will be
5 paid as much as \$525,000. You are aware of
6 that?

7 A I'm aware of that.

8 Q Yes, 350,000, plus a bonus of 175,000 so far, he
9 hasn't testified yet, you know that?

10 A I have read that, yes.

11 Q And that's different than what we are talking
12 about in the case of Gumieny; correct?

13 A Totally.

14 Q And whether it is before trial, during trial or
15 post trial, before the appeal or post appeal,
16 the money paid to Gumieny, as far as you know,
17 was for relocation, travel expenses and the
18 like; correct?

19 A That's all I was involved in, yes.

20 Q Right. To protect him, correct?

21 A Yes.

22 Q Is that right?

23 A Yes.

24 Q And I gather from what you said this morning, it
25 is not unusual that an individual of Gumieny's

1 unsavory character, as we know it to be, would
2 continually make demands, the same as Zanidean;
3 correct?

4 A Yes, sir.

5 Q You had seen that probably dozens of times in
6 your work in the Witness Protection Program;
7 correct?

8 A Yes, sir.

9 Q I mean, it is the kind of person that you are
10 working with; right?

11 A That's what we found, yes.

12 Q If you look -- in fact, you may have known at
13 one time, I know Mr. Dangerfield at trial took
14 Gumieny through his record. We are dealing with
15 a man that was convicted of theft, assault
16 causing bodily harm, this is at the time he
17 testified, dangerous driving, robbery, escaping
18 lawful custody, forcible confinement, rape. Are
19 you aware of that?

20 A Yes, we would be.

21 Q Yes. So that's the kind of individual that you
22 are dealing with. It is not unusual for him to
23 try and rewrite his contract, so to speak;
24 right?

25 A Right.

1 Q In fact, as I recall your memo, I think
2 Mr. Miller told you that it was nothing more
3 than extortion on behalf of -- describing what
4 Gumieny was trying to do; correct?

5 A From the tab, yes.

6 Q Yes, exactly. In fact, in your interview with
7 this Commission, which is I believe at tab 1 or
8 2 of the book of documents, which has been
9 marked as an exhibit, you make a comment about
10 Gumieny going back to his old habits in relation
11 to these demands; correct? Look at your
12 interview and I will give you the exact --

13 THE COMMISSIONER: It would be in the large one.

14 BY MR. PROBER:

15 Q Exhibit 3, which would be the book of documents
16 for Commission Counsel. In fact, at page 19 of
17 your interview. Are you there, sir?

18 A I'm there, yes.

19 Q Gumieny, second last sentence,

20 "Gumieny was initially quite easy to get
21 along with and Orr thought he would be able
22 to assimilate better than Zanidean would
23 have been. However, he became more and
24 more demanding with his handlers during his
25 six months into the program and slowly

1 began sinking back into his old habits."

2 I read that correctly?

3 A You did.

4 Q Now, post trial we see, and I think there is a
5 reference to Gumieny taking a shine to
6 Mr. Dangerfield. And I think Mr. Lockyer put
7 that in the context, the fact that Gumieny
8 called Dangerfield. But let me take you to a
9 couple of other people that he called. Maybe he
10 took a shine to a lot of people, because he
11 seems to have called Williams, a detective,
12 Osborne, a detective, Sergeant Hall and Sergeant
13 Puchniak of the RCMP. Let me direct your
14 attention, first of all, to tab 19, exhibit 4-A.
15 Are you there?

16 A Yes.

17 Q Second page of that letter, first paragraph,
18 Inspector Ewatski later advised Corporal
19 Orr that Gumieny had called Detectives
20 Williams and Osborne and anyone else
21 associated to the cases, and a phone
22 introduction Ewatski/Gumieny had been
23 made."

24 Did you see that?

25 A Yes.

1 Q If you go to tab 14, it is a letter from Hall, I
2 think he is an Inspector at the time, to Miller,
3 and in particular page 2, second paragraph,

4 "Gumieny called me from Ottawa to tell me
5 that he had been in touch with Dangerfield.
6 Gumieny called me again from Ottawa..."

7 Next paragraph,

8 "...and then on the 26th of May, I received
9 a third call from Gumieny."

10 So he has called Williams, he has called
11 Osborne, he has called Hall. If you look at tab
12 9, second paragraph,

13 "Sergeant Pusniak stated that he had
14 received a phone call from Gumieny stating
15 that he was freezing."

16 So Williams, Osborne, Hall, Pusniak,
17 Dangerfield, he called whoever would pick up the
18 phone and answer his calls, it would seem,
19 anybody associated with the case; correct?

20 A Correct.

21 Q Let me direct your attention to tabs 12 and 13.
22 Mr. Lockyer suggested that Mr. Dangerfield
23 changed his tune, those are the words
24 Mr. Lockyer used.

25 First, if you look at tab 12, and it may or

1 may not be the case that there was a change of
2 tune, but look at tab 12, the second page,
3 Mr. Dangerfield, in the handwritten note halfway
4 down,

5 "Mr. Dangerfield indicated he has no
6 intentions of and is not aware of anyone
7 else intending to provide Gumieny with any
8 financial assistance."

9 Do you see that?

10 A What page are you on?

11 Q Second page, tab 12, it is the handwritten note,
12 appears to be Klippenstein's note, he was the
13 Deputy Chief. Do you see the handwritten note
14 there?

15 A Yes.

16 Q Okay. It appears that Klippenstein spoke with
17 Dangerfield. And the second part of that
18 handwritten note it indicates that
19 Mr. Dangerfield indicated he has no intentions
20 of and is not aware of anyone, not aware of
21 anyone else intending to provide Gumieny with
22 financial assistance. Do you see that?

23 A Yes.

24 Q Note the date of that is May 18th, 1993. It is,
25 in fact, written at the top of the handwritten

1 note. Do you see that?

2 A Yes.

3 Q Okay. Then tab 13 appears to be a record of a
4 conversation. This would be the last page of
5 tab 13, a record of a conversation that you had
6 with Dangerfield, correct, on May 25th, tab 13,
7 the last page?

8 A May 27th --

9 Q This is the one that goes -- yes, the 27th, but
10 I'm referring to the call. You are at the right
11 page, on May 25th, is that what that means, '93?

12 A Yes.

13 Q So a week after what I just showed you in tab
14 12, you get a call from Dangerfield, who has
15 been speaking to presumably Gumieny and to his
16 current handlers, Constable Poitevan.
17 Dangerfield feels there is a threat arising from
18 the family of the spouse and that compensation
19 should be provided. Not unreasonable, is it, if
20 Mr. Dangerfield now knows about a threat to the
21 witness, that his position may change, if it did
22 change, that now perhaps compensation, or at
23 least moving expenses should be paid? It is not
24 unreasonable to be flexible, is it, in those
25 circumstances?

1 A No, sir.

2 Q No. One point I also want to make, if we go
3 back to tab 12, the handwritten note of Deputy
4 Chief Klippenstein, referring to the discussion
5 with Dangerfield, he is not aware of any reason
6 why anyone should be concerned about Gumieny
7 speaking to the media? Do you see that?

8 A Yes.

9 Q "He could tell them things that would put
10 the police and justice in a bad light, even
11 if it could be established to be a lie."

12 I wouldn't think Gumieny was a stranger to
13 lying. Would you agree with me?

14 A I agree.

15 Q But the point is Dangerfield says, there is no
16 reason for anyone to be concerned, correct? At
17 least in that note, you didn't write it, but
18 that's what it appears to say?

19 A That's what it appears to say.

20 Q Right. Now, we know that Gumieny threatens to
21 go to the media. You saw that. We know that he
22 threatens to go to Driskell's lawyer and say
23 that he was coaxed into fabricating his
24 evidence. Do you remember that?

25 A Yes.

1 Q Perhaps you wouldn't be aware of a summary of a
2 telephone interview that Commission Counsel had
3 with Gumieny on July 6th -- that is what, two
4 weeks ago, just over two weeks ago --
5 indicating, and this was put to Gumieny, his
6 threat of recantation. And what is quoted is
7 that -- what Gumieny told Detective Osborne on
8 May 18, 1993, if Gumieny doesn't get what is
9 promised to him, he will contact Driskell's
10 lawyer and the investigator hired by the lawyer
11 and relate that he was coaxed into fabricating
12 some of his evidence unless he received what is
13 promised to him. You perhaps wouldn't know --
14 and he made a similar threat later to Inspector
15 Hall on May 26th.

16 "Gumieny explains that he was probably high
17 on drugs when he made these calls and was
18 looking for money. He did have some
19 concern about the safety of his family that
20 they had just dumped in Ottawa. He
21 certainly wouldn't have actually carried
22 out these threats to recant his evidence.
23 He had had difficulties with drug abuse
24 most of his life."

25 Were you aware of that? Were you aware that

1 that's what he told Commission Counsel?

2 A No, sir.

3 Q Were you aware as well that Gumieny told
4 Commission Counsel that he had no real
5 relationship with George Dangerfield, wouldn't
6 know that?

7 A No, sir.

8 Q He told Commission Counsel before trial he only
9 spoke to Dangerfield for five minutes, when it
10 was explained to him what would happen in the
11 courtroom and that was it. He says after the
12 trial, Gumieny called Dangerfield a few times
13 because he thought there was someone watching
14 his house. Gumieny felt he got the brush-off
15 from Dangerfield, that Dangerfield thought this
16 was part of Gumieny's imagination. Were you
17 aware of that?

18 A No, sir.

19 MR. CODE: I'm happy for Mr. Prober to file
20 that, but I don't think that cross-examining
21 this witness on an interview that I conducted a
22 week ago really adds anything. Mr. Prober is
23 simply reading the document into the record.
24 MR. PROBER: In that regard, I'm following the
25 track of Mr. Code, who has appeared to have read

1 a lot into the record. But I'm happy to file
2 it, I expect it would have been filed, unless
3 Gumieny is going to be called, but I wanted to
4 clear the air in terms of what Gumieny said at
5 the time that he made these idle threats,
6 Mr. Commissioner.

7 MR. CODE: I hope I didn't read anything into
8 the record unless there was a question
9 associated with it.

10 MR. PROBER: Or an interpretation, but that's
11 fair.

12 THE COMMISSIONER: I am sorry. Mr. Gates.

13 MR. GATES: I can assure you that this witness
14 hasn't seen the witness summary of any other
15 witness.

16 MR. PROBER: And my suggestion, of course, was
17 not that he had. In fact, I think I prefaced my
18 comments to the effect that you hadn't seen
19 those, or those comments by Gumieny. But I will
20 leave that to Commission Counsel, if they want
21 to file it. I expect that they will, or
22 hopefully they will call Gumieny. They know
23 where he is; he is in prison.

24 BY MR. PROBER:

25 Q In any event, you were also asked about the

1 business, I think, in one of Miller's notes that
2 Gumieny would have to be appeased, and you
3 wanted to put that in context and I believe you
4 were cut off. Is it fair to say that the
5 context that you wanted to put it in is that
6 paying the money was paying for relocation
7 costs. Do you remember that this morning when
8 that was put to you by about appeasing Gumieny?
9 A Anything that I dealt with financially was
10 relocation costs related.
11 Q Right. Let me take you now to tab 13, I believe
12 it is tab 13, and it would be at the bottom of
13 the page 085. Do you have that page? The
14 number is at the bottom of the page, sorry,
15 bottom right, 085?
16 A Yes.
17 Q And the top left is 28th continued, right? This
18 is where you describe Dangerfield as nearly
19 apoplectic, and I think you say later on sort of
20 went ballistic. This is in relation to
21 Gumieny's demands for further money to relocate;
22 right?
23 A Yes.
24 Q You have got that location now?
25 A Okay.

