

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

Wednesday, July 26, 2006

Volume 7

INQUIRY PROCEEDINGS

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1 WEDNESDAY, JULY 26, 2006

2 UPON COMMENCING AT 9:00 a.m.

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

5 THE COMMISSIONER: Good morning, Mr. Lockyer,
6 good morning all.

7 MR. LOCKYER: Good morning. Mr. Commissioner,
8 yesterday I passed a book of materials around, a
9 book of documents around for my
10 cross-examination of this witness, and didn't
11 file it. I wonder if it could be filed as
12 wherever we are at.

13 THE COMMISSIONER: Exhibit 7.

14 (EXHIBIT 7: Mr. Lockyer's book of
15 documents for cross-examination of Mr.
16 Vandergraaf)

17 MR. LOCKYER: In order to confuse everyone, we
18 started it at tab 9.

19 THE COMMISSIONER: I'm not sure we did -- I
20 thought we talked about making it 4C and 4D.

21 MR. LOCKYER: No, that was Orr, that was all of
22 the Orr exhibits that were filed. Now we are on
23 a new witness.

24 THE COMMISSIONER: Okay.

25 MR. LOCKYER: So as I say, it starts at tab 9,

1 just to confuse you.

2 THE COMMISSIONER: This will be exhibit 7. Is
3 there more than one?

4 MR. LOCKYER: There are tons of them, everyone
5 has one.

6 THE COMMISSIONER: Is there more than one
7 volume?

8 MR. LOCKYER: No, there isn't, that's why it is
9 confusing, because it starts at 9.

10 THE COMMISSIONER: That is fine.

11 MR. LOCKYER: Just to get a brownie point, the 1
12 to 8, I took out after my cross-examination of
13 Corporal Orr took longer than I expected,
14 whereupon I cut the length of my
15 cross-examination of this witness, and 1 to 8
16 disappeared. And I will be a couple of days
17 with this witness -- I won't, don't worry.

18 THE COMMISSIONER: I think he ignored you.

19 MR. LOCKYER: Sort of a good news, bad news.

20 BY MR. LOCKYER:

21 Q So, yesterday, Mr. Vandergraaf, after going
22 backwards and forwards, to and fro, your
23 position at the end of the proceedings
24 yesterday, as I understand it, is that there was
25 an unconditional offer by the RCMP made to the

1 Winnipeg Police Force and/or the Manitoba
2 Justice that they would not arrest or prosecute
3 Mr. Zanidean for the arson in Swift Current; is
4 that right? So Zanidean was safe?

5 A Unconditional, I'm just not sure about that now
6 in the sense of -- the bottom line is my
7 information at the time indicated that they were
8 not going to pursue him any further and charge
9 him.

10 Q I could not hear you?

11 A They were not prepared to pursue him or charge
12 him with that particular offence.

13 Unconditionally, if you are alluding to --
14 sorry, sir, you will have to ask the question
15 again then?

16 Q Sir, it was your understanding that the RCMP had
17 assured your people, that's a very generic term,
18 police and/or Manitoba Justice, had assured your
19 people that Zanidean had nothing to fear where
20 the arson was concerned, they were not going to
21 prosecute him for it?

22 A That's correct.

23 Q And when did you acquire this understanding,
24 sir?

25 A In conversation with Sergeant Anderson.

1 Q When?

2 A I can't remember, sir, exactly when. Pre-trial.

3 Q Pre-trial. And how long pre-trial?

4 A Not long.

5 Q Days, weeks, or months?

6 A I don't know, a month, a month or so, I can't

7 exactly recall when.

8 Q Are you in touch with Anderson and Paul these

9 days, sir?

10 A On occasion I have been, yes.

11 Q And have you been in touch with them recently?

12 A Yes, I have.

13 Q And have you talked, I would imagine, about this

14 inquiry with them, sir?

15 A I have had several calls about it, yes, sir.

16 Q From them?

17 A Yes.

18 Q And them meaning both Anderson and Paul?

19 A Well, not Sergeant Paul, I have had casual

20 discussions with him.

21 Q With who?

22 A With Sergeant Paul.

23 Q You have seen him in person?

24 A Yeah, I ran into him coming into the inquiry

25 actually one day.

1 Q And?

2 A Or to counsel I should say.

3 Q Sorry?

4 A He was coming to meet Mr. Code I think one day,
5 and I happened to bump into him.

6 Q Is that the only time that you bumped into him?

7 A Yes.

8 Q And what about Anderson, sir, have you seen
9 Anderson recently?

10 A I have seen Anderson over the past month or so.
11 We have had conversations over the phone, yes.

12 Q And in person?

13 A Yes.

14 Q And one of the -- let me ask you this, sir; your
15 information came from Anderson, is that right,
16 not from Paul, about the fact that Zanidean was
17 safe?

18 A From not being prosecuted, yes.

19 Q And according to Anderson, sir, he claims that
20 this information was given to him in April, so
21 that would put us two months or so before the
22 trial starts. All right?

23 A Sounds accurate, sir.

24 Q Sounds accurate, okay. Now, in the meantime,
25 sir, you've told us and the Commission in

1 particular that as a consequence of that
2 information, which seems to have become
3 knowledge, or become common knowledge to a
4 number of people, both in Manitoba Justice and
5 in the Winnipeg Police Force, there were
6 discussions about what to do with the
7 information. Am I right?

8 A Yes.

9 Q And Anderson was a part of it, you said, Paul
10 was a part of it; is that right?

11 A Certainly, sir.

12 Q You said the meeting included Bell, is that
13 right, sir?

14 A Yes, that's correct.

15 Q And you?

16 A Yes.

17 Q And Miller?

18 A Correct.

19 Q Anyone else? Was Dangerfield there too?

20 A Not at that particular meeting, no.

21 Q Was Lawlor there at that particular meeting?

22 A I don't believe so, no.

23 Q Was anyone else at the strategy meeting, sir,
24 the strategy meeting, so to speak?

25 A No, sir, I don't recall who else may have been

1 there. I don't think anyone else.

2 Q At this meeting, sir, it was decided, presumably
3 with everyone's agreement, that according to you
4 what you told Commission Counsel, I think you
5 read part of it yesterday, that Zanidean wasn't
6 going to be told of the fact that he was secure
7 from being prosecuted for the Swift Current
8 arson. Am I right?

9 A That's correct, sir.

10 Q Everyone agreed with the decision and everyone
11 would have walked out of that meeting knowing
12 what the decision was?

13 A Yes.

14 Q And not a single person documented a single word
15 on a single piece of paper about this meeting;
16 is that right?

17 A That's correct.

18 Q And interestingly enough, at least to date, I'm
19 not aware of any of the other supposed
20 participants in this meeting ever having
21 recalled the meeting to a third party, be it
22 Commission Counsel or anyone else, as far as I'm
23 aware?

24 A I'm sorry, sir?

25 Q You are the only one who has ever talked about

1 this meeting, when you talked to Commission
2 Counsel, as I'm aware?

3 A As I recall it, yes.

4 Q To date, Anderson and Paul haven't mentioned in
5 their meetings to Commission Counsel, for
6 example?

7 A I wouldn't know, sir.

8 Q In fact, Anderson, according to his interview
9 with Commission Counsel, suggests that it was
10 his idea not to tell Zanidean?

11 MR. WOLSON: That's not what he said.

12 MR. LOCKYER: He does, he said, he told
13 Commission Counsel when he was told by Burton,
14 according to Anderson, that they weren't going
15 to pursue Zanidean on the arson charge, he told
16 Burton in that phone call that they weren't
17 going to tell Zanidean, which would kind of
18 suggests that it was his decision.

19 THE COMMISSIONER: Do you agree with that,
20 Mr. Wolson?

21 MR. WOLSON: There is further amplification on
22 that in Anderson's statement, and my friend has
23 just picked one area, but I can deal with that.

24 THE COMMISSIONER: Okay. Sorry for the
25 interruption. Can you answer?

1 THE WITNESS: Sorry?

2 BY MR. LOCKYER:

3 Q You said it wasn't Anderson's decision at all?

4 A No, it was not, sir. This was not done in
5 isolation. Mr. Miller was present, and
6 Mr. Miller came down rarely, and the intent was
7 for us to get some direction, how we were we
8 going to handle this?

9 Q You might say it is a little surprising that no
10 one else has, at least to date mentioned this
11 meeting that you recall so vividly. And I would
12 think you might, if it happened, it is not every
13 day that you get such a group of people having a
14 meeting about such a significant matter on a
15 homicide; is that right?

16 A That's correct. We often met with the Crown on
17 homicides, but for Mr. Miller to come down on
18 two occasions during the course of that
19 investigation, to our office, yeah.

20 Q Now, it was brought to your attention, first of
21 all by Commission Counsel, that on May 26th, you
22 were present when there was a significant, or
23 perhaps I will take out the word significant,
24 when there was a memorable dispute between
25 Mr. Kovnats and Mr. Dangerfield; is that right?

1 Sort of a nose-to-nose argument?

2 A I wouldn't describe it as that. I mean, we were
3 all kind of annoyed that Mr. Zanidean had
4 disappeared and we felt Mr. Kovnats was in some
5 fashion, you know, behind it. And Mr. -- it
6 wasn't nose-to-nose, but Mr. Dangerfield
7 expressed his displeasure.

8 Q I think you described how Mr. Kovnats was sort
9 of retreating backwards because of the way
10 Mr. Dangerfield was addressing him. Do you
11 remember that?

12 A Yes, I said that.

13 Q Yes. You said -- this is at page 10 of your
14 statement, sir -- you said, if you want to turn
15 to it, tab 1?

16 A Yes. Pardon me, of my statement?

17 Q Yes, under heading G, the dispute between
18 Dangerfield and Kovnats?

19 A Yes.

20 Q You say about seven lines down there,
21 "The discussion between Dangerfield, Miller
22 and Kovnats was heated from the outset and
23 voices were raised, even before the men
24 moved out of the open area and into a
25 private room. Dangerfield seemed annoyed

1 with Kovnats about the whole situation.
2 Vandergraaf recalls the issues being
3 discussed involved whether Zanidean was
4 going to cooperate or exercise his right to
5 silence...

6 THE COMMISSIONER: Mr. Lockyer.

7 BY MR. LOCKYER:

8 Q I know, I always do that, I'm sorry.

9 "...and whether the Crown was going to
10 reach a witness protection agreement with
11 him as Kovnats was demanding. Dangerfield
12 was admonishing Kovnats for his whole role
13 in the matter. He was much taller than
14 Kovnats and was expressing his displeasure,
15 and Kovnats was backing up, but they were
16 not nose to nose. Vandergraaf does not
17 recall obstructing justice being mentioned.
18 The matter was eventually resolved although
19 Vandergraaf is not sure of the details."

20 Now, this particular event, sir, no notes,
21 presumably, am I right?

22 A I haven't made no notes, no, sir.

23 Q Well, the only person who did ultimately was
24 Mr. Kovnats, and Mr. Brodsky as a consequence of
25 Mr. Kovnats giving him some hints about what had

1 happened during this particular dispute. Do you
2 have any explanation, sir, for you not making
3 any notes?

4 A I have no comment on Mr. Kovnats' notes, no,
5 sir.

6 Q No, sir, I say do you have any comment on why
7 you didn't make any?

8 A It was not an issue that was of consequence to
9 me.

10 Q It wasn't?

11 A Mr. Dangerfield, Mr. Miller were there, they
12 were dealing with the matter.

13 Q And am I right, sir, that a big part of that
14 discussion was Kovnats', Mr. Kovnats' insistence
15 that he wanted an assurance, in writing, that
16 Mr. Zanidean would not be pursued on the arson
17 charge in Swift Current?

18 A I have no information to that effect. I did not
19 attend the meeting.

20 Q No, no, during the fight, the argument, I'm
21 suggesting that's what they are arguing about.

22 A I'm suggesting to you, sir, that when
23 Mr. Dangerfield came in, he was, as we all were,
24 a little disturbed by the whole situation. And
25 that the issue was simply from Mr. Dangerfield's

1 perspective, my recollection is, is he going to
2 testify in this matter or not essentially, in a
3 nutshell.

4 Q I'm asking you, sir, wasn't the content of the
5 conversation about whether or not he was going
6 to testify to do with the issue of whether or
7 not Mr. Kovnats was going to get in writing an
8 assurance of no prosecution of Mr. Zanidean?

9 A Well, specifics like that I wasn't privy to,
10 sir, at that point in time.

11 Q I'm asking if you heard it?

12 A I did not. No, I just said I was not privy to
13 it.

14 Q I thought you were privy to the argument, to
15 describe it?

16 A The discussions, the argument was very quick, I
17 mean, the emotions were very quick, they
18 retreated to a room.

19 Q And brought to your attention, sir, by Mr. Code
20 yesterday, was a call that Miller made,
21 Mr. Miller made to Corporal Orr a matter of just
22 three days later, which you will see produced at
23 tab 9 -- the first tab, in other words, I
24 apologize, it starts at 9 -- of the book of
25 documents, sorry, the blue book? Could you go

1 to the blue book?

2 A The one that was just laid down?

3 Q If you would, please, just go to the first tab,
4 although it is tab 9. And Commission Counsel
5 showed you this as well. So now we have moved
6 on a matter of three days from this dispute, if
7 we can call it that, that took place, perhaps
8 the unseemingly dispute that took place between
9 Mr. Kovnats and Mr. Dangerfield. And we have
10 Corporal Orr recording that he has received a
11 call from Bruce Miller, who has got a letter
12 from Mr. Kovnats, advising Mr. Miller that
13 unless he met three conditions, one of which was
14 his client being given immunity from prosecution
15 for the Swift Current affair, he would be taking
16 steps to ensure his client's protection. And he
17 had given Mr. Miller a day to respond. In other
18 words, Mr. Miller received -- sorry, Mr. Miller
19 had received what might be called an ultimatum
20 from Mr. Kovnats, and Mr. Miller is now seeking
21 help from Corporal Orr in regards to the third
22 item. You understand?

23 A Yes.

24 Q And perhaps in regards to item two as well. It
25 is hard to see if item one would necessarily

1 have had a whole lot to do with Corporal Orr.
2 And if you then, and I'm not asking to you read
3 it, but if you then follow on, you will see, you
4 would see that that same day, pursuant to what
5 Mr. Miller has said to Corporal Orr, he in fact
6 calls Swift Current and speaks directly to
7 Mr. Burton. And PC Burton tells him that there
8 will only be no proceedings against Zanidean if
9 he goes into the Witness Protection Program,
10 which kind of echoes some of what you were
11 saying yesterday. Do you remember that?

12 A Yes.

13 Q Now, I must say, sir, I don't comprehend why
14 Mr. Miller would be so troubled as to have to go
15 to Orr for help on a matter which, as far as you
16 are concerned, had been resolved a month before?
17 Zanidean wasn't going to be pursued for the
18 Swift Current arson. Miller must have known
19 this, because he is at the meeting where a
20 decision is made that Mr. Zanidean isn't going
21 to be told this. Indeed, apparently, according
22 to you it is his decision that he is not going
23 to be told. Why is Mr. Miller -- I know you
24 can't speak for Mr. Miller, but it does call
25 into question what you are saying, it seems to

1 me, that Mr. Miller, a month or more later, is
2 now worried about whether or not Orr can obtain
3 the kind of guarantee for Zanidean that you have
4 already got. He is not going to be prosecuted
5 for the arson in Swift Current. Can you explain
6 that, or is it just you can't explain what
7 Mr. Miller's actions are?

8 A No, I can't explain Mr. Miller's actions, of
9 course. But it appears that Mr. Kovnats raised
10 the bar. I don't know how they settled it at
11 the meeting that we just discussed here, but it
12 seemed to be settled and we took measures with
13 Mr. Zanidean at that point in time.

14 Q You know, that sounds very reasonable, except
15 there is a big problem with what you just said,
16 sir. Mr. Kovnats, according to you, doesn't
17 know that his client is secure from prosecution
18 in Swift Current. He hasn't raised the bar at
19 all as far as he is concerned. His bar is the
20 same. He wants to make sure his client is not
21 charged with the arson. And according to you,
22 Mr. Miller has made a decision that he is not to
23 be told that. Because, obviously, if
24 Mr. Kovnats is told it, you are in effect
25 telling his client.

1 A It seems to me that Mr. Kovnats was, as I put
2 it, raising the bar in the sense of a full
3 immunity agreement, was my understanding at the
4 time. But I can't speak for anybody that
5 attended those meetings or --

6 Q According to you, sir, Mr. Kovnats still had
7 every reason to think, as of May 29th and indeed
8 as of June 11th, in the morning when his client
9 testified, June 11th, yes, that his client
10 wasn't secure from prosecution at all in Swift
11 Current. He had every reason to think he
12 wasn't, didn't he? Because he had never been
13 told otherwise?

14 A That's true.

15 Q I don't see how he is raising the bar, he is
16 just carrying on where he left off. He wants an
17 assurance that his client won't be prosecuted.
18 You people have that assurance to give him, but
19 you won't give it to him. But in the meantime,
20 despite that decision, for some extraordinary
21 reason Mr. Miller is still trying to secure
22 something that, in effect, you have already got,
23 and that even if he gets it, he is not going to
24 tell Mr. Kovnats he has got it anyway. Do you
25 see the point?

1 A Mr. Miller, I can't speak for Mr. Miller.

2 Q Why is Mr. Miller trying to get immunity on
3 May 29th, if a decision has been made already
4 that even if he gets it, Kovnats isn't going to
5 know anything about it? Do you see the point?

6 A I see your point, yes. And again, I'm sorry, I
7 can't speak for that meeting or Mr. Miller or
8 what they discussed. Mr. Miller,
9 Mr. Dangerfield at a point in time were aware
10 of --

11 Q I suppose it comes to this, Mr. Vandergraaf, you
12 might say that Mr. Miller's conduct on May 29th
13 is some circumstantial evidence, by virtue of
14 his contact, that your claim of that meeting
15 with Mr. Miller, where Mr. Miller supposedly
16 told you not to tell Zanidean about the
17 immunity, that your claim in that regard is
18 false. I guess that's the best --

19 A I don't think so, sir. Explain that again
20 please?

21 Q Yes. That if your claim was true of this
22 meeting that you say, to date only you say
23 occurred between Miller, Anderson, Paul, Bell
24 and yourself, that if that meeting -- your claim
25 that that occurred is completely undermined by

1 what Mr. Miller was doing on May 29th?

2 A I don't think it is undermined at all, sir.

3 Q As quoted by Corporal --

4 A No, sir, that's not correct.

5 Q You don't see that it just makes no sense next
6 to your claim, what Mr. Miller was doing
7 May 29th?

8 A Again, the issue of immunity is different than a
9 police department, police force deciding not to
10 pursue. That was never, in my mind it was never
11 a solid thing, because these things have a habit
12 of changing, and police forces can change their
13 mind. Until an immunity agreement is signed
14 under certain circumstances, I really didn't
15 know what was going on with that particular
16 situation. I wanted to leave it with the
17 Justice Department. I had no expertise in that
18 area at all.

19 Q I can't help sensing some shifting sands going
20 on here?

21 A There is no shifting sands, sorry.

22 Q Because you acknowledged yesterday yourself,
23 that from Mr. Zanidean's perspective, and this
24 is the chap who matters, whether he has got an
25 assurance of non-prosecution or an actual

1 "immunity" from Saskatchewan Justice doesn't
2 make a blind bit of difference to him, it is a
3 distinction without a difference. The fact is,
4 he doesn't want to be prosecuted for the Swift
5 Current arson, and either way he is not going to
6 be if he knew either of those things. You
7 acknowledged that yesterday?

8 A Yes.

9 Q And quite why Mr. Miller is suddenly asking
10 Corporal Orr, and you can see from how quickly
11 Corporal Orr reacts, asking him, one would
12 imagine with some concern, as to whether he can
13 get immunity from Saskatchewan, when there is
14 absolutely no purpose to that because he is not
15 going to tell Zanidean anyway, even if he gets
16 it. It just seems to me it puts a lie to your
17 claim of this meeting with Miller et al?

18 A I don't think so, sir, there was several
19 meetings. For example, this meeting of Kovnats,
20 Miller, Mr. Dangerfield, I mean --

21 Q Something else -- sorry, have you finished?

22 A There is no question they had some discussions
23 and I'm not sure what their discussions were.

24 Q Who is they, who are we talking about?

25 A The three lawyers, the three attorneys involved

1 in the matter at that time, when they came in
2 when Mr. Zanidean was arrested. There was
3 subsequent meetings, this was not done in
4 isolation with -- we had meetings, we discussed
5 it, Mr. Miller was fully aware.

6 Q You are confusing me, with respect, sir.

7 A Yes, it is understandable you would be confused
8 because I'm confused about the meetings that
9 went on, on some occasions as well. I was
10 leaving it with Mr. Miller, Mr. Dangerfield, the
11 Justice Department in essence.

12 Q One other thing that you would have known at
13 this time, sir, is that you already, besides
14 Zanidean being a problem, you knew he was a
15 problem in late May; right?

16 A Yes.

17 Q You already knew that two of your other key
18 witnesses were a problem, the Kara brothers,
19 didn't you?

20 A In what respect, sir?

21 Q Well, you knew that just the day after they had
22 spoken to the police, they had gone and spoken
23 to their own lawyer and told their own lawyer
24 that the police had, in effect, made up their
25 story for them. And the lawyer had already come

1 forward to the Crown and told them that that was
2 going to be a problem. You knew, that was a
3 problem, didn't you?

4 A I knew the Karas were making certain
5 allegations, which is not unusual.

6 Q So if Zanidean was going to become a problem as
7 well, potentially your prosecution was in some
8 trouble?

9 A No, sir.

10 Q You didn't think that. Let's talk about --
11 which, of course, would give you all the more
12 reason to want to keep him happy, if you go back
13 to Zanidean being "happy"?

14 A Well, happy in the sense that we wanted to
15 ensure that he felt he was being protected.
16 This particular man wasn't satisfied, sir.

17 Q But despite that desire to keep him happy,
18 sir --

19 A Keep him protected, sir.

20 Q Make him a witness who was going to be
21 cooperative, if you want to put it that way,
22 ensure he was going to be a cooperative witness,
23 one of the best ways of doing it would be, of
24 course, to tell him that that key demand, as you
25 call it, as you've described it, that he wasn't

1 going to be prosecuted in Swift Current, was
2 met. He wasn't going to be?

3 A Well, it was met in so far as the RCMP had
4 indicated, yes.

5 Q To make him a cooperative witness or help him
6 along as a cooperative witness, I guess you
7 could have told him?

8 A Well, the fact is that it appears after some of
9 these meetings and whatnot, yeah, we could have
10 told him, but the fact is the strategy was, as
11 sanctioned by Manitoba Justice, that promise of
12 favour to this particular witness or any witness
13 was a concern. And no, it was decided with
14 Mr. Miller that we would hold off on that.

15 Q Did you know, sir, that it is Mr. Kovnats'
16 position --

17 A Yes, Mr. Kovnats, yes.

18 Q You said yes. Did you know, sir, it was
19 Mr. Kovnats' position that both he and his
20 client were assured on several occasions, by
21 both the Winnipeg Police and by Manitoba
22 Justice, that Mr. Zanidean was not going to be
23 prosecuted for the arson in Swift Current and
24 that he was safe from it?

25 A I don't know what Mr. Kovnats was aware of, sir,

1 at all, no.

2 Q It is not what I put to you that he was aware of
3 it so much as he was told it by members of
4 Winnipeg Police Department and Manitoba Justice.
5 Not that he found it out through the walls, so
6 to speak, but he found it out directly from the
7 horse's mouth?

8 A I only had that one meeting with Mr. Kovnats, so
9 I don't know where he got that information
10 necessarily. Perhaps Mr. Miller, perhaps
11 Sergeants Anderson and Paul, I'm not sure.

12 Q It certainly takes on the issue of your
13 credibility when it comes to this meeting and
14 this decision by Miller, accorded him by the
15 rest of who were there, that Zanidean was not to
16 be told that a deal had been struck. Am I
17 right?

18 A What, sir?

19 Q He was not to be told that a deal had been
20 struck with Swift Current. What Kovnats is
21 apparently saying is contrary to your claims?

22 A I don't know what Mr. Kovnats is saying, other
23 than what you are describing here, I have no
24 comments on what Mr. Kovnats has to say, sir.

25 Q None of this, again, when it comes to whether or

1 not Mr. Zanidean would be told that he was
2 secure from being charged in Swift Current, and
3 indeed when it is finally claimed he was told
4 which is within minutes of him finishing his
5 evidence on the witness stand on June 11th, by
6 Anderson and Paul, that's their claim?

7 A Yes.

8 Q That there isn't a single scrap of paper that
9 anything is written on that describes any of
10 these events, am I right, any of these
11 decisions, any of these occurrences, there is
12 nothing? Is that right?

13 A I don't know, sir. I haven't seen the file in
14 years, many years, I don't know. My
15 recollection of what has been written, I only
16 provided partial, I haven't seen a full report,
17 I haven't seen a review. I don't know exactly
18 what the situation is in regards to that. I do
19 recall that the strategy, as sanctioned by
20 Manitoba Justice, was not to have any promise of
21 favour with this witness, and simply through
22 negotiations, he would be advised at the end of
23 the trial as to any outcome. And that's what we
24 did, sir.

25 Q Now, you said early on in your evidence,

1 yesterday, Staff Sergeant, to Commission Counsel
2 that you didn't make any notes on this case
3 because you didn't play an investigative role in
4 it. Is that right?

5 A Well, pretty much, yes.

6 Q I don't know what pretty much means, pretty much
7 what?

8 A I was directing, I was showing an interest, I
9 was working with my people, but I wasn't taking
10 an active evidentiary role.

11 Q That's not entirely true. You did do some, take
12 some investigative steps in this case, did you
13 not? You interviewed some of the witnesses.
14 Mr. Glass, for example, you interviewed?

15 A Yes, I did testify to that, yes.

16 Q And others.

17 A Yes.

18 Q But presumably I can be, I can suggest that you
19 did have a notebook at the time, and you were a
20 note taking officer, even as a Staff Sergeant?

21 A You see, you have to understand how that office
22 worked. It wasn't just solely responsible for
23 one investigation, the detectives were bringing
24 all kinds of investigations to that office. As
25 well, that office was also responsible for crime

1 throughout the city. Officers were phoning
2 constantly. So my role was to simply offer the
3 best direction through, from what I was
4 receiving from Manitoba Justice to my officers,
5 not only on that case, on any given case.

6 Q Sorry, you didn't answer the question, with
7 respect. I said I assume you had a notebook at
8 the time, that you were filling in as a Staff
9 Sergeant from time to time?

10 A In the interview with Mr. Glass, I would have,
11 yeah, but I didn't have a running notebook, no.

12 Q You didn't have a notebook that you would use?

13 A I didn't have a running notebook of meetings of
14 situations that were going on with this, no,
15 that was --

16 Q Sorry, we are still at cross purposes. Did you
17 have a notebook, so that from time to time when
18 events happened that you deemed were appropriate
19 to note, that you could go to and make a note?

20 A No, I did not.

21 Q You didn't? As a Staff Sergeant, you don't have
22 a police notebook, is that right? Sort of as a
23 part of your armory, you might say?

24 A I was kind of like a supervisor, manager, in
25 there. You offer direction, the best direction

1 you can to officers. You are dealing with all
2 kinds of situations across the city. I would
3 have 15 notebooks on any given day in that
4 particular office.

5 Q So if you wanted to make a note, let's say your
6 interview with Mr. Glass, where would you do it?
7 I don't understand.

8 A Well, I probably did make a note of that in a
9 notebook, but I don't have that available. I
10 don't know where those notebooks are.

11 Q I'm just asking if you had a notebook at the
12 time that you would use from time to time where
13 appropriate, from your point of view, to record
14 an interview or record an event. Did you have a
15 book?

16 A Yes, I had many books, sir, yes.

17 Q Presumably you work with one at a time?

18 A Yes.

19 Q All right. Sorry, it just took a while. It is
20 kind of a simple question, but I have got an
21 answer, I understand.

22 A Nothing is simple, sir.

23 Q It seems not. And as far as that notebook is
24 concerned, all of the dealings that you have had
25 that you talked about yesterday and today,

1 didn't make it into the notebook?

2 A No, sir.

3 Q And it has become I think pretty clear, probably
4 to you, from Commission Counsel's questioning
5 and to some extent from mine as well, that there
6 seems to have been a limited use of notebooks
7 when it comes to noting the kinds of matters
8 that we have been talking about in the last
9 couple of days, amongst your officers, not just
10 you, but also amongst the officers that you are
11 supervising, particularly Anderson and Paul.
12 Have you sort of picked that up in the course of
13 the questioning, sir?

14 A It seems to me I was provided with material that
15 showed very extensive notes.

16 Q About the matters that we have been talking
17 about in the last two days, sir, haven't you
18 picked up that apart from one entry in Paul's
19 notes and one entry in Anderson's notes that --
20 I think there is actually two entries in
21 Anderson's notes, one of which hasn't been
22 brought to your attention -- there is no other
23 reference to this Swift Current issue at all, in
24 a report or notes?

25 A That may be, sir.

1 Q That may be. And I'm wondering, sir, if that
2 was a feature of what was going on in the office
3 that you were supervising at the time?

4 A Not at all, sir.

5 Q Your officers simply weren't using their notes
6 or making notes as they should have been?

7 A My lord, I think if one views the material that
8 I was presented with, the notes are quite
9 extensive.

10 Q And I'm going to suggest to you, sir, it sort of
11 demonstrates a certain -- how would I put it --
12 almost a sense of entitlement going on in your
13 office, where it is sort of assumed that if they
14 don't make notes when they should, they are
15 going to get away with it anyway, nobody is
16 going to do anything about it, nothing is going
17 to come of it?

18 A That's wrong, sir.

19 Q And that is really the only reasonable
20 explanation for the absence of documentation of
21 the matters that we have been discussing,
22 particularly regarding the Swift Current arson?

23 A Again, the material that I was provided shows
24 clear information in notes and whatnot. Now,
25 witness protection matters were being handled to

1 a large degree separately, so --

2 Q They were being handled verbally, as far as your
3 department was concerned, and nothing else?

4 A As far as meetings go, yeah. I would not expect
5 to make notes, I don't know that we made notes
6 at every meeting we attended, no.

7 Q You have seen Anderson's October 8, '91 report;
8 am I right, sir?

9 A I would have to refresh my memory.

10 Q That's the report, it is in volume 2 of
11 Commission Counsel's materials, it is tab 10.
12 And that's Anderson's response to what is turned
13 into a, or what is perceived by the Winnipeg
14 Police Department as a complaint by the RCMP
15 about the way Anderson and Paul, and indeed the
16 Winnipeg Police Department, had conducted
17 themselves in relation to the Swift Current
18 arson?

19 A Well, I was away when that complaint came in. I
20 recall being apprised of it to some degree, and
21 his response was already drafted, I recall that.

22 Q And you have seen the response?

23 A I have seen the response. It was already
24 completed by the time I got back. By the time I
25 got back to work, the response was already

1 completed.

2 Q Would it surprise you, sir, as you go through
3 that, that essentially most, if not almost all
4 of the contents of that document are
5 undocumented until October 8th of 1991?

