

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

Thursday, July 27, 2006

Volume 8

INQUIRY PROCEEDINGS

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1 THURSDAY, JULY 27, 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 MR. CODE: Good morning, Mr. Commissioner.

6 THE COMMISSIONER: Good morning, Mr. Code.

7 MR. CODE: I call Sergeant Tom Anderson as the

8 next witness, please.

9 THE CLERK: Do you wish to swear on the Bible or

10 to affirm?

11 THE WITNESS: On the Bible. Thomas Burton

12 Anderson, Burton is B-U-R-T-O-N.

13 THE CLERK: And can you spell Anderson?

14 THE WITNESS: A-N-D-E-R-S-O-N.

15 THOMAS BURTON ANDERSON: SWORN

16 THE COMMISSIONER: You may be seated, Sergeant.

17 THE WITNESS: Thank you.

18 BY MR. CODE:

19 Q Good morning, Sergeant Anderson. Have you had a

20 chance to review your statement at tab 2 of the

21 exhibit book?

22 A Yes, sir, I have.

23 Q And you had a chance to review it before it was

24 finalized?

25 A Yes, I did.

1 Q You are content with its accuracy?

2 A Yes, for the most part. I may need to correct
3 some minor details as we go through it, but for
4 the most part, I am content with its accuracy.

5 Q Well, you will draw our attention to those as we
6 go through, because I don't intend to go through
7 the whole of your statement with you. I am
8 leaving it for the Commission in areas that are
9 sufficiently dealt with in the written record,
10 and I will simply take to you the areas that I'm
11 interested in focusing on. So you tell me if
12 there is any problem as we go through?

13 A Yes, sir, I will.

14 Q Your background is set out at page 1 --

15 A Yes.

16 Q -- of the statement. And, in essence, what it
17 discloses is that you had been a plain-clothes
18 detective for about seven years by the time of
19 the Harder homicide in 1990?

20 A Yes.

21 Q You had been with the police for 11 years, and
22 about the last 7 years of those had been as a
23 plain-clothes detective?

24 A Approximately, yes, sir.

25 Q And you became actively involved in the

1 investigation of the Harder homicide?

2 A Yes, I did.

3 Q And Staff Sergeant Vandergraaf, for the most
4 part, was your supervisor?

5 A That's true, yes, sir.

6 Q And he became the de facto officer in charge of
7 the case. Although there was no formal title to
8 that effect, he was the one who, for the most
9 part, took charge of the investigation?

10 A That's true, yes.

11 Q Now, dealing briefly on a fairly general level
12 with disclosure practices, which again is set
13 out in your statement beginning at page 3, this
14 trial took place six months before Stinchcombe,
15 and the investigation took place about a year
16 before Stinchcombe. So in terms of the kinds of
17 disclosure practices that were in place at the
18 time of the investigation in 1990, and the trial
19 in 1991, first of all, do I understand you
20 correctly that you were not directly responsible
21 for disclosure?

22 A Yes, that's correct.

23 Q That that was a task that a supervisor would
24 take charge of?

25 A Yes, sir.

1 Q And generally, given Staff Sergeant's
2 Vandergraaf's role in the case, it would have
3 been him who took charge of the disclosure
4 process?

5 A For the most part, yes.

6 Q Or one of the other staff sergeants --

7 A Right.

8 Q -- if he wasn't on shift at the time?

9 A That is more accurate, yes.

10 Q And in terms of -- although you weren't the
11 direct person who was passing materials on to
12 the Crown, that was going on at a level above
13 you, your understanding was that certainly at a
14 minimum, all police reports, the pinks that
15 we've heard about, or the pink copy of the
16 police report, and all witness statements, would
17 go up to the Crown?

18 A Yes. Accused's statements, witness statements,
19 supplementary reports and officer's notes.

20 Q Well, let's come to the notes in a minute. I
21 said, at a minimum, what would always go to the
22 Crown were the pinks, the pink copy of the
23 police reports, witness statements, statements
24 of the accused; is that accurate?

25 A Yes.

1 Q Now let's deal with police notes. Who had
2 custody, who had physical custody of the police
3 notes?

4 A The officer who made them.

5 Q And would a photocopy of your notes be kept on
6 the file, as a running copy of your notes on the
7 file, updated on a regular basis?

8 A No. The notes would be forwarded to the Crown
9 sometime preceding the trial.

10 Q Okay. And how and when would they be forwarded
11 to the Crown sometime -- a photocopy you're
12 talking about, presumably?

13 A Correct, yes.

14 Q Because you are keeping physical custody of your
15 notebook. So you're saying there's a
16 photocopying exercise that goes on sometime
17 prior to the trial, and all officer's notebooks
18 get sent up to the Crown?

19 A Generally speaking, yes.

20 Q All right. Well, generally speaking, if you
21 could be more precise about this, because nobody
22 else is saying this other than you, so I need to
23 know exactly what your account is about this
24 practice?

25 A Well, the practice of supplying Crowns with

1 officer's notes wasn't a static thing, it
2 changed over the years. But at this time, it's
3 my recollection that officer's notes would be
4 sent to the Crown.

5 Q And which officers and when, and what was the
6 process that triggered this? Give us some more
7 detail about it?

8 A Okay. The process that would ordinarily trigger
9 it, and again I don't have a specific memory of
10 this, but the process that would ordinarily
11 trigger it would be the Crown asking for the
12 notes at a specific time. Then usually the
13 coordinator would relay that information to
14 officers to photocopy their notes, and they
15 would be left with the coordinator and make
16 their way to the Crown.

17 Q Fair enough. So the Crown could get your notes
18 if they asked for them?

19 A Yes. But it's my memory that at that time that
20 was pretty standard.

21 Q That they routinely asked for your notes?

22 A Yes. At least in murder investigations. I'm
23 not sure if that was a blanket or not.

24 Q All right. So your understanding was that in a
25 serious case like a homicide, the prosecutors

1 would routinely ask for the notes of all of the
2 officers, or simply the most important officers?

3 A Well, I'm not sure. For sure the ones that were
4 subpoenaed, and it may have been all officers,
5 I'm not sure.

6 Q Because we certainly see a practice in this
7 file, if you want to look at tab 33,
8 Mr. Brodsky, for example, in this letter at tab
9 33, this is one of his three main disclosure
10 letters that we have a record of. You see that
11 letter at tab 33, the first four items on it is
12 he, Brodsky, is asking for police notes;
13 correct?

14 A Yes.

15 Q And at tab 35 you see the response that comes
16 back the very next day from Mr. Lawlor. He
17 forwards the first three sets of notes that were
18 requested. And those aren't complete notes, an
19 entire officer's notes, they are notes of
20 specific tailored events that Mr. Brodsky is
21 asking for the notes in relation to that
22 particular investigative step.

23 A Well --

24 Q Is that something different from what you're
25 describing where the Crown --

1 A Well, it is something different. But I am
2 basing what I say on my recollection and what
3 I've seen provided to me. And I've seen, on
4 lists of requests from the Crown, requests of
5 the police for further disclosure. I've seen
6 notes of, or requests for notes of specific
7 officers, other than these which led me to
8 believe that those were officer's notes who
9 hadn't yet been forwarded.

10 Q Again, so I can be sure that I understand you
11 here, the other references to notes you're
12 talking about, let me see if I can assist you,
13 tab 43, and again this is in response to a
14 request from Mr. Brodsky. You see at tab 43 --

15 A Yes.

16 Q -- a report of yours right on the eve of trial
17 on May 24th, Mr. Brodsky asks for Pilotte's
18 notes and Happychuk's notes, and they are items
19 6 and 7 attached to this supplementary report?

20 A Correct. And when I described the practice,
21 that's exactly what I'm thinking of, because
22 that says to me, when I read that, that means to
23 me that everyone else's notes have already been
24 forwarded, and I was tasked with getting ahold
25 of Pilotte and Happychuk and get their notes to

1 the Crown.

2 Q So you're drawing an inference from that
3 specific request by the Crown for the notes of
4 two officers that they already have everybody
5 else's notes?

6 A Yes, that's true.

7 Q And have you seen any documentation to support
8 that --

9 A I'm sorry?

10 Q -- entire notebooks were being forwarded?

11 A I didn't hear your question.

12 Q Have you seen any documentation to support that
13 assumption of yours that entire notebooks of all
14 of the other officers had already been
15 forwarded?

16 A Well, not that I can think of at the moment. I
17 arrived at that conclusion partly from those two
18 handwritten notes that we just referred to.

19 Q You're drawing an inference--

20 A Yes.

21 Q -- from that final supplementary report there?

22 A Yes.

23 Q Is the practice that you're describing, is this
24 the Crown asking for notes for their purposes,
25 or is this the Crown passing on a request from

1 the defence that they want to see all of the
2 officers' notes?

3 A Well, I don't know for sure. But as I read the
4 two handwritten notes that I referred to here,
5 my assumption was that the notes that
6 Mr. Brodsky had did not include notes of these
7 two officers, but I don't know that for sure.

8 Q All right. Because, you see, when Mr. Brodsky
9 generally asks for notes, he is fairly specific
10 and focused in asking for notes about a specific
11 aspect of the investigation. I am not aware of
12 any case, other than those two there, where he
13 asks for an entire officer's notebooks.

14 A Well, that may be the case, Mr. Code. I can
15 only go -- I can only refresh my memory, based
16 on the documentation that's been provided to me,
17 that's to the best of my ability.

18 Q You've explained your process of reasoning very
19 clearly now and I understand it. You are
20 drawing an inference from that final
21 supplementary --

22 A Yes.

23 Q -- report that we just produced. You don't
24 actually know whether it happened or not here,
25 you are drawing an inference?

1 A Yes.

2 Q All right. Leaving aside the notes then, the
3 question of the Supp. reports, the investigative
4 reports, the pinks, which we know were
5 automatically forwarded to the Crown, at least
6 according to all of the evidence that we have
7 heard. In terms of what went into those pinks,
8 those reports that always went to the Crown, as
9 I understand your statement at page 3, anything
10 relevant or important for the Crown to know, the
11 practice was to put it into a police report?

12 A Yes.

13 Q Now, turning to Reath Zanidean and the witness
14 protection issues, is it fair to say that the
15 Crown theory of the Harder homicide and the
16 police theory was that this was an execution of
17 a potential witness?

18 A Yes, that is fair to say.

19 Q That was your working theory, and accordingly
20 there were witness protection issues right from
21 the start of this case because of the nature of
22 the homicide, as you were trying to understand
23 the case?

24 A Yes, sir, that's correct.

25 Q And in addition to the theory of the case

1 driving witness protection concerns, when
2 Zanidean comes forward on October 9th, and then
3 you get him down to the station on October 10th,
4 he expresses concerns for his safety to you,
5 which adds to the sort of climate of witness
6 protection concerns in this case; is that fair?

7 A Yes, that's fair.

8 Q And, again, you've set this out in your
9 statement at page 7, and I don't need to go into
10 it in any more detail.

11 The one aspect of it I wanted to just touch
12 on briefly is that your recollection is that
13 Zanidean's witness protection requests or
14 demands, however one wishes to characterize
15 them, were fairly modest at the early stages.
16 When he comes in, in October, and you start
17 having these discussions with him, and he
18 becomes an important witness, he is not making
19 major demands in terms of witness protection at
20 that stage?

21 A Well, I don't recall any demands he was making
22 prior to -- prior to retaining Mr. Kovnats. The
23 discussions about witness protection, as I
24 recall, were one way, up until that point. In
25 the very first encounter with Mr. Zanidean, we

1 explained to him, Al Paul and I that is, that he
2 could expect nothing but protection.

3 Q So you were offering protection?

4 A We offered the protection, and we gave him an
5 education in what witness protection is, as I
6 have done with all witnesses that I have
7 encountered in my career. And the education
8 involves making him understand that they can
9 expect no reward or award or perks or benefits,
10 other than safety.

11 Q And so your point is that the demands weren't
12 coming from him, it was you who was offering it
13 because of the nature of the case?

14 A Correct.

15 Q And he, in turn, having these concerns for his
16 safety, was presumably very pleased that you
17 were offering that to him? He was happy that
18 this wasn't going to be a debate or a struggle
19 over this?

20 A Well, I don't think he was enthusiastic about
21 being a Crown witness, but he may have been
22 reassured by our promises of protection.

23 Q He wanted protection?

24 A Oh, absolutely, he did.

25 Q So there was a meeting of minds between both

1 sides about the importance of protection, and
2 there were no difficulties at those earlier --
3 at those early stages in negotiating what he was
4 going to get?

5 A No.

6 Q And you then prepare a report, which I
7 apologize, I didn't put in the original book of
8 documents. It is referred to in your witness
9 statement, and when I was preparing, I noticed
10 that we had omitted it. And perhaps I could ask
11 Madam Registrar to hand you a copy of what I am
12 going to ask become tab 58, which is a report
13 you prepared early on in the case. It is dated
14 November 4th. Perhaps I can ask Mr. Dawe to
15 distribute it?

16 THE COMMISSIONER: That will be tab 68 of
17 Exhibit 6B?

18 MR. CODE: Tab 58, sir.

19 THE COMMISSIONER: Tab 58 of Exhibit 6B.

20 MR. CODE: Exactly.

21 BY MR. CODE:

22 Q Do you have that report, Sergeant Anderson?

23 A Yes, do I.

24 Q It is your report --

25 A Yes, it is.

1 Q -- signed by you?

2 A Yes.

3 Q Dated November 4, 1990?

4 A Yes.

5 Q And this is pretty much at the point where you
6 have wrapped, in fact I think it is exactly at
7 the point where you have wrapped up all of your
8 witness interviews with Zanidean, he is finished
9 the body packing operation, and you are now
10 starting to get -- and Driskell's been charged
11 just in the previous week or so -- and you're
12 now starting to put together a witness
13 protection proposal or a plan for Zanidean. Is
14 that a fair summary of the purpose of this
15 report?

16 A Well, if you just give me a minute to read it
17 all, I could answer that.

18 Q You set out a short-term plan in the middle of
19 the page and a long-term plan at the bottom of
20 the page --

21 A Yes.

22 Q -- according to the headings in the left-hand
23 margin.

24 A Your question, sir, was?

25 Q The purpose of this report was to develop a

1 witness protection plan for Zanidean now that
2 you had effectively collected his evidence; is
3 that a fair summary of its overall purpose?

4 A Well, I have no memory of writing this, so I
5 can't remember exactly why I have written it. I
6 expect that I was instructed to by somebody,
7 Vandergraaf or someone. And to answer your
8 question, it does provide a background of
9 Mr. Zanidean's involvement with us, and a
10 short-term and long-term proposal for protecting
11 him. It looks to me like what it does is set up
12 a proposal for what we committed to do with Ray
13 Zanidean on day one.

14 Q I mean, it's not a particularly difficult
15 question, Sergeant Anderson. All have you to do
16 is look at the title of the document, "Witness
17 Protection for Ray Zanidean"?

18 A Yes.

19 Q And look at your two headings in the margin,
20 "short term" and "long term". You are setting
21 out a plan for his witness protection; is that
22 correct?

23 A Yes, I am. But I don't have any recollection of
24 who I'm addressing this to, or who it's being
25 sent to, or why it's written. I suspect,

1 because Sergeant Vandergraaf looked after
2 witness protection issues, that he has requested
3 it, but I don't know.

4 Q Well, it's rational that you would do this, is
5 it not? Look at the date of it, November 4th.
6 You have finished taking your statements from
7 him; is that correct?

8 A I believe so, yes.

9 Q I believe the last statement is November 2nd?

10 A Yes.

11 Q We will come to the statements in due course,
12 but this is within a day or two of the last
13 statement having been completed. You've got
14 witness protection concerns because of the
15 nature of the case and because of Zanidean's
16 expressed fears; is that correct?

17 A Yes.

18 Q So you need to develop a witness protection plan
19 for your witness?

20 A Yes.

21 Q It's a logical next step to take. And you set
22 about drafting a helpful little document on the
23 point.

24 The background information that you set out
25 in the two lead paragraphs, the two background

1 paragraphs, you note that Zanidean was receiving
2 UIC at the time; is that correct?

3 A That's what it says, yes.

4 Q Well, was that correct? It's your report. I'm
5 asking you if it's accurate?

6 A Well, I'm assuming it's correct, yes.

7 Q His wife, or his common-law wife, was receiving
8 compensation payments; is that correct?

9 A Yes.

10 Q And neither of them was working at present and
11 they have no plans to obtain work in the near
12 future; is that correct?

13 A That must be what they told me, yes.

14 Q And the short-term plan is to obtain an
15 apartment or a hotel room for them and put a
16 24-hour police guard on it?

17 A Yes, sir.

18 Q And the long-term plan is to have a change of
19 identity, to fund the relocation for him to
20 Calgary; is that correct?

21 A Yes.

22 Q And in terms of employment, your conclusion on
23 employment under the long-term plan heading is
24 that employment opportunities for Mr. Zanidean
25 and his wife are unaffected by Mr. Zanidean's

1 role as a Crown witness.

2 So it appears that you didn't think any
3 employment plan for him, or assistance with
4 change of employment, would be a witness
5 protection issue; is that correct?

6 A That would appear to be the case. That's what
7 it says.

8 Q You don't have any different recollection of
9 that?

10 A No, I don't. I actually don't have any
11 recollection of the issues contained herein, but
12 I have no reason to doubt them.

13 Q Fair enough. That's the way we usually work
14 with documents about old events.

15 And then, finally, in the very last
16 paragraph, you set out that you had made a clear
17 commitment to him that he would be protected at
18 your very first meeting with him on October 9th;
19 is that correct?

20 A Yes, I do.

21 Q And you were determined to honour it. You said,
22 "It is imperative that we fulfill our
23 commitment".

24 A Yes, that's true.

25 Q That was reflective of what, in fact, had

1 happened and what you wanted to see happen in
2 the future?

3 A Yes, sir.

4 Q All right. I want to turn to the subject of the
5 Swift Current arson and the two admissions that
6 you received from Mr. Zanidean during the month
7 of October.

8 A Yes.

9 Q Is it accurate to say that on two occasions
10 during the early investigative phase in October,
11 when you were taking your statements from
12 Zanidean and developing your case, that he
13 admitted to you on October 10th and October 29th
14 that he and Driskell were the co-perpetrators of
15 a serious arson in Swift Current?

16 A That's true, yes.

17 Q And the admission was that the arson had taken
18 place in early July of 1990, and that they had
19 driven out to Swift Current together from
20 Winnipeg, the two of them?

21 A Yes.

22 Q And the date of that trip, the early July date,
23 the time frame in which Zanidean admitted it had
24 taken place, was in and around the time of the
25 police and Crown theory of the Harder homicide?

1 A Yes.

2 Q The theory of the homicide was that it takes
3 place some time in or around mid-June, late
4 June; is that fair?

5 A June 16th, yes.

6 Q You believe Harder disappeared on June 16th and
7 had been executed almost immediately --

8 A Correct.

9 Q -- in a matter of days. So what this
10 information from Zanidean did is it placed he
11 and Driskell together, involved in a serious
12 crime, in and around the time of the Harder
13 homicide; is that correct?

14 A Yes, that is correct.

15 THE COMMISSIONER: Just refresh my memory for a
16 moment, I've forgotten the date of the fire?

17 MR. CODE: The date of the fire is June 8th --
18 sorry, July 8th.

19 THE COMMISSIONER: July 8th.

20 MR. CODE: So the theory of the disappearance is
21 it is on June 16th, and the homicide is within a
22 matter of days.

23 THE COMMISSIONER: Yes.

24 BY MR. CODE:

25 Q And then on July 8th is the trip to Swift

1 Current and the arson.

2 And, indeed, because of the close proximity
3 in time between the two crimes, you had taken a
4 statement from Zanidean about discussions that
5 he and Driskell had had about the homicide on
6 that very trip to Swift Current; is that
7 correct?

8 A Yes, that's correct.

9 Q So the intertwining of the two events was tied
10 together by statements that had allegedly been
11 made in the car while driving back from Swift
12 Current, I believe?

13 A Yes, to some extent.

14 Q Now, if I could go to the police notes of those
15 two statements. The October 10th admission is
16 in Sergeant Paul's notebook and the October 29th
17 one is in your notebook. So the first one, the
18 October 10th one, is in Sergeant Paul's
19 notebook, and that's at tab 5. And you, in
20 fact, initial these notes; is that correct?

21 A Yes, that's correct.

22 Q And that was because you hadn't taken notes of
23 the admission yourself and you were
24 authenticating the accuracy of your fellow
25 officer's notes?

1 A Yes, that's true.

2 Q So starting at 519, this is page 5, 519, we get
3 Sergeant Paul's note for October 10th; is that
4 correct, in the middle of the page?

5 A Yes, I have it here.

6 Q And Zanidean actually comes down to the Public
7 Safety Building on that day at 12 noon? He
8 attends at your office?

9 A Correct.

10 Q And that's the first time he had come down to
11 your office. You had met with him the day
12 before on October 9th and taken a statement from
13 him out in the suburbs somewhere; is that
14 correct?

15 A Yes, it is correct.

16 Q He hadn't actually come downtown to the station?

17 A True.

18 Q And according to Sergeant Paul's notes, you go
19 over the statement with him that you had taken
20 the previous day?

21 A Yes.

22 Q And you then have a discussion with him about
23 some other names of potential, either potential
24 witnesses or suspects; is that correct?

25 A Yes.

1 Q Over the page, at page 520, there's a mention of
2 Driskell's mobile home up at Matheson Island.
3 And then you have -- Sergeant Paul has recorded
4 a statement by Driskell about -- or by Zanidean,
5 a statement by Zanidean about Driskell and the
6 hiding of the body in his van; is that correct?

7 A Yes.

8 Q There is a reference to a silver van and the
9 statement to the effect that that's where he put
10 the body. And then immediately after that note
11 about -- the statement about hiding the body in
12 the van, we see your initials "T.A." in the
13 left, left-hand column?

14 A Yes.

15 Q And it's right at the point where Zanidean turns
16 to the topic of Swift Current; is that correct?

17 A That's correct.

18 Q What you are initialling here specifically is
19 the Swift Current admission?

20 A Yes.

21 Q And we will see in a minute, when we go to your
22 notes, that probably the reason for that is
23 because you had taken notes of the previous
24 discussions with Zanidean yourself. But this
25 part, you left the note taking to Sergeant Paul,

1 is that fair?

2 A Yes, that's fair.

3 Q So he raises the Swift Current matter there at
4 page 520, and he introduces it by saying there
5 could be a problem with his credibility in
6 court; is that correct?

7 A Yes.

8 Q And you have fairly acknowledged in your
9 statement that you recognized that this whole
10 Swift Current issue was obviously an issue that
11 could potentially impact on Zanidean's
12 credibility; is that correct?

13 A Yeah, in one way or another it could.

14 Q And Zanidean saw that and you saw that?

15 A Yes.

16 Q There was no confusion about it from the start.
17 And he then proceeds to make the admission that
18 he and Driskell had committed this arson in
19 Swift Current, which he describes as blowing up
20 a house of a relative's place; is that correct?

21 A Yes, that's correct.

22 Q And you initial it again at the bottom of the
23 page?

24 A Yes.

25 Q "T.A." And then over at the top of the next

1 page, 521, Sergeant Paul advises him, at the top
2 of 521, that the police will make inquiries with
3 Saskatchewan on that matter; is that correct?

4 A Yes.

5 Q And he then cautions Zanidean about his right to
6 counsel and his right to remain silent?

7 A That's correct.

8 Q Because he had implicated himself in a criminal
9 offence that you weren't investigating?

10 A Yes.

11 Q Is that correct?

12 A Yes.

13 Q So the interview ends and Zanidean leaves. And
14 you initial the conclusion of the interview
15 two-thirds of the way down page 521?

16 A That's true.

17 Q And that's the end of the notes for
18 October 10th. You see on the next page,
19 Sergeant Paul goes on to October the 11th.

20 Now, if we look at your notes for
21 October 10th, and we can just briefly point out
22 that you cover essentially the same matters as
23 Sergeant Paul in your notes, except for those
24 parts that you've initialled here. Your notes
25 are at tab 4, and it's right at the start of

1 your notebook, pages 9 to 10 -- sorry, 9 to 11,
2 that we have your note for October 10th. So tab
3 4, page 9, at the top we have your entry for
4 October 10th, Wednesday, October 10th; is that
5 correct?

6 A That's correct.

7 Q And you again have Zanidean attending at the
8 office, reviewing a statement from the previous
9 day; is that correct?

10 A Yes.

11 Q And then proceeding to give you a statement
12 about Driskell asking Zanidean to follow Harder
13 after a court remand? Have I summarized that,
14 that Zanidean attends at one of the
15 Driskell/Harder chop shop remand appearances?

16 A Yes.

17 Q And Zanidean recounts that Driskell asked him to
18 follow Perry, and Zanidean refused to do that.
19 And Driskell then suggested that his brother Ron
20 might do it for him?

21 A Yes, correct.

22 Q So this idea that they are following Harder or
23 Driskell's got a plan to try to follow Harder.

24 At the bottom of page 9 you have a note,
25 similar to Paul's note, about these other

1 potential witnesses and suspects that you are
2 looking at or you're interested in; is that
3 correct?

4 A Yeah. These are -- I believe these are criminal
5 associates of Driskell's that he is referring
6 to.

7 Q People that you are interested in looking at or
8 talking to --

9 A Possibly.

10 Q -- about the case?

11 A Potentially, yes.

12 Q Over the page, at page 10, without going through
13 all of the notes, towards the bottom of page 10,
14 you see you make a note about the mobile home at
15 Matheson Island?

16 A Yes.

17 Q Similar to your colleague, Officer Paul's note?

18 A Yes.

19 Q And then at the very bottom of page 10, you have
20 a note about the van, the silver van, and the
21 theory that or the statement to the effect that
22 that's where the body had been placed, that
23 Zanidean recounts to you. Again, all very
24 similar to Sergeant Paul's note, the very last
25 entry at the bottom of page 10?

1 A Yes.

2 Q You see the van with the cubby hole under the
3 bed?

4 A With just enough space --

5 Q Just enough space.

6 A -- to put Perry in.

7 Q Again, that's Zanidean's statement about what
8 Driskell said that you and Paul record in your
9 notes?

10 A Yes.

11 Q And then, finally, over the page, your last note
12 at the top of 11, a reference to Ray believing
13 that Jim Driskell had sold the van?

14 A Yes.

15 Q But still uses it?

16 A Yes.

17 Q And your notes for October 10th terminate at
18 that point, and you then pick up, in Sergeant
19 Paul's notebook, the discussion about Swift
20 Current and you initial it; is that correct?

21 A Correct.

22 Q So your notes essentially follow each other for
23 the early discussions. And then the final
24 discussion, when it turns to Swift Current, we
25 have you simply initialling Paul's notes. And

1 then that terminates the October meeting with
2 Zanidean; is that correct?

3 A Yes, sir.

4 Q Now, you later prepared a report of that
5 October 10th meeting with Zanidean?

6 A Yes, I did.

7 Q We find that at tab 6, the last tab in this
8 first book, in volume 1?

9 A Yes, I have it here.

10 Q And if we could look at that for a minute, the
11 report is dated October 28th. And it's going
12 back -- you're the author of the report?

13 A Yes, I am.

14 Q It's going back and reviewing the events in the
15 investigation on October 10th and October 11th;
16 is that correct? And setting them out in a
17 supplementary report for Crown counsel?

18 A Yes, that is correct.

19 Q The first two paragraphs deal with October 10th,
20 and then the next four paragraphs deal with
21 October 11th; is that correct?

22 A Yes, it is.

23 Q So you could draw a line, effectively, under the
24 first two paragraphs, and that is your report
25 for October 10th?