1 Q Now, Mr. Lockyer took to you this paragraph, or
2 sentence,

3 "Mr. Dangerfield had mentioned a sum of
4 \$2,000 but they did not want it to look as
5 though it came directly from them. He
6 wanted to supply the bills to the RCMP and
7 they would be paid for."

8 Isn't that what was normally done, that the
9 bills would be provided to the RCMP, or by the
10 RCMP rather, and Justice would pay, Justice
11 would fund those costs?

12 A Yes, on a repayment basis, yes, that's the way
13 it is normally done.

14 Q That's the way it was normally done?

15 A Yes, sir.

16 Q Mr. Dangerfield didn't say to you that he didn't
17 want it traceable, did he?

18 A Certainly not.

19 Q No. Mr. Dangerfield didn't say to you he wanted
20 to be in a position of deniability, did he?

21 A No, sir.

22 Q And had he said that, you would have noted that;
23 correct?

24 A Yes, sir.

25 Q Right. In fact, the RCMP were acting, I think

1 these are your words, as intermediaries. Tab
2 13, if you go towards the end of the tab now,
3 087 is the page number at the bottom.

4 "...that we were acting as intermediaries
5 due to past involvement and distances
6 involved."

7 A Yes.

8 Q Correct, right?

9 A Correct.

10 Q So Dangerfield wasn't asking you to do anything
11 out of the ordinary, was he?

12 A No.

13 Q Mr. Lockyer asked you if you knew who the Crown,
14 who in the Crown's office was responsible with
15 witness assistance in terms of witness
16 protection, and you indicated that you weren't
17 sure. Which is fair enough, it is a long time
18 ago. Now this is not in a book of documents
19 marked as an exhibit, but it is in a book
20 entitled "Documentary Disclosure from the
21 Winnipeg Police Association" and it is Gumieny's
22 application, which you would have seen, I take
23 it?

24 A Yes.

25 Q I'm going to hand it to you now. It appears to

1 be from Williams and Osborne. Just tell us what
2 it says about the prosecutor dealing with
3 witness assistance, who is named there?

4 A Mr. Bruce Miller, Q.C.

5 Q Thank you.

6 MS. CARSELL: Mr. Prober, do you have a page
7 reference?

8 MR. PROBER: Yes, thank you for asking -- 35.

9 BY MR. PROBER:

10 Q So at least according to that application, Mr.
11 Bruce Miller, the late Mr. Bruce Miller, was the
12 contact person dealing with Gumieny's witness
13 protection matters?

14 A Yes, sir.

15 Q If you look at exhibit 4(b), which is the
16 smaller book of documents provided to you by
17 Mr. Lockyer, tab 3. This is prior to the trial.
18 Just a small point, paragraph 1 on page 1,
19 paragraph numbered 1. Mr. Gumieny is expected
20 to give his evidence on or about June 10th.
21 Mr. Lockyer suggested to you that that in fact
22 was the case, when he had already pointed out to
23 you that Gumieny had given his evidence on
24 June 6th, or June 7th rather, and then the
25 weekend, 8th and 9th, and then he went into the

1 protection program on the 10th. Do you recall
2 that?

3 A Yes.

4 Q But what I really wanted to direct your
5 attention to is the second page.

6 "Miller..."

7 second last paragraph,

8 "...approved the above plan."

9 Do you see that?

10 A Yes.

11 Q And the letter is copied, the letter from Chief
12 Stephen is copied to Mr. Miller. Do you see
13 that?

14 A Yes.

15 Q Do you see if it is copied to Mr. Dangerfield or
16 not?

17 A No, it wasn't.

18 Q It wasn't. Next page, backtracking a very
19 little bit, is tab 4. That's the kind of money
20 we were talking about earlier, the RCMP is
21 seeking reimbursement for related travel,
22 accommodation, relocation and incidental
23 expenses; correct?

24 A Yes.

25 Q Again, it is not like an award payment to a

1 agent?

2 A Right, definitely.

3 Q In fact, you may recall from the documents -- if
4 not, I can take you to them -- but the \$2,000
5 that Mr. Dangerfield was talking about turned
6 out to be about \$2,800 for the rental of a truck
7 and so on in terms of relocating him. Do you
8 remember that?

9 A Yes, sir.

10 Q Tab 14, in exhibit 4-A, it is a bigger book,
11 there is a letter from Inspector Hall to
12 Mr. Miller; right?

13 A Yes.

14 Q Not to Dangerfield, right?

15 A Right.

16 Q There is another letter at tab 18, from
17 Superintendent Ayers, I believe, yes,
18 Superintendent Ayers to Mr. Miller, right?

19 A Right.

20 Q And not to Mr. Dangerfield?

21 A No.

22 Q In fact, attached to that letter, although you
23 weren't referred to it, is the \$2,800 expense
24 sheet that I was referring to; correct?

25 A Correct.

1 Q And then at tab 19, you have a letter to
2 Whitley, from again Superintendent Ayers, again
3 relating to the \$2,800. Do you see that?

4 A Yes.

5 Q Tab 23, you have a letter from Bruce Miller to
6 Chief Superintendent Embury; correct?

7 A Yes.

8 Q Have you seen any letters from Mr. Dangerfield
9 or to Mr. Dangerfield related to the witness
10 protection expenses of Gumieny?

11 A No, sir.

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

13 THE COMMISSIONER: Thank you, Mr. Prober.

14 MS. CARSELL: If I might have a minute,
15 Mr. Commissioner.

16 BY MS. CARSELL:

17 Q Sergeant, we met before, but my name is Kimberly
18 Carswell and I'm here on behalf of the Winnipeg
19 Police Service and its chief, Jack Ewatski, and
20 Inspector Hall.

21 I want to deal first just briefly with sort
22 of process on witness protection, if I can. And
23 that's something that you have dealt with
24 extensively in your career. And I think it
25 would be fair, and Mr. Code said it to you quite

1 fairly, that the funding must come from the
2 province ultimately; is that correct?

3 A In an assistance case, yes.

4 Q And the funding in these particular cases, that
5 being the witnesses Zanidean and Gumieny, didn't
6 come from the Winnipeg Police Service but came
7 in fact from Manitoba Justice; is that right?

8 A That's true.

9 Q In fact, in your discussions with the various
10 members of the Winnipeg Police Service, it was
11 clear that they were speaking to you and that
12 they would then have to go back and speak to
13 whoever they were speaking with at Manitoba
14 Justice, usually it appears from the documents,
15 Mr. Miller, in order to get approval for those
16 discussions. Would that be a fair summation of
17 the process?

18 A Yes, it is.

19 Q And this is basically what happens, no matter
20 what type of protection you are dealing with,
21 isn't it? Even short term interim protection,
22 ultimately that funding comes from the Justice
23 Department involved in ensuring the witnesses'
24 protection through the police agency; correct?

25 A With the assistance cases, yes.

1 Q Now, if I could just take you to the March 25th
2 letter, or March 25th notes of your meeting with
3 Zanidean's lawyer, Mr. Kovnats. And that
4 appears at tab 5 in the large book of documents,
5 which is the one I'm mostly going to be
6 referring to. So if you could pull that in
7 front of you, it would be of help.

8 Now, this was a meeting that you attend --
9 sorry, you are not there yet, or are you there?

10 A Yes.

11 Q This is the meeting that you attend with
12 Mr. Kovnats, you have got the application in
13 hand at this point, you have told us, and you
14 were there with Mr. Kovnats to, in your view,
15 sort of set out what the program could provide
16 for his client. Is that correct?

17 A That's true.

18 Q And so you would have told him about the
19 limitations of the program, what the program
20 could and could not do, what sort of
21 expectations could be met within the program;
22 correct?

23 A Correct.

24 Q And those were noted by you, and you don't need
25 to turn to it, but they were noted on

1 Mr. Kovnats' letter, which appears at exhibit 4,
2 with your handwriting, whose responsibility
3 would be the various items of demand that
4 Mr. Zanidean was making. Is that correct?

5 A That's correct.

6 Q Now, in your examination by Commission Counsel,
7 Mr. Code, he referred you to that witness
8 application at tab 2 that was prepared by the
9 Winnipeg Police Service, and you felt had been
10 provided to you by Staff Sergeant Vandergraaf?

11 A I thought it was, yes.

12 Q And if you refer to page 481 of that document,
13 and that's the numbers right at the bottom?

14 A Tab 2?

15 Q Tab 2, page 481 at the bottom, and this is under
16 part 7, continued (4), and the title is
17 "Summarize Information Divulged by the Witness
18 with Respect to Other Criminal Activity" and
19 then there was a portion of it read. I just
20 want to point out that there was a portion of
21 this that wasn't read which I think is germane.
22 And it is, and I'm going to go back, it says,
23 "Constable Burton has agreed not to pursue
24 Zanidean at this time but will continue
25 investigation once our trial is concluded.

1 We have made it perfectly clear to this
2 witness that we will not pursue immunity
3 for this charge in exchange for his
4 evidence. We have told him we have
5 notified the RCMP and the outcome of the
6 investigation rests with them."

7 Now, it is important I think to note that
8 there was a reasonable cooperative attitude
9 between the Winnipeg Police Service officers
10 that you were dealing with in this matter and
11 yourself?

12 A Yes.

13 Q And you would expect that from them, given that
14 you were offering them assistance in this
15 matter?

16 A Yes.

17 Q And there was information obviously provided to
18 you, that being the investigator in Swift
19 Current, Burton. So I suspect that, given that
20 you knew of that, that would give you a contact
21 person in Swift Current if you required to
22 discuss the matter with?

23 A Yes, it would have.

24 Q It didn't appear to you that the Winnipeg Police
25 Service was trying to hide any material facts

1 from you in this application?

2 A Not at all.

3 Q In fact, if you take a look at tab 30, which is
4 a summary of your material, it would appear that
5 you likely knew of Inspector Burton's
6 involvement from Anderson, because you only
7 spoke with Burton the one time, and that would
8 have been on May 30th. So the information about
9 who the investigator was must have come through
10 the Winnipeg Police Service; would that be fair?

11 A It was on the application process, or the
12 application document.

13 Q And in fact, if you had seen in that section
14 that the Winnipeg Police Service, and I want to
15 put your evidence to you, you said that it was
16 not unknown for that type of discussion to take
17 place, in other words, that immunity may be
18 offered to a witness who was going into, or
19 potentially going into a Witness Protection
20 Program. Would that be a fair summary of your
21 evidence?

22 A Yes.

23 Q So you wouldn't have been surprised had you seen
24 in that section that the Winnipeg Police Service
25 had suggested to Mr. Zanidean that they were

1 going to attempt to get him immunity? That
2 wouldn't have surprised you?

3 A Yeah, it would have.

4 Q It would have?

5 A Yes.

6 Q And that would have been because the charge
7 hadn't been laid?

8 A Just another promise made that shouldn't have
9 been, or put out there that shouldn't have been,
10 yes.

11 Q All right. But you said it was not unknown for
12 that type of discussion to take place, in your
13 evidence with Mr. Code?