6 A I don't know. I couldn't answer that.

7 Q I said would it surprise you?

8 A Pardon me?

9 Q Would it surprise you is the question, given
10 your knowledge of the people under your
11 supervision, would it surprise you that the
12 contents of that document are almost entirely
13 undocumented until October 8 of 1991, albeit
14 describing a series of events of a year or more?

15 A Undocumented by whom? No, Sergeant Anderson's
16 response to --

17 Q Anderson in particular, and you?

18 A This is Anderson's response to some complaint
19 that came in that I wasn't aware of until much
20 later.

21 Q And the only documentation for the day, so to
22 speak, the only contemporaneous documentation
23 was a substantial document that was created by
24 the RCMP contemporaneously with the events as
25 they occurred?

1 A I don't know that, sir.

2 Q Is there anything else that you can tell us,
3 sir, that could help us understand the absence
4 of documentation on the part of the people whom
5 you supervised?

6 A Specifically, which documentation, sir?

7 Q Documentation of all of the dealings, sir,
8 involving Swift Current?

9 A It was documented in notes at that point.

10 Q Something that you saw as a significant issue
11 and it was a key demand of your key witnesses?

12 A It was documented in notes, it was an issue that
13 we were dealing with.

14 Q Moving on, sir, you told us that Crown Counsel
15 who was prosecuting Mr. Driskell was kept well
16 informed of events as they progressed
17 surrounding Zanidean's situation in regards to,
18 amongst other things, his position in Swift
19 Current. Am I right?

20 A Yes.

21 Q And when you say that, is that both
22 Mr. Dangerfield and Mr. Lawlor? You talked
23 about Mr. Lawlor being involved intricately at
24 the outset. I'm not sure you used intricately,
25 I think that's my word, but having a personal

1 involvement at the outset. And then it got
2 moved on to Mr. Miller. But you say that Crown
3 Counsel were actually kept informed as things
4 proceeded thereafter as well?

5 A They were, sir, yes.

6 Q And is that Dangerfield and Lawlor, to your
7 knowledge, sir?

8 A One or the other, whoever was available.

9 Q You said in your statement to Commission
10 Counsel, sir, specifically that Mr. Dangerfield
11 was kept informed as things moved along where
12 Swift Current was concerned. Am I right?

13 A Yes, he was.

14 Q And at page 10 of your statement, sir, if you
15 could turn to that?

16 A Yes.

17 Q You say that, as regards the fact that Zanidean
18 was secure from prosecution in Swift Current and
19 this decision that you claim was made not to
20 tell Zanidean that he was secure from
21 prosecution in Swift Current, you say -- look at
22 the second line perhaps, top of page 10.

23 "Vandergraaf felt that was ultimately a
24 legal judgment call for Manitoba Justice to
25 make and he relied on Miller to make the

1 right decision."

2 That would be about whether or not Zanidean
3 should be told, all right. That's this
4 decision, this meeting that wasn't documented by
5 anyone. And then you say,

6 "He...",

7 meaning Miller,

8 "...would have briefed Anderson and Paul
9 about the decision and believes that
10 Dangerfield would also have been briefed,
11 either by himself or by Miller, although he
12 does not recall specifically having a
13 conversation with Dangerfield about this
14 issue."

15 Do you remember telling that to Commission
16 Counsel?

17 A Yes, I do.

18 Q And then you said,

19 "The RCMP's commitment not to charge
20 Zanidean with the Swift Current arson was
21 the kind of development that Dangerfield
22 needed to know about in case it came up in
23 court."

24 Do you remember saying that as well?

25 A Yes.

1 Q And then you testified yesterday to Mr. Code
2 that, in fact, since saying that, you actually
3 remembered specifically a meeting that you had
4 with Mr. Dangerfield where you actually told him
5 this?

6 A Yes, I slid up there to --

7 Q You slid up there?

8 A Well, I slid up to the Justice Department. I
9 drove down and met with Mr. Dangerfield. He was
10 preparing his case in a room, and we had a
11 discussion about it.

12 Q And you had a discussion about this, where he
13 was told Zanidean isn't going to be told about
14 his safety from the arson charge?

15 A No, we had a discussion concerning the Swift
16 Current decision not to proceed.

17 Q Well, presumably you would have told him as
18 well, otherwise he might have gone off and told
19 Zanidean, presumably you said that the decision
20 has been made we are not going to tell Zanidean
21 about it?

22 A Well, I mean, I can't recall specifics of the
23 meeting with Mr. Dangerfield. I wanted to
24 ensure that he was apprised. Mr. Miller was
25 also involved. I mean, none of this was in

1 isolation, sir.

2 Q Fine. In context, though, sir, it is only
3 really sensible if you do tell Dangerfield about
4 it, you are also going to tell him, by the way,
5 don't spill the beans to Zanidean because we
6 have made a decision that he is not going to be
7 told?

8 A Quite likely, sir.

9 Q Yes, indeed. So any suggestion, sir, if it were
10 to be made that there was some kind of wall
11 built up around Mr. Dangerfield, where he wasn't
12 to acquire this kind of knowledge, would simply
13 be untrue; is that right?

14 A Yes.

15 Q There was no wall built around Mr. Dangerfield?

16 A Certainly not, no.

17 Q Certainly not. Now, you, as we heard, sat --
18 I'm not quite sure we heard this. As I
19 understand it, perhaps I will approach it this
20 way. You sat and observed the trial proceedings
21 when Mr. Driskell's trial proceeded, am I right?

22 A I was in attendance, yes, I sat in.

23 Q I'm not sure it came out that you were there for
24 the whole trial, but you were certainly there
25 for Mr. Zanidean's testimony, for example; am I

1 right, sir?

2 A I recall being there, yes.

3 Q If you look at tab 10, sir, of the blue book,
4 the little one, the skinny one, which is tab 2
5 in effect, but it is tab 10. All right.

6 A Yes.

7 Q I have given you there, sir, an extract from
8 Mr. Zanidean's evidence which he gave as you
9 watched him, all right, assuming the court
10 reporter got it down right, and I'm sure he or
11 she did. At page 42, sir, we are in the midst,
12 as you can see from the top, Mr. Zanidean's
13 cross-examination by Mr. Brodsky. Do you see
14 that?

15 A Yes.

16 Q And if you look at line 10, you can see that
17 Mr. Brodsky is questioning him about the Swift
18 Current arson. You see that?

19 A Yes.

20 Q "You went there from Winnipeg with a plan of
21 burning down the house?"

22 A Yes.

23 Q And if you look at line 21, sir, or perhaps line
24 19, question, or 17.

25 "Q And the police found out about that?"

1 Meaning the arson.

2 "A Yes, they did.

3 Q And you are not charged?

4 A Not yet.

5 Q Not yet? Does it depend on how you do
6 in court today?

7 A No. What they told me was they give
8 the Swift Current RCMP the information I
9 give them, and that was it. Then I talked
10 to my lawyer.

11 Q You talked to your lawyer?

12 A Right.

13 Q About making a deal to avoid being
14 charged in Swift Current?

15 A No, that's not what I said. What I did
16 is I phoned my lawyer up and said I've got
17 to meet you, I got myself in a jam in Swift
18 Current, I told the police about it. He
19 said, what did the police say? I said, the
20 police told me they have to contact the
21 Swift Current RCMP.

22 Q You're not charged with the fire you
23 deliberately set, that right?

24 A Not yet, no, I'm not.

25 Q Well, when do you think you might be

1 charged with the fire you deliberately set
2 to get back at your sister for this
3 vendetta you spoke of? When do you think
4 you might be charged?

5 A I don't know. It is not up to me."

6 Now, of course if your claim that Zanidean
7 wasn't going to be told about the
8 non-prosecution, that he was secure from
9 prosecution in Swift Current, if that claim is
10 untrue, then obviously -- and indeed
11 Mr. Zanidean was told -- then obviously
12 Mr. Zanidean would not be telling the truth
13 there, right? It speaks for itself.

14 A It seems that Mr. Zanidean is telling the entire
15 truth in that section there, yes.

16 Q But you see, we don't have anything written down
17 anywhere or, indeed, said anywhere, until years
18 later that supports what Zanidean is saying
19 there. Do you get my point?

20 A Yes, I do.

21 Q Yes. What I'm going to suggest to you, sir, is
22 this, if I can sort of in a sense bring this
23 aspect of my questioning of you to a conclusion.
24 I'm going to suggest to you, sir, that first of
25 all, the Winnipeg Police Department officers

1 under your supervision took it on themselves to
2 assure Zanidean that they would make sure he
3 wasn't prosecuted for the Swift Current arson?

4 A Not correct, sir.

5 Q That they told him this as such before he
6 testified, but could never get it in writing
7 from Swift Current, which is what Mr. Kovnats
8 wanted, he wanted it in writing, could never get
9 it in writing from Swift Current because, of
10 course, Swift Current had never actually made
11 that offer?

12 A No, that's incorrect, sir.

13 Q And that Zanidean, sir, was told before he
14 testified that under no circumstances was he to
15 acknowledge that he was secure from prosecution?

16 A No, sir, totally incorrect.

17 Q In a sense, Mr. Code suggested to you yesterday,
18 that there was a charade surrounding worries
19 about Mr. Zanidean's protection when it seemed
20 apparent he didn't need it. Do you remember
21 that?

22 A I don't remember much of yesterday, to be
23 honest.

24 Q Well, that was I think Mr. Code suggested to you
25 that by the time Mr. Zanidean is off to Calgary

1 and the Winnipeg Police have sort of lost
2 contact with him, any concerns about his
3 protection seem to be a little bit of a charade,
4 especially when it is discovered that he has
5 come back to Winnipeg. And you agreed with
6 that, do you remember that?

7 A I agreed with that?

8 Q You did, you agreed it was a bit of charade at
9 that point, with Commission Counsel?

10 A I don't think that I agreed to that. That
11 doesn't sound correct, sir, but I stand to be
12 corrected.

13 Q Whatever. I am going to suggest to you, sir,
14 that really there was a charade here around the
15 charge in Swift Current. You wanted a happy
16 witness and you got it, by telling him don't
17 worry about Swift Current. And you have got
18 credibility because the jury never found out
19 about the fact that Zanidean believed he was
20 safe from being charged in Swift Current. You
21 ended up with the best of both world's?

22 A Well, that was the tact that we took, and that
23 was the tact that was discussed with Mr. Miller
24 and, hey, we expect good direction from Manitoba
25 Justice. Certainly they could have gotten ahold

1 of any one of us at any time to enlighten them
2 further if they wished.

3 Q When you look at tab 41, sir, of Commission
4 Counsel, volume 2 in other words --

5 A Yes.

6 Q -- and you look at what Anderson and Paul's
7 response was to Mr. Brodsky's question, as set
8 out at the bottom of the page, what is called
9 question 6?

10 A Yes.

11 Q Do you see where I am?

12 A Yes.

13 THE COMMISSIONER: I don't think you have the
14 clear --

15 MR. LOCKYER: Remember, that's where we have got
16 a single sheet. It is a single loose sheet, it
17 will be loose, Mr. Vandergraaf.

18 THE COMMISSIONER: I wonder if it is over here,
19 Madam registrar?

20 THE WITNESS: Here it is, I have it.

21 THE COMMISSIONER: And maybe what we will do is,
22 just put a paper clip, Madam registrar do you
23 have a paper clip? And just staple that at the
24 very top of that page, it is at tab 41, it is
25 the replacement or the additional page. That's

1 good.

2 BY MR. LOCKYER:

3 Q And this is where Mr. Brodsky has asked a
4 question that is really trying to get at
5 motivations possibly of witnesses as to why they
6 might be testifying. You understand? That's
7 what he is trying to get at?

8 THE COMMISSIONER: You are referring to the very
9 last paragraph?

10 BY MR. LOCKYER:

11 Q Yes. I'm trying to summarize what Mr. Brodsky
12 is seeking. And the answer that's given there,
13 sir, by Anderson and Paul with respect to the
14 second part of this question,

15 "We are not aware of a single criminal
16 charge outstanding against a single
17 subpoenaed witness at the time of the
18 deceased's disappearance. Furthermore,
19 protection is only favorable consideration
20 given to any witness. We are not aware of
21 any stayed charges or any other deals made
22 with any witness in exchange for
23 testimony."

24 And you said well, that's true, and when you
25 read it carefully, it is carefully drafted and

1 indeed it is true. There is nothing you can say
2 in there that is untrue. But do you think, sir,
3 when you consider Mr. Brodsky's question and the
4 motivation of Mr. Brodsky's question, whereby he
5 is seeking the potential motivation of witnesses
6 to give evidence for the Crown, because that's
7 why he is asking the question, and you know
8 that's why he is asking the question, do you
9 think the better answer might have been, sir,
10 well, there is a witness, Ray Zanidean, and he
11 is wanted for a serious arson in Swift Current.
12 He has made a key demand to us that we ensure
13 that Swift Current never prosecutes him for that
14 charge. We have tried to help him out. Indeed,
15 we have been successful. We have secured an
16 assurance from Swift Current that he won't be
17 prosecuted for that charge.

18 Do you think that might have been a honest
19 answer to Mr. Brodsky's question, sir, words to
20 that effect?

21 A I don't know. I don't find a big problem with
22 what is written here, but there is any number of
23 ways we could have dealt with it I suppose.

24 Q Well, the way I just put to you would have been
25 one of them, I guess you could say?

1 A I suppose. But, you know, Mr. Miller -- we
2 anticipated all kinds of direction on this
3 matter, you know.

4 Q And as you pointed out to us, sir, it is not as
5 if, what I put to you might have been another
6 way of answering that question, it is not as if
7 Mr. Dangerfield didn't know, the prosecutor
8 himself didn't know of the contents of that
9 answer that I have proposed as a reasonable
10 answer, right? Mr. Dangerfield knew everything
11 in that answer. That he had an arson in Swift
12 Current, that he was trying, both himself and
13 through counsel, to seek assurance that he
14 wouldn't ever be prosecuted for that charge?

15 A Yes, yes.

16 Q That you got that assurance. Mr. Dangerfield
17 knew all of that as well? You told us that?

18 A Yes.

19 Q The one person who didn't know, sir, was
20 Mr. Brodsky. He knew nothing of all of this
21 behind the scenes activity that had been going
22 on from October right up to the day that
23 Mr. Zanidean testified. He knew none of it, did
24 he, as far as you know? He didn't know Corporal
25 Orr's name had anything to do with the case. He

1 didn't know Burton, through the Crown, he didn't
2 know anything through disclosure, through the
3 disclosure process, as far as you know?

4 A As far as I know, I'm not sure, I don't know.

5 Q And that's not right, is it, sir? He should
6 have?

7 A I think Mr. Brodsky knew full well the details
8 of what was happening in Swift Current,
9 regardless of the disclosure, but that is beside
10 the point. Manitoba Justice was fully aware of
11 the situation. If they required further
12 clarification on what was going on for
13 disclosure purpose, I would have expected some
14 direction.

15 Q So really you are saying that if the fault lies
16 anywhere, and perhaps you are right, the fault
17 lies in Manitoba Justice?

18 A Well, I think so.

19 Q I want to just look at the issue of the monies
20 paid to Mr. Zanidean, sir.

21 A Yes.

22 Q If you look at tab 11 of the blue book, would
23 you do that, please?

24 A The little blue book?

25 Q Yes, the little blue book. You will see there,

1 sir, this is a part of the brief filed on
2 Mr. Driskell's behalf at his bail application,
3 in November of 19-- sorry in November of 2003.
4 All right. I'm sure you remember that in 2003,
5 after Mr. Driskell had made an application to
6 the Minister in Ottawa to review his case, he
7 was in fact released on bail pending that
8 decision in November of 2003?

9 A I read about that, yes.

10 Q I'm sure you did. And a part of the brief, sir,
11 filed in that regard, if you turn to the back, I
12 think it is the last page of this extract, you
13 will see that at the time of Mr. Zanidean's --
14 and I'm looking five lines down on that page.

15 A Which tab, sir?

16 Q I am sorry, tab 11, sir. Would you go to the
17 last page of tab 11?

18 A Yes.

19 Q Paragraph 101, if you look, you will see five
20 lines down, sir, it suggests that at the time of
21 Zanidean's testimony, the sum of \$24,807.35 in
22 consideration had been paid to him or for his
23 benefit. And then there is a sort of breakdown
24 of that \$24,807, which you will see, for
25 example, includes \$7,687 for the purchase of

1 Zanidean's equity interest in his home, 386
2 Chelsea Avenue. Do you see that?
3 A Which page, sir?
4 Q The last page of the tab, sir. I will do that
5 again, I thought you were with me, page 79 it
6 says at the top?
7 A Thank you. Yes.
8 Q So you will see the sum of 24,000 had been paid
9 to him, this is by the time he testified on
10 June 11?
11 A Yes.
12 Q And you notice as you go down the list of where
13 that money comes from or how it is accumulated,
14 the \$7,500 plus paid for the purchase of
15 Zanidean's equity interest. Are you with me?
16 A Yes.
17 Q If you then turn the page, sir, to the next tab,
18 what you are now looking at is an extract from
19 what is called the investigative summary
20 prepared by the Department of Justice in Ottawa
21 in response to Mr. Driskell's application. In
22 other words, it is a lawyer in the Justice
23 Department in Ottawa who has gone through all of
24 the documentation and all of the records?
25 A Yes.

1 Q And he prepared this, as I recall, around the
2 summer of 2004. So we have moved on six months
3 or so from the bail hearing. All right. Are
4 you with me?

5 A Yes.

6 Q And at paragraph 99, you will see that he has
7 concluded that a total of \$84,973.26 have been
8 paid by the Crown to Mr. Zanidean, all for his
9 benefit ultimately. Do you see that? It
10 doesn't say the word ultimately but --

11 A Yes, yes.

12 Q -- that's what he is saying. And I give you his
13 figure, because the figure that had been
14 presented in the brief in the previous tab on
15 the bail application was smaller than that, in
16 so far as the Department of Justice found more
17 payments that had been made to Mr. Zanidean that
18 Mr. Driskell's counsel hadn't found at the time
19 of the bail hearing. Do you see what I mean?

20 A Yes.

21 Q But the Department of Justice counsel, Mr.
22 McNairn, agrees with our figure of the \$24,807
23 that had been paid to Mr. Zanidean, or on his
24 behalf, at the time that he hit the witness
25 stand on June 11th of 1991. Do you see that, it

1 is all in the same paragraph, 99?

2 A Yes, sir.

3 Q Now, presumably those kinds of numbers, sir, the
4 interim number when he testified and the
5 ultimate number when all things were finished,
6 and this is assuming we do now have all of the
7 records, were of no particular surprise to you;
8 am I right? You would have expected those kinds
9 of figures?

10 A Yes.

11 Q Indeed, I think you said in your interview with
12 Commission Counsel, sir, that you anticipated
13 that ultimately the cost of Zanidean could
14 amount to between 150 and \$200,000. Am I right?

15 A In the formal Witness Protection Program, yes.

16 Q And of course, the balance, the difference
17 between the 24 and the 84, in other words what
18 is roughly another \$60,000 that made its way to
19 Zanidean in one form or another after he
20 testified, would have included that \$20,000
21 cheque that you delivered to him in November of
22 1991. Am I right, sir?

23 A That is correct. And you keep referring to them
24 as benefits, Mr. Lockyer. And, for example, I
25 see no benefit in the payment of 29,000, RCMP

1 Witness Protection Services. How is that a
2 benefit to Mr. Zanidean?

3 Q I am sorry, I don't know where you are looking,
4 sir?

5 A Number 7, triple 8, item 100.

6 Q Thank you.

7 A Safe house expenses, hotel lodging and meals.

8 Q Well, I guess the Department of Justice, I mean,
9 we don't have a breakdown of that \$29,000 at
10 all, sir, but the Department of Justice, and
11 perhaps we can assume there is some -- how would
12 I put it -- some objectivity on their part,
13 summarize it as being consideration paid to, I
14 think it should say "or on behalf of Reath
15 Zanidean," and that 29,000 is a part of it. I
16 can't break it down for you, but we would have
17 to go about probably 100 documents to break it
18 down.

19 A Certainly, sir, you just go over that list, and
20 if the inquiry wishes to consider them benefits,
21 that's fine by me I suppose. I don't consider
22 them benefits, I consider them expenses to deal
23 with protecting this man as we felt was
24 required.

25 Q I guess it depends on whose side you are on,

1 whether you are on Mr. Zanidean's side, as he is
2 getting money or the benefit, or whether you are
3 on the Department of Justice's side.

4 A Yes, he got the \$20,000 cash to relocate himself
5 essentially.

6 Q Now, that \$20,000, sir, I presume there is no
7 dispute about that, that's payable to Zanidean
8 not for things that have already happened or are
9 happening as he gets the money, but it is just
10 his 20 grand to do what you will with; right?

11 A It is a common practice, even with the RCMP
12 Witness Protection Program, to terminate plans
13 or protection measures with a settlement.

14 Q Of course, you were aware, sir, that when
15 Zanidean testified, that this kind of payment
16 was potentially in the works for Mr. Zanidean?

17 A I was not, sir, no.

18 Q Well, you told us --

19 A Well, I was -- that kind of a payment, when you
20 are talking figures, no, I had suggested to
21 Mr. Miller, as I think Tom Orr did at one point
22 in time and discussed it more formally, is that
23 this was an alternative.

24 Q Well, interestingly enough, before he testified,
25 sir, there was more talk about \$30,000 than

1 \$20,000. The figure was more?

2 A That may be. I don't know, sir.

3 Q Right. None of this was disclosed, either that
4 there was an intention that might well come to
5 fruition to pay him a lump sum, and then after
6 he testified, a lump sum was actually paid to
7 him. None of that was disclosed, either
8 pre-trial, in case of the intention, or
9 pre-appeal, in the case of the actual payment.
10 Do you understand that?

11 A That would be correct.

12 Q I'm just giving you information, I am not really
13 asking you to comment.

14 A Yes.

15 Q But I am going to ask you to comment now, sir.
16 I mean, that's not right, is it? That should
17 have been disclosed? Presumably you would
18 agree?

19 A Well, this is lawyering, I am not a lawyer,
20 Winnipeg Police are not lawyers. We seek
21 direction. And if that had to be disclosed, as
22 it stands here, I would have expected Justice to
23 deal with it.

24 Q Certainly no written report was prepared in this
25 regard that was aimed to Crown counsel?

1 A We didn't consider this as benefits, as people
2 keep putting it. It is in relation to witness
3 protection measures that were implemented.
4 Payments -- very little of that money went
5 directly into Mr. Zanidean's pocket, to my
6 knowledge. It was bills being paid to
7 facilitate keeping him safe.

8 Q You seem to be a little more comfortable in this
9 when you spoke to Commission Counsel, sir. Why
10 don't you look to the bottom of page 8 of your
11 interview? Last two lines, I will give you the
12 context of what is coming.

13 A \$20,000 payment to Zanidean?

14 Q Last two lines of page 8, sir, of your
15 statement.

16 "In Vandergraaf's experience, most people
17 in witness protection do not comply with
18 the rules, and his belief is that lump-sum
19 payments in lieu of formal RCMP witness
20 protection are very common."

21 A Yes.

22 Q "In Vandergraaf's view, this kind of
23 arrangement is a discloseable fact and must
24 be made transparently. It should be set
25 out in a supplemental report to the Crown

1 and disclosed to the defence. However, the
2 termination of any Witness Protection
3 Program would occur long after a trial and
4 any monies provided as a final payment in
5 witness protection matters is provided to
6 allow the witness to relocate himself."

7 A Yes.

8 Q You agree with that, sir?

9 A Yes.

10 Q So you readily agree with Commission Counsel
11 that an intention to make a lump-sum payment
12 and/or the payment of a lump sum is a
13 discloseable fact, should be made transparently
14 and should be set out in a supplemental report?

15 A Yes. I had no direct knowledge that a payment
16 was ever going to be made. Mr. Miller was
17 dealing with this situation. And until I
18 received his phone call and a subsequent memo
19 and sent him a memo, was the first that I knew
20 that, essentially that that was going to be
21 done.

22 Q And of course there was no supplemental report
23 on this?

24 A On me attending to make the payment or --

25 Q Of the discussions about it that you were

1 involved in? You talked about discussing it
2 with Miller in May, for example, that you were
3 involved in discussions with Miller in May?

4 A Discussions concerning --

5 Q Go back to page 8, you say that, go up a few
6 lines from where I read to you.

7 A Yes.

8 Q "At a later stage, probably in May,
9 he..."

10 meaning Vandergraaf,

11 "...discussed with Miller the possibility
12 of making a lump-sum payment to Zanidean
13 instead of enrolling him in the formal RCMP
14 witness protection."

15 A Well, it wasn't a discussion as it was more or
16 less a suggestion. I apprised him of the fact
17 that this was a common fairly practice, even
18 with the RCMP, in formal witness protection.
19 And in subsequent cases, it was something that
20 we did.

21 Q I'm not being necessarily aggressive with you on
22 this point, sir, as I have been on some other
23 matters. I am more approaching this from a
24 systemic point of view.

25 A Yes.

1 Q Because clearly there was a breakdown here, sir,
2 and let's forget for the moment whose fault and
3 why and how it happened. Let's just deal with
4 the breakdown and consider how you can make sure
5 it doesn't happen in the future.

6 Presumably, sir, would you agree with the
7 proposition that all of these matters in future
8 when you are dealing with a witness of the ilk
9 of Ray Zanidean, where you have got a witness
10 who is making these demands, and as fast as you
11 give him something, he wants more, as Corporal
12 Orr has described him, that he is manipulating
13 you, he is manipulating the system as best he
14 can, that these matters should be fully
15 documented in future cases?

16 A Well, certainly one of the recommendations that
17 I made with Manitoba Justice in the course of
18 the years subsequent to this particular trial
19 was that, you know, we had to have somebody in
20 Manitoba Justice who knew how to deal with these
21 matters better.

22 Q That's not quite what I'm into.

23 A No, but you suggested -- no, changes were made
24 over the years, there is no question, whether or
25 not as a result of this case, but simply that we

1 felt that we had to change the way we were doing
2 business. We set up a homicide squad, we
3 encouraged Manitoba Justice to deal with witness
4 protection matters. And I think they never
5 really addressed the issue until 2000 or the new
6 millennium, to be honest.

7 Q Tell me this, sir, the duty to make notes, there
8 is a duty on the part of the members of the
9 Winnipeg Police Department to make notes, I
10 presume?

11 A Well, it is a personal investigative decision, I
12 suppose.

13 Q Presumably, if you had an officer in your police
14 department who just refused to make any notes
15 about anything, he is not going to last in the
16 police department very long. Am I right?

17 A Probably not.

18 Q Where does that duty then, in effect it is a
19 duty, where does it come from? Are their
20 regulations, sir? Certainly in the province
21 that I come from there are. Are there
22 regulations in this province, sir, requiring
23 police officers to make notes, to record all
24 important events, to make reports on important
25 events, so on and so forth?

1 A To my knowledge, no.

2 Q No regulations at all?

3 A To my knowledge, no. It may be fundamental -- I
4 don't know, it may be British law, Common law, I
5 don't know.

6 Q So --

7 A To my knowledge, there is no regulation, sir.

8 Q That might help explain an absence of reporting
9 by Anderson and Paul about a lot of what they
10 did, for example, if there is no regulations
11 requiring them to do it, maybe that would
12 explain why they didn't do it?

13 A No, I think they chose to -- I think they made
14 very thorough notes, my lord, to be honest. I'm
15 not sure -- as far as the reporting situation
16 with the witness protection and those issues, we
17 were dealing with that separately with
18 Mr. Miller. And if there was some information
19 that we didn't type up and send to the Crown,
20 regardless, Mr. Miller knew of it,
21 Mr. Dangerfield knew of it. And until we had a
22 decision from Swift Current, we didn't really
23 know what we were going to do with that
24 information.

25 Q Let's consider it from a post-conviction,

1 perspective, sir. You make a payment of \$20,000
2 by cheque to, I presume it was a cheque or a
3 money order, one or the other?

4 A It was a cheque, yes.

5 Q To Mr. Zanidean in November of 1991?

6 A That sounds correct, sir.

7 Q You agree that that information should have got
8 to Mr. Driskell's counsel? I think you agree
9 with that. You said that to Commission Counsel?

10 A Appeals are something that I don't pay very much
11 attention to, to be honest with you. This is
12 the Justice Department appeal, very rarely are
13 police called into the appeal situations and
14 asked --

15 Q You are moving off point, sir. I'm just
16 interested in how this information gets to the
17 right party. You didn't do a sup report.

18 A If there was an appeal situation, Mr. Miller,
19 the Crown, the Justice Department, we have a
20 good relationship with them, they could have
21 simply called us up, this is the information we
22 require, please send us some more information,
23 or whatever you require. We were cooperative.

24 Q If we want to make sure that the information
25 gets to defence counsel, sir, whether pre or

1 post conviction --

2 A Yes.

3 Q -- one way of the police fulfilling their role,
4 I suppose, would be to prepare a sup report on
5 any post-conviction evidence, or indeed
6 pre-conviction evidence, and make sure it gets
7 to the right Crown Attorney. Am I right?

8 A Well, I suppose if it is dramatic earth
9 shattering evidence, yes.

10 Q Whether it is earth shattering or not, sir, is
11 perhaps not for the police to determine. If
12 relevant evidence takes place, pre or post
13 conviction, it should get into a sup report and
14 make its way to the Crown Attorney. Do you
15 agree with that?

16 A I guess relevancy is an issue that police
17 wrangle with all of the time, sir.

18 Q You have acknowledged, sir, in your interview
19 with Commission Counsel that the payment of
20 \$20,000 to Mr. Zanidean was something that
21 should have made its way to the defence?

22 A Well, Mr. Miller had my memo, and his direction,
23 perhaps that should have went to the defence.

24 Q It might have helped, sir, if there had been a
25 requirement somewhere in police regulations,

1 that you were required, as an officer, to
2 prepare a report and forward it to the Crown's
3 office, then you would have done it, wouldn't
4 you?

5 A Absolutely.

6 Q Yes. Likewise, if there had been such a
7 requirement, maybe Messrs. Paul and Anderson
8 would have prepared a report of what happened on
9 June 20th, 1991, June 19th, June 20th of 1991,
10 when Mr. Zanidean was repudiating the evidence
11 that he had given a week before to them?

12 A Perhaps. I mean, I viewed that matter, as I
13 testified yesterday, as just another tantrum of
14 a man who had been under a lot of stress that
15 day, and I didn't really take much stock in it,
16 to be honest.

17 Q It is funny you say being under a lot of stress
18 that day; a week had passed, sir, he had given
19 his evidence a week before?

20 A I stand corrected. Still he was under a lot of
21 stress, he was trying to negotiate through his
22 lawyer the best deal for himself, I suppose.

23 Q He was carrying on his manipulations is what you
24 are saying?

25 A Yes. Well, perhaps.

1 Q It didn't have much to do with stress at all.
2 Your position would be he was carrying on his
3 manipulations, wouldn't it, logically?

4 A I think he was tiring of the whole situation and
5 I think he had a blow-up. That's all.

6 Q Certainly, it would be something as defence
7 counsel you would be interested in knowing,
8 wouldn't you, sir? That a week after giving his
9 evidence in a murder trial, he is now
10 repudiating it to the very people to whom he
11 imparted the information in the first place?