1 A Yes.

2 Q And what we see set out there, in the first
3 paragraph, is that you bring Zanidean down to
4 the station on the 10th at 12 noon; is that
5 correct?

6 A Yes.

7 Q And you interview him.

8 "We conducted an interview, the purpose of
9 which was to obtain further details."

10 Is that correct?

11 A Yes.

12 Q It's a follow-up to the October 9th interview,
13 in essence?

14 A Correct.

15 Q And then the long paragraph, the second
16 paragraph, summarizes the various statements he
17 made to you, in particular, about this
18 possibility of following Perry Harder after his
19 court remand appearance is set out there; is
20 that correct?

21 A Yes.

22 Q That Zanidean had refused that and Driskell had
23 then turned -- or suggested his brother Ron
24 Driskell might help. That's all set out there?

25 A Yes, it is.

1 Q And that's consistent with your notes?

2 A Yes.

3 Q And, indeed, you would likely have been simply
4 relying on your notes to prepare this report; is
5 that fair?

6 A That's how I would prepare the report, yes.

7 Q Because you are preparing the report some 18
8 days afterwards. And this paragraph clearly is
9 faithful to the account in your notebook; is
10 that correct?

11 A Yes.

12 Q And then after the reference to following Harder
13 from a court appearance and the possibility of
14 contacting Ron Driskell, there's a concluding
15 reference to Zanidean saying that he didn't know
16 where Ron was. And he would try to get somebody
17 to help to follow Harder in an effort to locate
18 his current residence. And, again, that's
19 faithful with the accounts set out in your
20 notebook; is that correct?

21 A Yes.

22 Q And you then say,

23 "The conversation concluded at that."

24 Is that correct?

25 A Yes.

1 Q And as I understand, when we questioned you
2 about this, when you were giving your statement,
3 when you say:

4 "The conversation concluded at that",
5 that you are referring to Zanidean's conversation
6 with Driskell at the time of the court remand
7 appearance?

8 A That's true, yes.

9 Q You're not talking about your conversation with
10 Zanidean on October 10th concluding at that
11 point?

12 A Correct.

13 Q Because, in fact, what we know is your
14 conversation with Zanidean on October 10th
15 carried on, for another couple of pages of
16 notes, to deal with the Swift Current arson; is
17 that correct?

18 A Yes, that is correct.

19 Q And that part of your October 10th interview
20 with Zanidean has been omitted from this report;
21 is that correct?

22 A Yes, it is.

23 Q And why is it that you omitted that part of the
24 notes, that part of the October 10th interview,
25 from this report to Crown counsel?

1 A Well, you know, to answer that, I would be
2 better able to answer or give you a definitive
3 answer if I had the entire file here. Because,
4 for all I know, there is a report in that file.
5 I am dependent on you telling me that there
6 isn't a separate report on that file to believe
7 that there isn't. But I suspect, if it is the
8 case that there isn't a report covering this,
9 it's an innocent oversight. My intention likely
10 would have been to take out a separate file
11 number because, as a general rule, we didn't mix
12 up information to do with crimes in the same
13 report. In other words, we wouldn't report on a
14 series of car thefts and arsons, and what have
15 you, in a murder report.

16 And in this case, since it happened in
17 Saskatchewan, I suspect that my original
18 intention would have been to take a separate
19 file number, with a classification that we
20 referred to as assistance to an outside agency,
21 and eventually forward that to Swift Current.
22 As events unfolded, that didn't become
23 immediately necessary. So it may be that I did
24 do that, and it was in the file and it was never
25 forwarded through channels, or events unfolded

1 in a way that I didn't -- I never did complete
2 that report.

3 Q Well, let's deal with the first proposition
4 first, the thesis that there was a report done
5 and it's just gone missing from the file. We
6 have full disclosure from the Winnipeg Police of
7 their file, and we have full disclosure from the
8 Department of Justice of their file. So had you
9 produced a report, there would have been
10 multiple copies of it. There would have been a
11 copy in the Winnipeg Police file and a copy in
12 the Department of Justice file; is that correct?

13 A Well, that's the likely expectation. But what
14 I'm suggesting as one possible answer is that,
15 had I typed up a report that includes four
16 copies, it wouldn't necessarily have been split
17 up and sent through channels immediately, it may
18 have stayed with the murder file and is now
19 missing. I don't know, without the benefit of
20 having the file at the time.

21 Q In any event, you have no recollection of
22 producing such a report?

23 A No. No, I don't.

24 Q You are just offering a possible theory?

25 A Exactly.

1 Q Because certainly, from the two files that we've
2 received, the Department of Justice file and
3 Winnipeg Police Service file, we can find no
4 such report.

5 Turning, then, to the thought that perhaps
6 what happened here is that you intended to set
7 up a separate file because this was an arson,
8 and you were investigating a homicide, is it
9 fair to say that this information that
10 Driskell -- or that Zanidean was giving you
11 about the Swift Current arson was relevant to
12 the homicide, was important to the homicide?

13 A Yes, that's fair to say. And that's why all
14 relevant parties were notified of the contents
15 of those notes. Whether or not I reported on
16 it, my superiors were all informed of that
17 admission and a later one that came on
18 October 29th, I believe. My superiors were
19 informed of that, Mr. Miller was informed, Swift
20 Current, Constable Burton was informed.

21 Q We will come to the reporting that you did on
22 this in a moment. I appreciate your position
23 that this was all reported orally, even if there
24 is no report. But I am just -- I am just trying
25 to understand the logic for why you've edited

1 out part of the October 10th meeting with
2 Zanidean. So it was relevant to the homicide,
3 relevant in the sense that it went to Zanidean's
4 credibility?

5 A Well, first of all, if I could correct you,
6 Mr. Code. I didn't edit part of the -- I didn't
7 edit the meeting with Mr. Zanidean. I didn't
8 include the arson admission in that
9 supplementary report, I think that's a more
10 accurate way of stating it.

11 Q You omitted it?

12 A Yes, that's right.

13 Q I'm using --

14 A But only that part, that was the only part that
15 was omitted from that interview, as I'm sure
16 you'll agree.

17 Q I agree, absolutely. The rest of it is
18 completely faithful to your notes. And so I
19 don't mean to use the word "edit" in any kind of
20 a pejorative sense. To me it means the same
21 thing as omit, it has been left out.

22 It is relevant to his credibility; is that
23 correct?

24 A In some way it is. I mean, there was even,
25 during briefings when I relayed this to my

1 superiors and other investigators, there was a
2 school of thought that considered that, you
3 know, this witness was describing Mr. Driskell
4 being obsessed with plans to kill Perry Harder.
5 And the fact that they committed a serious crime
6 together, in close proximity to the time of the
7 murder, said to some people that there's an
8 explanation why Jim Driskell would trust Ray
9 Zanidean.

10 Q I see. If I was the prosecutor on this file, I
11 would want to have that evidence because it
12 potentially might be useful to the prosecution,
13 so that was going to be my very next point.
14 It's relevant to the defence in the sense of
15 credibility, but it's also relevant to the
16 prosecution? It might have helped the
17 prosecution?

18 A Yes.

19 Q Is that fair?

20 A Yes, that's fair.

21 Q For the reasons you've just given. So this idea
22 that because it's an arson in Saskatchewan and,
23 therefore, you might have had some idea of
24 setting up a separate file on the Saskatchewan
25 arson for the RCMP's assistance, it still needed

1 to be made part of the homicide file; is that
2 not correct?

3 A Well, it should be, yes. And one of the things
4 that I believe, from a Winnipeg Police reporting
5 perspective, I believe the proper way of dealing
6 with that would be to take out a separate file
7 number, as I described, and then cross-reference
8 it to the murder and include a photocopy of it.
9 But, again, I can't say that that was ever done.

10 Q So if no report was made, it was simply a
11 mistake on your part?

12 A Yes, that's true.

13 Q If there is no report to the homicide file, it
14 should have been done, and it simply wasn't
15 done?

16 A That's correct, yes.

17 Q All right. Let's turn to the second admission,
18 the October 29th admission. And this one,
19 unfortunately, requires us to go into your
20 notebook and your handwriting with a little more
21 care, because we don't have Sergeant Paul's nice
22 lucid hand to rely on here. Your notes are at
23 tab 4. And here we have the inverse, you make
24 note of the admission, and Paul is not the note
25 taker on this occasion. You have simply

1 reversed roles; is that correct?

2 A Yes, sir.

3 Q So tab 4, page 28, is where we get your note for
4 this second time the matter comes up. In the
5 middle of page 28, tab 4, we have your note for
6 October 29th; is that correct?

7 A That's correct.

8 Q And this, again, is a day where you meet with
9 Zanidean; is that correct?

10 A Yes, it is.

11 Q And what triggers this meeting on October 29th
12 is he gets a sudden call from Ron Driskell
13 asking him to come over. And at this point he
14 is working as a police agent for you. And you
15 use this as an opportunity to tape-record his
16 conversations with Ron Driskell; is that
17 correct?

18 A Yes, it is.

19 Q And Ron Driskell was a person of interest to
20 you. And this was an occasion to see if you
21 could gather some evidence through Ron Driskell?

22 A Yes, sir.

23 Q So on your note -- at page 28 you note that the
24 call to Zanidean had been initiated by Ron
25 Driskell, telling him to come over urgently.

1 And you wire him up at about 10 o'clock at
2 night. And you follow him to the house, over at
3 the top of page 29. He's into the -- sorry, the
4 bottom of 28 -- he is into the house at 2208.
5 And he is out of the house at 2300, at the top
6 of page 29?

7 A Yes.

8 Q So he is in there for slightly under an hour --

9 A Yes.

10 Q -- meeting with Ron Driskell. And then at 2310,
11 you take him back to the Public Safety Building
12 and debrief him; is that correct?

13 A That is correct.

14 Q And so starting at the top of page 29, the
15 notation for 2310 that you are into room 2 at
16 the Public Safety Building, that begins the
17 debriefing of him about his discussions with Ron
18 Driskell. Because you want to get a preview of
19 what's on the tape, because it's going to take
20 some time to presumably transcribe the tape; is
21 that fair?

22 A That is fair.

23 Q And the debriefing on page 29, you are recording
24 what Zanidean is saying that Ron Driskell said;
25 is that fair?

1 A Yes.

2 Q Over on to page 30, in particular, you note
3 the -- your style of note taking is you put
4 little dashes sort of at the start of each
5 paragraph in your notes; is that correct?

6 A Yes, generally speaking.

7 Q So that the third dash or the third paragraph at
8 the top of page 30, you have Zanidean, repeating
9 to Ron Driskell, a statement that Jim Driskell
10 had allegedly made during the trip to
11 Saskatchewan. Am I reading that correctly?

12 A Yes, you are.

13 Q And this is the,

14 "You would be surprised what a man can do
15 if he has to..."

16 statement which Zanidean had told you about was
17 made during the trip to Saskatchewan. And
18 Zanidean is repeating that to Ron to see if he
19 can elicit a response from Ron; is that correct?

20 A Yes, I expect that that's what he was doing.

21 Q And this Saskatchewan trip, of course, that he's
22 referring to, where the statement is made, is
23 the Swift Current arson trip?

24 A Yes.

25 Q And then the fourth paragraph, Ron says not to

1 tell him about it, he doesn't want to hear about
2 it. And in the fifth paragraph Ron says that
3 the lawyer wants to talk to Zanidean so that
4 they can find out who has been talking,
5 essentially?

6 A Yes.

7 Q Is that a fair summary --

8 A Yes, it is.

9 Q -- of what Zanidean is telling you about what
10 Ron said?

11 And then it concludes, the paragraph in the
12 middle of the page,

13 "Ray asks: What if he does..."

14 in other words, what if he does find out who has
15 been talking?

16 "...and Ron says: Better deal with him or
17 tell Jim's lawyer."

18 In other words, if he finds out who has been
19 talking, to come and deal with Ron or tell Jim's
20 lawyer; is that correct?

21 A Yes, that's the meaning I take from it.

22 Q That's your notation of what Ron is saying to
23 Ray Zanidean?

24 A Yes.

25 Q According to Ray's debriefing with you.

1 So at that point, about two-thirds of the
2 way down page 30, as I read your note, that more
3 or less ends what Ray tells you about his
4 meeting with Ron, except that he repeats that --
5 well, no, I think that is the end of the
6 conversation with Ron; is that correct?

7 A It is, yes.

8 Q And then, at the bottom of the page, you have a
9 note that Al Paul takes a statement covering the
10 events of Friday night, October 26th, as well as
11 this night, Monday the 29th?

12 A Yes.

13 Q And then, at the top of page 31, you turn back
14 to Swift Current; is that correct?

15 A That is correct.

16 Q And this is the notation of the second Swift
17 Current admission, if I could call it that, that
18 we find -- where you raise the subject that he
19 had previously volunteered to you on
20 October 10th, and you ask him a few more
21 questions about it?

22 A Correct.

23 Q And, in particular, you elicit from him the
24 motive, or the alleged motive for the arson, in
25 the middle of page 31; is that correct?

1 A Yes.

2 Q And he tells you that the motive was revenge.

3 Do you see, right in the middle of page 31:

4 "It was revenge."

5 He thought she didn't have insurance and he
6 wanted to get back at her for something; is that
7 correct?

8 A Yes.

9 THE COMMISSIONER: Where is that, actually?

10 MR. CODE: Right in the middle of page 31, the
11 paragraph with "Ray" in the left-hand margin.

12 "Yeah, it was my sister's house. She
13 caused me some problems. It was revenge."

14 THE COMMISSIONER: All right.

15 BY MR. CODE:

16 Q And then over the page, at page 32, you
17 cross-examine him a little bit on that. Your
18 question on the top of page 32, and a question a
19 lawyer would have asked him, you say,

20 "And you went all the way out there to burn
21 her house because you were mad at her?"

22 That is your question?

23 A Yes, it is.

24 Q He says,

25 "Yeah, I never made any money out of it."

1 You've translated your notes for me before, so I
2 have become a good reader of them. I have read
3 his answer accurately?

4 A Yes, you have.

5 Q And then, finally, in the middle of page 32,
6 Zanidean asks you,

7 "What do you think will happen to me over
8 that?"

9 Have I read that accurately?

10 A Yes.

11 Q "What do you think will happen to me over
12 that?"

13 A Yes, that's correct.

14 Q And your response to him -- so he is now
15 questioning you. He wants to know what's going
16 to happen as a result of these admissions. And
17 you say:

18 "I don't know, Ray. We've notified Swift
19 Current police and they are investigating,
20 and, you know, you are on your own. We
21 cannot help you out with any of that."

22 Have I read your answer correctly?

23 A Yes, you have.

24 Q And we will come back to your call to Swift
25 Current shortly. But this tends to indicate

1 that, as of October 29th, you've already called
2 Swift Current once?

3 A Correct.

4 Q Which probably refers to your October 27th call?

5 A Yes.

6 Q All right. And then, finally, Zanidean says at
7 the bottom of page 32:

8 "I'll just have to suffer the
9 consequences."

10 And then over at the top of page 33 you say:

11 "That's right, Ray, you will."

12 And then the final note that I just want to deal
13 with at the top of page 33, before Ray leaves,
14 you return to talking about the debriefing of
15 the Ron Driskell conversation where Ron had been
16 encouraging Jim -- sorry, Ron had been
17 encouraging Ray to go and see Jim at the PRC; is
18 that correct?

19 A Yes, it is.

20 Q And so the concluding note there, as I read it,
21 is,

22 "Al...",

23 that's Al Paul,

24 "...talks about meet with Jim PRC. And Ray
25 says he has to phone and make arrangements.

1 Ray agrees to notify us of time of the
2 visit."

3 Have I read that accurately?

4 A Yes, you have.

5 Q And the PRC is what?

6 A Provincial Remand Centre.

7 Q So the idea here is that Zanidean will go down
8 to the jail. Driskell has been arrested at this
9 point and he's in custody?

10 A Yes.

11 Q And Zanidean will go down and meet with Driskell
12 at the jail, and he'll notify you before he goes
13 down to see him?

14 A Correct.

15 Q And Ron Driskell had suggested that Ray should
16 do that?

17 A Yes.

18 Q So, in essence, what we get here is the
19 discussion about Swift Current, sandwiched
20 between your debriefing of Zanidean about the
21 Ron Driskell meeting. And then you come back at
22 the end to the plan that emerged out of the Ron
23 Driskell meeting; is that correct?

24 A Yes, that's correct.

25 Q And then your note is:

1 "Ray leaves."

2 And that ends your October 29th meeting?

3 A True.

4 Q Now, Sergeant Paul also made notes of that
5 October 29th meeting. If we can just briefly
6 turn to those, they are at tab 5, the next tab,
7 page 542 to 545. I'll just go through these
8 quickly. They essentially mirror your notes,
9 except for the discussion about Swift Current
10 where he leaves the note taking to you. Have
11 you got page 542?

12 A Yes, do I.

13 Q You see the entry "October 29th"?

14 A Yes, I do.

15 Q And his notes begin, like yours, with Zanidean
16 having a wire put on him in order to meet with
17 Ron Driskell, as a result of Ron Driskell's
18 call; is that correct?

19 A Yes, it is.

20 Q And, similarly, his notes have you following
21 Zanidean over to Ron Driskell's house and
22 watching him go in and watching him come out.
23 And then at the top of the next page, 543,
24 taking him down to the Public Safety Building to
25 debrief him?

1 A Yes, that's correct.

2 Q And Paul makes somewhat more detailed notes of
3 the debriefing, but it's very similar. For
4 example, if you look over at the next page, page
5 544 in the middle, you see the statement made on
6 the trip to Saskatchewan referred to.

7 "You would be surprised what a man can do
8 when he has to."

9 that Ray apparently put to Ron? Do you see that
10 in the middle of page 544?

11 A Yes, I do.

12 Q And, similarly, at 545, towards the end of the
13 debriefing at the top of 545, we have the same
14 statement about Jim's lawyer wanting to know
15 about who's talking to the police?

16 A Yes.

17 Q And, again, that was a discussion that Ron
18 Driskell was having with Ray Zanidean, according
19 to the debriefing?

20 A Yes, sir.

21 Q And both of you have noted it in your notes.

22 And then the concluding discussion at the
23 bottom of the page ends. He ends the note for
24 October 29th without setting out the Swift
25 Current discussion that we see in your

1 notebook?

2 A Yes, that's correct.

3 Q All right. Now, once again, you have prepared a
4 supplementary report for Crown counsel about the
5 events of October 29th?

6 A Well, if you could show it to me, I will
7 confirm. Either Al Paul or I would have.

8 Q Tab 7, first tab in volume 2.

9 A Yes, that was me.

10 Q It's your report dated October 30th?

11 A Yes, sir.

12 Q This one is written the day after the events of
13 October 29th; is that correct?

14 A Yes, that's correct.

15 Q And, again, it is substantially based on your
16 notebook?

17 A Yes, sir.

18 Q And, again, it covers off two day's events. You
19 have written a single report. You are catching
20 up on your report writing, in essence, and going
21 back and capturing the events of October 26th,
22 the Friday; is that correct?

23 A Yes, that is correct.

24 Q So the first five paragraphs of the report cover
25 the events of Friday the 26th. So the first

1 two-thirds of the first page are about an
2 earlier meeting with Zanidean?

3 A Yes, that's true.

4 Q And then, starting about two-thirds of the way
5 down the first page, where we see the entry for
6 Monday, October 29th, you begin to recount the
7 events of that day?

8 A Correct.

9 Q Where at 2100 hours,
10 "Zanidean called Sergeant Paul at home and
11 advised him that Ron Driskell had requested
12 that he attend to his residence to discuss
13 an important matter. Consequently, at
14 2205, Sergeant Paul again fitted him with a
15 recorder and he attended to...",
16 Ron Driskell's address. And he is in there for
17 just under an hour. And then when he exits,
18 you take him down to the Public Safety Building
19 and obtain a statement from him; is that
20 correct?

21 A Yes, that's correct.

22 Q Again, that mirrors the two notebooks, is that
23 fair?

24 A Yes.

25 Q And then the account that's set out of the

1 statement taken from Zanidean, the debriefing of
2 him, is again faithful to your notebooks setting
3 out the various statements that Zanidean said
4 Ron Driskell had said during their meeting; is
5 that correct?

6 A Yes, it is.

7 Q And if we turn over the page, in particular, to
8 the top of page 2, to simply illustrate the
9 point, the paragraph at the top of page 2 refers
10 to the "what a man can do when he has to"
11 statement that was made during the Saskatchewan
12 trip; is that correct?

13 A Yes, it is correct.

14 Q And Ron doesn't want to have anything to do with
15 it. He doesn't want to hear about it. And so
16 in the second paragraph they start talking about
17 the lawyer wanting to know who has been talking
18 to the police. Again, a faithful rendition of
19 your notes; is that correct?

20 A Yes, it is.

21 Q Incidentally, if I could just pause there, at
22 this point in October Mr. Brodsky was not
23 Mr. Driskell's lawyer; is that correct?

24 A I don't know if that's correct or not.

25 Q Okay. Well, we will see later on that

1 Mr. Brodsky doesn't appear on the scene until
2 some time later. But, in any event, carrying
3 on, the third paragraph there, on the second
4 page of the report, says the following:

5 "At the conclusion of the statement,
6 Zanidean added that Ron told him to either
7 deal with himself, or report to Jim's
8 lawyer, anyone he concludes is talking to
9 the police."

10 Is that correct?

11 A Yes.

12 Q And if we go to your notebook, we see where that
13 reference comes from page 30, tab 4, page 30.
14 It's the concluding paragraph of the debriefing
15 about the Ron Driskell statement, two thirds of
16 the way down page 30; is that correct?

17 "Ray asks: What if he does? And Ron says:
18 Better deal with him or tell Jim's lawyer."

19 A Yes.

20 Q And as we agreed when we went through that,
21 that's where the statement about the Ron
22 Driskell meeting ends. And you correctly state
23 here, in the third paragraph of the report, that
24 that was the conclusion of the statement about
25 the Ron Driskell matter; is that correct?

1 A Yes.

2 Q And then the fourth paragraph, the last
3 paragraph on page 2 of the report, then states
4 the following:

5 "This concluded the interview with Zanidean
6 at this time. And he indicated that he
7 intended to visit Jim Driskell on
8 October 31, 1990 in the PRC. He assured us
9 he would notify us of the time of his visit
10 upon completion of arrangements."

11 Have I read that accurately?

12 A Yes, you have.

13 Q And what that refers to, again, keeping your
14 notes open at tab 4 of volume 1, is if you turn
15 to the very last page for that date, page 33,
16 this is after you've discussed Swift Current,
17 you then come back, at the end of the meeting
18 with Zanidean, to talk about this plan to go
19 down to the PRC; is that correct?

20 A Right.

21 Q And it concludes exactly the same way your notes
22 conclude,

23 "Ray agreed to advise us of the time of his
24 visit."

25 You are virtually quoting your notes verbatim

1 here; is that correct?

2 A Yes, it is.

3 Q So, as I read this, what you've done is you've
4 taken the first part of your notes for
5 October 29th, dealing with the Ron Driskell body
6 pack initiative, and the debriefing of Ray
7 Zanidean about that event; is that correct?

8 A Well, maybe I could save you some time,
9 Mr. Code. What I've done is I have omitted the
10 conversation about the arson, the questions that
11 I have asked Ray Zanidean, just as I did in the
12 first -- in the report covering that interview,
13 I've omitted those comments, just as the first
14 report covering the first arson discussions
15 omitted them, same thing.

16 Q You've got the two pieces of bread on either
17 side of the sandwich, and you've left out the
18 meat; is that fair? You've got the first part
19 of the conversation and the last part of the
20 conversation, but you've left out the middle
21 part of the conversation?

22 A Well, I would prefer to spell out the nature of
23 the contents of what I'm omitting in this
24 report. What I'm omitting in this supplementary
25 report is the same subject matter that was

1 omitted in the earlier supplementary report.

2 Q I agree. I think that's exactly what you've
3 done. It is the two pages of your notes, at
4 page 31 and 32, that have you omitted, which
5 deal exclusively with the Swift Current arson;
6 is that correct? You've covered up to page 30,
7 which is the Ron Driskell debriefing, if I could
8 call it that. And then you omit pages 31 and
9 32?

10 A And a line on page 31 -- or 33, rather.

11 Q Yes, you're right. There is one line at the top
12 of 33. But you have essentially omitted 31 and
13 32, and then you have come back and picked up
14 33; is that correct?

15 A That's correct, yes.

16 Q And the explanation for that?

17 A Well, the same explanation that I gave you
18 before, without the benefit of the whole report
19 and answering that question 16 years later, I
20 don't know for sure. I can't give you a
21 definitive answer, but I can give you the same
22 answer, or the same possibilities, as I did in
23 response to your question about the first
24 omission.

25 Q All right. We don't need to go back over that

1 again.

2 Is it fair to say that it looks like you've
3 done this deliberately?

4 A Yes, it is fair.

5 Q Did it occur to you, as you were preparing this
6 report, that Driskell's lawyer -- given that the
7 story was that this was a crime that Driskell
8 and Zanidean had committed together, that
9 Driskell's lawyer was going to get briefed about
10 the Swift Current arson?

11 A That Driskell's lawyer was going to get briefed
12 about it, from his client, you mean?

13 Q Yes, from his client?

14 A Well, of course.

15 Q It's common sense --

16 A Yes.

17 Q -- that if what Zanidean was saying was the
18 truth, that the two of them had committed this
19 crime at the time that was close to the
20 homicide, his lawyer might well be questioning
21 his client about his activities at the time and
22 about his associations with Zanidean, and this
23 would come to light.

24 Accordingly, did it occur to you that this
25 was something that might well come up at the

1 trial, in cross-examination by Driskell's
2 counsel, if not by Crown counsel?

3 A Well, I don't know about that. It occurred to
4 me that it would be a subject of conversation
5 between the prosecutor and the defence counsel,
6 obviously, because the accused and a witness in
7 the prosecution were involved in a crime
8 together.

9 Q Well, defence counsel don't generally discuss
10 their proposed cross-examinations with the
11 Crown.

12 A Well, I wasn't suggesting it would come up in
13 their discussions about cross-examination. I
14 was suggesting that it would come up in their
15 preparation for the trial and so on.

16 Q My question is simply, did it occur to you that
17 the defence might raise this at trial?

18 A Well, that the defence would raise it in trial,
19 or in what manner, I don't think entered into my
20 thinking at that time. At that time those
21 comments by Ray Zanidean in our notebooks were
22 something of interest to a Swift Current,
23 Saskatchewan court, primarily.

24 Q Did it occur to you that the Crown would want to
25 know about this in order to be properly prepared

1 for trial?

2 A Well, I don't remember if that occurred -- I
3 don't think it did. But it occurred to me that
4 the Crown would want to know about this from a
5 witness protection angle, a development of the
6 case angle, and that's why it was of interest to
7 Mr. Miller.

8 Q It certainly has that aspect to it, as well,
9 there is no question it's of interest for
10 witness protection reasons, as we see quickly
11 develops in the course of the file. But, in
12 any event, it didn't cross your mind that this
13 was something that Crown counsel would want to
14 know about at trial, for trial preparation
15 purposes?

16 A Well, I don't remember that thought crossing my
17 mind, because the Crown knew about it so early
18 on. I was more interested in the witness
19 protection angle than the prosecution angle.

