

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

The Honourable Patrick LeSage, Q.C. Commissioner

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

Tuesday, July 25, 2006

Volume 6

INQUIRY PROCEEDINGS

COMMISSION STAFF:

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

APPEARANCES

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

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1 Tuesday, July 25, 2006

2 Upon commencing at 9:30 a.m.

3

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

6 MR. WOLSON: Good morning, sir.

7 THE COMMISSIONER: Good morning, Mr. Wolson.

8 BY MR. WOLSON:

9 Q Sergeant Orr, you are on the home stretch. I
10 was reviewing tab 10 of your document book and
11 you don't have to go there necessarily, but you
12 are advised that there was a threat made against
13 Zanidean, and this was on the 5th of April. You
14 were advised by the Winnipeg Police Service that
15 there was a threat made against Mr. Zanidean,
16 and that was sort of the genesis for you
17 arranging for a contact person in Calgary for
18 him to get him out of Winnipeg?

19 A Yes, that's true.

20 Q Vandergraaf had called you, I think on the 9th
21 of April according to the documents, and that
22 was the time where he had made a request of you
23 for a contact person in Calgary, and off
24 Zanidean went to Calgary?

25 A True.

1 Q Now at tab 22 -- so, Zanidean had been there for
2 a couple of weeks and then you started to hear
3 reports of problems, and Sergeant Vandergraaf
4 called you on the 26th and told you that
5 Zanidean had been kicked out of his hotel?

6 A Yes, sir.

7 Q And by the 29th Zanidean is back in Winnipeg
8 because you have a meeting with Ray Zanidean,
9 Susan Fehr, Vandergraaf, Miller and yourself?

10 A Yes, sir.

11 Q And at that meeting you learn that Ray and Susan
12 were having a verbal altercation that caused the
13 hotel security to become involved?

14 A Yes.

15 Q And I'm sure you weren't surprised at this, but
16 Ray Zanidean got in a fight or tussle, as he
17 referred to it as, with a Calgary police
18 constable?

19 A Yes, sir.

20 Q And you weren't surprised that Susan Fehr said
21 that what the Calgary police officer did was
22 unacceptable, and Kovnats on their behalf would
23 be making a complaint against the Calgary police
24 officer?

25 A Yes, sir.

1 Q And that's the same meeting where all of you
2 were there that Vandergraaf got cross at
3 Zanidean for his constant demands. You've
4 indicated that in your statement to --

5 A Yes.

6 Q -- or your discussions, your interview with
7 Mr. Code. And now Susan Fehr, that's the same
8 person that we are told at tab 39, on
9 July 13th -- I will wait until you get there.
10 Tab 39 is a recording by Constable Burton, and
11 at page 2 of that tab he notes at paragraph 2,
12 page 2, that on the 13th of July, Swift Current
13 members stopped Fehr for impaired driving. And
14 there is no question, by the way, Sergeant Orr,
15 that Fehr and Zanidean were not in the Witness
16 Protection Program, there was no question about
17 that?

18 A No question about that.

19 Q And there is no question they would have known
20 that because Zanidean hadn't signed the letter
21 of agreement, and the discussions were
22 ultimately a lump sum payment, so that was
23 pretty clear to Zanidean and Fehr in your
24 discussions with them that they weren't in the
25 program?

1 A That's true.

2 Q Yet here she is telling the Swift Current police
3 when she is stopped for impaired driving that
4 both of them, she is, as well as Ray Zanidean,
5 are in the Witness Protection Program and they
6 couldn't be charged. And you see that?

7 A Yes, I do.

8 Q And you smile because it doesn't surprise you,
9 knowing the nature of these two people?

10 A Yes.

11 Q They would try to take any advantage they could.
12 That was your experience with them?

13 A Yes, sir.

14 Q Now, going back for a second to that meeting
15 that we had talked about on the 29th of April,
16 while Miller and Vandergraaf were initially
17 there, they left, and you continued talking to
18 Fehr, Kovnats and Zanidean?

19 A Yes.

20 Q And Kovnats was, of course, at that meeting as
21 well?

22 A Yes, he was.

23 Q Now, you were basically telling them what could
24 and couldn't be done in terms of witness
25 protection, weren't you?

- 1 A Yes, sir.
- 2 Q But you had already done that with Kovnats when
3 you met with him the first time?
- 4 A Yes, I had.
- 5 Q It just wouldn't sink in, would it? You had to
6 repeat yourself, not at just that meeting, but
7 in telephone conversations, it was a constant
8 effort by you to get it across to them what
9 could and couldn't be done?
- 10 A Yes, sir.
- 11 Q And by that time, by the end of April, the
12 negotiations that were taking place were between
13 Miller and Kovnats, and you were involved to
14 some degree?
- 15 A Some degree, yes.
- 16 Q And the city police were more or less out of the
17 picture at that point? They, as you noted,
18 Zanidean wasn't -- just didn't feel that he
19 could get anything from the city police?
- 20 A It seemed to be that way, yes.
- 21 Q And by that time the issues of moment were
22 money, as it always was, true?
- 23 A True.
- 24 Q And monies for relocation, and monies for
25 protection purposes, that was one of the issues

1 involved?

2 A Yes.

3 Q And immunity became an issue that you became

4 aware of, true?

5 A Yes.

6 Q Now, at tab 30, you get a call from Bruce Miller

7 that he had just received a sort of a letter of

8 demand, an ultimatum, if you will, from

9 Mr. Kovnats, tab 30, page 1, 91/05/29?

10 A Yes.

11 Q And the first two items were concerning non

12 Swift Current matters, right?

13 A Yes.

14 Q One was to deal with Zanidean's credit rating

15 and the second one to deal with a letter that he

16 was seeking for employment purposes?

17 A Yes, sir.

18 Q And the third one was with regard to Swift

19 Current.

20 A Yes.

21 Q And what happens is that you have a discussion

22 with Bruce Miller, and you indicate regarding

23 Swift Current that you would check with Swift

24 Current to see what the standing was?

25 A Yes, sir.

1 Q And your hopes were to talk to Inspector
2 Preston? True?

3 A Initially.

4 Q And you learned that he wasn't available, you
5 had talked to a Staff Sergeant Dell Hurt, you
6 have noted?

7 A Yes.

8 Q And he advised you that the last he had seen of
9 the file, it was Driskell that was asking for a
10 guarantee for immunity, and was prepared to
11 provide a statement to Swift Current after his
12 murder trial?

13 A Yes.

14 Q And then you make a further phone call, and you
15 get one back from Constable Ross Burton on the
16 second page of tab 30, 91/05/30; right?

17 A Yes.

18 Q Now you have noted the results of that call, you
19 have made a note at 91/05/30, you have made
20 notes of that call?

21 A Yes, sir.

22 Q And you have made notes of the call because what
23 you have noted is what happened?

24 A Yes, sir?

25 Q And your notes portray the essence of that call?

1 A Yes.

2 Q There is no doubt about that?

3 A None.

4 Q Now, I'm assuming that you didn't have to twist
5 Ross Burton's arm, so to speak, for him to make
6 the statements that you recorded, they were
7 volunteered by him?

8 A Yes, sir, just during conversation.

9 Q Yes. You didn't advocate a position, the
10 position came from Swift Current; true?

11 A True.

12 Q And what he told you was that there would be no
13 proceedings against Zanidean as a witness or an
14 accused if he is accepted into the program?

15 A Yes, sir.

16 Q He went on to indicate that they had some
17 evidence against Zanidean's sister; true?

18 A True.

19 Q And that he asked you not to tell anyone so they
20 could nail the sister, not to tell anyone about
21 their decision not to proceed against Zanidean
22 so they could nail the sister?

23 A Yes, sir.

24 Q Well, Constable Burton has said that while he
25 doesn't recall speaking to you, there is no

1 question that he spoke to you?

2 A No question.

3 Q And he says that he wouldn't have said what you
4 have recorded, because to do so in his
5 circumstances would have been an act of
6 insubordination, but that's exactly what he said
7 to you is what you recorded?

8 A What I wrote down there, yes.

9 Q You stand by your notes, without any question?

10 A 100 per cent.

11 Q 100 per cent. You would assume for Burton to
12 have made that call to you that he would have
13 run it up the chain of command, because that's
14 what a RCMP junior or a Constable would do.
15 That would be protocol, true?

16 A I don't know if he would run it up the chain of
17 command. He had been told that I had called
18 previously.

19 Q Yes?

20 A I would imagine that he had been talking to
21 Inspector Preston, so for him to phone is not
22 out of line.

23 Q Well, let me tell you that he hadn't talked to
24 Preston, he hadn't, according to him, received
25 instructions like that to call you. So he would

1 have, in essence, you would assume if he hadn't
2 received instructions, that in RCMP protocol he
3 likely wouldn't have had the authority to make
4 those statements, in hindsight?

5 A In hindsight, yes.

6 Q And you took that call to mean that that was
7 likely the end of the Zanidean saga in Swift
8 Current, that's how you took it?

9 A I wasn't worried about it anymore, no.

10 Q Yes. And I'm assuming, because you were calling
11 at the instance, or at least as a result of a
12 discussion with Bruce Miller, you would likely
13 have informed him. That would have made sense?
14 You can't say 100 per cent, but that's the
15 likelihood of it?

16 A I can't say 100 per cent but, yes, that's the
17 likelihood.

18 Q That had been a problem that Miller had called
19 you about on the 29th, that was one of the
20 demands that Zanidean through his lawyer had
21 made, was the Swift Current issue; right?

22 A Right.

23 Q You say in your statement that after talking to
24 Burton, and I can refer you to that at page 15,
25 tab 1 of your statement, when I say your

1 statement, I mean your interview with Commission
2 Counsel. And I'm looking at page 15, about
3 three lines from the bottom. You tell Mr. Code
4 that while Burton didn't say anything to Orr
5 about the strength of his case, it was your
6 impression that they may not have had a great
7 case against Zanidean at that point; true?

8 A True.

9 Q And just before I finish on tab 30, sorry to
10 take you back there, if you go to tab 30, the
11 third page in, please, Sergeant Orr?

12 A Yes, sir.

13 Q And if you go to the last paragraph at
14 9:00 o'clock, you see your note of 9:00 o'clock?

15 A Yes.

16 Q And there had been a meeting held, after much
17 discussion, the meeting was I'm assuming between
18 Mr. Miller and Zanidean's lawyer, Mr. Kovnats,
19 that's what you have noted. And were you at
20 that meeting or were you just told of it, or do
21 you remember?

22 A I believe I was at the meeting.

23 Q And the bottom line is that nothing was
24 resolved? That's what you say, nothing was
25 resolved between Mr. Zanidean's lawyer and

1 Mr. Miller?

2 A Yes, sir.

3 Q And the note that you are making is on the 19th
4 of June?

5 A Yes.

6 Q And if you read on in the note, the idea of a
7 relocation fee was attractive to Zanidean, et
8 al, I am taking that means Fehr as well?

9 A True.

10 Q Then if you just go to the last line,
11 "I would imagine that will be the way they
12 will go and that witness protection is out
13 of the picture but we will see."
14 So there was still a possibility of that
15 happening should there have been a change of
16 circumstance, Witness Protection Program?

17 A There was a possibility of the application
18 process going ahead, yes.

19 Q Now, we talked about it yesterday, and I
20 suggested to you and you agreed with me, that as
21 time went on with Zanidean his personality
22 became rather ugly. You agree with that?

23 A I agree, yes.

24 Q By June 16th he had threatened you, he had made
25 a veiled threat against you?

1 A Yes.

2 Q It got so bad with him that by September of that
3 year, 1991, you had received a call from
4 Alberta, a Sergeant Secondiak, and I will refer
5 you to tab 41. September 19th, you got a call
6 from a Sergeant Secondiak, from Alberta, I don't
7 know what the next words are, some detachment?

8 A Brook detachment.

9 Q Brooks, Alberta. And he had stated he had been
10 contacted by Zanidean, and Zanidean wanted to
11 try and get an Alberta phone number without
12 using his real name. And this is what you said,
13 second paragraph,

14 "I advised Sergeant Secondiak to use a
15 hands off approach with Zanidean. I
16 consider him to be unpredictable,
17 potentially violent should you do something
18 that he does not agree with."

19 And you explained his encounters with you?

20 A Yes, sir.

21 Q This is the type of man that you grew to
22 appreciate was likely to say anything that
23 suited him in terms of if he weren't made happy?

24 A If he wanted something more, yes.

25 Q He might say that people were putting words in

1 his mouth, that's the kind of guy that you were
2 dealing with?

3 A He might.

4 Q It wouldn't surprise you, in any event, that he
5 would later say people were putting words in my
6 mouth, that wouldn't surprise you?

7 A No, sir.

8 Q And then I just have one last area that I want
9 to question you about, and that's tabs 38 and
10 39. I would like you to go to the first page of
11 tab 38, and at the same time if you will just
12 hold that page open and flip over to tab 39,
13 page 2. If you just keep the two available to
14 you so you could sort of cross-reference, I
15 would be obliged.

16 Now, at tab 39 you have a July 16th entry,
17 right?

18 A Right.

19 Q And you noted a conversation or a continuing
20 dialogue between Scowby and Marcella and you?

21 A Yes.

22 Q And then the next paragraph, or just before the
23 end of that paragraph, the dialogue was
24 concerning Zanidean's part in the arson and
25 their ongoing investigation in Swift Current?

1 A Yes, sir.

2 Q Because the last you heard there wasn't going to
3 be an investigation in Swift Current?

4 A True.

5 THE COMMISSIONER: But I just want to be clear
6 on this. As I understood it, your note on, I
7 have forgotten what the tab was, with your last
8 conversation with Burton, was that there
9 wouldn't be any proceedings if he was put in the
10 Witness Protection Program?

11 THE WITNESS: Yes, sir.

12 THE COMMISSIONER: Okay. So it had that clear
13 qualifier?

14 THE WITNESS: Yes, it did.

15 THE COMMISSIONER: Thank you.

16 BY MR. WOLSON:

17 Q And I'm assuming, by the way -- or maybe I
18 shouldn't assume. Did you have a conversation
19 with Burton at that time, back in May, that it
20 was unlikely that Zanidean would get in, or did
21 you note what the discussion was?

22 A I don't recall having a conversation of that
23 nature and I didn't note it in the file.

24 Q All right. So let me then take you to the tab
25 38, the first paragraph, we have just covered,

1 this dialogue about their continuing
2 investigation; true? That's the first paragraph
3 that you have at tab 38?

4 A Yes.

5 Q The second paragraph is a reference back to the
6 May call that you had had with Burton that the
7 Commissioner just asked you about.

8 "The last we heard on that was noted on
9 page 16 of my written notes, entered in
10 91/05/30, indicating there would be no
11 prosecution if he were accepted into the
12 Witness Protection Program."

13 A Yes, sir.

14 Q And you think this whole reference to Swift
15 Current now, following from the next paragraph
16 and the next page, was a reference, you were
17 just sort of updating the May call, this wasn't
18 a new call?

19 A The next paragraph, like on the first page?

20 Q Yes?

21 A That was the information that I was receiving
22 from Scowby and Marcella.

23 Q Because I'm going to suggest, and I want to take
24 you through these two tabs, and I'm not critical
25 of you at all, sir, but I suggest that there was

1 a further conversation with Officer Burton on
2 this July date, and let me then take you to the
3 third paragraph at tab 38. You have got tab 38
4 open, this is after you have had the Marcella
5 discussion, after you have noted your previous
6 call on May 30 with Mr. Burton, then you
7 indicate,

8 "Apparently in the past while Greg Brodsky
9 has indicated to Swift Current that he has
10 a transcript of a conversation between
11 Driskell, who was wearing a wire, and
12 Zanidean."

13 Do you see that, third paragraph on tab 38, page
14 1?

15 A Yes, I do.

16 Q And I'm going to suggest to you that you did
17 have this conversation with Burton in July,
18 because if you go now to tab 39, the one that I
19 asked you to keep your fingers on, and if you go
20 to tab 39, paragraph number 3, are you there?

21 A Yes.

22 Q Corporal Orr has the same date, 91/07/16?

23 THE COMMISSIONER: This is Corporal Orr.

24 BY MR. WOLSON:

25 Q This is tab 39 -- sorry, I misspoke. Burton has

1 the same note in his C237. At paragraph 3 he
2 says, on the same day, 91/07/16,

3 "Tom Orr of D Division confirmed that
4 Reath Zanidean and Fehr are not under the
5 program. Corporal Orr indicated he didn't
6 feel there was a transcript entered at the
7 murder trial of a conversation recorded by
8 Driskell wearing a body pack."

9 That's basically what you said in the previous
10 tab, isn't it? You don't use it as a body pack,
11 you use it as you didn't think Driskell was
12 wearing a wire. It is the same meaning, isn't
13 it?

14 A Yes, sir.

15 Q And then if you continue at that paragraph 3, at
16 tab 39, and I don't want to confuse you, so I
17 will wait for you to get there. Corporal Orr,
18 reading from paragraph 3 a few lines from the
19 bottom at tab 39.

20 "Corporal Orr was advised that Ray Zanidean
21 may be charged with the '88 and '90 arsons.
22 Corporal Orr was adamant that if Zanidean
23 went to jail, he would be murdered."

24 If you flip back to 91/07/16, your tab 38 call,
25 are you there?

1 A Yes.

2 Q And if you go to page 2, you indicate in the
3 first paragraph,

4 "According to Ross Burton, Swift Current
5 Detachment, Brodsky is forcing the RCMP to
6 investigate the arson..."

7 Do you see that?

8 "...to force a new trial."

9 A Yes.

10 Q And in the second paragraph you say,

11 "In the same vein, I made it known to
12 Burton that if Zanidean is charged and
13 found guilty and sent to jail, Driskell
14 will ensure that he doesn't walk out."

15 Which is the essence of the same conversation
16 that Corporal Burton has in the next tab, isn't
17 it?

18 A Yes, sir.

19 Q So that's pretty strong evidence that this
20 conversation, you both noted as 91/07/16, likely
21 happened at 91/07/16?

22 A I don't recall it, but, yes, it does look that
23 way.

24 Q Not only that, if you go to the last paragraph
25 on your tab 38, page 2, the last paragraph, you

1 continue on and you say investigators from Swift
2 Current and some others are meeting tomorrow to
3 discuss the case.

4 Now, you make that note on the 16th of
5 July; right?

6 A Yes.

7 Q And if you go to the next tab, tab 39, in
8 Burton's report, he says the same thing at
9 paragraph 12 on page 4. Do you see that,
10 paragraph 12 of tab 39, Burton talks about the
11 meeting the next day?

12 A Yes.

13 Q The 17th?

14 A Yes.

15 Q As a matter of fact, if you go to tab 39,
16 paragraph 3, the only -- or one of the major
17 things that Burton doesn't put in that paragraph
18 is what you have noted on the previous page, I
19 am sorry, the previous tab, where you say,

20 "According to Ross Burton, Swift Current
21 Detachment, Greg Brodsky is forcing the
22 RCMP to investigate the arson."

23 Do you see that?

24 A Yes.

25 Q That's not included in paragraph 3 of Burton's

1 report?

2 A No, sir.

3 Q But that was said by Burton because you noted
4 it. You wouldn't have noted it otherwise?

5 A Yes, sir.

6 Q You stand by your notes?

7 A I do.

8 THE COMMISSIONER: Pardon me, Sergeant Orr,
9 earlier you had indicated at that particular
10 paragraph, which is in tab 38 at the top of the
11 second page, you had indicated that you believed
12 that that is what Marcella and Scowby probably
13 told you. In fact, I think you said obviously
14 told me. What is your view now? I mean, it is
15 not critical but I just wonder what your view
16 is?

17 THE WITNESS: I am quite surprised that I
18 didn't -- like I don't remember two
19 conversations with Mr. Burton at all, and I'm
20 surprised that I didn't put a date or a time on
21 that. I did on the other page. But whether I
22 had the conversation with Constable Burton at
23 that time, I do not know.

24 BY MR. WOLSON:

25 Q As a follow up question to that --

1 THE COMMISSIONER: He made it clear in his
2 answer to you that he thought it was probable
3 that he had actually spoken to Burton on the
4 16th.

5 MR. WOLSON: Yes, quite so.

6 BY MR. WOLSON:

7 Q And as a last question, you would say that when
8 you look at tab 38, page 2, the page that the
9 Commissioner referred you to, it likely wasn't
10 learning something from Marcella and Scowby,
11 because if you read the two paragraphs, you say,

12 "According to Ross Burton at Swift Current,
13 Brodsky is forcing the RCMP to investigate
14 the arson."

15 You make that statement, right? Then you
16 continue on why Brodsky feels that.

17 "Brodsky is forcing the RCMP to investigate
18 the arson to force a new trial as they are
19 claiming that Zanidean perjured himself on
20 the stand, Driskell has apparently received
21 immunity due to his life sentence on the
22 murder charge."

23 You see that?

24 A Yes.

25 Q So it would be clear that you are not talking to

1 Scowby, because in the next paragraph you say,
2 "In the same vein I made it known to
3 Burton..."

4 So that is clear that you are talking in both
5 paragraphs to Burton? You wouldn't say I made
6 it known to Burton, if you were talking to
7 Scowby and Marcella, obviously; true?

8 A I don't recall it, but that's the way it looks
9 there, yes.

10 MR. WOLSON: Thanks very much, sir.

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

12 THE COMMISSIONER: Mr. Gates.

13 MR. GATES: Sergeant Orr, I promise I'm not
14 going to take to you tab 30.

15 BY MR. GATES:

16 Q Sergeant Orr, I would like to take you back to
17 an area, very briefly, very briefly take you
18 back to an area that was covered by Commission
19 Counsel, Mr. Code, when you first took the stand
20 on Thursday. And that relates to the RCMP
21 policy that was in place at the time of your
22 involvement in this particular matter. So if
23 you would have a look, please, at tab number 7
24 of the binders of materials that relate to your
25 evidence. And specifically you will see that

1 that tab contains a fairly significant chunk of
2 RCMP policy. I direct your attention, please,
3 to -- and if you look at the pages that are at
4 the bottom, right-hand corner of the page, to
5 page 81 and then to page 82.

6 As I understand what you have told us, this
7 policy covers both source protection and witness
8 protection; is that correct?

9 A That's true.

10 Q Can you very briefly tell us what the difference
11 is?

12 THE COMMISSIONER: I think I understand that.

13 MR. GATES: Okay.

14 BY MR. GATES:

15 Q Can you then please take a look at the
16 paragraph --

17 THE COMMISSIONER: I should say I didn't
18 initially, but I think that Sergeant Orr has
19 explained it.

20 MR. GATES: Thank you.

21 BY MR. GATES:

22 Q Can you then have a look at the paragraph that
23 Mr. Code specifically directed your attention to
24 at the bottom of page 82, that's the number at
25 the bottom right-hand corner?

1 A Yes.

2 Q And tell us, if you can, the difference between
3 the application of the policy in an RCMP case,
4 that is a case being investigated by the RCMP,
5 and a case that's being investigated by another
6 police agency?

7 A The difference between the two?

8 Q Yes?

9 A I'm not sure what you mean.

10 Q Okay. Let me be more specific. If you look at
11 paragraph 1(h) of the policy, which is at the
12 bottom of page 182, it identifies in sub
13 paragraph (1) and I quote:

14 "Each request for protection must be
15 carefully assessed to ensure that,
16 1. the RCMP meets its obligations to a
17 source/witness but is not overly generous
18 as that would affect the credibility of the
19 person's testimony."

20 A Yes.

21 Q Does that apply when you are dealing with source
22 protection, witness protection, or both?

23 A As far as the protection end of it goes, that
24 applies to both source protection and witness
25 protection.

1 Q Would the determination of the financial aspect
2 of witness protection in a non-RCMP file, such
3 as the one that we are dealing with here, would
4 that be an RCMP consideration as to the
5 generosity of the compensation?

6 A The cost of the protection and whatnot would be,
7 yes, it would be an RCMP, we would be the ones
8 that would give them the figures.

9 Q The last thing I want to ask you about is the
10 April 29th meeting that my friend, Mr. Wolson,
11 was speaking to you about a few minutes ago, and
12 your note is found at tab 22, for your
13 reference.

14 As I understand your evidence, Sergeant
15 Orr, it was at this April 29th meeting that you
16 first raised with Mr. Kovnats and Mr. Zanidean
17 the idea of a relocation payment?

18 A Yes, sir.

19 Q What is the RCMP's responsibility in an assist
20 situation with a relocation payment?

21 A We would have no responsibility.

22 Q What was your role in that process?

23 A I brought it to the attention of Mr. Miller and
24 the other parties involved, that it was a
25 possibility that they could look at. As far as

1 amounts or anything else like that, I was not
2 involved in that.

3 Q Did you have any role in the negotiation of the
4 amount?

5 A None whatsoever. Mr. Miller would have asked me
6 about, probably about costs associated to a six
7 month relocation, just to give a general idea.

8 THE COMMISSIONER: I take it that the RCMP, in a
9 non-RCMP case, are really the facilitator of the
10 program?

11 THE WITNESS: Yes, sir.

12 THE COMMISSIONER: Is that really what it is?

13 THE WITNESS: Yes, that's what it is.

14 THE COMMISSIONER: Right.

15 THE WITNESS: We are there in an assistance
16 capacity.

17 THE COMMISSIONER: This is a question, I'm just
18 curious about, relevant to nothing in this case,
19 but I am just curious about it. Is there any
20 police force in Canada, to your knowledge, that
21 has their own Witness Protection Program, or do
22 they all run through the facilitation of the
23 RCMP?

24 THE WITNESS: No, there are a number of police
25 forces that do have their own Witness Protection

1 Programs, however, when it comes to Federal
2 documents, they have to obtain the assistance of
3 the RCMP, but they do have their own programs.

4 THE COMMISSIONER: Okay. I don't want anybody
5 to follow up on that, it is irrelevant, I was
6 just curious.

7 MR. GATES: That you, Mr. Commissioner, those
8 are my questions.

9 THE COMMISSIONER: Thank you, Mr. Gates.

10 MR. CODE: Just a couple of questions in
11 re-examination, Sergeant Orr.

12 BY MR. CODE:

13 Q My colleagues, Mr. Abra and Mr. Wolson, both
14 asked you about your practice in terms of
15 keeping notes of the various developments on the
16 file, and suggested or implied that you always
17 did keep notes. Do you recall that area of
18 questioning?

19 A Yes, sir.

20 Q And I wanted to ask you whether my reading of
21 this snapshot of your note taking practices is
22 accurate, in general terms, in that I can find
23 five separate instances in the book of documents
24 I filed, and the book of documents Mr. Lockyer
25 filed, and I can state them to you for the

1 record. They are at tabs 3, 13, 30, and 38 of
2 my book, exhibit 3, and at tab 13 of Mr.
3 Lockyer's book, exhibit 4A, where you don't take
4 notes of developments on the file, telephone
5 calls, discussions. And at a subsequent
6 occasion when something arises, you refer back
7 to these prior events to give context to the
8 present event that's happening. Have I
9 accurately summarized your note taking practice
10 in that regard?

11 A Yes, sir.

12 Q That often there are developments that you don't
13 record, and you will come back to them if they
14 happen to be context for a further event that
15 happens; is that fair?

16 A That's fair. I may have considered them minor
17 at the time, however.

18 Q So if their significance didn't seem important
19 at the time, they don't get noted. And then if
20 they arise subsequently as context, you will
21 note them at that time?

22 A True.

23 Q And that reflects the phenomenon that events
24 sometimes acquire importance after the fact that
25 they didn't seem to have at the time; is that

1 correct?

2 A That's correct. It could also mean that I was
3 tied up in another file and couldn't get back to
4 this one at all.

5 Q Fair enough. All right. And in relation to one
6 of those instances in particular, at tab 3 of
7 the book, your very first note on the file,
8 where you refer to numerous previous phone calls
9 and discussions, none of which have been noted;
10 is that correct?

11 A Yes, that's correct on this file.

12 Q And in relation to that time period, Mr. Wolson
13 pointed out that Kovnats recalls a March 6th
14 meeting with you for which you have no note, no
15 contemporaneous note. And my question to you is
16 simply whether one of these numerous phone calls
17 and discussions referred to in your March 31st
18 note could have been a March 6th meeting with
19 Mr. Kovnats?

20 A I think I would have made note of a meeting.

21 Q I'm not using the word "meeting" in any term of
22 art sense. If you had discussions with him on
23 the 6th of March, could this be one of the ones
24 that's left out here?

25 A Possibly, yes.

1 Q Certainly we see by March 21st, you know
2 Kovnats' name and phone number, and you call him
3 up and you set a meeting with him?

4 MR. WOLSON: Mr. Commissioner, my questioning of
5 the witness in that regard was a March 6th
6 meeting with Kovnats, and a number of other
7 people, including Zanidean, Fehr, Vandergraaf,
8 and I think Miller are the people that I had
9 put, was there such a meeting, not just a
10 meeting with Kovnats.

11 THE COMMISSIONER: Thanks, Mr. Wolson.

12 BY MR. CODE:

13 Q The next area of re-examination I had is in
14 relation to the April telephone call that you
15 had with Upton, at tab 13. And Mr. Wolson asked
16 you to compare that -- and remember, the
17 April 12th call at tab 13 is the one that's
18 very, very briefly noted in the single sentence
19 at the end of your note. With the notation
20 "... " at the end of it?

21 A Yes.

22 Q A note that I had characterized as cryptic and I
23 believe you agreed with that characterization?

24 A Yes, sir.

25 Q And Mr. Wolson asked you to compare it to

1 Anderson's account of a call that he has at much
2 the same time with Burton, in early April, and
3 that's found at tab 8. And he got you to agree
4 that both notations, your notation of the Upton
5 call and Anderson's notation of the Burton call,
6 were to the same general effect, that there had
7 been a complete cessation of any pursuit of
8 Zanidean as of that early April time period. Do
9 you recall that area of questioning?