12 A Certainly is interesting, yes.

13 Q Yes. And if there were a requirement, sir, that
14 they were required to make a report and forward
15 it to the Crown's office, that would at least
16 get responsibility off the shoulders of the
17 police officer concerned in terms of disclosing
18 something, wouldn't it?

19 A Certainly, sir.

20 Q Going back to Mr. Zanidean's testimony, sir,
21 would you go back to tab 10 for a minute?

22 THE COMMISSIONER: Of the small book?

23 MR. LOCKYER: Yes, sorry, the blue one.

24 BY MR. LOCKYER:

25 Q Could you go to page 44 of his evidence? This

1 is again Mr. Zanidean being cross-examined by
2 Mr. Brodsky, sir. Mr. Brodsky asks him a
3 question at line 2 about the Swift Current fire,
4 and Mr. Zanidean sort of takes it off in a
5 different direction. He is asked,

6 "I'm suggesting to you that the whole
7 purpose of your trying to implicate Jim
8 Driskell in a murder is to keep yourself
9 out of jail on the Swift Current fire; what
10 do you say to that?

11 A I say that's not true. If I did it
12 just to get myself out of jail, that's,
13 then I did the wrong thing, because I have
14 lost a fortune -- for me it a fortune --
15 since this started. I have had to move out
16 of my house; my garage got burnt; my house
17 got broken into."

18 And then Mr. Brodsky repeats the two things to
19 him and he reaffirms them.

20 "Q You're being paid for that?"

21 At line 15,

22 "A Paid for moving out of my house? No.

23 Q What are you being paid for?

24 A I'm not being paid for nothing. All
25 as they're doing is paying my

1 accommodations where I'm staying right now.

2 Q Somebody's paying your living
3 expenses?

4 A They're paying for my room and my
5 meals.

6 Q For how long?

7 A Since I moved out of my house.

8 Q When was that?

9 A It was January or February.

10 Q Since January or February somebody has
11 been paying for your room and board?

12 A Right.

13 Q Who?

14 A The government, as far as I know.

15 Q For how long will this last?

16 A Sorry?

17 Q For how long will they continue to
18 pay? It is a pretty good deal, isn't it?

19 A Until the end of today, unless I'm
20 needed tomorrow."

21 Now, clearly that evidence is not truthful.

22 Would you agree, sir?

23 A No, I would not agree with that.

24 Q Let's try and break it down a little bit. First
25 of all, we know he has been paid more than

1 \$7,000 for the equity in his home, by this date,
2 just to take one example?

3 A Well, if you consider that a benefit when the
4 decision by Justice is to move him out, I
5 personally didn't consider it a benefit, I
6 considered it a necessity in that situation.

7 Q When you look at the documentation, there seems
8 to have been concern in the Justice Department
9 that the house was mortgaged for more than it
10 was actually worth?

11 A I have no idea how those negotiations went, sir.

12 Q His statement, sir, that his funding is just
13 room and board is clearly inaccurate. Would you
14 agree with that?

15 A I don't think it is clearly inaccurate at all,
16 sir.

17 Q His claim, sir, that everything is going to end
18 today unless I'm needed tomorrow, that's hardly
19 accurate. You have already been a part of
20 discussions of potentially paying him off with a
21 lump sum; right?

22 A He wasn't aware of that, to my knowledge. I
23 don't know.

24 Q Sure he was. His lawyer and he were a part of a
25 meeting about that.

1 A Then I wasn't aware -- to me, his testimony was
2 routine in the sense of -- no, benefits, no, it
3 was witness protection payments made to
4 facilitate protecting him. It was quite simple
5 that it was that in my mind I'm afraid, sir.

6 Q Line 17, sir, just going back to his evidence.
7 "My mortgage payments are in arrears right
8 now since then, and I'm on the verge of
9 losing my house and you can check that
10 out."
11 He was actually on the verge of selling his
12 house to the province, through his counsel,
13 which he well knew?

14 A Again, I wasn't --

15 Q And they were paying his arrears of mortgage,
16 they were paying his mortgage for him?

17 A He testified to the fact that he was losing his
18 house, yeah, I may have heard that, but it
19 didn't register to me as being any difficulty.

20 Q It didn't?

21 A Manitoba Justice was dealing with him on the
22 situation of the house.

23 Q You don't think the jury was getting a
24 misimpression, sir, of what was going on?

25 A I don't know.

1 Q You don't.

2 "What arrangements have you made for that?"

3 That is on the verge of losing my house.

4 "A I've made no arrangements for that.

5 Q Have you signed an agreement?

6 A No. With who?

7 Q With anyone to be compensated for this
8 testimony?

9 A No, I haven't."

10 That doesn't really present an image of what had
11 been going on, does it, sir? Zanidean, through
12 his lawyer, making demand, after demand, after
13 demand, and as fast as one was met, he would
14 make the next one. The jury didn't get that
15 image, did they, that you had of him by the time
16 he testified? Now, you made that clear
17 yesterday, what you thought of Zanidean and his
18 lawyer by the time he testified. They were just
19 out to get what they could. But the jury
20 wouldn't have got that impression from what
21 Zanidean is saying here?

22 A Probably not, no.

23 Q "Q Did you engage your lawyer?

24 A Did I engage a lawyer? Yes, I did.

25 Q Was it for the purposes of negotiating

1 a compensation package for this testimony?

2 A I called my lawyer up the day after I
3 told the detectives about the house in
4 Swift Current, and that's what I called him
5 about. I told them I needed a lawyer
6 because I might be charged in the near
7 future with the house in Swift Current.

8 Q Didn't you engage the lawyer also to
9 work out an agreement so you can be
10 compensated for your testimony?"

11 So he has asked essentially the same question
12 twice.

13 "A I engaged a lawyer to take care of the
14 Witness Protection Program.

15 Q Wasn't that payment of money?

16 A No, what that is, is relocation and
17 new identity, if needed.

18 Q And start-up costs?

19 A They never mentioned start-up costs.
20 So far I've lost, I've had to give up two
21 jobs because of this, and I asked them
22 about the jobs and they says, "no, we don't
23 reimburse you for the jobs."

24 Q Didn't you engage a lawyer in order to
25 try and get you some money for your

1 testimony?

2 A No."

3 That's just a lie, isn't it? You knew that.

4 You must have sat there and gone, holy smoke,
5 that's a lie?

6 A No, I did not sit there and do that, holy smoke.

7 Q You didn't?

8 A No.

9 Q It just went by you?

10 A Well, essentially, yeah, it did.

11 Q "Q How many times did you see a lawyer?

12 A I've seen him quite a bit.

13 Q You saw him quite a bit?

14 A Yes.

15 Q For what purpose?

16 A About the Witness Protection Program,
17 because apparently nobody knows about it.

18 So I needed a lawyer to help me talk to

19 people about it."

20 And that's the end of the questioning on it. I

21 mean, in effect, by the end of this series of

22 questions, it might fairly be said that a jury

23 would have had more reason to find Mr. Zanidean

24 credible than they did before this series of

25 questions began, because they had been given the

1 impression by Mr. Zanidean that this whole thing
2 has been nothing but grief, he really hasn't
3 been seeking anything material for his evidence
4 and he certainly hasn't got anything for his
5 evidence, right? I mean, that's what the jury
6 would have picked up from that exchange, all of
7 those exchanges?

8 A Essentially I think at that time that was
9 correct, was it not, sir?

10 Q You don't think the jury might have liked to
11 have heard about the dealing he had been doing,
12 both personally and through his counsel, trying
13 to get money out of you, the Winnipeg Police
14 Department, trying to get money out of Manitoba
15 Justice, the kinds of demands that he and his
16 lawyer made, that yesterday you were saying made
17 you -- you were just sick of it?

18 A I was sick of it, yes, but because I'm sick of
19 it is not evidence, sir.

20 Q But you were sick of it for a reason, sir, you
21 were sick of it because of the way Zanidean was
22 trying to manipulate the system?

23 A No, I was sick of it because of the way
24 Mr. Kovnats was trying to manipulate the system
25 on behalf of his client. And at that point in

1 time I wanted Manitoba Justice to deal with it
2 solely.

3 Q A bit of both, sir; right?

4 A Pardon?

5 Q A bit of both, trying to manipulate the system,
6 Zanidean and through his counsel?

7 A Well, yeah, I think that's fair, yeah.

8 Q But I think you might agree with me that the
9 jury wouldn't have got that impression from the
10 way Mr. Zanidean answered those questions
11 without correction from anyone?

12 A I don't know, I can't answer that question. I
13 mean Mr. Dangerfield, Mr. Lawlor were aware of
14 what was going on. If they felt there was a
15 problem with that testimony -- I was not
16 apprised of any difficulty, any obvious
17 difficulty with it.

18 Q Can you go back to tab 12, sir? And this
19 remember, is --

20 A Tab 12, yes.

21 Q Remember, this is an assessment by someone, it
22 might be argued, was providing an objective
23 assessment of the case. As a matter of fact, if
24 anyone could argue it wouldn't be objective, I
25 guess would more likely be Mr. Driskell than

1 anyone, simply because it is a member of the
2 Department of Justice in Ottawa, but certainly
3 not someone who is necessarily on Mr. Driskell's
4 side, sir. And what Mr. McNairn wrote after his
5 assessment of the case is at paragraph 99, he
6 sort of summarized it. He wrote in paragraph
7 99 -- are you with me, first page of tab 12?

8 A Yes.

9 Q He wrote -- and this is around the middle of
10 2004 he is writing this.

11 "Contrary to the tenor of Zanidean's
12 testimony, the sum of \$84,000 plus was paid
13 by the Crown to him or for his benefit
14 under the rubric of the witness protection
15 arrangement. At the time of his testimony
16 on June 11th, the sum of 24,000 plus had
17 been paid to or for the benefit of
18 Zanidean. This consideration was not
19 disclosed to the defence by the Crown, nor
20 was the extent of the consideration
21 forthrightly described by Mr. Zanidean in
22 his testimony. Moreover, the Crown did not
23 correct the misleading nature of
24 Mr. Zanidean's testimony regarding the
25 consideration he had received."

1 Would you consider that a fair summary of that
2 passage that I read to you from Mr. Zanidean's
3 testimony, sir?

4 A Well, again, I take objection to the word of
5 "benefit" in some of these documents. Certainly
6 the only cash that I'm aware of that was put
7 into his pocket to relocate himself was the
8 \$20,000 that I delivered to him. Prior to that,
9 it was all hotel bills, RCMP payments, expenses,
10 et cetera, to facilitate the protection. I
11 don't consider necessarily that that's a
12 benefit. The selling of his house was a
13 decision through, I take it, Mr. Kovnats and
14 Mr. Miller. I don't know that that's a benefit
15 per se, but I guess I stand to be corrected.

16 Q Mr. Code asked you yesterday, sir, about the
17 fact that Mr. Zanidean was arrested on -- sorry,
18 I forget the date, it would have been May --
19 23rd is in my mind, 27th -- 25th, sorry, my
20 mistake, arrested on May 25th on a witness
21 warrant, and picked up by Anderson and Paul in
22 Cochrane, Alberta, brought back to Winnipeg, and
23 then released on a recognizance requiring him to
24 remain in the custody of the City of Winnipeg
25 Police Inspector Johnson, or such nominee as

1 Johnson shall decide, and to remain within the
2 24 hour custody and control of the Inspector or
3 his nominee, at such location the Inspector
4 shall determine?

5 A Yes.

6 Q Do you remember that?

7 A Yes.

8 Q So, effectively, you had Mr. Zanidean, for the
9 last week or two before he testified, under lock
10 and key?

11 A Under protection, yes, we kept him under lock
12 and key.

13 Q It wasn't so much under protection, it was in
14 custody, he was required to remain in the
15 custody of the Winnipeg Police, like it or not.
16 It was protection for you, not for him?

17 A This was a situation that was put forward by
18 Manitoba Justice as a way not to put him into
19 jail on that warrant, essentially. And we
20 followed that direction.

21 Q But you keep saying it is for his protection. I
22 suspect that it is the last thing that Zanidean
23 wants?

24 A I mean, at that point -- sorry.

25 Q I suspect it was the last thing that Zanidean

1 wanted was to have to be in police custody for
2 two weeks?

3 A Yes, that's very true.

4 Q It wasn't really for his protection, it was for
5 the protection, if you will, if you want to use
6 that word, of Manitoba Justice and/or the
7 Winnipeg Police department?

8 A One of the difficulties -- we have always had
9 difficulties with witnesses. It seems even back
10 then, in this day and age, witnesses are as
11 difficult to deal with as accused parties are,
12 and it becomes -- these situations that have
13 evolved like in this situation. Yes, we kept
14 him under lock and key at that point in time
15 because he disappeared on us, correct, sir.

16 Q I wanted to ask you about that, sir. You have
17 difficulty with witnesses because, boy, you sure
18 seem to have in this case, now that we can see
19 the files. And I want to ask you about this
20 process that seems to be employed in this
21 province with Crown witnesses. If you look at
22 tab 13, sir, of the little blue book, maybe you
23 will see what I mean.

24 A Tab 13, yes.

25 Q Look at the first page, sir, and you will see

1 that on October 23rd of 1990, so we have moved
2 on three weeks, less than three weeks from when
3 Mr. Gumieny first spoke to the police. And you
4 will see this is a warrant for the arrest of
5 John Edward Gumieny.

6 A Yes, sir.

7 Q We have a warrant put out for his arrest on
8 October 23rd of 1990 as a material witness.
9 That he is arrested pursuant to that on that
10 date, if you look at page 2?

11 A Yes.

12 Q And required by, I don't know if it is a JP, or
13 it is a magistrate. I don't know if a
14 magistrate is someone who is necessarily, a
15 lawyer appointed magistrate, or I don't know the
16 procedure in this province for the appointment
17 of magistrate. But in any event, a magistrate
18 releases him on a recognizance, which, certainly
19 as far as I know, applied right through to June
20 of 1991 when he testified, requiring him to
21 report weekly to the police, to appear before
22 the court on notification by subpoena. There is
23 no suggestion here he had already been
24 subpoenaed. To reside at his current address
25 and provide any change of address immediately to

1 the police.

2 Do you have any explanation, sir, because
3 there is nothing in our materials to suggest
4 that Mr. Gumieny was threatening to flee or was
5 causing any troubles with the police as of
6 October 23, at all, not a whimper of a
7 suggestion that that was the case.

8 How could this warrant application have
9 been justified? The arrest of a material
10 witness, certainly in my experience, is a
11 serious matter that requires a hearing,
12 justification for it before the presiding
13 justice or magistrate before he will act
14 accordingly. Do you know how this is justified,
15 sir?

16 A I don't, sir.

17 Q You don't?

18 A I can't recall back then. I know there has been
19 changes over the years, but back then I can't --

20 Q It sort of became a practice, though. Turn over
21 to the third page of this tab. Suddenly we are
22 looking at Ashif Kara. Now, Ashif Kara, sir,
23 gave a statement to the police on October 23rd
24 of 1990. Bingo, same date that the warrant is
25 put out for Gumieny, which also happens to be

1 the same date that Mr. Driskell was arrested and
2 charged with the murder. All right. So all of
3 these things happen on the day of Mr. Driskell's
4 arrest and charge.

5 Ashif Kara, according to the officers who
6 dealt with him, Morin and Shipman, you know
7 them, they are under your supervision too?

8 A Yeah.

9 Q Was entirely cooperative on October 23, which
10 was the day they met him. They bring him into
11 the station, and what does he do on October 23,
12 he gives a statement incriminating Mr. Driskell
13 in the homicide of Perry Dean Harder, signs it,
14 puts his John Henry on the document that
15 incriminates Mr. Driskell?

16 A To my recollection, yes.

17 Q And for some reason, Shipman and Morin, whose
18 names appear at the bottom of the third page of
19 this tab, then seek a material witness warrant
20 for him, this man who is being so cooperative.
21 And not only do they seek it, they get it. And
22 suddenly Ashif Kara is also, look at page 4,
23 released -- sorry page 5, 298 at the bottom, if
24 you are looking at page numbers, look at page
25 298 -- he is released on a personal appearance

1 on each remand date.

2 A I have no page 298.

3 Q Look at the bottom right-hand corner of the
4 pages?

5 A 299, 301.

6 Q They hop around a bit. Keep going?

7 A Here we go. Thank you.

8 Q So here is Mr. Kara, he is released on
9 October 23rd by a magistrate. I never checked
10 this before, I imagine it is the same one -- it
11 is not, it is a different magistrate on
12 October 23rd. And from October 23rd on, again
13 until June '91, and indeed this came out in the
14 evidence, he has to report once a week to the
15 detective's office, he has to reside at 998
16 Yarwood Avenue, Winnipeg, and not move without
17 the court's permission. He is not to leave the
18 Province of Manitoba, and he has to report to
19 the detective's office. Can you explain this,
20 sir? Why -- this would be an abuse of the
21 material witness warrant provisions, wouldn't
22 it?

23 THE COMMISSIONER: Mr. Lockyer, I too find it
24 interesting, but I'm not sure how germane this
25 is to our questions that we have to inquire into

1 here. And also it may be that the practice is
2 to issue the warrant, have the person in and
3 release them. I don't know. It is different, I
4 know, than you are used to, and certainly my
5 limited experience, but I don't know what that
6 has to do with our inquiry.

7 MR. LOCKYER: I don't have the terms of the
8 inquiry before us, but just talking off the top
9 of my head, it is to look into the practices of
10 the Winnipeg Police Department in this case.
11 And I know it doesn't use those words but, in
12 effect, one of the practices, I'm going to
13 suggest to the Commission, is obtaining or
14 acquiring this kind of control over Crown
15 witnesses from the outset, that this is not an
16 unusual procedure.

17 THE COMMISSIONER: Why don't we just ask the
18 witness if this is a common practice? Is the
19 material witness warrant a common practice? And
20 I'm sure there are other witnesses that can
21 maybe speak to that. Is it a common practice to
22 have a material witness warrant issued for a
23 witness?

24 THE WITNESS: Material --

25 THE COMMISSIONER: And I'm not referring to the

1 situation when Zanidean had in effect flown the
2 coop, that to me is perfectly logical. The
3 other is not so apparent to me, that is for
4 Gumieny and Kara and --

5 THE WITNESS: Well, I would just like to
6 qualify, although I was familiar with some of
7 the situations here, I wasn't working -- other
8 Staff Sergeants and Sergeants were in control of
9 Shipman and Morin and other investigators. I
10 would come on and familiarize myself with it,
11 but decisions were made separate and apart from
12 me on those kinds of issues.

13 A material witness warrant, to my
14 recollection, would be issued if a witness had
15 material evidence to provide a court and we had
16 difficulty in locating him, simple as that. And
17 then we would provide the court, the magistrate,
18 on advice of Manitoba Justice, that this is a
19 situation, we are having trouble finding this
20 individual and we are wondering about a warrant
21 to be issued.

22 MR. LOCKYER: To respond to your question,
23 Mr. Commissioner, Mr. Dawe has just kindly put
24 the Order-In-Council before me. And I guess
25 paragraph 1(e),

1 "To give advice about whether any other
2 aspect of this case should be further
3 studied, reviewed, investigated, and by
4 whom, and to make systemic recommendations
5 arising out of the facts of the case which
6 the Commissioner considers appropriate."

7 And certainly this is --

8 THE COMMISSIONER: I was worried about that
9 paragraph.

10 MR. CODE: If I can help here. I think the
11 difficulty is Mr. Lockyer is making very lengthy
12 speeches about these documents, and I would ask
13 him to formulate a question, please?

14 MR. LOCKYER: Fine, I accept that criticism.

15 THE COMMISSIONER: That crossed my mind. Thank
16 you, Mr. Code, for articulating it for me.

17 MR. LOCKYER: In good spirits, even though it
18 was a bit of a shot.

19 BY MR. LOCKYER:

20 Q To complete the questioning, sir, in this
21 regard, if you keep moving through these
22 documents and look at the series of documents
23 that come after Ashif Kara, there is a third
24 witness, Shafik Kara, Ashif's brother, that the
25 same process was employed with on October 23rd

1 as well. Do you see that?

2 A Yes.

3 Q And that is two more officers, so these three
4 warrants have been obtained at the instance of
5 what I think one can say is a total of six
6 different officers, the ones that dealt with
7 Gumieny, the ones who dealt with one Kara, and
8 the ones who dealt with the other Kara?

9 A Yes. I am sorry, sir, I don't see complete
10 details here. If you see on the Shafik Kara
11 matter, I only see the front portion of what we
12 call a court assistance report.

13 Q I have only got what we got, sir. This is the
14 only documents available that I'm aware of, that
15 survived?

16 A There is a second part to that that would have
17 explained it, I'm sure, why the warrant was
18 issued. Because that formulates part of the
19 reasoning, the grounds to go to the magistrate
20 in the first place.

21 THE COMMISSIONER: The information for the
22 warrant?

23 THE WITNESS: Yes.

24 BY MR. LOCKYER:

25 Q I'm going to suggest to you, sir, that it is a

1 well known practice in your department?

2 A Actually sir, I could use --

3 THE COMMISSIONER: Actually, all right, it is
4 about break time and the witness has been on for
5 a long time. So I think it is a good time to
6 take a break.

7 THE CLERK: All rise. This Commission of
8 Inquiry is now in recess.

9 (Proceedings recessed at 10:45 a.m. and
10 reconvened at 11:06 a.m.)

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

13 THE COMMISSIONER: Mr. Lockyer.

14 BY MR. LOCKYER:

15 Q Thank you, sir.

16 Am I right, sir, that this use of witness
17 warrants was a common occurrence back then as a
18 way of controlling witnesses who the Winnipeg
19 Police Department thought could become a problem
20 down the road?

21 A No, sir, that is not correct. The material
22 witness warrant was for a witness that we
23 couldn't locate, that would be required, and we
24 would simply take him into custody to ensure his
25 appearance in court.

1 Q So in the case of Mr. Gumieny and the two Kara
2 brothers, you can't explain how, or what pretext
3 was used, or what justification is perhaps a
4 better word, what justification was used in the
5 case of Mr. Gumieny and the Kara brothers, you
6 have had no idea what justification was used to
7 get the warrants?

8 A I see incomplete documents here, but I believe
9 he would have absconded at some point in time.

10 Q This is, in the case of Karas, this is the day
11 that they were met by the police and gave their
12 statements. October 23rd the first contact they
13 had with the police on this case was around 9:00
14 or 10:00 that evening, October 23rd -- or
15 October 22nd, no, it was October 23rd.

16 A I'm not sure about that, sir. As indicated
17 earlier, three shifts were working that
18 particular case.

19 Q It was within an hour or two of Mr. Driskell's
20 arrest that evening.

21 A It was, was it?

22 Q Yes. At least this, you would agree it is not
23 appropriate to use a witness warrant for the
24 purposes of maintaining control over a witness
25 who you are hoping will be a Crown witness at a

1 later date? That's not an appropriate use of
2 the procedure?

3 A Well, I think in the circumstances here, the
4 decision was made through Justice to have him
5 released to our custody, or whichever witness
6 you are discussing here at the moment. But
7 simply, I think one of the ingredients for you
8 to detain people in custody is to ensure
9 appearance in court, if I recall.

10 Q I wonder if Justice had much to do with it
11 actually, sir.

12 A I think at that time material witness warrants
13 had evolved essentially to the point where we
14 couldn't get one without sanction from the
15 Crown.

16 Q And it is noticeable, sir, in each case that the
17 witnesses were required to report to the very
18 police who had questioned them, in the case of
19 the Kara brothers, that very evening. That they
20 were required to report to them?

21 A It is quite possible, sir, yes.

22 Q Did you know -- a couple of things, sir, I
23 wanted to ask you about -- did you know that
24 Mr. Gumieny was causing difficulties subsequent
25 to Mr. Driskell's trial and conviction? Did you

- 1 find that out as it was happening?
- 2 A No, sir.
- 3 Q You weren't briefed on that by anyone?
- 4 A I don't believe I was.
- 5 Q Including your own officers, Osborne and
- 6 Williams, they didn't tell you about it?
- 7 A They were on another shift. It is possible, but
- 8 I don't have any recollection of Mr. Gumieny to
- 9 any great extent, to be honest.
- 10 Q Did you know, sir, in 1993 and I think running
- 11 into 1994, the four police officers set about,
- 12 four senior officers in the force set about
- 13 preparing what came to be known, or what they
- 14 entitled the Perry Dean Harder homicide Review.
- 15 You knew about that internal inquiry, sir?
- 16 A I did, sir.
- 17 Q And I understand that you talked to them, I
- 18 think they say informally a couple of times; is
- 19 that right?
- 20 A To whom, sir?
- 21 Q I guess it was most likely Hall and/or Ewatski.
- 22 I think they report that you did speak to them
- 23 informally a couple of times?
- 24 A Likely, yes.
- 25 Q You don't remember that?

1 A I remember having conversations with them,
2 but --

3 Q You do. They didn't do a formal interview with
4 you; is that right, sir?

5 A I don't believe so, no.

6 Q And do you know why not?

7 A No, I don't.

8 Q Did you ever get a copy of the review, sir, as
9 it came out in a final report form?

10 A No, sir.

11 Q You never saw it?

12 A No, sir. I saw a copy floating around my
13 present job at one point in time, but I haven't
14 had a chance to digest it or read it, no.

15 Q So I don't know what your present job is?

16 A Manitoba Public Insurance investigations.

17 Q All right.

18 A Well, it is simply because I was working there,
19 one of the officers had acquired one. This
20 was -- this was earlier this year. That's the
21 first time I seen anything.

22 Q Anderson came in with it or --

23 A No, no, he doesn't work there at all, he doesn't
24 come around that office, no. It was -- I don't
25 know, somebody acquired one.

1 Q So it wasn't produced to you and you weren't
2 asked to comment on it by any of the officers
3 who prepared it in '93/'94?

4 A I had no knowledge of its contents, sir, no.

5 Q Did you ever ask to see it, sir?

6 A I did not.

7 Q You never had any curiosity as to what it said
8 about an investigation that you had effectively
9 been in charge of in '90/'91?

10 A Certainly I was curious about it, but my
11 information was that they weren't going to
12 release it to us any way, to us as well.

13 Q What made you think that, what information made
14 you think that? How did you find that out? I
15 can't imagine, if I were in your shoes, I would
16 say I would like to see a copy of it, it is my
17 case, I would like to know what you had to think
18 about it?

19 A I wasn't provided with one, whether I asked for
20 one, I can't recall, but I simply wasn't
21 provided with any information.

22 Q You came to understand that you would not be
23 allowed access to it anyway?

24 A Yes.

25 MR. LOCKYER: All right. That's all. Thank

1 you, sir.

2 THE WITNESS: Thank you, sir.

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

4 THE COMMISSIONER: Good morning, Mr. Gates.

5 BY MR. GATES:

6 Q Staff Sergeant Vandergraaf, my name is David
7 Gates, I am here representing the RCMP. And I
8 just have a few questions or a few areas that I
9 would like to go over with you for some
10 clarification, all of which relate to the Swift
11 Current investigation by the RCMP.

12 A Yes, sir.

13 Q Did you have any personal dealings with anyone
14 from the Swift Current RCMP detachment?

15 A I did not, sir.

16 Q Do you know who under your authority or command
17 had dealings with Swift Current?

18 A Sergeant Anderson.

19 Q Is he the only one, to your knowledge, who had
20 dealings with Swift Current, other than Sergeant
21 Mann who we will come to in a minute?

22 A As far as I can recall, yes.

23 Q Okay. Thank you. Looking just very briefly at
24 the chronology of the engagement between the
25 Winnipeg Police Service and the Swift Current

1 RCMP; Sergeant Mann, did he report to you in
2 1990?

3 A He wasn't a part of our squad, our unit, no.

4 Q He was or he was not?

5 A No, he was not. I think he was an arson
6 investigator at that time or a general
7 investigator, property crimes.

8 Q And who would he have reported to?

9 A I can't recall.

10 Q Would it have been another Staff Sergeant at
11 Winnipeg Police Service?

12 A Likely, yes.

13 Q Do I understand, Staff Sergeant Vandergraaf,
14 from your earlier testimony and from your
15 statement to Commission Counsel, that in terms
16 of the working area, that Sergeant Mann would
17 have been in the same general area that Sergeant
18 Anderson, Sergeant Paul would have been working
19 in?

20 A Well, the office was rather large in length, but
21 it was robbery/homicide close to the Staff
22 Sergeant's office, property crimes, and then
23 fraud division squad at the end.

24 Q Was it one --

25 A It was one large office.

1 Q Open area?

2 A It was interacted, yes.

3 Q Okay. And approximately how many people would
4 have worked there at the time?

5 A Maybe 30, between 30 and 40.

6 Q Okay. I wonder if I can take you to your, the
7 summary of your statement that you gave to
8 Mr. Code, which is at volume 1, tab 1?

9 A Yes.

10 Q Page 5, the last full paragraph?

11 A Yes.

12 Q Are you with me, sir?

13 A Yes.

14 Q It says,
15 "Vandergraaf recalls being advised by
16 Sergeant Ian Mann, one of the Winnipeg
17 arson investigators who shared the office
18 with the homicide squad..."
19 sorry, I have done it again.
20 "...that he had received a request from the
21 Swift Current RCMP to interview Zanidean."

22 A Yes.

23 Q Continuing,
24 "He told Mann to back off and leave the
25 matter with homicide."

1 Is that what happened?

2 A Essentially, yes.

3 Q Was that the normal course of, or the normal
4 process, given that Sergeant Mann reported to
5 another Staff Sergeant, for you to be directing
6 him with respect to his investigation; was that
7 normal?

8 A Oh, yes.

9 Q Okay. Continuing on just a few more sentences
10 further on.

11 "At this point the homicide officers
12 already had an admission from Zanidean
13 about the arson, and Anderson and Paul had
14 communicated this fact to the Swift Current
15 RCMP."

16 I believe we have your evidence on that?

17 A Yes.

18 Q "Vandergraaf's view was that the arson was
19 the Swift Current RCMP's case and that the
20 Winnipeg Police homicide was clearly more
21 serious. As long as the two cases were
22 being investigated separately, he felt that
23 each police force would make their own
24 decision, but he thought it would be
25 inappropriate in the circumstances for the

1 Winnipeg Police to investigate Zanidean on
2 the RCMP's behalf."

3 A Correct.

4 Q If you considered it inappropriate for the
5 Winnipeg Police to investigate Zanidean on the
6 RCMP's behalf, what steps did you take to convey
7 that information to the Swift Current RCMP?

8 A I don't recall, sir. My thinking was that there
9 was little point in having Sergeant Mann
10 involved in this matter at that time. My belief
11 was that it was well in hand with
12 robbery/homicide.

13 Q You were aware, as I understand the earlier
14 portion of your summary, that a request had been
15 made from Swift Current in July of 1990 for
16 Sergeant Mann or for someone from the Winnipeg
17 Police Service to interview Zanidean relative to
18 the arson in Swift Current?

19 A Yes, but I was not made aware of that until we
20 had already become involved with the matter.

21 Q Okay. However, at some point, as I understand
22 your summary, you made the decision that it was
23 not appropriate for the Winnipeg Police Service
24 to, in effect, investigate Zanidean on the
25 RCMP's behalf?

1 A Not under the circumstances that were evolving,
2 sir, no.

3 Q Was the Swift Current RCMP informed that the
4 Winnipeg Police Service would not investigate
5 Zanidean on their behalf?