20 Q Your account is that the Crown learns about it
21 through witness protection processes?

22 A Well, yes, Mr. Miller learned about this --

23 Q Through these oral briefings?

24 A -- probably within less than a day of the words
25 coming out of Mr. Zanidean's mouth.

1 Q And that's the witness protection process, if I
2 could call it that. I'm talking --

3 A Well, you know, I don't think my thinking then
4 was as refined as yours is now. It was
5 important information that was relayed to
6 superiors, and Mr. Miller and Saskatchewan RCMP.
7 I don't recall thinking in terms of what uses it
8 would be put to. The most obvious use it would
9 be put to, from my perspective, was to prosecute
10 Ray Zanidean and Jimmy Driskell for arson in
11 Saskatchewan.

12 Q In any event, you deliberately omitted out of
13 the normal method of communicating with
14 prosecuting counsel, which is to put it into a
15 supplementary report?

16 A I omitted putting it into the murder
17 supplementary report deliberately, yes, I did.

18 Q All right. The final report that I want to
19 refer to on this topic is at tab 8. And that is
20 a report, the report that deals with the Swift
21 Current "you would be surprised what a man can
22 do when he has to" statement, if I can call it
23 that, the statement that's referred to in the
24 previous report in the discussions with Ron
25 Driskell. But this is your more detailed report

1 about what Zanidean tells you himself about the
2 statement made in the course of the trip to
3 Swift Current; is that correct?

4 A Well, if you'll give me a minute, I was on the
5 wrong page.

6 Q Sorry, tab 8 in volume 2?

7 A Yes. I have got the page. Where was it on the
8 page?

9 Q Well, let's just identify the document. First
10 of all, it's a November 3rd report authored by
11 yourself?

12 A No, I don't have the right page. You said tab?

13 Q Tab 8 of volume 2?

14 A Yes, okay.

15 Q November 3, 1990 report of yourself?

16 A That's true, yes.

17 Q And it refers back to your statement taken on
18 November 11th from Zanidean?

19 A Yes.

20 Q You see the header up at the top,

21 "Statement of Ray Zanidean regarding
22 discussions he had with James Driskell
23 taken November 2, 1990."

24 A That's correct, yes.

25 Q At the Public Safety Building?

1 A Yes.

2 Q So again, what you are doing here is you are
3 catching up on your report writing. You've
4 taken a statement from Zanidean on November 2nd
5 that's recorded in your notes and in the
6 statement forms, and you are now putting it into
7 a Supp. report for the Crown; is that correct?

8 A Well, this document that you are referring to at
9 tab 8 is -- I believe it's a verbatim, it's the
10 statement itself, not a report on it.

11 Q You're just putting the statement, which you've
12 got on a statement form, into the form of a
13 Supp. report?

14 A Yes, that's correct.

15 Q So it's a duplicate of document, in a sense?

16 A True.

17 Q There was a formal practice, as I understand it,
18 of putting statements into Supp. reports at the
19 time, that you describe in your witness
20 interview with us?

21 A Yes.

22 Q And this, I believe, the October 2nd --
23 November 2nd statement, I believe, is the last
24 statement you take from Zanidean. And
25 essentially what you're doing here, as I read

1 this, is you're going back and you're cleaning
2 up or clarifying various references he's made in
3 the course of four or five earlier statements to
4 you throughout the month of October, and you're
5 getting some elaboration or clarification on
6 small points of detail, is that fair?

7 A That's how I read it too.

8 Q And so you're asking him a series of questions.
9 The first question that's set out is about a
10 phone call that Zanidean said he received from
11 Driskell about following Perry; is that correct?

12 A Yes, that's correct.

13 Q And we don't need to go through that. The
14 second question, two thirds of the way down the
15 first page, is a question about Zanidean having
16 told you about Jim showing Zanidean a van at
17 Auto Express. And you seek some clarification
18 on that; is that correct?

19 A Yes, that's correct.

20 Q And then over the page, on page 2, the third
21 question you ask him is,

22 "Did you ever know Jim to have guns or talk
23 about them?"

24 And you then elicit some information from
25 Zanidean about guns; is that correct?

1 A Yes, it is.

2 Q And then it is the fourth question that I am
3 interested in, at two-thirds of the way down
4 page 2 where you say,

5 "Ray, you told me before that you and Jim
6 took a trip to Saskatchewan and there was
7 some talk about Perry. What was that and
8 when?"

9 A Yes.

10 Q And that accurately reflects the question you
11 asked Zanidean?

12 A Yes.

13 Q And his answer is that in the beginning of July,
14 he says,

15 "On the way there we didn't talk about
16 Perry or Jim's charges or anything. On the
17 back we were just pulling into Brandon and
18 his pager went off."

19 And he gets a call from his wife or his
20 girlfriend, and that phone call elicits the
21 statement,

22 "You'd be surprised what a man can do when
23 he has to...",

24 as they are having a discussion at the gas
25 station in Brandon ostensibly about the Perry

1 Harder homicide; is that correct?

2 A Yes, if you will give me a second here? Yes,
3 that's correct.

4 Q A fairly incriminating statement, the
5 implication is that he has just learned about
6 Perry Harder and he goes white as a sheet, and
7 Zanidean's questioning him about what's going on
8 with Perry? And he says,
9 "You'd be surprised what a man can do when
10 he has to...",
11 just like he said before in the doughnut shop.
12 And he goes on to make an express statement to
13 the effect that he drew the inference that he
14 was essentially making an admission that he had
15 killed Perry Harder; is that correct?

16 A Yes.

17 Q And you set out his response in two paragraphs
18 there. And the third page of the report goes on
19 to deal with some other matters that we don't
20 need to be concerned about.

21 Is it fair to say that at the time of this
22 interview, this is the November 2, 1990
23 interview, Zanidean had already twice admitted
24 to you what the purpose of this trip to
25 Saskatchewan was, namely to commit the arson in

1 Swift Current of his sister's house?

2 A Yes, that's true.

3 Q There is no question that the admission
4 attributed to Driskell about the Harder homicide
5 is in the context of the trip to Saskatchewan
6 about the Swift Current arson, to carry out the
7 Swift Current arson?

8 A Yes, that's correct.

9 Q The two events overlap completely here at this
10 point; is that correct?

11 A Yes.

12 Q And yet the report makes no mention whatsoever
13 of the purpose of this trip to Saskatchewan
14 being to carry out the Swift Current arson on
15 his sister's house. It is completely omitted
16 from the report, is it not?

17 A Yes, it is.

18 Q And you had that information in hand, you could
19 have quite easily had it in a further section of
20 this supplementary report saying that on
21 October 10th, by the way, Crown counsel, and
22 October 29th, we took two statements from
23 Zanidean in which he gave us the context for
24 this trip to Saskatchewan and the alleged pager
25 call in Brandon. But you again deliberately

1 decided not to include the context; is that
2 correct?

3 A Yes.

4 Q And, again, the reason for doing that is
5 essentially the same as what you've already told
6 us?

7 A It is, yes.

8 THE COMMISSIONER: I wonder if I could just
9 interject? I must say that that's the
10 statement, which is the signed statement, it
11 seems relatively artificial that Zanidean would
12 be giving you a statement about an event and
13 leave out, that he would leave out the part
14 about the arson. Was he told to leave out the
15 part about the arson?

16 THE WITNESS: Well, I don't recall if he was
17 told in the taking of this statement, but he was
18 told that we wouldn't discuss the arson right
19 from -- other than that follow-up question that
20 I asked him on October 29th, he was told that we
21 wouldn't be discussing that, we would be
22 notifying Swift Current and not discussing it
23 further.

24 THE COMMISSIONER: Because it would strike me
25 that when he is giving a statement and he is

1 talking about the trip to Swift Current, that he
2 is just naturally going to mention the purpose
3 of the trip to Swift Current and what they did?

4 THE WITNESS: Well, not after his first
5 admission.

6 THE COMMISSIONER: Okay.

7 BY MR. CODE:

8 Q So we have now reviewed three reports and two
9 sets of notes about this whole area of the trip
10 to Saskatchewan and the Swift Current arson.
11 And I think it's obvious that the information
12 about the arson has been omitted from all three
13 reports.

14 Given that it is not in these reports, how
15 did you go about reporting these facts, assuming
16 you did report them, as you've told us you did?

17 A Well, I went about reporting them in the same
18 way that new developments, all new developments
19 in the case were reported, through talking
20 directly one-on-one with my supervisor, through
21 briefings with the divisional commander, the
22 supervisor and other investigators present,
23 through phone calls to Bruce Miller -- and I
24 can't say that's for sure how Bruce Miller was
25 notified about this. It may have been -- it may

1 have been my supervisor or divisional commander
2 that notified Bruce Miller, but all verbal. And
3 then, of course, in the case of Swift Current,
4 over the telephone.

5 THE COMMISSIONER: And I did somewhat mislead
6 you, because the statement actually doesn't say
7 Swift Current, it just says Saskatchewan.

8 THE WITNESS: Yes.

9 THE COMMISSIONER: So I did mislead you in that
10 respect.

11 BY MR. CODE:

12 Q So there were oral briefings to your -- we will
13 come to the phone call to Swift Current in a
14 minute. But in terms of reporting up the chain
15 of command in your own police force, you did
16 that orally by meeting with your supervisor?

17 A Yes. Sometimes this would be instantaneous.
18 Sometimes right coming out of the interview room
19 we would have a conversation with our
20 supervisor, or supervisor or divisional
21 commander, or the entire squad in the divisional
22 commander's office. It was an investigation --
23 sorry, an investigation is a fluid event and
24 things are happening and being relayed to people
25 on a constant basis.

1 Q All right. And in terms of the way that you
2 communicated to Crown counsel, again, as I
3 understand you, it was in an oral briefing with
4 Mr. Miller?

5 A Well, this was in November. I don't know
6 exactly when communication with Bruce Miller,
7 between Bruce Miller and Al Paul and myself
8 became direct and frequent. I think it was
9 later on. Mr. Miller was either told by us, or
10 Bill Vandergraaf, or the divisional commander,
11 I'm just not sure.

12 Q And you understood that Bruce Miller was not
13 prosecuting this case, he was dealing with
14 witness protection matters?

15 A Well, no, I didn't understand it that way at all
16 at this point. I didn't know who was going to
17 be prosecuting it. If I did, I've forgotten. I
18 don't know. Mr. Miller, at that time, was the
19 boss.

20 Q Well, Mr. Dangerfield and Mr. Lawlor were
21 prosecuting it. You surely knew that?

22 A Well, I knew that later. I don't know if I knew
23 that at this point or not, I can't remember.

24 Q Well, they are applying for a preferred
25 indictment, you knew about the preferred

1 indictment. They were the ones who were going
2 to be making disclosure, you knew about
3 disclosure. We see from your reports that you
4 were sensitive to the preferred indictment and
5 the disclosure issues, because they had an
6 impact on witness protection?

7 A Well, I don't take issue with you stating that I
8 knew. I just don't -- I just don't know myself
9 if at that time -- if you say that the
10 documentation is such that they were assigned by
11 then, I will take your word for it. But the
12 point is this, Bruce Miller is the person that
13 we dealt with on this issue for all matters. I
14 don't, myself, recall having anything to do with
15 Lawlor or Dangerfield.

16 Q All right, sir. So you orally report to your
17 supervisor, you orally report to Mr. Miller, and
18 now with the benefit of hindsight, you agree
19 that it would have been better practice to have
20 put these matters into a written report, a
21 supplementary report; is that fair?

22 A Well, it would -- first of all, I don't know 100
23 per cent for sure that I didn't put it in a
24 report. All I know for sure is I didn't put it
25 in the murder report. I didn't include those

1 details in the murder report, according to the
2 documents I've been shown.

3 Q All I'm talking about is, it would have been
4 better practice to put it in a supplementary
5 report on the murder file; is that fair?

6 A Well, it would have been -- it would be better
7 today if I could show you the copy that went
8 with the murder report, but I can't. And I
9 don't know why that is the case.

10 Q Which copy are you talking about, I'm sorry?

11 A No. I'm saying that -- you are asking me -- you
12 asked me, would it not be better if those
13 comments had been reported on a supplementary
14 report included in the murder report? As I sit
15 here today, the answer is yes, but I don't know
16 that that would have been the same answer then.
17 I don't know what the rationale was then.

18 Q You're saying that, at the time in 1990 to 1991,
19 you wouldn't have wanted the Crown prosecutor to
20 know this information. That there was some
21 different --

22 A No. That's not what I said at all, Mr. Code.

23 Q -- reason?

24 A I said that the Crown prosecutor did know. What
25 I am saying is that today, yes, it seems to me

1 that it would be better to have that recorded in
2 the supplementary report that's included in the
3 murder trial. I might have a different answer
4 if you were asking me this in 1991, and I had
5 the benefit of the entire report here and a
6 better memory of what I was instructed to do and
7 so on.

8 Q I think I understand that.

9 All right. Let's move on to the
10 October 27th call or calls to Constable Burton.
11 Both you and Burton agree that there was either
12 a call or calls in October of 1990, and both of
13 you have made reasonably contemporaneous reports
14 or notes of that call, or a call; is that
15 correct?

16 A Of the October 30th one you're referring to?

17 Q Yes.

18 A Yes.

19 Q Well, you say there was two, the 27th and the
20 30th?

21 A Well, yes, but only one where I spoke to
22 Constable Burton.

23 Q Yes.

24 A Yes.

25 Q I am not fixed on Constable Burton, I'm talking

1 about with Swift Current. You both agree there
2 was a call or calls, and you both made
3 reasonably contemporaneous notes or reports; is
4 that correct?

5 A Well, I don't know anything about his notes or
6 reports, but, yes, I made a note of the call
7 when I spoke to him.

8 Q Well, you have got his notes in the book of
9 documents, I am sure you reviewed it.

10 It was you who initiated the call, is that
11 correct?

12 A On October 30th, yes.

13 Q And on the 27th, you placed that call as well?

14 A Yes.

15 Q Why did you call? What was the reason for it?

16 A Well, to notify Swift Current about the comments
17 made about the fact that Jim Driskell and Ray
18 Zanidean may be suspects in their arson.

19 Q Was that the sole reason, to simply pass on that
20 admission to them?

21 A Well, I can't think of any -- I mean, obviously,
22 I needed to know what their intentions were,
23 when they were coming out to investigate and so
24 on, but it was to begin the process of dealing
25 with Swift Current on this arson.

1 Q So there is a Swift Current investigative reason
2 to call them, namely to tell them that we have
3 your perpetrator here in Winnipeg, we have got
4 both of your perpetrators here in Winnipeg --

5 A And evidence.

6 Q -- and evidence of it. Is there a Winnipeg
7 Police Service reason for making the call?
8 That's a Swift Current RCMP reason, you are
9 helping them out with their investigation. Did
10 the Winnipeg Police Service have a reason for
11 making the call?

12 A Well, I'm not sure what you're getting at. I
13 don't know.

14 Q I am simply asking you the reason -- you picked
15 up the phone and you called Swift Current, and I
16 am trying to understand the reasons why you took
17 that step?

18 A Well, I just can't imagine not taking that step.
19 That was always the intention.

20 Q Explain your rationale to us?

21 A Well, the rationale is that in the course of
22 investigating a murder in Winnipeg, we have
23 stumbled across evidence of a crime committed by
24 our witness and our suspect in a murder that
25 happened in Saskatchewan. In Winnipeg there

1 isn't much I can do with that information. I
2 have to notify the investigators assigned to the
3 case and let them know what the extent of the
4 evidence was here in Winnipeg, and find out what
5 their intentions are.

6 Q So, again, you are repeating or elaborating on
7 the purpose that you have already told us about,
8 you are being a responsible police officer
9 helping out a fellow police agency who have got
10 a serious investigation, and you have got
11 evidence of their crime that is helpful to them.
12 Was there any reason of your own, relating to
13 your own investigation, relating to your
14 homicide investigation, for calling?

15 A Not that I can think of.

16 Q Okay. Now, we have seen your notes of the
17 October 29th interview, and they clearly show
18 that by the time of the October 29th interview,
19 according to what you are telling Zanidean, you
20 had already placed an earlier call. And you
21 have told us that that refers back to your
22 October 27th call?

23 A Yes, sir.

24 Q And if we look at your notes at tab 4, we see
25 the reference to that at page 33.

1 A Yes, I have it.

2 Q Have you got tab 4, page 33? We have just
3 concluded your October 29th note at the very top
4 of the page, and then we turn to October 30th,
5 and you have a note that at 10:30 you contacted
6 Swift Current RCMP, Constable Ross Burton.
7 That's your October 30th call; is that correct?

8 A Yes, it is.

9 Q And then the paragraph at the bottom of that
10 page refers back to the earlier call on the
11 27th. You say:

12 "Swift Current City Detachment notified of
13 Ray's involvement in Swift Current arson on
14 the 27th of October and advised Constable
15 Burton is investigating officer."

16 Have I read that accurately?

17 A Yes, you have.

18 Q So when you are making up your notes on
19 October 30th of the call on that day, you set
20 out the context that there has been an earlier
21 call on the 27th?

22 A Correct.

23 Q Is that correct?

24 A Yes, it is.

25 Q In other words, you never made a contemporaneous

1 note of the October 27th call, you make the note
2 of it three days later?

3 A Yes.

4 Q And what was the reason for waiting three days
5 until after the second interview with Zanidean
6 about Swift Current before making up the note of
7 that earlier call?

8 A I don't know. I expect that because the first
9 call yielded no significant information, I just
10 doubled it up with the call where I made contact
11 with him. I didn't bother making any detailed
12 notes of the 27th.

13 Q All right. But in any event, what you told him
14 on the 27th, consistent with what you told
15 Zanidean, is that you informed them of his
16 admission, the October 10th admission,
17 presumably, that he was their suspect, and they
18 informed you that Burton was the investigating
19 officer?

20 A Yes, that's correct.

21 Q So when you phoned back on the 30th, you knew
22 that Burton was the guy that you were looking
23 for?

24 A Yes, that's true.

25 Q Now, if we turn over the page then, this is the

1 contemporaneous note at the top of page 34 of
2 your October 30th call; is that correct?

3 A Yes, it is correct.

4 Q And, again, in your usual style, you have set it
5 out nicely in three separate paragraphs with a
6 dash in front of each of them. If I could just
7 go through each of the three points that you set
8 out there.

9 First of all, Burton confirms that he is,
10 indeed, the investigating officer?

11 A Yes.

12 Q So that confirms what you had already learned on
13 the 27th; is that correct?

14 A Yes, it is.

15 Q And then the second point is that you advise him
16 of the admissions, that you've got the two
17 perpetrators here in Winnipeg who have made
18 admissions to the crime; is that correct?

19 A Yes.

20 Q And, again, that repeats the information that
21 you had already given them on the 27th, if I
22 read your notes correctly?

23 A Well, not exactly, because I had more
24 information on October 30th than I did on
25 October 27th.

1 Q So you go into a bit more detail. You've got a
2 more detailed admission by this point?

3 A That's true, yes.

4 Q And then, thirdly, the last point is you make a
5 note of what Burton says to you, and that is,
6 "Burton advises there is no evidence to
7 confirm..."

8 In other words, he is saying we don't have any
9 corroborating evidence implicating Zanidean to
10 support your admission, is that what you meant
11 to convey about that?

12 A Yes, it is.

13 Q "...but the investigation will continue."

14 A Yes.

15 Q Have I read that correctly?

16 A Yes.

17 Q And that third point there that you've noted
18 clearly was new information that you didn't
19 acquire in the October 27th call; is that
20 correct?

21 A You mean -- what information are you referring
22 to, the fact of the last paragraph?

23 Q Yes. Your third paragraph notes that Burton
24 tells you he has no corroborating evidence to
25 implicate Zanidean but that his investigation

1 will continue.

2 A And what is your question about that?

3 Q My question is, that's one piece of new, that's
4 a new development beyond what had already
5 occurred in the October 27th; is that correct?

6 The first two points simply replicate
7 discussions that had already taken place --

8 A Yes.

9 Q -- on the 27th?

10 A Yes, that's correct.

11 Q So the third one is something new?

12 A Yes.

13 Q And you'll agree with me that nowhere in that
14 note is there any hint or mention of Constable
15 Burton agreeing to delay or hold off on his
16 investigation of Zanidean until after the trial?

17 A I do agree with you, yes.

18 Q Now, we have your account of the phone call, and
19 your account is that, indeed, he did tell you,
20 he volunteered that he would hold off on the
21 investigation until after the Driskell homicide
22 trial; is that correct?

23 A Yes, that's correct. That's part of quite a bit
24 of the conversation that we had that isn't
25 recorded here in the notes, or that isn't

1 included in this note that you reviewed with me.

2 Q And that further point that's not covered in the
3 notes, that he agreed to delay their
4 investigation, to hold off on pursuing Zanidean
5 until after the Driskell trial, that was the
6 most important development to emerge out of this
7 phone call; is that fair?

8 A That's true, yes.

9 Q Indeed you've described it in your witness
10 statement as being positively good news, an
11 important development in the case; is that
12 correct?

13 A Well, yes, and it was unexpected. Because I
14 expected that once I would have talked to the
15 Swift Current investigator who was in charge of
16 the case, that things with Ray Zanidean would be
17 changing immediately. I expected an immediate
18 investigation in Winnipeg by Swift Current RCMP
19 or their counterparts at D Division in Winnipeg.

20 Q You were afraid that on the basis of the
21 admission they would be coming out to arrest him
22 and --

23 A Complicate matters, yeah.

24 Q And that would be a big problem --

25 A Yes.

1 Q -- for your investigation?

2 A Well, it would be a complication, that's for
3 sure.

4 Q Surely, that was one of the motivating reasons
5 why you placed the call in the first place?

6 A Well, no, not at all, because I had no clue --
7 it was the furthest thing from my mind that the
8 answer I would get from the other end of the
9 phone that we will just leave this until after
10 he testifies.

11 Q But leaving that aside, assuming that came, that
12 that was a good result for you, a happy result
13 and it was un expected, nevertheless, the fact
14 that their investigation was a threat to your
15 case or a problem for your case surely was one
16 of the motivating reasons that caused to you
17 make the phone call?

18 A Well, that would be part of it. If their
19 prosecution wasn't a complicating matter, I
20 still would have made the phone call because I
21 needed to inform them of evidence we had here in
22 Winnipeg.

23 Q You're jumping ahead to the result of the phone
24 call, as you recall it. I am at the beginning
25 of the phone call, before you've got the result.

1 I am trying to understand your motivation, when
2 you picked up the phone, why you are calling
3 them. And you've been very frank in telling us
4 about a police officer's duty is to help another
5 police officer in their investigation and
6 wanting to move the Swift Current investigation
7 forward. Now you are telling us that the Swift
8 Current investigation was actually a threat to
9 your investigation --

10 A No.

11 Q -- that it represented the --

12 A No, let me stop you right there, Mr. Code, I
13 never used the word "threat," you did. I said
14 it was a complication, not a threat at all.

15 Q Fair enough. It's a complication for your
16 prosecution, but that had no part of your
17 motivation to placing this call?

18 A Well, it didn't play a part in the sense that I
19 expected that outcome, it played a part in the
20 sense that I needed to inform Swift Current that
21 we had this information that pertained to their
22 investigation, and find out what their game plan
23 was, what there intentions were, so we could
24 coordinate that with witness protection issues
25 surrounding Ray Zanidean.

1 Q All right. If you look at page 14 of your
2 witness statement at tab 2, and you see the long
3 paragraph at the top of page 14, tab 2, page 14.

4 "From Anderson's perspective, Burton's
5 promise to hold off his investigation of
6 Zanidean was an important development for
7 the Harder homicide investigators in that
8 it removed the immediate pressure they were
9 under to arrange short-term witness
10 protection for Zanidean. Because this was
11 an important development and good news for
12 the investigative team, Anderson would have
13 related it to his supervisors and the Crown
14 that day or the day after."

15 Have I read that accurately?

16 A Yes, you have.

17 Q Does that reflect your views at the time?

18 A Yes, I think so. And I don't really see how
19 that differs from what I've said.

20 Q I'm not suggesting --

21 A I'm sorry.

22 Q I'm not suggesting for a minute that it does.

23 So it was an important development and good
24 news --

25 A Yes.

1 Q -- was the phraseology I put to you a minute
2 ago. And yet that aspect of the conversation,
3 the agreement to hold off until after the
4 Driskell trial, the aspect of the call that was
5 important and good news is the very aspect of
6 the call that you leave out of your notes; is
7 that correct?

8 A Well, I think you are overstating the case, sir.
9 There are many things that Ross Burton and I
10 talked about in that call that are not in my
11 notes. He gave me an education on the Zanidean
12 family in Swift Current. He told me about how
13 the investigation was going, the fact that they
14 had no suspects, the fact that they were
15 interviewing all family members, the fact that
16 they didn't have Ray Zanidean or Jim Driskell as
17 a potential suspect. There were many things
18 discussed that aren't included in my notes.

19 Q I accept that completely. I would never suggest
20 that your notes are a literal account of the
21 phone call. You are not answering my question,
22 however, that the aspect of the call that was
23 good news to you, the aspect of the call that
24 was important, namely the agreement to hold off
25 until after the trial, is completely omitted

1 from your notes?

2 A Yes, it is.

3 Q Do you have any explanation for why the most
4 important part of the call would be the part
5 that you omit from your notes?

6 A Well, because I didn't include -- I don't think
7 I included in the notes, in supplementary
8 reports any matters pertaining to dealing with
9 Swift Current or witness protection or any of
10 those issues.

11 Q Well, with respect, you do. We have just been
12 reading your note of the call?

13 A Well, then that's the only -- I made that call
14 not expecting that to become a matter of witness
15 protection, I made that call to notify them of
16 some details.

17 Q In terms of the suggestion that you don't make
18 up reports of witness protection issues, we just
19 reviewed new tab 58 where you set out a very
20 careful witness protection plan.

21 A Well, I said in my interview with you in May,
22 and I believe I have said generally now, but I
23 want to clarify, that generally speaking, we
24 didn't include those kind of matters in
25 supplementary reports. However, the

1 supplementary that you speak of now, and there
2 might be one or two others like it, are
3 exceptions to the rule. I suspect in that case
4 that the supplementary you have provided today,
5 pertaining to the witness protection plan, is an
6 exception that I was instructed to write for
7 some reason, to give to a Crown attorney, to
8 take to the RCMP witness protection people. I
9 don't know. I don't remember now.

10 Q That report at tab 58 of volume 2 is dated
11 November 4th. It's exactly four days after this
12 good news, important development on the witness
13 protection front that has just occurred on
14 October 30th. And yet there is no mention
15 whatsoever in the supplementary report about
16 witness protection, about this good news
17 development. Is there any explanation for that?

18 A Just the one that I've already given, Mr. Code,
19 that those matters just weren't included in
20 supplementaries, generally speaking, or notes.

21 MR. CODE: This is a good time for the morning
22 recess, Mr. Commissioner.

23 THE COMMISSIONER: Okay. Thank you.

24 THE CLERK: All rise. This Commission of
25 Inquiry is now in recess.

1 (Proceedings recessed at 10:47 a.m. and
2 reconvened at 11:04 a.m.)

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

5 BY MR. CODE:

6 Q Now, Sergeant Anderson, although the important
7 part of that call is omitted from your notes, we
8 do have your statement, prepared approximately a
9 year later, your report to Inspector Johns,
10 which does give an account of the two calls that
11 do refer to this aspect of the matter; sir?

12 A Yes, sir.

13 Q The offer to hold off until after the trial?

14 A Yes.

15 Q And we find that account at tab 10, page -- the
16 very first page at tab 10, your report to
17 Inspector Johns, at the very bottom of the page
18 you summarize the October 27th call?

19 A Yes, sir.

20 Q And, again, you confirm that in that first call
21 you had already provided Swift Current with
22 details of Zanidean's arson admission?