14 A Yeah, between the witness protection coordinator
15 and --

16 Q All right. But not between --

17 A The assisting, the police force that we were
18 assisting, no.

19 Q All right. Would you turn then to tab 9? And
20 you have got a note in April of '91, April 9th,
21 '91. It is clear from that note, again, that in
22 effect what was happening was that a threat had
23 been received by Zanidean, and that what the
24 Winnipeg Police Service was asking you to do
25 was, in effect, be a conduit for the money to

1 house Mr. Zanidean outside of the jurisdiction,
2 because they had no one in Calgary and you did,
3 the RCMP?

4 A Exactly.

5 Q And it was also clear, if you read through this
6 section, that Bruce Miller would ultimately be
7 responsible for providing the funding and
8 agreeing to whatever level of funding would take
9 place on behalf of Mr. Zanidean?

10 A Yes.

11 Q Now, in your meeting with Mr. Zanidean on
12 April 9th, before he leaves, which is set out at
13 tab 12 -- this is, he has received the threat,
14 he is about to leave for Calgary, and the
15 Winnipeg Police Service bring him in to complete
16 his personal history information form with you;
17 is that correct?

18 A Yes.

19 Q Now at that meeting, I take it, it would be,
20 part of what you would have done was to explain
21 the program to Mr. Zanidean, what you could
22 offer him within witness protection?

23 A Yes, definitely.

24 Q What you couldn't offer him within witness
25 protection?

1 A Yes.

2 Q And you would set aside any misconceptions he
3 might have about the RCMP being, I think as you
4 called it, the great money tree?

5 A I think we covered that with his lawyer and his
6 lawyer contacted him but, yes.

7 Q But you would have likely done that again with
8 him personally at this meeting of April 9th;
9 correct?

10 A Exactly.

11 Q I take you to tab 19 then. This is the
12 information that Calgary sent you April 17th of
13 1991. And this is eight days after your meeting
14 with Mr. Zanidean, where you set out what the
15 program can and cannot do for him. And this is
16 his list of, I'm going to call them additional
17 demands, that he requires for himself and his
18 wife in Calgary. And it is clear if you
19 compare, I suspect what you would have said
20 during your initial meeting, and this list, it
21 is obvious Mr. Zanidean just doesn't get it.
22 Would that be a fair assumption?

23 A Exactly.

24 Q And, in fact, he was clearly the type of person
25 that no matter what you told him, he was going

1 to interpret it in his own way. And you are
2 nodding in the affirmative, yes?

3 A He is going to try for more, yes.

4 Q And he was going to make up his own version of
5 what he was told; would that be fair?

6 A That would be fair.

7 Q And you said in your evidence, and I think it
8 was in response to something that was put to
9 you, that it was consistent throughout that
10 Zanidean's demands were for more, every time he
11 got something from the City Police. Do you
12 recall saying that?

13 A Yes.

14 Q And, in fact, it would be more correct to say
15 that he asked for more every time he got
16 something from the Province of Manitoba, because
17 that's ultimately where the funding was coming
18 from?

19 A Yes.

20 Q Now, during this particular period of time and,
21 in fact, we know from the letter that
22 Mr. Kovnats was actively negotiating with
23 Mr. Miller from at least December 14th of 1990,
24 that's when the letter with the "list of
25 demands" goes over to Mr. Miller?

1 A Yes.

2 Q And it was fair to say that it was clear that
3 there was contact going on between Mr. Miller
4 and Mr. Kovnats in relation to what the
5 ultimate -- I'm going to put it in quotations --
6 "deal" would be that occurred outside of your
7 level of knowledge and, in fact, outside of the
8 Winnipeg Police Service's knowledge?

9 A It could have been, yes.

10 Q And you get an indication of that in the letter
11 from Staff Sergeant Vandergraaf at tab 24, where
12 he expresses his frustration -- I believe it is
13 tab 24 -- 25, I am sorry, I misspoke -- where at
14 tab 25 he talks about the police agencies being
15 circumvented by Mr. Kovnats going directly to
16 Mr. Miller and negotiating, and that connection
17 happening outside of the Winnipeg Police
18 Service's knowledge and outside of even your
19 knowledge?

20 A Yes.

21 Q And you express some concern at some point when
22 Mr. Code put to you that there was a period of
23 time in which Mr. Zanidean disappeared and the
24 Police Service didn't know where he was. And
25 that can happen with witnesses like this, can't

1 it? They disappear on you, they go on the lam,
2 they go back to their old ways and sink back to
3 activities that we would prefer to keep them
4 away from?

5 A Possibility, yes.

6 Q Now, if you could turn to tab 27, this is a note
7 of a discussion you have on May 13, 1991 with
8 Mr. Miller. And if I took down your evidence
9 with Commission Counsel correctly, you confirmed
10 that this was information that you had gotten
11 from Mr. Miller, that being that he would keep
12 you advised of Zanidean's whereabouts and what
13 was happening. And you indicated in your
14 evidence -- and if I have got this wrong,
15 correct me, because I'm not a stenographer, I
16 can't take it down that fast -- but the fact
17 that this information was coming through Miller
18 seemed out of line. Was that your evidence?
19 Because you would expect this information would
20 be coming from the police?

21 A I would expect that, yes, but it wouldn't be out
22 of line for Mr. Miller to call me and tell me.

23 Q No, certainly not to call you and tell you, but
24 the source of the information, the fact that it
25 appeared that Mr. Miller knew more about what

1 was happening with Mr. Zanidean than the
2 Winnipeg Police seemed strange to you?

3 A Possibly, yes.

4 Q And that's likely as a result that the
5 negotiations were taking place outside of the
6 Winnipeg Police being involved in them. In
7 fact, it seems to confirm Staff Sergeant's
8 Vandergraaf's assessment that the police were
9 not in the loop anymore, the negotiation was
10 being conducted between Kovnats directly with
11 Miller?

12 A Yes, it seems that way.

13 Q Now, in tab 30 -- and I just want to correct
14 something that I may have misheard. I just want
15 to find the correct page. If you take a look at
16 the last page of tab 30, and that's a bit of a
17 summary that you wrote on June 19th of 1991.
18 And in asking about that summary, I believe my
19 learned friend suggested to you that there was
20 no contact of consequence between you and the
21 Winnipeg Police Service in this time frame. And
22 if I read correctly the third line, it indicates
23 there have been no calls from the WPD. So no
24 calls of consequence or inconsequence; would
25 that be fair?

1 A Yes, true.

2 Q Now, you were very fair on that same page when
3 you talked about Zanidean and what you express
4 as,

5 "But he was promised the sun and the moon
6 by the Winnipeg City Police."

7 That's WCP, correct?

8 A Yes.

9 Q And you were very fair I think in your evidence
10 in saying that you couldn't advise what had been
11 extended by the police because Zanidean wasn't
12 truthful with respect to what he had been told
13 about what his offers were. Would that be a
14 fair suggestion?

15 A That's true.

16 Q In fact, that was consistent with the behaviour
17 he was exhibiting with you and the RCMP when you
18 had your meeting with him on April 9, yet he
19 goes to Calgary and has expectations well in
20 excess of what you told him would be happening;
21 correct?

22 A That's true.

23 Q Now, if you turn to tab 32, I think this also
24 speaks to that same point. And then this is a
25 letter from Mr. Kovnats that is directed to

1 Mr. Miller on June 4th of 1991. And if you take
2 a look at paragraph 3, which is on page 142, it
3 says,

4 "My client wishes his full witness
5 protection agreement executed prior to
6 testifying, as promised by Constable Orr,
7 and to be included in that agreement should
8 be the following items:"

9 And then he lists five particular items. I
10 think it would be safe to say, based on all the
11 evidence that you provided, that you didn't make
12 him these promises, did you?

13 A Certainly not.

14 Q So not only was there a misunderstanding with
15 respect to what Mr. Zanidean thought he was
16 promised, certainly his counsel seemed to have
17 the same misunderstanding about what the
18 promises were?

19 A Exactly.

20 Q Now, on tab 38, which you described as summing
21 up notes, at the end you talk about receiving a
22 call from Mr. Miller. And I suspect Mr. Lockyer
23 may have dealt with this somewhat this morning.
24 But when you talked about another call in to
25 Miller to discuss the information received, you

1 are talking about the information that precedes
2 it on the two pages, that being the information
3 that you received from Swift Current from
4 Marcella and Scowby. I take that from the note,
5 but I just wanted to be clear that that's the
6 information that you indicated that you wanted
7 to discuss with Miller?

8 A The information just received, as I wrote it
9 down there, yes.

10 Q Now, with respect to Mr. Gumieny's resurfacing
11 later in '93, you are aware that the Winnipeg
12 Police Service took the position that they
13 weren't prepared to assist him in 1993, is that
14 correct? They felt there was no threat that had
15 come in relation to the Driskell matter and that
16 they weren't prepared to support his relocation
17 at that time?

18 A Yes.

19 Q And that's clear from the documents that have
20 been filed in Mr. Lockyer's exhibits 4-A and B.

21 Finally, if I could just take you to the
22 summary of your statement to Commission Counsel,
23 which is located at tab 1, and in particular
24 page 15, and I'm referring to the second
25 paragraph on that page. And this is just in

1 relation to a phone call you received from
2 Zanidean on May 29th, but I'm more interested in
3 the comment that you make about Zanidean's
4 attitude to the Winnipeg Police Service, and I'm
5 just going to read you this.

6 "The same day Orr got a call from Zanidean
7 who returned to his usual theme of 'what
8 are you doing for us.' Zanidean had been
9 told numerous times to go through the
10 Winnipeg Police."

11 And that would be you telling him to do that, is
12 that correct, stop phoning me, phone the
13 Winnipeg Police Service, it is their file?

14 A Yes.

15 Q All right.

16 "But despite this he was phoning Orr fairly
17 often. Zanidean didn't like dealing with
18 the Winnipeg Police Service and he would
19 complain to Orr that they couldn't do
20 anything and that Orr, therefore, had to do
21 it."

22 And I think that pretty much sets out Zanidean's
23 attitude, wasn't it? He knew that the money
24 wasn't coming from the Winnipeg Police Service,
25 he knew it was coming from Manitoba Justice.

1 His lawyer was in contact with Manitoba Justice.
2 Therefore, the way he was going to get things
3 done was either through you, in his view, or
4 through Manitoba Justice; would that be fair?
5 That was the impression that he left you with?

6 A Probably, because he wasn't getting anything, he
7 wasn't getting satisfaction from City Police,
8 therefore, he would go to anybody else that was
9 involved in it.

10 Q That's right. So he had his lawyer contacting
11 Manitoba Justice. He knew the City Police
12 weren't giving him the money. He knew they
13 didn't hold the key to the bank; correct?

14 A True.

15 Q So he was going to go to the people who had the
16 key to the bank?

17 A True.

18 MS. CARSELL: Thank you. Those are my
19 questions.

20 BY MR. ABRA:

21 Q Mr. Orr, I am Doug Abra, we have met already.
22 As I told you, I'm acting for the Estate of the
23 late Bruce Miller.

24 I would like to begin by your going to tab
25 12 in the book of documents that Mr. Code gave

1 to you, the big one that you have with you.
2 This is April 9 of 1991. And I understood you
3 to say to Mr. Code, when you were examined last
4 week, that it was really as early as that
5 meeting that you had with Mr. Zanidean that you
6 began to doubt whether or not he in fact would
7 be appropriate for the witness protection, the
8 formal Witness Protection Program; am I correct?

9 A Beginning to form my personal doubts, yes.

10 Q And throughout the time that you were involved
11 with Mr. Zanidean thereafter, and all of the
12 dealings that you had with other people, you had
13 this abiding reservation about whether or not
14 this guy was in fact ever going to fit into that
15 program. And the more you dealt with him, the
16 more you questioned whether or not he would ever
17 fit into the program itself?