10 A Yes, I do.

11 Q And I simply want to ask you to look at tab 39,
12 where we have a more fulsome account of the
13 conversations during that time period. You see
14 tab 39, page 3, paragraph 10 at the bottom of
15 page 3, and simply ask you whether that more
16 fulsome account at tab 39 is somewhat
17 inconsistent with the cryptic account of their
18 being a complete cessation of the investigation
19 of Zanidean?

20 A I took exception to one point in there already
21 saying that I told Upton that he was in the
22 Witness Protection Program.

23 Q I appreciate you disagree with that, I'm not
24 focused on that aspect of it. We have all beat
25 that one to death, I think. The point I'm

1 focused on is the issue of whether there was a
2 complete cessation of the investigation of
3 Zanidean. And this somewhat fuller note appears
4 to indicate that it is likely, in the
5 circumstances noted, him being in the Witness
6 Protection Program, that he won't be prosecuted,
7 but it is not certain, it is simply a matter
8 that's being considered. Is that a fair summary
9 of paragraph 10?

10 MR. WOLSON: By way of objection,
11 Mr. Commissioner, I understand that a prosecutor
12 may want to re-examine on an issue like this,
13 because a prosecutor may favour one position
14 over another. If there are conflicting views,
15 one may be favored. But in my view, it is
16 inappropriate cross-examination, because it
17 tends to try to favour a view. Just as my
18 friend, when Constable Burton was on the stand,
19 or now Inspector Burton was on the stand, and he
20 said to Inspector Burton at one point, Wolson
21 said that you appear to be overly suspicious
22 that you were being set up. And the question
23 was, a year later, do your suspicions bear
24 fruit, and advocating a position. And in my
25 view this is what this type of question is

1 doing, advocating for Constable Burton. That
2 may be a matter of argument, but in my view, if
3 there are competing views, they should be out
4 before you, and at the end of the day you will
5 decide, rather than appearing to take a position
6 of favour with one of those views. So I make
7 that objection for the record.

8 THE COMMISSIONER: Any comment, Mr. Code?

9 MR. CODE: Well, I hope Mr. Wolson is not
10 suggesting that his cross-examinations are
11 immune from re-examination. And when he puts an
12 incomplete picture before the witness, the
13 classic role of re-examination is to try to
14 correct the incomplete picture. He, Mr. Wolson,
15 likes the tab 13 and tab 8 versions of the
16 conversation. And I'm simply pointing out that
17 there is a different version at tab 39 that's
18 consistent with Inspector Preston's version at
19 tab 35. So we have got these two warring sets
20 of versions, we have the tab 35 and tab 39
21 version of whether there was ever a complete
22 cessation of the pursuit of Zanidean, and we
23 have the tab 13 and tab 8 version of whether
24 there was a complete cessation of it. So I'm
25 simply trying to put the full picture before the

1 witness and before the Commission so that we do
2 precisely what Mr. Wolson is suggesting, namely,
3 have the full position before the Commission and
4 let you decide at the end of the day what is
5 accurate.

6 I'm not advocating one position or another.
7 I acknowledge Mr. Wolson's point that the tab 8
8 and tab 13 version is the one that he favours.
9 I'm simply pointing out that there is a
10 competing version at two other tabs, tab 35 and
11 tab 39.

12 And I am more than content to leave it as a
13 matter for argument, as long as the record is
14 clear. I simply didn't want his
15 cross-examination, which was partial and
16 incomplete, to stand unchallenged.

17 THE COMMISSIONER: Well, I have indicated before
18 that I have no experience as a Commissioner in
19 an inquiry, and it is kind of difficult for me
20 to balance what the appropriate procedure is. I
21 certainly agree with Mr. Wolson and with
22 Mr. Code, that it would not be appropriate for
23 Commission Counsel to re-examine if the purpose
24 is to advocate one position over another
25 position. I agree with that, Mr. Wolson.

1 On the other hand, if it is simply to
2 clarify or point out that there is another view,
3 then it seems to me that that would be
4 appropriate.

5 However, I think both counsel have perhaps
6 pointed out that this may be a matter that could
7 be dealt with in submissions, and so perhaps we
8 will leave it at that.

9 MR. CODE: I'm more than content with that,
10 Mr. Commissioner.

11 BY MR. CODE:

12 Q The last area that I want to touch on, Corporal
13 Orr, is your question by Mr. Wolson about the
14 tab 30 telephone call, initially with Mr. Miller
15 on May 29th, and then with Constable Burton on
16 May 30th. And Mr. Wolson had you agree that
17 your note was accurate, your note of the call
18 with Burton was accurate and contained the
19 essence of the call. Do you recall that?

20 A Yes, sir.

21 Q And he then went on to put a proposition to you
22 to the effect that if Burton had not conferred
23 with his superiors, he would have had no
24 authority to make the statement he made, as set
25 out in your note. And you responded to the

1 effect that, well, if one assumes that there was
2 no conferring with his superior, and with the
3 benefit of hindsight, one might say there was
4 some violation of policy. Do you recall that
5 area of questioning?

6 A Yes, sir.

7 Q And just two points in re-examination. First of
8 all, you agree that your note is not complete,
9 it simply sets out the essence, the conclusion,
10 not the detail of everything that was said?

11 A Exactly.

12 Q And secondly, I want you to assume, and you of
13 course won't know this since you haven't heard
14 the evidence, but I want you to assume that
15 Inspector Preston, Staff Sergeant Ferguson, and
16 Constable Burton had all arrived at this point
17 at a consensus that if Zanidean was indeed
18 accepted into the Source Witness Protection
19 Program of the RCMP, that as a practical matter
20 he would not be charged. If you accept that a
21 consensus had arisen between the three officers,
22 would there be anything improper in Constable
23 Burton communicating that consensus to you on
24 May 30th?

25 MR. WOLSON: By way of objection, Burton himself

1 said it would be improper.

2 MR. CODE: Well, Burton gave about three
3 different accounts of that. There was the
4 account in chief, there was the account in
5 cross-examination, and then there was the
6 account in re-examination. So if you put all
7 three of them together, I don't think the
8 position is as Mr. Wolson has put it.

9 MR. WOLSON: Then that's an issue of argument.

10 THE COMMISSIONER: It was -- no, I won't go
11 back, I recall the examination and the
12 cross-examination of Burton. I was going to
13 attempt to recapture, but that will only
14 lengthen matters, so I won't, but it was far
15 from clear.

16 MR. WOLSON: Burton himself said it would be an
17 act of insubordination, those were his words.

18 THE COMMISSIONER: To a very specific question
19 you put to him, if he had done it without
20 checking with others, those are not his very
21 words but I can find pretty close to them if I
22 look at my notes, but that was the essence of
23 the question.

24 MR. WOLSON: Well, I submit again it is a matter
25 of argument.

1 THE COMMISSIONER: Okay.

2 BY MR. CODE:

3 Q Sergeant Orr, if we assume that these three
4 officers had held meetings and conferred and
5 arrived at a consensus position, is there
6 anything improper in him communicating that to
7 you?

8 A No sir.

9 MR. PROBER: Good morning, Mr. Commissioner.
10 You may have some questions, if you do, I will
11 stand down.

12 THE COMMISSIONER: Just for one second, I was
13 just going to -- go ahead, Mr. Prober.

14 MR. PROBER: Thank you. During my very
15 impartial examination of Mr. Orr, I referred to
16 Gumieny's telephone interview. I have talked to
17 Mr. Code about that, and I'm going to be
18 tendering that now as exhibit 5, because it was
19 referred to in the cross-examination.

20 THE COMMISSIONER: Good.

21 MR. PROBER: Thank you.

22 THE COMMISSIONER: And is there a date?

23 MR. PROBER: Yes, July 6, so it is a summary of
24 a telephone interview by Commission Counsel of
25 John Gumieny, and it is dated July 6, 2006.

1 THE COMMISSIONER: Thank you, Mr. Prober, that
2 will be exhibit 5.

3 (EXHIBIT 5: Summary of telephone interview
4 by Commission Counsel of John Guminey, July
5 6, 2006)

6 MR. CODE: It is exhibit 5. And could I ask
7 Mr. Prober to provide copies for our clerk so
8 that she can have a copy for the record?

9 I might also state that I think there are
10 issues as to whether it goes in for the truth of
11 its contents, or whether it is simply in as a
12 record of the fact of the interview that
13 Mr. Prober put to the witness in
14 cross-examination. But if that becomes an
15 issue, we can argue about it at another date.

16 THE COMMISSIONER: Okay.

17 MR. PROBER: In fact, maybe Commission Counsel
18 or you, Mr. Commissioner, or other counsel may
19 decide to suggest to you that Gumieny be called
20 as a witness. So I agree with Mr. Code, that
21 the issue of its weight will be left to be
22 determined at a later date.

23 Now, I can find a clean copy, one of my
24 colleagues will have one, mine is marked up, but
25 we will get that to the clerk.

1 THE COMMISSIONER: Thank you, Mr. Prober.

2 MR. LOCKYER: Mr. Commission, may I re-raise the
3 broader issue of what documents are before you?

4 THE COMMISSIONER: I think not, Mr. Lockyer, we
5 will do it another time.

6 MR. LOCKYER: Because I referred, for example,
7 to a letter from Mr. Miller, if you remember, to
8 Judge Enns, and I didn't file it, and perhaps I
9 should have.

10 THE COMMISSIONER: We will deal with this at
11 another time.

12 MR. LOCKYER: All right. There were a couple of
13 other things that I referred to that I didn't
14 file, so perhaps at a later date, if we address
15 the issue on a broader level, I won't have to
16 worry about the specifics. Is that right?

17 THE COMMISSIONER: Thank you, absolutely.

18 Well, Sergeant Orr, thank you for your
19 patience, and also thank you for your grade
20 school teacher, or your mother or father, for
21 teaching you to be such a good handwriter. You
22 are one of the few recorders that I can clearly
23 read. Thank you very much.

24 THE WITNESS: Thank you, sir.

25 (Witness stands down)

1 MR. CODE: Mr. Commissioner, could I make a
2 brief opening statement to introduce this second
3 block of witnesses?

4 We are now formally starting week two of
5 the inquiry. I remind everybody we have lost a
6 day. The second group of witnesses, if I could
7 just briefly outline their evidence and the
8 issues that I intend to be focusing on for the
9 next few days at least in my examinations.

10 These three witnesses are the lead officers
11 on the Harder homicide investigation from the
12 Winnipeg Police Service. They are Staff
13 Sergeant Vandergraaf, who was effectively the
14 officer in charge, although there was no formal
15 designation as such, he de facto took over that
16 role; Sergeant Anderson, who was one of
17 Zanidean's handlers and probably the most active
18 of the investigators on the file, from an
19 objective assessment of the record of who was
20 doing the most work, and who got the most credit
21 afterwards when Mr. Dangerfield wrote his report
22 back to the chief; and the third officer,
23 Sergeant Paul, who was Zanidean's other handler.

24 The group of witnesses who we have just
25 completed, Burton, Ferguson and Orr, traced the

1 history of the negotiations with Zanidean from
2 the RCMP perspective. They dealt with both the
3 witness protection issues, primarily through
4 Sergeant Orr, and they dealt with the immunity
5 issues on the Swift Current arson, primarily
6 through the evidence of Burton and Ferguson.
7 But, in essence, what we did in that first block
8 of evidence is trace what was going on in terms
9 of these two aspects of what Zanidean was
10 seeking, immunity on the Swift Current arson and
11 a series of financial benefits related to what
12 we could loosely call witness protection.

13 This second group of witnesses will cover
14 that same topic but from the perspective of the
15 Winnipeg Police Service. So we will go through
16 the Swift Current immunity issue and the witness
17 protection financial benefits that Zanidean was
18 negotiating with his lawyer, Kovnats. We will
19 go through that same material from the
20 perspective of the Winnipeg Police Service. And
21 I'm hopeful that that part of the examination
22 will proceed somewhat more quickly because we
23 are now familiar with the terrain, having spent
24 the last three witnesses covering it.

25 I don't anticipate any significant

1 differences between the Winnipeg Police
2 perspective and the RCMP perspective in terms of
3 the purely witness protection benefits that
4 Zanidean was seeking. In other words, the
5 financial benefits, the relocation benefits, the
6 protection related benefits that were being
7 negotiated, I don't think there is any major
8 differences between Winnipeg Police and the RCMP
9 about the course of those negotiations.

10 In terms of the Swift Current immunity
11 negotiations, there are differences which have
12 already emerged and are well known, and I
13 suspect the various players will stick to the
14 positions they have staked out, not surprisingly
15 at this point. So we will cover that material
16 once again. And as I say, I think this is all
17 fairly predictable at this point where that is
18 heading. However, there is a new issue, a
19 different issue that will begin to emerge with
20 this second group of witnesses, and I would
21 respectfully suggest that this may turn out, at
22 the end of the inquiry, to be the more important
23 area. As opposed to exactly who said what,
24 when, and where in the course of the
25 negotiations, the further issue that will begin

1 to emerge through these witnesses is what was
2 disclosed about these negotiations to the
3 defence, and what was disclosed to the court, to
4 the judge and jury about these negotiations
5 during the trial.

6 So we've devoted a great deal of time, and
7 you saw this morning so far devoted to it again
8 to these small nuances and internal
9 disagreements between Winnipeg Police and the
10 RCMP, as to who said exactly what and when about
11 the negotiations. And we now hopefully will
12 turn to the bigger issue of what was the defence
13 told about these negotiations and what was the
14 judge and jury told about these negotiations,
15 and were they left with a full, fair and
16 accurate picture of what was going on behind the
17 scenes in these negotiations with Zanidean.

18 So I will try and devote more time to that
19 second issue of disclosure to the defence and
20 disclosure to the court with this second group
21 of witnesses, and devote less time to the issue
22 of the nuances of the negotiations.

23 Having made that brief opening statement,
24 could I call Staff Sergeant Vandergraaf as the
25 first witness in this second block of evidence.

1

2

WILLIAM TORRANCE VANDERGRAAF, having first

3

been duly sworn, testified as follows:

4

MR. CODE: Could I, pursuant to our usual

5

practice, Mr. Commissioner, could I ask that the

6

two volume book of documents in relation to

7

these next three witnesses be marked as I

8

believe we are up to exhibit 6 now?

9

THE COMMISSIONER: So volume one will be 6A and

10

volume 2 will be 6B.

11

(EXHIBIT 6A: Volume 1, book of documents re

12

Sgts. Vandergraaf, Anderson and Paul)

13

(EXHIBIT 6B: Volume 2, book of documents re

14

Sgt. Vandergraaf, Anderson and Paul)

15

BY MR. CODE:

16 Q

Staff Sergeant Vandergraaf, have you had an

17

opportunity to review a summary of your

18

interview found at tab 1 of exhibit 6A?

19 A

I have, sir, yes.

20 Q

And are you content that it is accurate?

21 A

Yeah, it is accurate I think at the time -- if I

22

may make one correction, I think regarding my

23

sort of preamble there, I was an acting Staff

24

Sergeant I think at the time, and it wasn't

25

until about a year or two later that I was

1 promoted to a Staff Sergeant, essentially doing
2 the job of a Staff Sergeant.

3 Q Subject to that one minor correction, you are
4 content with its accuracy?

5 A I am, sir.

6 Q And that will allow me to skip over certain
7 parts of it and not repeat them, and to simply
8 assume that it is part of the record.

9 A Fine, sir.

10 Q Now, as you pointed out, your career with the
11 Winnipeg Police Service is summarized in the
12 first page or two; is that correct?

13 A Yes, sir.

14 Q And by the time the Harder homicide came along
15 in the fall of 1990, you had approximately 10
16 years in with the Crime Division, and were by
17 that point an experienced homicide investigator?

18 A That would be correct, sir.

19 Q And in practical terms, if not in official
20 designation terms, you became the officer in
21 charge of the investigation, having been the
22 Staff Sergeant who was on duty on the evening
23 when the body was found?

24 A That is correct, sir.

25 Q And you supervised a team of detectives who

1 carried out the investigations by way of meeting
2 with them at the start of their shifts, and
3 during their shifts, and reading their
4 investigative reports as they came in?

5 A Correct, sir.

6 Q And is it fair to say that of that team of
7 detectives, Sergeant Anderson and Paul were the
8 most active, who took on the bulk of the work,
9 generated the majority of reports?

10 A There was many detectives involved in the
11 overall investigation. They were a key,
12 integral part of the investigation, no question.

13 Q And you yourself didn't keep a separate
14 notebook?

15 A I did not, sir.

16 Q You would read all of the investigative reports
17 that came in and didn't undertake any original
18 investigative work of your own?

19 A No, sir.

20 Q On occasion we see a letter or a memo or a
21 report from you, if something occurred that you
22 were the original officer involved in. For
23 example, if you look at tabs 23 and tabs 27, we
24 have a couple of documents that you generated;
25 is that correct?

1 A That's correct, sir.

2 Q And the documents that you generated yourself
3 personally were almost exclusively in the area
4 of the witness protection issues?

5 A That is correct, sir.

6 Q And is it fair to say that's the one area of the
7 case where you took a leading role as opposed to
8 a purely supervisory role?

9 A Yes, sir.

10 Q Now, you've told us that you reviewed the
11 investigator's reports. Would you also review
12 their notebooks? What was the practice in that
13 regard?

14 A No, not routinely would we examine notebooks at
15 that time.

16 Q And who kept the notebooks? Were they regarded
17 as the property of the officer and kept in the
18 officer's personal possession, or were they kept
19 on the file, or in the file, or photocopies of
20 them in the file?

21 A Personal possession of the officers, sir.

22 Q So there are no photocopies or notebooks kept on
23 the file?

24 A That is correct, sir.

25 Q Now, you've described disclosure practices at

1 pages 2 to 3 of your statement, and I won't
2 repeat that with you, but is it fair to say that
3 the -- and this is just shortly before
4 Stinchcombe, about six months, the trial is
5 about six months before Stinchcombe, the
6 investigation gets started about a year before
7 Stinchcombe.

8 The basic practice, as I read your
9 statement, is that police reports and witness
10 statements were provided to the Crown, and notes
11 would be produced if expressly requested?

12 A That's correct, sir.

13 Q And to illustrate the point, if we look at
14 volume 2, tab 33, we have a letter of
15 Mr. Brodsky, one of his disclosure requests, you
16 see the first four items on his shopping list
17 are police officers' notes?

18 A Correct.

19 Q He asks for four sets of notes?

20 A That's correct, sir.

21 Q And when you look at the response that comes
22 back at tab 35, Mr. Lawlor writes back, and you
23 see his very first item in his response is to
24 provide the notes requested by Mr. Brodsky in
25 relation to his first three items?

1 A That is accurate, sir.

2 Q So that's an exact illustration of the point you
3 have made in your witness statement, is that the
4 way police officers' notes got disclosed at this
5 time?

6 A That is my recollection, yes, that's true, sir.

7 Q Your recollection appears to be consistent with
8 the practice that we see Mr. Lawlor and
9 Mr. Brodsky carrying out.

10 So given that practice, that what you were
11 reviewing was the reports and not the notes, and
12 that the notes were only produced upon specific
13 request. Could you tell the Commission what was
14 the general practice or policy as to when
15 investigators should produce a report? What had
16 to go into the reports and always be given to
17 the Crown?

18 A I'm not sure I understand?

19 Q What kinds of developments on the file, in the
20 course of an investigation, would you expect
21 your investigators to put into a police report,
22 to make sure that it did go to the Crown
23 automatically, without any specific request?

24 A Evidence, anything that was of evidentiary value
25 to the Crown, anything that the Crown should

1 have known about.

2 Q And obviously evidence is something that the
3 Crown should know about. What about
4 developments that would impact on the
5 credibility of a witness?

6 A Yes, for sure.

7 Q And what about matters that relate to witness
8 protection? Let me give you an illustration.
9 If you flip forward a couple of tabs there, you
10 will see a report -- sorry, it is a couple of
11 tabs back. You see tab 17, we get a
12 supplementary report about a threat that
13 Zanidean reported?

14 A Yes.

15 Q And he has moved into witness protection, he has
16 moved into temporary arrangements in a safe
17 hotel, and then he is formally placed under a
18 Witness Protection Program. Do you see that?

19 A Yes.

20 Q Would developments of that kind be recorded in
21 police reports, or should they be recorded in
22 police reports for the information of the Crown
23 when that kind of a development occurs?

24 A Yes. I asked either Sergeant Paul or Anderson
25 to document that situation.

1 Q Did the Crown's need to know about witness
2 protection developments, I suppose is what I'm
3 asking?

4 A Yes. Every indication at that time was the
5 Crown in charge of the conduct of the
6 prosecution was sort of separate and apart from
7 any discussions relative to witness protection
8 measures and things of that nature. And that
9 other Crown Attorney, in this case Mr. Miller,
10 would look after that.

11 Q So Mr. Miller was looking after the witness
12 protection arrangements, and the reports on the
13 file would go to Mr. Dangerfield, I take it?

14 A That's correct.

15 Q Something like this, a supplementary report
16 would go to Mr. Lawlor and Mr. Dangerfield?

17 A Yes, that's correct, sir.

18 Q All right. Again, in this early part of your
19 statement at page 3, you discuss the distinction
20 between informal witness protection measures and
21 the formal RCMP Witness Protection Program?

22 A Yes.

23 Q And you state that you were very familiar with
24 the former, those kind of informal arrangements
25 that are often made in numerous cases, I think

1 you say. Whereas the later was somewhat unusual
2 and this may have been one of the very first
3 cases you were involved in?

4 A That is correct, sir.

5 Q Could you explain the difference between these
6 two ways of protecting witnesses to the
7 Commission?

8 A Well, if it was something we undertook separate
9 and apart from any formal RCMP national program,
10 it may be as simple as providing a witness, if
11 he was that concerned, with monies to
12 essentially relocate himself to another
13 location, so that we could keep in contact with
14 him and not necessarily have to guard him or do
15 anything of that nature. Very informal. And
16 that's quite often how we dealt with things.

17 Q So as I understand it, it is informal, it is
18 local, it is controlled by you, and it is
19 generally short term; is that fair?

20 A That's correct.

21 Q And the other approach of going to the RCMP
22 witness protection, what were the
23 characteristics of that approach?

24 A Well, as in this case, when you deal with issues
25 of a secure name change, we require the

1 assistance of the RCMP. The RCMP really are the
2 only ones who can facilitate a secure name
3 change for any kind of an individual, a witness.
4 And that's one of the primary reasons.
5 Certainly, there is a national Witness
6 Protection Program, Manitoba Justice is aware of
7 it, and this program is designed to be used by
8 all municipal forces as well. So Mr. Miller
9 encouraged us to go there.

10 Q So, the more formal program involves long term
11 steps like change of identity?

12 A Long term steps, long after a trial even.

13 Q And including obviously relocation out of the
14 province, the RCMP could supervise that?

15 A Exactly, sir.

16 Q Which you wouldn't be able to do locally?

17 A That's correct.

18 Q All right. And you say Mr. Miller encouraged
19 you in this case to use the RCMP program?

20 A Yes.

21 Q And he encouraged you to use it in relation to
22 two witnesses, Zanidean and Gumieny?

23 A Yes.

24 Q And as a result of that we see the formal
25 application being prepared, which is in the

1 book, and you describe the preparation of that
2 at page 6 of your statement. Who was it who put
3 together that application?

4 A I believe Sergeants Anderson and Paul would have
5 had the direct input into that application.
6 They were familiar with the intricate details
7 required for that application. I wouldn't have
8 had the intricate details, but certainly I
9 worked with them and advised accordingly when
10 required.

11 Q There was a separate application for Gumieny,
12 that I'm not going to take you through, that was
13 dealt with by the officers who were working with
14 Gumieny?

15 A That would be correct, sir.

16 Q And one of the applications was successful, that
17 being the Gumieny application?

18 A I didn't catch the word, sir?

19 Q Was successful?

20 A Successful?

21 Q He was entered into the program, he got into the
22 program?

23 A To my knowledge, yeah. I kind of lost track of
24 him, but he was really in a lot of respects a
25 non-entity, he wasn't causing us many problems

1 at all until perhaps later on, with Mr. Miller I
2 understand.

3 Q And the other application, the Zanidean
4 application was unsuccessful, he never did enter
5 the program?

6 A That's correct.

7 Q So, if I could take you to Zanidean's
8 application, you state in your interview at page
9 4 that this was an obvious case to consider
10 witness protection, given the theory of the
11 crime; is that correct?

12 A Absolutely, sir.

13 Q And indeed you likely raised the issue yourself
14 with your investigators?

15 A I did, sir, yes.

16 Q And you also assert at page 4, that having
17 raised this issue with the investigators,
18 because of the nature of the crime you were
19 investigating, you made it clear that the only
20 thing the police would provide was protection.
21 Is that correct?

22 A Absolutely, sir.

23 Q And that position that you were only providing
24 protection ultimately was to become a source of
25 difficulty with Zanidean; is that fair?

1 A That's fair, sir, yes.

2 Q What developed over time is that he developed
3 the expectation, or he simply made, whether he
4 expected it or not, he demanded many financial
5 benefits that were only loosely connected to
6 protection?

7 A Yes, there was money issues.

8 Q He came to regard this as essentially a source
9 of earning a living, providing financial support
10 for him as opposed to providing simply
11 protection?

12 A Well, he didn't initially, until Mr. Kovnats
13 became involved, an attorney that he retained,
14 and from there it became increasingly difficult
15 to deal with him.

16 Q All right. Now, the reason you took this
17 position, that all that would be provided was
18 protection, is because you were aware of the
19 obvious difficulties involved in paying money to
20 witnesses; is that fair?

21 A Certainly, sir.

22 Q The perception that one is paying a witness in
23 return for their evidence is something that an
24 experienced investigator would obviously want to
25 avoid?

1 A Absolutely, sir.

2 Q So leaving aside those financial and protection
3 aspects, is it fair to say there was -- which
4 are fully set out in the witness protection
5 application which we have in the materials at
6 tab 16 -- is it fair to say that there was a
7 second aspect of the negotiations with Zanidean
8 in that he was also concerned about his
9 outstanding jeopardy to criminal charges, in
10 particular an arson in Swift Current?

11 A That is correct, sir.

12 Q And the application -- and you may want to turn
13 this up, Staff Sergeant, at tab 16 -- the
14 application fully and fairly sets out that
15 aspect of the matter at page 481. Part 7, page
16 481, there is a section of the application that
17 says,

18 "Summarize information divulged by the
19 witness with respect to other criminal
20 activity: Include possible charges."

21 And the application spells out this demand for
22 immunity on the Swift Current arson there at
23 page 481, does it not?

24 MR. WOLSON: What tab are you at?

25 MR. CODE: Tab 16, the witness protection

1 application.

2 BY MR. CODE:

3 Q How did you come to learn of this issue, Staff
4 Sergeant Vandergraaf?

5 A From Sergeants Anderson and Paul.

6 Q So they would have briefed you on it?

7 A They would, sir, yes.

8 Q And did you examine their notebook entries?

9 There is two notebook entries at tabs 4 and 5,
10 where they set out conversations they had with
11 Zanidean about these issues. I don't know if
12 you want to turn them up. But do you recall
13 whether you would have looked at their notebook
14 entries about the conversations with Zanidean,
15 about the Swift Current arson? The first one at
16 tab 4 in Anderson's notebook is pages 31 to 32.
17 You will probably have a bit of difficulty with
18 Anderson's writing.

19 A Yes.

20 Q But there is two --

21 A 41?

22 Q 31 to 32, it is October 29th note of a
23 discussion with Zanidean about the Swift Current
24 arson there, it takes up about two pages in his
25 notebook.

- 1 A Whether I examined their notebooks, I don't
2 think so, but I would have certainly asked them
3 to brief me on what he was saying.
- 4 Q The gist of it is, he makes an admission, he
5 says he did it?
- 6 A Yes, that's correct, sir.
- 7 Q And he did it with Driskell?
- 8 A That's correct.
- 9 Q And you were aware of that?
- 10 A Yes, sir.
- 11 Q And the other note is at tab 5, page 520 in
12 Paul's notebooks, which is actually the earlier
13 of two, where again he makes the same admission.
14 He makes it twice on two separate occasions,
15 October 10th and October 29th, and explains his
16 alleged motivation for it being to take revenge
17 on his sister, who he had some kind of a
18 grievance with?
- 19 A Yes, sir.
- 20 Q So you were generally aware of what had
21 happened, he had made these two admissions to
22 your officers, regardless of whether you looked
23 at their notebooks?
- 24 A I was, sir, yes.
- 25 Q And were you aware that he was asserting that

1 this was not a financial crime, it was not an
2 insurance fraud, he did it for revenge against
3 his sister in the belief that she didn't have
4 insurance?

5 A Yeah, I recall that, sir, yes.

6 Q Now, in our interview with you, back at tab 1,
7 and I'm sure you recall this, you explained
8 that -- and this is at page 5 of your
9 interview -- you explained that you initially
10 felt that that evidence had some potentially
11 incriminating impact, that it would be helpful
12 evidence to the Crown because it put Driskell
13 and Zanidean together in and around the time
14 frame you were very interested in, early July of
15 the summer of 1990, put them together involved
16 in serious criminal activity?

17 A Absolutely, sir.

18 Q So it clearly appeared to have some relevance to
19 the case potentially for the Crown?

20 A Yes.

21 Q Did you also see that it had potential impact on
22 his credibility, on Zanidean's credibility?

23 A It certainly wasn't fraught without difficulty,
24 sir, that's certain.

25 Q It obviously, in the broad sense of bad

1 character, revealed that he was a criminal who
2 was engaged in serious criminal activity?