6 A I don't recall, sir.

7 Q Did you inform them?

8 A I did not.

9 Q Would it have been appropriate to have informed
10 them?

11 A I don't know. Essentially, we were already
12 providing them with assistance relative to
13 Sergeants Anderson and Paul's information and
14 disclosure. So, simply my view was not,
15 Sergeant Mann, no, there is no need for you to
16 try to find whatever you are looking for
17 Mr. Zanidean in that particular instance.

18 Q Were you aware that the Swift Current RCMP,
19 through the balance of the calendar year 1990,
20 were waiting for the Winnipeg Police Service to
21 interview Zanidean and provide them with a
22 statement regarding Zanidean's potential
23 involvement in their arson investigation?

24 A Based on the letter, the request to Sergeant
25 Mann?

1 Q Were you generally aware that they continued to
2 await the assistance of the --

3 A No.

4 Q -- Winnipeg Police Service?

5 A No.

6 Q Would it surprise you to know that they were
7 continuing to wait for that?

8 A I don't know what they would be waiting for,
9 sir. We had already apprised them of -- we had
10 already phoned them to indicate what was
11 transpiring in this particular investigation.

12 Q Were you aware that they were waiting for an
13 interview of Mr. Zanidean that had been
14 originally requested of Sergeant Mann?

15 A No. I had no information to that effect.

16 Q Would it surprise to you learn that they spent
17 the balance of the calendar year 1990 waiting
18 for the Winnipeg Police Service to provide them
19 with a written statement from Mr. Zanidean?

20 A No, sir.

21 Q That wouldn't surprise you?

22 A Yes, that would surprise me, simply because we
23 had already advised them of the situation
24 involving Mr. Zanidean and whatnot. They were
25 already made aware. We went to the detachment

1 level because that's where we would have been
2 directed anyway, had we gone to Ottawa. So we
3 discussed it with, or Sergeant Anderson
4 discussed the situation with Constable Burton,
5 and it was left with them to decide how they
6 wanted to proceed further.

7 Q But without any further assistance from you?

8 A We already had established through that
9 interview with Sergeant Paul and Anderson, sort
10 of the prima facie case, if you must, for the
11 RCMP.

12 Q Okay. I wonder if you could have a look,
13 please, at tab 16, which is the second volume of
14 materials that the Commission provided you,
15 Staff Sergeant Vandergraaf?

16 A Yes.

17 Q This is the application, as I understand it,
18 that was submitted by the Winnipeg Police
19 Service to Sergeant Orr of the RCMP?

20 A Yes.

21 Q And as such, it was the basis for your request
22 for Mr. Zanidean's potential entry into the RCMP
23 Witness Protection Program; is that correct?

24 A That is correct.

25 Q At page 481 -- sorry, before we go there, 481 on

1 the bottom right-hand corner -- I believe you
2 told Commission Counsel that you don't recall
3 precisely when this application would have been
4 completed and forwarded to the RCMP. I think
5 you told us you don't know?

6 A No, sir, specific date, no, but it was an
7 ongoing thing.

8 Q Would it have been shortly after the initial
9 interview with Mr. Zanidean in October of 1990?

10 A No. This document would have been prepared over
11 the course of, I don't know, weeks perhaps. But
12 shortly thereafter, I don't recall.

13 Q It certainly -- would it be fair to say that it
14 would have been in the hands of the RCMP before
15 the end of the year, before the end of 1990?

16 A This document?

17 Q This document?

18 A I would think so.

19 Q Turning to page 481, the portion that deals,
20 item or sub category number 4 --

21 A Yes.

22 Q -- entitled, Summarize Information Divulged by
23 the Witness with Respect to Other Criminal
24 Activity, the very last sentence, or sorry the
25 second last sentence, the penultimate sentence,

1 "Zanidean's lawyer has requested of
2 Mr. Bruce Miller, Crown Attorney, complete
3 immunity from prosecution and a written
4 guarantee stating same prior to the murder
5 trial."

6 Do you see where that's written?

7 A Yes.

8 Q Would it be fair to conclude that as of the time
9 of the writing or the preparation of this
10 document, it was well-known to you and to the
11 Winnipeg Police Service that Mr. Zanidean and/or
12 his lawyer were looking for complete immunity?

13 A Yes.

14 Q Did you understand that to be the type of formal
15 immunity that you described for us earlier in
16 your testimony, the arrangement from Justice
17 Department to Justice Department?

18 A Yes. I kind of thought that's how it was going
19 to unfold.

20 Q So, as of the time of the preparation of this
21 application for Mr. Zanidean's potential
22 participation in the Witness Protection Program,
23 your understanding was that he was looking for
24 formal immunity relative to any charges that
25 might arise out of the Swift Current arson

1 investigation?

2 A Yes. I think Mr. Miller had apprised me of
3 that. However, the last line reads,
4 "This delicate matter has not yet been
5 resolved."

6 So it was Mr. Miller making those kinds of
7 arrangements.

8 Q Just to go back to the first area that I asked
9 you some questions about, Staff Sergeant
10 Vandergraaf, do you have any knowledge as to
11 whether or not Manitoba Justice or officials
12 from Manitoba Justice had any communication with
13 the Swift Current detachment regarding these
14 charges?

15 A I have no idea, sir.

16 Q I would like to take you to page 6 of the
17 summary of your statement, or the summary that
18 you prepared in conjunction with the interview,
19 or that was prepared for you, I'm sorry, in
20 conjunction with the interview that Mr. Code and
21 the Commission Counsel had with you relative to
22 your participation in this matter. It is at tab
23 1 of the first volume, sir, page 6.

24 A Yes.

25 Q And I'm interested in learning more about the

1 practice in Manitoba with respect to not
2 proceeding on charges. If you look at the last
3 sentence on page 6, and we are going to flip the
4 page to page 7, and I quote:

5 "This did not surprise Vandergraaf based on
6 his prior experience and common sense
7 understanding. If the arson investigation
8 had been a Winnipeg Police matter, they
9 could have resolved it themselves with the
10 approval of Manitoba Justice, a practice
11 known colloquially as a patch."

12 Do you recall saying that to Mr. Code and to
13 Commission Counsel?

14 A Yes.

15 Q And is that your understanding of how the system
16 operated in Manitoba at the time?

17 A I'm not sure what system you are referring to.
18 I mean, the patch reference was a silly little
19 term for all kinds of situations on informants
20 and witnesses.

21 Q Let me try and be a bit more specific. If the
22 arson investigation had been an investigation by
23 the Winnipeg Police Service or the Brandon
24 Police Service, or another municipal police
25 service in the Province of Manitoba, what level

1 of authority or approval would have been
2 required to not proceed with the charge?

3 A Highest levels of Manitoba Justice.

4 Q Would it invariably have to go to Manitoba
5 Justice for a decision?

6 A Yes.

7 Q Would there be any circumstances where that kind
8 of decision could be made at a lower level, that
9 is within the Winnipeg Police Service if it had
10 of been one of your files, a file investigated
11 by the Winnipeg Police Service?

12 A No, sir. The difference here, if it was under
13 investigation and no charges were pending, I
14 guess I would assume we would have apprised
15 Manitoba Justice, but if there was evidence to
16 support a charge, certainly it would have gone
17 to Manitoba Justice for a decision about how we
18 are going to handle that matter.

19 Q I'm just trying to clarify my own understanding
20 about what the system is in Manitoba. It varies
21 obviously from province to province. But if I
22 have understood you correctly, Staff Sergeant
23 Vandergraaf, you did not feel that you had the
24 authority to not proceed on a criminal charge,
25 if there was evidence to support it, as part of

1 an arrangement with a witness/accused on another
2 matter?

3 A Certainly not. Manitoba Justice would be
4 required to deal with that matter, even on, for
5 example, information on an informant, if we are
6 giving informant consideration, my lord,
7 Manitoba Justice is always consulted before a
8 stay of proceedings, even on a simple informant
9 situation.

10 Q What was your understanding of parallel
11 requirement in the Province of Saskatchewan?

12 A I have no idea, sir.

13 Q Given your knowledge of the situation in
14 Manitoba, would you have suspected that there
15 would be requirement for Saskatchewan Justice to
16 approve this kind of a situation?

17 A Possibly, sir, yes.

18 Q Did you take any steps, or did you direct any
19 steps be taken to determine whether or not
20 Saskatchewan Justice approval might be required
21 to not proceed on the arson charge?

22 A I don't believe I did, sir, no.

23 Q Are you aware of anyone taking any steps to
24 determine whether or not Saskatchewan Justice
25 approval might have been required?

1 A No, sir, I don't think so. I would have
2 expected the RCMP highest levels to perhaps
3 discuss the situation, but I don't know -- if
4 their system is similar to ours anyway.

5 Q What steps, if any, Staff Sergeant Vandergraaf,
6 did you take to assure yourself that all of
7 those steps had been taken?

8 A Nothing.

9 Q I would like to go to Sergeant Anderson's
10 response to a complaint, or an internal
11 investigation, it has been called various
12 things, that came after the fact relative to
13 this matter. And you will find that I believe
14 in tab 10 of the second volume of materials that
15 was provided to you.

16 A Yes.

17 Q And I would like to take you, if I may, please,
18 to the bottom of page 2, going on to the top of
19 page 3 of Sergeant Anderson's documents. And I
20 quote:

21 "On the 11th of June..."

22 This is at the very bottom of the page. Are you
23 with me, Staff Sergeant?

24 A Yes.

25 Q "On the 11th of June 1991, Reath Zanidean

1 testified at the murder trial. During his
2 testimony a tape and transcript of one of
3 his body pack meetings with Driskell was
4 entered in evidence in its entirety. Brief
5 discussion of the Swift Current arson was
6 included on that tape."

7 Turning the page,

8 "On that date, at the conclusion of
9 Zanidean's testimony, Sergeant Paul and I
10 informed Zanidean that we had assurances
11 from Swift Current RCMP that he would not
12 be charged with the arson that he admitted
13 to us. Zanidean expressed disbelief, but
14 we assured him that the decision not to
15 charge him came from the officer in charge
16 of the investigation. Prior to this date,
17 Zanidean clearly expected to be charged
18 with the Swift Current arson."

19 Do you see what I have read?

20 A I have read that, yes.

21 Q What was your involvement in the communication
22 with Mr. Zanidean about this so-called
23 arrangement with Swift Current?

24 A My involvement was, I think as indicated
25 earlier, that we apprised Mr. Miller, my

1 inspector, Inspector Bell, and discussions
2 centred around what do we do with that
3 information?

4 Q After the decision had been taken, as I
5 understand your evidence, by Mr. Miller that
6 Mr. Zanidean wasn't to be told before his
7 testimony, what direction or instruction did you
8 give to Sergeants Anderson or Paul regarding the
9 manner in which Mr. Zanidean was to be told and
10 the content of the message?

11 A They understood that he wasn't to be told
12 anything about that at that point.

13 Q But after he gave evidence, what were your
14 directions to Sergeant Paul and Sergeant
15 Anderson about what he could be told then?

16 A That the matter was under investigation by the
17 RCMP, no resolution, there was no decision made
18 essentially.

19 Q That there was no decision?

20 A Well, the matter was still in the hands of the
21 RCMP, and that this information that they were
22 going to be not proceeding, as discussed with
23 Mr. Miller, Inspector Bell, et cetera, it was
24 decided that this very well could be construed
25 as a promise of favour. And so my direction

1 would have been not to discuss that avenue, that
2 matter. And that's the advice I got from
3 Mr. Miller, and through our discussions.

4 Q And I understand that. If we can perhaps shift
5 to after Mr. Zanidean had finished giving
6 evidence, though, after he testified. I have
7 just referred to you Sergeant Anderson's account
8 of him telling Mr. Zanidean about the no charge
9 decision from Swift Current.

10 A Yes.

11 Q Were you involved in that discussion?

12 A No, no, he apprised me after --

13 Q Did you give --

14 A -- of Mr. Zanidean's reaction, he apprised me
15 after.

16 Q Did you provide either Sergeant Anderson or
17 Sergeant Paul with direction or instruction
18 about what Mr. Zanidean could be told when he
19 finished testifying?

20 A Certainly, sir, yes.

21 Q What were your instructions to Sergeant Paul or
22 Anderson?

23 A That he could be advised that the RCMP were no
24 longer going to be proceeding with their charges
25 in relation to the arson.

1 Q Okay. If you can just hold that thought for a
2 minute. I would like to take you to your
3 statement, that's at tab 1, sir, in the first
4 book, on page 13 under the sub heading, the
5 Resumption of the Swift Current Arson
6 Investigation?

7 A Yes.

8 Q Around the middle of paragraph J, Staff Sergeant
9 Vandergraaf, the summary reads as follows, and I
10 quote:

11 "His view of the matter was that there was
12 no formal Justice Department immunity
13 agreement and that while the RCMP had
14 previously indicated that they would be
15 exercising their discretion not to charge
16 Zanidean, they were entitled to change
17 their position and exercise their
18 discretion differently."

19 Reading from the top of the next paragraph:

20 "While Vandergraaf was not troubled by the
21 apparent resumption of the Swift Current
22 RCMP investigation, he recalls Anderson
23 being concerned because he had given
24 Zanidean his word that he would not be
25 charged with the Swift Current arson."

1 Do you recall that exchange with Mr. Code when
2 you were being interviewed?

3 A Yes.

4 Q In your view, what was the effect of what
5 Sergeant Anderson gave, if I can use that word,
6 to Mr. Zanidean after he had given his evidence
7 in the Driskell trial?

8 A What was the effect on whom?

9 Q What was the effect on Mr. Zanidean of the
10 information Sergeant Anderson gave to him?

11 A Well, I would have to be careful now, because of
12 my refreshing my memory through these documents
13 isn't recollection, but my recollection is that
14 he wasn't aware that that was going to occur at
15 that time, and he still wasn't sure even. And
16 Sergeant Anderson, yeah, he was upset with the
17 development, but my whole view was always if
18 there was no immunity agreement signed, just
19 about anything was fair game, and certainly
20 people change their positions.

21 Q Did you ask Sergeant Anderson or did you direct
22 Sergeant Anderson, or Sergeant Paul for that
23 matter, to explain that fact to Mr. Zanidean
24 when they told him about the Swift Current
25 situation?

- 1 A No, I did not, sir.
- 2 Q Is there a reason you didn't ask them to tell
3 him about that part of it?
- 4 A About a potential change in the position of the
5 RCMP?
- 6 Q Well, as I understand, sir, your evidence to the
7 Commission Counsel was that you weren't
8 personally surprised when the Swift Current file
9 resurfaced after the fact?
- 10 A No, sir.
- 11 Q Did you consider whether the absence of formal
12 immunity and the possibility that the charge
13 would resurface, did you consider that that was
14 something that should have been brought to
15 Mr. Zanidean's attention?
- 16 A Not necessarily. It was not -- I wasn't sure of
17 that. It was simply a matter of possibly prior
18 experience in these situations. But, you see,
19 even at that time I would have expected that --
20 and I don't think Constable Burton was acting
21 independently, he made decisions and advised us
22 accordingly through the chain of command with
23 the RCMP, was my belief anyway.
- 24 Q The last area that I just want to touch on very
25 briefly, Staff Sergeant Vandergraaf, has to do

1 with the written exchanges between the Winnipeg
2 Police Service and the RCMP in D Division
3 regarding the Calgary relocation event in April
4 of 1991.

5 A Yes.

6 Q I wonder if you could turn, please, to a couple
7 of tabs in the second volume of the materials
8 that were prepared for you by Commission
9 Counsel.

10 Tab 22, this is a letter dated the 10th of
11 April, 1991, from Deputy Chief Klippenstein to
12 Corporal Orr via Chief Superintendent Callens of
13 the RCMP. Are you familiar with this letter? I
14 believe you told us that you think you wrote it?

15 A I did sir, yes.

16 Q Did you know Chief Superintendent Callens?

17 A No, sir.

18 Q Were you aware of his position relative to
19 Corporal Orr?

20 A I would have addressed it to Callens under our
21 Deputy Chief probably at the request of Tom Orr.

22 Q Tab 27, which is a letter dated the 9th of May,
23 1991, from you, with a copy to Mr. Miller,
24 directed to Corporal Orr via Chief
25 Superintendent Callens?

1 A Yes.

2 Q Are you familiar with this letter?

3 A Yes, I am.

4 Q Did you write this letter?

5 A I did, sir.

6 Q And then the last letter that I would refer you
7 to is at I believe tab 23, which is a letter,
8 again from you it would appear, to Corporal Orr
9 via Superintendent Callens dated the 16th April,
10 1991. Are you familiar with this letter?

11 A Yes, sir.

12 Q And did you actually write this letter yourself?

13 A I did, sir.

14 Q I believe this matter was touched on, either by
15 Mr. Code or Mr. Lockyer, but as I understand
16 these three letters, they all related to the
17 arrangement between the RCMP and the Winnipeg
18 Police Service relative to a temporary witness
19 protection initiative relating to Mr. Zanidean?

20 A Correct.

21 Q Are you able to point to any similar kinds of
22 letters that document the arrangement between
23 the Winnipeg Police Service and Swift Current
24 relative to your understanding of their decision
25 not to pursue Mr. Zanidean?

1 A Any other letters to that effect, is that what
2 your question is?

3 Q Yes?

4 A I don't know, sir, I don't believe so, I don't
5 think so.

6 Q Do you have any notes to that effect?

7 A No, sir.

8 Q Is there anything on the file, the Winnipeg
9 Police Service investigative file that would
10 cover this particular matter?

11 A I'm not sure, sir. I haven't seen the file in a
12 lot of years, and it seems to me it has been
13 pulled apart over the last decade or so, and I'm
14 just not sure what is on file anymore.

15 Q Okay, that's fair enough. My last question
16 actually relates to trying to gain a better
17 understanding of how you exercised your
18 supervisory role relative to ongoing
19 investigations. Did you have a practice or a
20 process whereby you would periodically
21 physically review the file that was being
22 accumulated by your investigators?

23 A It would have been left in the office, the
24 working copy file, yes.

25 Q And was there a regular practice within the

1 Winnipeg Police Service at the time whereby, as
2 the supervisor, you would take the file
3 physically and review its contents to bring
4 yourself up to speed on the status of the
5 investigation?

6 A I would do that independently of any
7 instructions, yes.

8 Q Was there also a practice or a policy about
9 that?

10 A I don't recall that there was a specific policy,
11 no.

12 Q Do you recall, Staff Sergeant Vandergraaf,
13 whether in this instance you periodically
14 actually took the investigative file relating to
15 the Harder homicide and reviewed it yourself?

16 A Absolutely.

17 Q If we looked at the file, would we find any
18 written directions or comments from you about
19 the status of the investigation?

20 A I can't recall. I don't know.

21 Q As a matter of practice, was that a manner
22 that -- or was that something that you would do
23 routinely to convey your comments or directions
24 to your investigators about an investigation
25 that they were working on?

1 A No, not always. No, not always. You are
2 talking about written directions?

3 Q I'm wondering, Staff Sergeant, whether or not
4 your supervisory input whether by way of comment
5 or question or direction, routinely found itself
6 recorded in writing on the actual file?

7 A No, sir.

8 Q Did that ever happen?

9 A I don't know.

10 Q Do you have any recollection, as of today, that
11 that was a practice that you followed from time
12 to time, or even occasionally?

13 A No, it was a personal preference, I suppose, on
14 individual sergeants and staff sergeants. You
15 have got to keep in mind there was two other
16 staff sergeants who were working other shifts
17 involving some of the other detectives in this
18 matter, who, although I was trying to keep up to
19 speed on it, they were receiving direction from
20 these other officers. As far as Sergeant
21 Anderson and Paul, no, we would have discussions
22 and meetings and a general discussion about what
23 tact we might want to take with this, that's
24 all.

25 Q Would I be fair, and this is my last question,

1 Staff Sergeant, would it be fair for me to
2 conclude from your answer that as a matter of
3 personal preference you didn't write comments,
4 questions or directions in investigative files?

5 A No, not necessarily.

6 Q You found it --

7 A I didn't find it evidentiary at that point in
8 time. There were discussions, there seemed to
9 be no evidence, but I stand corrected at this
10 late stage.

11 Q No, I'm not suggesting that it was evidence, I'm
12 not for a moment suggesting it was evidence,
13 Staff Sergeant Vandergraaf. I'm just wondering
14 about the process by which you conveyed your
15 direction to your officers, those who you were
16 responsible for?

17 A Through verbal briefings and meetings primarily.

18 MR. GATES: Thank you very much. Those are my
19 questions. Thank you, sir.

20 MS. CARSWELL: Thank you, Mr. Commissioner.

21 BY MS. CARSWELL:

22 Q Staff Sergeant Vandergraaf, we know each other,
23 and just for the record my name is Kimberly
24 Carswell and I'm here for the police service.

25 A Yes.

1 Q I want to generally just talk to you about
2 practices within the Winnipeg Police Service, as
3 you were familiar with them back at the time of
4 the Harder homicide investigation in 1990 and
5 1991 first.

6 Generally, we've heard evidence from
7 Sergeant Orr who told us that, whether in his
8 experience the protection measures being
9 undertaken were temporary or the formal source
10 Witness Protection Program, ultimately it would
11 be Manitoba Justice responsible for the funding
12 of whatever measures were put in place. Would
13 that be your understanding as well?

14 A Absolutely, ma'am.

15 Q And, in fact, Sergeant Orr in his notes and in
16 his testimony -- and I can take you to the
17 notes, but I don't think you will ultimately
18 need it -- indicated that in his recollection of
19 your discussions with him, it was always clear
20 that you would have to seek formal approval from
21 Manitoba Justice for whatever arrangement the
22 two of you ultimately would come to, or
23 discussion that would take place would have to
24 then go to Manitoba Justice before it could be
25 considered any kind of a formal agreement.

1 Would that be correct?

2 A Essentially, yes.

3 Q And, in fact, you indicated at a number of
4 points in your evidence, and I took it down as
5 best I could, your preferred option in this
6 particular case was that Manitoba Justice was to
7 handle that portion of the negotiation. Is that
8 correct?

9 A Yes, that's correct.

10 Q And that was because the introduction of
11 Mr. Kovnats made the negotiations more
12 difficult; correct?

13 A Correct.

14 Q And that it was your view that they should be
15 dealt with lawyer to lawyer; correct?

16 A Essentially, yes.

17 Q And did you express that point of view to anyone
18 else at the Winnipeg Police Service with respect
19 to this case, in particular, the members who
20 would be dealing with these witnesses that were
21 to be protected, Mr. Gumieny and Mr. Zanidean?

22 A Certainly.

23 Q So you would have advised them who was dealing
24 with that negotiation; correct?

25 A Yes.

1 Q And the fact that that negotiation and promises
2 had to be left with Manitoba Justice, that they
3 weren't in a position to negotiate that deal
4 with Mr. Zanidean or with Mr. Gumieny; correct?

5 A Yes.

6 Q Your evidence was clear that, and I'm going to
7 colloquialize this, you told the officers to
8 keep their noses out of the Swift Current
9 Investigation, correct? That Swift Current
10 would make its own decisions, you were to supply
11 them with the information and they weren't to be
12 pressured with respect to making a decision on
13 how they were going to treat Mr. Zanidean?

14 A Exactly, ma'am.

15 Q And that's the information that you passed on to
16 Sergeants Anderson and Paul?

17 A Yes.

18 Q Did you also tell them that they obviously had
19 to keep their noses out of the financial
20 arrangements that were ultimately to be
21 negotiated, if any?

22 A Early on there was some payments coming through
23 to facilitate protection, but I'm not sure I
24 understand your question?

25 Q Ultimately, Anderson and Paul were told by you

1 they had no ability to make any promises with
2 respect to money, to put it bluntly?

3 A Correct.

4 Q And that the theme, if we go through the
5 documents, and I don't intend to take you
6 through them because many of them we have
7 already seen, is that as far as the finances and
8 the immunity arrangement were to be concerned,
9 and I'm going to use the word immunity because
10 that's what Mr. Kovnats was seeking; correct?

11 A Yes.

12 Q And to you that meant a formal agreement between
13 Justice Departments, you've said that he would
14 never be pursued?

15 A Yes. Police can't grant anybody immunity, and
16 even developed to the point where this patch
17 thing that I referred to colloquially, my lord,
18 was something that had to be cleared with
19 Manitoba Justice as well.

20 Q If we look at the documents, you don't have to
21 go through them, tab 22, 23, 16, 26, 27 and 46,
22 all of them refer to that part of the
23 negotiation being done through Mr. Miller and
24 through Manitoba Justice; correct?

25 A Correct.

1 Q And, in fact, would it be fair to say that in
2 1990/91, the Winnipeg Police Service didn't have
3 a protection program, even to the extent they do
4 today, and there certainly was no budget for
5 witness protection measures; correct?

6 A That's correct.

7 Q If I could take you to tab 24 in book 2 in front
8 of you? This is Sergeant Orr's notes, Corporal
9 Orr as he was at the time, notes of a meeting
10 that you had after Mr. Zanidean is returned from
11 Calgary on April 29th in 1991. And we know
12 already from the evidence that at that meeting
13 were Mr. Kovnats, Mr. Miller, Corporal Orr,
14 yourself, Mr. Zanidean and his wife, Ms. Fehr;
15 is that correct?

16 THE COMMISSIONER: Who is the last one?

17 MS. CARSWELL: Ms. Fehr, Mr. Zanidean's wife.

18 BY MS. CARSWELL:

19 Q It is clear and it is acknowledged that you were
20 angry at that meeting on what you perceived to
21 be the unreasonable demands of Mr. Zanidean and
22 his counsel; correct?

23 A I was getting annoyed, yes.

24 Q And there was, it is referred to by Corporal
25 Orr, I'm going to read it to you, it is the

1 bottom of the first page of that exhibit, it has
2 a number 9 in the little coloured box under the
3 date, 91/04/29, the last paragraph. And I will
4 try not to read too quickly, Mr. Commissioner.

5 THE COMMISSIONER: Thanks very much, Ms.
6 Carswell.

7 BY MS. CARSWELL:

8 Q "Ray was very upset about the money
9 problems they faced and an extended
10 argument was held between him and Staff
11 Sergeant Vandergraaf."

12 Correct?

13 A Correct.

14 Q And you weren't in favour of giving
15 Mr. Zanidean, through Mr. Kovnats, any more
16 money than what was absolutely required for
17 protection measures; correct?

18 A That's always been our intent, ma'am, yes.

19 Q And that was the source of this disagreement,
20 wasn't it?

21 A Yes.

22 Q Ultimately, we see, reading on,

23 "Through Kovnats and Miller certain
24 expenses were agreed to and there will be
25 an additional request to us for payment of

1 hotel room, plus additional living
2 expenses. Amounts have yet to be agreed on
3 and we will be notified by Staff Sergeant
4 Vandergraaf."

5 Is that correct?

6 A Yes.

7 Q So, it is clear that you, representing the
8 Winnipeg Police Service, were only in favour of
9 certain amounts to be paid to Mr. Zanidean,
10 which related only to witness protection, and
11 that the negotiation was happening outside of,
12 or other things were happening that were beyond
13 your control?

14 A That's fair, ma'am, yes.

15 Q And ultimately you said, whether or not the cash
16 settlement was paid to Mr. Zanidean, and we now
17 know it was, that was up to Mr. Miller and
18 Manitoba Justice to make that decision through
19 their negotiations with Mr. Kovnats; correct?

20 A Correct.

21 Q And just to take you again to tab 51 in the
22 second book, first page, this is Mr. Miller's
23 letter to Mr. Kovnats of June 21st of '91. You
24 went through with Mr. Code that you weren't
25 involved in any of the negotiations that

1 produced this "plan that was worked out with the
2 police"; is that correct?

3 A That's correct.

4 Q So in your view, this is either a plan that's
5 been worked out with the RCMP or perhaps just a
6 misstatement?

7 A I can't comment on that.

8 Q Now, if you go, if you wouldn't mind, please, to
9 tab 27 in that same book of documents. Mr. Code
10 took you to this, and I'm not going to repeat
11 what he said about -- expressed a view that you
12 had about circumventing police and going past
13 you to get to Mr. Miller in the negotiations,
14 that's already been dealt with. But certainly,
15 in your view, this was consistent with
16 Mr. Zanidean's character, wasn't it? He knew
17 that you weren't going to be authorizing any
18 money, you didn't have the power to do it, and
19 he was going to try and deal with the people who
20 had the power to give him something. Would that
21 be fair? That's the type of person he was?

22 A Well, I mean, it is not unusual I guess these
23 days for anybody in any given situation to try
24 and get their fair shake, isn't it, in these
25 situations? Yes, he was difficult at that time.

1 He became extremely difficult when Mr. Kovnats
2 became involved.

3 Q Right. I'm not suggesting this is a usual or
4 unusual situation, all I'm saying is that it
5 became clear to you, I think, that Mr. Zanidean
6 was going to deal with the people who had the
7 power to give him what he wanted?

8 A It seems to me, ma'am, yes.

9 Q Now, when you talked at a number of points in
10 your evidence about particular briefings with
11 the Crown and with Mr. Miller and
12 Mr. Dangerfield, and I'm not going to get into
13 the specific briefings, you expressed a
14 motivation that you didn't want the Crown to be
15 blind-sided by anything; is that correct? Did I
16 take -- I took those down as your words, I'm
17 hoping I got them correctly, that you were
18 briefing Mr. Dangerfield so he wasn't
19 blind-sided by something coming out in court?

20 A That's correct, ma'am.

21 Q And that, in fact, is part of police
22 responsibility, is to make sure that the Crown
23 has the entire file so that they can
24 appropriately deal with the matter in the courts
25 and before judges and juries; correct?

1 A I can't argue with that.

2 Q And in fact, we know that this is
3 pre-Stinchcombe at this time, as the
4 investigation goes on. But even in those days
5 you indicated that the practice was that the
6 police reports and statements and material went
7 to the Crown. And I just want to get into, for
8 the Commissioner who may not understand the
9 Winnipeg Police system at that time, the type of
10 reports that were generated and, in particular,
11 references he is going to hear to the pinks.

12 A Yes.

13 Q All right. And it would be fair to say at that
14 time standard Winnipeg Police Service forms, the
15 prosecutor's information sheets, supplemental
16 reports, were carbonless forms that contained
17 four copies. Is that correct?

18 A That's correct.

19 Q There was a white on the top, and then beneath
20 the white a yellow, a green and a pink copy?

21 A Correct.

22 Q And each of those copies was designated with a
23 specific purpose. The white went to the Bureau
24 of Police Records; correct?

25 A Correct.

1 Q And ultimately the pink copy would be removed
2 from all of the police reports and sent to the
3 Crown?

4 A Yes.

5 Q And those pinks would be, as I understand it in
6 that time, collected, usually in a reader's
7 office, and then delivered to the Crown
8 Attorney's office in a general bundle, or in
9 some cases, with a major case, delivered
10 directly to the Crown Attorney involved. Is
11 that right?

12 A Yes, quite often, yes.

13 Q And during this period of time I think it would
14 have been fair to say that there were fewer
15 Crowns than there are today in Manitoba, fewer
16 police officers, and there was more regular
17 police to Crown contact with respect to major
18 investigations than you would have now?

19 A Yes.

20 Q And on those occasions when something happened,
21 in 1990/91, it wouldn't be uncommon for the
22 investigator or supervisor on the file to pick
23 up the phone, phone the assigned Crown attorney
24 and advise them whatever was going on. That
25 wasn't an uncommon practice in those days?