18 A Exactly.

19 Q The more you got to know him, the less you liked
20 him, and more significantly, the more you
21 realized that he just wasn't going to fit into
22 the program because he wouldn't take
23 supervision, he wouldn't take direction, he
24 wouldn't take reporting, he wouldn't do anything
25 that he was told; is that fair?

1 A It is fair.

2 Q And the whole purpose of the program is that a
3 person has to be prepared to be cooperative with
4 the handlers in order that they can provide the
5 necessary protection for the witness?

6 A Yes, sir.

7 Q Okay. Now, having said that, in your
8 discussions with Bruce Miller, did you ever talk
9 to him at all specifically about how much money
10 Manitoba Justice might be prepared to pay in the
11 Witness Protection Program for Mr. Zanidean?

12 A How much they might be prepared?

13 Q Yes.

14 A No, I might have given him a rough idea on what
15 a relocation would cost, but that would be it.

16 Q And what might that have been?

17 A I can't remember exactly, but it would be in the
18 range, the same range as the Gumieny matter.

19 Q In fact, I'm suggesting to you that if you
20 didn't discuss it with Mr. Miller, you were at
21 least aware of the fact that it would cost
22 approximately \$20,000.

23 A Yes.

24 Q In fact, Mr. Lockyer suggested to you this
25 morning that it was slightly in excess of

1 \$18,000 that was spent on Mr. Gumieny, and he
2 asked you whether you were surprised about that,
3 and you indicated that you were. He never did
4 ask how much you thought might have been spent.
5 Would you agree that you thought it would
6 probably be around 20 or a little bit higher?

7 A I thought the 26 that he first mentioned was
8 high --

9 MR. LOCKYER: 21.

10 THE WITNESS: I thought that was high, but then
11 as you go through it, you find out these other
12 expenses came into it, and that's where they
13 added up to that. Yes, it would have been
14 around \$20,000.

15 BY MR. ABRA:

16 Q But in any event, even with your -- and this was
17 one, I gather this was a reasonably new project
18 that had just been started, this formal Source
19 Witness Protection Program, it had only been in
20 existence a year or two prior to this particular
21 case?

22 A Not very long, yes.

23 Q And you were reasonably new at it, as was
24 everybody else; is that fair?

25 A Reasonably, yes.

1 Q But notwithstanding that, with your experience,
2 you had a pretty good feel for the fact that it
3 would probably cost approximately \$20,000 for
4 Zanidean to go into the Witness Protection
5 Program?

6 A For a six month period, around there, yes.

7 Q Now, on April 29th, you met with -- and if you
8 go to tab 27 -- sorry, sir, I can't read my own
9 writing, it is a sign of old age I guess -- tab
10 22, I'm sorry. Thank you, Mr. Code.

11 Now, this was the meeting that you had on
12 April 29th at which Staff Sergeant Vandergraaf
13 was in attendance, Mr. Miller was in attendance,
14 Mr. Kovnats was in attendance, and Mr. Zanidean
15 was in attendance. Am I correct? Do you recall
16 what I'm referring to?

17 A Yes, I do.

18 Q Okay. And at that meeting there was initially
19 an argument that took place between Staff
20 Sergeant Vandergraaf and Mr. Zanidean along the
21 lines of what we have heard plenty of evidence
22 on, that being that Zanidean continually wanted
23 more, no matter what he got, he wanted more. Is
24 that right?

25 A True.

1 Q And Vandergraaf was kind of fed up with it?

2 A Yes.

3 Q In any event, according to page 2 of your note
4 of that meeting, Miller and Vandergraaf left.
5 Do you happen to remember, by the way, whether
6 Osborne and Paul were at that meeting?

7 A No, I would have written it down if they had
8 been.

9 Q Okay. In any event, Vandergraaf was there on
10 behalf of the Winnipeg Police Service, and
11 Mr. Miller was there?

12 A Yes.

13 Q And after the initial discussions had taken
14 place about the Witness Protection Program, you
15 then stayed behind after they left and you
16 talked to Mr. Kovnats and you talked to
17 Mr. Zanidean further; is that right?

18 A Yes.

19 Q And it was at that time that you made the
20 suggestion that rather than going into the
21 formal Witness Protection Program, they might
22 give consideration to taking a lump sum payment;
23 is that right?

24 A Yes.

25 Q And you were the one that made that suggestion?

- 1 A Yes.
- 2 Q And the idea of the lump sum payment was for,
3 rather than the RCMP being responsible for the
4 Witness Protection Program and for monitoring
5 Mr. Zanidean and protecting, or providing the
6 protection to him, it was to give him the amount
7 of money that might have been used in the
8 Witness Protection Program to find his own
9 relocation and to look after himself. Is that
10 right?
- 11 A Exactly.
- 12 Q That was the whole purpose of it?
- 13 A Exactly.
- 14 Q In essence, the cash payment was in lieu of the
15 amount it was going to cost, the approximate
16 amount that it would cost the Manitoba Justice
17 Department to pay for the Witness Protection
18 Program if Mr. Zanidean had gone into it?
- 19 A Yes, sir.
- 20 Q And you were the one that made this suggestion,
21 and they seemed interested in it?
- 22 A Yes.
- 23 Q And the reason that you made the suggestion was
24 by this time you had determined that
25 Mr. Zanidean probably wouldn't fit into the

1 formal Witness Protection Program, for the
2 reasons that you have described already, that
3 being that he wasn't very cooperative, but
4 notwithstanding that, that he would be paid that
5 amount of money and he could use it for his own
6 purposes to relocate himself and make his own
7 arrangements for protection?

8 A That's true.

9 Q That was the whole purpose of the lump sum
10 payment?

11 A We called it a relocation expense, yes.

12 Q And it was referred to throughout the documents
13 as a relocation expense? Your answer is yes?

14 A Yes.

15 Q And similarly, as you told Mr. Prober when he
16 was asking you questions, it was in essence the
17 same program as Gumieny was in, except Gumieny
18 was in the formal Witness Protection Program,
19 whereas Zanidean, the negotiations related to
20 paying Zanidean for relocation; is that right?

21 A He would have been responsible for his own.

22 Q Right?

23 A Instead of with Gumieny, we were looking after
24 him.

25 Q But the whole purpose of the payment was the

1 same?

2 A Same thing, yes.

3 Q For his protection?

4 A Yes.

5 Q It wasn't to buy his testimony, it wasn't for a
6 reward?

7 A No, sir.

8 Q Now, if you could go to tab 15, please, sir?

9 Now, this was the phone call that you had with
10 then Inspector Preston; is that right?

11 A Yes, it is.

12 Q And actually that particular phone call that you
13 had with Preston, you had previously spoken to
14 Sergeant Upton of the Swift Current detachment?

15 A Yes, I had.

16 Q And that's at tab 13.

17 Now, when you spoke to Upton, he told you
18 that Swift Current was closing its file and that
19 Zanidean was no longer wanted for questioning in
20 connection with the Swift Current fire; is that
21 right?

22 A That's what I wrote down here, yes.

23 Q And would that note have been made almost
24 contemporaneously with your phone call with
25 Upton or immediately after you got off?

1 A Immediately after.

2 Q And he told you that he would have the
3 investigator call you -- who was Burton?

4 A Yes.

5 Q But you didn't hear from Burton?

6 A No.

7 Q No. In fact, you didn't talk to Burton for some
8 considerable period of time after that; is that
9 right?

10 A Yes, sir.

11 Q And then you spoke to Preston, at tab 15. In
12 essence, you discussed with Preston the fact
13 that Zanidean -- that the negotiations were
14 going on with Zanidean related to witness
15 protection; is that right?

16 A Yes.

17 Q And did Preston say anything to you about
18 putting a decision off? That's not noted at
19 all, there is nothing in your notes that says
20 that Preston says he was going to put a decision
21 off?

22 A No.

23 Q No. All Preston said, according to your last
24 note, is that he would speak to the detachment
25 in Swift Current and get a better handle on the

1 situation. Is that right?

2 A He would speak to the OIC Crim Ops.

3 Q In Regina?

4 A Yes.

5 Q Sorry, all right. But he was on the spot in

6 Swift Current, and the reason he called you was

7 that he wanted to sort of know what was going on

8 with Zanidean in the investigation of Driskell

9 and so on?

10 A I would imagine he would have been contacted by

11 the members in Swift Current, yes.

12 Q Okay. And he called you to find out the

13 situation?

14 A Yes.

15 Q You filled him in on the situation?

16 A On what was going on, yes.

17 Q On what was going on. And did you mention --

18 and he then said that he would -- you gave him a

19 better handle on the situation and he would

20 report back or whatever to them. When I say

21 them, I mean the Swift Current detachment and

22 the OIC in Regina?

23 A Yes. He indicated there that he was going to

24 the OIC Crim Ops in Regina. He didn't say

25 whether he would go back to the Swift Current

1 Detachment, but he may have.

2 Q But you never heard from Preston again?

3 A No.

4 Q So he didn't tell you whatever decision he had
5 made, or what instructions he had given to Swift
6 Current Detachment?

7 A No, sir.

8 Q No. Now, if you go, sir, to tab 21? This was a
9 note that you sent to the OIC in Calgary, did
10 you, or in Ottawa?

11 A No, this went to Edmonton.

12 Q To Edmonton?

13 A K Division, yes.

14 Q And you also sent a copy of it to Ottawa, I
15 gather, did you?

16 A Yes.

17 Q And you also sent a copy of it to D Division in
18 Winnipeg?

19 A No, it is from D Division, Winnipeg.

20 Q Sorry, it is from you, sorry, you were in D
21 Division. And it was in reply to what is in tab
22 20?

23 A The message from Ottawa?

24 Q Yes?

25 A Yes.

1 Q And you didn't send a copy of this, I gather, to
2 F Division in Saskatchewan?

3 A No, it doesn't appear to. What is in there had
4 nothing to do with what was going on in
5 Saskatchewan so --

6 Q The only reason I ask, sir, is you had some
7 discussions already with, at least with Preston
8 and with Upton about Zanidean. And then
9 wanting -- and you checked with Upton as to what
10 the situation was with him, and he told you the
11 file is closed. Would that be the reason that
12 you decided that as far as you were concerned,
13 Swift Current no longer had any interest in
14 Zanidean?

15 A No, they are two different things. This deals
16 with the assistance that we were providing to
17 the City Police, and the other one was referring
18 to this immunity issue that was somewhere.

19 Q Okay. So this relates really to that Calgary
20 situation when Zanidean went out there and who
21 was paying the cost on it and so on?

22 A Yes.

23 Q And this had nothing, of course, to do with
24 Swift Current?

25 A Exactly.

1 Q And the reason you didn't copy Swift Current is
2 because it had nothing to do with Zanidean
3 deciding to go to Calgary and wanting to take
4 his dogs and so on?

5 A No.

6 Q And the concern that was being expressed by your
7 superior, by the other divisions, was, who is
8 paying for this guy? That was basically it,
9 wasn't it? Who is going to be paying the
10 freight for Zanidean going to Calgary and who is
11 going to be responsible for the costs and so on?

12 A They knew who was going to be paying for it.

13 Q Now, if you could go to tab 30, please, sir?
14 Now, firstly, the first note here is that Bruce
15 Miller called you, and you have written that
16 there is a reference to a letter. As Mr. Code
17 indicated last week, we have no indication of
18 any letter having been sent from Mr. Kovnats.
19 Be that as it may, Mr. Miller phoned you and
20 provided the information that you have written
21 there; is that right?