3 A That's correct, sir.

4 Q Right at the time of the alleged homicide?

5 A Yes, sir.

6 Q And it also, were you aware that, particularly
7 in the note of Sergeant Paul at tab 5, page 520,
8 that he volunteered this information the first
9 day he came into the police station on
10 October 10th. He contacted the police on
11 October 9th, and they had taken a statement from
12 him out in the suburbs somewhere. And then on
13 October 10th, he comes into the station for the
14 first time. And you see in the middle of page
15 520, Sergeant Paul records him as saying,
16 "Ray then states that there could be a
17 problem with his credibility in court."
18 And Sergeant Paul asks him why, and he then
19 divulges the Swift Current arson?

20 A Yes, sir.

21 Q Were you aware that he was concerned about this
22 issue because he perceived that it might impact
23 on his credibility?

24 A Yes, I was, sir.

25 Q So for all of those reasons, whether this

1 evidence helped the Crown or helped the defence,
2 was it something that was sufficiently relevant
3 and important to include in a police report?

4 A Well, one of the difficulties we had was the
5 witness protection situation, and we had Tom Orr
6 become involved in it, of course. And it was
7 not, it was fraught with difficulties, there was
8 no question. But I think at that time we
9 weren't sure exactly how it was going to impact
10 on anything here. I have not seen all of the
11 reports, I don't know if a report was filed to
12 Justice Department on that issue at that time.
13 It could be we separated it into witness
14 protection matters, but certainly the Crown was
15 advised.

16 Q This is all happening in October, this is the
17 first day he comes in to the office?

18 A I see.

19 Q We are way before witness protection.

20 A I didn't realize it was the first day, to be
21 honest.

22 Q The first day he was at the Public Safety
23 Building.

24 A Yes, okay.

25 Q And reports are prepared for the developments in

1 the investigation all throughout October?

2 A Correct.

3 Q And witness protection is not a matter that's
4 even under discussion --

5 A I stand corrected, sir.

6 Q -- until a month or two later, you set up a
7 temporary safe house, and then a month or two
8 later you get Orr involved in the spring?

9 A Exactly.

10 Q My question to you is simply, when this
11 information arose in October, was it
12 sufficiently relevant to the prosecution and
13 important to the case to merit putting it in a
14 police report?

15 A I would say so, yes.

16 Q In your interview back at tab 1, at page 5 of
17 your interview, you describe the emergence of
18 the Swift Current issue as a,

19 "...major development in the case."

20 Do you see that?

21 A Yes.

22 Q And I take it that's because this was a
23 particularly tricky piece of evidence, it could
24 have inculpatory impact as evidence that the
25 Crown might be able to use, if they could

1 somehow get over the similar fact rule, and it
2 also had potentially exculpatory impact?

3 A Yes, sir.

4 Q And it raised witness protection issues?

5 A Correct, sir.

6 Q So for all of those reasons, it was a major
7 development in the case. And I take it, it is
8 self-evident that major developments in the case
9 should be reported to the Crown?

10 A Yes, that's correct.

11 Q And obviously the best way to report is to fill
12 out a police report, put it in writing; is that
13 fair?

14 A Well, that would be fair, sir, yes.

15 Q All right. What steps -- so you learn about
16 this admission he has made twice over to the
17 Swift Current arson -- what steps did you take
18 to follow up in relation to that? How did you
19 instruct Anderson and Paul? Again, this is all
20 set out in your witness statement at page 5.

21 A On being advised of that information, we had a
22 discussion about what we should do with this. I
23 was always concerned with promise of favour to
24 any witnesses in any circumstances, and
25 certainly this did create a bit of a problem for

1 us in relation to this charge.

2 The view I took at that time, let's advise
3 Swift Current RCMP, find out who is
4 investigating, find out who is involved in this
5 investigation, determine if there is a fire, as
6 indicated by Mr. Zanidean, and determine what
7 the status is of their investigation.

8 And simply the intent was not to persuade
9 or dissuade Swift Current RCMP, it was simply a
10 matter to -- and I made sure that Sergeant
11 Anderson and Sergeant Paul understood this, at
12 least I hope I did -- that the promise of favour
13 thing, we didn't want it perceived or indicated
14 that we had asked them directly to do anything
15 in relation to that charge.

16 Q So you instructed them to call Swift Current?

17 A Yes.

18 Q And as I read your witness statement, you stood
19 by during the phone call?

20 A Yes. The particular desk was right outside of
21 my office, a general detective's desk with the
22 phone, and I was standing by my office. We had
23 just discussed it and he was about to make the
24 phone call, yes.

25 Q So you were actually physically present for the

1 phone call?

2 A I was standing by.

3 Q And I take it Anderson explains to Swift
4 Current, we have got a very serious homicide
5 here in Winnipeg, and we have got a witness who
6 has come in who appears to be critical to our
7 case?

8 A That's fair, sir, yes.

9 Q And he has confessed to the Swift Current arson
10 to us, he is your culprit, he is your
11 perpetrator?

12 A Yes.

13 Q And the obvious complication is, we need him as
14 a witness and you need him as an accused, so
15 what are we going to do? Was the conversation
16 somewhat along those lines?

17 A It was simply not what are we going to do, it
18 was simply a matter -- my instruction were at
19 that time, let Swift Current deal with their
20 arson, let's not have any perception that we are
21 trying to influence Swift Current. And I would
22 have expected -- I even expected, knowing how
23 the RCMP work, they are very efficient, very
24 good, and it would have gone to the highest
25 levels in the RCMP.

1 Q You are quite right, that is their policy. But
2 let's be practical here, you have got to tell
3 them what your situation is. Your situation is
4 you have a serious murder and this guy is your
5 witness?

6 A Yes.

7 Q And so that's all explained to him?

8 A Yes, yes.

9 Q A wink is as good as a nod to a blind donkey.
10 It is not going to be too difficult for them to
11 figure out that you need this guy on your case,
12 whether you expressly ask it or not?

13 A That's correct, yes.

14 Q In any event, Anderson explains the dilemma or
15 the situation to Swift Current, and what is the
16 report that comes back to you?

17 A The report --

18 Q You don't hear the other end of the
19 conversation?

20 A No, the indication was surprisingly that they --
21 well, not surprisingly, no -- they were going to
22 back off on their investigation in relation to
23 Mr. Zanidean pending our trial.

24 Q And you initially said surprising, and then you
25 reflected on it and said it is really not that

1 surprising, you simply have, as I understand
2 your version of it, one police force is
3 essentially extending some cooperation to
4 another police force to facilitate your
5 homicide?

6 A Yes. At that early stage, yes, that was
7 acceptable.

8 Q Assuming that's what happened, it is not
9 irrational for one police force to say, let your
10 case go first and get his evidence in on the
11 homicide, and we will decide what we are going
12 to do afterwards?

13 A Yes, that's correct, sir.

14 Q Nothing wrong or improper with one police force
15 extending that kind of favour or consideration
16 to another police force?

17 A I don't think so, sir, no.

18 Q So on reflection, if that is what has happened,
19 you wouldn't find it particularly surprising?

20 A That's correct.

21 Q Anderson had explained the dilemma to him and he
22 had responded to it?

23 A That is correct, sir.

24 Q Now, assuming that's what happened, this would
25 constitute obviously an important development on

1 the case; is that fair?

2 A Yes, sir.

3 Q Zanidean had been expressing concern about the
4 matter, he had raised it with the officers the
5 first day he came into the Public Safety
6 Building, he raised it as a matter affecting his
7 credibility. And you have succeeded in fairly
8 short order in achieving at least a temporary
9 reprieve, as I understand you; is that right?

10 A Yes, I think so, sir.

11 Q Again, is that something that would be
12 appropriate to put in a police report to inform
13 Crown Counsel of the development?

14 A Well, this was a situation, it was where --
15 because it was going, again, likely going
16 through the RCMP Witness Protection Program, it
17 was something that they had to know. We were
18 dealing with it at that point in time as a
19 witness protection matter.

20 Q Well, with respect, this is on October 30th,
21 there is no witness protection measures in place
22 that I'm aware of at this point. Zanidean is
23 out wearing a body pack in the field acting as a
24 police agent?

25 A That's correct, again --

1 Q This phone call is on October 30th?

2 A Yes, that's correct. Our investigation was
3 continuing at that time, and you know, we wanted
4 that bit of time to complete said
5 investigations.

6 Q So my question remains, you have got a witness
7 who has expressed concern about a matter that he
8 perceives as affecting his credibility. You
9 perceive it as potentially having either
10 inculpatory or exculpatory effect. You have had
11 this conversation with a fellow police force and
12 achieved a temporary reprieve for him on the
13 matter. Is that a development in the case that
14 should have been set out in the police report?

15 A In due course, yes.

16 Q And I take it, it clearly should have been set
17 out in police notes of the conversation?

18 A That's correct, sir.

19 Q Because you see when we look at Anderson's note
20 of the call, it is at tab 4, pages 33 to 34,
21 there is no mention of this apparent decision by
22 Swift Current to hold off on the matter pending
23 the trial?

24 A I am sorry, sir?

25 Q If you look at tab 4, page 34, the note in fact

1 tends to indicate the opposite. It is
2 consistent with your account that he informs him
3 of the problem, and of Zanidean's, at least he
4 informs him of Zanidean's admission?

5 A Yes.

6 Q And he simply says,

7 "Burton advises no evidence to confirm, but
8 investigation will continue."

9 A Yes.

10 Q There is no mention of this temporary reprieve
11 that's been undertaken by the RCMP?

12 A You have to show me again, sir.

13 Q In the middle of page 34, tab 4, page 34 at the
14 bottom. It simply says, he advises the RCMP of
15 the admission that Zanidean and Driskell are the
16 two culprits in the arson, and then it says,

17 "Burton advises no evidence to confirm but
18 investigation will continue."

19 And this discussion about temporary immunity
20 pending the trial is, there is no mention of it
21 whatsoever, as I read that note?

22 A You are correct, there is no mention.

23 Q So is there any explanation for the absence of a
24 contemporaneous note and the absence of a
25 contemporaneous report, because we don't have a

1 report about this either, as of this event on
2 October 30th, 1990?

3 A I'm sorry, sir, I lost track of your question.

4 Q Is there any explanation for this absence of a
5 contemporaneous note and the absence of a
6 contemporaneous report about this important
7 development in the case?

8 A I have no explanation.

9 Q And your recollection, what you have just
10 recounted to us over the last 15, 20 minutes or
11 so about this development, the basis of your
12 recollection of the phone call and the oral
13 report back you receive is what?

14 A That we were continuing our investigation,
15 certainly notifying them, and them trying to
16 hunt down Mr. Zanidean was not something that we
17 were interested at that time while we were doing
18 body packs. So --

19 Q But you have misunderstood my question. My
20 question simply is, given that we have got no
21 note from Anderson about this aspect of the
22 matter, and we have got no report from anybody
23 about this aspect of the matter, at the time,
24 and you didn't take notes yourself?

25 A No, I did not.

1 Q So my question for you is simply, you have been
2 telling us your recollection of this over the
3 past 15 or 20 minutes. What is the basis for
4 your recollection?

5 A On what I was informed by Sergeant Anderson and
6 then Paul.

7 Q Yes.

8 A Sergeant Anderson in this particular case.

9 Q I appreciate that, and there is nothing that you
10 have used to assist you in forming that
11 recollection?

12 A No, that is correct, sir. But on review of the
13 files that you provided me, it became apparent
14 to me that the investigation was still
15 continuing.

16 Q All right. You see, Sergeant Anderson
17 eventually produces a report some time later,
18 about a year later, in October of 1991, and I'm
19 wondering whether you have had a chance to
20 review that report and whether that assisted you
21 in formulating your recollection of this event?

22 A I don't know which report you are referring to,
23 Mr. Code.

24 Q Well, the recollection that you have just given
25 us, does that come purely from your memory,

1 completely unaided by any assistance from
2 anything, it is exclusively from your memory,
3 the account of this phone call that you remember
4 Anderson making?

5 A Because I was there and I was essentially part
6 of the investigation, and we were trying to
7 handle that matter delicately and we needed some
8 time to carry on our investigation. Certainly,
9 that initial phone call to Constable Burton was
10 simply to advise them what the situation was, so
11 they could take whatever measures they decided
12 to take and consult with whomever they wanted to
13 consult.

14 Q I'm not asking you to repeat your evidence on
15 it, we have gone over your story and I have got
16 it. My question is very simply, does that
17 account that you have given us come exclusively
18 from your recollection?

19 A Yes.

20 THE COMMISSIONER: Mr. Code, whenever it is
21 convenient would be --

22 MR. CODE: This is a perfect spot.

23 THE COMMISSIONER: We will adjourn for 15
24 minutes.

25 THE CLERK: All rise. This Commission of

1 Inquiry is now recessed.

2 (Proceedings recessed at 11:19 a.m. and
3 reconvened at 11:35 a.m.)

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

6 BY MR. CODE:

7 Q All right. Staff Sergeant, we are through to
8 the October 30th call to Swift Current, and the
9 report back you received from Sergeant Anderson
10 orally. What did you do then to follow up,
11 after having received that report from Anderson
12 about what Burton had agreed to in the call,
13 what did you do with that information?

14 A We would have passed it on to, because it was a
15 witness protection matter, we discussed it with
16 Tom Orr and we would have apprised Mr. Miller.

17 Q If you look at your statement at tab 1, page 5,
18 you say that it was also a major development in
19 the case?

20 A Yes.

21 Q And accordingly you say Mr. Dangerfield had to
22 be informed about it, and you --

23 A He was informed, sir, yes.

24 Q And the reason, I take it, why it has got this
25 dual aspect, it has got witness protection

1 aspects that go to Miller, because it affects
2 his potential safety; is that fair?

3 A Yes, I think that's fair.

4 Q In the sense that if he is going to go into
5 witness protection, being charged with a
6 criminal offence could bring him out into the
7 open and ultimately could land him in custody?

8 A That was a concern, yes.

9 Q But it also had evidentiary impact on the case,
10 as you have noted, because it could potentially
11 be used as evidence by the prosecution and it
12 could also be used as evidence by the defence?

13 A Absolutely, sir.

14 Q Which is why you took the view that Dangerfield
15 also had to be briefed about it?

16 A Yes.

17 Q Now, turning to the witness protection issues,
18 Staff Sergeant, the officers, your two lead
19 investigators, Anderson and Paul, they follow up
20 on Zanidean's witness protection issues by
21 setting up a meeting with his lawyer Kovnats.
22 And we see Kovnats' first appearance in the file
23 at a November 13th meeting, which Sergeant Paul
24 records in his notebook. If you want to see the
25 note of it, I'm not going to take you through it

1 in any detail. It is at tab 5, page 548,
2 Sergeant Paul sets out what appears to be a
3 fairly thorough, approximately two page note, of
4 the initial meetings with Kovnats. Do you see
5 that there starting at page 548?

6 A Yes.

7 Q Again, I'm not going to go through it with you,
8 it is quite self-explanatory. What I wanted to
9 ask you is what was your understanding as to why
10 Zanidean went and got a lawyer, why he got
11 Kovnats involved in this?

12 A It seems to me that it was a Swift Current
13 matter.

14 Q His primary reason for retaining a lawyer is
15 because he had this outstanding jeopardy in
16 Swift Current; is that fair?

17 A That's correct. And he would have been advised
18 by Sergeant Anderson and Paul that he had the
19 right to retain and instruct counsel.

20 Q All right. So we see this meeting gets arranged
21 approximately two weeks after the call to Swift
22 Current on October 30th, and Sergeant Paul sets
23 out the subject matter of the meeting. The
24 Winnipeg Police undertook that they would
25 provide short-term protection for him pending

1 the trial. They would make sure that he was
2 safe from any danger prior to testifying, but
3 they direct Kovnats to go and speak to the
4 Crown, they specifically direct him to Gregg
5 Lawlor, who was helping with the prosecution at
6 this point. To discuss long-term relocation,
7 change of identity, the formal witness
8 protection aspects, they direct Kovnats towards
9 the Crown's office?

10 A That's correct.

11 Q And I take it you would agree that was the
12 appropriate approach to take, consistent with
13 your initial evidence that you looked after
14 informal local temporary protection, but that
15 the long term protection had to go through the
16 RCMP?

17 A Absolutely, sir.

18 Q And you wanted the Crown to facilitate those
19 negotiations with the RCMP?

20 A Yes, sir.

21 Q Again, I take it, in terms of record keeping,
22 good police practices in relation to record
23 keeping, this kind of note that Sergeant Paul
24 kept here, what appears to be a thorough
25 two-page account of these discussions of witness

1 protection issues with Kovnats, I take it that's
2 an appropriate police practice, in your view; is
3 that fair?

4 A Certainly. I'm satisfied with those notes, yes.

5 Q Now, just to briefly pause and deal with
6 Mr. Lawlor's involvement at these early stages.
7 And remember, we are still -- this is mid
8 November, we don't have the preferred indictment
9 yet, we haven't made disclosure, there is no
10 trial date, it is early days still. And we see
11 at tabs 14 and 15 some degree of apparent
12 involvement by Mr. Lawlor at this time. And
13 incidentally, there is an error at tab 14, that
14 covering memo from Mr. Lawlor was not intended
15 to be included. And had I been able to review
16 every one of these tabs, I would have removed
17 the covering memo from Mr. Lawlor, because we
18 will be hearing from him in evidence and those
19 are matters that he can deal with in evidence.
20 But the contemporaneous documents, starting at
21 tab 2 of page 14, you see this temporary
22 provision of monies?

23 A I do, yes.

24 Q You see Mr. Lawlor being copied on those memos,
25 then we get an accounting spreadsheet that

1 Sergeants Anderson and Paul were keeping?

2 A Yes, that's correct.

3 Q And it shows them receiving monies from
4 Mr. Lawlor on four occasions, again in this
5 early period, November, December, January and
6 February. And then we get two more memos, again
7 with these temporary provisions of monies, with
8 Mr. Lawlor again being copied on the memos?

9 A That is correct, sir.

10 Q And do you have any recollection of his
11 involvement at these early stages, in witness
12 protection matters?

13 A Mr. Lawlor, no, being the prosecutor, or one of
14 the prosecutors, I think he finally deferred it
15 to Mr. Miller because of the complicating
16 factors.

17 Q At this point he appears to be carrying both
18 roles, the prosecution role of advising the
19 police on their case, but at the same time
20 dealing with some of these initial witness
21 protection issues?

22 A That is correct, sir.

23 Q And then eventually the relationship gets
24 formalized and Miller takes over the witness
25 protection?

- 1 A That is correct.
- 2 Q At tab 13 we see Mr. Kovnats' first letter to
3 Mr. Miller setting out a long shopping list of
4 15 requests that are being made on behalf of his
5 client?
- 6 A Yes, sir.
- 7 Q And included in those is number 8, a clear
8 request for immunity on any matters of which the
9 Crown is aware, currently aware?
- 10 A That is correct, sir.
- 11 Q And that would obviously have been understood at
12 the time as referring to the Swift Current
13 matter? That was the one outstanding jeopardy
14 that everybody knew about in relation to
15 Zanidean?
- 16 A Yes, that one specific fire with Mr. Driskell.
- 17 Q Certainly, the police knew about it at that
18 point?
- 19 A Yes.
- 20 Q And that request gets repeated in greater detail
21 in the actual application that's completed over
22 the next couple of months. We've already taken
23 you to that.
- 24 A Yes.
- 25 Q And I just wanted to pause and ask you to step

1 back and generally tell us about the practice in
2 serious homicides, where you've got these kinds
3 of witnesses, witnesses who come from the
4 criminal underworld, like a Zanidean, who may or
5 may not be accomplices, but certainly have
6 outstanding criminal jeopardy of their own. And
7 in your witness statement at tab 1, you have
8 told us very frankly -- this is at pages 6 to 7
9 of your witness statement -- that the justice
10 system does on occasion give these kind of
11 benefits to cooperating witnesses, by either
12 reducing charges, reducing sentences, or
13 withdrawing charges outright?

14 A That is correct, sir.

15 Q And we colloquially refer to that as a patch?

16 A Yeah, that's fair, sir.

17 Q So, when you heard that Kovnats was demanding
18 immunity on this outstanding charge in Swift
19 Current, and you put it into the formal witness
20 protection application, there is nothing
21 shocking or unusual about that. It happens from
22 time to time in the criminal justice system; is
23 that fair?

24 A Certainly, sir.

25 Q Again, as you very fairly pointed out in your

1 witness statement in the same area, pages 6 to
2 7, when that happens, when that kind of an
3 arrangement is made, it has to be approved by
4 the relevant Justice Department officials, it
5 gets set out in a supplementary report, and it
6 is then disclosed to the defence. Is that
7 correct?

8 A Generally I think, sir, yes. I'm not sure if
9 that happened in this case but --

10 Q I'm not saying it was. My lead in to this area
11 of the questions was to ask you to step back and
12 talk generally about your experience as a
13 homicide investigator, and we will come back and
14 talk specifically about this case where we have
15 some complications.

16 A I see.

17 Q At pages 6 and 7 of your witness statement, at
18 tab 1, at the top of page 7 you say,

19 "When this happens, it is openly disclosed
20 by the police in a supplementary report and
21 made known to the defence."

22 Is that correct?

23 A That is correct sir.

24 Q And indeed what often happens in these
25 situations is that Crown Counsel will bring it

1 out themself in examination-in-chief, to try to
2 downplay any harm in terms of the credibility of
3 witness?

4 A Certainly, sir.

5 Q So to take the sting out of it, the Crown brings
6 it out themselves?

7 A That's correct, sir.

8 Q Now, in this particular case, moving from the
9 general to specific, the arrangement of any kind
10 of a patch, if I could use the colloquial term,
11 was complicated by the fact that the charge was
12 in Saskatchewan and not in Manitoba?

13 THE COMMISSIONER: Mr. Code, I know you have
14 used that term a number of times. I haven't
15 heard a witness use it. I don't know whether it
16 is a colloquial term or not.

17 MR. CODE: I got it straight from the good Staff
18 Sergeant in the interview, and he used it, so
19 I'm assuming it is a local Manitoba term, that I
20 had heard it when I was a young lawyer, probably
21 25 years ago, but I got it from Staff Sergeant.

22 THE COMMISSIONER: That's fine, thanks.

23 BY MR. CODE:

24 Q It is a term that's right well known here in
25 Winnipeg, I take it?

1 A Yes, sir.

2 Q And the complication here was that the charge
3 was in Saskatchewan, it wasn't a local Manitoba
4 charge?

5 A Absolutely, sir.

6 Q And furthermore, it was being investigated by a
7 separate police force, by the RCMP and not by
8 the Winnipeg Police?

9 A That is correct, sir.

10 Q So you couldn't arrange it all yourself, and
11 then just report it in a police report, it had
12 to be coordinated with justice officials in
13 another province and police forces in another
14 province?

15 A That is correct.

16 Q Now, the next development in the case, having
17 submitted your witness protection application
18 that fully sets this all out in it, if I could
19 have you turn to tab 17, we see that this report
20 that I have taken to you once, I took you to
21 this morning when we were talking about general
22 police reporting practices and good police
23 reporting practices, we get Sergeant Anderson's
24 report of, the April 5th report by Zanidean to
25 Sergeant Paul, that he had received a

1 threatening note under his windshield wiper
2 blade?

3 A That is correct, sir.

4 Q And I take it you would have been informed of
5 that by reading this report?

6 A That is correct, I would have probably asked
7 them to put one in on that specific issue, yes.

8 Q And at this point in time, we know that Zanidean
9 is in a safe house and the police are providing
10 temporary support for him in that safe house.

11 And according to Sergeant Anderson's report, the
12 second to last paragraph, he says that temporary
13 arrangements were made to put him in a hotel, a
14 safe hotel, until arrangements could be made to
15 move him out of town.

16 A That's correct, sir.

17 Q And the arrangements are then made to relocate
18 him to Calgary for the approximately two-month
19 period you have got until the trial commences?
20 You have exactly two months until the trial
21 commences; is that correct?

22 A That is correct, sir.

23 Q Again, these kinds of arrangements, are they
24 typical of what you told us about in the early
25 part of your evidence, that you will often make

1 temporary local arrangements for witnesses,
2 pending the trial, that don't involve the formal
3 RCMP program?

4 A Absolutely, sir.

5 Q And being able to put Zanidean in a hotel in
6 Calgary didn't require any kind of formal
7 approval from the RCMP Witness Protection
8 Program?

9 A That's correct.

10 Q You simply did it, and you got the RCMP to
11 assist by providing a contact person in Calgary
12 who you could give the cheques to, to pay the
13 hotel and give Zanidean advances for his meals?

14 A Yes, sir.

15 Q There is a number of reports in here that you
16 have probably seen at tabs 18 and 19 of the RCMP
17 file, Corporal Orr's reports where he records
18 his conversations with you, making it clear that
19 all you were asking for was this informal
20 assistance by providing a contact person?

21 A Yes, sir.

22 Q And we actually see the chief gets involved in
23 this at tab 22, the acting chief, Lawrence
24 Klippenstein sends a letter at tab 22, and you
25 see the concluding paragraph of it makes it very

1 clear. He says in the last sentence,

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

6 A That is correct, sir.

7 Q And that reflects your understanding that this
8 had nothing to do with the Witness Protection
9 Program?

10 A That is correct, sir.

11 Q And this letter, incidentally, who would have
12 drafted a letter about these arrangements for
13 the acting chief?

14 A I did, sir.

15 Q So this is really your letter for the chief's
16 signature?

17 A That's correct, sir.

18 Q And if you look at the first page of the letter,
19 there is another helpful little point there. In
20 the third paragraph you see, you set out that he
21 has made a request to be relocated to Calgary
22 and your second sentence of that third paragraph
23 is,

24 "It is my understanding that he has not and
25 will not make a firm decision on a change

1 to a secure identity until completion of
2 the prosecution against Driskell."

3 A That was my understanding, sir, yes.

4 Q In other words, you couldn't formally enter him
5 into the Witness Protection Program because he
6 himself hadn't even made up his mind about it?

7 A That is correct, sir.

8 Q And in fact, he never did, as I read the file,
9 get over this hurdle of whether he wanted to go
10 through with those kinds of formal steps like
11 change of identity; is that correct?

12 A That is correct. That's not unusual with
13 witnesses.

14 Q It is a significant thing to change your
15 identity?

16 A It certainly is, sir.

17 Q And Zanidean had never quite come to terms with
18 that, and you were waiting for him to make a
19 final decision about it?

20 A Correct, sir.

21 Q Now, this straightforward understanding that
22 appears to exist between you and Orr, that they
23 are just providing informal assistance to you
24 and it is not the Witness Protection Program
25 yet, and indeed Zanidean hasn't even made up his

1 mind about the Witness Protection Program yet,
2 was that understanding that you seem to all
3 share here, was that shared by Anderson and
4 Paul? Would you have briefed them on these
5 matters?

6 A Yes, I would.

7 Q And did there ever appear to be any
8 misunderstanding by Anderson and Paul that
9 somehow, by putting him up in a hotel in Calgary
10 temporarily pending the trial, that he was now
11 formally in the RCMP Witness Protection Program?

12 A I could understand perhaps how a mistake like
13 that could be made, but, no, until the RCMP make
14 those kinds of arrangements, it is an interim
15 matter, it is an interim protection matter. I
16 would hope they understood that at the time.
17 But people use witness protection quite
18 liberally, and sometimes it is confused with the
19 national program.

20 Q My question to you is more specific than that.
21 Do you remember any discussions with Anderson or
22 Paul where they said, where they were confused
23 about this, where they said, gee, I thought he
24 was in the Witness Protection Program when we
25 put him up in this hotel in Calgary? Do you

1 remember any discussions that signified
2 confusion on this point?

3 A No, no. It was all witness protection of some
4 form.

5 Q I'm not suggesting that it is not a form of
6 witness protection, but it is not the RCMP
7 program?

8 A That's correct, sir.

9 Q And as far as you know, that was understood?

10 A Yes, sir.

11 Q Certainly the documentation here makes it very
12 clear.

13 All right. Zanidean appears to last all of
14 about 11 days in Calgary, in this form of
15 witness protection at the hotel. If you look at
16 tab 21, we have a useful little Winnipeg Police
17 document called the Ray Zanidean log book, which
18 is a log book that presumably was set up at your
19 direction to make sure he called in?

20 A I recall that, yes.

21 Q And you make arrangements for him to place his
22 first call on April 12th, when he gets there, in
23 order to give you the name of his hotel and his
24 room and his phone number?

25 A Yes, that is correct, sir.

- 1 Q And basically you are trying to keep track of
2 him?
- 3 A Absolutely, sir.
- 4 Q He is your witness in an important case, he is a
5 critical witness, and he is in a form of
6 protection that you are financing with the
7 Department of Justice, so you are keeping track
8 of him?
- 9 A That is correct, sir.
- 10 Q So he does call in, at the bottom of the second
11 page on April 12th, you get the first call in.
12 And then over the page, the third page of the
13 book, you see at the top of the page, he calls
14 in again on the 15th, three days later. It
15 looks like Sergeant Paul's writing to me at the
16 top of the page, is it?
- 17 A What words, "Zanidean called"?
- 18 Q Yes?
- 19 A That's my handwriting, sir.
- 20 Q That's your handwriting?
- 21 A Yes, sir.
- 22 Q And then on the fourth page here, the next page,
23 top of the page, he calls in on the 18th of
24 April?
- 25 A Yes, sir.

1 Q And asks for his mail and luggage. Is that
2 Sergeant Anderson's writing?

3 A It looks like it, sir, yes.

4 Q And then finally at the bottom of that page, we
5 get the problem on April 23rd. Do you see the
6 April 23rd note?

7 A Yes.

8 Q And is that your writing again?

9 A That is not, sir, no.

10 Q In any event, the message, it is Corporal Smith
11 who is the contact person with the RCMP, he
12 calls in to say that Zanidean got in trouble
13 with the Calgary Police Department and was
14 kicked out of the hotel, and Smith doesn't know
15 where he is.