1 A Certainly not.

2 Q It is a practice you now know has changed,
3 though. Now material would be reduced into a
4 report, and the report forwarded to the Crown,
5 correct? That's a practice that's definitely
6 changed over the years?

7 A Absolutely.

8 Q It would also be fair to say that if a Crown
9 wanted something, for example, the notes of a
10 particular member, and I'm going to -- for
11 example, in this instance, Sergeant Anderson, it
12 was a practice that they would often just pick
13 up the phone and phone the member and say, I
14 need your notes, please send them to me?

15 A Quite often, yes.

16 Q So that also wouldn't be something unusual
17 during this time period for the Crown to contact
18 the officer directly and ask for material that
19 they required?

20 A Correct, ma'am.

21 Q And again, that's something that has decreased
22 in the years to now. Now there is a formal
23 request system, material comes in and there is a
24 formal response system for those requests. So
25 that practice has also changed since this time

1 period?

2 A Yes.

3 Q And yesterday you were asked about a number of
4 particular items and whether it would be
5 preferable or correct if a contemporaneous
6 report or notes would have been done. And I
7 think you fairly indicated a number of times
8 that in most cases that would have been the
9 appropriate practice, certainly it would be
10 absolutely the appropriate practice now, but it
11 obviously would have been better had notes or a
12 report been prepared contemporaneously on a
13 number of things in this file. I think that's a
14 fair statement to make, and you made it;
15 correct?

16 A Sometimes I know not what I say, my lord, but I
17 think she is correct.

18 Q Sometimes, though, and in this particular case,
19 and I'm not going to go through specific
20 instances, when the Crown was there at a
21 particular event, for example, the meeting that
22 I have just referred to, it would be, in your
23 view, little practical reason to generate a
24 report when the Crown is standing in the meeting
25 and he has access to the same information that

1 you've just heard, correct? Practically
2 speaking, to give the Crown information they are
3 already aware of, the generation of a report
4 seems --

5 A Well, the Crown is, I mean, it is obvious even
6 in this province, the Crown is in charge of the
7 conduct of the prosecution in any matter. And
8 should there be certain aspects of the
9 investigation he needs clarification on, pick up
10 the phone or send a memo or whatever. And I see
11 in some cases it was questions generated, but
12 they were generated from Mr. Brodsky to the
13 Crown. And we tried to assist the Crown in
14 responding to those questions.

15 Q But I'm talking about, let's take a specific
16 meeting then, let's go to tab 24 again. I don't
17 believe that's a meeting or an instance that was
18 covered by either of my learned friends, and
19 that's the meeting of April 29th of 1991.

20 A Yes.

21 Q And that's the meeting that we have just talked
22 about, where you were upset, and Mr. Miller,
23 Mr. Orr, the parties that I have already
24 referred to were present at the meeting. And we
25 know that there was no report generated by you

1 of that meeting. And I'm just saying,
2 practically speaking, to generate a report to
3 advise a Crown who was standing at the meeting
4 seems -- to me the practicality is limited;
5 correct?

6 A It never occurred to me. Mr. Miller was there.
7 If he needed something more I would have
8 provided him.

9 Q All right. And there was nothing to stop
10 Mr. Miller, or in the cases where you were
11 dealing with some other Crown, to generate their
12 own memo to file about the events of the
13 meeting?

14 A I would hope so, sir, yes -- or ma'am, sorry.

15 Q It is all right.

16 And certainly there was nothing to stop any
17 of the Crowns, as you have said, from contacting
18 you and saying, Staff Sergeant Vandergraaf,
19 could you put together a report on that meeting,
20 I know I was there, but I would prefer it to
21 come from the police service?

22 A Yes, it is quite common these days I think.

23 Q Now, I put to you, based on what we know of what
24 happened with the negotiation, it would have
25 been quite difficult for you to put together a

1 report that detailed what was going on during
2 the negotiations, because you didn't know?

3 A That's exactly right, ma'am.

4 Q Have you ever, in your career, had an instance
5 where the Crown contacted you after reviewing a
6 report and asked you, or asked for
7 clarification, expansion, further investigation,
8 or just suggested to you that you or someone
9 under your command got it wrong in the report?
10 Have you ever had a Crown contact you --

11 A Oh, absolutely.

12 Q Did you ever have a Crown contact you in this
13 particular case and say, we need some additional
14 reports, we need clarification on this issue, we
15 think you got it wrong in this report?

16 A No, ma'am.

17 Q There is nothing to stop them from doing that?
18 You would be open to that?

19 A Certainly, we like to follow the direction of
20 Manitoba Justice.

21 Q Did anyone during this process, on behalf of
22 Manitoba Justice, ever contact you, or are you
23 aware of them contacting anyone at the Winnipeg
24 Police Service and asking you to obtain a copy
25 of the RCMP arson report for them?

1 A No, ma'am.

2 Q And based on what you have said both yesterday
3 and today, I would take it that if you received
4 such a request, you would have acted on it? You
5 would have attempted to get them a copy of that
6 report; correct?

7 A Correct.

8 Q You indicated in your evidence that, and again I
9 tried to take this down as exact as I could, so
10 if I didn't, you will correct me, I know, Staff
11 Sergeant Vandergraaf. You said, and the tense
12 is a little off, but you said in relation to a
13 question, you didn't know at which point
14 notebooks had been provided. Do you recall
15 saying that?

16 A Where did I say that yesterday?

17 Q You were discussing the notes of Anderson and
18 Paul in relation to the admission, and you said
19 you didn't know at which point notebooks had
20 been provided. That is as I wrote down your
21 evidence. Now, if I have got it --

22 A Provided to the Crown?

23 Q That is what my question is, provided to who?
24 And did that mean you were unsure if they had
25 been provided or you weren't -- or you were sure

1 they had been provided or --

2 THE COMMISSIONER: I think the context of the
3 questioning was, would notebooks in the normal
4 course, copies of the notebooks be forwarded to
5 the Crown when you are sending your report to
6 the Crown Attorney. Was that the context?

7 MS. CARSWELL: No, it was later on,
8 Mr. Commissioner, which is why I took note of
9 it. But it was in relation to, I believe
10 Mr. Code's questioning on disclosure. And
11 again, I write as fast as I'm able, so if I have
12 got it wrong, I'm hoping this witness will
13 correct me. Which is why I'm saying, do you
14 recall saying that or did I perhaps just
15 misstate what you took, as an answer?

16 THE WITNESS: The latter part, I think you are
17 mistaken.

18 BY MS. CARSWELL:

19 Q All right. That's fine. It won't be the first
20 and I am sure it won't be the last.

21 Certainly, if you look at tab 31, which is
22 the request of Mr. Brodsky on February 7th of
23 1991, to Mr. Lawlor, and I'm going to go to
24 point 16, which is at the bottom of page 2, and
25 it relates to the contacts with Zanidean.

1 A Yes.

2 Q And I'm not going to suggest to you that the
3 contacts were provided. We know that the
4 notebook contacts do not appear to be provided
5 to Mr. Brodsky. Would it be, in your view, a
6 reasonable request that the Crown would have
7 suggested, please provide the notebooks of all
8 of the officers who dealt with Mr. Zanidean,
9 given that the request is,

10 "I would like a record of all his contacts
11 with the police, whether by way of formal
12 statement or written notification in a
13 police officer's notebook."

14 A Yes, perhaps.

15 Q Do you recall receiving a request of that type?

16 A No.

17 Q If you turn over to tab 33, and I'm going to
18 deal with the second page of that tab. And this
19 is a letter, again, from Mr. Brodsky, this time
20 to Mr. Dangerfield with a list of requests. If
21 you look at page 2, there is the material that
22 Commission Counsel referred you to yesterday.
23 Number 9,

24 "What do the Winnipeg Police Service have
25 on the fire in Swift Current and the fire

1 at Pacific and the fire at Shafik Kara's
2 shop?"

3 And I note that you looked a bit surprised
4 yesterday when you were advised that Constable
5 Burton had indicated that he had sent his entire
6 report to the Winnipeg Police Service. I take
7 it then, from the expression that I noted, that
8 you never saw that report?

9 A I did not, ma'am.

10 Q I can tell you that I wasn't able to locate the
11 entire report in Winnipeg Police Service
12 materials, but certainly -- if exhibit 1 could
13 be placed before the witness, Madam Clerk?

14 I know you haven't seen these documents,
15 Staff Sergeant, and it is not going to be a lot
16 for you to take a look at, but if you could open
17 to tab 28 and 29? This is exhibit 1, Inspector
18 Burton and Ferguson material.

19 THE COMMISSIONER: Did you say tab 8 and 9?

20 MS. CARSWELL: I said 28, Mr. Commissioner, and
21 tab 29 of A, not of the B tab.

22 BY MS. CARSWELL:

23 Q What we have is -- sorry, 29 and 30, I misspoke,
24 tabs 29 and 30.

25 What we have at tab 29, and I only want you

1 to look at this, is a notation in now Inspector
2 Burton's continuation report dated December 14
3 of '90, you see that, 90/12/14?

4 A Yes.

5 Q And it says,

6 "A copy of this file and file 88...",

7 that's another arson file,

8 "...are being forwarded to Sergeant Ian

9 Mann of the Winnipeg PD arson unit."

10 Do you see that?

11 A Yes.

12 Q If you turn over the tab to tab 30, you will see
13 that this is a copy of a letter from the Swift
14 Current detachment, directed to the Winnipeg
15 Police Department, which indicates that he would
16 be attaching the file; correct?

17 "Please find copies of our two

18 investigations...",

19 is the second sentence?

20 A Yes.

21 Q Did you ever see this letter?

22 A I did not.

23 Q Thank you. Certainly by this time, you can see
24 from that letter that Corporal Burton or
25 Constable Burton, as he was then, was aware that

1 Sergeant Anderson was involved. He references
2 him in the first paragraph?

3 A Yes.

4 Q Yet he directs the material to Mann at arson.
5 Do you see "Attention Sergeant Ian Mann"?

6 A Yes.

7 Q Thank you. I'm finished with this book.

8 Mr. Code took you yesterday to a couple of
9 tabs, tab 44 and 45, which were memoranda
10 prepared by Mr. Brodsky. These are in exhibit
11 6B, Mr. Commissioner.

12 A Volume 2?

13 Q Volume 2.

14 A Tab 44?

15 Q Yes, 44, 45. And he put to you that it appeared
16 that these documents supported your view that
17 Crown Dangerfield had a level of knowledge of
18 the issue because Mr. Brodsky notes that he
19 discusses it during the pre-trials?

20 A Yes.

21 Q Is that correct?

22 A That's correct.

23 Q Subsequent to these pre-trial participations,
24 which we know are the 22nd of May, do you recall
25 getting any telephone call, memorandum, anything

1 from anyone at the Crown Attorney's office
2 involved in this case, asking you for further
3 information on these issues, the Swift Current
4 arson in particular and the immunity?

5 A No, ma'am.

6 Q And are you aware of anyone else in your unit
7 receiving such a request?

8 A Not to my knowledge, ma'am, no.

9 Q In fact, we know that within four days after
10 this occurs, these pre-trials occur, four or
11 five days, depending on what time of night you
12 are talking about, May 26th or 27th is when we
13 have the incident at the Public Safety Building
14 where Mr. Dangerfield is present, Mr. Miller is
15 present, Zanidean has been brought back from
16 Calgary, and Mr. Kovnats is there, and there is
17 a discussion about Mr. Kovnats', I'm going to
18 call them, demands on behalf of his client if he
19 intends to testify?

20 A Correct, ma'am.

21 Q And Mr. Dangerfield is there to hear this first
22 part, which you heard, and I take it was fairly
23 loud out in a more public area?

24 A Yes.

25 Q After that meeting, did you receive any further

1 requests from anyone at the Crown's office,
2 Mr. Lawlor, Mr. Dangerfield, Mr. Miller, asking
3 for a further report on the status of the
4 immunity discussions, or the Swift Current
5 situation, or the financial agreements to be
6 reached?

7 A No, ma'am, we did not.

8 Q Finally, and I hope I do mean finally,
9 Mr. Lockyer put something that Sergeant Orr said
10 to you about police services wanting happy
11 witnesses. And I take it that that's not
12 particular to this witness. Generally speaking
13 police officers would like to keep the witnesses
14 happy so that they will come to court when
15 required and give the evidence that they are
16 going to give. Would that be a fair, common
17 sense assessment of any situation?

18 A Yes, that's correct, ma'am.

19 Q And I put it to you that if you look at this
20 objectively, you didn't do a very good job of
21 keeping Mr. Zanidean happy, did you? You didn't
22 give him what he wanted, you had no power to
23 give him what he wanted. You yelled at him and
24 lost your temper with him on at least one
25 occasion that we know about. You wouldn't give

1 him anything but protection. You ultimately
2 arrest him, drag him back from Calgary to
3 Winnipeg, you in the sense of Winnipeg Police
4 Service, and you end up putting him in a hotel
5 room and restrict his freedom. I suspect, and
6 we have heard, he wasn't too happy with the
7 Winnipeg Police Service, was he?

8 A He was not, ma'am.

9 Q So you didn't keep him a happy witness then?

10 A No. How happy he was wasn't a concern to me,
11 necessarily. Our view of it was we wanted to
12 ensure his appearance in court.

13 MS. CARSWELL: Thank you. Thank you,
14 Mr. Commissioner.

15 MR. WOLSON: I just need to get some books, sir.

16 THE COMMISSIONER: Certainly, Mr. Wolson.

17 MR. WOLSON: Do you want me to start now?

18 THE COMMISSIONER: Yes, I would. We have seven
19 minutes, so if we could. If you need a break at
20 any time, please don't hesitate.

21 THE WITNESS: Thank you, I appreciate that.

22 BY MR. WOLSON:

23 Q Staff Sergeant Vandergraaf, by the time 1990
24 rolled along, you had been a policeman for about
25 18 years?

- 1 A Correct, sir.
- 2 Q And for about 10 of those years, as you told us
3 before, in major crime?
- 4 A Yes.
- 5 Q Now, one of the problems with the unit that you
6 were in, major crime, is that it wasn't
7 dedicated only to homicide, was it?
- 8 A No, sir, it wasn't major crime at that time, it
9 was called robbery/homicide essentially.
- 10 Q Was it dedicated only to robbery and homicide,
11 or did it do other cases?
- 12 A Well, that's the confusion. No, any serious
13 crime in the City of Winnipeg had to come
14 through our office. We had to be notified and
15 make a decision whether or not we would
16 investigate those kinds of crimes personally.
17 It could be kidnappings, robberies, rapes.
- 18 Q So all of these cases may have been handled by
19 your unit?
- 20 A All of them were at any given time, yes.
- 21 Q So in terms of the focus, you would have had a
22 number of different cases going on at one time?
- 23 A Oh, I hated that system, yes. There was lack of
24 focus on homicides.
- 25 Q And that system has changed, at least by the

1 time you left, that there is a dedicated
2 homicide unit?

3 A I lobbied with the department to change the way
4 we were doing things to have a separate homicide
5 squad.

6 Q It is that way now, to your knowledge?

7 A Yes. I was instrumental in implementing those
8 changes.

9 Q Now, I don't know whether the Commissioner knows
10 this, but Winnipeg, for a city of its size, has
11 had a lot and does have a lot of murders on an
12 annual basis?

13 A Correct, sir.

14 Q You may be working, just on homicides
15 themselves, on a number of different cases at
16 one time?

17 A It is possible, sir, yes.

18 Q You had senior detectives and junior detectives
19 working in robbery/homicide at the time, 1990?

20 A Yes.

21 Q Now, in an ideal world, with the benefit of
22 hindsight, you would say that, particularly of
23 what we know now about this case, that it would
24 have been a perfect practice to document
25 everything done by everybody in notes and

1 supplemental reports, so that it was all nailed
2 down for review at a later time. You would
3 agree with that statement, with the benefit of
4 hindsight and in a perfect world?

5 A Certainly, sir.

6 Q Now, I don't know whether you have sensed this,
7 but it is my sense that, either by inference or
8 otherwise, it has been suggested that the lack
9 of supplemental reports or the lack of notes is
10 some kind of cover-up by you or any officer
11 working for you. Is that at all possible, in
12 your opinion?

13 A Nonsense, sir.

14 Q The fact that if a supplemental was not made
15 that would otherwise be good police practice,
16 there was no sinister motive in that regard, was
17 there?

18 A Certainly not, sir.

19 Q Now, I want to take you back to 1990, if you
20 will, please. You were an acting Staff
21 Sergeant, true?

22 A True.

23 Q You were one of three shifts?

24 A True.

25 Q There would be three, either acting or Staff

1 Sergeants; one for each shift?

2 A True, sir.

3 Q And did you always work with the same
4 detectives, or were there times when either you
5 had days off, or they had days off, or other
6 people were involved in the mix? For instance,
7 did you always work with Anderson and Paul when
8 they were working?

9 A No, I can't -- I don't necessarily know for
10 sure. I can't remember who the shift was. I
11 worked with all of these guys at any given time
12 on different shifts. So at that particular
13 time, I don't know if they were my shift or the
14 other guy's shift. But I worked closely with
15 all of the guys anyway.

16 Q Who was above you, was that an inspector?

17 A Inspector Randy Bell.

18 Q Now, you were a hands-on guy, there is no
19 question about it, you were involved in the
20 investigations?

21 A Correct, sir.

22 Q And I know Randy Bell, I have known him for many
23 years, he too was an experienced homicide
24 investigator in his day, wasn't he?

25 A Correct, sir.

1 Q And you would say, I take it, that he was a
2 hands-on inspector as well, in terms of knowing
3 the case that you gentlemen or ladies were
4 working on at the time?

5 A That's correct, sir.

6 THE COMMISSIONER: Mr. Wolson, it is about 12:30
7 now, if this is convenient?

8 MR. WOLSON: It is 12:29:31 and that is fine. I
9 notice there is a clock here, so that's perfect,
10 we can break.

11 THE COMMISSIONER: I saw you take a deep breath,
12 so I thought I would take the opportunity.

13 MR. WOLSON: Thank you.

14 THE COMMISSIONER: We will resume at
15 2:00 o'clock.

16 MR. CODE: Perhaps I can take the opportunity,
17 while we have got ten seconds left on our new
18 digital clock here, to say in terms of the
19 schedule of next week, I think we have consensus
20 from all parties that what I call the Wolson
21 proposal, that we slightly change our sitting
22 schedule to cut 15 minutes off the lunch recess
23 and sit 15 minutes extra at the end of the day,
24 and then on Thursday sit straight through to
25 1:30, appears to be agreeable to everybody on

1 one very strict caveat. And that is if we are
2 going to take off that Thursday afternoon at
3 1:30 that we not take it back at any time. If
4 that's agreeable to the Commission, and Mr.
5 Giasson tells me it is agreeable to the staff,
6 who I assume he has consulted on these
7 matters --

8 THE COMMISSIONER: He told me that he had
9 consulted with the reporter, and she is the
10 person who has the most difficult role to play
11 in the hearing room. So if everyone else is
12 agreeable, I'm more than agreeable, because it
13 certainly suits me, it is a preferable schedule
14 for me.

15 MR. CODE: So we could start that regimen next
16 week, and I will tell Mr. Giasson to post
17 notices to that effect.

18 THE COMMISSIONER: Fine. Thanks everyone.

19 THE CLERK: All rise. The Commission of Inquiry
20 is adjourned until 2:00.

21 (Proceedings recessed at 12:32 and
22 reconvened at 2:00 p.m.)

23 THE CLERK: All rise. This Commission is
24 Inquiry is now recommenced. Please be seated.

25 MR. WOLSON: I notice there is a billiards

1 competition going on in the building and I'm
2 sure some of my colleagues would rather be
3 there, but here we go again.

4 THE COMMISSIONER: I was noticing everybody with
5 their cues over their shoulder.

6 MR. WOLSON: It was either that or a bow and
7 arrow, but think it was a cue.

8 BY MR. WOLSON:

9 Q Now, Mr. Vandergraaf, we were at a point where
10 you were talking about Inspector Randy Bell, and
11 you advised the Inquiry that he was a very
12 skilled homicide investigator, and a hands-on
13 kind of guy, as you were. You would agree with
14 that?

15 A Thank you, sir, yes.

16 Q And I take it that, if necessary, you were not
17 afraid to go upstairs to the powers that be in
18 the safety building, the higher-ups, and seek
19 their advice? That would happen from time to
20 time?

21 A The powers that be, the Deputy and the Chief?

22 Q Yes?

23 A Not necessarily, no.

24 Q Let me take you back then to this particular
25 case, the Driskell case. Decisions were made by

1 you and Bell at times, and meetings with your
2 detectives who were working for you?

3 A That's correct, sir.

4 Q There was a meeting on a daily basis, sometimes
5 more than one, in terms of developing a course
6 of strategy, that would happen?

7 A Certainly, it was always ongoing.

8 Q And those meetings where you would advise people
9 to do things, who were working for you, the
10 detectives to do things, those were sort of
11 informal meetings and there were verbal
12 instructions, not written?

13 A That's correct, sir.

14 Q Now your relationship with the Crown was a good
15 one?

16 A It certainly was, sir.

17 Q George Dangerfield was a Crown who did a lot of
18 homicide cases?

19 A Absolutely, sir.

20 Q And you would liaise with him if you thought it
21 were important on a case?

22 A I would, sir, yes.

23 Q And you told the inquiry that you did so on this
24 case?

25 A I did, sir, yes.

1 Q Decisions were never made in a vacuum, on your
2 shift. They were, as you indicated, they would
3 be as a consequence of discussing strategy and
4 what to do and who should do it?

5 A That's correct, sir.

6 Q And you knew what was going on?

7 A Yes, I suppose, sir.

8 Q Now, you had indicated in your interview with
9 Mr. Code, when you were interviewed, that the
10 reports, the sups would come to you, and you
11 would read them. That was pretty standard,
12 wasn't it?

13 A The sups would come to me. If you noticed in
14 some of the documents provided to me, other
15 Sergeants, Staff Sergeants signed them off after
16 having read them, and it would be placed into
17 the file, and I would apprise myself of the
18 contents when I got it.

19 Q If you thought that a sup should be forthcoming
20 and one of your detectives hadn't made a
21 supplementary report, you would instruct him to
22 make one? That would be something you would do?

23 A Normally, yes.

24 Q And not only would you instruct them or could
25 you instruct them, but instructions could come

1 from other people as well?

2 A That's correct.

3 Q From the Crown, or from Bell, or from whomever?

4 A That is correct, sir.

5 Q That is from whoever had that authority?

6 A That's correct, sir.

7 Q Now, nobody has asked you about the character of
8 Tom Anderson. And you being his Staff Sergeant
9 or acting Staff Sergeant, you had worked with
10 Tom Anderson for some, I think three years at
11 the time of the Harder investigation. He
12 started in late '86, I think November of '86,
13 and I think this was now into 1990?

14 A It sounds correct, sir.

15 Q So that the Commissioner knows the nature of the
16 person that we are dealing with, what can you
17 tell us about the character of Tom Anderson, as
18 you knew him? What do you say about his
19 honesty?

20 A Tom Anderson has always been one of the most
21 honest investigators that I have ever seen. He
22 oozed integrity. For example, overtime was
23 always a big issue around there and, you know,
24 things of that nature never concerned him. He
25 was concerned with the job at hand. He showed a

1 lot of integrity, whereas some of the other
2 detectives, you are always watching them on
3 overtime and that type of thing. He had the
4 highest integrity, in my opinion.

5 Q Was Tom Anderson the type of detective who would
6 intentionally deceive somebody?

7 A Absolutely not, sir.

8 Q Could you imagine Sergeant Anderson lying to you
9 or anybody else?

10 A Absolutely not, sir.

11 Q Would you believe for a minute that Tom Anderson
12 would not intentionally make a sup so as to
13 withhold evidence from the Crown?

14 A Not for a second, sir.

15 Q Would you think for a second that in an effort
16 to hide information from the Crown, he would put
17 something in his notes and not make a sup on it?
18 Is that something that you could possibly
19 imagine?

20 A Really not, no.

21 Q No. Would you expect him to lie to you about
22 the results of phone calls with Constable
23 Burton? That would never happen, would it?

24 A I would not expect him to lie.

25 THE COMMISSIONER: I think if you keep it in the

1 general rather than the specific.

2 MR. WOLSON: I asked for the specific because
3 those are the types of questions that Staff
4 Sergeant Ferguson was asked, in particular,
5 about the Constable. But I have your point.

6 THE COMMISSIONER: Okay, thank you.

7 BY MR. WOLSON:

8 Q Al Paul, honest man, man of integrity?

9 A Yes, absolutely.

10 Q Now I want to ask you about George Dangerfield,
11 because you had had a number of dealings with
12 him over the years?

13 A Yes.

14 Q He was known to you to be a very competent,
15 excellent prosecutor?

16 A Absolutely, sir.

17 Q He knew his case, when you worked with him?

18 A Absolutely.

19 Q He knew what the case was all about?

20 A Absolutely, sir, yes.

21 Q And he knew his witnesses, did he not? That is
22 if the witnesses were problematic, that's
23 something that Mr. Dangerfield would know, and
24 you would provide him with information if there
25 were problems?

- 1 A Yes, sir.
- 2 Q Now, Zanidean, in particular, there were issues
3 about his protection; true?
- 4 A Yes.
- 5 Q There were issues about a charge from an outside
6 jurisdiction, Swift Current; true?
- 7 A Well, charges, an investigation ongoing.
- 8 Q Quite so, you have corrected me, an outside
9 investigation?
- 10 A Yes.
- 11 Q Those were problem areas potentially that I'm
12 assuming you would have briefed George
13 Dangerfield about. There is no doubt he knew
14 about the outstanding allegations in Swift
15 Current, first of all?
- 16 A Yes.
- 17 Q The outstanding investigation?
- 18 A Yes.
- 19 Q And in terms of Mr. Miller, he was actually the
20 point man for the Crown dealing with David
21 Kovernats?
- 22 A That is correct.
- 23 Q And issues regarding the Swift Current
24 investigation were very much in the forefront
25 there?

- 1 A They were, sir, yes.
- 2 Q And you would expect, I take it, that the Crown
3 is the Crown, so that you would have expected, I
4 assume, for there to be information passing from
5 Mr. Miller to Mr. Dangerfield?
- 6 A I would have expected that, sir, yes.
- 7 Q Now, this case was a case of a direct
8 indictment?
- 9 A That's correct, sir.
- 10 Q The Driskell case?
- 11 A That's correct.
- 12 Q And because there was no preliminary inquiry,
13 you expected that things like policemen's notes
14 would be provided to the Crown? You expected
15 that?
- 16 A At some point in time, yes.
- 17 Q Particularly for subpoenaed witnesses, for
18 subpoenaed police witnesses?
- 19 A Absolutely, sir.
- 20 Q Now, we know that Sergeant Paul testified,
21 obviously he did so under subpoena, those are
22 the rules, aren't they?
- 23 A Yes.
- 24 Q He would have testified with a subpoena. And I
25 know from the disclosure that Sergeant Anderson

1 was also subpoenaed?

2 A I don't recall but --

3 Q You will accept that for the moment?

4 A Yes, I will.

5 Q So in that regard, you would agree with me that
6 their notes furnished to the Crown is what would
7 have occurred on the direct indictment? You
8 would expect that?

9 A Yeah, I would have -- if the Crown required
10 them, yes.

11 Q Let me ask you this: When one of the officers
12 testified, and we know that Sergeant Paul
13 testified, you would expect him to have his
14 notes with him?

15 A Absolutely.

16 Q That's common place for a detective, is it not?

17 A That's correct, sir.

18 Q And you would know from that, having testified
19 many times, that once you have your notes with
20 you there, they are open for the defence to look
21 at them, there is no doubt about that?

22 A That's correct, sir.

23 Q Now, from the time that Mr. Zanidean came
24 forward and divulged that he had information
25 regarding Mr. Driskell being involved in this

1 homicide, you knew from the very beginning that
2 protection of Zanidean was going to be an issue
3 of some kind, didn't you?

4 A Absolutely, sir.

5 Q Because he was providing some evidence against
6 an accused, or a potential accused, who you
7 believed had done away with a witness, potential
8 witness in a case?

9 A That is correct, sir.

10 Q So, the issue of protection was something that
11 was in the forefront at an early stage?

12 A It was, yes.

13 Q And I know that you eventually became the
14 officer, or one of the officers with the police
15 service that dealt with witness protection
16 issues. You did that at a later time, after
17 1990, is that so?

18 A Yes, it is.

19 Q And this is one of your first cases dealing with
20 formal witness protection with the RCMP?

21 A Yes, that would be fair.

22 Q And your evidence further is that Mr. Miller
23 encouraged you to consider enrolling both, or
24 applying for both Mr. Gumieny and Mr. Zanidean
25 into the formal Witness Protection Program?

1 A He did, sir, yes.

2 Q You are aware that Zanidean came to the police
3 attention through Crime Stoppers. You were
4 aware of that? That is he had called Crime
5 Stoppers, and ultimately Officers Paul and
6 Anderson eventually met with him. You are aware
7 of that?

8 A That is correct, yes.

9 Q And you are aware that on -- that was
10 October 9th, by the way -- on October the 10th,
11 Officers Paul and Anderson interviewed, at the
12 police station they interviewed Zanidean, when
13 he made the admission that he was involved with
14 Driskell in the arson in Swift Current. You
15 became aware of that?

16 A Yes.

17 Q Although there is no supplemental report on it,
18 you were told about that admission right away by
19 your two sergeants, Paul and Anderson?

20 A I was, sir, yes.

21 Q While you didn't examine their notes on the
22 point, there was a disclosure verbally by them
23 to you?

24 A There was, yes.

25 Q And you viewed that, as you've indicated, as a

1 positive development, because it brought
2 Zanidean and Mr. Driskell together at least, so
3 it added some credibility to the statements that
4 Mr. Zanidean was making. It was a positive
5 development, wasn't it?

6 A That was my view, yes.

7 Q Did you direct that a sup should be prepared on
8 this disclosure? And I'm assuming that you
9 didn't, because there is no sup; would that be
10 fair to say?

11 A If I had directed a sup, there would have been
12 one. I may not have directed them.

13 Q Let me ask you, and this is a good point to do
14 that, the homicide file itself, that's a file
15 that's kept at the safety building; true?

16 A Yes.

17 Q And the file itself, I'm lead to believe, and
18 correct me if I'm wrong, was a huge, the
19 homicide file was a huge file? It was quite
20 thick?

21 A It was growing, yes.

22 Q By the time it was completed in this case, it
23 was quite a massive file?

24 A Yes, I think it probably was.

25 Q You don't have the whole file today?

1 A No, sir.

2 Q We have a snapshot of the file, at least you
3 have a snapshot of the file contained in some of
4 the materials?

5 A Yes, sir.

6 Q Do you know how long the files are kept for, the
7 homicide files? Do you know whether they are
8 destroyed or they are --

9 A At that time I'm not sure. I know during
10 subsequent years, we came to an understanding
11 with Manitoba Justice that all exhibits and
12 files would be retained indefinitely.

13 Q At the time of Harder, do you know if that
14 existed?

15 A I don't know.

16 Q Would I be correct in stating that in a homicide
17 file there would be all kinds of loose papers
18 where notes would be made, that would exist in a
19 homicide file, ordinarily?