23 A Yes.

24 THE COMMISSIONER: Mr. Code, I'm sorry, I'm --

25 MR. CODE: I'm sorry, I'm in volume 2.

1 THE COMMISSIONER: Volume 2, yes.

2 MR. CODE: At tab 10.

3 THE COMMISSIONER: Oh, I'm sorry, yes.

4 BY MR. CODE:

5 Q It is at the very first page of the report to
6 Inspector Johns, the paragraph at the bottom of
7 the page describes the first call. And I was
8 simply pointing out that it sets out the two
9 facts that are found in Sergeant Anderson's note
10 of that call. Is that correct, Sergeant
11 Anderson?

12 A Yes.

13 Q The first fact being that you informed him of
14 the arson admission by Zanidean, and the second
15 fact being that they informed you that Burton
16 was in charge of the investigation?

17 A That's correct.

18 Q So that's completely faithful to your notes
19 there?

20 A Yes, sir.

21 Q And then over the page at page 2, we get the
22 October 30th call. And you set out in the first
23 two or three sentences there that you phoned
24 Burton on the 30th and he confirmed that he was
25 in charge of the investigation. Again, that's

1 faithful to your notes; is that correct?

2 A Yes.

3 Q The first point at the top page of your notes,
4 "I discussed the situation with him and he
5 indicated that the entire Zanidean family
6 was being interviewed with respect to the
7 arson."

8 That's not found in your notes, but you've
9 explained to us that there was a considerable
10 discussion, not all of which was recorded in
11 your notes; is that correct?

12 A Yes, it is.

13 Q So he is giving you a little bit of detail about
14 his investigation, that he is focusing on the
15 Zanidean family?

16 A Yes.

17 Q And then the third sentence,
18 "He said there was no other evidence
19 against Reath Zanidean at that time."

20 And, again, that's clearly set out in your notes
21 that there was nothing he had so far to
22 corroborate Zanidean's admission; is that
23 correct?

24 A Yes, it is.

25 Q But what you've omitted there, again, referring

1 back to your notes, is the last part of that
2 sentence, the sentence in your note is,
3 "Burton advises no evidence to confirm, but
4 investigation will continue."

5 You've left out the "but investigation will
6 continue" part; is that correct?

7 A Where are you suggesting I left that out, in the
8 memo?

9 Q Yes, in your memo at the top of page 2, the
10 third sentence where you've got Burton telling
11 that you there is no corroborating evidence
12 against Zanidean at that time, that replicates
13 your note at tab 4, page 34, the last paragraph
14 where you say,

15 "Burton advises no evidence to confirm."
16 Is that correct?

17 A Yes.

18 Q But in your note your sentence continues and it
19 says,

20 "...but investigation will continue."
21 And that part has been omitted from your tab 10
22 report; is that correct?

23 A Yes. I don't see it in the report, that's
24 correct.

25 Q And then it's the next part starting,

1 "Constable Burton made a suggestion...",
2 the part that was underlined in this copy that
3 was produced to us, that goes on to set out
4 Burton's offer to delay their pursuit of
5 Zanidean until after the murder trial?

6 A Yes.

7 Q And that's the new part, if I could call it
8 that, that's not found in your contemporaneous
9 note; is that correct?

10 A Yes.

11 Q So your year later account at tab 10, it omits
12 one part of the note and it adds in a new part;
13 is that fair?

14 A Well, my notes from the 30th of October that
15 cover that call, as well as the October 27th
16 call, as I've explained before, are by no means
17 an all-encompassing account of the conversations
18 that I had with Constable Burton. The memo that
19 I'm writing approximately a year later includes
20 some information that isn't in the notes. And
21 you have pointed out to me one piece of
22 information that is in the notes is not in the
23 memo, yes.

24 Q And my question simply is that by the time you
25 came to write up this report to Inspector Johns

1 a year later, on October 8th of 1991, is it fair
2 to say that there had been a number of new and
3 important developments in the case? The case
4 hadn't stood still for that year, there had been
5 a lot of important developments?

6 A You mean up until the time that I am writing
7 this memo, October 8th of '91?

8 Q Between the date of your notes on October 30th
9 of '90, and the date of this memo on October 8th
10 of 1991, there had been a number of significant
11 developments in the case?

12 A Yes.

13 Q And if I could just itemize a few of them for
14 you. First of all, Driskell had been convicted.
15 That was a very significant development, is that
16 fair?

17 A Yes.

18 Q Second of all, it was willing alleged that
19 Zanidean, your key witness in the case who this
20 reported note concerns, had perjured himself,
21 specifically about the Swift Current arson; is
22 that correct?

23 A No.

24 Q There was no suggestion that Zanidean had
25 perjured himself in his testimony on June 11th?

1 A Well, certainly not to my knowledge, no.

2 Q You were not aware of the allegations of
3 Zanidean's alleged perjury?

4 A No, not at this time. I believe I would first
5 become aware of that allegation either in the
6 press, media stories in '93 or -- that's
7 probably when I first became aware.

8 Q I'll come back to that with you. So you're
9 saying by October 8th of 1991, when you write
10 the report to Inspector Johns, you're not aware
11 of the allegations of Zanidean's perjury about
12 the Swift Current arson?

13 A No, not at all.

14 Q Were you aware that the defence was trying to
15 get the Swift Current arson, the Swift Current
16 RCMP, to lay arson charges against Zanidean?

17 A I don't think I would have been then.

18 Q Were you aware that they were pursuing a
19 strategy that if they could get Swift Current to
20 lay the arson charges against Zanidean, it would
21 assist them on their appeal in establishing the
22 case that he had perjured himself?

23 A I don't think so. If I was, I have forgotten,
24 but I am quite certain that I wasn't aware.

25 Q Were you aware that there was an appeal pending?

1 A No.

2 Q You weren't aware of any appeal?

3 A No. I was aware that appeals are a possibility
4 after a trial, but as to whether one had been
5 filed or what the date of it was or any of that,
6 no, I was not aware of any of that.

7 Q Were you aware that Saskatchewan Justice was
8 conducting a review of the matter to determine
9 whether there had been an unauthorized promise
10 of immunity to Zanidean?

11 A Well, I think by the time I am writing this,
12 this is October 8th, I would have learned
13 something of that from Constable Burton over a
14 phone call to my house on July 16th, I believe.
15 It is either July 16th, or maybe on the
16 conversation on July 18th, or at some point I
17 would have learned, because we had talked about
18 referring the matter to our respective justice
19 departments.

20 Q You and Burton had had a conversation in July
21 about pushing this whole matter up to the two
22 justice departments to sort out --

23 A Yes.

24 Q -- as to whether there had been an unauthorized
25 promise of immunity?

1 A Correct.

2 Q And finally by this point, you believed there
3 was an RCMP complaint against you in relation to
4 your handling of this matter and you were
5 responding to that complaint in this letter?

6 A That's what it was all about, yes.

7 Q And my question to you is whether all of these
8 subsequent events that occurred in the
9 intervening year had an impact on you when you
10 wrote up this report?

11 A I don't know what you mean?

12 Q Was your account of the events of the previous
13 year, when you are trying to reconstruct this
14 phone call, these two phone calls in October of
15 1990, was it influenced by the intervening
16 events?

17 A Not to my knowledge. Maybe you could be more
18 specific, but I can't think of any way they
19 would be influenced.

20 Q Well, my suggestion is that by this time there
21 had been a number of developments that had put
22 you on the defensive about this whole thing,
23 that the allegation that there had been an
24 unauthorized promise of immunity to Zanidean was
25 under review, there had been a complaint made

1 against you, you had secured a conviction but
2 that conviction was potentially threatened in
3 the Court of Appeal --

4 A Excuse me, which allegation are you talking
5 about, what allegation of improper immunity?

6 Q The Department of Justice, the two Departments
7 of Justice, Miller and Quinney, were reviewing
8 whether or not whatever immunity deal had been
9 made with Zanidean had been improperly
10 authorized, whether it was a bar to prosecuting
11 him for arson?

12 A Well, I don't think I was aware of that in that
13 much detail. The only thing I knew at this
14 point about Saskatchewan Justice was the fact
15 that Ross Burton and I talked about this change
16 of heart that the RCMP had in Swift Current with
17 respect to Ray Zanidean not being charged, and
18 that he and I agreed that this is a matter that
19 our respective justice departments -- I don't
20 know that I was aware at that point that
21 Saskatchewan Justice were unhappy with improper
22 immunity granting or anything like that.

23 Q Leaving aside the degree of detail that you were
24 aware of, you've told us what your general
25 awareness was of these developments, my question

1 to you is very simply, were you, by the time you
2 wrote this subsequent report, were you somewhat
3 on the defensive?

4 A Well, I was asked to respond to it. And one
5 thing that we are missing here, Mr. Code, is the
6 original complaint from the RCMP to Winnipeg
7 Police Department that resulted in this
8 response. So I was clearly responding to a
9 complaint, yes.

10 Q All right. And the version of the October phone
11 call that you are giving us today as your
12 recollection is essentially the version set out
13 in this report; is that correct?

14 A Well, there is much more detail, of course, than
15 what is set out in that report. But, yeah, that
16 would be the most current -- that would be the
17 most current account of those events, yes.

18 Q The account you gave us in your interview with
19 us at tab 2 is generally consistent with the
20 account in this report at tab 10?

21 A Yes.

22 Q You're sticking to the story that we find in
23 that report? You say that's the true account?

24 A Yes.

25 Q Now, Constable Burton's version of the call, as

1 you know, is somewhat different, and in fairness
2 I have to put this to you, it is at tab 11, the
3 very next tab of volume 2, and it's at the top
4 of page 2. And there are clearly problems with
5 reconstructing Burton's version of it because of
6 the loss of reports in his file, but the closest
7 contemporaneous account we have is this one at
8 the top of page 2 of the report at tab 11, which
9 appears to quote from a November 15, 1990 report
10 of his, that is approximately two weeks after
11 the call. And if I could just go through it,
12 it's just two sentences, if I could read the
13 first sentence with you and ask you about it.
14 The first sentence says,

15 "Anderson advised that Zanidean is a
16 witness in a homicide prosecution as he
17 observed Driskell execute a Crown witness
18 in relation to another prosecution."

19 Now, leaving aside the nuance of whether
20 Zanidean observed it or not, the substance of
21 what's set out there, that Zanidean's a witness
22 in the homicide against Driskell and it involves
23 the execution of a Crown witness, that's
24 information that you would have passed along to
25 Burton in the course of that phone call; is that

1 correct?

2 A The fact that Zanidean is a witness in a
3 prosecution?

4 Q The information that's set out there, that he is
5 a witness in a homicide prosecution --

6 A Right.

7 Q -- against Driskell, and it involves the
8 execution of a Crown witness in relation to
9 another prosecution?

10 A Yes, that's true. What isn't accurate is the
11 fact that I would tell him that Zanidean
12 witnessed the murder. I would not have told him
13 that.

14 Q He has clearly got that wrong?

15 A He's got that wrong.

16 Q But the substance of what's set out there is
17 unobjectionable, it is the kind of information
18 you would have been passing along to him, is
19 that fair?

20 A Yes, if we are talking about those first three
21 lines, yes.

22 Q The first sentence --

23 A The first sentence.

24 Q -- which is on three lines, you're right.

25 A Yes.

1 Q And then the second sentence is the part that
2 you object to, as I understand it.

3 "Anderson requested that we keep this
4 information in confidence and hold off on
5 pursuing Zanidean as it will endanger their
6 prosecution of Driskell."

7 And I take it you disagree that you said that,
8 because he has got the request emanating from
9 you for Winnipeg Police reasons to assist your
10 prosecution; is that correct?

11 A I do take issue with that, yes.

12 Q And your view is that the motivation for the
13 call was to assist them, not to assist you?

14 A Well, that's right, to notify them of the
15 information we had, and then find out whether
16 they would be coming to investigate, or have D
17 Division in Winnipeg investigator whatever. I
18 had no expectations other than an immediate
19 investigation of this arson.

20 Q You weren't trying to get them to help you out
21 on the Winnipeg case?

22 A Absolutely not, no.

23 Q You were trying to help them out on the Swift
24 Current case?

25 A Yes.

1 Q And you never suggested to him that the Swift
2 Current investigation was an impediment to your
3 very serious homicide in Winnipeg?

4 A No.

5 Q If you look at tab 2, your interview, page 12,
6 there is no question and you have been very
7 frank with us in acknowledging that the Swift
8 Current investigation was indeed an impediment
9 to your investigation. If you look at the very
10 middle of page 12 at tab 2, the last sentence of
11 that long paragraph you state:

12 "The Winnipeg Police expected that once
13 Swift Current RCMP learned of Zanidean's
14 admissions, they would immediately
15 investigate, which would expose Zanidean
16 and force the Winnipeg Police and Crown to
17 take action to protect him."

18 Is that correct?

19 A Yes.

20 Q So the Swift Current investigation was, in fact,
21 an impediment, but you didn't raise that with
22 Burton?

23 A No.

24 Q All right. If I could move on to the next time
25 period, and I'm going to try to take you

1 sequentially through the investigation, if we
2 could move to the next block of time. You've
3 essentially done this intensive investigative
4 period in October, and you've dealt with Swift
5 Current at the end of October, you've got a
6 temporary stand-still agreement with them in
7 place. And we now move into what -- I'm going
8 to lump together the next five months from
9 November to March, and just highlight some of
10 the early developments in the case in this kind
11 of preparatory phase of the case.

12 The next development that I want to note in
13 November is a November 12th meeting that you
14 have with Zanidean that is noted in your notes.
15 So if you could turn up tab 4 of your notes,
16 please, page 76 -- tab 4, volume 1, page 76.
17 There is actually two notebooks here, so the
18 numbering repeats itself twice. But it's about
19 halfway through tab 4 we find a note for
20 November 12th. Do you have that?

21 A I think my numbers are different than yours.
22 THE COMMISSIONER: Actually, as Mr. Code just
23 indicated, and I realize that it's about the
24 middle, about the middle of that tab, because
25 there are also 70s at the end.

1 MR. CODE: There is two notebooks at this tab,
2 so the numbering repeats itself twice. The
3 first notebook --

4 THE COMMISSIONER: It's approximately the middle
5 of tab 4.

6 BY MR. CODE:

7 Q The first notebook goes up to about page 83.
8 And then we get numbering that start at page 40
9 again. So if you look at the first set of
10 numbers at page 76, you should have a note for
11 November 12th. Do you see that? It's about
12 halfway through that tab. Page 76, November 12,
13 1990, towards the end of your first notebook.

14 A I have it now.

15 Q Have you got it?

16 A Yes.

17 Q Now, unfortunately, this is a very poor
18 photocopy of the note, and I have got the better
19 photocopy that I had during your interview, so
20 let me read this out to you, Sergeant, and
21 confirm that this is an accurate note of the
22 meeting.

23 "Ray Zanidean attends office."

24 Is that correct?

25 A Yes.

1 Q "Discuss concerns about witness
2 protection."

3 Is that correct?

4 A Yes.

5 Q And the third paragraph,
6 "Says he spoke lawyer who told him program
7 doesn't often work."

8 Is that correct?

9 A Yes.

10 Q "Says he has appointment with Dave Kovnats
11 tomorrow."

12 A Yes.

13 Q So essentially what we have here is a meeting
14 between you and Ray Zanidean where he raises
15 concerns with you about witness protection and
16 says that he has retained a lawyer who is giving
17 him some advice on that matter?

18 A Yes. I don't have any independent memory of
19 that, I am totally dependent on those notes, but
20 that's what it would seem to indicate, yes.

21 Q It appears that the meeting with Zanidean on
22 November 12th exclusively dealt with witness
23 protection issues?

24 A That's what the note would indicate, yes.

25 Q And is that in accord with ordinary good police

1 practice, to make a note like that?

2 A Well --

3 Q Are you doing anything improper in making that
4 note?

5 A I don't think so.

6 Q So it's ordinary good police practice to make a
7 note like that?

8 A Well, I don't think it's improper.

9 Q You've told us that you don't make notes about
10 witness protection matters?

11 A Generally speaking, no.

12 Q All right. The next day, if you turn the
13 notebook to page 77, we have a November 13th
14 meeting with the lawyer, Kovnats; is that
15 correct?

16 A Yes.

17 Q So Zanidean on the 12th tells you he has got
18 this meeting the next day with Kovnats and you
19 attend with him at that meeting; is that
20 correct?

21 A Yes.

22 Q And how is it that you came to attend that
23 meeting? Why did you go to this meeting with
24 his lawyer?

25 A Well, here again I am totally depending on the

1 notes because I don't have a memory of this
2 meeting, but the notes indicate that Kovnats
3 phoned my at home.

4 MR. PROBER: Could I ask that the witness speak
5 into the mike, please?

6 THE WITNESS: Sorry. My notes indicate that I
7 received a phone call from Mr. Kovnats, and then
8 Al Paul and I met with he and Ray Zanidean at
9 his office.

10 BY MR. CODE:

11 Q So it appears Kovnats invited you to attend the
12 meeting?

13 A Yes.

14 Q And the substance of the notes -- and
15 incidentally, Sergeant Paul makes notes of it as
16 well, I will take to you his note in a minute.
17 Your notes are both consistent on what was
18 discussed. In the middle of that page 77, you
19 discuss witness protection issues with Zanidean
20 and Kovnats; is that correct?

21 A Yes.

22 Q And you -- at the bottom of page 77, your notes
23 are much shorter than Paul's. We get a bit more
24 detail in Paul's. But at the bottom of the
25 page, after the meeting with Kovnats, you have a

1 note,

2 "Al Paul and Vandergraaf met with Lawlor
3 1400 hours and advised him of action taken
4 by Zanidean and his chosen lawyer."

5 Have I read that correctly?

6 A Yes, you have.

7 Q So Paul presumably briefed you that after the
8 meeting with Kovnats and Zanidean about the
9 witness protection issues, that Paul and
10 Vandergraaf then went to meet with Lawlor and
11 advise them of the developments?

12 A I'm not sure what that means. I may be missing
13 the word "to", there may have been an intention
14 for them to have a meeting. I don't know what
15 that last paragraph is.

16 Q That's a good point. It may be simply that that
17 was -- the conclusion of the meeting was that
18 Paul and Vandergraaf were going to go on to meet
19 with Lawlor to brief him, as opposed to an
20 after-the-fact note?

21 A Yes.

22 Q Is that your point?

23 A Yes.

24 Q In any event, it seems to indicate that the
25 upshot of the meeting was to brief Lawlor about

1 this; is that correct?

2 A Yes.

3 Q And, again, is there anything improper in that
4 note? Is it good police practice to make that
5 note of the November 13th meeting?

6 A Well, I think so. As I explained, generally
7 speaking, we wouldn't include witness protection
8 matters in notes or a report, but this would be
9 a note that isn't of a sensitive nature, I
10 guess.

11 Q Paul's notes are at tab 5, page 548. And we get
12 simply a more detailed version of the witness
13 protection discussions. Essentially, what it
14 says, as I read page 548, is that Winnipeg
15 Police will provide the immediate short-term
16 protection pending trial; is that correct? But
17 that the long-term relocation and change of
18 identity is something that you direct Kovnats to
19 go and speak to Lawlor about; is that correct?
20 Have I summarized it accurately?

21 A We are on page 548?

22 Q 548 in the middle of the page.

23 A Yes.

24 Q Essentially you tell Kovnats that you, the
25 Winnipeg Police, can provide short-term

1 protection pending the trial, but that long-term
2 relocation and change of identity, that he needs
3 to go to speak to Lawlor about that?

4 A Yes, that's correct.

5 Q And it goes on for another page at 549. And
6 then at page 550, Sergeant Paul makes a note at
7 the top of page 550,

8 "Arrangements are being made through the
9 Crown's office to find a safe house for Ray
10 and Susan once disclosure of the facts has
11 been made to Driskell's lawyer?"

12 Is that correct?

13 A Yes.

14 Q And moving a witness to a safe house is
15 obviously a sensitive matter; is that correct?

16 A Yes. Certainly the location of the safe house
17 would be, yes.

18 Q So the location of the safe house is what's
19 sensitive, but there's nothing improper or bad
20 police practice about Sergeant Paul making a
21 note of the witness protection arrangements that
22 you're going to set up for Zanidean?

23 A I don't think so.

24 Q Six days after the meeting with Kovnats on
25 November 19th, you prepare a memo to Inspector

1 Bell on these issues, on these witness
2 protections issues, and we find that on tab 12,
3 a November 19th memo to Inspector Bell?

4 A Yes, that's my signature.

5 Q And as I read that memo, it is headed up
6 "protection of Crown witness Ray Zanidean." And
7 if we could summarize it so that we don't take
8 time to read the whole thing, the first
9 paragraph, right at the start of it, you
10 emphasize the importance of Zanidean's evidence,
11 that he is a major portion of our case. Was
12 that the view you took of it?

13 A Yes.

14 Q And further down in that first paragraph you set
15 out that he has subjective fears for his safety
16 and has requested a police guard at his home on
17 Chelsea Avenue?

18 A Yes.

19 Q 24-hour basis; is that correct?

20 A That's correct.

21 Q You set out Zanidean's witness protection
22 requests at this stage?

23 A Yes.

24 Q Is that correct?

25 A Yes.

1 Q And those were his wishes at that time?

2 A Well, I don't recall that, but that's included
3 in this request, that's for sure.

4 Q Then it must have been accurate?

5 A I'm assuming it is.

6 Q And then the second paragraph, you offer your
7 opinion, presumably an objective check on
8 Zanidean's subjective fears. You conclude that
9 the threat is real and you support the proposal
10 for witness protection, particularly once full
11 disclosure is made, in about a week's time, as a
12 result of the direct indictment; is that
13 correct?

14 A That is correct.

15 Q So you are throwing your weight behind his
16 requests for protection and offering an
17 objective trial-related reason for the need for
18 witness protection; is that fair?

19 A Well, I am explaining to the divisional
20 commander, and you will note in the very first
21 sentence I write "as you know," meaning the
22 divisional commander knew all the details about
23 this, I was just giving him a piece of paper on
24 which he could act.

25 Q Exactly. You have had an oral briefing with him

1 and now you are memorializing it with him in a
2 memo?

3 A Yes. Not an oral briefing, but oral briefings,
4 many, many, many.

5 Q Fair enough. So Zanidean is asking for witness
6 protection, you are supporting it. And,
7 finally, in the last three paragraphs you set
8 out a plan or a proposal for 24-hour police
9 guard on his house until the time of trial. Is
10 that correct?

11 A Yes.

12 Q And, again, this kind of a detailed witness
13 protection plan or proposal, obviously, is a
14 sensitive matter. Is that fair?

15 A Yes.

16 Q And there is nothing improper in setting it out
17 in a written memo in this fashion. It is good
18 police practice; is that correct?

19 A Yes. It's set out in a format that wouldn't --
20 that wouldn't go -- any supplementary, of
21 course, would end up in the hands of defence
22 counsel. This wouldn't, because it is a piece
23 of paper between me and the divisional
24 commander.

25 Q So this is an internal memo that would only be

1 in the file at the Public Safety Building?

2 A Well, maybe today. At the time it probably
3 wouldn't, it may not have even been in the file,
4 it would have stayed with the divisional
5 commander, probably.

6 Q So he would have had a file in his office?

7 A Yeah. It would have stayed -- it would have
8 eventually, at the conclusion, found its way
9 probably back. Well, it obviously did or you
10 wouldn't have it.

11 Q Found its way back into the homicide file?

12 A Correct.

13 Q And just dealing with the point in the second
14 paragraph where you're coordinating the timing
15 of the threat with the timing of the direct
16 indictment and the timing of disclosure, I take
17 it those are decisions that the prosecutors
18 would have been making? The prosecutors
19 assigned to do the court case would have been
20 ferrying the direct indictment and disclosure
21 matters through the court process; is that
22 correct?

23 A Yes.

24 Q So it tends to indicate there has been some
25 discussions between you and the prosecutors

1 about the interrelationship of witness
2 protection issues with trial issues. Is that
3 fair?

4 A Well, I don't know about me, but some discussion
5 between the prosecutors and the police, maybe
6 Sergeant Vandergraaf, maybe Inspector Bell, I
7 don't know.

8 Q If it wasn't you, you were briefed about it?

9 A If it wasn't me, I would be briefed about it,
10 yes.

11 Q Because you are connecting the witness
12 protection measures to trial-related steps; is
13 that right?

14 A Right.

15 Q All right. The next tab, you can skip over tab
16 13, Mr. Kovnats' letter, which you deal with
17 fully in your witness statement at tab 2. I
18 don't need to go back over that at all. But at
19 tab 14, and if you could ignore the covering
20 memo there, the contemporaneous memo from
21 November 10th, 2004, there is no need to put it
22 in there. I am interested in the historical
23 memos from November and December of 1990. Do
24 you see the November 26, 1990 memo from Louise
25 Beaudette to Brian Arnason?

1 A Yes, I do.

2 Q And this is some seven days, a week after you've
3 sent your memo, your internal memo, to Inspector
4 Bell. We see that there is now, rather than
5 your proposal to guard his house on Chelsea
6 Avenue, we see that the decision appears to have
7 been made to move him to a secure house; is that
8 correct?

9 A That's what this memo would indicate, yes.

10 Q And you're going to pay his rent and damage
11 deposit and his moving expenses; is that
12 correct?

13 A Manitoba Justice is, yes.

14 Q Yes. And throughout these memos at tab 14, we
15 see Gregg Lawlor, for example, copied on that
16 first memo about this initial cheque for \$1,300,
17 and then we have an accounting journal that it
18 looks like you and Sergeant Paul were keeping
19 dated November 27th; is that correct?

20 A Yes. I don't know -- I don't know what this is.
21 Some of the handwriting is mine.

22 Q Some of the writing on it is yours?

23 A Yes.

24 Q And it is headed up as being yours and
25 Anderson's --

1 A Oh, yes, our names.

2 Q -- book-keeping journal at the top, do you see
3 that?

4 A No. Mine is cut off. Just where it says "Tom
5 Anderson and Al Paul," I see that now, but there
6 is no title on it.

7 Q So it would appear that it is your document,
8 yours and Sergeant Paul's document, recording
9 the monies that are being expended on Zanidean
10 in this pre-trial period?

11 A Yes, it would appear that it was for that
12 purpose. Whether or not it was just Al Paul and
13 me, I don't know, there may have been other
14 officers involved, I don't know.

15 Q And that initial memo, the November 27th memo
16 seeking a \$1,300 cheque to facilitate the move
17 to the safe house, we see that's the very first
18 entry on November 27th. And you note that the
19 cheque is received from Gregg Lawlor; is that
20 correct?

21 A I don't. But somebody noted that, yes.

22 Q And then on December 19th there is another
23 cheque received from Lawlor for \$853; is that
24 correct?

25 A I see what you're talking about, yes.

1 Q And on January 29th there is a third cheque
2 received from Lawlor in the amount of \$1,000.

3 Do you see that?

4 A I see that entry, yes.

5 Q And then on February 21st there is a fourth
6 cheque received from Lawlor, again in the amount
7 of \$1,000?

8 A I also see that.

9 Q And the first cheque, the November 27th cheque,
10 if you look back at the memo, it's to be in your
11 name, do you see that, at the top of the second
12 page of the memo?

13 A Yes, I do.

14 Q And similarly, the memo after the accounting
15 spreadsheet, the \$853 cheque, which is the
16 second one, the December 19th cheque, that one
17 is also to be issued to Sergeant Thomas
18 Anderson?

19 A Yes, that's what the memo says.

20 Q Again, Gregg Lawlor is copied on the memo?

21 A Yes, he is.

22 Q And my question to you is simply, it appears
23 from these documents that at these early stages,
24 when you were facilitating Zanidean's protection
25 right around when the preferred indictment and

1 disclosure was being made, it appears that
2 Mr. Lawlor is involved in facilitating those
3 efforts. Is that fair?