16 A That's right. And the initials there would be
17 Staff Sergeant Steve Jones, I believe.

18 Q And he wants to talk to you, leaves a message
19 for Anderson. And finally over the page, the
20 last page, we have, I believe it is your note on
21 the 26th of April, saying Ray is in Winnipeg?

22 A That is correct, sir.

23 Q And then the last note I wanted to ask you
24 about, there is a note right below that.

25 "Ray never told me, refused."

1 Do you see that?

2 A Yes.

3 Q Is that your note?

4 A Yes.

5 Q And can you help us with that?

6 A I think that was in regards to him not wanting
7 to disclose his location.

8 Q Not wanting to disclose --

9 A Where specifically he was. Now, I can't recall
10 how I found it out, but --

11 Q Where he was back in Winnipeg?

12 A Yes.

13 Q He had arrived back in Winnipeg, without your
14 knowledge, and he didn't want to tell you where
15 he was?

16 A Right.

17 Q So, I take it none of this was a good
18 development, these last 11 days in Calgary, he
19 has gotten into trouble with the local police,
20 he has been kicked out of the hotel, his handler
21 or his contact person doesn't know where he is.
22 And then he comes back to Winnipeg, the area of
23 the alleged threat, without your knowledge, and
24 won't tell you where he is in Winnipeg?

25 A Yes, sir.

1 Q None of this is good for witness protection
2 candidacy; is that a fair way of putting it?

3 A It was not good, sir, not unexpected sometimes.

4 Q So he is starting to look like he is going to be
5 a difficult candidate for the Witness Protection
6 Program?

7 A Absolutely, sir.

8 Q And is it fair to say that this kind of
9 experience, with the 11 days in Calgary, started
10 to influence your views about how best to handle
11 the witness protection issue and what would be
12 the preferred options here?

13 A The preferred option was to let Manitoba Justice
14 handle it with Mr. Kovnats and Mr. Zanidean.

15 Q I appreciate that. But we, as we see from your
16 statement from the interview, you came to the
17 view, as did others, including Miller and Orr,
18 that the better option here was going to be a
19 straight cash payout to Zanidean, instead of
20 putting him into the Witness Protection Program.
21 Is that fair?

22 A I would have discussed that with Mr. Miller, as
23 I think did Tom Orr at some point in time, yes.

24 Q And the three of you ultimately came to favour
25 that option, because of the fact that Zanidean

1 was a difficult, unmanageable individual, who
2 wouldn't fit well with the Witness Protection
3 Program?

4 A Certainly, if he demanded protection, sometimes
5 the simplest way to do it is to provide him the
6 funds to relocate himself, wherever he chooses,
7 without being under our control at all.

8 Q At page 8 of your interview, tab 1, at the
9 bottom of the page 8, three lines up from the
10 bottom of page 8, you say,

11 "Vandergraaf advocated this alternative..."
12 that's the cash lump sum payment,
13 "...partly because it was cheaper and
14 partly because Zanidean was very hard to
15 manage and was not a good candidate for the
16 RCMP program."

17 A That is correct, sir.

18 Q My question to you simply is, this experience in
19 April with Calgary is the beginnings of that
20 process of thought that ultimately culminates in
21 May to you having your discussion with Miller
22 and recommending to him the cash payout option?

23 A Yes, sir.

24 Q All right. So he is back in Winnipeg, and as I
25 read the next development on the file at tab 24,

1 you have a discussion with Orr. Orr makes a
2 note of it on the 26th.

3 A Yes.

4 Q And you arrange a meeting of all of the parties
5 in a room --

6 A I did not arrange that meeting, sir, Mr. Miller
7 did, and Mr. --

8 Q I wasn't --

9 A Oh, I see. I recall it, I was asked to get
10 ahold of Tom Orr and have him down at that
11 meeting.

12 Q Whether you personally arrange it, or whether
13 somebody else did, it is the sensible step to
14 have a meeting, I take it?

15 A Yes.

16 Q You have got a problem with the witness, he has
17 just called you on April 26th, according to the
18 log book, you have got concerns. You phone Orr,
19 and the agreement is that we need to have a
20 meeting and sort this out. Have I summarized
21 what happens?

22 A Well, yeah, I apprised Sergeant Orr, and then
23 apprised Mr. Miller as well. And Mr. Miller and
24 Mr. Kohnats must have decided to have that
25 meeting. How the formal arrangements were made,

1 I guess I don't recall, but --

2 Q I'm not trying to saddle you with responsibility
3 for arranging the meeting. It was a sensible
4 thing to do, given the problem?

5 A It was, sir. And I'm not trying to be
6 difficult, I'm trying to get a sense of
7 specifics about who arranged what, that's all.

8 Q Well, a meeting is arranged and you all get
9 together; is that fair?

10 A That's very fair, sir.

11 Q Okay. And presumably the purpose of the meeting
12 was to try to reach some understanding about
13 Zanidean's witness protection arrangements, in
14 light of the difficulties that had arisen in
15 Calgary?

16 A That is correct, sir.

17 Q Now, Orr makes a note of the meeting there, if
18 you could keep tab 24 open, and you gave us your
19 best recollection of the meeting in your
20 statement at page 8 as well.

21 A Yes.

22 Q And there is no significant difference between
23 your two accounts, as I read them. The gist of
24 it is that there was what Orr describes as an
25 extended argument, and that you characterize in

1 much the same terms at the top of page 8 of your
2 witness statement; is that correct?

3 A Yes, that is correct.

4 Q It was a confrontational argument between you
5 and Zanidean over money essentially. Is that
6 fair?

7 A Well, rather than Mr. Kovnats or Mr. Miller or
8 anyone opening the meeting, it seemed that
9 Mr. Zanidean was opening the meeting, and his
10 attitude wasn't sitting well with me, sir, no.

11 Q And that attitude of his that didn't sit well
12 with you is that he regarded you and the Crown
13 as essentially a money tree that he could make a
14 living off of, as opposed to your view, which
15 was that you were solely providing protection;
16 is that a fair summary?

17 A Essentially, that's it, yes.

18 Q Your witness statement says you weren't offering
19 him a living, you were offering him protection?

20 A That is correct, sir.

21 Q The meeting breaks up into a second meeting.
22 According to Orr's notes, you and Miller leave,
23 and Orr carries on with Zanidean and Kovnats and
24 Zanidean's wife?

25 A That sound correct, sir, yes.

1 Q And on the second page of the notes we see that,
2 in fact, it is Orr who raises the idea of a cash
3 settlement at that separate meeting. I'm not
4 suggesting you were present for it, but the
5 genesis of the idea that you and Miller
6 eventually discuss in May appears to come from
7 Orr at this meeting. And I suppose what I
8 wanted to ask you in relation to that is, did
9 you have the sense that Orr was on side with
10 this idea of a cash payout, because he too
11 viewed Zanidean as a singularly inappropriate
12 candidate for the witness protection
13 application?

14 A Yes, sir.

15 THE COMMISSIONER: Mr. Code, was that meeting
16 April 29th?

17 MR. CODE: Yes, it is.

18 THE COMMISSIONER: Thanks.

19 BY MR. CODE:

20 Q So coming out of that meeting, you and Miller
21 have follow-up discussions in May. And you
22 describe those at page 8 of your statement, I
23 don't need to go over them in detail, but it is
24 at some point in May that the two of you come to
25 a consensus that is similar to the proposition

1 that Orr puts to them at the April 29th meeting,
2 that the cash settlement is the better option
3 here?

4 A I suggested it to Mr. Miller. Whether or not
5 there was a consensus, it was up to Mr. Miller
6 of the Justice Department to deal with that
7 issue, sir. It seemed to be the wise route to
8 go, though.

9 Q I appreciate you can only speak for yourself
10 here, but did Miller resist the idea, did he say
11 no, that's a bad idea, or was he open to it?

12 A This was a common way to handle business, even
13 for the RCMP in other matters. And no,
14 Mr. Miller didn't raise any objection.

15 Q In fact, if you follow through in Orr's notes,
16 he and Orr have a discussion about it at the end
17 of May, which is completely consistent with your
18 account, that there is this process that appears
19 to go on of Miller coming around to that view?

20 A Yes, sir.

21 Q The question I wanted to ask you about it is,
22 when the views crystallized around this kind of
23 arrangement -- and you say it is a fairly common
24 arrangement, you have seen it in a number of
25 cases -- is it a discloseable fact, in your

1 opinion, does it get again put into a report of
2 some kind that the Crown Attorney is advised of,
3 and it is either brought out on the record by
4 the Crown or it is disclosed to the defence?

5 A Yeah, it should be disclosed. It should be
6 documented, that's correct, sir.

7 Q Again, your interview is clear on that. At the
8 top of page 9 you say,

9 "...this kind of arrangement is a
10 discloseable fact and must be made
11 transparently."

12 Is that still your view?

13 A Page 9, sir?

14 Q Yes, second line, top of page 9 of your
15 statement?

16 A Yes, yes.

17 Q Now, arrangements are attempted to get Zanidean
18 to go back to Calgary, and I won't take you
19 through this in any detail, we have been through
20 it with Corporal Orr. At tab 26, you see phone
21 calls between you and Orr trying to make another
22 temporary arrangement to have Zanidean go back
23 to Calgary. Do you recall that?

24 A Yes.

25 Q And there is an interesting note at tab 26. You

1 see the reports of these discussions. Orr calls
2 you, according to his notes, at 14:20 in the
3 afternoon of May 9th. So it was at a point
4 where Zanidean has been back in Winnipeg for a
5 couple of weeks. You hear that he is back on
6 the 26th, and here we are on the 9th of May, and
7 you see Orr's notes, where he calls you and
8 explained the calls he has been receiving from
9 Zanidean. And you say,

10 "This is entirely news as he had not been
11 advised of any changes, did not know where
12 Zanidean was."

13 And again, do you recall at this time period in
14 mid May, or early May when Zanidean had returned
15 to Winnipeg, of simply not knowing where he was?

16 A That is correct, sir.

17 Q He had essentially gone underground since his
18 return from Calgary. And you weren't protecting
19 him, or you didn't have any arrangements in
20 place for him, he essentially appears to be on
21 his own at this point?

22 A That is correct, sir.

23 Q And you in fact write a letter at tab 27 to
24 Corporal Orr and his boss, Callens, and you cc
25 it to Miller, expressing your concern. If you

1 look at the second sentence of that letter,
2 "It appears that Zanidean is circumventing
3 both police agencies and is dealing
4 directly with Mr. Miller through his
5 lawyer. Mr. Miller supplied Zanidean with
6 funds to carry him until May 14th..."

7 Does that accurately reflect the concerns that
8 you had at that time?

9 A Yes, sir.

10 Q And why did you feel this was important enough
11 to put it in writing and send a formal letter to
12 all of the concerned parties? The rest of the
13 documentation appears to support your view that
14 this, in fact, is what was going on. And I am
15 simply asking, why was this important to put it
16 in writing and make clear to everyone your
17 concerns about the matter?

18 A Well, I was receiving information from
19 Mr. Miller. I would go back to Tom Orr's notes
20 at tab 26, where Tom Orr notes that Mr. Miller
21 has contacted him personally concerning the
22 issue. And it seemed to me that both police
23 agencies were being circumvented and Mr. Kovnats
24 and Mr. Miller were dealing with this.

25 Q I agree with you, the record supports you, in my

1 view of the documents that I have seen. My
2 question is more about process. Why was it that
3 you wanted to put this in writing? Articulate
4 for us what your concerns specifically were?

5 A Well, I think Tom Orr should have known
6 officially, and Mr. Miller, that this was
7 essentially what the situation was.

8 Q Let me try and see if I can help you on this.
9 You've got a murder trial coming up in about two
10 weeks, three weeks at this point, a serious
11 murder trial?

12 A Yes.

13 Q And this guy is your most important witness?

14 A Yes.

15 Q And he is supposed to be a threatened witness,
16 he has reported threats, you have been trying to
17 get him into a form of witness protection, in
18 various ways, with these temporary measures you
19 have been taking. And he has essentially gone
20 underground on you?

21 A Yes, sir.

22 Q Is that the situation?

23 A Yes, sir.

24 Q And so the witness protection is in a sense a
25 charade because he is avoiding you. Is that the

1 gist of what you are trying to bring to the
2 attention of the authorities here, that he is
3 not a protected witness in any sense because he
4 is avoiding the police?

5 A At that point in time, yes, that would be
6 correct.

7 Q And he doesn't return to Calgary, he doesn't
8 take up the arrangements that you have made for
9 him; is that correct?

10 A That is my recollection, sir, yes.

11 Q And that's made clear in tab 28 in Orr's note of
12 his conversation with you on the 14th of May?

13 A Yes, sir.

14 Q And the one other letter on this point at tab 29
15 is, Callens appears to respond to your letter
16 by, in essence, agreeing that this matter has
17 got to be drawn to a conclusion, that there is
18 no resolution of it. And he suggests in the
19 letter the cash payment option?

20 A That is correct, sir.

21 Q So, I take it the fact that your witness has
22 gone underground on you, and is in no form of
23 protection, the police don't even know where he
24 is, he is circumventing the police, solidified
25 the view that the only way that you could make

1 any witness protection arrangements with this
2 guy would be to pay out a lump sum payment, that
3 he was not going to be a candidate for a
4 program?

5 A Essentially, that's true, sir, yes.

6 Q All right. Now, I think that takes the whole
7 witness protection arrangements up to
8 essentially the eve of trial. And what I want
9 to do is step back into April and pick up the
10 other side of the negotiations, which is Swift
11 Current immunity. We have been dealing with the
12 financial, relocation, protection issues up to
13 now. I want to pick up the other side of the
14 negotiation, the Swift Current immunity issue.

15 This report that we looked at from Sergeant
16 Anderson of the report from Zanidean of the
17 threat, tab 17, you recall that report comes in
18 on April 5th. Have you got tab 17 there,
19 Sergeant Anderson's report? He writes up the
20 report on the 10th of April, five days later,
21 but the actual event that triggers this flurry
22 of activity in early April is a report on
23 April 5th from Zanidean to Paul about the note
24 on his windshield wiper?

25 A Yes, sir, that is correct.

1 Q And on that same date we know from various
2 records that Sergeant Anderson calls the RCMP in
3 Swift Current again, he places what is
4 essentially his second substantive call to Swift
5 Current. He had called them back in the fall on
6 October 30th, and then the second call of any
7 significance is on April 5th.

8 If I could take to you tab 11, where we
9 have a report of that call? And Constable
10 Burton and Sergeant Anderson are not far apart
11 on this call, they have got roughly similar
12 accounts of this April 5th call. If you look at
13 tab 11 at the bottom of the page?

14 A Um-hum.

15 Q You see the reference to the April 5th call,
16 that last third of the second page.

17 "On April 3rd, call was received from Tom
18 Anderson of Winnipeg Homicide."

19 Do you see that?

20 A April 5th it says here, yes.

21 Q Yes, April 5th, I'm sorry, I misspoke, that's
22 the date.

23 "He advised they wanted to put Zanidean
24 under the Witness Protection Program as
25 individuals associated to Driskell were

1 actively trying to kill him at present."

2 A Yes, that is correct.

3 Q Just stopping there. The context for the call
4 to Burton appears to be this threat that's just
5 been received, according to Burton's account of
6 the call. And I'm wondering whether you can
7 assist us on that. Was that the reason why your
8 officers got back in touch with Swift Current
9 again? And if so, if you could explain the
10 context for us?

11 A It is quite possible that's why he contacted
12 them, to find out what the situation was out
13 there relative to their investigation, yes, and
14 to apprise them of these threats against our
15 witness.

16 Q I guess what I'm asking is, was there a push on
17 or a sense of urgency to get Zanidean into the
18 formal program at this point, as a result of the
19 threats?

20 A Yes. Yes, we would have preferred the RCMP to
21 take it over. That's their area generally.

22 Q And in relation to the application, we saw you
23 set out clearly the Swift Current arson charges
24 in the application as being an issue that had to
25 be addressed, and it was still under

1 negotiation. What was your understanding as to
2 whether the Swift Current charges were or were
3 not an impediment to the RCMP Witness Protection
4 Program?

5 A It was my understanding they were an impediment
6 to entry into the program, there was potential
7 criminal charges pending, which affected how
8 they would undertake a secure name change.
9 There was escorts for court, trials, remands,
10 all sorts of problematic areas, including the
11 fact that he could have been sentenced to a jail
12 term.

13 Q There is no question, as a matter of common
14 sense, it raises problems?

15 A Yes, sir.

16 Q And you have just catalogued some of them. I
17 suppose what I'm getting at is, was it an
18 absolute impediment, was it a complete bar, or
19 was it simply a problem that you had to work
20 with?

21 A Well, it was a bar as it existed. I would think
22 the RCMP could deal with it over a course of
23 time, but at that point in time, yes, it was a
24 bar to entry. It had to be, you know, resolved
25 in some fashion. And if he was going to be

1 charged with something, fine, we would have had
2 to deal with it then. It wasn't impossible to
3 deal with.

4 Q As a common sense matter, as an experienced
5 investigator, you know that many of your
6 witnesses in serious criminal cases come from
7 the underworld, and they have got criminal
8 jeopardy that has to be dealt with. Is that
9 fair?

10 A Quite often, sir, yes.

11 Q And your candidates for Witness Protection
12 Programs are not going to be a bunch of angels,
13 generally; is that fair?

14 A Absolutely.

15 Q So, the fact that they have got outstanding
16 charges, does it make sense that it would be an
17 absolute bar to entry into the program?

18 A Well, it was at that time, because Mr. Orr
19 viewed it as something that -- you see, my
20 understanding is those measures have to go to
21 Ottawa and come back and approval has to be
22 made, and that was one of the issues that
23 Corporal Orr raised with us as a bar at that
24 point in time.

25 Q So you are saying you recall a specific

1 discussion with Orr along those lines?

2 A Yes.

3 Q Where he was erecting it as an absolute bar?

4 A Yeah, it was, yeah, if not an absolute bar,
5 close to it. It created inherently difficult
6 problems for the RCMP in the national program.

7 Q What I'm also understanding you to say is that
8 you can imagine situations where you could try
9 to work with it by putting the person in a
10 secure setting in some fashion in the jail, or
11 dealing with their problems?

12 A Well, you see, I have the luxury of having done
13 work 10 or 12 years above and beyond that
14 particular case, and am a lot more experienced
15 now in witness protection matters. And
16 certainly, there is all kinds of issues that
17 come up that I think we could deal with, and
18 perhaps could have better dealt in this case
19 back then. I'm not sure about that.

20 Q You are saying that in practice and in reality,
21 the system does have ways of working with these
22 kinds of problems, but your understanding from
23 Orr, in this case, was that it was an absolute
24 bar?

25 A For example, in another case I was told a

1 witness would have to go into drug
2 rehabilitation for smoking marijuana every
3 second day, or every few days. There was always
4 little things that came up. And to me that was
5 a bar, that was a difficult situation for the
6 National Witness Protection Program at that
7 point in time, sir, yes.

8 Q If you stay at tab 11 in that --

9 THE COMMISSIONER: Mr. Code, just one thing I
10 thought you may have said in error is, I don't
11 think that the witness ever said that it would
12 be an absolute bar, he said it would be a bar,
13 not an absolute bar, but practically speaking,
14 it was a bar.

15 MR. CODE: I think you are right, I think I did
16 misstate that and overstate it.

17 BY MR. CODE:

18 Q Certainly from your view as a practical matter,
19 it shouldn't have been an absolute bar, there
20 are ways of working around this kind of problem?

21 A Well, no problem is insurmountable, sir, no.

22 Q In any event, the impression you were getting
23 from Orr was that it was a very serious
24 impediment?

25 A Yes, at that time. It was a very serious charge

1 too.

2 Q The arson charge?

3 A Yes.

4 Q If we could just finish up with the account at
5 tab 11 of the call between Anderson and Burton.

6 You see after referring to the existence of
7 active present threats, he goes on to say,

8 "The Witness Protection Program coordinator
9 in D Division advised they would not hide
10 Zanidean as long as the writer was actively
11 investigating him with the possibility of
12 charges pending."

13 That's roughly --

14 A I couldn't find it, but I trust you.

15 Q I am tab 11, page 2, bottom third of the page.

16 He goes on to refer to the -- Burton is
17 recording Anderson telling him the advice they
18 are getting from Orr?

19 A Yes, that's correct, sir.

20 Q Generally consistent with what you have just
21 told us?

22 A Yes, sir.

23 Q And then the next paragraph, second to bottom
24 paragraph there, still on page 11 at the bottom.

25 "The matter was discussed with Tom

1 Anderson. It was agreed that the only
2 viable solution would be to not charge
3 Zanidean. I advised Zanidean that I would
4 submit the above recommendation through
5 channels."

6 Again, was that generally consistent with your
7 understanding of what had come out of this call?

8 A Yes, sir.

9 Q And in fact, it is set out in your witness
10 statement at page 9, that Anderson briefed you
11 on the call?

12 A Yes, sir.

13 Q And you expressed concern as to whether Orr had
14 sufficient authority to make this decision?

15 A Burton, sir, not Orr.

16 Q Thank you.

17 A That's one of the reasons we wanted Tom Orr to
18 delve further into it.

19 Q So, obviously, a junior constable dealing with,
20 as you describe it, a very serious charge like
21 this, would not be able to make this kind of
22 agreement without the approval of senior
23 officers?

24 A I don't view this as necessarily an agreement
25 between Sergeant Anderson and Constable Burton

1 at the time. This was a decision -- my view of
2 it was, look, we are not putting any pressure on
3 Swift Current on this matter, it is too delicate
4 a situation, let them decide, whatever they
5 need, whatever they want, we will provide them.
6 Our concern initially of course was our
7 continuing investigation. But, you know, this
8 is what Sergeant Anderson told me as a result of
9 his discussions and --

10 Q You are quite right, Burton describes it simply
11 as a recommendation that he is prepared to make.

12 A Thank you, sir.

13 Q So you are right that there is no agreement yet.
14 But in any event, your response to it, as set
15 out at page 9 of your statement at tab 1, was to
16 say, you need to make sure we have got senior
17 officer approval of this, you don't have that
18 yet, there is no agreement in place. Is that
19 fair?

20 A Certainly no immunity agreement, even with
21 senior officers, but it was their choice to
22 pursue this situation or not. It was getting
23 very complicated.

24 Q So the step that you take, and you began to
25 refer to it there, was you wanted to get Orr

1 involved in this; is that correct?

2 A Certainly, sir.

3 Q So you had a discussion with Orr about Anderson
4 and Burton's conversation, and asked him if he
5 would look into it for you?

6 A That's my recollection, sir, yes.

7 Q At more senior levels?

8 A Well, however the RCMP proceed, yes, I would
9 expect -- my experience is that things go to
10 Ottawa and have to come back, and I assumed
11 that's what was happening.

12 Q All right. In fact, from Corporal Orr's records
13 we have three phone calls that he has in and
14 around this time period, one on April 4th, that
15 he doesn't have a contemporaneous note of, but
16 that he refers back to later, one on April 12th
17 and one on April 16th, that deal with this very
18 subject matter, where he is calling Swift
19 Current, or Swift Current is calling him. So it
20 is consistent with your recollection that you
21 get Orr involved in the process.

22 A Yes, sir.

23 Q And those documents, in particular, are found at
24 tab 13 of the Orr documents book, which is
25 exhibit 3 in these proceedings. You don't have

1 them before you right now.

2 THE COMMISSIONER: Mr. Code, whenever it is
3 convenient.

4 MR. CODE: Thank you, my lord, if I could just
5 finish up this area. I think I have covered
6 this, if I could just check my notes.

7 BY MR. CODE:

8 Q Again, these discussions that were taking place
9 here between yourself and Orr, and between
10 Anderson and Burton, and between Orr and Upton,
11 did Orr, and ultimately Orr and Preston, did Orr
12 report back to you on what he had learned --

13 A Oh, certainly, sir, yes.

14 Q -- from his calls?

15 A Yes.

16 Q So the complete picture that you have at the end
17 of this process of phone calls is, what is the
18 status of the Swift Current matter?

19 A That is correct.

20 Q And what was your understanding of the --

21 A Certainly not immunity, it was a matter of they
22 weren't pursuing that investigation further,
23 they weren't pursuing Zanidean, I should say,
24 Mr. Zanidean, is my recollection of it.

25 Q All right. And was this again an important

1 development in the case, both in terms of
2 witness protection and in terms of the
3 credibility issues that the arson charge
4 represented?

5 A Well, yeah, I guess, you know, it was important,
6 it certainly placed the RCMP in a better
7 position for the Witness Protection Program.

8 Q And Kovnats had been demanding it on behalf of
9 Zanidean and --

10 A That was the whole problem, sir, yes.

11 Q And now it appeared that you had it for him, at
12 least in the form of RCMP discretion?

13 A Yes. Yes, that's correct, sir.

14 Q So is it the kind of matter that should have
15 been made the subject of a supplementary report
16 to Crown Counsel?

17 A Witness protection matters would have gone to
18 Mr. Miller. I mean, the impression that I had
19 was that such witness protection matters, what I
20 did with it at that point in time, regardless if
21 a report is filed, I would have had a discussion
22 with Mr. Dangerfield about it actually, and
23 apprised him of that fact as soon as I was made
24 aware of it. Because the trial was coming up.

25 Q I'm going to come to you in a minute, after the

1 lunch recess, about any oral discussions you had
2 afterwards. But my question is simply in terms
3 of ordinary good police practices, when
4 developments like the ones that you have been
5 describing, this flurry of phone calls to Swift
6 Current that are taking place as a result of the
7 threat reported at tab 17, should there have
8 been a follow-up report to this report at tab 17
9 setting these matters out, documenting them, in
10 terms of good police practice?

11 A Yes, that's true.

12 MR. CODE: This would be a perfect time,
13 Mr. Commissioner.

14 THE COMMISSIONER: Thank you. We will adjourn
15 until 2:00 o'clock.

16 THE CLERK: All rise. This Commission of
17 Inquiry is now adjourned until 2:00 o'clock.

18 (Proceedings recessed at 12:32

19 and reconvened at 2:00 p.m.)

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

22 BY MR. CODE:

23 Q Staff Sergeant Vandergraaf, we were just
24 finishing up with the April 5th phone calls
25 between Winnipeg and Swift Current, and there is

1 a number of these calls that all take place
2 around that time period. And I want to ask a
3 few follow-up questions.

4 So just to recap, as I understood your
5 evidence before the lunch recess, the account of
6 the call that we find at tab 11 is essentially
7 consistent with what you were told by Sergeant
8 Anderson when he reported back to you? And
9 that's at the bottom of page 2 of tab 11, that I
10 went through with you, where there is an attempt
11 to get Zanidean into the Witness Protection
12 Program. You have been told by Corporal Orr
13 that the existing investigation is a impediment
14 to the application. And Burton agrees that he
15 will recommend to his senior officers that
16 Zanidean not be charged as a result of those
17 circumstances. And that's essentially what you
18 were told by Anderson, is it?

19 A That's correct, sir, yes.

20 Q And then you follow up to that by calling
21 Corporal Orr yourself in order to get him to
22 make inquiries, because you are not confident
23 that where Burton and Anderson have ended up is
24 a final agreement with approval from senior
25 officers?

1 A That's correct.

2 Q And then Orr, we know from his documents, in
3 fact, has a series of calls, three calls, two
4 with Upton and one with Preston in and around
5 this time, which I don't need to go through with
6 you. But he then reports back to you on the
7 results of his phone calls?

8 A Yeah, he did, sir, yes.

9 Q And what is the result, what is the upshot of
10 it? What is the position you end up in after
11 all of this flurry of Swift Current activity?

12 A Pretty much confirmed what we had been told by
13 Constable Burton.

14 Q Consistent with this report here at tab 11, that
15 they were sensitive to the witness protection
16 issue, and in light of the witness protection
17 issue, they wouldn't be pursuing him?

18 A Yes.

19 Q And was it made clear to you, in your report
20 back from Corporal Orr, that that decision was
21 contingent on Zanidean, in fact, getting into
22 the Witness Protection Program, that his
23 application succeed, if I can put it that way?

24 A That would be correct, sir.

25 Q And you then report to whom? You have got the

1 result of this process that you've described for
2 us. What do you do with the information that
3 you have learned?

4 A Discussed it with Mr. Dangerfield, Mr. Miller.

5 Q And if we look at your report, at tab 1 of your
6 interview, bottom of page 9, you say that you
7 had follow-up discussions with Anderson and
8 Paul. Obviously you had to tell Anderson and
9 Paul what you had learned from Orr; is that
10 fair?

11 A That's fair, yes.

12 Q Orr reported back to you, and you then had to
13 brief Anderson and Paul about what Orr had told
14 you?

15 A Essentially, yes.

16 Q And you also say Inspector Randy Bell and Bruce
17 Miller?

18 A George Dangerfield, Randy Bell and Bruce Miller,
19 yes.

20 Q Now, Dangerfield's name is not mentioned at the
21 bottom of page 9, but if you turn over the page
22 to page 10, where you bring up Mr. Dangerfield
23 is in the context of this follow-up discussion
24 about what you are to do with this arrangement
25 that you have got with Swift Current, do you

1 tell Zanidean about it or don't you tell him
2 about it; is that correct?

3 A Yes.

4 Q So, let's talk about that for a minute and then
5 we will come back to Mr. Dangerfield and any
6 briefings you had with him.

7 First of all, the decision as to whether
8 you tell Zanidean or not, could you explain that
9 to us, and who you had that discussion with?