20 A Quite often.

21 Q Do you know today whether we have all of the
22 sups, do you know that?

23 A No, sir, I don't know, I don't know what we
24 have.

25 Q Let me ask you straight up: Do you think for a

1 minute the fact that this disclosure is not in a
2 sup that it was an intention to hide it?

3 A Absolutely not, sir.

4 Q If one wanted to hide it, it wouldn't appear in
5 a policeman's notes, would it? You don't make a
6 note of something in an effort to try and hide
7 it. There is no doubt about that, is there?

8 A That's correct.

9 Q And once there were two mentions of it, there
10 were two utterances of it from Zanidean that we
11 are aware of, the 10th and the 29th of October,
12 you became aware of both of them. That is when
13 Zanidean had made some statement about Swift
14 Current, you were advised of it by your two
15 sergeants?

16 A I was.

17 Q And as a result of the disclosures, you then had
18 an outside, potential outside police matter,
19 that is Swift Current; true?

20 A Yes.

21 Q And you had a homicide investigation going?

22 A That is correct.

23 Q Would you necessarily make, or direct a
24 supplemental be prepared for an outside police
25 matter?

1 A Direct it?

2 Q Would you direct that a sup be prepared if it
3 were an outside police matter, as long as -- go
4 ahead?

5 A Well, in this situation, we were kind of dealing
6 with the two issues somewhat separate and apart,
7 and keeping the Crown apprised of it. The issue
8 at Swift Current seemed to be long from being
9 resolved. And I take it that's why the said
10 supplementaries that you are talking about
11 ultimately may have not been done, I don't know.

12 Q But you did instruct, and it was your
13 instruction to Sergeant Anderson to call Swift
14 Current?

15 A Yes.

16 Q You had met Zanidean yourself at some point
17 while he was being interviewed, or at some point
18 when Anderson and Paul had talked to him, you
19 had met him?

20 A I think I probably met him, yes.

21 Q Would you agree with this statement that at no
22 time, prior to ultimately being told at the end
23 of his evidence, at no time did you or your
24 brother officers, to your knowledge, offer
25 Zanidean immunity for Swift Current?

1 A Absolutely not, sir. Our whole fundamental
2 approach in those issues was witness protection
3 and we were concerned in so far as that issue
4 may very well be construed as a promise of
5 favour. And I asked Sergeant Anderson, when you
6 talk to Swift Current, there should not be any
7 pressure put on them, they were to deal with
8 this matter in due course on their own.

9 Q Let me ask you this: The call to Swift Current,
10 we know takes place, and there is a question as
11 to the date, but I don't think it is that
12 material. It is either the 27th of October or
13 the 30th of October. And you were questioned
14 about that in particular, why the delay in
15 calling Swift Current? I think my friend
16 Mr. Lockyer asked you about that. If I were to
17 suggest that there was no question you were
18 going to call Swift Current, you would agree
19 with that?

20 A Absolutely.

21 Q You wanted Zanidean to wear a wire, if he would,
22 or a body pack, and see whether he could gather
23 some evidence from Driskell. That was something
24 that you wanted?

25 A Those were investigations ongoing, yes.

1 Q If you had phoned Swift Current, let's say on
2 October 10th, the same day as the disclosure by
3 Zanidean, what may have happened was Swift
4 Current may have said they are going to arrest
5 him. That would be something that would be
6 beyond your control, wouldn't it, sir?

7 A That's correct, sir.

8 Q And you weren't -- your instruction to Sergeant
9 Anderson was, don't put any pressure on them, it
10 is their call, obviously; right?

11 A Essentially explain our dilemma, situation.

12 Q It might be that the delay in calling Swift
13 Current was to enable Zanidean to wear the wire?

14 A Absolutely, it was to facilitate continuing
15 investigation, yes.

16 Q Because as I suggested to you a minute ago,
17 Zanidean may well have been arrested by Swift
18 Current. That potential existed in your mind,
19 didn't it?

20 A Well, that and the fact that they may start
21 making inquiries relative to Zanidean. At the
22 very least, yes, it could jeopardize what we
23 were doing.

24 Q Now, Anderson phoned Swift Current on, as I say
25 either the 30th or the 27th of October, the date

1 hasn't firmly been established. And you heard
2 at least part of the conversation from
3 Anderson's perspective?

4 A Well --

5 Q What Anderson was saying, you were there?

6 A Yes, I was standing outside of my office. He
7 was on a phone right directly at the desk, the
8 robbery/homicide desk.

9 Q This wasn't a sales pitch?

10 A No.

11 Q This was a debriefing, if you will, that
12 Zanidean had admitted to an arson in Swift
13 Current with Mr. Driskell. You are aware of
14 that?

15 A That's correct, yes.

16 Q And that Zanidean was a witness in a homicide in
17 Winnipeg?

18 A That is correct.

19 Q And Sergeant Anderson reported to you, and I
20 take it he reported it to you when he got off
21 the phone? There wasn't weeks that went by, he
22 told you right away the results of that call?

23 A Yes.

24 Q And he told you that Constable Burton offered to
25 delay the investigation regarding Zanidean until

1 after the Driskell case in Winnipeg?

2 A Yes, that's correct.

3 Q Words to that effect?

4 A Yes.

5 Q Now, let me take you to tab 16, that would be in
6 volume number 2, and if you would go, please, to
7 part 7 at page 481 in the bottom right-hand
8 corner? So I'm asking you to look at volume 2
9 of the material, tab 16, page 481 at the bottom?

10 A Yes.

11 Q Actually the results of that phone call, to some
12 degree, are put in this application for witness
13 protection halfway through paragraph C?

14 A Yes.

15 Q Constable Burton confirms they are investigating
16 the same; that's the arson?

17 A Yes.

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

22 That's exactly what you were told?

23 A Yes.

24 Q You weren't told that they were going to hold
25 off on the arson investigation, they were going

1 to hold off on Zanidean. That was what you were
2 told, wasn't it?

3 A Yes, that is correct, sir.

4 Q And then that information became, that was the
5 information that was put into the witness
6 protection application which then went to
7 Corporal Orr; true?

8 A Correct.

9 Q Corporal Orr is RCMP?

10 A Correct.

11 Q You were aware, you even asked him at one point
12 to call Swift Current?

13 A That is correct, sir.

14 Q So if the information that is put into the
15 application was wrong, Corporal Orr would have
16 found that out, no doubt about that?

17 A Possibly, likely, yes.

18 Q There is no supplemental regarding that
19 telephone call and your debriefing of it?

20 A There is not, no.

21 Q There is no supplemental of that?

22 A I take it there is not, no.

23 Q And I'm assuming that you didn't direct one be
24 done in particular; you don't recall that today?

25 A No, I don't.

1 Q And that wasn't done for an ill motive at all,
2 was it?

3 A No, it was something that we were going to deal
4 with, but we didn't know what was going on in
5 Swift Current at that point in time.

6 Q Now, if I can take you to volume 1, tab 4, page
7 34 in the bottom right-hand corner, do you see
8 that? Go to 33 actually, the bottom right-hand
9 corner. These are Sergeant Anderson's notes.
10 So tab 4 --

11 A Yes.

12 Q -- and on the right-hand corner, at least in my
13 copy, there is a notation number 33. Do you see
14 that?

15 A At the bottom, yes.

16 Q And turn over the page to 34, this is Sergeant
17 Anderson's note of the call, although it is
18 brief, I might say,
19 "Burton confirmed he is handling."
20 In other words he is handing the case, I assume.
21 "I informed him of our dealings with Ray
22 Zanidean and comment that he and Driskell
23 are responsible for their arson."
24 So Anderson is writing down the gist of the
25 conversation?

1 A Yes.

2 Q It is not in quotation marks?

3 A No.

4 Q "Burton advises no evidence to confirm,
5 but..."

6 And these are the words that my friend
7 Mr. Lockyer questioned you about, I believe,
8 "...but investigation will continue."
9 Do you see those words?

10 A Yes.

11 Q You were advised that the investigation of the
12 arson will continue, but that they are going to
13 hold off pursuit of Zanidean. That was your
14 concern?

15 A That is correct, sir, yes.

16 Q That's the only relevant part that you were
17 interested in. You didn't care whether they
18 investigated the arson in Swift Current, the
19 situation was interviewing Zanidean in Winnipeg.
20 That was the --

21 A Yes, that's correct.

22 Q Again, you asked Sergeant Anderson, in speaking
23 to Burton, not to be aggressive. This was
24 Burton's -- this was Burton's offer, that's what
25 you were advised?

1 A Yes.

2 Q Generally speaking, witness protection -- or
3 just let me back up for one second. While there
4 was no sup about that call, you were advised,
5 true? You were advised of the call?

6 A Yes.

7 Q And ultimately that became something that
8 Mr. Miller was working on, he was working on the
9 Swift Current issue. You knew that?

10 A Yes.

11 Q And Mr. Dangerfield had to know that for obvious
12 reasons, that Mr. Code dealt with you when he
13 examined you, so he wouldn't be blind-sided. He
14 had to know that?

15 A Yes, yes.

16 Q Sergeant Mann, you became aware that Sergeant
17 Mann had raised the issue of Zanidean, you
18 became aware of that?

19 A Yes.

20 Q You didn't know, I'm assuming, that he had the
21 Swift Current file? You didn't know that, I
22 take it?

23 A No, just a letter was my understanding.

24 Q Now, once Swift Current, once Constable Burton
25 had told Sergeant Anderson that Swift Current

1 volunteered to withhold their pursuit of
2 Zanidean until after the Driskell trial, I take
3 it there was no urgency, therefore, to interview
4 Zanidean? That urgency had gone, if there had
5 been one, true? Would you agree with that?

6 A Yes, and the fact that they had already noted
7 his admissions to it. Essentially, I think
8 that's what the RCMP was after, interview
9 Mr. Zanidean. Well, it has kind of been done,
10 he has admitted it during the course of an
11 another interview.

12 Q But once their decision to hold off on Zanidean
13 until later, from your perspective, there was no
14 urgency to have Zanidean interviewed?

15 A No.

16 Q So Mann's involvement then was not particularly
17 relevant or important?

18 A That's right.

19 Q Zanidean hired Dave Kovnats?

20 A That's correct.

21 Q You met Mr. Kovnats, you had him unfortunately
22 at the safety building, and you described that
23 to the Commissioner. You would say of
24 Mr. Kovnats, and I'm not casting aspersions, he
25 is an excitable guy? That's something that you

1 could see in dealing with him, true?

2 A Yes.

3 Q He obviously was trying to do the best he could

4 for his client, but at times you thought he was

5 sort of pushing the matter to the limit?

6 A True, yes, that's true.

7 Q And his demands were many, weren't they? His

8 demands for his client were substantial, they

9 were many?

10 A Yes. Not to us, to Manitoba Justice, yes.

11 Q And that's why you deferred the matter to

12 Mr. Miller, who was naturally going to deal with

13 them?

14 A That's correct, sir.

15 Q If Zanidean, in a document, said that he was

16 offered immunity from the Winnipeg Police

17 Service from the get go, that would be

18 absolutely false?

19 A Absolutely false, sir.

20 Q Now, I want to ask you about, and I think you

21 covered this very well yesterday, your evidence

22 on Corporal Orr in terms of an outstanding

23 investigation being a bar to the Witness

24 Protection Program, your position is it was a

25 practical bar?

1 A Yes.

2 Q And that in a high profile matter like arson, if
3 somebody had to go to court and there had been a
4 change of identity, it would totally foul that
5 up, wouldn't it?

6 A Possibly, yes.

7 Q Well, you had said from the very beginning of
8 dealing with Zanidean, protection was going to
9 be an issue, and you appreciate that?

10 A Yes.

11 Q And your instruction, you told us, was to try
12 and get him in the Witness Protection Program.
13 And I take it that for a number of months that
14 was your goal, get him into the formal program;
15 you would agree with that?

16 A That's correct, sir.

17 Q It is not a question of paying him for his
18 evidence at all, is it?

19 A Absolutely not, sir.

20 Q So, your belief, at least practically speaking,
21 that the outstanding investigation was a bar to
22 Zanidean getting into the Witness Protection
23 Program, some time in April we are advised that
24 Sergeant Anderson called Swift Current again,
25 and that would have been as well on your advice

1 and instruction?

2 A That specific incident, I don't remember when he
3 called again, but likely, yes.

4 Q Well, put this it this way; if Sergeant Anderson
5 were to make calls to Swift Current, they would
6 normally be under your advice and instruction?
7 That's something that you would do in these
8 circumstances?

9 A Yes.

10 Q We are told that it is approximately April the
11 5th that Sergeant Anderson called Swift Current
12 and indicated words to the effect that they were
13 trying to get Zanidean into the Witness
14 Protection Program, but it would be a bar to him
15 getting in if there were an outstanding charge.
16 And we are advised that Constable Burton told
17 Anderson that Swift Current would abandon its
18 pursuit of Zanidean completely, unconditionally.
19 That was reported back to you, wasn't it?

20 A Yes.

21 Q Sergeant Anderson told you this, and you would
22 agree with me that you can't imagine that he
23 would have lied or misstated the situation. You
24 don't believe that for a second, do you?

25 A Not for a millisecond, sir.

1 Q And when he got this information, you asked him,
2 knowing how the RCMP works, you asked Sergeant
3 Anderson to call back in a couple of days and
4 make sure that it was confirmed by the
5 higher-ups in Swift Current?

6 A That's correct, sir.

7 Q And he reported back to you that he had done
8 that, and that was the arrangement, that Swift
9 Current was prepared to abandon Zanidean, but
10 they felt they had a case against some others
11 and they would pursue the others. That's what
12 you were told?

13 A Something to that effect, yes.

14 Q But it wasn't left at that, because you had a
15 conversation in early April, and I'm going to
16 suggest that you wanted Corporal Orr to call
17 Swift Current, RCMP to RCMP, and ensure that
18 that was the arrangement?

19 A Yes.

20 Q I wonder, do you have what is called the Orr
21 book, exhibit 3? If you could just, perhaps you
22 will be given that. Thank you very much, Madam
23 clerk. Would you then turn to tab 13 of exhibit
24 3, the book of documents concerning Sergeant
25 Orr. Are you there, tab 13?

1 A Yes.

2 Q Tab 13 is an entry at 91/04/12; do you see that?

3 A Yes.

4 Q And at 10:55 Sergeant Orr writes,

5 "Call Swift Current detachment further to

6 my call..."

7 he is now referring to an earlier call of the

8 4th of April.

9 "At that time I spoke to Upton."

10 And I don't know that it is necessary to read

11 all of that. But if you go to 11:07, there is a

12 call back on the 12th of April, and this is the

13 information that Sergeant Orr receives.

14 "Swift Current will be concluding their

15 file and Ray Zanidean is NO LONGER WANTED

16 for questioning."

17 Do you see that?

18 A Yes.

19 Q You were told that by Orr?

20 A Yes, I was.

21 Q And that was consistent with what you were told

22 by Sergeant Anderson, no strings attached?

23 A Absolutely.

24 Q And at that time the witness protection formal

25 program was certainly an issue, wasn't it, sir?

1 A It was, sir.

2 Q Now, Mr. Gates, my friend had asked you some
3 questions, Mr. Gates is the gentleman, the good
4 looking gentleman in the third row in the blue
5 suit. He asked you some questions regarding the
6 propriety of immunity on charges and so forth.
7 Do you recall him asking you questions about
8 that?

9 A Yes, I recall, but I don't recall the questions
10 specifically.

11 Q First of all, the investigation in Swift Current
12 was just that, it was an investigation?

13 A That's right.

14 Q It wasn't as if there was a charge in Swift
15 Current which would require Justice to Justice
16 immunity, that didn't exist here. This was an
17 investigation. No charges had been laid?

18 A That is correct.

19 Q You've told us now, having received that
20 information about Mr. Zanidean no longer being
21 wanted for questioning and the pursuit was over
22 of Zanidean, there is no supplemental of that,
23 but you have no doubt that you were given that
24 information?

25 A Absolutely, sir.

1 Q And you have no doubt because it was of some
2 importance on both fronts, the witness's front
3 in terms of when he were to testify, that
4 Mr. Dangerfield was advised of that?

5 A Yes.

6 Q And, of course, Mr. Miller, who was dealing with
7 issues of immunity, had to know that as well,
8 that's common sense?

9 A That's correct, sir.

10 Q Now, I would like to go to tab 41 -- if you put
11 the Orr book aside, at least I'm finished with
12 that -- and go to the second book, tab 41, if
13 you will, second book of documents regarding you
14 and Tom Anderson and Al Paul. So it would be
15 exhibit 6B, are you at tab 41?

16 A Tab 41, volume 2, yes.

17 Q It is the page that we replaced, which is now
18 stapled into that book.

19 A Yes, I have mine.

20 Q Now, there is a response to question 6. You see
21 that and you have been questioned about that?

22 A Yes.

23 Q This response would be, that is when an officer
24 makes a supplemental response, that would then
25 be viewed to make sure that it is satisfactory.

1 You were satisfied that this was an appropriate
2 response, based on what you knew?

3 A I was, sir, yes.

4 Q But you would have expected that the Crown as
5 the Crown, they knew all about the Swift Current
6 matter, you knew that?

7 A Yes.

8 Q If there was anything wrong with that response,
9 you would have expected that would be corrected,
10 no doubt about that?

11 A Yes, that's correct, sir.

12 Q And you dealt with Bruce Miller enough, you
13 would say that Bruce Miller was a man of
14 ultimate integrity, wouldn't you?

15 A No question, sir.

16 Q I want to ask you about the body pack evidence,
17 when Zanidean wore a wire or a body pack so that
18 he could attempt to engage Driskell,
19 Mr. Driskell and some other people in
20 conversation. You were aware of that?

21 A I was, sir.

22 Q When the body packs came back, they would be
23 given to you and you would pass them on to
24 Transcription Services?

25 A Well, not on every occasion, but on many

1 occasions, yes. I have noticed on review of the
2 documents, My Lord, that there were other
3 officers working at that time, supervisors,
4 whoever it was, but I would have had the
5 information left for me.

6 Q Whoever got them would have to send them off for
7 transcription?

8 A Yes.

9 Q And that took what, a week, two weeks to get
10 back?

11 A Easily take a couple of weeks.

12 Q Now, after Zanidean testified, that's when it
13 was resolved, on the information that you had
14 received, and you've told the inquiry about it
15 so I'm not going to take you there, it was
16 resolved that Sergeants Anderson and Paul, after
17 he had testified, would disclose about the
18 results of Swift Current?

19 A Yes, that's correct, sir.

20 Q And the results, as you knew them, were
21 unconditionally that Swift Current was finished
22 its investigation and that was it for Zanidean?
23 That's what you were advised?

24 A That was the premise that I was working under,
25 yes.

1 Q But after he testified, the Winnipeg Police
2 Service still kept him in protection, true?

3 A True.

4 Q And in terms of some questions that you were
5 asked this morning, protection was still an
6 issue, even after Zanidean testified?

7 A Absolutely, sir.

8 Q Because if you weren't interested in protecting
9 the man, and he had run away from you, and
10 protection wasn't a factor, you wouldn't have
11 kept him in a protected situation after he
12 testified. You wouldn't have done that if
13 protection had not been an issue, obviously?

14 A That's right. We felt our obligation to witness
15 protection continued.

16 Q He had been threatened earlier on?

17 A Yes.

18 Q And you became aware, I think you weren't even
19 working at the time, or correct me if I'm wrong,
20 that there was a flare-up after his testimony
21 with Al Paul and he, they got into a verbal
22 dispute at the hotel where Zanidean was in
23 protection. You became aware of that?

24 A I did hear about it, sir, later, yes.

25 Q And there is no question from what you knew that

1 particularly Al Paul and Zanidean, it was tense
2 between them at times? Zanidean was pushing Al
3 Paul, pushing the envelope with Al Paul?

4 A Yes. Al Paul was expressing that he was having
5 some difficulty with him, yes.

6 Q So when Zanidean and Paul had this altercation,
7 this verbal blow-up in the hotel afterwards,
8 that was, to your knowledge, disclosed to the
9 inspector, D.K. Johnson, who was the inspector.
10 You have seen that?

11 A Yes, I have seen it in the documents.

12 Q If there had been a need from an inspector's
13 perspective, and D.K. Johnson, by the way, was
14 also a very experienced investigator?

15 A He was, yes.

16 Q Who had done a number of major cases, he earned
17 his position with a lot of hard work in the
18 field, he was an experienced guy, not just a
19 pushing paper. D.K. Johnson was an experienced
20 homicide investigator himself?

21 A He was more your age, sir, you would know
22 better, but that would be correct.

23 Q He is an older guy.

24 A Yes.

25 Q Now, if there had been -- D.K. Johnson would

1 know if this was something that was thought to
2 be important, there would have been an
3 instruction to prepare a sup at the time. You
4 would say that in confidence, wouldn't you?

5 A Yes, I would think so, if it was felt to be
6 important, yes.

7 Q The fact that he had blown up in the hotel and
8 made comments that he did was consistent with
9 the way that Zanidean was acting in kind of a
10 volatile way at times, wasn't it?

11 A It was, sir, yes.

12 Q So you took it to be that this was just
13 reflective of the nature of the guy, this is
14 just another sort of childish outburst?

15 A I have seen outbursts with witnesses in those
16 circumstances quite regularly, sir, yes.

17 Q Now, at some point in July, we know that Swift
18 Current decided to resume their investigation
19 vis a vis Zanidean. They were always
20 investigating, but now they were turning to
21 Zanidean again, and you knew that?

22 A Yes.

23 Q You were made aware of that?

24 A Yes.

25 Q You were made aware of that because you were

1 briefed by Sergeant Anderson, who had talked to
2 Constable Burton?

3 A Yes, I think so.

4 Q And while you weren't too upset about that
5 decision, there is no question that Sergeant
6 Anderson was. And he explained to you that he
7 had given his word to this man?

8 A Yes.

9 Q And that bothered him?

10 A Yes, it bothered Sergeant Anderson, yes.

11 Q I want to take you to tab 10 of the exhibit,
12 please?

13 A Volume 2?

14 Q Yes, please.

15 A Yes.

16 Q Tab 10 is a seven page letter or report to
17 inspector Ray Johns regarding issues that had
18 come up by way of complaint from Swift Current.
19 You have seen this document before? You have
20 read it?

21 A Yes.

22 Q In your preparation for coming to give your
23 evidence, you have read it because you had these
24 books for a few days at least, and you had
25 reviewed this document?

1 A I did, sir.

2 Q Rather than take you through the whole document,
3 because you have read it, the matters that are
4 stated in there by Sergeant Anderson you believe
5 are true?

6 A I do.

7 Q Based on what you know firsthand?

8 A Yes.

9 Q What you were briefed by Sergeant Anderson at
10 the time?

11 A That's correct, sir.

12 Q And your absolute belief in his honesty and
13 integrity?

14 A I have no question about that, sir, yes. I
15 wasn't working when this was done, and then I
16 recall the complaint coming in, I happened to be
17 in the office. And then I also read this letter
18 some time after it was compiled.

19 Q Many of these, although there were not
20 necessarily -- and we will have to get Sergeant
21 Anderson's evidence on this -- contemporaneous
22 supplementals prepared, or even notes, you are
23 aware of a lot of this content because you were
24 briefed of it at the time?

25 A That's correct, sir.

- 1 Q Body pack evidence -- and I'm close to finishing
2 my examination of you, sir -- the body pack
3 evidence, was there any intent at all in
4 delaying Swift Current obtaining the body pack
5 evidence?
- 6 A No, sir. The body pack evidence had been
7 tendered in court, so there might have been a
8 delay there. As far as the actual tape goes, I
9 didn't understand the legal repercussions of all
10 of that. Certainly it was entered as an
11 exhibit.
- 12 Q That is the body pack tape could have been
13 obtained from a reporter, from a Transcription
14 Services?
- 15 A The transcripts, yes. The actual tape, no.
- 16 Q So the question is that it took some time for
17 the transcript to be prepared. You were aware
18 of that?
- 19 A Yes.
- 20 Q We don't have necessarily daily reporting?
- 21 A No.
- 22 Q The reports take some times to obtain, you are
23 aware of that?
- 24 A Yes.
- 25 Q And just lastly, in terms of the body pack

1 evidence, Sergeant Anderson would come to you
2 with questions about it, and ask you what was on
3 the tape. You recall him coming to you at
4 times?

5 A Sergeant Anderson was always coming to me with
6 something, yes.

7 MR. WOLSON: All right. Thank you very much,
8 sir.

9 THE COMMISSIONER: Thank you, Mr. Wolson.

10 MR. PROBER: Good afternoon, Mr. Commissioner
11 and Mr. Vandergraaf.

12 THE WITNESS: Good afternoon, sir.

13 BY MR. PROBER:

14 Q We know each other and you know who I represent.

15 A I do, sir.

16 Q I only have about 10 or 12 points that I want to
17 cover with you this afternoon. When you met
18 with the Commission Counsel and you gave them
19 sort of your version of what you recalled, that
20 was the truth as best you could recall it;
21 right?

22 A Yes, sir.

23 Q Yes. And you have had an opportunity to review
24 your interview summary?

25 A Yes, I did.

- 1 Q And you had an opportunity to make any
2 corrections to that summary?
- 3 A Yeah, I made a couple of corrections initially,
4 yes.
- 5 Q How long did you reflect on the summary when you
6 got it before you made the corrections; do you
7 recall?
- 8 A No, I don't recall.
- 9 Q But the interview was done June 22nd, '06, as I
10 recall. That is tab 1 of exhibit 6A, June 22nd,
11 '06. Just over a month ago?
- 12 A Yes, yes.
- 13 Q Now, you knew Mr. Dangerfield?
- 14 A Absolutely.
- 15 Q You had worked with him on a number of cases?
- 16 A I have, sir, yes.
- 17 Q And you describe him as a very able prosecutor?
- 18 A Absolutely, sir.
- 19 Q Very intelligent prosecutor.
- 20 A Certainly.
- 21 Q Very professional prosecutor?
- 22 A Always, sir.
- 23 Q Very fair prosecutor?
- 24 A Absolutely, sir.
- 25 Q And that's basically what you told the

1 Commission Counsel as well in your statement?

2 A Correct. We often, if I may take the liberty,
3 called him the Crown that played by the Marcus
4 of Queensbury Rules all of the time. And in
5 this case, there were certain pieces of evidence
6 that he didn't want to call, for example, the
7 Allan Moss situation, I asked him why isn't this
8 Mr. Moss coming to the attention of the court?

9 Well, an accused has the right to formulate a
10 defence, whether or not it is involving trickery
11 or lies, he wasn't interested in that kind of
12 thing.

13 Q Right. And if he didn't believe the witness, he
14 wouldn't call him, Dangerfield, would he?

15 A That's right.

16 Q He was, as we just said, very fair?

17 A Yes.

18 Q And you knew, as part of his modus operandi, his
19 fairness, that if you disclose something to him,
20 he is going to disclose it to the defence. That
21 was his reputation, correct?

22 A Well, I don't know that that was his reputation,
23 his reputation was fair. If I hand him
24 something off, I expect it to go to the defence,
25 but I can't say for certain.

- 1 Q But you knew he was fair?
- 2 A Yes.
- 3 Q You knew as well he could disclose only what he
4 was told by the police?
- 5 A Yes.
- 6 Q In other words, it is pretty basic, you can't
7 disclose what you don't have?
- 8 A Certainly, if he felt he didn't have something,
9 it was his obligation in my view to contact us
10 and make sure he did get it.
- 11 Q Right. But you wanted to keep him advised,
12 correct?
- 13 A Correct, sir.
- 14 Q And as it has been put to you, I think your
15 exact words were actually, you didn't want him
16 to be taken by surprise?
- 17 A Yes.
- 18 Q And if you thought that Brodsky in this case had
19 something, you wanted Mr. Dangerfield to have
20 it?
- 21 A That's correct.
- 22 Q Correct?
- 23 A Essentially, yes.
- 24 Q And you said that if he wanted something, all he
25 had to do was ask, right?

- 1 A Or ask me or ask Mr. Miller.
- 2 Q Or ask Mr. Anderson?
- 3 A Any one of us.
- 4 Q Or Paul, or Shipman, or Morin, any of them?
- 5 A Yes, sir.
- 6 Q But was it in fact the normal course, in terms
7 of disclosure to the Crown by police, by way of
8 supplemental reports?
- 9 A Well, in this case with the Swift Current
10 situation, I mean, Mr. Miller was dealing
11 primarily with it. There was not a lot of
12 information. We didn't know what they were
13 doing with Swift Current, so it didn't seem to
14 have a huge bearing on how that was going.
- 15 Q That wasn't my question. My question was, the
16 normal way that disclosure was made to the Crown
17 in those days, at that time, by the police, was
18 by way of supplemental reports?
- 19 A Generally, yes, or letter.
- 20 Q Or letter?
- 21 A Yes.
- 22 Q But mostly the pinks, as you referred to them
23 this morning?
- 24 A Correct.
- 25 Q The fourth copy of the supplemental reports;

1 right?

2 A Correct.

3 Q We will come back to that, but let me confirm
4 with you another matter, and that is that you
5 certainly had more contact with Mr. Miller on
6 this matter, because it was Mr. Miller that was
7 dealing with the witness protection matters;
8 correct?

9 A Correct, sir.

10 Q I think, as you put it yesterday at the very
11 beginning of your evidence, something to the
12 effect that the Crown who conducted the
13 prosecution was separate and apart from the
14 Crown who was dealing with the witness
15 protection issues. Isn't that what you said
16 yesterday, something to that effect?

17 A Something to that effect, he wasn't kept in
18 isolation. What that meant is he wasn't to deal
19 with the witness protection matters.

20 Q He wasn't which?

21 A He wasn't to deal with those matters.

22 Q No, Mr. Miller was?

23 A Yes.

24 Q And that's why you had more contact with
25 Mr. Miller?

1 A Correct.

2 Q All right. Dealing in a different sort of
3 perspective with that same issue of witness
4 protection, I get the impression from your
5 evidence that once Kovnats becomes involved, the
6 witness protection issues take a turn for the
7 worse, become more difficult; is that fair?

8 A Absolutely.

9 Q Became more demanding?

10 A Mr. Kovnats or Mr. Zanidean, I don't know which,
11 but together, yes.

12 Q And more confrontational, more inflammatory?

13 A Well, I never had that much contact with him at
14 that time. The one incident described earlier,
15 Mr. Miller was dealing with him.

16 Q We are talking about on April 29th, there was an
17 incident. If you want to refresh your memory,
18 look at tab 24, where I think Kovnats threatens
19 to make a complaint to the police?

20 A Tab 24?

21 Q Tab 24. That was Calgary?

22 A City police, Calgary, yes, I reviewed that, yes.
23 I got a little confused too.

24 Q You were there, right, at that meeting?

25 A What meeting?

1 Q Meeting attended with all above, yes, you were
2 there?

3 A Which tab?

4 Q Tab 24, it would be exhibit 6B, it is Orr's note
5 of a meeting.

6 A Yes.

7 Q You were at that meeting? I thought you
8 confirmed that earlier today?

9 A You have 91/05/01 at the top of yours?

10 Q No.

11 A Am I in the wrong book, sir?

12 Q It is exhibit 6B, I don't know what you are
13 looking at. You may have the wrong book.
14 Volume 2 of your disclosure, there may not be
15 exhibit numbers on your book, I don't know.