4 A According to these documents, yes.

5 Q And I take it that your entries in your ledger
6 would be accurate? You would be making them
7 contemporaneously in order to keep a proper
8 record?

9 MR. OLSON: Well, with all due respect, his
10 evidence was that wasn't his handwriting.

11 BY MR. CODE:

12 Q I suppose I'm asking you about the character of
13 the document, the purpose for keeping this kind
14 of a document. Did you have a business or
15 accounting purpose for keeping this document?

16 A I don't know what this document was all about.

17 Q You've got no idea why you and Al Paul were
18 keeping this document?

19 A Well, first of all, I didn't say Al Paul and
20 I -- I said there is handwriting of mine, it has
21 our names on the top, but it might have been one
22 of those things that was left in the file and
23 anyone involved in witness protection would have
24 filled in. I don't know. I don't have any
25 recollection of this at all.

1 Q Can you assist us, Sergeant Anderson, as to the
2 purpose of this document?

3 A Well, on the surface of it, it is obvious that
4 it would appear to keep track of monies spent on
5 witness protection to do with relocation in the
6 early stages of witness protection.

7 Q I would have thought so.

8 The next document that I want to take you
9 to is, again, a document that I apologize for
10 not including. This is the only other one that
11 I just came across last night. And it's new tab
12 59, Madam Registrar, if you could make a copy
13 available to the witness and to
14 Mr. Commissioner, please?

15 I understand copies have been made
16 available to the parties.

17 And it's a March 4th document. So the
18 accounting entries back at tab 14 took us up to
19 February, the four cheques to Mr. Lawlor end on
20 February 21st. And then here on March 4th,
21 about a week, ten days later, we have Bruce
22 Miller sending a memo to the Assistant Deputy
23 Minister, Stu Whitley. And he states in the
24 second paragraph:

25 "Sergeant Tom Anderson of the Winnipeg

1 Police, who has been the police contact
2 with this individual and his lawyer, was in
3 to see me Friday. We discussed a number of
4 issues relevant to this particular
5 situation which I would like to bring to
6 your attention."

7 So I take it, just pausing there, that is
8 consistent with your recollection that you had a
9 number of meetings with Mr. Miller to discuss
10 witness protection issues for Zanidean?

11 A Yes. Yes, that's true.

12 Q And the first matter that Miller wants to bring
13 to Whitley's attention is about the mortgage
14 payments, that an issue has been raised about
15 the mortgage payments; is that correct? That
16 Zanidean and Kovnats are expecting the
17 Department of Justice to look after them, and at
18 the last sentence on the bottom of the page,

19 "I advised Sergeant Anderson...",

20 this is at the top of page 2,

21 "...that should the question arise again,
22 he is simply to instruct the witness to
23 take the matter up with his counsel."

24 And my question to you simply is, is it fair to
25 say that in March and April, negotiations about

1 what to do with Zanidean's house as a result of
2 moving him out of his house and into the safe
3 house, his own house on Chelsea Avenue, which
4 had an outstanding mortgage, had to be dealt
5 with in some fashion, and Miller is directing
6 you to tell the witness to have his lawyer,
7 Kovnats, raise this matter?

8 A That's what this memo would suggest, yes. I
9 don't have a memory of that at the time, but
10 that's what it would suggest.

11 Q Is that consistent with reason and common sense,
12 that you would move the man out of his house
13 into a safe house, and some arrangements had to
14 be made to look after his own house?

15 A Yes, something must have been done.

16 Q You would expect that to be a matter that would
17 properly be related to the protection issues; is
18 that fair?

19 A Yes, that's fair.

20 Q In paragraph 2, finally,

21 "Sergeant Anderson will be meeting with
22 Corporal Tom Orr to discuss in greater
23 detail and ultimately to launch the
24 application for participation in the
25 witness assistance program."

1 And does that second point, is it consistent
2 with your recollection that you were involved in
3 the preparation of the formal application in and
4 around this time of March 4th?

5 A Yes, it is consistent.

6 Q And you've told us in your interview, and I
7 don't need to take you to this, that your
8 examination of the application tended to
9 indicate that it probably arose sometime around
10 mid-March; is that fair?

11 A Yes, that's fair.

12 Q Which would be consistent with this memo?

13 A Yes.

14 Q Now, the application itself is next step,
15 assuming it emerges sometime around mid-March,
16 and we have it at tab 16, a very lengthy
17 detailed document. And do I take it that this
18 document was prepared by the Winnipeg Police?

19 A Yes, sir.

20 Q And that you had a role in it?

21 A I had some role in it, yes.

22 Q And, in particular, the part of it that I'm
23 interested in is at page 481, the discussion
24 about the Swift Current situation. And you see
25 the report, the application form at page 481 has

1 a section under part 7(4) saying.

2 "Summarize information divulged by the
3 witness with respect to other criminal
4 activity?"

5 A Yes, I see that.

6 Q And it sets out the fact of the Swift Current
7 arson, the facts of the admissions made by
8 Zanidean; is that correct? The first
9 sentence --

10 A Yes.

11 Q -- at the bottom of page 81?

12 A Yes, that's correct.

13 Q It sets out your stand-still agreement with
14 Constable Burton, holding off until the end of
15 trail; is that correct?

16 A Yes, it is correct.

17 Q And it sets out that Zanidean is demanding
18 complete immunity, in other words, something
19 more than the stand-still agreement, and a
20 written guarantee setting that out prior to the
21 murder trial. And it concludes,

22 "This delicate matter has not yet been
23 resolved."

24 Is that correct? The very last two sentences of
25 that section?

1 A That is correct.

2 Q And did that generally reflect the state of your
3 awareness in and around this time period?

4 A Yes, I believe so.

5 Q Now, in relation to the Swift Current arson, and
6 the status of it as set out here, and your --
7 the application has now gone in. We understand
8 the application goes to Corporal Orr at the
9 RCMP; is that correct?

10 A Well, yes, it would. I don't have much memory
11 of this document. It would have been filled out
12 by me, Bill Vandergraaf, Al Paul, or some
13 combination thereof, and then eventually sent or
14 delivered to Corporal Orr, yes.

15 Q All right. And at some point you have some
16 discussions with Corporal Orr about the
17 application?

18 A Yes, I did.

19 Q And what does he tell you about this aspect of
20 it that's set out at page 481 of tab 16? What
21 advice do you receive from him about this
22 outstanding Swift Current investigation with its
23 this stand-still agreement?

24 A Well, I think I only received one piece of
25 advice. I think I only talked to him about it

1 once, and that was the initial discussion with
2 him, pursuant to Mr. Miller's instructions to
3 me. And his response to this part was that
4 Mr. Zanidean wouldn't be eligible for the
5 Federal Witness Protection Program with this
6 charge outstanding.

7 Q And in your statement to us, which is consistent
8 with what you've just said at page 21, you've
9 described it that Orr's advice was that it was a
10 complete bar to Zanidean's entry into the
11 program, made him completely ineligible; is that
12 correct?

13 A Yes, that's correct.

14 Q Now, I have to ask you how sure you are of that
15 characterization of it, because Corporal Orr has
16 come here and disputed that and said it is no
17 such thing and he wouldn't have said that. Are
18 you sure that he characterized it in the --
19 MR. WOLSON: I don't think Corporal Orr was that
20 definite when he testified, given the
21 examinations and cross-examinations at the end
22 of the day. That may be an overstatement of
23 Orr's position.

24 MR. CODE: I don't think it would be very
25 fruitful for Mr. Wolson and I to engage in an

1 argument about what Orr's evidence is. But
2 certainly his statement, which he adopted is
3 very clear. And I recall him, on a number of
4 occasions, giving evidence to that effect. So I
5 think I'm entitled to preface my question, I am
6 simply asking Sergeant Anderson how sure he is
7 on this point?

8 THE WITNESS: I can answer?

9 THE COMMISSIONER: Yes, answer the question.

10 THE WITNESS: I can tell you exactly what I'm
11 sure of, Mr. Code. I can't tell you what words
12 Corporal Orr used, but what I can tell you is
13 that when I left his office, trying to fulfill
14 Bruce Miller's instructions to get Ray Zanidean
15 into the Federal formal Witness Protection
16 Program, with change of identity and all that
17 goes with it, that he was not eligible as long
18 as that Swift Current charge was still
19 outstanding. That was the understanding I left
20 Corporal Orr's office with.

21 Q You're quite confident of that then?

22 A 100 per cent confident.

23 Q So there wasn't a misunderstanding about this?

24 He was quite explicit on the point?

25 A Well, I told you, I don't remember his exact

1 words, and I suppose there is a possibility for
2 a misunderstanding. But I can tell you with
3 certainty that I left his office with that
4 understanding.

5 Q You didn't have any kind of common sense view of
6 witness protection, that you have often got lots
7 of shady characters in witness protection who
8 have got problems with the law, and you would be
9 out of business if you tried to bar them from
10 the program because of outstanding criminal
11 jeopardy?

12 A No. I didn't have that thought. My first
13 thought was that it made sense. This is a man
14 who has unresolved business. How could he have
15 his name changed to somebody else? The RCMP
16 would be assisting him in escaping justice. It
17 made sense to me initially. And what you do
18 with witnesses that need witness protection that
19 have outstanding charges, or are subject to
20 other investigations or warrants for that
21 matter, I had no idea, I had no clue what you do
22 with those people under those circumstances.

23 Q You didn't think there are practical ways of
24 dealing with those problems?

25 A Well, I would have expected Corporal Orr to

1 explain that to me rather than shut it down
2 altogether, if those practical ways of dealing
3 with existed and were so easy to access.

4 Q Fair enough. So he didn't explain the ways in
5 which you could work with that problem?

6 A No. It wasn't a talking point.

7 Q It was simply all over?

8 A Correct.

9 Q The application was finished?

10 A Exactly.

11 Q So, needless to say, this was a significant
12 problem for you; is that fair? That it
13 effectively put an end to this very thorough
14 application that you spent some time putting
15 together for an important witness on a serious
16 case?

17 A Well, what it amounted to was that a witness,
18 who Al Paul and I had promised protection,
19 witness protection to in our first meeting, as
20 far as I knew at the end of the day in talking
21 with Corporal Orr, was ineligible for what we
22 had promised to do for him, and what Mr. Miller
23 was assisting us to deliver on when he sent me
24 to see Corporal Orr. So what it was, it was a
25 matter that I didn't know, the resolution of

1 which I had no clue. I knew that I would have
2 to talk to supervisors and Mr. Miller about.

3 Q So for all of those reasons, it was a serious
4 problem?

5 A Yeah, it was a problem.

6 Q You now needed to obtain immunity in order to
7 allow the application to go forward?

8 A Not necessarily, but that would certainly be the
9 easiest way. It wasn't my first choice, because
10 I never was a big fan of Ray Zanidean or James
11 Driskell escaping justice on the Swift Current
12 arson. And I was later to learn that there was
13 not only one, but a second one. But the point
14 is, immunity for Mr. Zanidean was last on the
15 list of my favorites.

16 Q What were your favourite options?

17 A Well, I don't know. I didn't know what the
18 options were, that's why I phoned Swift Current.
19 Possibly a quick resolution in the
20 investigation, maybe Mr. Zanidean pleading
21 guilty for all I know. I don't know. I didn't
22 know the Swift Current case and I didn't know
23 what options there were.

24 Q All right. So you came out of that meeting
25 determined to phone Swift Current and try to

1 find a solution to this problem?

2 A Well, the agreement that Corporal Orr and I
3 closed off on was that I had this contact in
4 Swift Current, with whom I had already spoken.
5 And he, being a member of the RCMP, also had a
6 role in talking to his brother officers in Swift
7 Current about what their intentions are, what
8 they planned on doing with that case. I
9 volunteered to phone Ross Burton, and ask
10 Corporal Orr if he would also talk to his
11 brother officers and see what they had planned
12 for this case.

13 Q So the plan to call Swift Current emerges out of
14 your meeting with Orr?

15 A Yes.

16 Q And the advice that he gave you?

17 A Yes.

18 Q So this important development happens and you
19 formulate a plan on how to deal with it. Did
20 you make a note or a report of that step in the
21 case?

22 A Not to my knowledge. If I did, I don't have it
23 today.

24 Q And why wouldn't you make a report or a note of
25 an important development like that?

1 A Well, first of all, it was the kind of thing
2 that I would brief my superiors on verbally.
3 And witness protection matters, as I've
4 explained before, were not something generally
5 speaking that we would include in notes or
6 supplementaries. And if I could remind you,
7 Mr. Code, I was a front-line investigator who
8 worked on that basis. That wasn't a practice
9 that I established or that I pioneered, that was
10 just normal every day practice for the Winnipeg
11 Police Department then and, as far as I know,
12 even now.

13 Q You've got a serious impediment to your most
14 important witness getting protection in a very
15 serious homicide. You don't think that's
16 something that Crown counsel should get a report
17 on?

18 A It never occurred to me at the time, and no
19 supervisor, no Crown attorney ever told me
20 otherwise.

21 Q All right. The next significant development, we
22 are now into early April, is on April 4th your
23 witness, Ray Zanidean, allegedly receives a
24 threat on his windshield, a note on his
25 windshield on April 4th. And then he reports it

1 to you on April 5th. The fact that he received
2 the report on the 4th, you will find at tab 22
3 in the letter that Staff Sergeant Vandergraaf
4 drafts for your Acting Chief Klippenstein. And
5 the fact that he reports it to you on the 5th
6 you will find at tab 17, in the report that you
7 and Sergeant Paul prepare; is that correct? Tab
8 22 and tab 17 give us the information about this
9 April 4th windshield note that gets reported to
10 you on April 5th; is that correct?

11 A Yes. That's at tab 17?

12 Q Yes, tab 17, and we get a bit more detail at tab
13 22 in Vandergraaf's letter for Klippenstein.

14 The report -- you then prepare this
15 supplementary report at tab 17 on April 10th; is
16 that correct? You are catching up on your
17 report writing. So this April 10th report looks
18 back retrospectively on the last five day's
19 events, starting with the April 5th threat,
20 report of the threat; is that correct?

21 A Yes. I am not sure you are characterizing it
22 accurately. I suspect that I was -- I don't
23 think I was catching up on report writing, I was
24 probably instructed to write this.

25 Q And who would have instructed you to write it?

1 A I don't know. Probably Vandergraaf, or the
2 supervisor on duty at the time. My guess is
3 that this would be -- I was instructed to write
4 this to facilitate a change in program or a
5 relocation or something. These matters would
6 not normally be included in supplementaries.
7 The exceptions are when a supervisor or a Crown
8 attorney needs something on paper. And this
9 looks to me like one of the exceptions.

10 Q Okay. And we see, after setting out the
11 circumstances surrounding the report of the
12 threat in the first two or three paragraphs,
13 that the long paragraph in the middle you set
14 out what the steps were, the witness protection
15 arrangements that were made to move Zanidean to
16 a safe hotel temporarily; is that correct?

17 A That is --

18 Q You set out the temporary measures?

19 A Yes, that is correct.

20 Q And then you say that more long-term
21 arrangements are being made to move him out of
22 town?

23 A Yes, sir.

24 Q Now, again, this supplementary report clearly
25 deals with sensitive witness protection matters,

1 does it not?

2 A Well, yes, it deals with witness protection
3 matters. And again, there are no addresses or
4 anything revealed here, of course.

5 Q You've been careful not to identify where he is,
6 but the measures, the fact that you moved him to
7 a safe hotel and then you've moved him out of
8 town are set out in the report?

9 A Yes.

10 Q So, again, does this represent good police
11 practice, to make a report like this about
12 witness protection arrangements for a key
13 witness like Zanidean?

14 A I think it does in this case. Because, as I
15 tried to explain to you, there will be a
16 specific reason why this document, and I suspect
17 that the -- I am just not up on the dates, but
18 this may be around the time of the move to
19 Calgary. The specific, the specific reasons for
20 documenting these matters popped up from time to
21 time, and sometimes they were as simple as the
22 RCMP needed details of this in order to assist
23 Sergeant Vandergraaf with the move -- and I'm
24 speculating, but I'm telling you what I suspect.

25 Q Now, at the same time as you're writing this

1 report on April 10th, you've, shortly before
2 this, you've been in to see Corporal Orr, who
3 has told you that he is ineligible for the
4 Witness Protection Program because of the
5 outstanding Swift Current investigation. Is
6 that correct?

7 A Yes, that's correct.

8 Q And yet in the concluding paragraph of the
9 report, you state:

10 "Zanidean has since been placed under the
11 Witness Protection Program and will be
12 moved to a safe location in Canada to await
13 the upcoming trial."

14 Can you explain to us how that's consistent with
15 what you say Corporal Orr was telling you?

16 A Well, you see, I didn't then know or now know a
17 great deal about witness protection. But there
18 is two things I know about witness protection.
19 There's one kind that involves a formal name
20 change, new social insurance card, new birth
21 certificate, new location. It's administered by
22 the RCMP, and from my perspective it involves
23 getting the witness out of my hair.

24 The other kind of witness protection
25 programs are all the others; two Winnipeg Police

1 officers in a hotel with a witness; two Winnipeg
2 Police officers moving the witness to another
3 house; or the RCMP assisting Winnipeg Police
4 with a new city on a temporary basis.

5 Q So I'm still not understanding how that last
6 paragraph --

7 A Well --

8 Q The last paragraph is referring to the Witness
9 Protection Program, capital W, capital P,
10 capital P. Is that not a reference to the
11 formal RCMP program?

12 A Well, I don't think it is. I think it is a
13 reference to that temporary arrangement that the
14 RCMP helped Bill Vandergraaf out with, to move
15 him to Calgary.

16 Q Accepting that, that you are not very careful
17 about the exact way that you phrased this,
18 whether it should be all capitalized is not a
19 big point. The more important part here is, you
20 have just received, in the preceding days,
21 advice from Orr, according to your account, that
22 he is ineligible for the Witness Protection
23 Program unless you can resolve this Swift
24 Current investigation. And you are taking steps
25 to try to resolve it. You have worked out a

1 plan with Orr. Why would you not include that
2 in this report so that all of the current
3 information about his witness protection
4 situation was brought to the attention of the
5 Crown?

6 A Well, first of all, I don't think this -- I
7 suspect this report wasn't written for the
8 Crown. It was written for Tom Orr, I suspect,
9 and two different issues altogether. Ray
10 Zanidean's ineligibility for the formal,
11 Federal, name-change, long-term witness
12 protection is a totally separate issue from
13 this.

14 Q All right. So, this report is an appropriate
15 report because it only covers the short-term
16 temporary measures in Calgary, and the question
17 of his long-term eligibility is a separate
18 matter that would have to be the subject of a
19 separate report; is that what you're saying?

20 A No, that's not what I'm saying. It wouldn't
21 necessarily have to be the subject of a report
22 of any kind unless I was instructed to write
23 one.

24 Q What I am not understanding, Sergeant Anderson,
25 is, why is it appropriate to write a report

1 about short-term temporary measures that have
2 got nothing to do with the Witness Protection
3 Program, but it's inappropriate to write a
4 report about a far more serious matter, his
5 ineligibility for the National RCMP program?

6 A Well, let me explain. And, again, 16 years
7 later, without the benefit of the entire file,
8 with all its notes and handwritten entries on
9 the manila folders and that sort of thing, I
10 don't know for sure what this supplementary is
11 about. But the nature of it, it is specific,
12 concise, and to the point, and it jumps out at
13 me that someone is asking me to write about this
14 supplementary about one incident pertaining to
15 the protection of Ray Zanidean, for some
16 specific purpose, such as Tom Orr needed it to
17 facilitate the Calgary move, something like
18 that.

19 On the other hand, Ray Zanidean's
20 eligibility for the formal Federal Witness
21 Protection Program is a totally separate issue,
22 which I still brief my superiors on, I still
23 brief Bruce Miller on, but there was no need for
24 me to commit that to paper unless someone
25 instructed me to.

1 Q The move to Calgary is documented in these next
2 four or five tabs. And I know you don't have a
3 strong recollection of the developments in
4 Calgary, so I'm not going to go through these
5 next four or five tabs with you in any detail.
6 Perhaps suffice it to say that at tab 21, the
7 logbook, it does include some entries by you; is
8 that correct? For example, I think at the top
9 of the --

10 A The top one is mine.

11 Q -- page 3, April 18th is yours?

12 A Yes, correct, the top entry at the top of page
13 463 is also my handwriting.

14 Q Yes. Any others? At the top of the first page,
15 461, is your handwriting?

16 A Yes.

17 Q So you've got --

18 A The top of 461 and top of 463 are the only
19 entries that were mine.

20 Q So you were aware he was in Calgary and you were
21 involved. And, in fact, Corporal Smith when he
22 calls in on April 23rd about Zanidean having got
23 into trouble with the Calgary police and having
24 been kicked out of the hotel, there is a message
25 left for you by the officer who took that call,

1 from Corporal Smith; is that correct? Do you
2 see at the bottom of page 463?

3 "Message left for T. Anderson."

4 A Yes, I see that.

5 Q So it appears that you were involved in and
6 around this whole Calgary, temporary Calgary
7 relocation business, you just don't have a
8 strong recollection of it now; is that fair?

9 A That's right. And the extent of my involvement,
10 I have no idea.

11 Q And I also understand that there was no
12 misapprehension in your mind that this temporary
13 relocation of Zanidean to a Calgary hotel, that
14 lasts for all of about 12 days, it appears, that
15 that did not constitute acceptance into the
16 formal RCMP Witness Protection Program?

17 A Not even close.

18 Q It was obvious, it was a no-brainer that this
19 was not the Witness Protection Program; is that
20 fair?

21 A That's right. This was just a low-grade, keep
22 him safe, like two Winnipeg police officers in a
23 hotel, except it was in a different city where
24 we don't have officers.

25 Q Now, the same date that that threat report comes

1 in from Zanidean, namely April 5th, according to
2 your tab 17 report, we also know that that is
3 the date that you place your call to Swift
4 Current emerging out of your meeting with Orr;
5 is that correct?

6 A Well, you took me through a process in my
7 interview with you back in May that leads me to
8 believe it would be April 5th. I'm just not
9 sure.

10 Q You don't have a note or a report that puts a
11 date on the call, but you're willing to accept
12 Corporal Orr's note that the call, in fact, was
13 on April 5th? And it's consistent with other
14 things that were going on at that time?

15 A Corporal Orr's note?

16 Q I'm sorry, Constable Burton's note. Constable
17 Burton's note?

18 A I have no reason to dispute that it was
19 April 5th.

20 Q So the plan with Orr that emerges out of him
21 telling you, you've got a complete bar to
22 witness protection, and the threat from
23 Zanidean, and the call to Swift Current, are all
24 in and around the same days; is that correct?

25 A Yes, that's what it appears to be.

1 Q And if we look at Burton's report at tab 11, and
2 his best account of it, again, accepting the
3 deficiencies in his reports at the bottom of
4 page 2 of tab 11?

5 A Yes.

6 Q Is that when the call comes in from you, you
7 advise him of the witness protection issue, that
8 you've told us about. So he's consistent with
9 your account about the witness protection
10 problems; is that correct?

11 A About the need for it?

12 Q No. That you want to get Zanidean into witness
13 protection?

14 A Oh, yes.

15 Q And that you are being told by Orr --

16 A Yes.

17 Q -- that it's an impediment?

18 A Yes.

19 Q So his account is consistent with your account
20 on that point; is that fair?

21 A Yes.

22 Q And he also says that you told him that there
23 were active threats against Zanidean that were
24 of real concern. Is that also consistent with
25 what was going on at this time?

1 A It is consistent. I don't recall telling him
2 that, but I don't take issue with it.

3 Q He could only have got that from you, and we
4 know that was a concern of yours at this time?

5 A Well, he could have got that from Corporal Orr
6 as well. But, again, I don't take issue with
7 him saying that he got that from me.

8 Q So assuming that you raised these two matters
9 with him about your witness protection concerns
10 and about your threat concerns, is it fair to
11 say that this is simply part of an effort that
12 you're taking to try to get Zanidean into the
13 Witness Protection Program? Is that your
14 purpose in making the call?

15 A Well, I don't like the way you've stated it.
16 The purpose of making the call, as I agreed with
17 Corporal Orr, was to talk to Swift Current and
18 find out what their intentions were as far as
19 the investigation goes. Because at that point,
20 you will recall that the only commitment I've
21 had from Swift Current is that they will delay
22 the pursuit of Mr. Zanidean until after the
23 trial. And I also had information from them at
24 this point that they would continue
25 investigating, they were suspicious of all

1 family members and especially the sister and so
2 on. The purpose of this call was to find out
3 what their intentions were, how their case was
4 going, and what possible arrangements could be
5 made.

6 Q And the reason you were interested in finding
7 out what their intentions were, was because you
8 had this impediment that Corporal Orr had
9 raised?

10 A Correct.

11 Q And the practical solution to that impediment,
12 that you say Burton spontaneously volunteers to
13 you, he says it comes out as a process of
14 rational discussion and deliberation, but
15 leaving aside that nuance as to whether it
16 jumped out of him spontaneously or whether it
17 was a process of discussion that led to it, the
18 fact of the matter is you both agree that the
19 resolution you ended up with was not to charge
20 Zanidean? That's what Burton says and that's
21 what you say; is that correct?

22 A Yes, that's correct.

23 Q Again, you're consistent on that point as to
24 what the obvious solution to your problem is.
25 Is that correct?

1 A Yes. And I should add, though, that that that
2 wasn't a solution that either of us were happy
3 with in that April 5th call. We both -- neither
4 of us were content with the fact that
5 Mr. Zanidean would escape justice on that. And
6 Corporal Burton consoled me, so to speak, and
7 himself, I suppose, to a lesser extent, by
8 reminding me that they wouldn't have known about
9 Zanidean and Driskell had Zanidean not told us.
10 But that was the solution that he offered up.
11 And, again, it wasn't the solution that I was
12 expecting when I dialed that phone, or dialed
13 that number, but I suspected that Corporal Orr
14 and Mr. Miller and Sergeant Vandergraaf would
15 need some kind of confirmation of that
16 arrangement. That it wasn't just Ross Burton's
17 idea, but that there was approval from his
18 commander. And so I asked him if he would get
19 that approval and that I would get back to him.
20 But that is the arrangement, the agreement that
21 I agreed with him, once he suggested it,
22 reluctantly and unhappily with it.

23 Q All right. Just dealing with that last point,
24 Sergeant Anderson, about the need to get
25 approval from the superiors, that again is a

1 point, as I read the records, on which you and
2 Burton are substantially in agreement and
3 consistent. You see his report at tab 11, the
4 bottom of page 2, the last entry is:

5 "I advised Anderson I would submit the
6 above recommendation through channels."

7 So he's on side with you, but he has got to get
8 the approval of his superiors. And your report
9 is consistent with that as well, that you were
10 concerned to make sure that this wasn't just the
11 decision of a low-level constable, that it had
12 the approval of his superiors?

13 A Yes.

14 Q And that's just common sense, this was a serious
15 crime. Burton was a young constable. He was
16 certainly junior to you at that time. And he
17 couldn't make this kind of decision on his own,
18 and you understood that?

19 A Well, to be accurate, that wasn't my thought.
20 My thought was that someone else would need to
21 know, need confirmation from somebody higher
22 than him. He gave the approval. He was the one
23 that volunteered to delay his pursuit of
24 Mr. Zanidean, and that didn't seem to be
25 overruled by anybody. But the reason that I

1 requested that he check with his superiors was
2 because I thought that I would need that for
3 Mr. Miller and Vandergraaf.