10 A My recollection is that it would have been in
11 the office of the Division 23 inspector, Randy
12 Bell at the time. I believe Mr. Miller was
13 there. We were kind of flying by the seat of
14 our pants on that issue and we needed some
15 direction from the Crown on that, as to how we
16 were going to handle it further.

17 There was some debate, some discussion. I
18 was always concerned with promise of favour to
19 any kind of witness. Protection was a different
20 situation, but any kind of promise of favour or
21 charges that aren't laid or stayed, things of
22 that nature, that, you know, was sort of, could
23 be construed as a promise of favour. That was
24 not my intent at that time. And we discussed it
25 with Mr. Miller, and he felt that was the way to

1 go as well.

2 Q All right. Now, you acknowledge in your
3 statement in this area, the bottom of page 9 and
4 the top of page 10, that this is another view of
5 this issue and that is that any of these kind of
6 deals that are being requested by a witness,
7 that they should be resolved in advance of the
8 witness testifying so that there aren't any
9 unresolved contingencies hanging over the
10 witness, holding out the possibility of hope in
11 the future. Is that correct?

12 A That's correct, yes, that was part of the
13 discussion.

14 Q And, in fact, when we see these kind of
15 agreements reached, and you've told us that the
16 justice system sometimes does make these kind of
17 agreements, a common way of dealing with it is
18 for the Crown to bring out the agreement in
19 chief, to put it all on the record and make it
20 clear that any agreements with the witness have
21 been concluded and they are done with, and to
22 disclose them to the jury?

23 A That was my experience in later years, as we
24 dealt with these things. I think, again, at
25 that time, I couldn't be sure exactly what the

1 correct tact was to take.

2 Q And you say again in your statement that you
3 ultimately felt this was a legal judgment call
4 and you left it to Mr. Miller?

5 A That is correct, sir.

6 Q And he came down on the side of not telling
7 Zanidean?

8 A That is correct.

9 Q And what about disclosure to Mr. Brodsky, to the
10 defence and to the court, was there any
11 discussion about that aspect of the problem?

12 A There was not, sir.

13 Q Now, coming back then to Mr. Dangerfield, and
14 you state at the top of page 10 of your
15 statement that you believe that Dangerfield
16 would have been briefed, either by yourself or
17 by Miller. The RCMP's commitment not to charge
18 Zanidean with the Swift Current arson was the
19 kind of development that Dangerfield needed to
20 know about in case it came up in court?

21 A Yes.

22 Q Could you explain to the Commission your
23 reasoning there? Why was this something that
24 could have come up in court and that Dangerfield
25 needed to know about it?

1 A There was no question that Mr. Dangerfield
2 needed to know what was happening on that. It
3 seemed to me that the accused and his lawyer
4 already did know, and Mr. Dangerfield should not
5 have been subjected to any surprises.

6 Q Well, in the sense the accused and his lawyer
7 knew about the Swift Current arson is what you
8 are saying, what you are getting at?

9 A Certainly, sir.

10 Q And as a result of that, Mr. Brodsky was likely
11 to question Zanidean about it?

12 A It was coming up, yes.

13 Q And given that it was coming up, you don't want
14 your Crown to be blind-sided and not knowing
15 what the story is?

16 A That's correct.

17 Q And in terms of who it is who briefs
18 Mr. Dangerfield, as I read you, you are not sure
19 whether you did it or whether Miller did it, but
20 you assume that somebody would have had to brief
21 him because he needed to know?

22 A Well, I have given it some thought on having
23 reviewed this since Friday, when I had this
24 material dropped on me. And although I didn't
25 change it, my recollection is going down and

1 having an interview -- not an interview, but
2 speaking to Mr. Dangerfield. He was in the
3 process of organizing his case, essentially, and
4 we had a discussion about that.

5 Q And whereabouts would that --

6 A In his office.

7 Q In his office over on Broadway?

8 A Yes.

9 Q And again, were these developments in these
10 phone calls to Swift Current, and this kind of
11 de facto agreement or arrangement that you have
12 arrived at with the RCMP, subject to this
13 proviso that Zanidean get into witness
14 protection, and the decision not to tell
15 Zanidean about it, were these developments of
16 the kind that you would expect in normal good
17 policing practice would be made the subject of a
18 report, supplementary report?

19 A Yes, that is correct.

20 Q That would be the normal way that you would
21 brief the Crown on a matter like this?

22 A Yeah, it was witness protection matters. The
23 fact remains, I recall going down to
24 Mr. Dangerfield's office with that information.
25 I wanted to apprise him of what their decision

1 was and if that had any impact on what we were
2 going to be doing. He didn't suggest it was, if
3 the RCMP chose not to pursue, then he didn't
4 feel it was an issue, sir.

5 Q He agreed with the decision that Miller had
6 arrived at?

7 A I suppose, yes.

8 Q And when you made the oral report for him, he
9 didn't ask for a written report?

10 A No, he didn't.

11 Q You see, you mentioned that it was a witness
12 protection matter, but we know from the report
13 at tab 17 that those matters can be made the
14 subject of police reports?

15 A Yes. Yes.

16 Q Finally, the last area of questioning that I
17 want to do in this whole business of the Swift
18 Current arson is, would you have expected to see
19 a confirming letter of some kind? Because what
20 you are dealing with here is a different police
21 force in a different jurisdiction, a different
22 province. Is this the kind of agreement that
23 likely would or should have been put into a
24 confirming letter to the RCMP, setting out the
25 understanding that you had arrived at?

1 A Because it was impacting potentially on the
2 National Witness Protection Program, I thought
3 the RCMP would be dealing with that issue
4 specifically.

5 Q You assumed Orr would send a confirming letter
6 to Swift Current based on his discussions?

7 A Yeah. One of the regrets that I have is that we
8 didn't proceed by correspondence, but whether or
9 not -- I would have expected -- the reason we
10 went to Tom Orr was to get further confirmation
11 about what the heck was happening out there.

12 Q You see, when I look at your letter at tab 22,
13 the letter you drafted for your chief, for
14 Klippenstein, is another instance where you have
15 an arrangement with the RCMP, this one, this
16 fairly modest arrangement to provide a contact
17 person in Calgary, and that arrangement becomes
18 the subject of a very thorough well-written
19 confirming letter. And I'm just curious as
20 to -- the agreement you reached with Burton,
21 Anderson, yourself, Upton, Preston, all of the
22 people who were parties to the calls in mid
23 April, is a far more significant agreement than
24 this little hotel arrangement in Calgary. Is
25 that not correct?

1 A Yes.

2 Q Yet we don't see a similar kind of confirming
3 letter?

4 A No.

5 Q And the explanation for that is you simply left
6 matters --

7 A I thought the RCMP were dealing with that issue.
8 I mean, they alerted us to the fact they weren't
9 going to proceed. In retrospect, yeah, we
10 should have demanded, but that's one of the
11 reasons we went to Corporal Orr of the National
12 Witness Protection Program in D Division, was
13 for him to deal with that specific matter with
14 his own force.

15 Q So your explanation for the absence of a letter
16 is that you thought that Orr was looking after
17 it?

18 A Yes, essentially.

19 Q Finally, I would like to refer you to a note
20 that's found in exhibit 3. Madam Clerk, if you
21 could make exhibit 3 available to the witness?
22 I didn't put this in the book of documents,
23 Staff Sergeant, I'm sorry, I realized it when I
24 was preparing my notes that I should have put it
25 in, because I wanted to ask you a question about

1 it. But if you could look at the Corporal Orr
2 book, tab 30? This is in May, about a month,
3 five weeks, six weeks after you have been having
4 these discussions with Swift Current about their
5 agreement to hold off, to not charge Zanidean if
6 he is accepted into the Witness Protection
7 Program. And you see what happens on this
8 May 29th note is Miller calls Orr, as I say,
9 about a good month or five weeks after you
10 briefed him on the developments in April, as I
11 understand you?

12 THE COMMISSIONER: Sorry, what is the tab
13 number?

14 MR. CODE: Tab 30. Exhibit 3, tab 30.

15 THE COMMISSIONER: Okay.

16 BY MR. CODE:

17 Q And you see he reports to -- so Miller calls
18 Orr, and Orr's note of the call is that Miller
19 had received a letter from Kovnats that
20 essentially amounts to an ultimatum. He has got
21 three demands. And you see after setting out
22 the three demands, he would be taking steps to
23 ensure his client's protection if these demands
24 aren't met, and he gives Miller a day to
25 respond -- so some kind of brinkmanship going on

1 here. And the third request expressly relates
2 to this Swift Current charge, that he wants his
3 client to be given immunity on the Swift Current
4 charge.

5 And Miller and Orr discuss the matter, and
6 Miller asks Orr to look into the Swift Current
7 matter for him to see what the standing was. Do
8 you see that note in the middle of the page?

9 "I advised that I would check with Swift
10 Current and see what the standing was."

11 A Yes.

12 Q So Miller sort of deputizes Orr to make a call,
13 and the call is made, and you see it over the
14 page, Orr calls Burton, and Burton advises that
15 no proceedings will be brought if he is accepted
16 into the program. Essentially what you have
17 been telling us.

18 A Yes, essentially, this is the first time I have
19 seen these I think.

20 Q No, I appreciate I didn't put them in your book,
21 I'm sorry. But is the result of that process
22 essentially the same as what you understood it
23 to be back in April?

24 A It is, sir, yes.

25 Q So my question is, if Miller had been briefed

1 about this by you orally back in April, and
2 nothing had changed, why did he need Orr to look
3 into it for him at the end of May, on the eve of
4 trial? Is there any explanation or --

5 A Simply because the issue of immunity is a
6 different issue than simply RCMP not continuing
7 with an investigation. That's a whole different
8 ball of wax, so to speak.

9 Q Perhaps you could elaborate on that for us?

10 A An immunity agreement would be, in this
11 particular situation, between the two respective
12 justice departments. Saskatchewan Justice would
13 assess their case and assess all of the details
14 and have discussions with Manitoba Justice. If
15 immunity -- and I view immunity as a very formal
16 agreement between justice departments, and this
17 is why we were leaving a lot of it to
18 Mr. Miller.

19 Q Fair enough, I appreciate the distinction. So
20 your understanding of the agreement you had in
21 April with the RCMP was that they would exercise
22 a police discretion not to charge if he was
23 admitted into witness protection?

24 A Certainly, absolutely.

25 Q Whereas it appears from this note that what

1 Kovnats was insisting on was a much more formal
2 immunity?

3 A Certainly, because we were all aware that could
4 change, that opinion in Swift Current.

5 Q Exactly, police discretion is not binding --

6 A That's correct, sir.

7 Q -- on anybody, whereas immunity from the
8 Department of Justice would be a binding
9 agreement?

10 A That's correct, sir.

11 Q All right. I'm through with all of that and I
12 want to now turn to the subject of disclosure.
13 You will be glad to hear I'm not going to delve
14 into the negotiations with Zanidean any further
15 on these matters. I want to turn to the other
16 side of the coin, what was being disclosed to
17 the defence and to the court about these
18 matters. And this is an area that we haven't
19 covered before with the previous witnesses
20 because, of course, they had nothing to do with
21 this.

22 In the book of documents that I provided
23 you with Staff Sergeant, you find three major
24 disclosure requests from Mr. Brodsky. Just so
25 that you situate them, the first major letter is

1 at tab 31, you see his letter dated
2 February 7th, once he is firmly on the record
3 and trial dates are being set. The second one
4 is tab 33, April 25th letter, about five weeks
5 before the trial. And then the third and last
6 one is at tab 38, which is a memo titled
7 "questions" that he presents at the pre-trial
8 before Justice Morse. It is actually a
9 continuing pre-trial, it starts on May 10th and
10 resumes on May 22nd. So those are the three key
11 documents that I'm going to be working from
12 here, tabs 31, 33, and 38. And they sort of
13 build on each other, there is a number of
14 consistent themes that run through them. And I
15 wanted to just be clear about the process here.
16 When these letters go to the Crown, obviously
17 they don't go to the police?

18 A That is correct.

19 Q And disclosure, we all understand, is the
20 Crown's responsibility. But a number -- was it
21 the practice in Manitoba, especially in a major
22 case like this, that a number of these
23 disclosure requests would be passed along to the
24 police to get your assistance?

25 A Absolutely, yes.

1 Q And a good illustration of that we see at tab
2 34. Remember at tab 33, Dangerfield and Lawlor
3 get the April 25th letter from Brodsky, and the
4 next tab, tab 34, the very next day, April 26th
5 he is sending it on to you by fax and asking you
6 to help him with a number of specific paragraphs
7 on Mr. Brodsky's shopping list?

8 A That is correct.

9 Q And that, I take it, was a normal routine
10 process in the way disclosure worked in those
11 days?

12 A Yes.

13 Q And needless to say, the police have a duty to
14 assist the Crown in the disclosure process; is
15 that correct?

16 A Yes. I at one time mentioned to Crown that I
17 felt like an agent for the Crown, because we are
18 always doing work for the Crown, and essentially
19 that's how we felt, whatever the Crown needed,
20 we provided.

21 Q On a purely practical level --

22 A They took exception to that, though.

23 Q Sorry?

24 A They took exception with the agent description.

25 Q We all know police officers aren't agents of

1 anybody, they are independent.

2 A So is the Justice Department.

3 Q That's right. They are both independent.

4 On a purely practical matter, leaving aside
5 the question of professional duties, on a
6 practical level, you had the investigative file,
7 they didn't have it, it was in your possession
8 at the Public Safety Building?

9 A At the time of these letters?

10 Q Yes, in 1990, you would physically keep the
11 police file over at the Public Safety Building,
12 it wouldn't be situated up on Broadway in the
13 Woodsworth Building?

14 A No, they would have a full copy of what we had.

15 Q They have a copy of your reports and witnesses
16 statements?

17 A Yes.

18 Q Things like officer's notes they wouldn't have?

19 A Not necessarily, no.

20 Q And miscellaneous material in the investigative
21 file?

22 A Yes, I understand, that is correct.

23 Q If you slip a piece of paper to jog your memory
24 in the future, and you slip it in the
25 investigative file, the Crown is not going to

1 get that?

2 A That's correct.

3 Q And certainly anything that's within your
4 knowledge, your investigative knowledge of the
5 case, matters that you have not committed to a
6 report at all, are not situated over on Broadway
7 in the Woodsworth Building, they are situated
8 down in the Public Safety Building in your
9 memory?

10 A Yes.

11 Q So there are practical reasons to pass along
12 these requests to the police, because the police
13 have a broader knowledge base about the
14 investigation than the Crown does; is that
15 correct?

16 A Yes, essentially.

17 Q You have got everything that is in your notes
18 and everything that's in your memory and
19 everything that's in your file, and the Crown
20 won't necessarily have all of that?

21 A And further, it may require further
22 investigation. So, yes, you are right, sir.

23 Q So with that background in mind, I want to take
24 you through three instances -- you will be happy
25 to know I'm not going to take you through all 50

1 of Mr. Brodsky's individual points -- but there
2 are three major concerns that I want to raise
3 with you about the disclosure process that all
4 tie into this subject matter of Zanidean and his
5 benefits and his requests that we have been
6 talking about.

7 So, if I could take you through each one of
8 these. The first one is set out in
9 Mr. Brodsky's first letter. So if you go back
10 to tab 31, and turn up number 16 on
11 Mr. Brodsky's list? You see at the bottom of
12 the second page, he says,

13 "We have eight or nine statements from
14 Zanidean, are there more that we do not
15 have? I would like a record of all of his
16 contacts with the police whether by way of
17 formal statement or written notification in
18 a police officer's notebook."

19 Have I read that accurately?

20 A You have.

21 Q And approximately two and a half months later,
22 Mr. Lawlor takes some time with this -- this
23 letter is written immediately after an
24 appearance before Chief Justice Hewak, where
25 Chief Justice Hewak says he is concerned that

1 Brodsky get full disclosure because it is a
2 direct indictment case.

3 And at tab 36 we get Mr. Lawlor's response
4 to that particular item in a letter dated
5 April 26, as I say, a good two and a half months
6 later. And he says,

7 "With respect to paragraph 16 of your
8 letter of February 7th, I am advised that
9 you have all statements/conversations of
10 Zanidean."

11 Do you see that?

12 A Yes, I do.

13 Q And I take it that the reference "I am advised,"
14 refers to discussions he would have had with the
15 Winnipeg Police about responding to that item,
16 or anyone else who would be --

17 A I'm not sure what that means, to be honest. "I
18 am advised," is he advised by the files that
19 have been distributed to him? I never had a
20 conversation with him about these issues.

21 Q You did not have a conversation with him about
22 it?

23 A No, I did not.

24 Q The request is for notations in notebooks, is it
25 not? If you go back to tab 31, number 16, this

1 is a fairly standard kind of request defence
2 counsel make when police officers prepare these
3 nice formal statements, a statement sheet. A
4 skeptical defence counsel has said, well, show
5 me the notes of what was actually said, the
6 original notation of all contacts with the
7 person? Am I reading that correctly, that
8 that's what Brodsky is asking for?

9 A Is that one of the questions directed to myself
10 through that fax, sir?

11 Q No, no, this is long before that fax. This is
12 the first letter. The fax is after the second
13 letter. I'm asking you, as you read the
14 request, it is a request for police, for their
15 notebooks?

16 A Yes. I don't recall this specific document
17 being faxed to me, so I don't know if that
18 question was even in the copy that he faxed to
19 me.

20 Q It is not, I assure you, it is not.

21 A Oh, yes.

22 Q The fax to you is the one fax we have got which
23 sort of illustrates the process, that's the only
24 reason I used that fax.

25 A I see.

1 Q There is no suggestion that it is in that fax.
2 This is his first letter in February. That fax
3 relates to his second letter in April. So I'm
4 just asking you to look at the request, at tab
5 31. And am I reading it correctly that he is
6 asking for officers' notebooks of all of their
7 contacts with Zanidean?

8 A Essentially that's correct, sir, yes.

9 Q When you look at Lawlor's response at tab 36
10 where he says "I am advised," is it logical to
11 assume that the person you would look to for
12 advice on an inquiry about police notebooks
13 would be the police?

14 A Yes.

15 Q Because you have got the notebooks?

16 A Yes.

17 Q And Lawlor doesn't have them; is that right?

18 A Yes, right. I take it at that time, I'm not
19 sure, he may have, I don't know.

20 Q Tell me, would Lawlor have copies of all of your
21 notebooks on April 26th?

22 A I don't know, sir.

23 Q Who has got possession of them?

24 A Individual officers, unless copies were made. I
25 don't know at what point in time copies were

1 made.

2 Q Well, I thought at the start of your evidence
3 this morning we cleared up that the process was
4 the officers keep their notebooks, the property
5 of the notebooks, but if a specific request is
6 made for notebooks, they are furnished?

7 A Yes.

8 Q And we saw that happening in this case?

9 A Yes.

10 Q So here we have got a specific request for
11 notebooks. The logical people to ask would be
12 the police?

13 A That's correct.

14 Q The response that comes back is, I'm advised
15 that you have all statements and conversations
16 of Zanidean.

17 My question to you is, who in the police
18 department would have been giving that advice to
19 Mr. Lawlor, assuming he has written out
20 accurately what the advice was that he was
21 given? Who would be responsible for giving him
22 that advice in relation to a disclosure request
23 in this case?

24 A I don't know, sir, I don't know who he would
25 have talked to on that.

1 Q You don't recall speaking to him?

2 A I do not, sir, no.

3 Q What would the process be, what was the normal
4 disclosure process here in this case?

5 A Well, we would have sought direction. This kind
6 of a question, if it would have been brought to
7 my attention, we would have asked Mr. Lawlor for
8 more direction on it. In other words, do you
9 want copies of all notebooks, what do you need,
10 Gregg?

11 Q He is not asking for all of your notebooks, his
12 request is very specific, he is simply saying
13 notes of all of your contacts with Zanidean
14 where he makes some statement or there is some
15 conversation?

16 A That's Mr. Brodsky's question to Mr. Lawlor, and
17 Mr. Lawlor didn't send that question to us, to
18 my knowledge.

19 Q Well, whether he said it to you or not,
20 according to his note, somebody advises him that
21 you have all statements or conversations of
22 Zanidean. So all I'm asking you is what would
23 be the normal process to determine the answer to
24 Brodsky's questions?

25 A Well, he would seek out information from the

1 police, you are correct. And who he may have
2 talked to, I'm not sure.

3 Q And who would be responsible for this? It is a
4 narrow request for statements, conversations of
5 Zanidean in officer's notebooks, logically, who
6 would this request go to? Would it go to you?

7 A It would come to me normally.

8 Q And what would you do with it?

9 A I would talk to the officers involved and say
10 let's get everything together, yes, and get it
11 down to Mr. Lawlor.

12 Q And logically who would you talk to, for
13 statements and conversations of Zanidean?

14 A Sergeants Anderson and Paul primarily.

15 Q So you were the point man for disclosure, Lawlor
16 would funnel the request through you, and would
17 you delegate them down to whoever the
18 responsible officer was; is that fair?

19 A Yes, sir.

20 Q And you've told us that you don't recall
21 reviewing the notebooks yourself, of the
22 officers?

23 A No, sir, I did not.

24 Q So you would rely on them to tell you whether
25 there were any statements or conversations with

1 Zanidean that hadn't already been disclosed?

2 A In relation to the Swift Current business, yes.

3 Q Because you see, of course, what we know is that
4 the two statements/conversations of Zanidean on
5 October 10th and October 29th have been omitted
6 from the continuation reports on those dates,
7 and they are only found in the officers'
8 notebooks?

9 A Correct.

10 Q So this answer appears on its face to be false.
11 And my question to you is, who is responsible
12 for that falsehood, assuming it is false?

13 A Well, I don't know, the word "I was advised," I
14 don't know who he was advised of, or he was
15 simply taking that on as this is the information
16 that I have, if that's what he meant. I don't
17 know what he means essentially by that.

18 THE COMMISSIONER: I'm not sure that the words
19 "I have been advised," I'm not sure they are
20 there.

21 MR. CODE: Tab 36, Mr. Commissioner, the second
22 paragraph.

23 THE COMMISSIONER: I am sorry.

24 MR. CODE: It is Mr. Lawlor's response to the
25 February letter.

1 THE COMMISSIONER: Sorry, I was looking at the
2 earlier.

3 BY MR. CODE:

4 Q I appreciate you have got no recollection of the
5 specific conversation, you don't know who Lawlor
6 spoke to. All I'm asking you is in terms of
7 what you know about the process --

8 A Well, if Mr. Lawlor makes this -- has all
9 statements and then he indicated he was advised
10 he had everything. No, he obviously did not at
11 that point in time.

12 Q And the process would have been you delegating
13 this to Anderson and Paul, Anderson and Paul
14 reporting back to you, and then you reporting to
15 Lawlor?

16 A Yes.

17 Q And you wouldn't double check their notebooks,
18 you would take their word for it?

19 A No. I knew there was notes, sir, myself. I
20 mean, they had charged and cautioned
21 Mr. Zanidean on that matter, so there was
22 significant content there, and it was something
23 that we were hoping the National Witness
24 Protection Program could deal with at that
25 point.

1 Q So you knew about those notes is what you are
2 telling me?

3 A Certainly, when they briefed me they go over
4 their notes.

5 Q They had their notebooks there?

6 A Yes, sir.

7 Q So Anderson knows that he has got a note of a
8 conversation on October 29th. Paul knows he has
9 got a note of a conversation on October 10th?

10 A Yes.

11 Q And you know they have got notes of those
12 conversations?

13 A I what?

14 Q You know that they have notes of those
15 conversations because they briefed you at the
16 time?

17 A Yes, yes.

18 Q So all three of you know that the answer that
19 goes back to Mr. Lawlor here is not full, fair
20 and accurate; is that correct?

21 A That the answer that goes back to Mr. Lawlor or
22 to Mr. Brodsky?

23 Q To Mr. Lawlor? Lawlor reports to Brodsky that
24 he has been advised to have all statements and
25 conversations of Zanidean?

1 MS. CARSELL: This witness has said that he
2 doesn't know that there was an answer that went
3 back to Mr. Lawlor. So for my learned friend to
4 suggest to him that he knew that the answer that
5 went back was not full and fair, I don't think
6 is based on what this witness' evidence has
7 been, which is that he didn't know if an answer
8 went back. This is the first time he has seen
9 the letter.

10 THE COMMISSIONER: I am not sure if that's
11 exactly what Mr. Code was saying.

12 MS. CARSELL: Well, if not, I apologize.

13 THE COMMISSIONER: If it was then -- Mr. Code,
14 could you proceed?

15 MR. CODE: First of all, Ms. Carswell knows what
16 Mr. Lawlor's evidence is on this point, because
17 we have a full statement from him, and I think
18 it is common sense what the letter means and
19 what Mr. Lawlor would say and will say. So I am
20 putting to the witness that, assuming there was
21 a conversation with Lawlor, with a member of the
22 police, if that conversation was with you or
23 Anderson or Paul, all three of you would know
24 that this answer is false; is that correct?

25 THE WITNESS: Yes, I think so. Yes.

1 BY MR. CODE:

2 Q All right. If we turn to his second letter,
3 this is the second matter I want to raise with
4 you about disclosure. Tab 33 is the second
5 letter, the April 25th one, and this is the one
6 where you get the fax in relation to a number of
7 the requests. And I'm particularly interested
8 in -- this one is the one that I took you to
9 earlier where there are requests for a number of
10 police notes, you see --

11 A Yes.

12 Q -- in the first four paragraphs?

13 A Yes.

14 Q And there is a positive response to those, the
15 notes are provided?

16 A Yes.

17 Q So I'm not concerned about those. It is number
18 9 I'm interested in, on the second page.

19 "What do the Winnipeg City Police have on
20 the fire in Swift Current, Saskatchewan..."

21 Do you see that?

22 A Yes.

23 Q He is also interested in a couple of other
24 fires, but it is the one in Swift Current,
25 Saskatchewan that we are obviously focused on.

1 A Um-hum.

2 Q Fairly broad request, what did the Winnipeg City
3 Police have on the fire? And when you look at
4 Mr. Lawlor's fax to you at tab 34, you see that
5 number 9 is one of the specific requests he
6 passes along to you. Do you see that at tab 34?

7 A Yes.

8 Q And obviously, it is the kind of request that
9 would have to be passed on to the Winnipeg
10 Police, because it is specifically directed to
11 what is in your possession; is that correct?

12 A Yes.

13 Q So, tab 37, we get the response, very quick
14 response within two days. We are now within
15 five weeks of the trial. Mr. Lawlor responds
16 promptly on April 29th. And you see the third
17 item in his letter, he is clearly responding to
18 the April 25th letter, and he says,

19 "Re: paragraph 9, Winnipeg Police have
20 nothing on these incidents."

21 Have I read that correctly?

22 A You have.

23 Q And again, I take it that would be information
24 that he would have gleaned from contacts with
25 you and, in turn, your contacts with any

1 officers you delegated the matter to; is that
2 fair?

3 A I suppose. I don't recall having conversation
4 with him about that or --

5 Q Well, he faxes it to you?

6 A Yes.

7 Q It has your name on the fax sheet?

8 A But that's his response to Mr. Brodsky. What
9 was our response, sir?

10 Q We have nothing in writing, all we have got is
11 Mr. Lawlor's letter. So there is no police
12 report back from you on this subject.

13 I guess my question to you again is, were
14 you the point person on disclosure, the person
15 who Dangerfield and Lawlor dealt with on
16 disclosure issues?

17 A I was the point man on the witness protection
18 matter, but as far as disclosure, we provided
19 them and advised them --

20 Q Did they deal directly with the officers below
21 you or would they go through you?

22 A Quite often they would deal with the officers
23 below me. I was apprised, though.

24 Q Assuming you received that fax at tab 34, and
25 there is an inquiry about what the Winnipeg

1 Police have on the Swift Current arson, the fire
2 in Swift Current, would you have delegated that
3 request to any of your officers, or would you
4 have looked after it yourself?

5 A Specifically which -- no, I would have had
6 delegated it, sir.

7 Q And then again the officers logically that you
8 would turn to in relation to the Swift Current
9 arson would be who?

10 A Sergeants Paul and Anderson.

11 Q Again, obviously, the logical officers who were
12 dealing with this matter?

13 A Yes.

14 Q And again, unfortunately, we know that this
15 answer is not correct, that the suggestion
16 Winnipeg Police have nothing on these incidents
17 ignores the two admissions in the two officers'
18 notebooks; is that correct?

19 A Yes, it certainly appears to, sir, yes.

20 Q You have two significantly incriminating
21 admissions from Zanidean. Second of all, it
22 ignores the communications with Sergeant Mann
23 back in July and August, where Mann had been
24 asked to go out and find Zanidean and interview
25 him, long before he came in -- not long before,

1 but two months before he came in to become a
2 Crown witness. Is that correct?

3 A I wasn't aware Sergeant Mann had any
4 information. I understood that he had received
5 a request to investigate, yes.

6 Q You were aware of the request to Mann that he go
7 out and find Zanidean and interview him --

8 A Yes.

9 Q -- on behalf of the Swift Current RCMP?

10 A Yes.

11 Q Because it was you who told him to back off?

12 A Yes, he brought it to my attention, I recall
13 that.

14 Q And you set that out very fairly in your witness
15 statement on page 5, that when he brought it to
16 your attention, you told him to back off because
17 the homicide was superseding it, and homicide
18 already had admissions from Zanidean about the
19 matter?

20 A Yes.

21 Q And you were going to phone Burton and let
22 Burton know that you had the admissions, so
23 there was no need for Mann to go any further
24 essentially was your thinking; is that fair?