16 A 6B, okay. Now, what is the top?

17 Q Do you see,
18 "Call received from Staff Sergeant Bill
19 Vandergraaf."
20 Tab 24, for the 24th time.

21 A "Call received from Staff Sergeant Bill
22 Vandergraaf."
23 Yes.

24 Q And then the meeting of the 29th,
25 "Meeting attended with all above present,

1 including Ray and his wife."

2 That would include you, right?

3 A That's correct, sir.

4 Q And you were shown that already today?

5 A Yes. You directed me to the wrong book, sir,
6 thank you.

7 Q I thought I directed you to 6B, but in any
8 event, you have it now. You were at that
9 meeting; right?

10 A Yes.

11 Q Zanidean and Kovnats are making demands?

12 A Yes, sir.

13 Q And Kovnats is threatening to make a complaint
14 against the Calgary City Police; right?

15 A Yes.

16 Q Now, what I was asking you was to confirm for me
17 that once Kovnats got involved, witness
18 protection issues became a little more
19 confrontational, a little more demanding, a
20 little more inflammatory; right?

21 A I suppose, yes, you could describe it like that.

22 Q I mean, you know about the confrontation between
23 Kovnats and Dangerfield, I think that's the one
24 that you were referring to --

25 A Yes.

1 Q -- on May 26, '91?

2 A That's correct.

3 Q You were there and Miller was there; right?

4 A Yes.

5 Q Now, I know you were questioned by Mr. Code and
6 even others about the arson, witness protection
7 and immunity, as sort of separate matters, but
8 they weren't really separate matters, were they?
9 They were overlapping, they were inter-mingled
10 and they weren't separate issues; is that a fair
11 statement?

12 A Well, in so far as Swift Current, if Swift
13 Current proceeded on their investigation and
14 laid charges, definitely overlapping. I mean,
15 we were waiting to see what was going on in that
16 particular thing. And at a certain point they
17 decided not to proceed at all, and again it
18 changed the complexion of that issue again. So,
19 yes, there was overlapping issues, and
20 Mr. Miller was dealing primarily with those
21 issues, and I thought he was in touch with
22 Mr. Dangerfield at the very least.

23 Q Well, you don't know. He wasn't obviously. We
24 will get to that. In fact, if you look at your
25 interview, the summary of your interview with

1 Commission Counsel which is tab 1 of 6A, you
2 have got that, page 5, please? Do you see that?

3 A Page 5.

4 Q Are you there?

5 A Of my statement.

6 Q Yes?

7 A Yes.

8 Q The top paragraph,
9 "Dangerfield was informed of the situation
10 but Miller dealt with it."
11 Do you see that?

12 A Yes.

13 Q And then the last sentence of that paragraph,
14 "So Dangerfield had to be informed about
15 it, but most of Vandergraaf's discussions
16 about Swift Current were with Miller."
17 So you say that Dangerfield was informed, you
18 say that he had to be informed. I think you
19 told Mr. Wolson that he was advised. And that
20 was, as you could recall, the truth of the
21 matter when you made these comments to
22 Commission Counsel; correct?

23 A Absolutely, sir.

24 Q Well, when was Dangerfield informed of the
25 matter?

1 A Informed specifically of which matter, sir?

2 Q The matter there?

3 A Swift Current?

4 Q Yes?

5 A As soon as it developed, at least when

6 Mr. Kovnats -- later on for sure, when

7 Mr. Dangerfield came into the office with

8 Mr. Miller.

9 Q That's May 26th?

10 A Yes.

11 Q Well, this is October '90.

12 A Yes.

13 Q May 26 is '91?

14 A Correct.

15 Q Are you saying that that's as soon as it

16 happened? That's some months later?

17 A No, I'm saying he would be informed earlier,

18 much earlier than that.

19 Q When?

20 A I don't know, sir.

21 Q Within a week?

22 A I couldn't say for sure.

23 Q Within a month? The point you can't really

24 recall, can you?

25 A No, I can recall having briefed him on the

1 situation regarding, particularly when the
2 charge was going to be dropped altogether.

3 Q We will deal with that in a moment. Right now
4 we are talking about --

5 A I can't answer that question, sir. I don't know
6 exactly when.

7 Q And that's reasonable. I mean, it is 15 years
8 ago, right? Approximately?

9 A Yes.

10 Q And you told somebody this morning that you
11 couldn't remember what happened yesterday. So
12 it is not unreasonable for you to say that you
13 can't remember what happened 15 years ago. And
14 if I were to ask you specifically when
15 Dangerfield was informed, you couldn't tell us?

16 A No, I couldn't.

17 Q And if I were to ask you specifically who
18 informed him, you couldn't really tell us that,
19 could you?

20 A Well, it would be myself, Miller, Tom Anderson
21 or Sergeant Paul.

22 Q Well, that's a choice of four. You don't know
23 who?

24 A No. Probably all of us.

25 Q Well, at the same time or separately?

1 A Probably in due course of the investigation, as
2 the investigation was proceeding, sir.

3 Q Not probably, but do you specifically recall
4 whether it was Anderson or Paul or you or
5 Miller?

6 A No.

7 Q No. If you look at tab 4 of that same book you
8 have open, you will see at tab 4 there are,
9 according to my calculation, 118 pages of
10 Anderson's notes. Tab 4, if you look at the
11 number at the bottom, you can take my word for
12 it that there are approximately 83 pages in one
13 notebook and 35 in another. That comes to 118
14 pages; fair enough?

15 A Fair enough.

16 Q Okay. And you are not in a position to disagree
17 with my suggestion that there is not one mention
18 of Dangerfield's name in all of those notes?

19 A Well, you have gone through them, sir. If you
20 say so, I will accept that.

21 Q Yes, my assistant counsel Mr. King and I have.
22 There is not one reference to Mr. Dangerfield
23 ever being advised of anything in Tom Anderson's
24 notes. You can't dispute that, can you?

25 A In those notes, no, sir.

1 Q No. There is one mention at page 77 -- yes, it
2 is actually page 77 -- of Lawlor's name. Do you
3 see that?

4 A Yes.

5 Q Yes. So there is one mention of Mr. Lawlor's
6 name. None of Mr. Dangerfield's.

7 Now, at tab, I guess it is 5, you have
8 Detective Paul's notes. I counted approximately
9 72 pages of notes. The number at the bottom is
10 505 of the first page, the last page is 577, so
11 that's about 72 pages of notes?

12 A Okay, sir.

13 Q Not one mention of Dangerfield's name. You
14 can't dispute that?

15 A No, I don't dispute that.

16 Q No reference at all of Paul attending any
17 meeting with Dangerfield. You can't dispute
18 that?

19 A That's correct, sir.

20 Q And no reference at all in these notes of
21 Dangerfield being provided with any information?

22 A Well, sir --

23 Q Answer the question, is there any reference?

24 A Ask the question again?

25 Q Is there any reference in these notes of

1 Dangerfield being provided with any information,
2 in these 72 pages of Paul's notes?

3 A You looked at them, sir, I can't dispute that.

4 Q You can't dispute that. Right. Look at page
5 548 of Paul's notes, page 548? Lawlor is
6 mentioned again as someone who is looking after
7 some matters?

8 A Yes.

9 Q Right?

10 A Yes.

11 Q So we have 190 pages of notes approximately, two
12 mentions of Lawlor, none of Dangerfield; right?

13 A It looks like it, sir, yes.

14 Q Now, if you go to your interview summary,
15 please, page 9? This is what you wanted to talk
16 about before.

17 "Vandergraaf..."

18 this is the last paragraph,

19 "...had discussions with Anderson, Paul,
20 Inspector Randy Bell and Bruce Miller about
21 what should be done in terms of informing
22 Kovnats and Zanidean that one of their key
23 demands had been met."

24 When you spoke to Commission Counsel, you did
25 not mention Dangerfield's name, right, at that

1 point?

2 A Yes, that's correct.

3 Q You had discussions with the others, but not
4 Dangerfield?

5 A That's correct, sir.

6 Q You say at the next page that you relied on
7 Miller to make the right decision; right?

8 A Yes.

9 Q You say that,

10 "He..."

11 and I don't know who 'he' means, whether that's
12 you, Vandergraaf, or Miller,

13 "...would have briefed Anderson and

14 Paul..."

15 A Yes.

16 Q But I take it that it means you? Somebody
17 suggested it meant Miller, but I think it was
18 you?

19 A I would have briefed Anderson and Paul, yes.

20 Q Right.

21 "...and believes that Dangerfield would
22 also have been briefed either by myself or
23 by Miller, although he..."

24 Vandergraaf,

25 "...does not specifically recall having a

1 conversation with Dangerfield about this
2 issue."

3 That's what you told Commission Counsel on
4 June 22nd of this year; correct?

5 A Yes.

6 Q You believe Dangerfield would have been briefed
7 either by you or Miller. I take it you don't
8 specifically recall having a conversation with
9 Miller about it, or do you?

10 A Miller was present at this meeting, if that is
11 what you are suggesting, yes.

12 Q He was. All right. Do you recall being present
13 if and when Miller briefed Dangerfield?

14 A No.

15 Q No. You don't know whether Miller briefed
16 Dangerfield or not?

17 A I don't know, no.

18 Q No. Do you recall being present when Anderson
19 briefed Dangerfield?

20 A No.

21 Q And, in fact, you wouldn't know whether Anderson
22 briefed Dangerfield or not, would you?

23 A You know, yeah, detectives were up and down to
24 the Manitoba Justice Department so routinely and
25 regularly --

1 Q They might have been up and down routinely and
2 regularly. The question was, though, do you
3 know, do you have a specific recollection of
4 knowing that Anderson briefed Dangerfield on
5 this?

6 A No, I don't.

7 Q Same with Paul, you don't have a specific
8 recollection that Paul would have briefed
9 Dangerfield on this; right?

10 A Correct.

11 Q Now, you say that since your interview of June
12 22nd, if I understand your evidence correctly,
13 since your interview of June 22nd, since you had
14 an opportunity to review your interview, make
15 corrections, the light came on about some
16 meeting with Dangerfield?

17 A Yes, that's correct, sir.

18 Q All right. Well, when was it?

19 A It wasn't a meeting, sir, it was a matter of me
20 attending to his office with some reports.

21 Q I see. So if it is not a meeting, what would
22 you call it?

23 A Well, it was a meeting, he was preparing his
24 case in one of the side rooms and had all of the
25 files spread out and whatnot, and we were

1 discussing it. I said, are you aware, I recall
2 this particular incident, I asked him if he was
3 aware of the situation with Zanidean and the
4 Swift Current matter.

5 Q Well, when did this recollection of yours come
6 to you? Was it yesterday or --

7 A No. In due course, in reviewing this stuff,
8 things start to come to mind again. I haven't
9 spent a lot of time reviewing it, I have had far
10 too many issues to deal with in my personal
11 life.

12 Q I see. It didn't come to you prior to June 22,
13 '06, the day you were interviewed by Commission
14 Counsel?

15 A No, it simply did not, no, sir.

16 Q And it didn't come to you when you exercised
17 your opportunity to review the summary of your
18 interview, whenever that happened to be; right?

19 A No, I didn't change it, sir, no. I would have
20 corrected it and added it, if it did.

21 Q So it has come to you some time in the last few
22 weeks. Do you remember what day it came to you?

23 A Probably on this weekend when I was reviewing
24 this information.

25 Q On the weekend?

1 A I would think so.

2 Q Saturday or Sunday, or do you remember?

3 A I don't remember.

4 Q You don't remember. And you don't remember much
5 about yesterday, but you are telling us you
6 remember a meeting 15 years ago that isn't
7 recorded anywhere?

8 A I happen to remember walking up there with
9 supplemental reports, Mr. Prober. And all of
10 the meetings that we have with Manitoba Justice,
11 we don't make notes of every time that we sit
12 down and talk to you gentlemen or them.

13 Q When did you meet with Mr. Dangerfield?

14 A When he was preparing for the case.

15 Q When, what day of the week?

16 A I don't have a specific date, sir.

17 Q How long before the trial?

18 A The trial was coming up very quickly. At the
19 time of this disclosure to us --

20 Q Was it a week before the trial that this meeting
21 occurred? You have had this revelation on the
22 weekend?

23 A Call it a revelation if you like, Mr. Prober,
24 but you know dam well I'm telling you the truth.
25 We are up there talking to the Crown regularly

1 on these issues.

2 Q Let me say that it is up to the Commission to
3 decide whether you are telling the truth, Mr.
4 Vandergraaf, or not. I'm trying to find out the
5 specifics of this recollection that occurred on
6 the weekend.

7 A Yes, and I'm telling you that the recollection
8 is of seeing Mr. Dangerfield standing in the
9 room adjoining the offices, and preparing his
10 case. I walked in, like we were always allowed
11 to do, and engaged him in conversation, and
12 generally asked him how it was going. And then
13 it was a matter of this particular issue, I
14 asked him if he was aware of that.

15 Q Let's explore the specifics. When did this
16 occur?

17 A Sir, I can't answer when.

18 Q All right. Who was there?

19 A Just myself, I took some reports up to him.

20 Q And I think -- do you know what month it was,
21 are we talking June before the trial, or May
22 before the trial?

23 A It would have been May.

24 Q It would have been May. How many weeks before
25 the trial, do you know?

1 A I don't know, sir.

2 Q What time of day was it, do you know?

3 A Morning or afternoon.

4 Q Well, I guess it would be. Morning or afternoon
5 or maybe night? You don't know the time of day?

6 A Not night, sir.

7 Q Okay. Was it morning or was it afternoon?

8 A I don't know, Mr. Prober.

9 Q You don't know. You can't recall, right?

10 A I can't.

11 Q Now you worked with Mr. Dangerfield on a number
12 of cases?

13 A Yes, sir.

14 Q Maybe this was a meeting with Mr. Dangerfield on
15 some other case?

16 A It was not, sir, because it was the issue of
17 Mr. Zanidean. I recall it directly.

18 Q All right. And despite the fact that you don't
19 remember much of yesterday, despite the fact
20 that you don't remember any of the details and
21 the times when this recollection or revelation
22 came to you, you are asking this Commission to
23 believe that now you have got a recollection of
24 a meeting, although you said you can't recall
25 the specifics; is that true?

1 A The specifics were concerning the Zanidean
2 matter. I went up there on a general inquiry to
3 bring him further reports in this matter.

4 Q So you do recall the specifics of the
5 conversation?

6 A The specific issue was dealt with about
7 Mr. Zanidean and the Swift Current situation.

8 Q What issue?

9 A The issue of the fire and whether or not they
10 were proceeding with their investigation or
11 charges or what.

12 Q Go ahead?

13 A And I advised him that Swift Current RCMP had
14 gotten back to us and indicated that they were
15 no longer interested in pursuing.

16 Q Why didn't you do a sup on that?

17 A I don't know.

18 Q You went up there with a bunch of sups in your
19 hand; is that what you said?

20 A Yes.

21 Q And as we've already discussed, supplementals
22 were the normal way in which the Crown would get
23 disclosure from the police in those days; right?

24 A Correct.

25 Q Lo and behold, I take it that you now know that

1 there was no supplemental report prior to the
2 trial about the Swift Current arson?

3 A Correct.

4 Q You know now that there was no supplemental
5 report about Zanidean coming to Anderson and
6 Paul and telling them there was a problem with
7 his credibility, right, in relation to the Swift
8 Current arson?

9 A No, I don't think so, sir.

10 Q No. And you know there is no supplemental
11 report about the motive that Zanidean told Paul
12 and Anderson about, namely that it was for
13 revenge that they created this explosion and
14 arson; right? No sup on that?

15 A I don't think so.

16 Q No. And no sup about the agreement not to
17 proceed against Zanidean; right?

18 A I don't believe there was, no.

19 Q No. And no sup about not telling Kovnats and
20 Zanidean about it, right? No supplemental about
21 that; right?

22 A No, I imagine not.

23 Q So, it is not a question of having one or two
24 sups on this issue and one or two missing, there
25 are no supplemental reports at all about the

1 Swift Current matter prior to the trial; right?

2 A I take it that's correct.

3 Q Yes. And that's the normal way the disclosure
4 was supposed to happen; correct?

5 A Yes, but it wasn't an issue that --
6 Mr. Dangerfield didn't seem concerned about it.
7 When I mentioned it to him, he said okay, that's
8 fine, they are not going to pursue him, fine.

9 Q And that was it?

10 A Essentially.

11 Q How long did the meeting last?

12 A I can't remember. About ten minutes.

13 Q You do remember it was ten minutes?

14 A It wasn't very long. He was busy preparing his
15 case.

16 Q Well, you were taking supplementals to him, I
17 take it, on this case?

18 A Yes.

19 Q What supplementals were you taking him on this
20 case?

21 A I don't know, Mr. Prober.

22 Q You don't know?

23 A No, sir.

24 Q Now, you, at one point during my questioning,
25 suggested that if Mr. Dangerfield wanted

1 something, all he would have to do is ask for
2 it. Ms. Carswell suggested to you that the
3 Crown could request something. But the practice
4 was that if it was something significant, it
5 would be put in a supplemental report and it
6 would be given to the Crown, right, if there was
7 a major development? Isn't that what you said?

8 A Yeah. And we were dealing with that Swift
9 Current situation somewhat separate and apart.

10 Q I know. But I'm talking about any major
11 development, it would go in a sup, right?

12 A Technically you are right, yes.

13 Q Technically that's what happened. You wouldn't
14 wait until the Crown, sort of play a guessing
15 game with the Crown and have the Crown keep
16 asking you if anything was happening, if there
17 were any major developments, what is going on.
18 You would be pro-active, right? I mean, if it
19 was a major development, you, meaning the
20 police, would prepare a supplemental report and
21 get it to the Crown?

22 A Yes.

23 Q You are not going to sit back and wait for the
24 Crown to come to you and make requests, are you?

25 A Quite often we do. Quite often the requests

1 come in on all kinds of situations.

2 Q But normal practice?

3 A Normal practice, no, in this case, no.

4 THE COMMISSIONER: Mr. Prober, sometime in next
5 few minutes, if we could break?

6 MR. PROBER: Sure. Right now would be
7 convenient. I won't be much longer, but it is a
8 good time.

9 THE COMMISSIONER: Break for 15 minutes.

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

12 (Proceedings recessed at 3:30 p.m. and
13 reconvened at 3:47 p.m.)

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

16 MR. PROBER: Thank you.

17 BY MR. PROBER:

18 Q Going back to the meeting that you have suddenly
19 recalled, you will agree with me, by the way, in
20 your interview with Commission Counsel, you
21 indicate that you have no specific recollection
22 of a conversation with Dangerfield about the
23 matter?

24 A At that time, yes, sir.

25 Q At that time, which was what, 30 days ago?

1 A Yes.

2 Q 35 days ago?

3 A Yes.

4 Q And I thought you had said to Mr. Lockyer this
5 morning that you couldn't recall the specifics
6 of the meeting with Dangerfield. My note is
7 "can't recall specifics about the meeting." Are
8 you changing your mind now?

9 A I don't think I said that, I hope I didn't.

10 Q Well, if you said it, are you changing your
11 mind?

12 A No, sir.

13 Q So you still --

14 A I don't recall saying that, and if I did, I was
15 mistaken. The specifics would be the intricate
16 details, the specifics that I'm referring to are
17 the Zanidean matter.

18 Q When did you find out that the Swift Current
19 RCMP were not going to proceed against Zanidean?

20 A I don't have a date noted. I can't --

21 Q That was in April. Other counsel took you over
22 that today?

23 A Yes, right.

24 Q April 5th, and then it was confirmed on
25 April 12th; right?

1 A I take it that's correct.

2 Q Any reason why you waited weeks to tell
3 Dangerfield? Is there a reason you waited weeks
4 to tell him?

5 A I don't know that I did.

6 Q You said that it was just before trial you went
7 to see him. It would have been in May?

8 A Well, I thought it would have been in May, but
9 to say it was weeks, I'm not sure, sir.

10 Q Can't recall?

11 A No, sir.

12 Q Okay. By the way, if you would turn to tab 45
13 in volume 2 of 6B, that's 45, you were directed
14 to this memo of Mr. Brodsky's. I think you were
15 even asked to comment on what it meant. Do you
16 recall that line of questioning yesterday?

17 A Yes.

18 Q Well, look at the second paragraph.

19 "The Winnipeg Police can only make
20 agreements with respect to the area they
21 are responsible for."

22 Do you know what that means?

23 A Yes, that would be counsel, in discussions with
24 Mr. Brodsky, advising them, apprising them of
25 the Swift Current matter. We can only make

1 arrangements or agreements with respect to
2 offences in Manitoba. That is the
3 interpretation that I had.

4 Q That's the interpretation that you have?

5 A Yes, sir.

6 Q All right. And so you know what the next
7 sentence means,

8 "The area of Manitoba, they are not able to
9 make agreements with respect to what some
10 other police force, particularly the RCMP
11 will do, and they did not."

12 Do you know what that means?

13 A The area of Manitoba -- no, I don't know what
14 that means.

15 Q The best person to ask about that would be
16 Mr. Brodsky?

17 A Yes, sir.

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

19 THE WITNESS: Thank you, sir.

20 MR. OLSON: Thank you, Mr. Commissioner.

21 BY MR. OLSON:

22 Q Mr. Vandergraaf, I have a few questions only.
23 And we've met before, but I do act for the
24 Attorney General and for Mr. Lawlor in these
25 proceedings.

1 A Certainly, sir.

2 Q On matters relating to disclosure, Mr. Code and
3 other counsel have dealt with that fairly
4 completely and I don't intend to ask you many,
5 other than one or two, sir.

6 As I understand the process that you've
7 described, Mr. Lawlor on occasion would make a
8 request of you, or Anderson and Paul. If it was
9 of you, you would pass it on to Anderson and
10 Paul and they would make responses to him?

11 A Essentially, yes. If it was other detectives,
12 it went to other detectives.

13 Q I understand that, sir, but we have seen in tabs
14 41, for instance -- well, tab 34, if you take
15 that, of 6B, if you have that, sir? Tab 34 is
16 the fax to you from Mr. Lawlor?

17 A You keep referring to 6B, or Mr. Prober did, I
18 don't know what that is, but I have volume 2.

19 Q Yes?

20 A Tab 41 --

21 THE COMMISSIONER: No, tab 34.

22 THE WITNESS: Yes.

23 BY MR. OLSON:

24 Q Have you seen this before? I just want to --
25 that's the type of thing that would come from

1 Lawlor, and in this case it did, asking for
2 specific responses, and would you pass that on
3 to Anderson and Paul?

4 A Correct, sir.

5 Q And we see at 41 their response, dated May 18th;
6 right?

7 A Correct.

8 Q And in Mr. Code's examination of you, he pointed
9 out to you that presumably that's what
10 Mr. Lawlor then passed on to Mr. Brodsky several
11 days later?

12 A Presumably.

13 Q One would have to make that leap. Do you recall
14 that?

15 A Yes.

16 MR. OLSON: We have an additional book of
17 documents with several ones that have not been
18 put in so far for the witness. We can probably
19 mark this as the next exhibit.

20 THE COMMISSIONER: Madam registrar, are we at 8?

21 MR. OLSON: I think that's correct.

22 THE COMMISSIONER: This will be exhibit 8 then.

23 (EXHIBIT 8: Book of documents produced by
24 Mr. Olson)

25

1 BY MR. OLSON:

2 Q Just to complete that picture on the documents
3 that we just looked at, of the sup coming back
4 from Anderson and Paul in response to the
5 inquiry, if you look at tab 1 in this document,
6 sir, exhibit 8, tab 1, we see a typed memo from
7 Anderson and Paul back to Lawlor dated May 19,
8 which is the day after the date of their sup.
9 So that ties the sups into Mr. Lawlor then
10 sending it along to Brodsky, and this document
11 will speak for itself, but this is the process
12 that was followed? Lawlor would make an
13 inquiry, it would go from you to them, they
14 would prepare the sup, get the information and
15 give it back, and here is the memo in this case
16 that evidenced that fact?

17 A Yes, sir.

18 Q Thank you. Now in your statement to Commission
19 Counsel that's marked as the first tab in
20 exhibit 6A, volume 1 of your document, sir --
21 you don't have to go to it unless you need to --
22 there is no mention by you throughout your
23 summary of Mr. Lawlor at all, other than on page
24 2 where you say,
25 "Yes, he stayed in the background."

1 A Page 2?

2 Q Yes. Under Crown office, you will see 5 lines
3 down,

4 "Gregg Lawlor stayed more in the
5 background."

6 A True.

7 Q And that's your recollection, sir?

8 A True.

9 Q You did in fact have some early contact with
10 Mr. Lawlor, and by early I mean in October,
11 November of 1990, as this investigation was in
12 its early stages; is that fair?

13 A Yes.

14 Q And that was I think before Mr. Dangerfield had
15 some involvement. Do you recall that?

16 A No, you will have to refresh my memory?

17 Q Mr. Dangerfield, in the documents, doesn't seem
18 to appear until mid November or thereabouts.
19 But let me help you, I have just handed you this
20 small booklet that we have marked as exhibit S8
21 In that one go to tab 3, sir. These are
22 Mr. Lawlor's notes, and thankfully they are
23 relatively legible, apparently recording a
24 conversation with you having to do with the
25 issue of the firearm, the 22, and the bullets?

1 A Yes, I note that.

2 Q And some inquiries or steps were going to be
3 taken, investigative steps I gather in respect
4 of that matter?

5 A Yes.

6 Q That was early on in the investigation, was it
7 not?

8 A I'm not sure.

9 Q You don't recall?

10 A No. I recall the inquiries, but I'm not sure
11 when exactly.

12 Q It is the only note that I could find in
13 Mr. Lawlor's notes that appear to pertain to a
14 direct communication from you on evidentiary
15 matters?

16 A Yes.

17 Q And that would accord with your recollection
18 that, generally speaking, the inquiries coming
19 from Mr. Lawlor would be in respect of matters
20 that Mr. Brodsky had asked him of, and which he
21 was then asking the police to assist him in
22 getting answers?

23 A Excuse me? To me Mr. Lawlor was like a second,
24 he was seconded to Mr. Dangerfield to work as a
25 team, that's all I recall. He stayed in the

1 background primarily during court, but he surely
2 dealt with issues for and on behalf of
3 Mr. Dangerfield.

4 Q Whether that's so or not, sir, I'm saying that
5 there is apparently no direct contact between
6 you and Lawlor, other than the document that I
7 have just shown you, tab 3 in exhibit 8, and
8 other than requests in respect of disclosure
9 matters that Mr. Brodsky has made of him?

10 A Yes.

11 Q All right. Thank you. Now, in respect of
12 expenses being incurred for protection of
13 Mr. Zanidean, or other than that, can you
14 confirm, sir, that you had virtually no contact
15 with Mr. Lawlor in respect of the Witness
16 Protection Program or immunity issues?

17 A That would be correct.

18 Q Thank you. In respect of the expenses being
19 incurred for the protection being taken for
20 Zanidean at an early stage -- tabs 14 and 15,
21 that's volume 2 again in the big book of
22 exhibits, sir?

23 A 14, yes.

24 Q There were several and they all appear to be
25 early in the procedure, that is in the fall,

1 late fall of 1990. And if you turn to exhibit
2 15, or tab 15 in that exhibit, sir, this is the
3 only other note that seems to relate to expenses
4 being incurred in respect of the protective
5 nature of Zanidean's relationship. This was a
6 \$400 item with respect to Mr. Gumieny?

7 A It seems to be, sir, yes.

8 Q And you will confirm that Mr. Lawlor, at that
9 early stage, was the name given by Anderson and
10 Paul to Kovnats as the person who would be at
11 least initially the contact person?

12 A Yes.

13 Q And Mr. Prober took you to the notes of Anderson
14 and Paul at tabs 4 and 5 in the same document,
15 and pointed out that Lawlor's name appears in
16 two places, one in Anderson's at page 77, and
17 one in Paul's at page 548?

18 A Yes.

19 Q You can satisfy yourself, if you like, but both
20 of those references by Anderson and Paul to
21 Lawlor's name is once only, and in both cases it
22 relates to telling Kovnats on November 13, 1990
23 that Lawlor is the contact person?

24 A That may be, sir, yes.

25 Q All right. And you were aware, sir, that

1 Mr. Lawlor didn't have any authority to approve
2 any expenditures, and that when they came to
3 him, he was turning those over to Mr. Miller?

4 A Yeah, that sounds correct.

5 Q Right. Now, you have described some meetings in
6 the course of your evidence to various other
7 counsel, sir, that you were involved in with
8 Zanidean present, and Kovnats in some cases,
9 Orr, Miller, Dangerfield. It is a fact, is it
10 not, sir, that Mr. Lawlor was in none of those
11 meetings to which you have referred?

12 A That's correct.

13 Q Thank you. There has also been some reference
14 to an approval and subsequent payment of the
15 lump-sum payment in lieu of the protective
16 program, of some \$20,000. And you described
17 your involvement, sir. You are not aware of any
18 involvement by Mr. Lawlor in that approval or
19 payment of the lump-sum payment?

20 A I am not, sir.

21 Q Thank you. And it also appears from other
22 evidence, sir, that Mr. Lawlor had no further
23 involvement in these proceedings, that is the
24 matters relating to Mr. Driskell back in 1991?
25 Once the trial completed in June of '91, he was

1 not a participant in the appeal and had no
2 further involvement?

3 A Appeal is a Justice matter. I wouldn't know.

4 Q You wouldn't know that.

5 You were asked by Mr. Gates about the
6 application, if I can find that in my notes,
7 sir, the application for the Witness Protection
8 Program. And as I recall, you indicated that it
9 may have been late in the year 1990 or something
10 like that. Do you recall that?

11 A Yes.

12 Q That application again is tab 16 of volume 2,
13 again?

14 A Yes.

15 Q Just open that up. Page 476, bottom right-hand
16 corner, under the heading part 5?

17 A Yes, sir.

18 Q Part way down there, there is reference to,

19 "The witness requests relocation for
20 himself and his wife at the conclusion of
21 the trial. He is only recently married."

22 I believe we see from other documents that
23 they married in March of '91. Do you recall
24 that, sir?

25 A Well, I don't recall when he was recently

1 married, but --

2 Q I'm trying to assist you in the dating of the
3 document.

4 A Yes. This was sort of an ongoing document that
5 was taking time to complete, so I'm not exactly
6 sure when it was completed and forwarded.

7 Q Fair enough. There is also reference on page
8 469 to the address of the witness being 650
9 Beaverbrook, the safe house?

10 A Yes.

11 Q He wasn't moved to a safe house, I don't think,
12 sir, until 1991 at some point?

13 A Yes. And I see your point, sir. Thank you.

14 Q And I think there is also reference to the trial
15 date having been set, and we know the trial date
16 wasn't set until the late winter, February 14th
17 of 1991. So those three components, it is
18 reasonable to assume --

19 A Narrow it down much better, thank you.

20 Q Right. It is reasonable to assume then that
21 this document, although it might have been
22 evolving, was not completed and submitted until
23 some time later in March then?

24 A I thank you for that, sir.

25 Q Ms. Carswell asked you a number of questions,

1 and many of them have been covered off already,
2 but I wanted to address a couple with you, sir.
3 She asked you to look at tab 31 of this same
4 bundle, and I would ask you to look at that as
5 well. That is the letter from Mr. Brodsky to
6 Mr. Lawlor of February 7, 1991.