4 Q Did you think that he had authority to make this
5 decision on his own?

6 A I don't know. I didn't necessarily -- I wasn't
7 sure he had authority to leave Ray Zanidean
8 until after the trial, either. And in
9 retrospect, it does seem implausible. But I
10 don't think anyone else found it -- Mr. Miller
11 was satisfied with the fact that this constable
12 in Swift Current had volunteered to delay his
13 pursuit, and Sergeant Vandergraaf was satisfied
14 with it, Inspector Bell was satisfied with it.
15 And nobody reneged on the first offer that
16 Corporal Burton, or Constable Burton made.

17 Q Sergeant Anderson, if you seriously believed
18 that Constable Burton had the authority to make
19 that decision, why did you ask to have the
20 superiors approve it?

21 A For the reasons that I explained to you already,
22 Mr. Code, because I suspected that those
23 involved in Winnipeg, Bruce Miller, Staff
24 Sergeant Vandergraaf, divisional commander,
25 would want to hear it from somebody higher than

1 Constable Burton.

2 Q So Constable Burton's views on the matter were
3 sufficient for you, but you thought more senior
4 people would want approval from more senior
5 people?

6 A Exactly. I had no reason to doubt Constable
7 Burton on April 5th.

8 Q In any event, you are both in agreement that the
9 upshot of the April 5th call was that he would
10 seek approval from his superiors?

11 A That's true.

12 Q All right. Now, if we look at your account of
13 the call, which again, the place, the only place
14 we find it is in your 1990, October 8th, 1990
15 memo to Inspector Johns at tab 10, the preceding
16 tab. The two differences, the only real
17 differences with Burton's account is, first of
18 all, you've got Burton immediately volunteering
19 this solution; is that correct?

20 A Are you talking about the April 5th call?

21 Q Yes.

22 A Yes. Yes, that is what happened.

23 Q And, secondly, you've got him making a second,
24 you've got yourself making a second call to him
25 where Burton purports to give you the

1 unqualified approval of his superiors; is that
2 correct?

3 A Yes, that's correct.

4 Q Now, assuming that second version, your version
5 of this for the moment, as set out in your
6 October 8, 1991 report, that development, when
7 you had confirmation that senior officers had
8 given their unqualified approval that Zanidean
9 would not be pursued for all time, clearly you
10 characterized that in your mind as a very
11 significant development for the case?

12 A Yes.

13 Q Is that fair?

14 A Yes, that's fair.

15 Q Indeed, in your interview with us, at pages 26
16 and 27 of tab 2, you referred to it as a
17 blockbuster?

18 A Yes.

19 Q It allowed the formal witness protection
20 application to proceed and meant that your
21 critical witness, in a very serious important
22 homicide, could be provided with protection
23 measures?

24 A That's true, yes.

25 Q And in spite of that blockbuster significance to

1 this development, you did not make a note of the
2 call or prepare a supplementary report; is that
3 correct?

4 A That is correct, yes.

5 Q And given the absence of any written record, how
6 is it that you reported this very significant
7 development?

8 A Do you mean on October 8th?

9 Q No, I'm talking about on the --

10 A Oh, how did I report the news of this?

11 Q I'm talking about in April when this development
12 occurs?

13 A Well, here is how I reported it. Immediately
14 after it I reported it immediately to Bill
15 Vandergraaf, divisional commander, and I don't
16 know whether there were other investigators
17 there or not, and to Bruce Miller.

18 Q So you had oral briefings in the same manner as
19 the October call with your superiors and with
20 the Justice Department?

21 A Exactly.

22 Q Do you recall that Staff Sergeant Vandergraaf
23 was unsure about the information that you were
24 receiving from Swift Current, and as a result,
25 he got Corporal Orr involved in making some

1 calls of his own?

2 A No. I don't recall anything about that, but I
3 would remind you that I said from my meeting
4 with Corporal Orr that he agreed to also make
5 contact with Swift Current detachment, as well
6 as myself. But as far as Vandergraaf, what you
7 just asked me, no, I have no memory of that at
8 all, no knowledge of it.

9 Q So if Vandergraaf was unsure about the
10 information that you were getting, and he phoned
11 Orr himself to get Orr to make calls, that would
12 be consistent with the plan you had already put
13 in place with Orr that Orr should also make
14 calls to his connections?

15 A I guess it would be, yes. I take it you are
16 asking me if Vandergraaf would be checking up
17 with Corporal Orr about whether or not he made
18 that call? He may have been.

19 Q In any event, we know Corporal Orr does place a
20 number of calls around this time and receives a
21 call as well. He places two calls and he
22 receives one call. So there is three calls
23 involving Corporal Orr in and around this time,
24 according to his records. And I want to put to
25 you the one account here of those calls that

1 appear to be based on information from you. And
2 so, in fairness to you, I need to put this to
3 you. It's at tab 54, page 3, tab 54 of volume
4 2, page 3. This is a report of Corporal
5 Burton's later in the summer in July, after your
6 July calls with him. It's about your July calls
7 with him. And at paragraph 10, do you see at
8 the bottom of page 3 --

9 A Yes, I see it.

10 Q -- he sets out an account that according to his
11 report, and a reasonably contemporaneous report
12 comes from you, and it says,

13 "Sergeant Anderson also stressed that part
14 of the deal for Zanidean's testimony was
15 that he would not be charged for the 1990
16 arson. He made this representation based
17 on my statement that I would recommend
18 this...",

19 and this is the part that I'm interested in,

20 "...and Sergeant Upton's conversation with
21 Corporal Orr on April 10th in which he
22 indicated that he would likely not be
23 charging Zanidean for the 1990 arson. At
24 the time that Corporal Orr contacted
25 Sergeant Upton, he advised him that

1 Zanidean was already under the Witness
2 Protection Program and he was concerned
3 about us surfacing him for the arson.
4 Sergeant Upton had stated that he would
5 likely not do so, however, that decision
6 would rest with the investigator."

7 My question for you, arising out of that report,
8 is were you briefed at any time by either Orr or
9 by Vandergraaf about the calls that Orr had
10 placed and received in April?

11 A No, I wasn't, but there is so much in that
12 paragraph to respond to. I would really like to
13 take up the whole paragraph, if you don't mind?

14 Q Well, we will be coming back to the July part of
15 it when we get to July. I am just trying to
16 deal with the April part of it --

17 A No.

18 Q -- if you don't mind?

19 A No. The answer is no, no one told me about
20 that.

21 Q So you weren't aware of the calls between Orr
22 and the Swift Current people?

23 A Not until -- not until reading the Hall and
24 Ewatski report in 2003.

25 Q All right.

1 A I had no idea that that went on.

2 Q So Burton is simply not correct in quoting you,
3 as stating that the basis for your belief that
4 there was a no-charge decision was Orr's
5 communications with Upton, that was not the
6 basis for your belief that you had an agreement
7 with Swift Current?

8 A Oh, gosh, no. I never -- I have no recollection
9 of talking to Corporal Orr about this matter,
10 other than that one meeting, and all other
11 matters were followed up by Vandergraaf. So,
12 no, that's not how I understood --

13 Q The sole basis for your belief that you had an
14 agreement with Swift Current was your calls with
15 Burton?

16 A That's correct.

17 Q Finally, in this area -- and I note we are
18 coming up to the lunch recess. I think I can
19 finish up this area, Mr. Commissioner. Did you
20 ever understand, or come to understand in this
21 time period, April, May, leading up to the
22 trial, that the Swift Current position was that
23 Zanidean would not be charged if he was accepted
24 into the RCMP Witness Protection Program, is
25 that the rationale for the decision to not

1 prosecute?

2 A Did I ever come to understand that that was the
3 Swift Current position?

4 Q Yes. That was the rationale for their position,
5 is that it depended on him -- it was based on
6 the assumption of his entry into the Witness
7 Protection Program?

8 A I only became aware of that in preparation for
9 this inquiry. I had no clue back then.

10 Q All right. If we look at your statement, your
11 interview with us on that point at tab 2, could
12 I take you to two references? First of all, at
13 page 33, where we're talking in the middle of
14 paragraph 3, that paragraph starting,

15 "Anderson does not recall the possibility
16 of a cash settlement..."

17 Do you see that?

18 A We are on page 33 of my statement?

19 THE COMMISSIONER: The first full paragraph.

20 THE WITNESS: Yes, I see that.

21 BY MR. CODE:

22 Q The first full paragraph deals with that
23 settlement issue. Right in the middle of that
24 paragraph, it says:

25 "This was a matter of interest to Anderson

1 because, as far as he was concerned, if
2 Zanidean was not going into the RCMP
3 Witness Protection Program there was no
4 reason for him to escape justice on the
5 Swift Current arson charge. The need to
6 arrange de facto immunity on this charge
7 arose only because of what Tom Orr said
8 were the requirements for entry to the RCMP
9 program."

10 A Yes.

11 Q Does that reflect your position?

12 A Yes, it does.

13 Q And at page 37 is another related comment, a
14 statement by you, page 37, the six or seven
15 lines down from the top there is a sentence, and
16 this is again in the context of discussing the
17 cash settlement.

18 "He cannot explain why there is no mention
19 of the immunity issue in this letter..."

20 Do you see that?

21 A Yes, I do see that.

22 Q "...particularly since the apparent
23 decision not to enroll Zanidean in the
24 formal RCMP Witness Protection Program
25 undercut the rationale for the arrangement

1 he had arrived at with Burton."

2 So is that your --

3 A Which letter is this now?

4 Q This is the June 21st letter from Miller to
5 Kovnats setting out the agreement to make a
6 \$20,000 payment, immediately after the trial.
7 Was it your understanding that the rationale for
8 the arrangement that you had arrived at with
9 Burton was formal entry into the RCMP Witness
10 Protection Program?

11 A Absolutely, yes.

12 Q And what was your view as to Zanidean's
13 prospects for entry into the Witness Protection
14 Program?

15 A You mean after the April 5th conversation with
16 Constable Burton?

17 Q In April and May, leading up to the trial, after
18 you had these difficulties in Calgary, and after
19 he goes on the lam out to Cochrane, and you
20 execute a material witness warrant for him and
21 bring him back, did you think he was likely to
22 get into the Witness Protection Program?

23 A Yes. I had no reason to suspect otherwise.

24 Q You thought he was a good candidate for it?

25 A Well, I didn't know what a good candidate was.

1 I just expected that now that the Swift Current
2 arson business was resolved that he would be --
3 I had no reason to expect he wouldn't get in.

4 Q Did Orr tell you he was a good candidate?

5 A No.

6 Q Did Orr tell you he was a hopeless candidate, he
7 had no chance of getting in, or virtually no
8 chance of getting in?

9 A No.

10 Q Had Zanidean himself made up his mind, as far as
11 you knew, that he even wanted into the Witness
12 Protection Program?

13 A Well, I wouldn't have a clue. That's just an
14 undertaking that Al Paul and I had made to him
15 on day one that we were working with Mr. Miller
16 to deliver on. I have no clue. As far as I
17 know, he was demanding witness protection right
18 up until the end.

19 MR. CODE: This is a good point to break,
20 Mr. Commissioner.

21 THE COMMISSIONER: Thank you. We will
22 adjourn until 2:00 o'clock.

23 THE CLERK: All rise. This Commission of
24 Inquiry is adjourned until 2:00 o'clock.

25

1 (Proceedings recessed at 12:33 p.m. and
2 reconvened at 2:00 p.m.)

3 THE CLERK: All rise. This Commission of
4 Inquiry is now recommenced. You may be seated.

5 BY MR. CODE:

6 Q Sergeant Anderson, I wanted to turn to a
7 different area now, and that is the whole issue
8 of disclosure in the two, three months leading
9 up to the trial, April, May, 1991. And I
10 covered this substantially with your colleague,
11 Staff Sergeant Vandergraaf, so I will try to
12 keep it as quick and simple as possible so that
13 we can make sure that we finish up this
14 afternoon.

15 As you will have seen in the document books
16 that I have produced for you, there are three
17 major disclosure letters from Mr. Brodsky. And
18 you will find them at tab 31 is the February
19 one, tab 33 is the April one, and then tab 38 is
20 the May one. And what we see is that, in
21 relation to many of these requests, or some of
22 these requests, the Crown seeks assistance from
23 the police. And the police will get back to
24 them, either with what appears to be an oral
25 report or, in some cases, a written

1 supplementary report. And my question simply
2 is, was that the normal practice that when
3 disclosure of requests came in, the Crown would
4 delegate some of them to the police or seek
5 police assistance on some of them?

6 A Yes, sir, that is.

7 Q And the police, of course, have a duty to assist
8 the Crown in the disclosure process; is that
9 correct?

10 A Yes.

11 Q Now, I want to take you to three illustrations
12 of areas of difficulty with these disclosure
13 requests. The first one is at tab -- if you
14 trace it through, it begins at tab 31 in
15 Mr. Brodsky's February 7th letter. And it's
16 item 16 I want you to look at. So if you're at
17 tab 31, page 2 at the bottom, item 16, he asks
18 for -- he says, I've got Zanidean's statements.
19 What I want is all of his contacts with the
20 police, whether by way of formal statement or
21 written notification in a police officer's
22 notebook. So, in essence, all contacts with
23 Zanidean in a police officer's notebook. Do you
24 see that?

25 A Yes, I do.

1 Q And Lawlor takes some time to respond to this.
2 And two and a half months later, on April 26th,
3 we see his response at tab 36. So if you turn
4 up tab 36, Mr. Lawlor's April 26th letter to
5 Brodsky, you see he says,

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

10 Do you see that?

11 A Yes, I do.

12 Q Now, the "I am advised" part, I take it the
13 common sense reading of that would be that in
14 relation to a request about police officer's
15 notebooks containing all contacts with Zanidean,
16 it would be natural for him to turn to the
17 police for assistance?

18 A Yes, it would be natural.

19 Q So the "I am advised" likely refers to some
20 conversation he has had with the police
21 officers; is that fair?

22 A Yes, it likely is.

23 Q And we also know that these requests generally
24 get funnelled through the staff sergeant; is
25 that correct? It probably came in to

1 Vandergraaf or one of these other --

2 A Yes, either the divisional commander or the
3 staff sergeant.

4 Q And if they got a request like that for all
5 contacts in officer's notebooks with Zanidean,
6 they would likely delegate it down to you and
7 Paul; is that fair?

8 A That's a likelihood, yes.

9 Q And the simple point here is that the response
10 that comes back,

11 "I'm advised that you have all
12 statements/conversations of Zanidean...",
13 appears to be inaccurate, in that we know that
14 the October 10th and October 29th, 1990
15 conversations that were in yours and Sergeant
16 Paul's notebooks do not appear to have been
17 produced?

18 A Well, that could be inaccurate if the Crown
19 hadn't given Mr. Brodsky our notes, that's true.

20 Q So do you recall dealing with this specific
21 request?

22 A No, not at all.

23 Q And do you ever recall producing your entire
24 notebook to the Crown, or specifically the
25 October 10th and 29th passages of your notebook

1 to the Crown?

2 A No, I don't recall.

3 Q This is the only request, specific request we
4 have been able to find that is referable to
5 those two conversations. And it appears that,
6 unfortunately, the response that came back was
7 inaccurate; is that correct?

8 A Well, it's only inaccurate if the Crown hadn't
9 already provided Mr. Brodsky with a copy of our
10 notes.

11 Q Well, first of all, if the Crown had your notes
12 and, second of all, had failed to provide them.
13 You're not aware of either of those steps having
14 been taken?

15 A No, I don't know.

16 Q So assuming they didn't have your notes, neither
17 the Crown nor the defence had your notes, and
18 we've got production of both of those files,
19 we've got the Department of Justice file and
20 we've got Mr. Brodsky's file, so if we assume
21 they didn't have your notes, can you explain how
22 Mr. Lawlor would come to be advised that the
23 Crown and the defence were already in possession
24 of all statements and conversations of Zanidean?

25 A Well, if I have to assume that Mr. Lawlor didn't

1 have my notes, no, I can't explain that.

2 Q All right. The second issue I want to raise
3 with you in this disclosure process is the April
4 letter at tab 33. Do you have the April letter
5 of tab 33, and, in particular, item 9 on page 2,
6 where Mr. Brodsky asks:

7 "What do the Winnipeg City Police have on
8 the fire in Swift Current?"

9 He also asks about two other fires, but it is
10 obviously the Swift Current Saskatchewan fire
11 that we are focused on. Do you see that?

12 A Yes, I do.

13 Q And we see at tab 34 that Mr. Lawlor expressly
14 passes along that particular item to Staff
15 Sergeant Vandergraaf. Do you see the fax cover
16 sheet at tab 34?

17 A Yes, I do.

18 Q And he says,
19 "Could you please help me...",
20 specifically on paragraph 9?

21 A Yes.

22 Q And the response that comes back four days
23 later, Lawlor sends it over to Vandergraaf on
24 the 26th and we get the response at tab 37 on
25 the 29th. So tab 37 is Lawlor's April 29th

1 response to the April 25th letter from Brodsky.

2 And you see in his third paragraph he says,

3 "Re paragraph 9, Winnipeg Police have
4 nothing on these incidents."

5 And, again, is it fair to assume that a request
6 to Vandergraaf to pass along whatever the
7 Winnipeg Police have on the Swift Current arson
8 would likely have been delegated down to you and
9 Paul?

10 A No, I don't think so, because at that point
11 Vandergraaf would know everything about the
12 Swift Current fire.

13 Q Fair enough. But he wouldn't have your
14 notebooks, would he?

15 A No. But there again, I am assuming by then that
16 he would also know that the notebooks had been
17 forwarded to the Crown.

18 Q I beg your pardon?

19 A I said by then I would expect Vandergraaf, at
20 this point, would be aware that our notebooks
21 had been forwarded to the Crown, or copies of
22 it, I should say.

23 Q You're the only person who is making that
24 assumption, that the notebooks have been
25 forwarded. Nobody else joins you in that

1 assumption at this point. Vandergraaf's
2 understanding of disclosure is that you get the
3 notebooks if you ask for them. And we saw that
4 Mr. Brodsky just asked for them and he didn't
5 get them. So if we leave aside the assumption
6 that they have already got the notebooks, you
7 are the person who is in possession of the
8 notebook; is that fair?

9 A Yes, that is fair.

10 Q Vandergraaf doesn't have them?

11 A No, not my notebook.

12 Q But you're quite right, he is aware of the
13 admissions in your notebook about the Swift
14 Current arson. He is very frank about that, and
15 he was fully cognizant of that. So a request
16 like this about: What have you got on the Swift
17 Current arson? Given that you have got two
18 admissions in your notebook, can you explain how
19 this response comes back that the Winnipeg
20 Police have nothing on these incidents?

21 A No, I can't, sir. And I have no recollection of
22 Sergeant Vandergraaf asking me to photocopy
23 those relevant areas. If he asked me, then I
24 assume I would have done that.

25 Q And what about the communications with Sergeant

1 Mann, were you aware that Sergeant Mann had been
2 dealing with Swift Current about the arson and
3 had made arrangements to interview Zanidean?

4 A I believe I first became aware of that in 1993.

5 Q During the Hall/Ewatski review?

6 A That's right, yes. Strangely enough, one of the
7 mysteries of this whole exchange that I had with
8 Constable Burton is the fact that in no phone
9 call did he ever mention to me that he had
10 already sent out a request to the Winnipeg
11 Police to have Ray Zanidean interviewed on that
12 arson as part of their routine inquiries. He
13 explained on the phone to me that they were
14 interviewing family members, but never did he
15 mention to me that Sergeant Mann had already
16 been asked to look into Ray Zanidean.

17 Q You see, Burton sends a letter to Mann on
18 December 14th, 1990, saying:

19 "It is my understanding that you have
20 spoken with Tom Anderson of your force, and
21 you are aware of the circumstances
22 surrounding this investigation."

23 So that's at Exhibit 1, tab 30. So the
24 implication of the correspondence between Mann
25 and Burton is that there has been some

1 conversation with you about it?

2 A Well, I am almost certain there hasn't been.

3 I have no recollection of that at all.

4 Q And we also have an interview with Sergeant
5 Mann, who was interviewed by the Hall/Ewatski
6 review. And, again, this is in Exhibit 1 at
7 tab 21, and he has some recollection. It's not
8 the best of recollections, but he says -- I
9 think it was Tommy Anderson that he was speaking
10 to about the Swift Current arson. But in any
11 event, you say you've got no recollection of
12 ever dealing with Sergeant Mann and being aware
13 that he had a file on this matter?

14 A Correct, or talking to Constable Burton about
15 Sergeant Mann.

16 Q In any event, you did have your notebook.
17 And you've got no explanation as to why this
18 inaccurate response was sent back to
19 Mr. Lawlor?

20 A Well, no, I can't explain why that response was
21 sent back to Mr. Lawlor. All I can tell you is
22 that Sergeant Vandergraaf -- and I understand
23 that you've agreed with me that this is the
24 case, Sergeant Vandergraff was well aware of
25 those comments in the notebooks, in Sergeant

1 Paul's and my notebooks. And if he asked me to
2 photocopy them to send to Mr. Lawlor, I have no
3 recollection of that.

4 Q Whatever Vandergraaf's responsibility is, and
5 clearly he bears some responsibility, being
6 aware of those notes, if you received a request
7 from the Crown, in effect, that they want what
8 you've got on the Swift Current arson, it's your
9 responsibility to produce it, is it not?

10 A Well, yes, and that's what I would do. I just
11 don't have any recollection of that request.

12 Q Finally, the last of these three disclosure
13 issues that I wanted to bring to your attention
14 to is at tab 33. This is, again, in the April
15 letter. Item number 5, Mr. Brodsky asks for
16 what favourable -- for the criminal records of
17 the witnesses and any outstanding charges they
18 may have had. And then he asks for,

19 "What for favourable considerations were
20 given to them for the not pressing of
21 charges or laying of charges, and any other
22 matters that would influence them to
23 testify in a particular fashion."

24 Do you see that?

25 A Yes, I do.

1 Q And in his earlier letter, the February letter
2 at tab 31, he had made a more general request
3 along these same lines. You see, if you go back
4 to tab 31, his item 23 on page 3 is,

5 "What motives do people have for assisting
6 the police that are demonstrated in the
7 police files?"

8 So if you read these letters together, it would
9 have been apparent that what he is trying to get
10 at is what is motivating the witnesses to come
11 forward and assist the Crown; is that fair?

12 A Yes.

13 Q All right. And, again, we have at tab 34,
14 Mr. Lawlor explicitly passing this request on to
15 Staff Sergeant Vandergraaf. You see the fax
16 cover sheet again expressly asks for help on
17 item 5?

18 A Yes.

19 Q Which is the one we have just been dealing with.
20 And just to clear up the numbering here, if you
21 look at tab 38, which is the May request, this
22 one gets renumbered. This is the pre-trial memo
23 before Justice Morse on May 10th. And you see
24 the second page of it, item 6 on Mr. Brodsky's
25 shopping list, he refers back to his item number

1 5 from the April 25th letter and simply repeats
2 it and says, he is still waiting for a response.
3 Do you see that?

4 A Yes, I do.

5 Q So I am simply drawing that to your attention,
6 because item 5 in the letter becomes item 6 on
7 the pre-trial memo, so there is a change in
8 numbering.

9 Now, the response that comes back is at tab
10 40, Mr. Lawlor encloses a number of police
11 reports in his May 21st letter. And at tab 41,
12 in his police reports dated May 18th, three days
13 before the letter was sent. Do you see that?

14 A Yes, I do.

15 Q Although we don't have them attached to the
16 letter, the natural inference is that these
17 would have been the ones that were enclosed.
18 And both of those reports are authored by you;
19 is that correct?

20 A Yes, that's true. It is one report that's two
21 pages, I think is what you mean?

22 Q Oh, is it? I'm sorry. There are some further
23 ones. Tab 43 is another one. But that's the
24 one I'm looking at, at tab 41.

25 A Yes.

1 Q And, in particular, I'm interested in question
2 number 6 from the pre-trial memo. You see the
3 header in the report clearly refers back to the
4 questions raised by defence counsel at the
5 May 10th pre-trial; is that correct?

6 A Yes.

7 Q So if you look down to the bottom where you
8 respond to question number 6, and you first of
9 all deal with criminal records, and you then
10 deal with outstanding charges. And, finally, in
11 the very last sentence, you deal with the
12 broadest aspect of the question, the question
13 that is trying to get at motivation and
14 favourable considerations. And your answer is
15 as follows, in the last sentence:

16 "Furthermore, protection is the only
17 favourable consideration given to any
18 witnesses. We are not aware of any stayed
19 charges or any other deals made with any
20 witness in exchange for testimony."

21 Have I read that correctly?

22 A Yes, you have.

23 Q And are you satisfied that that is a full, fair
24 and accurate response to Mr. Brodsky's inquiries
25 at the pre-trial?

1 A Yes, I am.

2 Q And explain to us, in light of the developments
3 you've told us about, in April with the Swift
4 Current RCMP, how that, in your mind, was a
5 full, fair and accurate response?

6 A Well, first of all, no deals were made with Ray
7 Zanidean for anything. So in spite of the fact
8 that an arrangement had been made with Swift
9 Current to not pursue Ray Zanidean on the arson,
10 to facilitate his entry into the Witness
11 Protection Program, I don't see anything untrue
12 about that to this day, to this statement that
13 I'm making or this last paragraph that you
14 pointed out. There was no immunity. There was
15 no -- Ray Zanidean's testimony was in exchange
16 for nothing, not immunity, or anything else.
17 And, furthermore, there was no deal made on
18 immunity with Ray Zanidean. It was made with
19 Ross Burton in Swift Current.

20 Q The response doesn't limit itself to whether
21 you're specifically talking about a deal made
22 with the witness. What it says is:

23 "We are not aware of any stayed charges or
24 any other deals made with any witnesses in
25 exchange for testimony."

1 Is that correct?

2 A If you will just take me back there again.

3 We are still talking about the last paragraph
4 here?

5 Q Yes, exactly.

6 A Mine is a poor copy here. There are a couple of
7 sentences that I am having trouble reading.

8 Q Well, the sentences that are poor copies are
9 dealing with outstanding charges and criminal
10 records. It is just that last sentence.

11 A That begins with "furthermore"?

12 Q Yes, starting with "furthermore".

13 THE COMMISSIONER: We will you get a clearer
14 copy here.

15 THE WITNESS: Thank you.

16 BY MR. CODE:

17 Q Let me put it this way, Sergeant Anderson, I
18 don't want to get into an argument with you
19 about what's full, fair and frank disclosure.
20 You're aware that Kovnats and Zanidean have been
21 demanding immunity?

22 A I was at this point, yes.

23 Q And you were aware that you had achieved a form
24 of de facto immunity with the Swift Current
25 agreement that you say you had reached in April;

1 is that correct?

2 A Yes.

3 Q So whether Zanidean knew about it, he had been
4 seeking it and you had got it for him, is that
5 not fair?

6 A What's true is that he had been seeking it. I
7 didn't get it for him at all. I think the best
8 way to describe it, I got it for Tom Orr.

9 Q But in terms of relevance to his motivation, the
10 fact that he had been seeking this agreement and
11 you had succeeded in getting it, did you not
12 think --

13 A But that couldn't be a motivation because he
14 didn't know about it.

15 Q Well, the fact that he is seeking it surely
16 shows what his motivation is. That's what he
17 wants out of this whole process?

18 A Well, that may be. But the fact of the matter
19 is that the arrangement made with Ross Burton,
20 in my view, when I typed up this supplementary,
21 was in exchange for nothing, and that Zanidean
22 didn't know about it.