25 A Yes.

- 1 Q So, the fact that a Winnipeg Police Officer had
2 been out looking for Zanidean in late July,
3 early August, a full two months before he comes
4 in, was a relevant fact in the possession of the
5 Winnipeg Police at the time Mr. Brodsky makes
6 this disclosure request. Is that not correct?
- 7 A Well, it is a fact, yes. The relevancy, I guess
8 I was uncertain of at that time.
- 9 Q Well, you can imagine that Mr. Brodsky would
10 have liked to have known that there was a police
11 officer out knocking on Zanidean's door, trying
12 to find him, and that whether that factored into
13 Zanidean's decision to come into the police on
14 October 9th might be something that Mr. Brodsky
15 might want to explore?
- 16 A It seems to me that when I found out about this
17 letter, we were well into the investigation.
- 18 Q And Zanidean had come in?
- 19 A Yes.
- 20 Q And one of the very first things he tells you is
21 he is concerned about the Swift Current arson?
- 22 A Yes.
- 23 Q So Mr. Brodsky might want to put two and two
24 together there?
- 25 A I suppose. But my instructions were to Sergeant

1 Mann, the matter was being dealt with through
2 Manitoba Justice and the homicide division, and
3 there was really no value in having him carrying
4 on trying to locate a witness that we were
5 keeping under wraps.

6 Q I'm not challenging your decision, I understand
7 the logic of your decision.

8 A I wasn't suggesting that you were challenging
9 it, sir, I was just trying to be as specific as
10 I can.

11 Q Your thinking is completely logical as far as I
12 can see. My point to you here is, you have now
13 got defence counsel asking what have you got on
14 the Swift Current file?

15 A Yes.

16 Q And we know that you have got the two
17 admissions?

18 A Yes.

19 Q We know that you have got Sergeant Mann's
20 investigative steps, whatever they were,
21 knocking on Zanidean's door we understand. And
22 the third thing that you have got is you have
23 got the entire Swift Current investigative file,
24 which was sent to you in December by Constable
25 Burton, to assist in whatever you might do with

1 Zanidean in terms of interviewing him about this
2 matter. Are you aware that Burton sent the
3 entire investigative file to you in December?
4 A Absolutely not, sir.
5 Q He sent it to Sergeant Mann?
6 A No.
7 Q Did Mann tell you --
8 A No.
9 Q -- I have got the full investigative file
10 here --
11 A No.
12 Q -- in my office?
13 A No.
14 Q If you want to learn about that Swift Current
15 arson, I have got it?
16 A No, he didn't.
17 Q In any event, we know that you have got
18 something about the Swift Current arson.
19 A Yes.
20 Q And the answer goes back that you have nothing
21 on it, according to Lawlor's letter?
22 A I can't explain that, sir.
23 Q You agree with me, sir, that the answer is not
24 full, fair and accurate?
25 A Yes.

1 Q Finally, the third and last matter I want to
2 draw to your attention is again in this April
3 letter at tab 33, item number 5 on Brodsky's
4 list on the first page?

5 A Yes.

6 Q And he says that he is looking for the criminal
7 records of any witness' outstanding charges at
8 the time, presumably meaning at the time they
9 came forward, what dispositions were made. And
10 that it is the last part of the question that
11 I'm interested in.

12 "...what favorable considerations were
13 given to them for the not pressing of
14 charges or laying of charges, and other
15 matters that would influence them to
16 testify in a particular fashion."

17 And if you go back to his earlier request in
18 February, he makes, at tab 31, he makes a broad
19 request that's related. If you look at tab 31,
20 paragraph 23, he asks,

21 "What motives do people have for assisting
22 the police that are demonstrated in the
23 police files..."

24 A Yes.

25 Q So he is trying to get at the motivation for the

1 witnesses coming forward and, in particular, any
2 favorable considerations such as the not
3 pressing of charges. Have I fairly summarized
4 what he is looking for there?

5 A Yes, but if I may simply add, there were no
6 charges being laid. The not laying of charges,
7 we were still a little bit uncertain as to what
8 they were going to be doing with that situation
9 at that point in time.

10 Q In Swift Current?

11 A Well, in Swift Current, or if Manitoba Justice
12 was dealing with it or what.

13 Q Because you say the Swift Current arrangement
14 was contingent on him getting into witness
15 protection?

16 A Essentially, yes.

17 Q And he didn't look like a very good candidate
18 for witness protection?

19 A Not that formal program, no, sir.

20 Q We will come to your answer in a minute. You
21 are jumping ahead to the answer, and fortunately
22 here we have got the answer in writing.

23 A Pardon me, sir.

24 Q So what I'm simply trying to establish here is
25 that it was pretty clear what Brodsky is getting

1 at here, he wants to know what is motivating
2 these witnesses to help the Crown? And in
3 particular, are they seeking or getting any
4 favorable considerations; is that a fair
5 summary?

6 A Yes.

7 Q There was no confusion in your mind about what
8 is being looked for?

9 A That's fair, sir.

10 Q And at tab 34, again, the fax from Mr. Lawlor
11 expressly passes this one on to you. You see
12 his fax at tab 34, he asks you to help him on
13 paragraph 5 of the April 25th letter. Is that
14 correct?

15 A Yes.

16 Q And the final piece of background here is when
17 it comes to the pre-trial of Justice Morse at
18 tab 38, on May 10th, Brodsky follows up on this
19 one again. Tab 38, number 6 on his questions
20 list, he repeats it essentially. He refers to
21 his -- you see page 2 of the questions memo at
22 tab 38, page 2, item 6?

23 A Yes.

24 Q He refers to his earlier letter of April 25th,
25 which is only about two weeks old at this point,

1 paragraph 5, and he sets out the request again.

2 And at the end of that paragraph he says,

3 "...no response has been made with respect
4 to the issue of favorable considerations,
5 not pressing charges, and other matters
6 that would influence them to testify in a
7 particular fashion."

8 A Yes.

9 Q So his item 5 on the April letter becomes item 6
10 on the pre-trial memo. I just want you to
11 understand the numbering here, because when we
12 get your report back, your report back is
13 referring to item 6?

14 A Okay.

15 Q So 5 becomes 6, as I read this. The response
16 from Mr. Lawlor is at tab 40, and police reports
17 are attached, May 21st letter, attaching police
18 reports. And we don't have the exact
19 attachments in the file, the files don't
20 perfectly reconstruct this. But, logically,
21 given that his response at tab 40 is dated
22 May 21st, we have a report dated May 18th
23 dealing with this very matter. So it is
24 reasonable to infer -- and that report is at tab
25 41, the next tab -- is it reasonable to infer

1 that the report at tab 41 responding to the
2 pre-trial questions would likely have been
3 included in the letter at tab 40? Do you
4 understand my point?

5 A I think so, yes, I think that's fair.

6 Q It would be nice if we had Mr. Lawlor's letter
7 with the reports attached to it, but we don't.
8 So there is a process of inference here that
9 this May 18th report was likely appended to the
10 May 21st letter; is that fair?

11 A Yes.

12 Q In any event, this is the way the process
13 worked, that you would get --

14 THE COMMISSIONER: What was the date of the
15 pre-trial?

16 MR. CODE: The pre-trial starts on May 10th, and
17 Mr. Brodsky delivers his list of questions in
18 the morning. The Crown doesn't get much notice
19 of it. And the Crown asks to have the pre-trial
20 adjourned over in order to give them a chance to
21 respond. And Justice Morse resumes it on
22 May 22nd for a report back essentially.

23 BY MR. CODE:

24 Q So you have 12 days between May 10th and May
25 22nd to respond to these matters. And the

1 process that you see here of these kinds of
2 reports being produced, and there is a number of
3 them -- tab 41 we have two reports and tab 43 we
4 get a third report -- this was again a normal,
5 ordinary way in which disclosure requests would
6 be dealt with?

7 A Yes, that's correct.

8 Q All right. And the only one I'm concerned with
9 is the response to question 6. And the report
10 that comes back here at tab 41 is authored by
11 Sergeant Anderson; is that correct?

12 A Yes.

13 Q He signs off on it. And would you have seen it
14 and reviewed it before it was sent back?

15 A His supervisor that night appears to be Sergeant
16 Ryland, but I would have, on return, apprised
17 myself, yes.

18 Q You would have seen it the next day?

19 A Yes.

20 Q And unfortunately, our very diligent student
21 produced a rather poor photocopy of the
22 paragraph that I'm interested in, so if you
23 could take a better copy for your book, Staff
24 Sergeant Vandergraaf. Question 6 you see is
25 dealt with at the very bottom of page?

1 A Yes.

2 Q Question 6, first of all, the top of the memo
3 which is perfectly legible on both copies makes
4 it very clear what you are doing is responding
5 to a request from Crown Attorney Gregg Lawlor
6 relating to questions raised by defence counsel
7 at a pre-trial held on May 10th. Is that
8 correct?

9 A Yes.

10 Q So there is no question that this is the
11 response to the pre-trial memo?

12 A That's correct.

13 Q And you spell out the numbers that you are
14 responding to. And the one I'm interested in,
15 question 6, the one about favorable
16 consideration is at the bottom of the page; is
17 that correct?

18 A Yes.

19 Q And you begin -- I shouldn't say you -- Sergeant
20 Anderson begins by dealing with the first part
21 of the question, which is the criminal records
22 of any of the witnesses?

23 A Yes.

24 Q Which is dealt with?

25 A Right.

1 Q Then the second paragraph there turns to the
2 second part of the question, which initially
3 deals with outstanding criminal charges and
4 says.

5 "...we are not aware of a single criminal
6 charge outstanding against a single
7 subpoenaed witness."

8 A Yes.

9 Q And then it is the last sentence, the last two
10 sentences that deal with the question of
11 favorable consideration such as not laying
12 charges, and what it says is:

13 "Furthermore, protection is the only
14 favorable consideration given to any
15 witness. We are not aware of any stayed
16 charges or any other deals made with any
17 witness in exchange for testimony."

18 Have I read that accurately?

19 A Yes.

20 Q And is it your view that that provided full,
21 fair, and frank disclosure of the arrangement,
22 or agreement, or whatever it was, that had been
23 arrived at with Swift Current?

24 A Well, that's accurate. It doesn't address the
25 Swift Current matter, though, I suppose, as far

1 as an investigation that was supposed to be
2 outstanding there and subsequently didn't result
3 in any charges, to my knowledge.

4 Q It would be fair to say that the answer is
5 accurate, as far as it goes, would that be a
6 fair way of characterizing it? That it
7 ultimately doesn't reach --

8 A No, the answer is accurate in all respects
9 regarding that question. There was no criminal
10 charges outstanding against any of the
11 witnesses.

12 Q No, no. There is no question the first part of
13 it is not problematic at all. My sole focus is
14 on the last two sentences where you say,

15 "...protection is the only favorable
16 consideration given to any witness, and we
17 are not aware of any stayed charges or any
18 other deals..."

19 It is that fairly broad language at the end,

20 "...any other deals made with any witness
21 in exchange for testimony."

22 Go ahead?

23 A No, and that is correct, the Winnipeg Police, as
24 do the RCMP, protection of witnesses has always
25 been of paramount importance to us. That Swift

1 Current issue wasn't resolved.

2 Q It is still under negotiation?

3 A Well, and the negotiation, I was hoping that
4 Justice would deal with it and end it, whatever
5 they had to do.

6 Q There was no finalized deal yet would be the
7 accurate way of putting it?

8 A Yes.

9 Q And that's why I say it is accurate as far as it
10 goes?

11 A Right.

12 Q That there is no finalized deal in place?

13 A Yes. Swift Current could have got back to us
14 within a couple of days and said, hold it, we
15 are having to charge him.

16 Q And Orr could have said there is no way this guy
17 is getting into witness protection, at which
18 point the contingent event wouldn't have
19 happened and there would be no agreement at all?

20 A Yes, I think so.

21 Q But my question to you is, we know that Kovnats
22 and Zanidean had been demanding immunity?

23 A Yes.

24 Q Repeatedly?

25 A Yes, through Mr. Miller.

1 Q Yes. It is in the first letter to Miller on
2 December 14th. It is in the witness protection
3 application in March.

4 A Yes.

5 Q It is in the May 29th phone call from Miller to
6 Orr.

7 A Yes.

8 Q And it is again in the June 4th letter, it is a
9 leak motif that consistently runs through the
10 negotiations, coming from Zanidean and Miller --
11 sorry, Zanidean and Kovnats?

12 A Yes.

13 Q We also know that Zanidean is concerned about it
14 because he raises it with you the first day he
15 comes in to the Public Safety Building, in
16 Sergeant Paul's October 10th note, and he
17 identifies it as a matter that he is worried
18 about in terms of his credibility?

19 A Yes.

20 Q We know that it is under negotiations still,
21 their wishes in this regard have not yet been
22 resolved; is that fair?

23 A Yes.

24 Q So to say there is no other deals, any other
25 deals, when part of the deal is still under

1 negotiation is surely not a full, fair and frank
2 response to Mr. Brodsky's question?

3 A I can't really answer that. That's the way the
4 report -- I didn't read the report until perhaps
5 several days later, the report would have gone
6 in. But I don't have a problem with the way
7 that reads there, there were no charges, we were
8 still waiting for word from Saskatchewan,
9 Mr. Miller seemed to be dealing it. We had no
10 information about any charges at that time, or
11 potential charges.

12 Q You see, Brodsky clearly is trying to get at the
13 witness' motivation, is he not?

14 A I have rarely been able to understand what
15 Mr. Brodsky is up to at the best of times, sir.

16 Q Well, fortunately for him, in this instance he
17 spelled it out for you at tab 31, in the
18 paragraph that I read to you, paragraph 23.

19 "What motives do people have for assisting
20 the police that are demonstrated in the
21 police files..."

22 And the fact that he is demanding these favours,
23 benefits in relation to Swift Current, clearly
24 demonstrates evidence of his motivation, does it
25 not?

1 A I guess one could argue that, yes.

2 Q And there is all kinds of activity going on
3 around this, and you are not disclosing any of
4 it in this very carefully crafted answer; is
5 that correct?

6 A Very carefully crafted answer?

7 Q All right. The last issue in relation to
8 disclosure here is, the actual pre-trial when it
9 resumes on May 22nd in front of Justice Morse,
10 there are some oral disclosures that's made, in
11 addition to what is in that written report of
12 Sergeant Anderson, there appears to have been
13 some kind of oral disclosure by the Crowns at
14 that pre-trial. Because we get two memos from
15 Mr. Brodsky to his file, at tab 44 and tab 45.
16 The memo at tab 44 refers to a pre-trial on
17 May 23rd, which appears to be a typo because it
18 was May 22nd. The memo at tab 45 clearly gets
19 it right as the pre-trial, May 22nd. Do you see
20 those two memos to file?

21 A Yes.

22 Q We don't have any documents from the Crown as to
23 what the Crown said at the pre-trial, but if we
24 just look at these two memos of Mr. Brodsky's
25 briefly, at tab 44 you see the fourth paragraph

1 starts,

2 "They are not prepare to involve themselves
3 in the Swift Current fire..."

4 Do you see that paragraph?

5 THE COMMISSIONER: Sorry, what tab?

6 MR. CODE: Tab 44, the fourth paragraph that
7 starts with the sentence,

8 "They are not prepared to involve
9 themselves in the Swift Current fire..."

10 THE WITNESS: Yes.

11 BY MR. CODE:

12 Q "...that is another police force."

13 A Yes.

14 Q And they go on to set out that the RCMP were
15 advised that Zanidean probably set this fire.

16 Do you see that in the second sentence?

17 A Yes.

18 Q So it appears that, although you didn't provide
19 the notes to them, that somehow they were
20 briefed about Zanidean's admission and the fact
21 that you had passed it on to Swift Current RCMP.

22 Am you reading that accurately?

23 A You are, yes, that's correct.

24 Q So it looks like they have acquired this
25 information orally from you or your officers,

1 and then we have the sentence,

2 "The RCMP chose to do nothing about it."

3 A Where is that?

4 Q Do you see that, the third sentence, same
5 paragraph?

6 "The RCMP chose to do nothing about it."

7 A Yes.

8 Q And is that consistent with the view that you
9 took of the matter?

10 A Pretty much, yes.

11 Q That it was their decision?

12 A Yes.

13 Q So, again, it would appear there had been some
14 oral briefing of the prosecutors on this matter,
15 if I'm reading that correctly?

16 A Yes.

17 Q And then flipping to tab 45, the second memo
18 about the same pre-trial, the second paragraph,
19 you see it expressly adverts to question 6,
20 which is the one that is covered in your police
21 report, Sergeant Anderson's police report of
22 May 18th?

23 A Yes.

24 Q "With respect to question 6, the Crown
25 says that no favorable consideration was

1 offered. The Crown makes the point that
2 the RCMP and Swift Current were notified of
3 the involvement of Zanidean and it is up to
4 them to pursue or not pursue the
5 investigation."

6 Again, suggesting knowledge by the Crown of
7 Zanidean's admissions. Is that correct?

8 A Yes.

9 Q And then the third sentence,
10 "The Winnipeg Police can only make
11 agreements with respect the area they are
12 responsible for."

13 A Yes.

14 Q Now --

15 A That's not exactly accurate but --

16 Q Exactly, you have predicted my point. The fact
17 of the matter is, one police force can make an
18 agreement with another police force. You get on
19 the phone and you talk to them and see if you
20 can arrive at an agreement, there is nothing
21 magical about it; is that correct?

22 A Well, in certain circumstances there is nothing
23 magical about it, no. But an arson was far too
24 serious a matter to simply be trying to discuss
25 with Swift Current, you know, like forget about

1 it, drop it. Certainly there were discussions
2 later on that, you know, what is the best course
3 to take in that investigation, you know, I
4 didn't know.

5 Q But there had been interventions made, the two
6 police forces had been talking to each other?

7 A Yes.

8 Q And they had arrived at an arrangement, an
9 understanding; is that correct?

10 A Yes.

11 Q So for Mr. Lawlor and Mr. Dangerfield to tell
12 defence counsel at the pre-trial that, in
13 essence, we can't make agreements with other
14 police forces, there is nothing here, is again
15 not full, fair and accurate disclosure on this
16 issue; is that correct?

17 A I suppose if Mr. Brodsky notes are accurate,
18 yes.

19 Q I'm asking you to assume that?

20 A Yes, right.

21 Q In any event, what those two memos tend to
22 suggest, and consistent with your evidence, is
23 although there is no written briefing that we
24 have on this matter, it appears there was some
25 kind of oral briefing of the two prosecutors

1 about the Swift Current matter?

2 A Yes.

3 Q I thought you would like those two memos, I put
4 them in for you.

5 I'm reaching the end now, I don't know, I
6 don't wear a watch so I don't know how close we
7 are?

8 THE COMMISSIONER: It is ten after 3:00,
9 whenever you want to.

10 MR. CODE: I'll carry on, go to 3:30.

11 THE COMMISSIONER: Any time between now and
12 3:30.

13 MR. CODE: I will try to wrap up by 3:30.

14 BY MR. CODE:

15 Q I want to return to the material witness warrant
16 and the meeting that ensues at the Public Safety
17 Building between Mr. Kovnats and
18 Mr. Dangerfield, and then the final pre-trial
19 negotiations. So I'm basically in late May,
20 early June, the whole culmination of this. And
21 I'm not overly interested in that meeting at the
22 Public Safety Building, we have Mr. Kovnats'
23 account and Mr. Dangerfield's account, and there
24 is no serious dispute between them, as I see it.
25 So I'm not going to delve into that in any

1 detail with you, although I know you were
2 present.

3 The material witness warrant -- where we
4 left off with Zanidean before we went on that
5 little foray into disclosure, was he is
6 underground in Winnipeg somewhere, you have lost
7 touch with him, and you are sending these
8 letters of concern that he is avoiding police,
9 Klippenstein is sending letters saying, what is
10 going on here -- sorry, Callens, Orr's boss --
11 let's settle this thing.

12 The next thing we discover is the police
13 acquire information, this is at tab 47, that he
14 is not going to appear at trial. If you look at
15 tab 47, this is the material witness --

16 A Yes.

17 Q -- report. If you look at page 2 of it, says on
18 May 24, right in the middle, the police received
19 information indicating that Zanidean has left
20 Winnipeg and will not appear in court as
21 required. Do you remember where that
22 information came from?

23 A No, I don't, likely from Mr. Kovnats.

24 Q I think you can reconstruct it in that manner,
25 that Kovnats says something to Miller and Miller

1 informs you.

2 In any event, you obtain a material witness
3 warrant on May 24th. The report indicates that
4 the RCMP, the local detachment in Cochrane out
5 in the Foothills, finds him on May 25th, the
6 next day. And then on the third day, May 26th,
7 Anderson and Paul fly out, pick him up and bring
8 him back. Is there anything that you can add to
9 that, that you recall about this incident?

10 A No, sir.

11 Q You don't have a strong recollection of this, as
12 I recall?

13 A Well, because of the Kovnats/Dangerfield --

14 Q You remember that part of it --

15 A Yes.

16 Q -- once he is back at the Public Safety
17 Building. I was more focusing on his going on
18 the lam to Alberta?

19 A Yes.

20 Q You don't remember much about that?

21 A No, I don't.

22 Q I take it --

23 A I remember we sent them out there to pick him up
24 on this warrant, yes.

25 Q I take it that it was a consistent development

1 with what had been happening in May, with
2 Zanidean not staying in touch with you and you
3 not knowing where he was?

4 A Yes, sir.

5 Q He wasn't behaving like a protected witness who
6 was under your control and supervision?

7 A He was behaving pretty much like many of them
8 do, that's for sure, but it certainly wasn't
9 acceptable to us.

10 Q He is released on a recognizance, you get him
11 back in custody down at the Public Safety
12 Building, on the fourth day, May 27th, it
13 appears he is brought back late at night. And
14 the third page of this tab, tab 47, is the
15 recognizance that he is released on --

16 A Yes.

17 Q -- before a Provincial Court Judge on the 27th
18 of May, and he is essentially put under 24 hour
19 police custody, with Inspector Johnson having
20 the power to delegate the custodial function to
21 individual officers. Is that correct?

22 A That is correct, sir.

23 Q Zanidean calls Kovnats down to the Public Safety
24 Building, obviously he is in custody?

25 A Yes.

1 Q Was he in a sweet-tempered mood or was he upset,
2 Mr. Zanidean, at this point?

3 A Mr. Zanidean?

4 Q Yes?

5 A I don't know that I saw him that much. He was
6 tucked away in a room.

7 Q And you call, or somebody calls Miller and
8 Dangerfield down?

9 A Yes.

10 Q And a heated argument ensues, to encapsulate
11 what happens?

12 A Essentially, I think we were all annoyed at
13 Mr. Kovnats, we had a witness essentially
14 disappear on us for a period of time, and
15 Mr. Kovnats was making demands to Mr. Miller,
16 yes, we were getting annoyed with Mr. Kovnats.
17 And certainly Mr. Dangerfield expressed some of
18 his concerns to Mr. Kovnats.

19 Q And you've described the matter, to the best of
20 your recollection, in your statement at tab 1,
21 pages 10 to 11, and I'm not going to go over it
22 in any detail with you about the argument that
23 ensues down there. But what I am interested in
24 is the substance of the dispute --

25 A Yes.

1 Q -- what is the issue between Kovnats on the one
2 side, and Miller and Dangerfield on the other
3 side. And again this is succinctly summarized
4 in your statement, but it is important enough
5 that I think I should ask you to distill it for
6 us here at the hearing. What was the gist of
7 the dispute between the two parties at this
8 point on the eve of trial, about a week before
9 trial at this point?

10 A Well, it seems to me the issue is whether or not
11 Mr. Zanidean was still providing evidence for
12 the Crown or not.

13 Q On his side, he was essentially saying, I'm
14 going to exercise my right to remain silent, I'm
15 not going to cooperate any further unless --
16 what was the unless, what was it that he wanted
17 in return for his cooperation?

18 A Well, to be honest, that day I didn't even know.
19 I was getting so fed up with Mr. Zanidean and
20 Mr. Kovnats that I wanted Justice to deal with
21 it. I mean, Mr. Dangerfield was admonishing
22 Mr. Kovnats, no doubt about that. I wish I had
23 a crack at Mr. Kovnats too, but I didn't.

24 Q Again, turning to your statement at page 10 of
25 tab 1?

1 A Yes.

2 Q What he was demanding on his side, as I read
3 your statement, was whether the Crown was going
4 to reach a witness protection agreement with him
5 on his terms?

6 A Yes, essentially.

7 Q So on the one side they wanted the witness
8 protection agreement, and on the other side, the
9 Crown wanted his cooperation --

10 A Correct.

11 Q -- as a Crown witness. And that was the gist of
12 the dispute, is that fair?

13 A Yes.

14 Q And they reach an agreement and he is released
15 on his recognizance, and the matter is over
16 with?

17 A Essentially, yes.

18 Q Now, that's late on the night of May 27th, as I
19 read the documents, the recognizance shows him
20 being released that evening. The ensuing events
21 in the next days, essentially in the week until
22 the trial starts on June 3rd, there is a number
23 of developments, and I want to just ask you
24 whether you have any knowledge of these
25 developments, whether you had any role in them

1 in that final week of negotiations, if I could
2 call it that. And we learn this from a variety
3 of other documents. I don't think I need to
4 take them to you.

5 First of all, two days later on May 29th,
6 Kovnats gives Miller an ultimatum which we see
7 set up in Orr's notebook of his conversation
8 with Miller, the one I took to you earlier, that
9 shows Kovnats making three demands and Orr --
10 one of them is immunity -- and Orr makes his
11 phone call to Swift Current. Did you have any
12 involvement in that matter, the events of
13 May 29th?

14 A I don't believe so.

15 Q Which is the Wednesday of that week, and the
16 follow-up call is on the 30th, on the Thursday
17 to Swift Current. Were you called in for any
18 briefings or kept in the loop on any of that?

19 A I couldn't say for sure, but I have no
20 recollection.

21 Q On the Friday, May 31st, Miller sends Kovnats a
22 letter, which we have here at tab 49, no member
23 of the police are copied on it apparently, tab
24 49. And if you look at item 4 in Miller's
25 letter to Kovnats, he spells out that the

1 witness protection arrangement has not yet been
2 worked out. He says that he has committed to
3 it, but it is on terms yet to be arranged. Do
4 you see that?

5 A Yes.

6 Q Were you privy to that letter and were you
7 involved in the negotiation of those
8 arrangements?

9 A I was not, sir, no.

10 Q Still appear to be ongoing on the Friday for a
11 trial that's starting on the Monday?

12 A Oh, yes, to be honest, I didn't know what
13 Mr. Kovnats and Mr. Miller were discussing or
14 doing, even prior to that, relative to this
15 whole situation.

16 Q On Sunday, June 2nd, the day before the trial is
17 to start, we have various memos from Mr. Brodsky
18 and Mr. Kovnats that I don't need to take you
19 to, but they show that Kovnats and Brodsky
20 actually meet on the Sunday. Brodsky wants to
21 interview Zanidean, and Kovnats is phoning
22 Miller about the matter as to whether or not
23 Brodsky is entitled to interview Zanidean. Were
24 you aware of any of those developments?

25 A Is there a tab, sir, or --

1 Q No.

2 A There is no tab? No, I wasn't aware.

3 Q There is no documents that suggest you are, I'm
4 asking you. The trial gets started on the
5 Monday the 3rd, and on Tuesday the 4th, Kovnats
6 sends another letter, which is at the next tab,
7 tab 50, to Miller. Again, you are not copied on
8 it and there is no reference to you, but one
9 thing he is asking for that involves the
10 Winnipeg Police is -- you see item 12 on his
11 list?

12 A Yes, I do.

13 Q He is asking for an assurance from the Crown and
14 the Winnipeg Police Department that they have no
15 information which could result in him being
16 charged for an offence under any statute?

17 THE COMMISSIONER: What tab is that you are
18 looking at?

19 MR. CODE: It is at tab 50. Tab 50 is
20 Mr. Kovnats' final list of demands, the June 4th
21 letter. And the only reference to the Winnipeg
22 Police that I can see is the request for a
23 letter in relation to the immunity issue.

24 THE WITNESS: Yes, question 12, yes, I see that.

25

1 BY MR. CODE:

2 Q Of course, we know that you did have information
3 that could result in him being charged, you had
4 two admissions from him in relation to the Swift
5 Current arson. So it is a little bit difficult
6 to know what that is getting at. But were you
7 aware of there being a concern by Mr. Zanidean
8 or Mr. Kovnats that the Winnipeg Police had
9 something on him?

10 A No, sir.

11 Q Finally, the last event prior to his testimony
12 of any significance, that I'm aware of, is on
13 Thursday, June 6th, we are now four days in the
14 trial, Mr. Dangerfield is calling his case,
15 there is an incident between Kovnats and
16 Zanidean and Sergeant Paul in a restaurant
17 parking lot, that's summarized in the memo at
18 tab 52 --

19 A Yes.

20 Q -- second page of it. Zanidean is apparently in
21 the process of preparing a sworn statement
22 setting out his account of the matter, together
23 with his spouse, Susan Fehr, and he is also in
24 the process of annotating his police statements,
25 the typed police reports, and making various

1 annotations on those police reports as to
2 whether he said these things or not. And Paul
3 sees this process going on, he takes Zanidean to
4 a restaurant to meet Kovnats, and observes
5 Kovnats leaving with these documents, and there
6 is a bit of a dispute over who should have
7 custody of the documents. Were you aware of
8 that development?

9 A I don't have a strong recollection of it. There
10 was so many difficulties coming up in that, but
11 I don't have a direct recollection of that kind
12 of altercation.

13 Q Again, is that the kind of development where you
14 would expect to see, good police practice being
15 the production of a supplementary report to
16 brief you on the incident and to brief Crown
17 Counsel on the incident?

18 A Not necessarily.

19 Q You have your chief Crown witness preparing a
20 statement for his lawyer of his version of what
21 happened, and you have him annotating his police
22 statements with his comments on it. You don't
23 think that's something that should be recorded
24 in a report and the Crown alerted to it?