22 A Yes.

23 Q And specifically number 3 was that Mr. Kovnats
24 wanted assurance of immunity with respect to the
25 investigation in Swift Current. Is that right?

1 A Yes.

2 Q And you told him that you would contact Swift
3 Current and find out what the existing status
4 was?

5 A Yes.

6 Q And you also at that time, according to your
7 note, discussed a number of points, including
8 the aspect of a single payout to Zanidean. And
9 then you said that you advised that you would
10 check with Swift Current and see what the
11 standing was, or what the situation was. Is
12 that right? I'm on page 1, sir.

13 "I advised that I would check with Swift
14 Current and see what the standing was."
15 Middle paragraph, sorry?

16 A Mr. Miller and I discuss, right?

17 Q Yes?

18 A A number of points.

19 Q Sorry, I have mine highlighted, it may not be as
20 easy for you to pick it out.

21 A I have got it here.

22 Q In any event, you told him that you would check
23 with Swift Current and see what was going on?

24 A Yes.

25 Q But in that same conversation, you discussed

1 with Miller the idea of a single payout to
2 Zanidean in place of putting him in witness
3 protection; is that right?

4 A Yes.

5 Q Is that the first time that you discussed it
6 with him, do you know?

7 A I haven't seen it anywhere else in my notes, so
8 that may be the first time I did.

9 Q Okay. In any event, the next day, May 30th, you
10 have a note that you received a call from
11 Constable Ross Burton, who advised that there
12 would be no proceedings against Zanidean, either
13 as a witness or an accused, if he is accepted
14 into the program.

15 Now, are you sure that call took place?

16 A It is written right here.

17 Q Okay. Did you write it contemporaneously with,
18 or immediately after you got off the phone with
19 Burton?

20 A Usually it would be immediately after, or soon
21 after I got off the phone.

22 Q Okay. And he told you that if Zanidean went
23 into the Witness Protection Program, no charges
24 would be laid against him?

25 A That's what I have written here.

1 Q And whether or not it was immunity or there
2 wasn't a charge laid, the impact was the same,
3 Zanidean would not be called to account for
4 whatever participation he may have had in the
5 Swift Current fire; is that right?

6 A If he was taken into the Witness Protection
7 Program, yes.

8 Q Was there any discussion with Burton at all
9 about a lump sum payment and what impact it
10 would have?

11 A No, sir.

12 Q But the purpose of the lump sum payment was, in
13 essence, the same as the Witness Protection
14 Program, to protect Zanidean; correct?

15 A Yes, it was.

16 Q And did you interpret -- well, you didn't
17 discuss the lump sum payment with Constable
18 Burton at all?

19 A No, sir.

20 Q And you didn't discuss it with Preston either, I
21 gather?

22 A They didn't have to know about it.

23 Q Okay. And when you say they didn't have to know
24 about it, what makes you say that?

25 A Because we weren't dealing, going to be dealing

1 at all in F Division. We were dealing at the
2 time with the people in Alberta.

3 Q Okay. But I'm talking about the lump sum
4 payment that you had talked about with Miller,
5 in lieu of Zanidean going into the Witness
6 Protection Program, not just one trip to
7 Calgary, but a lump sum payment of \$20,000?

8 A It wouldn't be necessary to talk to them about
9 it.

10 Q It wouldn't be necessary?

11 A To talk to Swift Current about it, no.

12 Q What about this whole issue of immunity?

13 A What about it?

14 Q Well, assuming for a moment that Zanidean
15 decided to take the lump sum payment in lieu of
16 the Witness Protection Program, did you not
17 expect that he would want that same immunity?

18 A I can't tell what he would have wanted.

19 Q I see. But did you not see fit to discuss with
20 Swift Current the fact that rather than going
21 into the Witness Protection Program, we might be
22 giving a lump sum payment to Zanidean for the
23 purposes of relocating him?

24 A No, I wouldn't discuss that there.

25 Q I see. But the effect of the \$20,000 was

1 supposed to be the same thing, the relocation of
2 Zanidean for his protection?

3 A Yes, it was.

4 Q Yes. But you didn't discuss it with Swift
5 Current at all?

6 A No.

7 Q I can keep going, Mr. Commissioner.

8 THE COMMISSIONER: No, this is probably a
9 convenient time.

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

12 (Proceedings recessed at 3:27 p.m. and
13 reconvened at 3:45 p.m.)

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

16 BY MR. ABRA:

17 Q Mr. Orr, I would like to take you back, please,
18 to tab 30. The last entry there that you have
19 got on May 30th of 1991, at 11:00 o'clock, is
20 the one that we were talking about earlier,
21 about your conversation with Constable Burton,
22 and that he told you that there would be no
23 proceedings against Zanidean, either as a
24 witness or an accused if he is accepted into,
25 and your words were, "the program."

1 Now further down, the last two lines of
2 that same page, sir, you wrote,
3 "Constable Burton requests that the info on
4 charges not being laid against Z...",
5 who would be Zanidean, I assume,
6 "...be withheld from everyone else as they
7 would really like to obtain the statement
8 from Driskell and nail his sister."

9 Did Burton tell you that?

10 A That's what I wrote down, yes.

11 Q Now, you had told Miller the day before in your
12 conversation with him that you would find out
13 what was going on in Swift Current and would get
14 back to him. Right?

15 A Yes.

16 Q And then you spoke to Burton the next day on the
17 30th, and he told you about their position with
18 respect to immunity, but also told you not to
19 say anything to anybody because they wanted to
20 interview Driskell; right?

21 A Yes.

22 Q I'm suggesting to you, sir, that as a result of
23 that, you did not phone Miller and tell him what
24 the situation was in Swift Current and you have
25 no note of it for that reason?

1 A I was making the phone call on behalf of
2 Mr. Miller, I would think that I had got back to
3 him and just forgot to put it on the file.

4 Q Well, you told Mr. Code the other day, well, I
5 must have gotten back to him, but there is no
6 note of it on your file?

7 A No, there isn't.

8 Q No. As you told Mr. Prober earlier, you do note
9 everything, or you told Mr. Lockyer that you do,
10 any significant fact, you do note?

11 A Yes.

12 Q Yes. And that was a pretty significant fact,
13 because the whole point of Miller's original
14 call was for to you find out what was going on
15 in Swift Current. You did from Burton, but he
16 asked you to remain quiet about it. And I'm
17 suggesting to you, as a result of that, you
18 didn't phone Miller back to tell him the
19 situation? I'm not being critical, I'm just
20 saying you didn't.

21 A I may or may not have.

22 Q You don't know?

23 A I don't know.

24 Q Now, I would like to go to tab 38, sir.

25 Now, this I gather is basically a synopsis

1 of some phone calls that you have had, as you
2 say, during the previous couple of weeks; is
3 that right?

4 A Yes.

5 Q And by this time you are getting requests for
6 information from Scowby, who is in Saskatchewan,
7 is he not?

8 A Yes.

9 Q And from Staff Sergeant Wayne Marcella. Is he
10 also in CROPS, in Criminal Operations in
11 Saskatchewan?

12 A Yes, he is.

13 Q And they are wanting to know what is going on
14 with Zanidean; is that right?

15 A Yes.

16 Q Okay. Now, you then wrote this quote about,
17 "Apparently in the past while Driskell's
18 lawyer, Greg Brodsky, has indicated to
19 Swift Current RCMP that he has a transcript
20 of a conversation between Driskell and
21 Zanidean and so on."

22 And it goes on to say,

23 "Apparently what Brodsky is trying to do is
24 discredit Zanidean's testimony when he said
25 he burned his sister's place for revenge as

1 he hated his sister."

2 Now, did you learn that in these various
3 conversations with Scowby and Marcella and so
4 on?

5 A Probably, yes.

6 Q And was it your impression from those
7 conversations that Brodsky only learned about
8 the Swift Current fire and Zanidean's part in it
9 at the trial?

10 A I'm not --

11 Q You don't remember.

12 A I don't remember. I didn't form an impression,
13 no.

14 Q Because we have heard quite a bit of evidence so
15 far that Mr. Brodsky was well aware of that
16 situation and Zanidean's participation well
17 before the trial. But you don't recall now what
18 your impression was?

19 A Not at all.

20 Q Now, on page 2 of that same memorandum, you
21 wrote and I quote, and this is talking about
22 your conversation with Burton now -- you told us
23 earlier I believe that you only had one
24 conversation with Burton; is that right?

25 A Yes.

1 Q So this then is a kind of a rehashing of what
2 you recalled you previously discussed with
3 Burton about Zanidean; is that right?

4 A True.

5 Q And you said to Burton, and you then wrote that
6 you made it known to Burton,

7 "If Zanidean is charged and found guilty
8 and sent to jail, Driskell will ensure that
9 he does not walk out. This has been made
10 quite evident from previous conversations
11 when Zanidean was being processed for
12 possible witness protection."

13 Do I take it from that, that in essence what you
14 said to Burton was, this guy needs protection,
15 no matter how it is done, because if he goes to
16 jail, Driskell is going to get him?

17 A Yes, I was just explaining the facts as I saw
18 them and from the application documents.

19 Q And I'm suggesting to you, sir -- well, is it
20 fair to say that, from your perspective, whether
21 Zanidean got a lump sum payment for protection,
22 for his own relocation and for protection, or
23 whether he went into witness protection, the
24 implications were the same, if he got charged in
25 Swift Current there was going to be trouble for

1 him?

2 A Could have been.

3 Q Yes. And you may have said that to Burton?

4 A Yes, I may have, yes.

5 Q Now, the next page, and I assume it is the same
6 day, is it, Mr. Orr, you say, and I quote:

7 "I was able to advise my counterpart in
8 Regina that Zanidean was not part of the
9 protective plan, and my conversation with
10 Mr. Miller today it would appear that the
11 Manitoba AG's will be paying out a \$20,000
12 relocation payment to Zanidean."

13 Now, when you say your counterpart in
14 Saskatchewan, that's the F Division witness
15 protection person?

16 A Yes.

17 Q And you are explaining to him that Zanidean may
18 be going into witness protection or he may be
19 getting a lump sum payment, but the whole
20 purpose of the lump sum payment is for his
21 protection and relocation?

22 A Yes, they would have understood that.

23 Q And you told your counterpart in July, or gave
24 that information to your counterpart on
25 July 16th. It is all part of the same

1 memorandum?

2 A Yes.

3 Q Now, if you go to tab 40, please, sir? This
4 again relates to a telephone conversation that
5 you apparently had with Bruce Miller. And when
6 you say you explained the situation to him, this
7 related to -- did you tell him that Brodsky was
8 telling everybody that Zanidean might have lied?

9 A Probably just the information that I had
10 received from the guys in F Division, yes.

11 Q Okay. And you passed it on to Miller in a phone
12 call?

13 A Yes.

14 Q Now, you were aware of the fact that he had not
15 done the trial, he was not the Crown prosecutor
16 for the trial?

17 A Yes, sir.

18 Q You were aware of that?

19 A Yes, sir.

20 Q Were you aware of the fact that it was George
21 Dangerfield and Gregg Lawlor that in fact had
22 prosecuted Mr. Driskell?

23 A Yes, sir.

24 Q And when you received this information about
25 Zanidean from F Division, you knew that Miller

1 didn't know anything about the evidence that had
2 gone in at the trial so you suggested that they
3 call Lawlor?