23 Q So you took a very narrow, strict construction
24 of the question and interpreted it as asking you
25 only whether there was a quid pro quo with

1 Zanidean that he was aware of?

2 A Well, you could characterize it that today. I
3 certainly didn't think of it that way when I
4 wrote it.

5 Q You weren't troubled that, here I am sitting on
6 this information of this deal that I've made
7 with Swift Current that is exactly what the
8 witness has been seeking, repeatedly. And
9 Brodsky's trying to get at that, he just hasn't
10 quite framed the question right, but I am not
11 going to answer anything more than the narrow
12 question he has asked. Is that your view of it?

13 A Well, I wasn't troubled by it at all until I had
14 an interview with you and you pointed it out to
15 me. I've never -- and I might add that this
16 paragraph that I write characterizes a situation
17 known by all of my superiors and the Crown. And
18 there was not one of them that came to me and
19 said, Tom, I think this is a little inaccurate.
20 I didn't see it as inaccurate when I wrote it.
21 And I didn't see it as -- and I didn't imagine
22 anyone else seeing it as inaccurate until I had
23 my meeting with you and you interviewed me.

24 Q You see, that would be a very good response,
25 Sergeant Anderson, if we had a memo showing that

1 you had clearly reported the deal to them.

2 A To who?

3 Q And then it would be up to them.

4 A To who?

5 Q To any of your superiors and, in particular, to
6 the Crown. You can pass the blame on to the
7 Crowns if they are fixed with knowledge of this.
8 But you don't have a single piece of paper that
9 fixes the Crown with knowledge of this April
10 deal that you say you made. You are trying to
11 shift the blame to somebody that you haven't got
12 a report to.

13 A I am not trying to shift the blame to anybody.
14 I am trying to answer your questions. What I'm
15 telling you is that I saw zero wrong with the
16 characterizing the situation in that paragraph,
17 nothing.

18 Q All right. I would like to turn to the events
19 that ensue after the pre-trial. The pre-trial
20 concludes on May 22nd. And very shortly after
21 that we get this problem of Zanidean's flight
22 out to Cochrane in Alberta and the material
23 witness warrant. Do you recall that?

24 A Yes, I do.

25 Q And your interview sets out your account of that

1 at pages 30 to 32. And is it fair to say that
2 this was a fairly dramatic event, having your
3 key witness take off literally on the eve of
4 trial on you, and your having to get a material
5 witness warrant and fly out to Alberta to pick
6 him up and bring him back?

7 A A fairly what event?

8 Q A fairly dramatic event?

9 A Yes, I could agree with that.

10 Q A serious development in the case that you had
11 to take a significant step to correct it?

12 A Yes.

13 Q And the event became even more dramatic when you
14 got back to the Public Safety Building the night
15 of the 26th and 27th, and there's this
16 confrontation between Mr. Kovnats and
17 Mr. Dangerfield in your offices in which they
18 argue out the whole dispute over whether or not
19 there's a witness protection agreement, and
20 whether Zanidean's going to cooperate? So the
21 drama increased, I suppose, is what I'm asking
22 you?

23 A Well, Ray Zanidean was a difficult man to deal
24 with, and that hyped it up a bit, I guess.

25 Q So we have sort of got a double dramatic event

1 on the eve of trial. And, once again, there is
2 no notes in your notebook, no report of any
3 kind; is that correct?

4 A Not that I have here today, no.

5 Q If we move, then, into the following week, the
6 27th, I believe, is a Monday, it's the last week
7 before the trial is about to commence on the
8 Monday, the 3rd. And once you've got Zanidean
9 in custody, and we have got the recognisance
10 showing that he's in your custody 24 hours a
11 day; is that correct?

12 A Yes, that's correct.

13 Q And you're guarding him, you and Sergeant Paul,
14 essentially take on split shifts, 12-hour
15 shifts, working overtime, to keep a constant
16 guard on him?

17 A Yes, with some assistance from other detectives.

18 Q Some other officers helped out?

19 A Yes.

20 Q And there's a memo from you at tab 46, that you
21 prepared back in April, about a month before he
22 flees, in which you tried to predict in advance,
23 you are being proactive here and writing a memo
24 to your inspector, a report to your inspector
25 saying, we need to make a plan for the witness

1 protection arrangements immediately before and
2 after the trial; is that correct?

3 A Yes, that's correct.

4 Q And you suggest the idea of 12-hour shifts,
5 including some overtime, and send the proposal
6 up to your inspector?

7 A Yes, I did.

8 Q And in the last paragraph of that memo, you say:

9 "As you are aware, we have a commitment
10 from the Justice Department, Bruce Miller,
11 to fund hotel accommodation for both
12 witnesses. Miller has expressed his wish
13 to see both witnesses in protective custody
14 as soon as possible, but is in agreement
15 with our proposed May 21, '91 start date."

16 Have I read that accurately?

17 A Yes, you have.

18 Q So in the concluding paragraph, you report to
19 your inspector on discussions and advice and
20 instructions you've received at a meeting with
21 Miller, and set out his views on the witness
22 protection issue; is that correct?

23 A Well, I'm not sure. That last paragraph I am
24 definitely characterizing something that Bruce
25 Miller has asked for. I don't know if that

1 pertains to the entire document or not.

2 Q Well, you've got a proposal that you're making
3 to your inspector about the witness protection
4 arrangements. And as I read this, you've run it
5 by Miller and you've got him on side,
6 specifically in relation to the May 21st start
7 date? It looks like he takes a slightly
8 stronger view of it than you. He would like
9 them in protective custody sooner, but he's
10 willing to go along with your proposed start
11 date. Is that not the natural way to read the
12 memo?

13 A Yeah, that is.

14 Q Now, this memo is not any big dramatic event, is
15 it? I mean, this is a fairly routine aspect of
16 witness protection, making the arrangements for
17 12-hour shifts, and the start time and the end
18 time of the protective custody that you are
19 going to keep Zanidean in. This is not like
20 fleeing to Alberta or some dramatic event like
21 that?

22 A No. No, you misunderstand report requirements
23 in the Winnipeg Police Department circa 1990.
24 This is a proposal that costs money, so it has
25 to be documented and get the divisional

1 commander's -- get him to sign off on it before
2 that plan flies.

3 Q So the financial aspects of witness protection
4 you would commit to writing in an internal
5 report, but the substantive aspects of witness
6 protection, you would not commit to writing?

7 A Well, that's partly true. This document isn't
8 just about financial aspects either. It is also
9 about shift changes and that sort of thing.
10 It's the kind of thing that in the Winnipeg
11 Police Department, in 1990, had to have the
12 divisional commander's approval.

13 Q It also makes a record of your meeting with
14 Miller, of your discussions with Miller. You
15 are documenting to your superior officers your
16 discussions with Miller, so that they will know
17 Miller's position on these issues, is that not
18 the purpose?

19 A Well, you may have missed the two or the three
20 words "as you know." The divisional commander
21 already knew all of that, that Mr. Miller was in
22 agreement with this.

23 Q So you had orally briefed him and now you are
24 putting it in writing?

25 A Yes, no doubt because he told me to.

1 Q The following week, the trial starts on
2 June 3rd, and you've still got Zanidean in
3 custody that whole week at the hotel; is that
4 correct?

5 A Yes, it is correct.

6 Q In particular, two incidents appear to take
7 place that I want to ask you about. The first
8 one is on the Monday, on June 3rd, it appears
9 that Zanidean and Fehr, his common-law wife, who
10 is with him -- or I suppose at this point they
11 are actually married -- in the hotel suite. She
12 was with him, was she?

13 A Yes, she was.

14 Q It appears they had been in the process of
15 preparing a lengthy written account of the
16 witness protection negotiations from their
17 perspective. And also it appears they had been
18 annotating their police statements, their typed
19 up police statements, which presumably they had
20 a copy of. Would they have had copies of their
21 police statements?

22 A I don't know. I imagine they would have been
23 given copies before -- or not "they," Ray
24 Zanidean would have been given copies of
25 statements before he testified, but I don't

1 recall.

2 Q To help refresh his memory?

3 A Correct.

4 Q And the memo at tab 52, if you turn up tab 52,
5 this is an internal memo from Mr. Kovnats' file
6 that we recently got released, where he writes a
7 memo to file about the events of June 3rd. And
8 it discusses these two documents, the account
9 they are writing out and also the annotated
10 police statements, and a conversation they have
11 with Ken Cameron. Do you see that in the middle
12 of the memo?

13 A Of page 1?

14 Q It's at tab 52. It's a one-page memo of a
15 June 3rd meeting with Zanidean.

16 A Oh, in the middle paragraph, in the middle of
17 the last paragraph, that's what you're talking
18 about?

19 Q No. Right in the middle of the memo, it's the
20 third paragraph.

21 "Ray and I and Susan then went out to the
22 parking lot and met with Ken Cameron. Ray
23 gave him a copy of the letter to read."

24 A I see that, yes.

25 Q And you see in the preceding paragraph it's

1 described as,

2 "...full written instructions and a full
3 written history of everything that's going
4 on with this case."

5 And what I wanted to ask you is who was Ken
6 Cameron?

7 A He was a detective that worked in
8 robbery/homicide at the time that was helping us
9 out with the guarding of Ray and Susan Zanidean?

10 Q He was one of the officers on the guard duty
11 with you and Paul?

12 A Yes.

13 Q And did you ever receive a report, oral or in
14 writing? Did you hear about this development on
15 Tuesday, June 3rd?

16 A If I did, I have forgotten about it now.

17 Q And, again, I take it that would be a
18 significant development, your star witness is
19 writing out his full written history of
20 everything that has gone on with the case, and
21 is beginning to make allegations about the
22 contents of his statements. Those would be
23 important developments that you would want to
24 know about?

25 A Yes, sir.

1 Q And certainly important developments that Crown
2 counsel would want to know about?

3 A Yes.

4 Q The second of the two memos, if you turn over
5 the page, deals with the other incident that I
6 wanted to ask you about. On June 6th, later
7 that week, still the first week of the trial,
8 Sergeant Paul takes Zanidean in his custody to a
9 meeting with Kovnats, where Kovnats, according
10 to his file memo, notarizes the handwritten
11 statement and reviews what he refers to as the
12 alterations to the police statements, where the
13 police have misunderstood or changed their
14 statements, as the case may be. And according
15 to Kovnats' account, and Sergeant Paul has given
16 an account of this incident as well, which it
17 would probably be fair to say is a somewhat
18 milder version of the incident than Kovnats'
19 version, but nevertheless substantially
20 acknowledges the incident, that there is a
21 dispute between Paul and Kovnats over who should
22 take custody of these documents? Do you recall
23 hearing about that development?

24 A No, but it's unthinkable that I didn't. I am
25 sure I did. I just have no recollection of it

1 right now.

2 Q Unthinkable because this is a significant
3 development in the case, again for the same
4 reasons we have talked about before, you have
5 got your key witness giving his whole account of
6 what has happened, and he is also starting to
7 make allegations about the integrity of his
8 statements. You would want to know about those
9 developments, would you not?

10 A Yes.

11 Q So it is unthinkable that you wouldn't prepare a
12 report of that for Crown Counsel so that Crown
13 Counsel would know about it?

14 A I don't know.

15 Q Clearly, this kind of information would have
16 been extremely important to Mr. Dangerfield as
17 he is preparing to call Zanidean to the witness
18 stand?

19 A Yes.

20 Q Again, the natural, normal way to communicate
21 that to Mr. Dangerfield would have been by way
22 of a supplementary report?

23 A No. Verbally, a telephone conversation. I
24 don't know. It wouldn't necessarily by way of
25 report, at least initially.

1 Q You wouldn't expect a development like that to
2 be put in writing because of its evidentiary
3 value?

4 A Well, probably after speaking with the
5 prosecutor it would be, yes.

6 Q The last event in June that -- I'm sorry, the
7 second to last event in June that I wanted to
8 review with you is the meeting with Zanidean
9 after his trial testimony.

10 A Yes.

11 Q He testifies on June 11th, I believe?

12 A Yes.

13 Q And you have provided an account of a meeting
14 that you and Sergeant Paul had with him
15 afterwards, in which you assured him that he had
16 received immunity on the Swift Current arson; is
17 that correct?

18 A Yes.

19 Q And your account of that is set out in your
20 October 8th statement and also in your statement
21 to Commission Counsel; is that correct?

22 A Yes, it is.

23 Q Your statement to Commission Counsel, of course,
24 is at tab 2, and that's at pages 34 to 36, for
25 the record, where Sergeant Anderson discusses

1 the meeting at some length. So I am not going
2 to go into it in any detail. It is fully set
3 out there in your account. Your October 8th,
4 1991 report to Inspector Johns deals with the
5 matter. That's at tab 10, at the top of page 3,
6 the paragraph that says,

7 "...at the conclusion of Zanidean's
8 testimony..."

9 So those are the two written accounts we have of
10 it. And I just wanted to ask you a couple of
11 questions about this development where you tell
12 Zanidean afterwards about the agreement with
13 Swift Current.

14 First of all, once again, the meeting with
15 Zanidean after the trial, after his testimony
16 where you communicate this information to him
17 about the Swift Current deal, there's no note or
18 report of that event; is that correct?

19 A Not to my knowledge, no.

20 Q The first time you write a report that sets out
21 that event is in your October 8th -- indeed, the
22 only place you set out an account of it is in
23 your October 8, 1991 statement?

24 A As far as I know, yes.

25 Q And at that point you are writing the account

1 out from the perspective of a couple of months
2 later, with the developments that we discussed
3 before having taken place; is that correct?

4 A Which developments?

5 Q The post-trial developments in relation to the
6 Swift Current matter, which we're about to come
7 to, the July developments, if I could call them
8 that, which will be the matter we're going to
9 cover.

10 Your October statement is written from the
11 perspective of being after the July developments
12 and after the September developments; is that
13 correct?

14 A Yes.

15 Q And just -- if I can break down your account of
16 what you say has now happened, the picture has
17 now been completed by your communication to
18 Zanidean of the deal; is that correct? You've
19 taken the last step to consummate it by
20 informing him?

21 A Yes.

22 Q And as a result of your informing him, he now
23 has an expectation about immunity?

24 A Yes.

25 Q Which you, very fairly, acknowledged in your

1 October 8th report that Zanidean clearly would
2 see this as part of his deal and, indeed, in
3 return for his testimony; is that correct?

4 A That's what the report says, yes.

5 Q So let's just go back and reconstruct what
6 you've done here, according to your account.
7 First of all, you know that Zanidean and Kovnats
8 have been actively seeking immunity; is that
9 correct?

10 A Yes.

11 Q And you then, the Winnipeg Police Service,
12 through discussions with the RCMP, obtain that
13 immunity or obtain a form of immunity through
14 your discussions with Swift Current in April; is
15 that correct?

16 A Yes.

17 Q You then make a deliberate decision not to tell
18 Zanidean about the agreement you've reached; is
19 that correct?

20 A Yes. That was a requirement of the Crown.

21 Q I beg your pardon?

22 A That was a requirement of the Crown, yes.

23 Q You have a meeting and the Crown instructs you
24 that: This is the way we're going to do it,
25 we're not going to tell him?

1 A Correct.

2 Q So it's a thought-out, deliberate plan not to
3 tell Zanidean about the agreement?

4 A Absolutely, yes.

5 Q And the objective of that plan was to allow him
6 to testify without having knowledge of the
7 agreement? In other words, to allow him to have
8 an innocent state of mind about the fact that
9 the agreement was in place?

10 A Correct.

11 Q And he does, indeed, testify that there is no
12 deal and he fully expects he could be charged
13 any day, and you're aware of that?

14 A Yes.

15 Q And what we know is that the -- his evidence
16 that there was no deal and that he could be
17 charged any day, in fact, is misleading.
18 Because you say there was no option of him being
19 charged, the agreement was in place. So he has
20 given false evidence, although not intentionally
21 false. It is not false, to his knowledge; is
22 that correct?

23 A Well, I suppose he's given testimony based on
24 what he knows about his position with respect to
25 the arson charge.

1 Q Yes. He has told the jury: I don't believe
2 there is any agreement. I could be charged at
3 any time. But we know that's not true. His
4 state of mind, his belief, is true. But the
5 fact of what he's testifying to is not true; is
6 that correct?

7 A The fact is, yes, we had an agreement with Swift
8 Current that he wouldn't be charged, true.

9 Q And then, as soon as that testimony is over, as
10 soon as you've secured his testimony, which is,
11 in fact, false, but not intentionally false, you
12 tell him the whole truth? You tell him the real
13 story?

14 A Yes.

15 Q Is that correct?

16 A Yes, that is correct.

17 Q So, in essence, the whole scheme is calculated
18 to allow him to honestly tell the jury something
19 that's not true; is that not correct?

20 A Well, that's how you characterize it. That
21 certainly isn't -- I never heard Mr. Miller
22 voice it that way, or Mr. Vandergraaf, or Al
23 Paul or myself.

24 Q He tells the jury there is no deal. When, in
25 fact, we know, according to your account, there

1 is a secret deal. It is just that the deal is
2 secret. You haven't told him about it yet?

3 A That's true.

4 Q And you say Bruce Miller approved that whole
5 thing?

6 A Yes.

7 Q Without a shed of paper to document it, the
8 Director of Prosecutions for this province
9 approved that kind of an arrangement?

10 A Well, what you may be forgetting, Mr. Code, is
11 that it wasn't much of a leap of faith with him,
12 because it was in communication with Corporal
13 Orr, who I now know also had confirmation of
14 this arrangement.

15 Q Well, your counsel's told you his version of
16 Corporal Orr's evidence, has he? Is that what
17 you're referring to?

18 A No. No, what I'm referring to is I know now
19 that there were communications between Swift
20 Current senior officers, more senior than Ross
21 Burton, with Corporal Orr. And I know that
22 Sergeant Vandergraaf, Miller and Orr, I now
23 know, handled this entire matter after, the
24 witness protection matter, or the Swift Current
25 charge business, as well as the witness

1 protection matter, after the first meeting that
2 I had, or the one and only meeting that I had
3 with Corporal Orr. So I don't think Mr. Miller
4 had to take Mr. Vandergraaf's word, that Tom
5 Anderson said, that Ross Burton said. He would
6 have double confirmation that this was the case.

7 Q So what you're engaging with me now is an
8 argument about other evidence before this
9 inquiry that you've had shown to you by your
10 counsel, is that what you're doing?

11 A What I am trying to do is answer your question,
12 Mr. Code.

13 Q Well, then, let's get back to my question.
14 You've reached an agreement to tell the jury
15 something that is, in fact, false, but that
16 Zanidean can honestly say, on the basis of his
17 belief, is true?

18 A Well, if that is the case, that certainly wasn't
19 my intention.

20 Q You've allowed a situation to exist where he can
21 say there is no deal when, in fact, there's a
22 secret deal; is that correct?

23 A Yes. I didn't -- I didn't tell him about it.

24 Q And Miller approved that, you say, without any
25 paper trail to document it?

1 A Well, without any paper trail that I am aware
2 of, that you provided me with, or that exists
3 today that I know of.

4 Q And I guess the concluding question on this,
5 Sergeant Anderson, is if you were involved in
6 that kind of a scheme, would you not want -- and
7 your defence is to say it was all approved by
8 the Director of Prosecutions --

9 A And others.

10 Q -- would you not want to have some paper on the
11 file saying: I know this sounds crazy and I know
12 it's high risk, but Bruce Miller approved this,
13 and I'm just doing what I was told to do by
14 Bruce Miller. Would you not want a piece of
15 paper in the file saying that?

16 A Well, it's not a big issue with me. It wasn't
17 at the time and it's not now.

18 Q You think this was a sensible, straight ahead
19 deal to mislead this jury, as long as you misled
20 them innocently; is that your evidence?

21 A Well, I didn't see it as a deal to mislead the
22 jury.

23 Q It has the effect of misleading the jury, does
24 it not?

25 A Well, that may be the case. I certainly didn't

1 see it that way, and I would be surprised if
2 anyone else in the process saw it that way,
3 either.

4 Q The jury is never told that he is seeking
5 immunity. And the jury is never told that
6 you've secretly got immunity for him; is that
7 correct?

8 A Well, I don't -- not that I know of. I wasn't
9 in the courtroom. But as far as I know, they
10 weren't told that.

11 Q So you had no concerns to protect yourself by
12 putting a memo on the file?

13 A No, I don't -- there wasn't anybody involved in
14 this process that I distrusted.

15 Q All right. The June 20th blow-up with Sergeant
16 Paul, if I could move on to that. We are now --
17 the trial is over, it finishes on the 14th.
18 You've still got Zanidean in custody; is that
19 correct?

20 A Yes.

21 Q And on Sergeant Paul's shift on the 20th, some
22 six days after the jury's verdict, there is a
23 dramatic development where Zanidean and Paul
24 have a serious argument and witness protection
25 is terminated for him; is that correct?

1 A Yes, that is correct.

2 Q Again, we've got your account in your interview
3 at tab 2, so I am only going to touch on a
4 couple of aspects of this. It's at pages 37 to
5 38 of your interview, if you need to refer to
6 it.

7 Essentially, as I read your account at
8 pages 37 to 38, you don't have a lot of memory
9 of this incident. But at the same time, you
10 don't dispute that Sergeant Hall called you
11 immediately after what he characterizes as the
12 blow-up and informed you?

13 A Well, the more correct version is I have no
14 memory of this. But I don't dispute the fact
15 that Sergeant Paul called me at home.

16 Q And the telephone records that Sergeant Paul
17 obtained from the hotel when he checked out
18 confirm that he did call?

19 A Yes.

20 Q And as a result of him calling you and informing
21 you of the blow-up, you proceeded to meet with
22 Inspector Johnson, and the decision is made by
23 the Winnipeg Police Service to terminate witness
24 protection for Zanidean; is that correct?

25 A Well, that's what inspector -- or that's what

1 Sergeant Paul's report says. I don't remember
2 that at all.

3 Q You've got no recollection of terminating
4 witness protection?

5 A No. And I suspect it's because I wasn't there.
6 I worked through the night. I suspect that I
7 was at home sleeping when all of this was going
8 on. And Sergeant Paul has forgotten when he
9 writes that report, but I could be wrong about
10 that.

11 Q Well, his report says he called you?

12 A Yes.

13 Q And that you meet with Johnson and witness
14 protection is terminated?

15 A Yes.

16 Q Is that not correct?

17 A That's what his report says, yes.

18 Q It is at tab 53, if you want to have it open,
19 volume 2, tab 53. Is that not another one of
20 these highly dramatic events that are taking
21 place in and around May, June of this year?

22 A Well, yes, probably the most dramatic because it
23 enabled us to end our protection over Zanidean,
24 from Al Paul's and my perspective, that is.

25 Q In your witness statement to us at tab 2, page

1 38, you conceded that it was a fairly
2 significant development, for those reasons that
3 you've just given. It terminates, essentially,
4 a nine-month effort to get Zanidean into the
5 Witness Protection Program; is that correct?

6 A Yes, that's correct.

7 Q In addition, Zanidean had made a threat to
8 Sergeant Paul that he was going to the media and
9 was going to tell them that his testimony had
10 all been lies, according to Sergeant Paul's
11 subsequent report; is that correct?

12 A Yes, that's correct.

13 Q So for that reason, as well, it was a highly
14 significant development?

15 A Yes.

16 Q And you had telephone records. Finally,
17 Sergeant Paul obtains the records from the
18 hotel, showing that Zanidean had, in fact,
19 called Greg Brodsky immediately after the
20 blow-up; is that correct?

21 A That's what Sergeant Paul's report says, yes.

22 Q And in spite of the nature of these
23 developments, you have little or no recollection
24 of them?

25 A That's true.

1 Q And yet you recall your telephone call with
2 Constable Burton on October 30th of the previous
3 year?

4 A Yes, I do.

5 Q Why was no report or note made of this
6 development at the time?

7 A I don't know the answer to that.

8 Q Sergeant Paul's report is made over two years
9 later; is that correct?

10 A That's correct, yes. And my earliest
11 recollection of any of this business is in the
12 '93 Hall and Ewatski investigation.

13 Q Again, is this not a development that
14 Mr. Dangerfield should have been informed of,
15 given that he had conduct of the appeal that was
16 pending?

17 A Yes. We would normally -- Paul and I would
18 normally deal with Mr. Miller, who I would
19 expect would inform Mr. Dangerfield, yes.

20 Q Again, would not the normal, professional way to
21 inform Crown counsel of a development like this
22 that had evidentiary value be to put it in a
23 supplementary report?

24 A In Winnipeg, Mr. Code, in 1991, yes, if the
25 Crown, after being informed of the event,

1 verbally requested it.

2 Q You had to be asked before you would produce a
3 supp. report, is that your position?

4 A Sometimes, yes, not all, some.

5 Q You strike me, Sergeant Anderson, from my
6 reading of the file, as a very vigorous, active,
7 go-getter kind of officer, not a guy who was
8 shy, who sat back and waited to be told. You
9 were smart and creative and active. You don't
10 look to me to be the kind of guy who sits around
11 and waits for orders to be given before doing
12 the sensible thing. Were you a shrinking violet
13 who waited to be told before you did anything?

14 A No.

15 Q You were a take-charge guy, from what I could
16 see of you. Why wouldn't you do the sensible
17 thing and put events like this that have
18 evidentiary value into a written report?

19 A I don't know.

20 Q If we look at your notebook for this period,
21 your notebook's at tab 4, and if we look at the
22 front cover of the notebook, you have got a note
23 on it, on the front of it, you have to turn the
24 book sideways. It says,

25 "Tom Anderson's notes of the Perry Harder

1 murder investigation. These notes contain
2 details which may expose protected
3 witnesses."

4 You wrap that cover around the outside of the
5 notebook to make it clear that it was a
6 sensitive set of notes; is that correct?

7 A Yes.

8 Q Because you are working with protected
9 witnesses?

10 A Yes.

11 Q And if you look to the very last page at tab 4,
12 you will see where the notebook ends. The last
13 entry in it is Friday, May 17th, 1991; is that
14 correct?

15 A Yes, it is.

16 Q So all of the events in late May through to late
17 June, starting with Zanidean's flight to
18 Alberta, his arrest on a material witness
19 warrant, the dispute at the Public Safety
20 Building between Kovnats and Dangerfield on
21 May 26th, May 27th, the June 3rd and June 6th
22 incidents with Kovnats and Zanidean about
23 Zanidean's police statements and this account
24 that he was writing out of everything that had
25 happened, the meeting with him on June 11th

1 after his testimony was completed where you have
2 sealed the immunity agreement, and then finally
3 the June 20th blow-up and June 21st termination
4 of his witness protection, none of that is noted
5 in your Perry Harder notebook; is that correct?

6 A That's correct, yes.

7 Q And is there any explanation for that that you
8 can help us with?

9 A Well, not beyond any explanation I've already
10 given. I, like most members of the
11 robbery/homicide division at that time, was less
12 interested in documenting things that didn't
13 have to be documented and more interested in
14 getting out on the road. So if something wasn't
15 strictly -- it didn't have to be documented, it
16 wasn't obvious to document it, it might not
17 necessarily get documented until there was a
18 request for it. And later on in my career, as a
19 supervisor in the homicide unit, that was one of
20 my roles. I received reports and made
21 determinations on whether I needed further
22 supplementaries, and I would liaise with Crown
23 attorneys who called for further
24 supplementaries. So I think it's pretty natural
25 to not document something if there's no apparent

1 reason or no request to do it.

2 Q And that series of events I just went through
3 with you over this approximately 30-day period,
4 you didn't think there was any need to document
5 any of that?