25 A Certainly, and further, I thought Mr. Kovnats,

1 as an officer of the court, would be dealing
2 with Mr. Miller on those issues.

3 Q We will deal with Mr. Kovnats when he gets here,
4 but I'm concerned about the police
5 responsibility here, or --

6 A I had no firm information, as described in
7 this -- are these Mr. Kovnats' note -- I had no
8 firm information at that time.

9 Q I know you didn't, that's my point. Should
10 there have been a report to you that you could
11 then have passed on to Crown counsel? I am
12 talking about standard, proper police reporting
13 practices when an incident like this happens.

14 A Well, I guess, yes, standard practice should be
15 to report those things. It wasn't -- I don't
16 know.

17 Q Would you think Mr. Dangerfield would have
18 wanted to know that his star witness was
19 preparing a statement for his own lawyer with
20 his account of what happened, and more
21 significantly perhaps, that he was annotating
22 his police statements?

23 A Well, you see, when Mr. Kovnats became involved,
24 much of this rhetoric that I was hearing wasn't
25 impressing me very much, so perhaps it wasn't

1 reported. In other words, it wasn't significant
2 in the sense of Mr. Zanidean had a lawyer
3 dealing with the Crown, the Justice Department,
4 these issues were coming up, I wanted to leave
5 it all with Justice Department. Whether or not
6 we would have reported a specific incident as
7 related in these notes, and I don't even know if
8 these notes are true, to be honest, I don't
9 know.

10 Q We know these documents exist, we have got them,
11 the documents that are handed over to Kovnats at
12 this meeting, and we know that Sergeant Paul is
13 concerned that police statements of their star
14 witness are being taken away. And that's what
15 causes the dispute. So all I'm asking you is,
16 is that concern something that should have been
17 reported up the line to you, and then on to
18 Crown Counsel?

19 A I guess, ideally, yes, it could have been.

20 Q All right. The next week, Tuesday, June 7th,
21 Zanidean testifies. And what was your
22 understanding as to whether a final agreement
23 had been reached with Zanidean prior to his
24 testimony?

25 A He wasn't going to be pursued by the RCMP

1 relative to the arson charge.

2 Q Your understanding was there was an agreement
3 that he would not be pursued by the RCMP?

4 A The RCMP indicated no, that they were not going
5 to pursue him any further on that matter.

6 MR. LOCKYER: I didn't hear what he said.

7 BY MR. CODE:

8 Q What was the agreement with the RCMP?

9 A Essentially, that they were no longer going to
10 pursue their interests in that arson
11 investigation with Mr. Zanidean.

12 Q And was this a further development from the
13 understanding that you had had back in April,
14 with the various phone calls that went on with
15 Swift Current, that Anderson made to Burton and
16 Orr made to Upton and Preston?

17 A Yes.

18 Q So the situation had moved on --

19 A Yes.

20 Q -- by the time of trial?

21 A Yes.

22 Q There had been a further development of some
23 kind, that the caveat if he gets admitted into
24 the Witness Protection Program had been removed,
25 and there was now a clear agreement that he

1 would not be prosecuted?

2 A Clear agreement, well, this is what the RCMP
3 were telling us. We took it simply as a matter
4 that they had discussed, consulted on, and came
5 back to us with that kind of decision.

6 Q So the position in April had been a qualified
7 one, and the position now on the eve of his
8 testimony was an unqualified one. Am I
9 understanding it?

10 A Until you get a signed immunity agreement by
11 Justice Departments, I'm never satisfied with
12 those kind of situations. They indicated to us
13 that this was their intention at that time, and
14 we passed that on to the Justice Department.

15 Q How does this agreement that is arrived at prior
16 to Zanidean getting into the box get
17 communicated to you? How do you learn of it,
18 approximately when and where and how?

19 A From Sergeant Anderson.

20 Q Sergeant Anderson, prior to Zanidean testifying,
21 has some further communication with the RCMP?

22 A I take it he does, yes.

23 Q And that leads him to conclude that there is now
24 a firm agreement, at least with the police, not
25 immunity with the Department of Justice, but a

1 firm agreement with the police that any caveats
2 have now been removed and they are definitely
3 not pursuing him?

4 A Yes, that was my understanding, yes.

5 MR. WOLSON: What date is that? June 7th did
6 you say?

7 MR. CODE: He hasn't given me a date yet. If
8 you let me ask the questions, I will try and get
9 it for you.

10 MR. WOLSON: You had used the date of June 7th.

11 MR. CODE: I didn't say anything about June 7th,
12 you must have misheard me.

13 MR. WOLSON: Well, that's when he testified --

14 BY MR. CODE:

15 Q Zanidean testifies on June 11th, Tuesday,
16 June 11th?

17 A That could be.

18 Q And approximately when does Anderson communicate
19 this understanding to you, in terms of when
20 Zanidean gets into the box?

21 A I think before the trial started, wasn't it,
22 Mr. Code?

23 Q Well, I'm asking you. You seem to be saying --
24 is it shortly before the trial starts or --

25 A It was getting on to the trial, the trial was

1 upcoming, yes, there is no question about that.

2 Q So sometime shortly before June 3rd when the
3 trial starts, Anderson comes to you and says
4 there has been a further development?

5 A Sure, there is always a flurry of activity in
6 all kinds of various areas of a case like that,
7 before trial. That was one of them.

8 Q In the course this flurry of events that take
9 place in the week after Zanidean is brought back
10 in custody, there is some further development
11 that Anderson tells you about --

12 A Yes.

13 Q -- that leads you to believe there was a final
14 agreement?

15 A Absolutely, sir.

16 Q Again, is there any report memorializing that,
17 that you have seen?

18 A I hope I'm not confusing the conversations or
19 the dates here, but is that not the time that we
20 had Tom Orr confirm that, or was this a final,
21 final, final?

22 Q We went through the Tom Orr interventions back
23 in April. Orr places calls to Upton and then he
24 receives a call from Preston in early to mid
25 April, and we have been through that. So I'm

1 now into --

2 A Well, I don't think the deal changed then
3 significantly from that point on. It was simply
4 a matter that, if my recollection is correct,
5 that they were not going to pursue him.

6 Q So there is no new development on the eve of
7 trial, there is no change?

8 A No, I don't believe so.

9 Q And correct me if I'm wrong, what I understood
10 you to say about the April discussions is that
11 they were in the context of Zanidean getting
12 into witness protection?

13 A Yes, yes, that's true.

14 Q So on the eve of trial, you've got Zanidean, who
15 is probably more uncooperative than he has ever
16 been, you have had to go and arrest him. Is
17 there any realistic prospect that he is going to
18 get into the Witness Protection Program, the
19 formal --

20 A Well, if the RCMP weren't able to admit him into
21 their Federal/National program, certainly we
22 felt obligated to undertake some measures for
23 him.

24 Q You would have done something?

25 A Through Justice, we would have done something,

1 yes.

2 Q So one way or another, you would get him into
3 witness protection of some form, and you felt
4 that you had a firm undertaking in those
5 circumstances that Swift Current would not
6 charge him?

7 A Yeah, yes.

8 Q That's the immunity part of the negotiations.
9 You remember my question was, was there a final
10 agreement in place before he testified? What
11 about the financial benefits, what was your
12 understanding as to whether there was a firm
13 agreement in place prior to his testimony on
14 that side of the equation?

15 A I don't really know. Mr. Miller was dealing
16 with that with Mr. Kovernats.

17 Q I will break at this point -- Mr. Commissioner,
18 if I could just ask one final question. So
19 those final negotiations about witness
20 protection benefits, if I can call it that, you
21 had no involvement in those?

22 A Absolutely none.

23 Q So you were involved in the immunity side of it,
24 but not in the witness protection financial
25 benefits side of it; have I summed that up

1 accurately?

2 A Well, we weren't asking for immunity, but, yes,
3 what you are saying is essentially, what do you
4 guys want to do in Swift Current with that
5 charge, what do you want to do with this guy,
6 let us know? I could care less if they charged
7 him, to be honest.

8 MR. CODE: This is a perfect time to break, Mr.
9 Commissioner, thank you.

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

12 (Proceedings recessed at 3:36 p.m. and
13 reconvened at 3:51 p.m.)

14 THE CLERK: All rise, this Commission of Inquiry
15 is now open. Please be seated.

16 BY MR. CODE:

17 Q Just a couple of brief areas to conclude with,
18 Staff Sergeant. First of all, you were in court
19 when Zanidean testified on the 11th of June?

20 A I was, sir, yes.

21 Q All right. And I'm told that I said the 7th,
22 and there was at least four witnesses to it. We
23 are all agreed that it is the 11th and that I
24 misspoke.

25 You were there and you heard him testify.

1 And, in particular, you would have heard him
2 testify to the effect that he did not instruct
3 his lawyer to make a deal to avoid being charged
4 in Swift Current. Do you remember that?

5 A No, I don't.

6 Q Mr. Brodsky expressly asked him,
7 "You talked to your lawyer about making a
8 deal to avoid being charged in Swift
9 Current?"

10 And he says,

11 "No, that's not what I said."

12 You don't recall hearing that from his
13 testimony?

14 A I don't recall that, sir, no.

15 Q Because, of course, we know he did instruct his
16 lawyer to try to make a deal to avoid being
17 charged in Swift Current, don't we, repeatedly?

18 A Yes.

19 Q You heard him testify that he wasn't paid to
20 move out of his house, that his mortgage
21 payments were in arrears, he was about to lose
22 his house, I'm on the verge of losing my house.
23 And Mr. Brodsky said, what arrangements have you
24 made for that? And he said, I have made no
25 arrangements for that. Did you hear that

1 testimony?

2 A That I recall, yes.

3 Q That he wasn't paid to move out of his house,
4 his mortgage payments were in arrears, he was
5 about to lose it, and no arrangements whatsoever
6 had been made about the house?

7 A Yes, I recall something to that effect, yes.

8 Q And that of course was all false, was it not?
9 Extensive arrangements were made in relation to
10 the house and moving costs?

11 A I wasn't sure how Manitoba Justice was dealing
12 with that house. Certainly moving costs in
13 relationship to us providing him with a safe
14 house --

15 Q Whenever you moved him you paid his moving
16 costs, and the house, your understanding,
17 whether you had it at the time, was that
18 extensive arrangements were being made about the
19 house; is that correct?

20 A I would imagine they were, but if they were, I
21 didn't have any direct knowledge of what they
22 were doing with the house or how they were going
23 to go about it.

24 Q It is simply common sense, isn't it, in a
25 witness protection arrangement, when you move

1 somebody out of their house for their own
2 protection that you make some arrangements for
3 their house, so it doesn't just sit there?

4 A Most often such witnesses don't have property
5 that we have to worry about. This made this
6 case a little unusual. This man was a property
7 owner, his wife owned a car, dogs.

8 Q Come back to my point. Is it not common sense
9 that if you move someone out of their house for
10 witness protection reasons, you are going to
11 make some arrangements in relation to their
12 house?

13 A Yes, I would imagine that would be correct.

14 Q Finally, you heard him testify that the only
15 thing that they are paying for is my room and my
16 meals. And when Brodsky asked how long will
17 that continue? He said until the end of today,
18 unless I'm needed tomorrow. In other words, you
19 are going to cut him off the minute he gets out
20 of the box. And when Mr. Brodsky pressed on and
21 said, what about start-up costs after he was
22 relocated, and he said they have never mentioned
23 start-up costs. Do you remember that testimony?

24 A Yes, I do.

25 Q Again, we know that's not true. There were

1 obviously ongoing arrangements after his
2 testimony was finished; isn't that correct?

3 A Yes, there was, yes.

4 Q You weren't going to put him out in the cold and
5 not give him any start-up costs in his
6 relocation?

7 A That's fair, sir, yes.

8 Q So, did you take Mr. Dangerfield aside and say,
9 we have got a problem here, he is painting a
10 false picture about the very minimal help that
11 he says he is getting from the Crown? Did you
12 raise that with Mr. Dangerfield?

13 A I did not, sir, no.

14 Q Did you raise it with Mr. Lawlor?

15 A I did not sir, no.

16 Q Did you raise it with Mr. Miller?

17 A No, sir.

18 Q Did they raise it with you?

19 A No, sir.

20 Q Did they come to you and express concern about
21 Zanidean's testimony on these witness protection
22 issues?

23 A No, sir, they did not.

24 Q Nobody said a thing about this?

25 A Not to me sir, no.

1 Q The final development in terms of witness
2 protection with Zanidean is that nine days after
3 his testimony, on June 20th, he and Sergeant
4 Paul have a major argument that results in the
5 Winnipeg Police Service terminating his witness
6 protection. Is that correct?

7 A That's correct, sir, yes.

8 Q And those events are set out at tab 53, in a
9 report that Sergeant Paul prepares almost two
10 and a half years later, September 23rd, 1993; is
11 that correct?

12 A Tab?

13 Q Tab 53, Sergeant Paul's report on the June 20th,
14 1991 blow-up, as he calls it?

15 A Yes.

16 Q And it is particularly, at the bottom of that
17 first page, it is about a page and a half long
18 report, but at the bottom of the first page, do
19 you see the paragraph starting,

20 "On the 20th of June, Zanidean made
21 numerous phone calls..."

22 A Yes.

23 Q "...and became increasingly upset as the
24 day progressed, finally exploding and
25 accusing the writer of screwing up the

1 package. The writer finally had enough of
2 Zanidean's ranting and raving and argued
3 with him. Zanidean threatened to go to the
4 press and tell the press that his testimony
5 had all been lies and that would
6 really...",

7 and he used an expletive. He storms back into
8 his room. Sergeant Paul calls Sergeant Anderson
9 to warn him that the situation may get out of
10 hand, and they confer with Inspector Johnson,
11 and the agreement is reached on the 21st of June
12 to remove the protection from Zanidean. Is that
13 correct?

14 A Yes.

15 Q And then finally, Sergeant Paul obtains the
16 phone records as he is checking out of the
17 hotel, and over the page, he learns that
18 Zanidean called Greg Brodsky's number right at
19 the time of the blow-up, just after the blow-up
20 he says; is that correct?

21 A That's what the report says, yes.

22 Q And my question to you is, were these
23 developments the kind that, again, in accordance
24 with good police practice, should have been
25 recorded in a supplementary report at the time

1 for your review and Crown Counsel's review?

2 A Well, perhaps. I guess my view of Mr. Zanidean
3 was that he was having little temper tantrums
4 that were starting much earlier in the year, and
5 this didn't surprise me one bit, it didn't come
6 as a shock or a surprise. And whether or not it
7 should have been documented at that time, the
8 significance of it didn't strike me until all of
9 this happened.

10 Q You knew that Driskell had an appeal pending; is
11 that correct?

12 A Yes.

13 Q And Zanidean is reported as saying that his
14 testimony had all been lies, or he is
15 threatening to go to the press and say that his
16 testimony had all been lies. Do you think
17 Mr. Dangerfield would have liked to have known
18 that, prior to arguing the appeal?

19 A Well, perhaps. Again, I thought it was simply
20 another kind of a temper tantrum by this
21 particular guy. It is not unusual with these
22 kind of witnesses.

23 Q You are evaluating the weight of the evidence?

24 A Well, I am, yes.

25 Q And the truthfulness of the evidence, whether he

1 is speaking honestly here or whether it is just
2 blowing off steam?

3 A He is under a lot of stress, he just testified
4 in a big murder trial.

5 Q Fair enough. Is that a police officer's role to
6 evaluate the weight of testimony, or evaluate
7 the weight of information, or simply to evaluate
8 its relevance?

9 A Yeah, I think it is our role and --

10 Q Do you keep information from the Crown because
11 you don't think much of it?

12 A No, no, that's not the case and it shouldn't be
13 the case.

14 Q It is for the Crown to decide what weight and
15 value it has, and make disclosure decisions in
16 relation to the defence?

17 A Yes.

18 Q There is a meeting we hear about, the day before
19 this blow-up on June 19th, there was apparently
20 a large meeting that Orr and Miller and Kovnats
21 and Zanidean attend to try to resolve the
22 witness protection issues. Do you recall
23 attending that meeting?

24 A Which meeting, sir? Date?

25 Q June 19th, the day before the blow-up, eight

1 days after his testimony.

2 A I have no recollection of that, I don't know
3 sir, I wasn't there.

4 Q There is nothing in the report that indicates
5 that you were. We have Corporal Orr's notes of
6 the occasion and there is no indication that you
7 were present.

8 The day after the blow-up, June 21st,
9 Miller writes Kovnats, and this is at tab 51, if
10 I could ask you to look at it, and refers to an
11 apparent agreement, or arrangement, or plan
12 that's been arrived at. Do you have tab 51?

13 A Yes, I do, sir.

14 Q And in particular, the third paragraph says,
15 "The plan arranged for your client is one
16 that has been worked out with the police
17 and is one with which your client is
18 comfortable...",

19 and he goes on to say it involves relocation,
20 the witness protection, and a \$20,000 cap. Do
21 you see that?

22 A Yes.

23 Q And was that plan worked out with the police, to
24 your knowledge?

25 A Not with us.

1 Q Sorry?

2 A Not with Winnipeg Police.

3 Q You are not aware of any such plan having been
4 worked out with the Winnipeg Police Service?

5 A No.

6 Q Indeed, it appears you had very little
7 involvement in the preceding month or so, since
8 the April 29 meeting, in these discussions; is
9 that fair?

10 A That's fair, sir.

11 Q Finally, Staff Sergeant, your witness statement
12 sets out the events of July, at page 13 of your
13 witness statement, tab 1, page 13, where the
14 Swift Current investigation becomes the subject
15 of a fair amount of activity. And your account,
16 your view of this is set out fully in your
17 witness statement; is that correct?

18 A Yes, sir, I think so.

19 Q And in essence, because there never was an
20 immunity agreement in the formal sense with the
21 Department of Justice, you weren't overly
22 concerned about whether the police decided to
23 charge or not to charge, that was their
24 discretion in your view; is that correct?

25 A That was my view, sir, yes.

1 Q You didn't see this as violating any agreement
2 that you had?

3 A No, sir.

4 Q And then finally, the delivery of the \$20,000
5 cheque, you get roped into carrying that task
6 out; is that correct?

7 A Yes, I recall that. And I also recall somebody
8 asking me about two different memos.

9 Q There is a couple of odd little memos, they were
10 odd to us originally, and I think --

11 A I have an explanation from my end of it, if you
12 wish, Mr. Code.

13 Q They are at tab 56 and 55. Miller writes you
14 asking to you request the money, and then you
15 write him back requesting the money. What is
16 the explanation for this --

17 A I recall that because Mr. Miller called me and
18 he says, would you draft a letter, send it to me
19 requesting \$20,000? And I said, like hell I
20 will. I says, you have been negotiating with
21 Mr. Kovnats and Mr. Zanidean. If this is some
22 kind of arrangement that you have come up with,
23 you send me a letter and I will send you a
24 letter back, essentially.

25 Q We have been able to sort this out a little more

1 clearly now. There is some internal notes of
2 Mr. Miller's that I think explain this as a
3 requisitioning problem, for him to requisition a
4 cheque?

5 A That is my understanding too, sir, but I wanted
6 him to commit his negotiations down to paper
7 before I took \$20,000 to anybody, sir.

8 Q You deliver the cheque and get a receipt for it?

9 A We were flying by the seat of our pants in a lot
10 of those issues, and I had to quickly adapt a
11 RCMP termination contract at that point in time.
12 I asked Mr. Miller, this is it, do you want a
13 termination contract, a payment to say you can
14 relocate yourself and no more involvement with
15 the police essentially? So I typed that up and
16 had Mr. Zanidean review it and sign it, and he
17 was presented with a cheque, yes.

18 MR. CODE: Those are all of my questions. Thank
19 you.

20 THE WITNESS: Thank you, sir.

21 MR. LOCKYER: You looking at me?

22 THE COMMISSIONER: I am looking at whoever wants
23 to go next.

24 MR. LOCKYER: Well, Mr. Wolson, approached me.
25 I mean, the idea had been that I would go last

1 in that this witness isn't represented, as I
2 understand it.

3 THE COMMISSIONER: That's right.

4 MR. LOCKYER: He is hardly favorable to my
5 position, or my client's position. And then
6 Mr. Wolson approached me, if I may tell a
7 story --

8 MR. WOLSON: I simply say, on the issue of who
9 would go next, I expect that Mr. Lockyer,
10 through his questioning, will -- I don't know
11 this for sure -- but will certainly be, I'm
12 sure, attacking the credibility of my clients.
13 And in that regard, I feel in putting their
14 positions forward that I would at least be in a
15 position, or I should be, to be after
16 Mr. Lockyer.

17 Now, I don't know whether there are other
18 counsel that would volunteer to go next, but I
19 certainly don't want to, for the reasons that I
20 have stated.

21 When we did the Sophonow Inquiry, it was
22 always after Commission Counsel
23 examined-in-chief, and did examine-in-chief,
24 counsel for Mr. Sophonow always went in the
25 second position. And that was the process that

1 we had in that inquiry, and I thought it made
2 good sense then, as I do think it does now.

3 THE COMMISSIONER: I'm a novice here.

4 MR. OLSON: I have no difficulty with going
5 next, sir, but that is not going to solve
6 anybody's problem, I don't think.

7 THE COMMISSIONER: At least it delays the
8 problems.

9 MR. LOCKYER: I thought the rules were adverse,
10 if the witness is adverse, you go later rather
11 than earlier. And I would have thought that
12 this witness was clearly more adverse to me than
13 he is to Mr. Wolson. It is just that Mr. Wolson
14 came up to me before recess and suggested it may
15 be the other way around, he was more adverse to
16 his clients than mine. I am not sure I agree
17 with that, but that's what Mr. Wolson seems to
18 think.

19 MR. CODE: The rules clearly are, as Mr. Lockyer
20 has put it, the issue who is adverse, the party
21 that he is adverse to should get to go last.

22 MR. LOCKYER: I don't mind going first. In the
23 case of this witness, I will go first, as long
24 as it doesn't create a precedent.

25 MR. OLSON: I was going to say,

1 Mr. Commissioner, I think the argument can be
2 made that this witness is potentially adverse to
3 virtually everybody else in the room. So I
4 don't know how you sort that out.

5 THE COMMISSIONER: Well, if I can avoid making a
6 decision, I will.

7 MR. LOCKYER: I will go first.

8 THE COMMISSIONER: Thank you.

9 MR. LOCKYER: So you can avoid making a
10 decision.

11 THE COMMISSIONER: You know the old saying,
12 never put off until tomorrow what you can put
13 off indefinitely.

14 MR. LOCKYER: I have a book of documents,
15 Mr. Commissioner.

16 THE COMMISSIONER: Thank you, Mr. Lockyer, I
17 appreciate your concession on this witness
18 anyways.

19 BY MR. LOCKYER:

20 Q Yes, sir, in light of the fact that some months
21 before Mr. Zanidean first spoke to Anderson and
22 Paul on October 9th of 1991, some months before
23 that a request had been made of your force for
24 Mr. Zanidean to be located and interviewed on
25 the Swift Current arson. All right. Are you

1 following me?

2 A Yes.

3 Q Would that information have been reasonably
4 accessible to Anderson and Paul, if they had
5 troubled to look on October 9th, sir?

6 A It would have been accessible, yes.

7 Q It would have been. And obviously it would have
8 been accessible through talking to the officer
9 who had taken on the task, I think it is
10 Sergeant Mann?

11 A Yes.

12 Q And how else would it have been accessible? If
13 they plugged his name into computer, would it be
14 accessible?

15 A No.

16 Q How else would it have been accessible?

17 A Through the RCMP in Swift Current, if they would
18 have advised us that this document came here,
19 when Sergeant Mann approached me, I said it was
20 being looked after.

21 Q Just through the name Zanidean, how would it
22 have been accessible, Reath Zanidean?

23 A In our computer system back then, I am not sure
24 it would. It would be individual officers
25 consulting. Detective Mann must have heard the

1 name being mentioned when he approached me. My
2 recollection is it was a casual approach.

3 Q And he approached you when, sir?

4 A When?

5 Q Yes?

6 A During the course of this investigation, at
7 which point it was fairly early on, but after we
8 had the Swift Current situation come to light.

9 Q Now --

10 A Not long after.

11 Q Now, you've described Mr. Zanidean, sir, really
12 to summarize, as being a very demanding
13 individual while you were dealing with him; is
14 that right?

15 A Not initially, but as it progressed, yes.

16 Q Certainly by, shall we say November, December of
17 1990 and thereafter?

18 A Yes.

19 Q And one of the things that Corporal Orr put in
20 one of his reports was he spoke of what perhaps
21 seems very obvious, the Winnipeg Police
22 Department's desire to have a happy witness in
23 the case of Mr. Zanidean. He actually used that
24 phrase, a happy witness?

25 A He did. We always want happy witnesses.

- 1 Q Of course you do. And Zanidean was certainly
2 presenting himself, after November 1990, as
3 being a very unhappy witness, is that right,
4 sir? Whether he was or wasn't, he was
5 presenting himself that way?
- 6 A Yes.
- 7 Q And I suspect you felt, sir, that a lot of that
8 unhappiness that he was presenting was
9 manipulative on his part?
- 10 A I think --
- 11 Q A way of getting things?
- 12 A Yes, yes.
- 13 Q You said, sir, in your statement to Commission
14 Counsel, and as well I think you said it in your
15 evidence-in-chief this morning, that you saw the
16 Swift Current event, the arson, or events, as
17 being a major development in the case; is that
18 right?
- 19 A That's correct, sir.
- 20 Q You pointed out -- or I didn't say you did, but
21 it was pointed out in his application for
22 witness protection that he was seeking immunity
23 from that charge, sir? That's been brought to
24 your attention --
- 25 A Yes.

1 Q -- by Mr. Code? It was very much a priority of
2 his and Mr. Kovnats that he get immunity; is
3 that right, sir?

4 A Well, those discussions were being held with
5 Mr. Miller, but it was my sense of it, yes.

6 Q If you go to your statement, sir, that you gave
7 to Commission Counsel, you refer to it -- this
8 is at page 9, tab 1, page 9 of your statement --
9 you refer to it, if you look around the third
10 line of the last paragraph, you saw it as being
11 one of their, meaning Kovnats and Zanidean's,
12 key demands. Is that right?

13 A I couldn't find it, sir.

14 Q Last paragraph, second, third, line. You refer
15 to it as being a key demand of Mr. Kovnats and
16 Mr. Zanidean?

17 A Yes, that's correct.

18 Q And the demand, as you have put it, or key
19 demand, as you put it, you refer to earlier on
20 page 5 of the same statement, about 12 lines
21 down from the top, there is a line beginning,
22 "Since it became a witness protection issue
23 once Kovnats demanded immunity for
24 Zanidean...",
25 do you see that?

1 A Yes.

2 Q That's the key demand that you are referring to?

3 A "Dangerfield informed of the situation
4 but Miller dealt with it since it became a
5 witness protection issue once Kovnats
6 demanded immunity for Zanidean."

7 That's correct.

8 Q That same demand, you say at the third line of
9 the top of 6,

10 "Once Kovnats became involved and demanded
11 immunity for Zanidean, the matter became
12 very complicated...",

13 et cetera. So the key demand, to use your
14 words, is that he get immunity; correct?

15 A That was the sense that I was getting from
16 Mr. Miller, yes.

17 Q Now, in your examination-in-chief, sir, you
18 described a call that you said you were standing
19 by, that took place on October 27th, a call made
20 by Anderson to Swift Current; is that right?

21 A I don't recall the date, I recall the call, yes.

22 Q That call, sir, was made, if we assume it was
23 made on the 27th, and the evidence suggests
24 that -- I think there is actually divided
25 evidence, whether it was the 27th or the 30th,

1 whichever it is. Was the call made, as far as
2 you are aware, sir, pretty well
3 contemporaneously with Anderson and Paul finding
4 out about the Swift Current arson, or had there
5 been a delay of some sort?

6 A I think he tried a few times to get ahold of
7 somebody there, yes. I think, my recollection
8 would be there was a couple of times that we
9 tried to get ahold of them out there and
10 unsuccessfully.

11 Q All right. This, I think almost goes without
12 saying from what we are seeing, is undocumented,
13 what you are saying?

14 A Probably, yes.

15 Q Probably. And so do you have any sense of how
16 long it was. I mean, did Anderson and Paul, one
17 or both, brief you as soon as they became aware
18 of what you have called a major development in
19 the case?

20 A Yes.

21 Q They did. As far as you know?

22 A Yes.

23 Q Within hours, or when you were next on and they
24 were on, whatever it was?

25 A Yes, yes.

1 Q And you were very close to this investigation
2 from the beginning?

3 A Yes.

4 Q They briefed you, however, if they did brief
5 you, verbally and not in writing; is that right,
6 sir?

7 A That would be correct, sir, yes.

8 Q Do you have any sense of how long did pass
9 before this call was made, sir, when you finally
10 got through and you were standing as the call
11 was made?

12 A How much time had gone past from which point?

13 Q A day or two, a week or two, a month or two?

14 A From which point, from the disclosure of the
15 arson?

16 Q Yes, when you first heard about it orally, one
17 or the other?

18 A I'm not sure, it could have been weeks.

19 Q Well, it was either 17 or 20 days, sir. Which
20 seems, at least to me, rather a long time before
21 a call is made on what you yourself call a major
22 development in the case. And I'm wondering why
23 it would have taken so long?

24 A I think, my recollection is they tried a couple
25 of times to get ahold of somebody out there that

1 was familiar with it.

2 Q Well, from what we have heard from Swift
3 Current, sir, this was a major case for them, as
4 you can probably imagine.