4 A He recommended to me.

5 Q Pardon me?

6 A Bruce represented to me that I call Lawlor, or
7 have Swift Current call Lawlor.

8 Q And did you pass that on to Swift Current?

9 A I contacted Brian Scowby in F Division, yes.

10 Q And it was left at that?

11 A Yes.

12 Q With respect to Zanidean, you were aware of the
13 fact almost from the beginning that Miller was
14 quite hands-on as it related to Zanidean and the
15 negotiation of a protection package for him?

16 A Yes, sir.

17 Q Yes. With respect to Gumieny, I'm suggesting to
18 you that you hardly had any, in fact, had no
19 involvement with Miller as far as Gumieny was
20 concerned?

21 A Without benefit of my notes here from the file
22 or the file that was destroyed, I couldn't tell
23 you if I was talking to Bruce about it or not.

24 Q All right. The Gumieny matter was a sort of
25 fait accompli, right after he testified he went

1 into witness protection; is that right?

2 A Yes.

3 Q You were aware of the fact that Sergeant

4 Williams and Osborne of the Winnipeg Police

5 Service had been babysitting Gumieny throughout

6 the whole process prior to him testifying?

7 A Yes, sir.

8 Q To your recollection, was it Williams and/or

9 Osborne that in fact told you what the deal was

10 with Gumieny?

11 A Told me what what deal was?

12 Q That he was going into witness protection, and

13 once the agreement was made, that it was just

14 done, he signed it and he was gone. Is that

15 fair?

16 A No, that's not quite the way it works.

17 Q So he signed the agreement, he signed the

18 memorandum of understanding, and he signed the

19 letter of agreement, which are the three

20 documents, are they?

21 A He signed the letter of agreement, yes, prior to

22 the move.

23 Q Okay. And who gave it to you, do you remember?

24 A Who gave it to me?

25 Q Yes?

1 A I would have been there when it was signed.

2 Q Pardon me?

3 A I would have been there when it was signed.

4 Q Okay. Do you remember the signing at all?

5 A No, I don't. But obviously we did because he

6 went into the program so --

7 Q Okay. And the terms of it were pretty well laid

8 out, almost from the beginning, as to what was

9 going to happen. He was going to be relocated,

10 he was given protection, he agreed to take the

11 supervision that Zanidean didn't, he agreed to

12 follow orders that Zanidean wouldn't and so on.

13 Is that fair?

14 A Pretty well followed the standard LOA, yes.

15 Q Yes. And is it fair to say that because the

16 Gumieny matter went much smoother than the

17 Zanidean matter, that 15 years later your

18 recollection of Zanidean is a lot better than it

19 was with respect to Gumieny?

20 A Might be because I had the file to review too.

21 Q You didn't remember a lot about Zanidean either,

22 is that what you are saying? And I'm not being

23 critical.

24 A No.

25 Q But after 15 years, you didn't remember very

1 much about either one of them?

2 A No, sir.

3 Q But having said that, you did remember that
4 Zanidean was a bit of a piece of work?

5 A Yes, sir.

6 Q That's something that would stick -- is it fair
7 to say he was one of the more difficult people
8 that you dealt with in your time in that
9 program?

10 A Yes, he was.

11 Q And Gumieny wasn't anywhere near the same?

12 A Not initially, no.

13 Q When you say initially, prior to these problems
14 that arose later?

15 A Yes.

16 Q Okay. That's fine, thank you very much,
17 Mr. Orr. No further questions. Thank you
18 Mr. Commissioner.

19 THE COMMISSIONER: Thank you, Mr. Abra.

20 MR. OLSON: I have no questions of Mr. Orr.

21 THE COMMISSIONER: Thanks, Mr. Olson.

22 Mr. Wolson.

23 BY MR. WOLSON:

24 Q Good afternoon, Mr. Commissioner. Sergeant Orr,
25 I introduced myself to you this morning,

1 although it seems like a long time ago. I'm one
2 of the last standing now, so you are almost
3 done.

4 The Winnipeg Police Service had no Witness
5 Protection Program themselves, so they had to
6 work with you?

7 A Yes, sir.

8 Q And you didn't liaise, at least from what I
9 gather from your evidence, with any officer in
10 particular on a constant basis, it was a
11 different officer on different cases, or do you
12 remember?

13 A In the Zanidean matter, it was mostly with Bill
14 Vandergraaf.

15 Q Yes, but the point I make is he wasn't the
16 officer in charge of liaising on all witness
17 protection matters, he did though on Zanidean's
18 matter?

19 A Yes.

20 Q And --

21 A And he was subsequently our contact person
22 whenever we had other dealings.

23 Q So this was the first time, to your knowledge,
24 that you had dealt with him?

25 A I believe it was.

1 Q And your involvement with the Winnipeg Police
2 ended at some point in April or so, and your
3 dealings were more with Mr. Miller?
4 A In the Zanidean case?
5 Q Yes?
6 A Yes.
7 Q Now, I couldn't find a note and I want to ask
8 you, are your notes regarding Zanidean and your
9 file regarding Zanidean, are they intact, to
10 your knowledge, or is what you have simply all
11 that could be found, do you know?
12 A No, they would be intact.
13 Q All right. And I couldn't see anywhere in your
14 notes a reference to meeting with Tom Anderson.
15 Do you recall having many meetings with him or
16 talking to him much at all?
17 A No, not at all.
18 Q So you would expect that he would be briefed by
19 Vandergraaf, whom at least initially you had
20 some meetings with and some discussion with?
21 A Yeah. And there may have been a meeting like
22 prior to all of this happening, you know, we
23 have a couple of witnesses that may be going in,
24 that type of thing, but I can't remember
25 specifically.

1 Q Now, Mr. Code, in talking with you and asking
2 you questions, referred to your notes at times,
3 as he called them, you have cryptic notes. You
4 would say, though, that your notes depict the
5 essence of each of your conversations or
6 transactions, and that's why you made the notes?

7 A Yes, sir.

8 Q Now, your first meeting with David Kovnats is
9 set out in tab 5 of the materials on March 25th.
10 Do you recall whether Zanidean was with you at
11 that meeting?

12 A I don't believe he was.

13 Q I'm assuming that there was no March the 6th
14 meeting where Kovnats was present with Zanidean
15 and Fehr and Vandergraaf, and I ask that because
16 Kovnats has a memo in his file, or a
17 reconstruction note in his file of a meeting on
18 March 6th. But I see none of that in your
19 notes?

20 A No, sir.

21 Q And you would say there wasn't such a meeting,
22 otherwise you would have noted it?

23 A I did not attend the meeting or I would have
24 noted it.

25 Q He says you were there March 6th, but you would

1 say that's likely -- he is confused in some
2 respect, you would say?

3 A Could be.

4 Q Because you have no note of a March 6th meeting?

5 A No.

6 Q And Kovnats, in your meeting with him on the
7 25th, and you've made notes which give the
8 essence of that meeting; true?

9 A Yes.

10 Q He appeared to have a mistaken impression
11 implanted, he says by the Crown, I take it, that
12 the RCMP was going to act as financial
13 benefactor here?

14 A Yes.

15 Q As I read your tab 5, the note on tab 5, while
16 you would have had the so-called December 14th
17 shopping list of Mr. Kovnats that my friend,
18 Mr. Code, referred you to in his examination of
19 you, as I read your tab 5, there is a discussion
20 about protection and what the program, the
21 Witness Protection Program could provide.
22 That's one thing that was discussed?

23 A Yes.

24 Q "He was referred to the Crown for
25 financial matters."

1 That's another thing that was discussed?

2 A Yes.

3 Q But you don't have any note at this meeting at
4 all about anything to do with the Swift Current
5 arson. I'm assuming that that wasn't a major
6 issue raised by Kovnats or you would have noted
7 it?

8 A I assume.

9 Q You assume that?

10 A Yeah, because I didn't write anything down about
11 it.

12 Q Because, as you indicated to the Commissioner,
13 you would have noted everything that you thought
14 was important at the time, in summary fashion,
15 to give us, or to give you later a memory aid?

16 A Yes, sir.

17 Q And the purpose you took, or at least one of the
18 points that you took and you noted in your
19 statement with Commission Counsel, your
20 interview with him, you indicated that you were
21 there in part to correct some of Kovnats'
22 mistaken perceptions about the program?

23 A Yes, sir.

24 Q He didn't tell you, again, because you would
25 have recorded it, he never said words to the

1 effect that the Winnipeg Police Service has
2 offered Zanidean immunity? That wasn't
3 something that Kovnats raised with you or you
4 would have noted it; you would agree with that?

5 A Yes.

6 Q I want to ask you a few questions about your
7 impression of David Kovnats, because you met
8 with him on that date, you had a number of phone
9 discussions with him; true?

10 A True.

11 Q You met with him at a later date, along with
12 some of the members of the -- or along with
13 Vandergraaf and Miller. You would say, I take
14 it, if you recall, that Mr. Kovnats was a fairly
15 excitable guy?

16 A I don't recall.

17 Q You have no memory of Mr. Kovnats?

18 A No, sir, I don't.

19 Q Now, Zanidean, at the beginning of your dealing
20 with him, he appeared to be reasonable at the
21 very beginning? You would say that, you have
22 not made a note to the contrary, I take it?

23 A I don't know if I would have said he was
24 reasonable at the outset. Usually a person
25 that's going into the program on behalf of

1 another police force does not phone the
2 coordinator and say, what is going on with my
3 case?

4 Q But he was basically calling you to say things
5 like, why haven't you contacted my lawyer? He
6 wasn't making outrageous demands at the
7 beginning, but incrementally those kinds of
8 demands were forthcoming from him?

9 A Exactly.

10 Q Would you say that near the end of your dealing
11 with him that his personality had become very
12 ugly? He had made a threat to you that we will
13 get to shortly?

14 A Yes, sir.

15 Q And the recurring theme that he would tell you,
16 when he spoke to you was, and this was a
17 recurring theme, was that the Winnipeg Police
18 Officers that he was dealing with were not
19 prepared to do much for him? He would tell you
20 that quite often, and therefore he would have to
21 call you to see if you could help him?

22 A Or anybody else that he was dealing with, yes.

23 Q Now, you were asked by Mr. Code, when he
24 examined you, about whether or not an
25 outstanding charge per se is a bar to the

1 admission to the program?

2 A Yes.

3 Q You recall being asked that?

4 A Yes.

5 Q And your evidence is, well, it is not a bar, it
6 is a complication?

7 A Certainly.

8 Q And I'm assuming that the more serious the
9 outstanding charge, the more high profile the
10 outstanding charge, the bigger the potential for
11 complication?

12 A True.

13 Q So if somebody had a theft charge or an impaired
14 driving charge, or an assault charge where it
15 wasn't high profile and no jail term might be
16 attendant to it, you would not consider that to
17 be too complicated?

18 A No, sir.

19 Q But here you had an arson case, not just an
20 arson but one that we have been told was quite
21 high profile for the City of Swift Current, and
22 one where there was actually an explosion. So
23 this was a serious charge?

24 A Fairly serious, yes.

25 Q And it was expected that if Zanidean were

1 convicted, charged and convicted of this
2 offence, a jail term would likely follow, either
3 in a penitentiary or in a Provincial jail. That
4 was something that you raised at a later time,
5 indicating that if he were convicted and jailed,
6 he would have a major problem?