6 A Well, I guess I didn't. I guess I didn't think
7 there was any need at the time if I didn't
8 document it.

9 Q All right. The last event that I want to cover
10 with you, Sergeant, is the July telephone calls
11 with Sergeant Burton -- with Constable Burton,
12 I'm sorry, in July of 1991. In the following
13 month, both you and Burton agree that there are
14 two further telephone calls between you, the
15 first one on July 16th and the second one on
16 July 18th; is that correct?

17 A Yes, that's correct.

18 Q And if I could take you, first of all, to your
19 account of it, and then allow you to responsible
20 to Constable Burton's account of it, your
21 account is at tab 10 --

22 A Yes, I have it.

23 Q -- again, in the usual document where we find
24 this, the October 8th, 1991 report to Inspector
25 Johns. And your account of the call begins at

1 page 3, the first of the two calls --

2 A Yes.

3 Q -- begins at page 3?

4 A Yes.

5 Q And it's, oh, about a third of the way down we

6 see the paragraph that starts,

7 "On the 16th of July..."

8 A Yes, I see that.

9 Q And it is essentially those two paragraphs in

10 the middle of page 3 that set out your

11 recollection of the call as of October 8th when

12 you are writing this report; is that correct?

13 A Yes.

14 Q And then the July 18th call is over the page at

15 the bottom of page 4. According to your account

16 of the July 18th call, nothing much of

17 significance happens in that second call. All

18 of the important content is in the first call;

19 is that correct?

20 A Well, the first phone call was --

21 Q Let's just go through them. I thought that was

22 self-evident, but I don't want to struggle over

23 the question. Let's turn to the first call, the

24 16th of July.

25 A Yes.

1 Q The first thing, according to your account, that
2 you learned from Constable Burton -- and it's he
3 who is calling you; is that correct?

4 A That is correct, yes.

5 Q And he advises you that Staff Sergeant Ferguson
6 has interviewed James Driskell and obtained a
7 statement in which he implicates Zanidean in the
8 arson?

9 A Yes.

10 Q So you become aware that the Driskell defence
11 team is cooperating with the RCMP investigation;
12 is that correct?

13 A Yes.

14 Q And the objective appears to be to implicate
15 Zanidean in the arson with some further
16 evidence; is that correct?

17 A Yes, it is.

18 Q And then the second thing that you learn from
19 him, a couple of lines on,
20 "He went on to say that superior RCMP
21 officers in Regina had overruled Swift
22 Current officers and had decided to charge
23 Zanidean."

24 So the information, as I read this, is that by
25 July 16th a formal charging decision had been

1 made by superior officers in Regina; is that
2 correct?

3 A Yes.

4 Q And I can tell that you there isn't a shred of
5 evidence in the Swift Current file to support
6 that suggestion that a decision to charge
7 Zanidean had been made by July 16th. So are you
8 quite confident that Constable Burton told that
9 you?

10 A Yes.

11 Q In other words, if he said that to you, it was
12 an outright lie to deceive you in some fashion,
13 because certainly there is nothing to suggest
14 that that is true?

15 A Well, that may be, but this is what he told me,
16 Mr. Code.

17 Q The third thing you learn from him is that this
18 decision to charge involved overruling the local
19 officers in Swift Current who favoured the
20 no-charge position; is that correct?

21 A Yes.

22 Q Again, I can advise you that that is not
23 reflective of what we learned from an
24 examination of the file. So, again, are you
25 quite confident that he told you that?

1 A Yes, I am.

2 Q The fourth thing you learned from him is that he
3 has got a negative view of his superior
4 officers, he essentially bad mouths his superior
5 officers for the next little while; is that
6 fair?

7 A Blamed it all on them.

8 Q And did you have the sense that Constable Burton
9 was the kind of guy who would tell stories about
10 his superior officers? Was this consistent with
11 the image you had of him from your prior calls?

12 A Could you go over that again, please?

13 Q Was he the kind of officer, based on your prior
14 decisions with him, who talked like this, who
15 told stories out-of-school about his superior
16 officers? Was he that kind of a loud-mouthed,
17 bad-mouthing police officer who tells stories
18 about superior officers, or did this surprise
19 you?

20 A Well, I don't know about telling stories about
21 superior officers. He was very candid with me
22 in every conversation I had with me. He talked
23 about the problems they had in Swift Current. I
24 talked to him about our case and about Ray
25 Zanidean. He was very candid.

1 Q I guess what I'm getting at is, were you shocked
2 or surprised by this, or did this seem to be in
3 character, was this the kind of officer you had
4 got used to in your dealings with him?

5 A Well, I don't know. I was in shock that the
6 RCMP in Swift Current had changed their mind on
7 this, and he was quite apologetic about it. And
8 you saw this as -- I didn't have any reason to
9 think that this wasn't the case.

10 Q So you were focused on the substance of it?

11 A Well, and I expected that that sounded like the
12 kind of thing that would happen. Officers at
13 the detachment level agreed to something and got
14 overruled from above.

15 Q All right. And then the second paragraph there,
16 it sets out what you told him. You told him,
17 "We had already informed Zanidean of his
18 immunity, which had become part of the
19 negotiations with our Justice Department".

20 Is that correct?

21 A Yes.

22 Q And if you go up to the paragraph, the second
23 paragraph at the top of the page where you're
24 relating those --

25 A At page 3?

1 Q Yes, still on the same page, just go up to the
2 second paragraph where you're talking about the
3 negotiations immediately after the trial. You
4 say:

5 "Zanidean's immunity became a component of
6 the protection agreement reached by Miller
7 and Kovnats."

8 Do you see that?

9 A Yes, I saw that.

10 Q So you're telling Burton that immediately after
11 the trial your understanding was that Miller and
12 Kovnats had included the immunity as a component
13 parts of the overall protection agreement; is
14 that correct?

15 A Exactly, yes.

16 Q You are passing that along to Burton?

17 A Yes.

18 Q And, finally, the last point is you've learned
19 that this fellow, Richard Quinney, the director
20 of prosecutions in Saskatchewan, is reviewing
21 the matter, and you and Burton both agree that
22 it would be best to bump the matter up into his
23 hands and let him deal with it. Is that
24 correct?

25 A Yes, that's correct.

1 Q All right. And the second call, over the page,
2 page 4, is a short paragraph there at the end,
3 the bottom of page 4, about the July 18th call.
4 Most of it appears to deal with the court
5 transcripts that Burton is trying to get, the
6 trial testimony and this business about the body
7 pack tapes. And then there is a brief mention
8 of the immunity issue in the last two sentences
9 of that paragraph, last three sentences of that
10 paragraph. But nothing of substance seems to
11 change from the July 16th call; is that correct?

12 A That's correct, yes.

13 Q Now, Burton's account of the call is quite
14 different. This is one of the calls where,
15 unlike the April calls, there is quite a
16 dramatic difference between your two accounts.
17 We find his account at tab 54 in the next tab.
18 And this is a reasonably contemporaneous report
19 July 19, '91, three days after the July 16th
20 call. And we have -- this is one of the
21 occasions where we actually have the complete
22 report, we are not dealing with a cut and paste
23 job where he has put together a bunch of old
24 reports. And if you could start at paragraph 4
25 on page 2, he begins the July 16th call; is that

1 correct?

2 A Yes.

3 Q And the first two paragraphs, paragraphs 4 and
4 5, deal with these issues surrounding the trial
5 transcript and the body pack transcript; is that
6 correct? I'm not interested in the details of
7 this. I am not going to go into the squabbles
8 about were you providing this to him fast
9 enough. Is it fair to say that part of your
10 discussion in these calls in July was about
11 efforts to obtain the trial transcript and the
12 body pack transcripts?

13 A Yes, that is correct.

14 Q So if we skip over paragraphs 4 and 5 as in
15 substance dealing with a matter that you were
16 dealing with him, and turn over the page to page
17 3, paragraph 6. Another evidently matter that
18 you were discussing was the two admissions, and
19 you were agreeing to provide a report setting
20 out the admissions that you and Sergeant Paul
21 had been receiving. And, again, we know that's
22 something that you did in this time period, I
23 think it's early October you send him a
24 supplementary report setting out those
25 admissions; is that correct?

1 A Yes, it is.

2 Q So, again, paragraph 6, without going into
3 detail, the substance of it was a matter that
4 was under discussion between the two of you; is
5 that correct? The need for a report about these
6 two admissions?

7 A Yes, I believe so.

8 Q And, then at paragraph 7 we get to the immunity
9 issue. And I would like to read this paragraph
10 to you carefully and get your response.

11 Paragraph 7 Burton says:

12 "Sergeant Anderson was advised that
13 Zanidean might be charged with the two
14 arsons."

15 And that is a slightly softer version of what
16 you've got recorded in your report. Your report
17 is that it is a definitive decision. His report
18 is that it's a possibility. And then the next
19 sentence,

20 "He advised that Zanidean...",

21 "he", being Anderson,

22 "...advised that Zanidean had stated to him
23 after the murder trial that if he was
24 charged, he would go to the media and state
25 that he only told Winnipeg Police Service

1 'what they wanted to hear' regarding the
2 murder so that Driskell would be acquitted
3 on appeal or a new trial ordered."

4 A That's wrong. I didn't tell him that and Ray
5 Zanidean never told me that.

6 Q Let's take it in two steps. First of all, I'm
7 more interested in what Zanidean told you than
8 what you told Burton. What had Zanidean told
9 you on the subject about the possibility of him
10 being charged and what he would do, if anything?

11 A Nothing. I believe that Constable Burton would
12 be -- what I probably did, although I don't
13 remember for sure, what I probably did was tell
14 him the story about the Al Paul incident, that's
15 probably what I told him.

16 Q All right.

17 A And he has somehow twisted that around to
18 involve the arson, or at least that's what it
19 appears to be.

20 Q So you may have told him about the June 20th
21 blow-up with Sergeant Paul that bears some
22 resemblance to this account?

23 A Yes, I may have.

24 Q And that's a hypothesis on your part. You don't
25 recall saying that to him; is that fair?

1 A That's fair.

2 Q But, in any event, did Zanidean ever discuss
3 with you what he would do if he was charged with
4 the Swift Current arson?

5 A No. That's how I know I didn't say that to
6 Constable Burton, because Mr. Zanidean never
7 said anything of that sort to me.

8 Q So Burton has either completely misunderstood
9 you on this point, or else he has made it up?

10 A Correct.

11 Q Paragraph 8 goes on to say that you wanted to
12 speak to Miller and Dangerfield about the
13 matter. I take it that fairly and accurately
14 reflects the response that you had? This is the
15 conclusion, the concluding paragraph of the
16 July 16th call, according to Burton's note. He
17 then goes on to the July 18th call. Is that the
18 likely conclusion that you would have arrived at
19 after hearing what Burton told you?

20 A Well, I would certainly be reporting it to
21 Mr. Miller. I don't recall reporting matters to
22 Mr. Dangerfield at that time.

23 Q And then paragraph 9 moves into the second call,
24 the July 18th call, which again, like your note
25 back in your report at tab 10, I believe, it

1 begins with a discussion about the transcript,
2 the trial transcript and the body pack issues;
3 is that correct?

4 A Yes.

5 Q So your note and his note are generally
6 consistent on that point. And then paragraph 10
7 gets into the substance of the immunity issue
8 again. And this is the one we briefly touched
9 on this morning, because it raised the events of
10 April, and you wanted to respond more generally
11 to it. So I promised you we would come back to
12 it, and perhaps could you give us your response
13 to paragraph 10. In particular, I'm interested
14 in -- you have told us about your response to
15 the April calls between Orr and Upton and
16 between Preston and Orr. You see there's
17 reference to calls both between Orr and Upton
18 and between Orr and Preston in April, the last
19 call being the April 16th call between Preston
20 and Orr. And you say you weren't aware of any
21 of those calls?

22 A Yes.

23 Q So you couldn't have said anything to Burton
24 about the Orr/Upton or the Orr/Preston calls?

25 A Correct.

1 Q So leaving that aside as having been dealt with,
2 the first part of paragraph 10 says:

3 "Sergeant Anderson also stressed that part
4 of the deal for Zanidean's testimony was
5 that he would not be charged for the 1990
6 arson."

7 A That is absolutely incorrect. And I have no
8 idea what role that has played in every
9 inaccurate media report that I have read on this
10 issue from 1993 -- 1993 forward. There was --
11 Ray Zanidean got nothing in exchange for
12 testimony, as I've stated earlier. And I don't
13 know where he would have got that from, but that
14 is absolutely untrue.

15 Q Your account is that there was a deal, but it
16 was a secret deal, it wasn't known to Zanidean?

17 A Correct. And it wasn't in exchange for anything
18 except his entry into the Witness Protection
19 Program.

20 Q He had been seeking it, but he never got it, to
21 his knowledge, prior to his testimony?

22 A Right. And when he did get it, he got it
23 inadvertently.

24 Q I'm sorry, he got it inadvertently?

25 A Yes.

1 Q You mean when he ultimately succeeded --

2 A Yes.

3 Q -- at the end of all of this process?

4 A Yes, because he didn't go into the witness
5 protection program, he should never have gotten
6 it.

7 Q Good point. The whole premise of the deal was
8 that he was going into witness protection?

9 A Yes. It was the promise of witness protection
10 that got all of us, me, Al Paul, Bill
11 Vandergraaf, Bruce Miller, and everybody in
12 Swift Current, caught up in this mess. It was
13 the promise Al Paul and I originally made him
14 that we would protect him. To protect him, you
15 have to get him a new location, with new
16 identity. And to do that, you've heard the rest
17 of it, the Swift Current, he couldn't be the
18 subject of another investigation.

19 Q So when you say he got it inadvertently, your
20 view was that once he was not admitted into the
21 Witness Protection Program, there was no deal
22 and he could have been charged, as far as you're
23 concerned?

24 A Right up until the day -- up until after his
25 testimony, when he was told he could, I don't

1 see how we could go back on our word then.

2 Q Once you told him?

3 A Once you make a commitment, once you tell
4 somebody -- but certainly right up until that
5 point, he could have been charged if it was
6 known he wasn't going into the Witness
7 Protection Program.

8 Q I see. So if there was no reasonable
9 expectation that he was ever going to get into
10 the witness protection prior to his testimony,
11 at that point there would have been no deal and
12 he should never have been told that there was a
13 deal?

14 A Correct.

15 Q And then, finally, to finish up on Constable
16 Burton's report, paragraph 11 is correct, is it?
17 As I understand it, you --

18 A Well, you didn't let me finish reading paragraph
19 10 yet.

20 Q I'm sorry, I didn't want to cut you off. I
21 thought we had dealt with all of the April stuff
22 simply on the basis of --

23 A We may have, if I could just have a quick scan
24 here.

25 Q Fair enough.

1 A We're on to paragraph 11 now, you said?

2 Q Paragraph 11 is the last paragraph in Burton's
3 account of the second call. And it makes the
4 point that you hadn't been aware of the 1988
5 arson and that you didn't feel that it was
6 covered by the deal?

7 A Absolutely. The July 16th phone call was the
8 first time I heard about the 1988 arson, another
9 thing that I found odd that Constable Burton
10 hadn't mentioned that to me. But my reaction to
11 that on July 16th was, I think, a little
12 stronger than he has represented it to be. I
13 took the attitude, go for it, we didn't promise
14 him anything on the '88 arson.

15 Q Again, there is this letter to Sergeant Mann in
16 December where Burton clearly draws his
17 attention to the second arson.

18 A Yes, but I never saw that. I never saw that
19 report ever.

20 Q I appreciate that. But the preface to the
21 letter says,

22 "I understand you have been talking with
23 Sergeant Anderson."

24 So Burton, obviously, somehow had it in his head
25 that you and Mann were talking about this. But,

1 in any event, you're content with paragraph 11?
2 It accurately sets out the conversation on that
3 point that you had?

4 A Yes, it does, absolutely.

5 Q All right. The last point, and then I'll be
6 finished, Sergeant Anderson, is I just wanted to
7 come back to this issue that you adverted to
8 this morning, and I promised you that I would
9 come back to it after I had had a chance review
10 the documents.

11 You recall I had asked you if, prior to
12 preparing your report to Inspector Johns on
13 October 8, 1991, there had been a number of
14 significant developments that had taken place,
15 things like the conviction of Driskell, the fact
16 that there was this Saskatchewan Justice review
17 going on, the fact that there was an appeal
18 pending, the fact that Brodsky and Driskell were
19 trying to get Zanidean charged with the arson in
20 order to lever the appeal. And you acknowledged
21 that you were aware of some of these things, but
22 you thought you weren't aware of all of them.
23 So I just wanted to help you on that point by
24 taking you to tab 10 in volume 2, your report to
25 Inspector Johns, and just draw a couple of

1 passages in your report to your attention.

2 First of all, at page 3, the third
3 paragraph, and this is the passage I already
4 took you to, you were aware that Staff Sergeant
5 Ferguson had come to Winnipeg, had interviewed
6 Driskell, and had obtained a statement from him
7 in which he implicated Zanidean. And he does
8 that post-conviction, post-trial; is that
9 correct?

10 A Yes.

11 Q So you knew there was some degree of cooperation
12 going on between the Driskell defence team and
13 the Swift Current arson investigation to try to
14 get Zanidean charged?

15 A Yes.

16 Q And at the bottom of that page, the last line at
17 the bottom of page 3, the discussion about the
18 body packs. Burton was telling you that Brodsky
19 had informed them about some allegedly
20 incriminating statements made on the body packs;
21 is that correct?

22 A Yes, it is.

23 Q Which, again, is consistent with the theme that
24 the defence team was doing its best to try to
25 get Zanidean charged with the arson; is that

1 correct?

2 A Yes.

3 Q And over the page, on page 4, in relation to the
4 issue of whether there was an appeal pending, in
5 the middle of page 4, you refer to your efforts
6 to contact Gregg Lawlor, the Crown Attorney, to
7 determine whether the transcript was ready yet,
8 the trial transcript; is that correct?

9 A Yes.

10 Q And as a result of those discussions with Lawlor
11 about the trial transcript, you would have
12 become aware that the appeal was pending?

13 A No. I don't think so.

14 Q All right. Let me give you one last document,
15 if I could ask Madam Registrar to help with this
16 one, with Exhibit 1. This is the book of
17 documents on the Swift Current arson file, which
18 were prepared for the first group of witnesses
19 in the first week. And you will see it has got
20 50 tabs in it. And then those are all under tab
21 A, 1 to 50. And then about two-thirds of the
22 way through the book you should see a tab B?

23 A I do.

24 Q And the numbers start all over again?

25 A Yes.

1 Q If you turn to tab B6, there is a memo from this
2 fellow, Corporal Atras, who is referred to,
3 incidentally, in your report to Inspector Johns,
4 is he not?

5 A Yes.

6 Q He's the guy you were dealing with in the RCMP
7 office here in Winnipeg, who was trying to
8 obtain the transcripts and body packs and
9 whatnot; is that correct?

10 A That's correct, yes.

11 Q And he clearly had a good relationship with you.
12 He liked you. He describes you as most
13 cooperative in a couple of his memos, is that
14 correct, including in this one? You see at the
15 top,

16 "Writer spoke to Sergeant Tom Anderson..."

17 A Yes.

18 Q "...who was most cooperative, as expected,
19 and advised..."

20 So this is not an officer who you had a hostile
21 relationship with?

22 A Not that I knew of, no.

23 Q And if you look at his second point, he is
24 trying to get the transcripts of Zanidean's
25 evidence in his first point. In his second

1 point is he is trying to get the body pack
2 transcript; is that correct?

3 A I'm sorry, I am trying to read and listen to you
4 at the same time.

5 Q Okay. You read, then, and I'll shut up.

6 A Yes, I've read that now.

7 Q And it is the second point I am particularly
8 interested in, the one about the body pack
9 transcript. And according to his file note of
10 his conversation with you, this is September 3,
11 1991, about a month before you write the report
12 to Inspector Johns, he says:

13 "With respect to the transcript of
14 Zanidean's body pack evidence, it's
15 requested that we wait for at least until
16 the appeal period is over."

17 That would tend to indicate that you were aware
18 of the appeal; is that fair?

19 A That would tend to indicate that. I don't
20 have -- I don't remember being aware of the
21 appeal at all, nor do I have any idea of what
22 connection the appeal would have to that
23 transcript.

24 Q Well, the transcript is being prepared for the
25 appeal.

1 A Oh, maybe that could be.

2 Q There are dozens of memos on this. I don't want
3 to go through them with you. But Lawlor has
4 ordered the transcript for appeal or Brodsky has
5 ordered it for appeal purposes. We don't
6 normally order transcripts of trials unless
7 there is an appeal. And the fact that you're
8 dealing with Lawlor about the transcript, and
9 you're dealing with Atras, and Atras is asking
10 you to wait until the appeal period is over, you
11 would agree with me would tend to suggest that
12 you were aware of the appeal?

13 A It would certainly suggest that, yes.

14 Q And then you carry on to say, according to
15 Atras' note,

16 "As can be gathered, Zanidean and Driskell
17 are at each other's throats."

18 Which would be a fair inference, from the
19 efforts Brodsky and Driskell are making, to try
20 to get Zanidean charged; is that correct?

21 A I don't know what that's in reference to. It
22 would appear to be that.

23 Q And then the last sentence,

24 "According to Anderson, there is not much
25 detail on this transcript regarding the

1 arson, et cetera."

2 So you downplay the utility of the body pack
3 transcripts, according to Atras' memo. Do you
4 recall doing that?

5 A No, I don't. But it's possible that I did
6 because this is a -- this is a problem area.
7 Because I was the one communicating with Swift
8 Current, but I was the one that was out of the
9 loop, as far as what was on those body pack
10 transcripts. And if Constable Burton got the
11 impression that he got an incomplete account of
12 what I said was on those body pack tapes, he
13 could be right, because I went to someone else
14 for -- and I didn't get the transcript or a
15 written account of what was on them. I was
16 asked, is there talk -- I asked probably Bill
17 Vandergraaf, Al Paul or both, and I asked --
18 first of all, there was a lot of confusion that
19 came out of Swift Current when I was looking for
20 transcripts of a body pack that Mr. Driskell had
21 worn, which made no sense, of course. Then when
22 we got that misunderstanding out of the way, the
23 issue was, what is on the body pack tapes of
24 interest to Swift Current? And I asked that
25 question of somebody, again I think Vandergraaf,

1 Paul, or both, and relayed that. I can't
2 remember now if it was -- Atras' report said I
3 relayed that to him that there is not much on
4 there. And I believe I had a conversation with
5 Constable Burton there as well.

6 Q Oh, I think you did.

7 A So there is confusion there, there is no doubt
8 about it.

9 Q But the point I was interested in this morning,
10 when I raised this topic, is simply that by the
11 time you write the memo at tab 10, on October 8,
12 1991, you're aware that all of these
13 developments have taken place. You've got a
14 conviction. You've got an appeal pending.
15 You've got an effort to get Zanidean charged by
16 the Driskell team. You've got a complaint
17 against yourself. You've got a review going on
18 by Saskatchewan Justice as to whether there is
19 or isn't an immunity deal. A whole number of
20 events have taken place by the time you come to
21 write this report; is that correct?

22 A The October 8th report, yes, that's correct.

23 MR. CODE: Those are all of my questions. Thank
24 you very much.

25 THE COMMISSIONER: Well, we've got 20 seconds.

1 MR. CODE: Now, if I could perhaps speak to the
2 scheduling issue, as there has been a fair bit
3 of discussion about scheduling, and let me see
4 if I can set out what I understand the proposal
5 is that everybody's reasonably agreeable to, and
6 we can get you out of here quickly,
7 Mr. Commissioner, because I know you've got a
8 plane to catch.

9 Mr. Lockyer has problems on Monday, he has
10 got a commitment in relation to the Truscott
11 case to the Court of Appeal. And, as you know,
12 when the Court of Appeal gives you a deadline,
13 they don't ask you about your calendar.

14 THE COMMISSIONER: He shouldn't be so
15 pessimistic as to think that he has problems
16 with the Court of Appeal.

17 MR. CODE: So unless you want to give Chief
18 Justice McMurtry a phone call, who is the
19 president of the panel, I understand, and I'm
20 sure you've got lots of influence with him, in
21 order to get Mr. Lockyer here on Monday, he
22 can't be here. So subject to your intercession,
23 Mr. Lockyer would be the first cross-examiner in
24 the usual order of things, the options for us
25 are to either have the other counsel proceed

1 with their cross-examinations, and I'm told that
2 the general view is that they don't want to do
3 that. They want Mr. Lockyer to go next because
4 his cross-examination will influence theirs.
5 And I can understand why they might take that
6 position in this particular instance.

7 And since, obviously, it's unsatisfactory
8 for to us lose the day in waiting for
9 Mr. Lockyer to get back, what I proposed as a
10 compromise, and everyone I spoke to was
11 agreeable to this, although I think I've missed
12 a couple of my colleagues, but everybody I was
13 able to reach agreed to this, is that I would be
14 willing to call Sergeant Paul on Monday. In
15 other words, to ask Sergeant Anderson to stand
16 down his cross-examination for a day. And I
17 think we could probably complete Sergeant Paul
18 in a day. I certainly will be much shorter with
19 him, having now covered the whole field with
20 both Staff Sergeant Vandergraaf and Sergeant
21 Anderson. Sergeant Paul has had a heart attack
22 and he has got problems with his recollection.
23 And he's not the author of as many documents.
24 He is not on these phone calls. I can do
25 Sergeant Paul in a much, much shorter period of

1 time, probably an hour or two at most, and my
2 colleagues could cross-examine him. And then
3 when Mr. Lockyer has told his me he is content
4 with that, Mr. Libman can handle the
5 cross-examination of Sergeant Paul. So we won't
6 lose any time. It requires us asking Sergeant
7 Anderson's indulgence to stand down for a day
8 and come back Tuesday morning.

9 THE WITNESS: Yes, sir.

10 THE COMMISSIONER: Is that going to cause great
11 problems for you?

12 THE WITNESS: No.

13 THE COMMISSIONER: Okay, thanks.

14 MR. WOLSON: What would cause problems, though,
15 and I wasn't asked of this, I have just found
16 out about it, the problem, and I don't expect it
17 to be a problem, but I'm advised by Sergeant
18 Anderson that he has a commitment out of the
19 city on Friday. But I'm assuming that Wednesday
20 and Thursday would certainly be enough time. I
21 don't know that because I haven't canvassed how
22 long people would be, but he has a commitment --
23 well, we don't sit Friday.

24 MR. CODE: Yes.

25 MR. WOLSON: Well, that's not a problem. But he

1 is away Friday and Monday, the following Monday.

2 MS. CARSWELL: That's a holiday.

3 MR. CODE: I intend to have Mr. Kovnats up on
4 the stand by no later than Wednesday afternoon,
5 I hope.

6 THE COMMISSIONER: All right. Well, everyone's
7 agreeable, I hope. We will adjourn until Monday
8 morning. And, Sergeant Anderson, if you would
9 return on Tuesday morning --

10 THE WITNESS: Yes, I'll be here.

11 THE COMMISSIONER: -- at 9:00 o'clock?

12 THE WITNESS: Yes.

13 MR. CODE: No. 9:30 is the start.

14 THE COMMISSIONER: 9:30 on Tuesday.

15 THE WITNESS: Okay.

16 THE COMMISSIONER: Thanks so much.

17 THE WITNESS: Sure.

18 THE CLERK: All rise. This Commission of
19 inquiry is now adjourned.

20 (PROCEEDINGS ADJOURNED AT 3:35)

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COURT REPORTER'S CERTIFICATE

CECELIA REID and LISA REID, duly appointed
Official Examiners in the Province of Manitoba,
do hereby certify the foregoing pages are a true
and correct transcript of our Stenotype notes as
taken by us at the time and place hereinbefore
stated.

Cecelia Reid
COURT REPORTER

Lisa Reid
COURT REPORTER

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