5 A I imagine it was, yes.

6 Q They don't have a high murder rate in Swift
7 Current.

8 A Or arsons.

9 Q Or high arson rate, indeed. But what you are
10 suggesting is, for some reason Swift Current
11 didn't get back too quickly to calls from your
12 officers?

13 A I can't answer that. I don't know what messages
14 Sergeant Anderson may have left. But all I
15 recall is that he was -- I recall what my
16 instructions were to him, and I stood by while
17 he made that call, I stood by from --

18 Q Coincidentally, you were there for the call that
19 worked?

20 A Actually I was, because our office is right
21 outside of that detective desk and whatnot, it
22 is right there. You are always kind of floating
23 around, watching things. And we had had a
24 discussion about that, to my recollection. We
25 would have, have we heard anything?

1 Q Undocumented by you?

2 A That's right.

3 Q And you said to Mr. Code a couple of times, you
4 didn't actually say this, I don't think, in your
5 witness statement as such, but a couple of times
6 you said that you wanted to make sure from the
7 outset that there would be no promises or
8 favours made with regard to the charge. Do you
9 remember saying that?

10 A Yes.

11 Q And then having said that, I think at least
12 twice to Mr. Code, you then referred to this
13 call as being "a witness protection measure."
14 Do you remember saying that to Mr. Code as well,
15 this morning?

16 A It is possible. The two issues were related
17 with witness protection --

18 Q It seems a little contradictory to me. On the
19 one hand you don't want to make any promises or
20 favours, and then you call the purpose of the
21 call being a witness protection measure. It
22 seems almost contradictory?

23 A If I said it, I'm not sure in what context I
24 said it.

25 Q Now, you have become aware, sir, of the version

1 of the call from the other end, that is from PC
2 Burton, as he then was, when he received this
3 call?

4 A The material provided, I reviewed, yes.

5 Q Yes. And PC Burton's version of this call, sir,
6 which interestingly enough he did record
7 contemporaneously with the event, was that
8 Anderson told him that Zanidean was a witness in
9 a homicide, and specifically asked PC Burton to
10 hold off on pursuing Zanidean on the arson
11 charge because it could endanger the prosecution
12 of Mr. Driskell.

13 Now, you are smiling, sir?

14 A No, I don't --

15 Q All right.

16 A I don't see that as being valid.

17 Q You don't see that -- that's not at all
18 consistent with what you say you heard while you
19 were standing by?

20 A It was certainly not consistent with my
21 instructions to Sergeant Anderson.

22 Q Let me finish, would you?

23 A Sorry, sir.

24 Q That's certainly not consistent with what you
25 say you heard while you were standing by

1 listening to Anderson make the call?

2 A And more importantly, not consistent with my
3 direction to Sergeant Anderson and Paul.

4 Q But you certainly acknowledged to Mr. Code that
5 Anderson's note of this call is not consistent
6 with what you recall hearing either, because at
7 least, this is one of the few things with
8 regards to Swift Current a note was made of. Do
9 you remember the note being read to you?

10 MR. WOLSON: I don't think that note was a
11 contemporaneous note. That was a note that was
12 made, the note that my friend read I think was a
13 1992 report of Burton's.

14 MR. LOCKYER: Sorry, I'm looking at
15 Mr. Anderson's notes in his notebook.

16 MR. WOLSON: Mr. Anderson --

17 BY MR. LOCKYER:

18 Q Notes in his notebook, where he referred to
19 Burton telling him that the investigation will
20 continue. Do you remember that note being read
21 to you? Do you want to go back to it?

22 A Yes, I recall that note.

23 Q Which is perhaps more consistent with what
24 Mr. Burton said?

25 A Their investigation would be continuing, but not

1 at the moment while we were conducting our other
2 investigations. That was the other concern that
3 we had with body packs and whatnot at that time.

4 Q Anderson didn't add that last bit to what he
5 wrote, sir, he just said that Burton advised him
6 that the investigation will not continue?

7 A It was a preliminary phone call to them, sir.
8 And if Sergeant Anderson didn't note
9 specifically, I don't find that to be unusual,
10 it was a preliminary phone call to alert them.

11 Q But the note, sir, seems to contradict your
12 memory of the call, that's the problem, it is
13 not that it is not fulsome, it is contradictory
14 to the call that you are saying you are standing
15 by listening to.

16 A I didn't hang on every word that was being said
17 by Sergeant Anderson, but certainly with my
18 direction to him, I was interested in basically
19 what he was saying. And basically it was, we
20 have this situation, we have this witness, he
21 has made these admissions to your fire, and
22 there was some discussion about him going into
23 witness protection, potentially, and things of
24 that nature.

25 Q So --

1 A If Sergeant Anderson didn't note that, well --

2 Q Sorry, I didn't realize you were talking about
3 witness protection this soon. I thought witness
4 protection came --

5 A Witness protection, in a situation like this,
6 was all at the back of my mind as something that
7 we would have to deal with in due course.

8 Q I see. But you acknowledge, do you, sir, at
9 least certainly your memory of what you heard,
10 first of all, was contradicted by PC Burton at
11 the other end, according to his report, and also
12 contradicted by the note that Sergeant Anderson
13 made of it in his notebook. That's just the way
14 the world is going around?

15 A I suppose.

16 Q And just today, sir, we received by way of
17 disclosure some notes of PC Burton that we
18 hadn't had before. We asked him to provide them
19 to us, and he did so through his counsel, just
20 this morning. And we can see from those notes
21 that he worked on the arson case on
22 November 15th, 16th, 21st, 23rd, 30th,
23 December 3rd, 7th, 11th, 18th in 1990, all of
24 which seems kind of consistent, more consistent
25 with Anderson's note of the conversation rather

1 than what you claim you overheard during the
2 conversation. In other words, Burton said the
3 investigation will continue, and by gum, that's
4 what happened. Day after day in the ensuing two
5 months, they continued to work on the case?

6 A Yes. And I think what we were looking for at
7 that point in time was, did he interview
8 Mr. Zanidean at any point in time in that new
9 disclosure, sir? Because that was our concern
10 at that time, he wanted to see Mr. Zanidean
11 concerning your investigation. This is the
12 situation, he is a witness in a murder.

13 Q All right. So we are getting flushed out as we
14 go along. Now the focus is not on whether he
15 will continue the investigation, but whether he
16 wants to speak to Mr. Zanidean?

17 A No, sir, please. The fact is they were free to
18 investigate all they wanted, and if Sergeant
19 Anderson's notes reflect that, that's fine. I
20 was also informed that they were going to be
21 delaying the investigation, which in fact I
22 guess they didn't.

23 Q Of course, the first time anyone really hears of
24 your claim that you were standing by during that
25 phone call, sir, was really in the last week or

1 two; is that right?

2 A It was during the course of my interview with
3 Mr. Code.

4 Q Which I assume was in the last week or two, or
5 three or four?

6 A Well, yes.

7 Q Now, after listening to your
8 examination-in-chief, sir, I must confess I'm a
9 little confused as to where we are left in terms
10 of your understanding of whether or not the
11 Swift Current people had promised or assured
12 that they were not going to pursue Mr. Zanidean
13 on the Swift Current arson. And I really want
14 to know what your final position is. Is it that
15 they wouldn't, if certain things happened, or is
16 it that they wouldn't pursue him on the Swift
17 Current arson, and as far as Zanidean was
18 concerned, it was all over? Which was it? Were
19 there conditions to that from Swift Current, or
20 was there a full and final position taken by the
21 RCMP that they weren't going to prosecute him?

22 A It was contingent on the Witness Protection
23 Program nationally as well, was my recollection,
24 my understanding.

25 Q So that's sort of bouncing back to an earlier

1 position. I thought your position had moved
2 from there.

3 So your position now is that Zanidean had
4 only been told -- or sorry, you had only been
5 told, I say you meaning, I'm not sure if it was
6 you personally, but whoever it was that was
7 told -- by the Swift Current Police that they
8 would not pursue Zanidean on the Swift Current
9 charge, there was an assurance of that, so long
10 as he went into the Witness Protection Program?

11 A Yeah, I think that, yes.

12 Q That's the bottom line?

13 A Well, we wanted to have Mr. Zanidean in the
14 Witness Protection Program, it sure saved us a
15 lot of problems. But this arson was essentially
16 an obstacle to the RCMP Witness Protection
17 Program.

18 Q I don't say there isn't some sense to that, sir.
19 The RCMP is then saying, we, the RCMP, we are
20 going to bring him into our program, our witness
21 protection program, which you are asking us to
22 do, we can assure you we will not then pursue
23 him on the Swift Current charge of arson?

24 A Yes.

25 Q The corollary of that being that if he doesn't

1 come into the RCMP Witness Protection Program,
2 there is no reason why we shouldn't pursue him
3 for the Swift Current arson?

4 A I suppose so, yes.

5 Q And of course, by the time -- and this all
6 happened in April, is that right, sir? This is
7 when you became aware of this was in April?

8 A Yes, I think that's correct, sir.

9 Q Of '91?

10 A Yes.

11 Q All right. Now, certainly by the time that
12 Mr. Zanidean testifies in June of 1991, sir, it
13 seems to be common knowledge amongst all of the
14 authorities, meaning the Winnipeg Police
15 Department, the RCMP, especially through
16 Corporal Orr, and indeed the Crowns, that
17 Zanidean is not getting into any RCMP Witness
18 Protection Program; am I right? I think you
19 made that clear to Mr. Code that happened as
20 early as May, if not before then?

21 A I think that was still under negotiation with
22 Mr. Miller and Mr. Kovnats. My personal view
23 was likely he wasn't going to be, no.

24 Q And certainly, by the time he testified in June,
25 you knew he wasn't entered into a RCMP Witness

1 Protection Program?

2 A He never was, no.

3 Q And you never thought he was?

4 A No.

5 Q Right. So as of the moment he testified, as
6 best I understand you, your position then would
7 be, if Zanidean were to ask you, am I going to
8 be prosecuted in Swift Current, your answer to
9 him would be, it kind of depends on whether or
10 not you get in the Witness Protection Program.
11 To be perfectly honest with you, I don't think
12 you are going to be getting into it. So the
13 answer really is, yes, you may well be
14 prosecuted in Swift Current. Is that right? Is
15 that a fair interpretation of everything you are
16 saying?

17 A I'm not too sure of that, sir.

18 Q Isn't that a fair conclusion to draw from
19 everything that you say? By the time he
20 testifies, he is not in the Witness Protection
21 Program, you don't think he is going to get into
22 the Witness Protection Program. The RCMP
23 position that they won't prosecute him for the
24 arson is dependent on him getting into the
25 Witness Protection Program. If you add all that

1 up, an honest answer to Mr. Zanidean was, we
2 haven't gotten any commitments from the RCMP not
3 to prosecute you at all. Isn't that right?

4 A I'm not sure, we had that conversation, we had
5 that information they weren't going to proceed,
6 that's correct.

7 Q I have lost you now. I thought you didn't. You
8 just said you only had that if he was going to
9 go into RCMP witness protection, there is always
10 that condition, I thought. Am I wrong or am I
11 right?

12 A That was the RCMP situation, yes.

13 THE COMMISSIONER: Let me -- when the witness
14 was being examined by Mr. Code, he said that at
15 the time Zanidean testified on June 11th, the
16 final agreement, as he understood it, was that
17 essentially -- he may not have used the word
18 essentially, I think he did -- the RCMP were no
19 longer going to pursue the arson investigation
20 against Zanidean. This is what the RCMP was
21 telling us. And then I put in brackets whether
22 or not Zanidean was accepted in the witness
23 protection. And then I think he said I learned
24 this from Anderson before the trial started.

25 MR. LOCKYER: Yes, Mr. Commissioner, he said he

1 came up with -- the witness testified that
2 Anderson had come up with a new claim just
3 before Zanidean testified, that immunity had
4 been given to Mr. Zanidean as a result of
5 further contacts he had had with the RCMP. Five
6 minutes later, or ten minutes later, during the
7 same examination-in-chief, he backed off that
8 completely and said that hadn't happened. Am I
9 not right, Mr. Code? He did a complete about
10 turn on it and said it hasn't happened? So
11 that's why I started by saying, I don't
12 understand what the witness's ultimate position
13 is, he is to'ing and fro'ing on this.

14 THE COMMISSIONER: All right, you continue.

15 BY MR. LOCKYER:

16 Q So as best I'm understanding you, sir, from what
17 you are saying now, all you had at the time that
18 Zanidean testified was what you had before, that
19 the RCMP wouldn't prosecute him, but there was a
20 pre-condition as long as he entered the RCMP
21 Witness Protection Program. As of when he
22 testified he wasn't in it. As of when he
23 testified, you didn't anticipate he would
24 actually get in it?

25 A No, and that's correct, sir. But there were

1 negotiations going on with Mr. Miller still at
2 that time, and I wasn't privy to them.

3 Q I'm going to come to those at some point, but
4 they seem to have been extremely unsuccessful,
5 and indeed we have heard from Corporal Orr to
6 that effect last week, before Mr. Zanidean
7 testified, that there were no developments. On
8 the contrary, if anything, things went against
9 Mr. Zanidean getting immunity rather than in
10 favour of it.

11 So it seems to me that your position is
12 that, as we move from April towards June and you
13 see all of the problems that Zanidean is
14 causing, and it is obviously becoming less and
15 less likely that he is a suitable candidate for
16 the RCMP Witness Protection Program, and perhaps
17 a better candidate for a cash settlement
18 instead, that the idea of Mr. Zanidean not being
19 prosecuted, or a deal having been made by the
20 RCMP that they wouldn't prosecute him is rapidly
21 disappearing into the distance? Isn't that
22 fair?

23 A Yes.

24 Q So if Zanidean had asked you that question when
25 he went on the witness stand on June 11th, and

1 you had answered him honestly, and I don't mean
2 to cast any aspersions by saying honestly, I'm
3 just saying if you had told him the whole ball
4 of wax, so to speak, your response to him, if
5 you had responded, would have been, you know
6 what, there is every reason to think they may
7 prosecute you for the Swift Current --

8 A I still wasn't certain what was going on with
9 Mr. Miller and Mr. Kovnats and that whole
10 situation. So certainly the fact that we would
11 have told him they weren't prosecuting would
12 have been something that Mr. Miller would have
13 approved of as a part of his negotiations as
14 well.

15 Q Because what totally confuses me,
16 Mr. Vandergraaf, is what you told Commission
17 Counsel, when I compare what you are saying now
18 with what you told Commission Counsel, where it
19 seems that you were of the opinion that there
20 had been an assurance from the RCMP that they
21 wouldn't prosecute Mr. Zanidean, no ifs ands or
22 buts, no conditions, no nothing. Why don't you
23 look at what you told Commission Counsel, at
24 page 9 of tab 1, sir, under F, The Status of the
25 Swift Current Arson Investigation.

1 "Vandergraaf recalls that at some point
2 Sergeant Anderson advised him the RCMP had
3 decided not to charge Zanidean with the
4 Swift Current arson."

5 A Yes.

6 Q No conditions there, sir?

7 A Right.

8 Q "His response was to advise Anderson to
9 ensure this position had been approved by
10 senior RCMP officers. His understanding
11 was that the matter had been complicated
12 for the RCMP because of the homicide
13 prosecution, and they reached their
14 decision to abandon their pursuit of
15 Zanidean on their own."

16 A Yes.

17 Q "Vandergraaf recalls this information was
18 discussed with Orr who confirmed it. He
19 recalls asking Orr to speak to Swift
20 Current RCMP and confirm their position, as
21 they were unsure about the information
22 Anderson had been getting from Swift
23 Current."

24 A Yes.

25 Q There is no conditions there, there is no if he

1 gets into the RCMP Witness Protection Program.

2 What you are saying there is that your
3 understanding is they said they wouldn't charge
4 him, Zanidean is free and clear, there is no
5 Swift Current charge coming? That is how that
6 sounds to me?

7 A Essentially, that's how it reads, yes.

8 Q Well, you say yes. Just a few minutes ago, sir,
9 you were saying that it was conditional on going
10 into the witness protection?

11 A You say you get confused. I get confused lots
12 of times, when you are dealing with the RCMP
13 relative to entry into the program and
14 conditions. The fact --

15 Q My confusion, sir, arises out of you taking two
16 different positions.

17 A I don't think so, sir. I think I'm trying to do
18 the best I can. If you would ask me a direct
19 question again, I will do my best for you.

20 Q Then, sir, in that same interview, next
21 paragraph, that's when you start talking about
22 how, as a result of this, you debated whether or
23 not this should be disclosed to Zanidean?

24 A Yes.

25 Q You say,

1 "Vandergraaf had discussions with Anderson
2 and Paul, Inspector Bell and Bruce Miller
3 about what should be done in terms of
4 informing Kovnats and Zanidean that one of
5 their key demands had been met. They
6 debated whether the decision of the Swift
7 Current RCMP should be disclosed to
8 Zanidean."

9 A Yes.

10 Q And then you describe how in fact a decision was
11 made that it shouldn't be disclosed to Zanidean;
12 is that right?

13 A Yes.

14 Q And indeed, I guess not only it shouldn't be
15 disclosed to Zanidean, but it shouldn't be
16 disclosed to his counsel, Kovnats, either?
17 That's the bottom line?

18 A Yes.

19 Q Right?

20 A Yes.

21 Q They are both to be kept in the dark?

22 A I suppose, yes.

23 Q Right. So what hasn't yet -- so I am not sure
24 that it has necessarily dawned on everyone, is
25 that then the ensuing letters from Kovnats

1 demanding immunity are kind of superfluous,
2 unbeknownst to Kovnats, because that key demand,
3 as you put it, he has already got, right? But
4 you are just not telling him. He keeps asking
5 for something not knowing he has already got it?

6 A Well, yes, I guess immunity is not a term I use
7 unless it is official. In this situation, no,
8 it was -- RCMP in Saskatchewan simply, I think,
9 it was getting too complicated for them too, and
10 the indications were they were going to not
11 pursue that any further.

12 Q It is a term you use, sir, you used it at page 5
13 and at page 6 of your statement. I have already
14 read it to you. You talked of Kovnats demanding
15 immunity, on page 5. On page 6 you said Kovnats
16 became involved and demanded immunity.

17 A Well, that's Mr. Kovnats words, sir, yes.

18 Q And on page 10, you refer to that as the key
19 demand, on page 9 rather, that's a key demand of
20 Zanidean and Kovnats; right?

21 A Yes, between Mr. Miller and Mr. Kovnats and
22 Mr. Zanidean, sir, yes.

23 MS. CARSWELL: Mr. Commissioner, if you read the
24 paragraph, there is no indication that it is
25 immunity that's been approved. It says the RCMP

1 have agreed not to pursue the matter. It
2 doesn't say RCMP have granted immunity. So when
3 my learned friend says to him immunity is
4 contained in there, unless I'm missing this in
5 my reading of this paragraph, I don't see the
6 word immunity in either of those paragraphs, in
7 sub F. If I have missed it, I apologize to
8 Mr. Lockyer.

9 THE COMMISSIONER: Well, you are absolutely
10 right, but, Mr. Lockyer, you will recall,
11 referred the witness back to two occasions and
12 the word demands, and then tied it to immunity,
13 and so --

14 MS. CARSWELL: But by indicating that he was
15 saying in this paragraph immunity had been
16 granted, and I didn't think that was a fair
17 assessment of what is in these, because the word
18 immunity doesn't appear there.

19 THE COMMISSIONER: No, you are absolutely right,
20 but you will recall that Mr. Lockyer --

21 MS. CARSWELL: Absolutely, he suggested and the
22 witness responded that that was Mr. Kovnats'
23 demand, and that demand was different than his
24 understanding. And I think that's why it is
25 unfair to suggest that by saying he refers to

1 the key demand, he is necessarily saying that's
2 immunity to him. I just think that's rather
3 unfair to the witness.

4 THE COMMISSIONER: Certainly the aspect -- when
5 the witness says that he doesn't use the word
6 immunity, I guess except in rare situations, I
7 think he is correct in that. And the immunity
8 references are Kovnats and Miller discussions.
9 However, Mr. Lockyer, I see your point about the
10 key demand and the word immunity, so you may
11 continue.

12 MR. LOCKYER: And this all comes back to the way
13 the witness, certainly from my point of view,
14 skirted the May 29th letter, and I will be
15 coming to that in due course, or the May 29th --
16 not letter, sorry, the May 29th entry of Orr of
17 his phone call with Miller, but I will come to
18 that in due course.

19 THE COMMISSIONER: As I understand the witness,
20 and I think everybody does, is that immunity
21 really is a legal contract that the person will
22 not be charged or will not be pursued, as
23 opposed to an agreement not to pursue by the
24 police officer. The immunity agreement would
25 have to come from Justice, the non-pursuit could

1 come from the police. I think that's what the
2 witness is saying. But anyways, carry on.

3 MR. LOCKYER: I guess you could say from
4 Zanidean's point of view, sir, it is a bit of a
5 distinction without a difference. All he is
6 worried about is whether he is going to be
7 charged with an arson in Swift Current. He
8 doesn't care if it is a decision by the RCMP
9 that they are not going to prosecute him, which
10 they have agreed to undertake, or if it is a
11 commitment by a Crown that they won't charge
12 him. Either way, all Zanidean cares is he is
13 not being charged. Right?

14 THE WITNESS: Yes, that would be fair.

15 BY MR. LOCKYER:

16 Q Right. So having gone through this, I now go
17 back to where I started, and that is, did
18 Zanidean have an offer, or was Zanidean --
19 sorry -- were you told that Zanidean was free of
20 the Swift Current arson charge whatever
21 happened, or were you told that he was free of
22 the Swift Current arson charge if he was
23 accepted into the RCMP Witness Protection
24 Program? It is one or the other, I want to know
25 which it is. Because you go backwards and

1 forwards in chief and now --

2 A I can see your point now, yes, thank you, I can
3 see your point.

4 Q Which is it?

5 A Give me a second, please. The issues were so
6 inter-related, that does -- but the fact
7 remains, my understanding was they weren't going
8 to pursue him under any circumstances.

9 Q That's kind of crucial to Mr. Zanidean, to say
10 the least, in the circumstances of the case,
11 given that he didn't go into the Witness
12 Protection Program, sir, if that condition was
13 there, a promise not to prosecute was rather
14 meaningless. But if that wasn't a condition, of
15 a promise not to prosecute, then he was going to
16 be a happy camper; right?

17 A Yes, I suppose that's correct, yes.

18 Q All right. So your final position then is that
19 in fact he had that promise, is that right, sir?
20 That the RCMP, to your understanding, had
21 promised they were not going to pursue him or
22 prosecute him for the arson charge, and that's
23 exactly what Mr. Zanidean was looking for?

24 A Yes, that would be correct, yes.

25 Q Right. And so that decision was made then you

1 say to not tell Zanidean or his lawyer, because
2 presumably you were worried it could undermine
3 his credibility? Is that the problem,
4 presumably, when he testified?

5 A We discussed this with Manitoba Justice to try
6 and decide what tact to take, how they wanted to
7 advise us on it. And simply it was decided that
8 a promise of favour in that kind of situation
9 was potentially more harmful to the witness, and
10 Mr. Miller sanctioned that that's the way we
11 should go, yes.

12 Q And, of course, if you don't tell Zanidean that
13 he has got immunity from this charge, or he is
14 not going to be charged with this charge, he is
15 safe from this charge, all right, then you can
16 hardly disclose it to the defence that he is
17 safe from the charge, because in a sense you
18 would be letting the cat out of the bag; right?

19 A No, that's not accurate, sir. I mean, we kept
20 Manitoba Justice, Mr. Miller, Mr. Dangerfield,
21 fully aware of that development. And as far as
22 disclosure goes, if they had decided that there
23 was something we wanted to get to Mr. Brodsky or
24 to anybody, we would have certainly followed
25 their direction on it.

1 Q It doesn't make a lot of sense, sir, you are not
2 going to tell Zanidean and you are not going to
3 tell Kovnats, but you then proceed to disclose
4 it to Mr. Brodsky, and Mr. Driskell, in effect?

5 A We were following directions from Manitoba
6 Justice, sir. These issues are very complicated
7 and not for a policeman to deal with
8 necessarily. And this is why I was a lot more
9 comfortable in allowing Mr. Miller and the
10 Justice Department to negotiate any further
11 deals.

12 Q I'm not quite sure you are answering my
13 question, but let me put it like this, perhaps a
14 better way, a more easy way of dealing with it
15 is that, really, what happened here is in the
16 discussion that you say you had with Mr. Miller,
17 a tactical decision was made in terms of the
18 prosecution of Mr. Driskell?

19 A Yes.

20 Q Right.

21 THE COMMISSIONER: Whenever it is a convenient
22 time.

23 MR. LOCKYER: Yes, sure, I'm past time I think,
24 so this is a good time to finish.

25 THE COMMISSIONER: Mr. Code, I have forgotten

1 what our schedule is?

2 MR. CODE: Tomorrow is the day when we are
3 starting half an hour early, so it is a 9:00
4 o'clock start tomorrow and on Thursday. And I
5 can say that Mr. Lockyer has two exhibits that
6 he wants to file

7 MR. LOCKYER: Can I file the two exhibits?

8 THE COMMISSIONER: Absolutely.

9 MR. LOCKYER: Thank you, Mr. Commissioner. It
10 is the letter that I referred to, Mr. Miller to
11 Judge Enns, and if you remember the last tab of
12 Commission Counsel's documents to Mr. Orr were a
13 single page, and I'm putting the whole report
14 in, the last page of that single page.

15 MR. PROBER: Mr. Lockyer was away from the mike.

16 MR. LOCKYER: I just filed the letter from
17 Mr. Miller to Judge Enns that I referred Mr.
18 Orr to yesterday.

19 THE COMMISSIONER: That will be exhibit 7?

20 MR. LOCKYER: I think it was going to be 4C
21 would be the idea.

22 THE COMMISSIONER: Well --

23 MR. LOCKYER: I thought it was going to be C and
24 D of what I filed before.

25 MR. CODE: Mr. Lockyer exhibits are 4A and B,

1 this is part of his cross-examination.

2 THE COMMISSIONER: All right then, it will be 4C
3 and 4D.

4 (EXHIBIT 4C: Letter, Mr. Miller to Judge
5 Enns)

6 (EXHIBIT 4D: Report of what Mr. Orr was
7 told by Chief Ewatski re Zanidean's
8 possible involvement in crime)

9 MR. LOCKYER: 4D is, you remember the last page
10 of Commission Counsel's book of materials
11 contained a single page from a longer report
12 relating to what Mr. Orr recalled being told by
13 Chief Ewatski about his belief as to Zanidean's
14 possible involvement in the crime. And I
15 produced the whole report rather than just the
16 last page, and it is the whole report that I
17 made, 4D.

18 THE COMMISSIONER: What tab was that?

19 MR. LOCKYER: The very last tab.

20 THE COMMISSIONER: Tab 43 of exhibit 3.

21 (OFF THE RECORD DISCUSSION)

22 THE COMMISSIONER: Counsel, there was another
23 matter that Mr. Lockyer asked about, the
24 question of exhibits and what is an exhibit and
25 what isn't. And I avoided dealing with it

1 because I don't know the answer. But, however,
2 I have had some discussion with Commission
3 Counsel, and so at some point, I don't think
4 there is any rush on this, maybe counsel could
5 get together and you could talk about sort of
6 the suggestion that I think he is going to make,
7 or if you want to make it now.

8 MR. CODE: If I could just briefly address that,
9 if you will permit me. When the issue first
10 arose, I conferred with Mr. Olson and Mr. Abra,
11 who both had experience in prior inquiries where
12 this issue had come up. And the consensus that
13 we arrived at, the three of us in discussion, I
14 put to Mr. Lockyer just on one of the recesses
15 today and I believe he is agreeable to it. And
16 essentially the position is that a Commission of
17 Inquiry is entitled to refer to anything that it
18 collects in the course of its investigative
19 work, gathering documents and interviewing
20 witnesses. So it is a broad principle of access
21 to the information. You are not confined to
22 what is marked as an exhibit at the public
23 hearings. But in terms of fair management of
24 the public hearings, both fairness to the
25 witness and fairness to the parties, and

1 fairness to the public, the media, who need to
2 see the materials that counsel are relying on,
3 that the practice of preparing a documents book,
4 having it marked as an exhibit, putting it to
5 the witness pursuant to the rule in Brown and
6 Dunn, and letting the other side know that you
7 rely on this document, is obviously a principle
8 of fairness, and also efficiency in the conduct
9 of the hearing.

10 So I think the position is kind of a two
11 pronged one. Yes, the Commission can refer to
12 anything that's in its disclosure materials.
13 But as a matter of fairness and efficient
14 management of the hearing, we should be
15 producing documents, or copies of documents, and
16 marking them as exhibits during the public
17 portion of the hearings.

18 I believe I have stated Mr. Abra's and Mr.
19 Olson's view of it, which seems fair to me, and
20 I believe Mr. Lockyer concurred in that. I
21 don't know if my other colleagues do.

22 THE COMMISSIONER: Sounds reasonable to me.

23 MR. LOCKYER: Is that a ruling?

24 THE COMMISSIONER: If anyone has any difficulty
25 with that, we can talk about it later. I can

1 assure you that the basic rule I think is one of
2 fairness, and I am not going to make some
3 adverse finding relating to any person or
4 institution on something that we haven't -- that
5 hasn't been disclosed in these exhibits or in
6 the witness statements that have been prepared.
7 As you know far better than I, there must be
8 what, six feet of documents? And I would prefer
9 that we don't haul all of those into the room
10 and then go searching through them every time we
11 have a witness. So the book of documents I
12 think is a much better way of really saying that
13 the more significant and the germane documents
14 will become as exhibits or part of witness
15 statements. If that's sufficiently vague that
16 we can discuss it later, if necessary, so be it.
17 Thank you.

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

20 (Proceedings adjourned at 5:00 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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