7 A True.

8 Q You had talked about ways of protecting somebody
9 if they had an outstanding charge. And one of
10 the things that you talked about with Commission
11 Counsel in your discussion, your interview with
12 them, was you could employ, or the authorities
13 could employ segregation. They would have
14 somebody with an outstanding charge in a
15 segregated area of a jail, that's one thing?

16 A Um-hum.

17 Q Your answer is yes?

18 A Yes.

19 Q But those that know the justice system, and as a
20 police officer you would know that somebody like
21 Zanidean would be considered to be an informant
22 and on the lowest rung of the prison scale, or
23 very low, you would know that?

24 A Yes, sir.

25 Q And you would also know that news travels pretty

1 quickly in a prison?

2 A Yes, sir.

3 Q And that caused you to say, and it has been
4 covered at tab I think 39, you would say and you
5 did say to the Officer Burton that if he goes to
6 jail, Zanidean, I think the words you used are
7 that Driskell will ensure that he doesn't walk
8 out. You said that?

9 A That's true, yes.

10 Q Connoting that if this man went to jail, he was
11 likely a dead man. That's what that meant?

12 A Yes, based on the material that we had received,
13 on the original application.

14 Q So, this outstanding arson was a complication
15 that was fairly substantial in terms of
16 complications, you would say that? It was a
17 serious matter that had to be dealt with?

18 A It had to be dealt with, yes.

19 Q I don't know whether you know this, but we had
20 an officer here of 36 years experience, Officer
21 Ferguson, who noted that it was his
22 understanding of the program, the Witness
23 Protection Program, that if somebody were
24 charged while in the program, it would be
25 contrary to the legislation that he referred to.

1 So you would agree that while you understand the
2 Witness Protection Program, it is often
3 misunderstood, and we have seen instances of it
4 in this case?

5 A Very true.

6 Q And what you can say is that you may well have
7 told either Anderson or Vandergraaf that this
8 was -- and that's why in answers to my friend,
9 Mr. Lockyer, you weren't definitive on what or
10 how it might have been interpreted by
11 Vandergraaf or Anderson. It may well have been
12 misinterpreted, and you would agree?

13 A It may have been.

14 Q Misinterpreted that they may have thought it was
15 a bar because of the complicating factors,
16 whereas you didn't intend to convey that; you
17 would agree with that statement?

18 A Could be.

19 Q You may have told them that a charge like the
20 arson may well delay the employment of Witness
21 Protection Program? That's a factor that
22 certainly exists --

23 A Yes.

24 Q -- with an outstanding serious charge?

25 A Yes.

1 Q The letter of agreement was never signed by
2 Zanidean?

3 A No, it was not.

4 Q Never got that far?

5 A No.

6 Q Now, I want to take you to the actual document
7 itself, the application for witness protection
8 at tab 2 of the materials. Would you go there,
9 please? And this application would have likely
10 been filled out by someone at the police
11 service?

12 A Winnipeg Police Service, yes.

13 Q Part 5, which is page 32 at the bottom
14 right-hand corner.

15 "This witness has requested through his
16 lawyer immunity from prosecution relating
17 to an arson in Swift Current in 1990."

18 You can see that? Yes? Page 32, last about
19 three or four lines, are you with me on that,
20 sir?

21 A Yes.

22 Q And there is a reference to part 7 as well,
23 which I want to cover with you. And then if you
24 just go over the page to page 33, there is a
25 clear indication that there were no promises to

1 the witness regarding immunity. You see that,
2 page 33, last four lines?

3 A Yes.

4 Q And more than that, what the author of this
5 document has noted was,

6 "With respect to his role in the Swift
7 Current arson, we have informed him..."

8 So this is what Zanidean would have known,

9 "...that we notified Swift Current RCMP who
10 are investigating independently and without
11 any request of favour or bias."

12 So you would say that Zanidean would not know
13 anything about any requests by anybody, or any
14 suggestions by anybody about the Swift Current
15 matter? He was simply told, according to this,
16 that the Winnipeg Police would tell Swift
17 Current and then it was up to them to
18 investigate. That's what that means to you?

19 A Yes, sir.

20 Q And then, most importantly, if you turn to page
21 37, bottom right-hand corner, under part 7,
22 4(c); are you there?

23 A Yes.

24 Q Go halfway to the page,

25 "Constable Burton confirms they are

1 investigating."

2 Burton is with Swift Current RCMP, you know
3 that?

4 A Yes.

5 Q And here it is right here.

6 "Constable Burton has agreed not to pursue
7 Zanidean at this time, but will continue
8 investigation once our trial is concluded."

9 So when you phone to Swift Current, you needed
10 to know in terms of what was going to be Swift
11 Current's position, because you had a
12 complicating factor that we have talked about;
13 true? The arson?

14 A Yes, sir.

15 Q And it wasn't satisfactory to know that they
16 were simply going to put their pursuit of
17 Zanidean on hold until after the trial, you
18 wanted to know more than that, you had to know
19 more than that?

20 A Yes, sir.

21 Q And thus your call to Swift Current at tab 13,
22 if you go to tab 13? So, you need to know from
23 Swift Current not just that they are going to
24 hold their pursuit of Zanidean until after the
25 trial, but you are wanting more information. So

1 on that basis you make a call 91/04/12, you
2 noted at 10:55; right?

3 A Yes.

4 Q And what you say is, and this is where you are
5 sort of getting up-to-date on your note keeping,
6 you say,

7 "Further to my call on the 4th of April..."

8 So now you are talking about the fact that you
9 called Swift Current on the 4th of April. That
10 is how you would read that, wouldn't you?

11 A Yes.

12 Q "Further to my call of the 4th..."

13 A Yes.

14 Q And then you say.

15 "At that time...",
16 meaning the 4th of April, true?

17 A Yes.

18 Q You spoke to second in command, Sergeant Upton,
19 and explained the situation with Zanidean as in
20 note 7. True? That's what you said?

21 A Yes.

22 Q And the part of part 7 that you needed the more
23 information on was, okay, Swift Current you are
24 going to put the investigation in terms of the
25 pursuit of Zanidean on hold, but you would need

1 to know, what are you going to do ultimately?

2 That's why you were calling and that's what you
3 told them?

4 A Yes, sir.

5 Q Yes. Now, you are speaking to Sergeant Upton,
6 and you may or may not know this, but we have
7 been told at this Inquiry that Upton was the
8 acting commander at that time, because Ferguson,
9 who was the detachment commander says he was
10 away at that time. So you are talking to the,
11 you may not know that, but you were talking to
12 Upton, who was in control.

13 MR. CODE: I'm not sure that was suggested.

14 MR. WOLSON: My friend, Mr. Code, said that
15 Ferguson thinks that might be case. So let's
16 carry on here.

17 THE WITNESS: I noted in here that he was 2 IC
18 of the detachment, in the notes.

19 BY MR. WOLSON:

20 Q That's right. So you then tell him that
21 Zanidean and Driskell were probably responsible
22 for burning Zanidean's sister's garage. It
23 appeared that Upton didn't really know very much
24 about this file, that was clear by your
25 discussion with him. Because what he says to

1 you is he would have Burton, who was the
2 investigator, call you?

3 A Yes, sir.

4 Q So what he is basically saying to you is, you
5 know, let's let the investigator who knows the
6 file give you a call, because I don't. That's
7 what you took from that, that's why he was going
8 to have the fellow more knowledgeable give you a
9 call?

10 A Yes, sir.

11 Q Now, we have also been told that Upton didn't
12 involve himself in investigations for the most
13 part, and he was more of an office guy. So that
14 would be consistent with him saying to you,
15 let's have the investigator call you, so he
16 knows what you are talking about?

17 A Right.

18 Q And you would want to talk to the person that
19 was most familiar with the file, that's someone
20 that you would want to talk to, of course?

21 A Usually, yes, sir.

22 Q Now, Burton, who we are told is a very diligent
23 guy, doesn't call you back; true?

24 A True.

25 Q You are told by Upton that Burton will call you,

1 and he doesn't call.

2 A That's true.

3 Q You may not know this, but we know that on the
4 5th of April, Burton and Sergeant Tom Anderson
5 had a conversation. So, Burton, while he
6 doesn't call you, speaks to Sergeant Anderson
7 the very next day, the 5th. You would have
8 expected Upton to brief the investigator as to
9 your call? That would be a natural thing in a
10 RCMP detachment, you would expect that?

11 A Yes, sir. But not an immediate call back, I
12 mean --

13 Q But you would expect at some point Upton to
14 brief, to go to Burton and say, hey, I got a
15 call from Orr in Winnipeg, this is what he
16 wanted to know. That's common sense, you would
17 expect that?

18 A Yes.

19 Q Well, you are waiting and you don't get a call
20 back from Burton. You say in your note,
21 "As there was no call, I talked to Upton
22 again."

23 Which is now some week later on the 12th?

24 A On the 12th.

25 Q Now, Upton didn't call you back, or didn't speak

1 to you I should say, because you called him,
2 Upton didn't say, hey, where do you get this
3 information that you had told him about that
4 Swift Current was holding off their pursuit of
5 Zanidean until after the trial, that's nonsense;
6 he didn't say that to you, did he?

7 A No, sir.

8 Q But what he did say to you was actually
9 something to the contrary. He said to you,
10 Swift Current will be concluding their file and
11 Zanidean is no longer wanted for questioning.
12 Right?

13 A Yes, sir, that's what I wrote down here.

14 Q And you never expected that necessarily at all,
15 did you? You never expected him to say that?
16 You thought that you were going to have a
17 complicating factor and somehow you would have
18 to deal with it. That's what you thought?

19 A True.

20 Q And in your interview with Commission Counsel at
21 page 7, and I won't take you there, just to
22 indicate that you took this to mean, what Upton
23 was telling you, that Swift Current was no
24 longer interested in charging Zanidean --

25 A Yes, sir.

1 Q -- with the arson. Now, if you just go to tab 8
2 for a second, page 2 of tab 8, about halfway
3 down the first paragraph; are you on tab 8?

4 A Yes, I am.

5 Q And this is an account of Sergeant Tom Anderson
6 about his interaction with Constable Burton of
7 the RCMP, and what he said at page 2 is as
8 follows:

9 "I discussed the situation with him..."
10 this is talking about a call he had had with
11 Swift Current.

12 "He said there was no other evidence
13 against Reath Zanidean at the time."
14 This is his initial call. And he says,
15 "Burton made a suggestion to which I
16 readily agreed. He offered to delay their
17 pursuit of Reath Zanidean until after he
18 testified at our murder trial."

19 Do you see that.

20 A Yes.

21 Q That's exactly what is noted under section 7 of
22 the witness protection application?

23 A Yes, sir.

24 Q And that's what you would have put to Upton when
25 you spoke to him, because as we talked a few

1 minutes ago, that's what you needed
2 clarification on; you know, I understand that
3 you are holding off, but what are you going to
4 do later? That's something that Upton was told
5 by you, that was the purpose of your call. And
6 Upton never said to you, he never said to you,
7 hey, where do you get this information from,
8 that's nonsense? That never happened?

9 A I may have -- I don't know if I referred
10 specifically to that or if I was just asking him
11 in general what was going on with --

12 Q Well, what you did is you referred to part 7 and
13 that's in your note at tab 13. So that's what
14 you needed to know?