7 A Yes.

8 Q And she turned your attention to paragraph 16,
9 and suggested to you that it would have been
10 reasonable for the Crown to ask for all of the
11 notebooks because that would have given the
12 answer to the question. Do you recall her
13 saying words to that effect?

14 A Yes.

15 Q The question was, however,
16 "...record of all contacts, whether by way
17 of formal statement or written notification
18 in a police officer's notebook."

19 And formal statements would not be in a police
20 officer's notebook, would they?

21 A Formal signed written statements, if that's what
22 they mean, there is somewhat of a distinction,
23 sir, yes.

24 Q So it would make sense, would it not, for the
25 Crown to give the entire wording of the inquiry

1 to the Winnipeg Police Services and ask them to
2 respond?

3 A I can't make heads nor tails of this document,
4 Mr. Olson. The notations, I don't know who
5 makes those notations on the side. Was that one
6 sent to us?

7 Q I can't answer that off the top of my head.
8 Certainly there were discussions.

9 A There is a notation beside that says,
10 "Has all statements."
11 I don't know who wrote that. I don't know what
12 that means.

13 Q I understand. We will hear from Mr. Lawlor in
14 due course.

15 A Thank you.

16 Q Then in -- I hope you still have it --
17 Ms. Carswell asked to you look at exhibit 1,
18 which is the book of documents for Inspector
19 Ross Burton, and ask you to turn to tab 29 and
20 30. And I'm directing your attention to tab 30.
21 Do you still have that volume up there, sir?

22 A Tab 30, volume 2?

23 Q Yes.

24 THE COMMISSIONER: No. Michelle, could you get
25 exhibit 1 and give it to the witness? So it

1 will be at tab 30 of this exhibit that we are
2 just going to give to you here.

3 MR. OLSON: Sorry, if I'm confusing you,
4 Mr. Vandergraaf.

5 THE WITNESS: No, you are not confusing me.
6 Yes, sir.

7 BY MR. OLSON:

8 Q If you just leave that open and if you then turn
9 to your statement, sir, which is contained in
10 volume 1 of your documents at page 5?

11 A Yes.

12 Q And I think this was consistent, your summary in
13 written form at page 5 here was consistent with
14 what your evidence has been to counsel in these
15 proceedings. I'm looking at five lines down.

16 "Anderson reported back to him that the
17 Swift Current RCMP confirmed an arson had
18 occurred, that they had no other
19 information that Zanidean was responsible,
20 and that considering the circumstances,
21 they would not look at the matter until
22 after the Driskell murder trial."

23 The circumstances you were referring to there
24 were the fact that he was going to be a witness
25 in a homicide and he had already admitted the

1 arson?

2 A Yes.

3 Q So considering the circumstances, they would not
4 look at the matter.

5 And going back to what tab 30 was in
6 Burton's volume, exhibit 1, Burton writes this
7 letter back to Ian Mann, and in the sixth line
8 he says,

9 "Once circumstances permit, please
10 interview Reath Zanidean regarding this
11 arson also."

12 A That's what it says, sir, yes.

13 Q But you expect, sir, that had you seen this, you
14 say you hadn't seen this, but had you seen that,
15 would you read those as being the same
16 circumstances that you heard from Anderson?
17 That is you wouldn't be interviewing him at that
18 point until after the trial because of the
19 matters and the circumstances that had already
20 been discussed?

21 A I didn't think it was appropriate for Winnipeg
22 Police to continue an interview, an
23 investigation for Swift Current on a serious
24 charge like arson. I guess essentially, no, we
25 already had information from Mr. Zanidean, I

1 didn't want us to continue any further
2 investigations on behalf of the RCMP, Swift
3 Current, in that regard.

4 Q Right. And you've made that clear. And in
5 fairness to you, the suggestion has been made to
6 you and other witnesses that Swift Current RCMP
7 were expecting Winnipeg Police to examine,
8 interview, investigate, but take a statement
9 from Zanidean, and they were waiting for this
10 all of the time. That is not what this letter
11 says.

12 "...once circumstances permit..."

13 A Yes.

14 MR. OLSON: Those are my questions. Thank you,
15 sir.

16 BY MR. ABRA:

17 Q Mr. Vandergraaf, it has been a long day, I know.
18 I hope I won't have to be too long.

19 You knew Bruce Miller well?

20 A On a professional basis.

21 Q That's what I meant?

22 A Yes.

23 Q You knew, for example, he was a senior Crown
24 Attorney at the Public Safety Building for a
25 number of years?

1 A Yes.

2 Q And during that period he worked with members of
3 the Winnipeg Police Service on a daily basis,
4 including yourself?

5 A That's correct, sir.

6 Q You also knew him to be a very experienced Crown
7 Attorney. And did you actually testify in cases
8 in which he was a prosecutor, that you recall?

9 A I don't recall a specific case but --

10 Q But you certainly knew him to be a very
11 competent and experienced Crown Attorney?

12 A I liaised with him regularly, sir.

13 Q Okay. And he had a lot of experience in trial
14 work on behalf of the Crown, including
15 homicides?

16 A I believe he did, sir, yes.

17 Q And as you have told Mr. Wolson, he was a man
18 who had a reputation of very high integrity?

19 A Yes.

20 Q Now, you knew that Bruce Miller's part in the
21 Zanidean matter related to the Witness
22 Protection Program?

23 A He was dealing with that specific --

24 Q That aspect of it. You also knew that George
25 Dangerfield and Gregg Lawlor were the ones that

1 were going to be doing the trial?

2 A Yes.

3 Q And as you told Mr. Code yesterday, there is no
4 question that Mr. Dangerfield and Mr. Lawlor had
5 to be intimately familiar with all of the
6 evidence, all of the Crown's evidence, and all
7 of the nuances that might come up during the
8 course of the trial?

9 A Yes.

10 Q So they wouldn't be caught by surprise?

11 A Yes.

12 Q And you were aware of that, of course, because
13 of your experience as having been a witness in
14 numerous trials and having been a lead
15 investigator on numerous homicides?

16 A I suppose, sir.

17 Q That the Crown Attorneys that did the trial had
18 to be intimately familiar with all of the
19 evidence so they could react to any situations
20 that came up?

21 A Yes.

22 Q Now, you knew that Miller was not going to be
23 prosecuting that case, the Driskell case?

24 A Manitoba Justice as a whole was prosecuting it.
25 Two Crowns were assigned and --

1 Q But you knew that Miller was not going to have
2 direct involvement in the prosecution of
3 Mr. Driskell?

4 A No, he wouldn't appear in court, no.

5 Q And in fact, to your knowledge, and you were
6 there daily, he didn't attend the trial at all;
7 isn't that right?

8 A I don't believe he did.

9 Q Dangerfield and Lawlor were the ones that were
10 there every day?

11 A Yes.

12 Q Now, when this information came in from Anderson
13 to you that Swift Current RCMP were not going to
14 charge Mr. Zanidean, that was one of the
15 critical issues as far as this prosecution was
16 concerned; is that right?

17 A It was an issue, yes.

18 Q Yes. And not only was it an issue to Zanidean,
19 but it also was an issue to Zanidean's
20 credibility as a witness?

21 A Possibly, yes.

22 Q Now, Brodsky was aware of the Swift Current
23 fire, to your knowledge, according to what you
24 testified to?

25 A He certainly was.

1 Q And knew it was alleged that Zanidean had been
2 involved in it?

3 A Yes.

4 Q And you knew that it was likely that it was
5 going to come up at the trial of Driskell?

6 A Yes.

7 Q Now, this meeting that you say was held with
8 Miller to discuss what to do with the
9 information about Zanidean, when was it held?

10 A I don't know, sir, exactly.

11 Q What month was it held?

12 A Is there something that I can refer to refresh
13 my memory, sir?

14 Q I don't know, sir, because we have no documents
15 at all relating to that meeting.

16 A Well, Mr. Miller was there, Mr. Bell was there.

17 Q Inspector Bell?

18 A Yes.

19 Q I see. The difficulty is that the point has
20 been made to you numerous time already during
21 the course of your testimony, there is
22 absolutely no documentation of that meeting at
23 all. There is nothing in anybody's notebooks
24 that we have seen.

25 A Mr. Miller made no documentation? Well --

1 Q There is nothing anybody --

2 A We had lots of informal discussions on all kinds
3 of cases at that time, Mr. Abra.

4 Q Mr. Vandergraaf, this was one of the critical
5 issues of that case, was Zanidean's credibility?

6 A It was a critical issue as far as Mr. Miller
7 dealing with Mr. Kovnats on that issue, yes.

8 Q But the issue of whether or not Swift Current
9 RCMP were going to charge Mr. Zanidean or not,
10 in other words, whether the patch was in, was a
11 critical issue, wasn't it?

12 A It was important, yes.

13 Q Yes. The purpose of this meeting, from what I
14 understand, was to discuss that evidence, or to
15 discuss Zanidean and the immunity issue, or
16 whether he was going to be charged or not;
17 right?

18 A I believe so, sir, yes.

19 Q Did you invite Miller to the Public Safety
20 Building for this meeting that you don't recall
21 the date of?

22 A I think at that time -- no, I didn't personally
23 invite him, but maybe Inspector Bell did. All I
24 know is they were there and we were having this
25 meeting.

1 Q I see. Well, did you just happen to drop in or
2 was it arranged or what?

3 A No, I would have been working, and the issue
4 came up and we felt we better get Miller down.

5 Q Miller's office wasn't at the Public Safety
6 Building at that time, he was down on Broadway.

7 A That's correct.

8 Q So he would have to go to the Public Safety
9 Building for that meeting?

10 A Yes.

11 Q Was it a called meeting, an organized meeting,
12 an arranged meeting?

13 A I think it probably was.

14 Q I see. And it was to discuss Zanidean and the
15 issue of whether he was going to be charged or
16 not?

17 A Um-hum.

18 Q Was there any thought given to inviting
19 Dangerfield or Lawlor?

20 A No.

21 Q It was kind of important from their perspective,
22 wasn't it?

23 A Well, yes. And we deal with the Justice
24 Department, we deal with -- we were dealing with
25 Mr. Miller at that time on those issues. And I

1 mean, he could have brought everyone here to
2 that meeting if he chose.

3 Q But, Mr. Vandergraaf, Miller was dealing with
4 one isolated area as far as Mr. Zanidean was
5 concerned, and that was the issue of witness
6 protection; right?

7 A Yes, but he is also --

8 Q Sorry, I didn't mean to cut you off.

9 A He is the director of criminal prosecutions, so
10 I don't think that he was working in a vacuum.

11 Q That may very well be. He obviously had an
12 interest in the Driskell case. But the ones
13 that were on the line were Dangerfield and
14 Lawlor?

15 A In the front line, essentially.

16 Q Yes.

17 A Yes.

18 Q Did it not make any sense to invite them to
19 discuss this issue?

20 A That would have been Mr. Miller's choice.

21 Q Mr. Miller's choice?

22 A Yes.

23 Q Well, one of the big issues that came up at this
24 meeting, according to what you have testified,
25 was how to handle that information about the

1 fact that Swift Current RCMP were not going to
2 charge Mr. Zanidean?

3 A Um-hum.

4 Q And whether to tell him or not. That was one of
5 the big issues discussed, was it not?

6 A Yes.

7 Q And if that's what was going to be discussed,
8 isn't it something that you would have thought
9 Dangerfield and Lawlor should have been part of?

10 A We were talking to Manitoba Justice, that's all
11 that concerned us.

12 Q I see, the indivisible Manitoba Justice, all 50
13 Crown Attorneys?

14 A Well, Mr. Abra, please, you have worked with me
15 long enough to know that a lot of informal
16 meetings are held between the police and
17 Manitoba Justice.

18 Q I couldn't agree more. But the informal
19 meetings that are often held, and they are held
20 a lot in preparation for trials?

21 A Yes.

22 Q You and I are ad idem on that. But this
23 particular meeting that was dealing with an
24 issue that was critical to the trial of Mr.
25 Driskell didn't seem to have the two prosecutors

1 that were doing the trial invited to it for some
2 reason?

3 A I can't answer why that is, other than we had --
4 Mr. Miller came down and it was discussed.
5 Certainly, he was dealing with these issues. If
6 he wanted to have those two present, he could
7 have certainly had them.

8 Q And you are telling us that at this meeting,
9 Mr. Miller went on to suggest that Mr. Zanidean
10 shouldn't be told about it?

11 A He went on to -- not to suggest that, I probably
12 suggested it, we had discussion about it, and we
13 came to an understanding at least between
14 Mr. Miller and I.

15 Q And would you not have expected Miller to say,
16 that's a decision that Dangerfield and Lawlor
17 have to make, they are doing the trial?

18 A I don't know. He certainly didn't, and if he
19 felt that way, he could have certainly had
20 George and Gregg come down to the meetings.

21 Q Isn't it true, Mr. Vandergraaf, that if there
22 was any meeting that Mr. Miller attended to
23 discuss Zanidean, there was absolutely no
24 discussion at that meeting about how to deal
25 with the information as far as Mr. Zanidean was

1 concerned?

2 A There was no --

3 Q I'm suggesting to you, sir, that there was no
4 discussion at any meeting, that you were in
5 attendance with Miller, about how to handle the
6 information, as far as Mr. Zanidean was
7 concerned, that he was not going to be
8 prosecuted by Swift Current RCMP?

9 A That's so untrue, sir.

10 Q So you are suggesting that's what happened?

11 A Pardon me?

12 Q You are suggesting that that was discussed?

13 A Yes. Mr. Miller, if I may interject, was down
14 at the Public Safety Building on a couple of
15 occasions.

16 Q He may very well have been.

17 A Yes.

18 Q And Miller didn't make any suggestion that a
19 police report or supplementary be written about
20 this information so it could be given to Lawlor
21 and Dangerfield?

22 A No, he did not.

23 Q Not at all?

24 A No.

25 Q Did Miller say, well, I will set up a meeting

1 with Dangerfield and Lawlor so you can discuss
2 this with them and tell them about it?

3 A He did not, sir, no.

4 Q Well, you knew at the time of this meeting that
5 Lawlor and Dangerfield were prosecuting the case
6 and Miller wasn't?

7 A Yes, sir.

8 Q You have no idea what the date of this meeting
9 was?

10 A No, sir.

11 Q In fact, I gather from your previous comments,
12 you don't even know what month it was held in?

13 A Possibly, sir. If you could help me with that,
14 I would appreciate it.

15 Q Well, I don't know, sir. You were one that was
16 at it, I wasn't. And there is no documentation
17 anywhere that any of us have seen of that
18 meeting that gives us any idea that it ever took
19 place.

20 A Nor do we have documentation, I would expect, on
21 initial meetings with Mr. Miller when
22 Mr. Driskell was initially a suspect.

23 Q That may very well be, but what I'm talking
24 about is a meeting that related to a very
25 significant issue as far as the conduct of that

1 trial was concerned, and --

2 A Mr. Miller was an experienced lawyer, he was a
3 director of criminal prosecutions at that time.
4 I mean, Mr. Abra, really, we were looking for
5 direction from Manitoba Justice on some of these
6 issues, there is no question.

7 Q That may very well be. That may very well be.
8 What I'm saying to you, Mr. Vandergraaf, or
9 suggesting to you, is that the one that you
10 should have gotten the direction from, and if
11 indeed it was ever discussed with Miller, he
12 would have told you to get the direction from
13 Dangerfield and Lawlor as to how it should be
14 handled.

15 A Well, he is their boss, sir.

16 Q And he had never dealt with the Swift Current
17 RCMP. You knew that?

18 A Mr. Miller?

19 Q Mr. Miller?

20 A To my knowledge, no.

21 Q No. Anderson had?

22 A Yes.

23 Q Anderson was supposedly the one that got the
24 information about this decision that Swift
25 Current RCMP had made?

1 A Yes, sir.

2 Q And yet, from what I understand you to be
3 saying, Anderson and Paul and you and Bell all
4 expected Miller to be the conduit of this very
5 important information to Dangerfield?

6 A I didn't know what to expect, to be honest with
7 you. It was a meeting to discuss the situation,
8 yes.

9 Q So what you are telling us is that Miller gave
10 advice to you on a matter that was clearly going
11 to come up during the course of the trial --

12 A Um-hum.

13 Q -- as to how it should be handled, that he was
14 prepared to do that?

15 A Yes.

16 Q And it was evidence that, quite frankly, was
17 stupid?

18 A Evidence of --

19 Q Well, what sense did it make to not tell
20 Zanidean?

21 A I think the promise of favour situation was the
22 issue that was discussed.

23 Q The promise of favour had already occurred.
24 Zanidean wanted assurance that the charges
25 wouldn't be laid. And according to what you've

1 told us, you now had the assurance they wouldn't
2 be laid. It was a done deal. The patch was
3 complete.

4 A Mr. Zanidean wasn't aware of that, nor was
5 Mr. Kovnats.

6 Q So what you then -- by this decision we are
7 putting Zanidean in the position of not knowing
8 what the situation was with the Swift Current
9 charge, when everybody else knew; right?

10 A Yes.

11 Q Yeah. And you had to have known that if
12 Zanidean was cross-examined at the trial on the
13 issue of whether he was going to be prosecuted
14 in Swift Current or not, he would answer he
15 didn't know, or yes, because he didn't know that
16 he wasn't going to be charged. So you knew he
17 wasn't going to be, but you put him in the
18 position of answering, effectively, contrary to
19 the truth; right?

20 A No, I don't believe that was our intent. Our
21 intent was to leave him without any,
22 essentially, promise of favour. We were looking
23 for witness protection and that was it.

24 Q I suggest to you, sir, that the promise or hope
25 of favour had already been achieved?

1 A Yes, but he wasn't aware of it, so how -- these
2 are the kinds of questions we were discussing
3 with Mr. Miller, I'm afraid, Mr. Abra.

4 Q Let's assume for a moment -- you were an
5 experienced investigator at that time, you knew
6 that Zanidean was a problem. He was already
7 causing trouble; right?

8 A Yes.

9 Q Assuming for a moment that Kovnats contacted the
10 RCMP in Swift Current to find out what the
11 situation was, and assuming for the moment they
12 said, well, we told Winnipeg Police a month ago
13 that we weren't charging him, that would have
14 really made Zanidean happy, wouldn't it?

15 A I don't know.

16 Q That might have ticked him off even more than he
17 already was, don't you think?

18 A I don't know for sure, I don't know.

19 Q I see. And if it ever came out that the Crown's
20 office and the Winnipeg Police knew that
21 Zanidean wasn't going to be charged, and he
22 wasn't told that, don't you think that there
23 would be a furor about the fact that the
24 intention of the Crown's office and the Winnipeg
25 Police was to hold this over his head?

1 A That's always a possibility, sir, yes.

2 Q In fact, you know as well as I do that
3 Mr. Zanidean should have been told. And I'm
4 suggesting to you that at no time did Bruce
5 Miller ever suggest to you that he should not be
6 told?

7 A We wouldn't have proceeded that way without
8 direction from Manitoba Justice, sir.

9 Q I see. But it wasn't from Dangerfield and
10 Lawlor, the ones who were on the line?

11 A No, I'm afraid, Mr. Abra, it was Mr. Miller,
12 their boss.

13 Q If I might have a moment, Mr. Commissioner, I'm
14 just about finished.

15 THE COMMISSIONER: Certainly, Mr. Abra.

16 BY MR. ABRA:

17 Q Just one other question, Mr. Vandergraaf. Could
18 you go to tab 41, please?

19 A Yes.

20 Q Which is the one that you have been shown
21 previously, that was shown to you yesterday by
22 Mr. Code and a couple of the other lawyers have
23 referred to it.

24 THE COMMISSIONER: It is in?

25 MR. ABRA: Sorry, it is in volume 2, of the book

1 of documents.

2 THE WITNESS: 41?

3 MR. ABRA: Yes.

4 BY MR. ABRA:

5 Q Now, I know that this was written by Anderson.

6 The supervising officer was apparently Sergeant

7 Ron Ryland?

8 A Yes, sir.

9 Q Did you review this sup before it was sent to
10 the Crown, do you remember?

11 A I don't know. I did review it in due course
12 when I returned, but it very well could have
13 been sent over before my --

14 Q Without your reviewing it?

15 A Yes.

16 Q I see. You have no specific recollection of it?

17 A No.

18 Q Okay. I just want to ask you a couple of
19 questions, Mr. Vandergraaf. You became, after
20 this case -- this was one of the first cases
21 involving witness protection, I think you
22 testified to yesterday; is that fair?

23 A Witness protection to this extent, yes.

24 Q Yes, to the point that it became an organized
25 program and so on?

1 A It took a lot of years, yes.

2 Q And subsequent to this case, I don't know when
3 it was exactly, but subsequent to this case, you
4 effectively became the Winnipeg Police officer
5 responsible for witness protection in subsequent
6 cases; is that right?

7 A To a large degree, sir, yes.

8 Q And you did it for a number of years involving a
9 number of protected witnesses?

10 A Yes, sir.

11 Q It was not at all uncommon, I gather from what
12 you testified to I believe yesterday, I just
13 wanted to make sure, that rather than putting
14 the witness into the formal witness assistance
15 program, that the person would be paid a
16 relocation allowance for them to make their own
17 arrangements about relocating themselves,
18 protecting themselves and so on?

19 A Very common, sir, yes.

20 Q And such payments were, in fact, for witness
21 protection?

22 A That's what they were for. If we didn't go that
23 route, the cost would have skyrocketed further,
24 I'm sure. And although that's not the sole
25 reason, through negotiations with a witness, if

1 it is a satisfactory arrangement to them, then
2 we would just as soon be done with them, my
3 lord.

4 Q Okay. That was quite common?

5 A Yes.

6 Q But it was part of the same responsibility that
7 you had as far as witness protection was
8 concerned? Justice paid the bills, I
9 understand, but as far as the negotiation is
10 concerned, you were involved in many situations
11 where it was negotiated as lump-sum payments?

12 A That's right, sir. And in this particular case,
13 because it was so new, we were flying by the
14 seat of our pants actually.

15 Q Well, it made sense in this case simply because
16 Zanidean was so uncontrollable; is that fair?

17 A Well, him and others in other cases, yes.

18 MR. ABRA: That's fine, sir. Thank you very
19 much.

20 THE WITNESS: Thank you.

21 THE COMMISSIONER: Mr. Code, we have nine
22 minutes.

23 MR. CODE: I have it on the clock. So I'm going
24 to finish in time and you are going to be able
25 to go home.

1 THE COMMISSIONER: Thank you, sir.

2 MR. CODE: And you won't have to come back
3 tomorrow.

4 THE COMMISSIONER: Thank you, sir.

5 BY MR. CODE:

6 Q If I could start, I have only got about four or
7 five questions, but if I could begin with Mr.
8 Abra's question, the area where he just finished
9 up. Your experience after this case, where you
10 went on to do a number of subsequent cases with
11 protected witnesses and became somewhat of a
12 specialist in this area, and you advised that it
13 became common in those cases to pay a witness a
14 relocation allowance?

15 A Yes.

16 Q You recall that evidence. And I simply want to
17 ask you, in those cases where that practice
18 developed, I take it that's what you were
19 referring to in your interview with us where you
20 said that the proper way to do this is to
21 prepare a supplementary report, doing it all
22 openly and transparently, and disclose that to
23 the defence; is that correct?

24 A That's correct, sir.

25 Q And that's the practice that you followed in the

1 subsequent cases?

2 A Yes. We developed, over the course of years,
3 some policy to deal with these situations, yes.

4 Q If I could then go back to one of the earliest
5 cross-examinations conducted by my colleague,
6 Ms. Carswell, and Mr. Olson asked a question in
7 this area as well, so if I could deal with both
8 Ms. Carswell and Mr. Olson's question on this
9 point.

10 They specifically were directing you to tab
11 31 of volume 2, where we have Mr. Brodsky's
12 letter, his first disclosure letter, the
13 February 7th disclosure letter, where his item
14 number 16 asks for police officers' notebooks of
15 all contacts with Zanidean. You remember that
16 particular disclosure request?

17 A Yes, sir.

18 Q And the questions that Ms. Carswell and
19 Mr. Olson asked you in that area were as to
20 whether or not, having had that request passed
21 on to you, and given the advice back that
22 Mr. Lawlor passed on to the defence, was there
23 ever any request, either from the Crown or from
24 Mr. Brodsky, as I understood it, did anybody
25 ever ask you to produce all of their notes,

1 instead of just the notes of the contacts with
2 Zanidean, let's have their entire notebooks; do
3 you recall that area of questioning?

4 A Yes. Yes.

5 Q Sir, the suggestion was there could have been a
6 follow-up request that was even broader than
7 this rather narrow focused request. Do you
8 remember that?

9 A Yes, I do. And I guess with Stinchcombe, the
10 broader request would be a mandatory situation
11 now. I don't know.

12 Q With Stinchcombe, you wouldn't even have to make
13 a specific request, you would just automatically
14 get the officer's notes books because they are
15 relevant and they are discloseable, sir.

16 A Correct, sir.

17 Q The question I wanted to ask you about this
18 suggestion that there could have been an even
19 broader request than Mr. Brodsky made is, did
20 the Crown ever take that kind of step,
21 indicating some kind of mistrust of you and say,
22 well, you have responded to our narrow request,
23 but we don't trust you, so give us your entire
24 notebook so we can vet them for you? Was that
25 the nature of the relationship you had with the

1 Crown?

2 A Definitely not, sir, no.

3 Q They weren't looking over your shoulders to see
4 if you were answering the narrow specific
5 questions fairly and fully?

6 A Well, looking over our shoulders, no.

7 Q Were there cases where the Crown said, well, I
8 want to see your entire notebook, I'm going to
9 check this myself to make sure that you have
10 answered honestly?

11 A No, I never heard of that, sir.

12 Q And if Mr. Brodsky had said, I want your entire
13 notebook, instead of asking a narrow focused
14 request like that, would you have thought that
15 that was reasonable?

16 A We would have gone to the Crown and said, this
17 is a request that we have, do we comply with it?
18 And he would have said yes, and we would have
19 provided them.

20 Q I take it your attitude towards a narrow focused
21 request, that asks only for your contacts with
22 Zanidean, would be that that's a more reasonable
23 request than a broad open-ended request to give
24 me everything?

25 A Yes, I think so. Mr. Brodsky's requests

1 sometimes I never thought were reasonable, but
2 then again, on that issue, yes, I think you are
3 right.

4 Q If you look at tab 33, Mr. Brodsky's next
5 letter, you see -- have you got tab 33, his
6 second letter, the April 25th one?

7 A Yes, sir.

8 Q Look at his very last request, number 21. He in
9 fact asks to see everything. He says,
10 "Can I see the entire file?"

11 In essence he is saying, I don't trust what I'm
12 getting, give me your whole box, I want to look
13 at it myself.

14 You see that at the very end of tab 33?

15 A I do, sir.

16 Q Do you remember what the answer to that request
17 was?

18 A I don't know, sir, no.

19 Q The answer was, you can't have it.

20 A Not by us.

21 Q Well, the answer at the pre-trial was no to that
22 request.

23 A I see.

24 Q A couple of questions from my colleague,
25 Mr. Wolson -- I don't want him to feel left out

1 of my re-examination. Mr. Wolson asked you
2 whether police officers brought their notebooks
3 to court when they testified, and whether you
4 got access to them in the old days
5 pre-Stinchcombe, if the officer was in the
6 stand. Do you recall that?

7 A Yes.

8 Q And I simply wanted to ask you if the rule was
9 that you got access to anything the officer had
10 used to refresh memory; is that correct?

11 A Yes.

12 Q You couldn't roam at large through his notebook,
13 you got access to what he had used to refresh
14 his memory; is that correct?

15 A Well, not exactly in this province. It seemed
16 to me that once that notebook, I mean, we would
17 confine a notebook to a specific area of that
18 investigation. If there was additional other
19 investigations, my lord, of course, that would
20 be pinned up, and now, of course, it is a
21 photostatic copy that we provide of solely those
22 notes. So it was quite common for counsel to
23 take the book and say, what is this? Well,
24 that's a different case, sir.

25 Q So if the officer was testifying about a certain

1 aspect of the case, and he had refreshed his
2 memory in relation to that aspect, you are
3 saying that he could look at any other part of
4 the notebook in relation to that case?

5 A Well --

6 Q Pre-Stinchcombe rules?

7 A Yes, if he had notes and he was refreshing his
8 memory, and there was other issues in that case,
9 my understanding was defence counsel had free
10 roam of that particular issue in that notebook.

11 Q It is not a big point, I don't want to use up
12 too much of my time on it.

13 A Sorry, sir.

14 Q Mr. Wolson suggested to you, or the implication
15 in one of his questions was that some of the
16 Winnipeg Police Service file was now lost or
17 destroyed. Do you remember that area of
18 questioning?

19 A Yes, I think so.

20 Q Do you have any knowledge or information as to
21 whether any part of that file has been lost or
22 destroyed?

23 A I don't have any idea, sir.

24 Q You know that the police theory in this case has
25 always been that two people were involved in

1 this homicide?

2 A Yes, sir.

3 Q And as a result of that, the file is still very
4 much an open file; is that correct?

5 A In technical terms, sir, yes.

6 Q An open homicide file in Winnipeg Police
7 Service, is it likely that any of that file has
8 been destroyed?

9 A Well, no. But in this case it seems to be
10 spread all over. I don't know. I wouldn't
11 expect any of it to be destroyed, no.

12 Q All right. And the last question is, Mr. Wolson
13 questioned you about the April phone calls to
14 Swift Current. You remember there was a number
15 of phone calls in April where you are getting
16 information about the Swift Current situation
17 from both Anderson and Orr. And he suggested to
18 you that there were two calls placed by
19 Anderson, and that as a result of the various
20 calls you came back with a clear-cut decision
21 that there was no prosecution of Zanidean, no
22 strings attached. Do you remember that area of
23 questioning?

24 A Yes.

25 Q And I have got two brief questions to ask you.

1 First of all, do you specifically recall
2 Anderson placing two calls in April as opposed
3 to one?

4 A I think, yeah, I think I do. There was
5 several -- at least there was more than one call
6 he was making, yes.

7 Q We know there was more than one call.

8 A And I'm saying he was apprising me, he tried to
9 get ahold of them on one occasion and didn't,
10 and then he finally did.

11 Q I think you are now thinking about October.

12 A I am.

13 Q But in April, in the April time frame when we
14 have both Anderson and Orr making calls, do you
15 specifically recall whether Anderson made one
16 call or two calls?

17 A No, I don't.

18 Q And in relation to the reason that you asked Orr
19 to get involved and to make calls, is it fair to
20 say that the reason you asked Orr to get
21 involved is because you were unsure about the
22 information that Anderson had been getting from
23 Swift Current?

24 A Yeah, that's true.

25 MR. CODE: Thank you very much. Those are my

1 questions.

2 THE COMMISSIONER: Thank you very much. And you
3 will not have to come back.

4 THE WITNESS: Thank you, my lord. I can be
5 excuse for -- forever?

6 THE COMMISSIONER: You are excused. Thank you.

7 THE CLERK: All rise. This Commission of
8 Inquiry is now adjourned.

9 (Proceedings adjourned at 4:50 p.m.)

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CECELIA REID and LISA REID, duly appointed
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and correct transcript of our Stenotype notes as
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Lisa Reid

COURT REPORTER

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