15 A Okay.

16 Q All right. And while you are at page 2 of tab
17 8, let me take you to the third paragraph.
18 Because we know in April there was another call
19 that Sergeant Anderson had with Constable Burton
20 in Swift Current, and let me take you to, oh,
21 about five lines into the third paragraph, page
22 2, tab 8, where Sergeant Anderson writes:

23 "I had two further conversations with
24 Burton."

25 Well, that may be somewhat at issue. But he

1 says,

2 "During the first conversation, I explained
3 the dilemma..."

4 And I let you know, sir, that the dilemma was
5 Zanidean can't get into the Witness Protection
6 Program if there is an outstanding charge, and
7 we have covered that in my questions with you
8 already. And what Burton says,

9 "I believe he had already talked to
10 Corporal Orr."

11 Right? That's what you read there, do you see
12 that?

13 "I believe he said he already had talked to
14 Corporal Orr."

15 You know you never talked to Burton, but you did
16 talk to his superior, Upton; right?

17 A Right.

18 Q And it may well be that Upton briefed Orr,
19 that's something you would agree with? That's
20 something that Upton would do if you called him,
21 he would brief the investigating officer? The
22 investigating officer would want to know that?

23 A Brief Burton?

24 Q Yes?

25 A Yes.

1 Q I am sorry, Burton. He goes on to say,
2 "In any case he had given the matter
3 thought and he immediately offered to
4 withdraw their pursuit of Zanidean
5 entirely."

6 Do you see that?

7 A Yes.

8 Q Isn't that exactly what, some time on the 12th
9 of April, Upton had said to you?

10 A Yes, sir.

11 Q Now, I want to take you to -- you know that
12 there had been some, there is some controversy
13 about this case of whether or not, and I know it
14 is not because of you, whether or not Zanidean
15 was in the Witness Protection Program. And
16 you've been asked questions about it, and you've
17 seen that some people seem to think that he was,
18 other people weren't sure. That's what we have
19 heard so far, no one really knew. Are you aware
20 of that? Not because of you, but people seem
21 not to have known whether he was or whether he
22 wasn't in the Witness Protection Program?

23 A That may have been the case, yes.

24 Q As a matter of fact, we have -- and I will take
25 you to it in a minute -- we have Burton thinking

1 that Zanidean was in the Witness Protection
2 Program, and I will take you there to a note of
3 Burton's. We have --

4 THE COMMISSIONER: Certainly you can take it
5 from Mr. Wolson that there were a lot of
6 different views expressed by a lot of different
7 people about whether he was or wasn't in the
8 Witness Protection Plan?

9 THE WITNESS: Yes, sir.

10 THE COMMISSIONER: But we know from you that he
11 never was?

12 THE WITNESS: Yes, exactly.

13 BY MR. WOLSON:

14 Q And I suppose the point to be made here is that
15 the Witness Protection Program is a specialty
16 area that certainly you know, because you spent
17 a long time in that area; true?

18 A Yes, sir.

19 Q But because it is a specialty area and because,
20 well, we have heard that certain people in this
21 case had never dealt with witness protection
22 matters, you could understand how there could be
23 misunderstandings, honest misunderstandings?

24 A Yes, sir.

25 Q Now, I want to ask you a question and you

1 probably are able to answer this. The RCMP have
2 what we've been told are protected B files. You
3 are aware of that system of files, are you?

4 A Yes, sir.

5 Q And protected B files are for sensitive
6 information that are not meant for everyone's
7 eyes, and they are kept, we were told that Swift
8 Current, the protected B files were kept under
9 lock and key?

10 A Yes, sir.

11 Q And things such as witness protection matters
12 would be in restricted B files? We were told
13 that. Is that consistent with your
14 understanding?

15 A If not protected C, yes.

16 Q All right. So protected C is even a higher
17 standard of caution?

18 A Yes.

19 Q I suspect we will hear that the Winnipeg Police
20 had no protected files in that regard. Are you
21 aware of that?

22 A I was not aware of that, no.

23 Q Now, in your interview with Mr. Code you had
24 taken some issue with some statements that were
25 made by Officer Burton. And let me take you to

1 tab 14, if you will, please? This is a letter
2 or a memo from Burton responding to my client,
3 Tom Anderson's memo, that I had you at earlier.
4 But if you turn the page to page 3, if you will,
5 please? This is what Burton writes, second
6 paragraph, if you will, 91/04/16:

7 "Inspector Preston talked with Corporal Orr
8 who advised Zanidean is now under the
9 Witness Protection Program."

10 That's not true, is it?

11 A No, that's not true.

12 Q You never told Preston or anyone else that?

13 A I made it very clear he wasn't in.

14 Q Next sentence.

15 "After trial he will be relocated
16 permanently."

17 That's not true either. You never told Preston
18 that and that's not true?

19 A If he had been going into the program after the
20 trial, he would have been relocated.

21 Q That's not what you told Preston, you didn't
22 tell him that he is going to be in the program
23 and permanently relocated, that's not what you
24 said?

25 A At that point, I might have told him that he was

1 going to go into the program after the trial.

2 Q So you knew that around April 16, that he might
3 be in the program?

4 A The application had been made, so, yes, he might
5 have been.

6 Q But he never told you, in the next sentence,
7 "In view of this, the only course of action
8 open to us is to await the outcome of the
9 trial."

10 You never heard this?

11 A No, sir.

12 Q And let me take you to the conversation that you
13 had with Inspector Preston then, please, and
14 that can be found at tab 15 of the materials.
15 You said to Inspector Preston on the 16th of
16 April,

17 "Call received from OC Swift Current, Rick
18 Preston. He was inquiring about Zanidean
19 and his involvement with the fire of his
20 sister's place in Swift Current. The
21 hypothesis is that the sister hired
22 Zanidean and Driskell to start the fire for
23 insurance fraud purposes. She however has
24 passed a polygraph..."

25 And he says,

1 "...before being contacted by the Winnipeg
2 Police Department, he had no knowledge of
3 who was responsible for the arson."

4 That's what you noted. While they suspected the
5 sister Hayek, he didn't know about Zanidean or
6 Driskell or anything else; that's what he told
7 you and that's what you noted here?

8 A Yes.

9 Q Isn't that the same as the comment of Constable
10 Burton when he spoke to, and I referred you to
11 it a few minutes ago, when he spoke to my client
12 Tom Anderson and said to Anderson, we didn't
13 know who was responsible, we didn't know?

14 MR. GATES: With respect, that's not how I read
15 the document that my friend is putting to the
16 witness. In fairness, as I read the document,
17 what this report is saying is that she, that is
18 Carol Hayek, had no knowledge of who was
19 responsible for the arson before being contacted
20 by the Winnipeg Police Department, not he,
21 Constable Burton. This is referring to Carol
22 Hayek.

23 BY MR. WOLSON:

24 Q Let me ask you then -- and I appreciate that
25 point, thank you, Mr. Gates. Let me ask you,

1 when you made this note,
2 "...had no knowledge of who was responsible
3 for the arson...",
4 did you intend that to be what Preston told you?

5 A Yes, that would be what our conversation was,
6 yes, and it was talking about her.

7 Q And then you said,
8 "I discussed the matter with Inspector
9 Preston, explained our situation to him
10 regarding Winnipeg City Police desire to
11 keep a happy witness."

12 Now, on that note, when you were interviewed by
13 Commission Counsel, you said that's sort of a
14 common sense police officers' mentality that you
15 had raised on your own with Inspector Preston,
16 that's what you had done?

17 A Yes.

18 Q And then you said, and this is illustrative of
19 the serious complication here regarding
20 potential charges for Zanidean, you said,

21 "Included was the problem of interviewing
22 Zanidean once he became involved in the
23 protection program and the possibility of
24 difficulty should there be charges."

25 That's just illustrative of what we talked about

1 earlier? This was a serious complicating issue
2 in this case?

3 A Yes, sir.

4 Q Now, Inspector Preston didn't tell you, you
5 know, we are going to take a wait and see. What
6 he said to you was that, he stated in the last
7 paragraph, he had a letter, or he had a better
8 view of the situation and would probably speak
9 to the OIC Crime Ops F Division and let us know.
10 In other words, like Upton had said earlier, he
11 was going to get back to you?

12 A Yes.

13 Q But he didn't get back to you, and you didn't
14 hear from Swift Current until the 30th of May
15 when Constable Burton called you, and he told
16 you that if he gets -- if Zanidean gets into the
17 program, then they are not going to pursue him,
18 words to that effect?

19 A Yes, sir.

20 Q And that was about six weeks later?

21 A Yes.

22 Q Right?

23 A Yes.

24 MR. WOLSON: Mr. Commissioner, I have about 15
25 or 20 minutes more. I know that Mr. Gates may

1 have some questions and my friend, Mr. Code, may
2 have some further questions. I don't know
3 whether you would like me to continue or adjourn
4 for the day?

5 THE COMMISSIONER: No, on our current schedule,
6 this is the time we would adjourn. Now,
7 speaking of which, I don't know if we -- I had
8 some discussion about whether or not our
9 schedule might change at some point, I don't
10 know if anyone is prepared to talk about that
11 now or we can do it at another time. We
12 certainly don't have to.

13 MR. CODE: I canvassed my colleagues, with the
14 exception of Mr. Prober who was nowhere to be
15 found at the afternoon recess.

16 MR. PROBER: You constantly ignore me, Mr. Code.

17 MR. WOLSON: For good reason.

18 MR. CODE: He is hard to find. Everyone
19 agreed -- and Mr. Abra was deep in his documents
20 and I didn't want to disturb him. So subject to
21 Mr. Prober and Mr. Abra's views on this,
22 everyone was agreed with the short term solution
23 that we start early on Wednesday and Thursday to
24 make up the lost time. So two early mornings at
25 9:00 o'clock this week was the suggestion. I

1 see Mr. Abra is nodding his head and Mr. Prober
2 is checking his diary?

3 MR. PROBER: Lost time because the reporter, you
4 mean?

5 THE COMMISSIONER: No, because of the
6 Commissioner who once again has run into a
7 scheduling problem, and it is no --

8 MR. PROBER: No, problem.

9 THE COMMISSIONER: If life was always only so
10 easy.

11 MR. CODE: That's the voice of an experienced
12 counsel speaking. So I think we are all okay
13 for this week to make up early Wednesday and
14 Thursday by starting at 9:00 o'clock.

15 In terms of Mr. Wolson's sort of bigger
16 suggestion that we revamp the whole schedule, I
17 again canvassed everybody on that and got
18 substantial consensus. But perhaps since that
19 is a little bit more complicated proposal, I
20 should explain that to Mr. Abra and Mr. Prober
21 and get back to you on that. So I think this
22 week we solved the problem.

23 THE COMMISSIONER: Thank you, thank you all for
24 your consideration. And, Sergeant Orr, we will
25 see you again tomorrow.

1 THE WITNESS: Oh, good.
2 THE COMMISSIONER: I know you are thrilled. At
3 least I think I can guarantee we won't have to
4 have you come back after tomorrow.
5 THE WITNESS: That would be nice.
6 THE COMMISSIONER: We will adjourn until
7 tomorrow morning.
8 THE CLERK: All rise. This Commission of
9 Inquiry is now adjourned.

10 (Proceedings adjourned at 4:47 p.m.)

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COURT REPORTER'S CERTIFICATE

CECELIA REID and LISA REID, duly appointed
Official Examiners in the Province of Manitoba,
do hereby certify the foregoing pages are a true
and correct transcript of our Stenotype notes as
taken by us at the time and place hereinbefore
stated.

Cecelia Reid
COURT REPORTER

Lisa Reid
COURT REPORTER

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