

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

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The Honourable Patrick LeSage, Q.C. Commissioner

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

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Wednesday, September 20, 2006

Volume 23

INQUIRY PROCEEDINGS

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1 Wednesday, September 20, 2006

2 Upon commencing at 9:30 a.m.

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

5 THE COMMISSIONER: Mr. Wolson, I was thinking of  
6 your comment last evening, how it's always so  
7 unfair that you end up having to begin your  
8 examination -- so I think with the next witness  
9 we'll have you do it first.

10 MR. WOLSON: Instead of Commission Counsel.

11 THE COMMISSIONER: Exactly. Good morning, and  
12 please proceed.

13 BY MR. WOLSON:

14 Q Good morning, Chief Ewatski. We ended up  
15 yesterday where I was about to ask you about  
16 your visit to Orr, which took place I am advised  
17 on the 11th of May of '93, just a few days  
18 before you saw Bruce Miller?

19 A Yes, sir.

20 Q And if you would turn, the book of documents for  
21 you, which is Exhibit 28B, and if you would turn  
22 to tab 7, page 207 at the bottom right-hand  
23 corner?

24 A Yes, sir.

25 Q While at the top it indicates "Interview with

1 Tom Orr, Source Witness Protection D Division,"  
2 the date I take it is wrong up in the left-hand  
3 corner. That should be '93?  
4 A It appears to be wrong, yes, sir, it would have  
5 been '93.  
6 Q So it was the 11th of May of '93 when you went  
7 to visit him, and you eventually saw Bruce  
8 Miller, I am advised on the 13th of May, two  
9 days later? And I can take you to the date in a  
10 moment.  
11 A I believe that's correct, sir.  
12 Q Accept that date for the moment, if you will?  
13 A I accept that date.  
14 Q And what you did when you saw Officer Orr is you  
15 made some notes about your interview with him  
16 and his file?  
17 A That's correct, sir.  
18 Q And if you go a little more than halfway down  
19 page 207, you see an entry which is similar to  
20 the entry you made regarding Tom Anderson's  
21 discussions with Officer Burton of Swift  
22 Current. You see,  
23 "Indication that Swift Current RCMP per  
24 Constable Burton has agreed to not pursue  
25 arson investigation until completion of the

1 trial."

2 A That's correct, sir.

3 Q And just by way of comparison, and I would like  
4 you to keep open, if you would, perhaps on a  
5 corner of the table there, Exhibit 6B, tab 10,  
6 because I'm going to draw some references to it.

7 A Which one is that, sir?

8 THE COMMISSIONER: That's the Vandergraaf,  
9 Anderson, Paul, volume 2.

10 THE WITNESS: Thank you, sir. Sir, which tab  
11 and page?

12 BY MR. WOLSON:

13 Q Tab 10, please. Tab 10 is the memo from Tom  
14 Anderson to Inspector Johns?

15 A That's correct, sir.

16 Q So you see the entry there. If you'll turn to  
17 page 2 of that, Tom Anderson talks in the first  
18 paragraph, October 30, talks of a telephone, or  
19 writes of a telephone discussion with Burton  
20 where Burton agrees to put his investigation on  
21 hold until after Zanidean has testified at the  
22 homicide case here in Winnipeg?

23 A That's accurate, sir.

24 Q Now, you've got your volume 2, the thinner  
25 volume in front of you, Exhibit 28B, page 207.

1           That's your interview with Tom Orr?

2    A       Yes, sir.

3    Q       And if you go down two bullets from the bottom  
4           of the page,

5           "Subject's lawyer..."

6           which we know is David Kovnats,

7           "...has asked for a written guarantee of  
8           immunity prior to the trial."

9    A       That's what it says, sir.

10   Q       If you turn over the page to page 208, this is  
11           again your interview with Tom Orr, halfway down  
12           the page, 91-04-12, Corporal Orr talks with  
13           Sergeant Upton, RCMP in Swift Current. This is  
14           on the 12th of April, and Upton advises Zanidean  
15           is no longer wanted for questioning re the arson  
16           and that their file will be closed?

17   A       That's what it says, sir, yes.

18   Q       Which parallels again Sergeant Anderson's report  
19           in the third paragraph at page 2, where Anderson  
20           writes in the middle of the paragraph.

21           "I explained the dilemma."

22           This is his conversation with Burton which we  
23           know is April 5th.

24           "I explained the dilemma and I believe he  
25           had already spoken to Corporal Orr. In any



1 case, he had given the matter thought and  
2 he immediately offered to withdraw their  
3 pursuit of Zanidean entirely."

4 THE COMMISSIONER: If you'd just bear with me  
5 for a moment.

6 MR. WOLSON: Third paragraph, about halfway into  
7 the third paragraph where you see "during the  
8 first conversation," it starts, it would be  
9 about five lines from the top of the third  
10 paragraph, Mr. Commissioner.

11 THE COMMISSIONER: Maybe I'm on the wrong page.

12 MR. WOLSON: Page 2 of the interview, third  
13 paragraph, which starts during March and April  
14 of '91, this is the Exhibit 6B tab 10.

15 THE COMMISSIONER: Yes.

16 MR. WOLSON: The thought occurred to me that I  
17 am reading from an excerpt. If you look at the  
18 third paragraph, Mr. Commissioner, which starts  
19 during March and April of '91.

20 THE COMMISSIONER: Yes.

21 MR. WOLSON: If you go about five lines down in  
22 the middle, it says,

23 "During the first conversation..."

24 THE COMMISSIONER: Yes.

25 MR. WOLSON: "I explained the dilemma."

1 THE COMMISSIONER: Yes, thank you.

2 MR. WOLSON: "And I believe he had already  
3 spoken to Corporal Orr. In any case, he  
4 had given the matter thought and he  
5 immediately offered to withdraw their  
6 pursuit of Zanidean entirely."

7 THE COMMISSIONER: Okay.

8 BY MR. WOLSON:

9 Q Then if you would, and I'm sorry to keep going  
10 back and forth, but if you would again go to  
11 your book, volume 2, at page 209 of tab 7, if  
12 you look at the third bullet on that page,  
13 91-05-29, May 29, '91:

14 "Info from Bruce Miller that the subject's  
15 lawyer wants an immediate response to  
16 request including immunity from prosecution  
17 of Swift Current arson."

18 A Yes, sir.

19 Q That's what we have referred to as the ultimatum  
20 letter from Kovnats to Miller, and then Miller  
21 speaks to Orr about that.

22 And you see two bullets down from there,  
23 91-05-30, Orr speaks to --

24 "Constable Burton Swift Current RCMP  
25 reports there would be no action against

1           subject...",  
2           the subject we know is Zanidean,  
3           "...if he is entered into the Source  
4           Witness Protection Program..."

5    A    Yes, sir.

6    Q    And the added note that he has, he is referring  
7           to Burton when it says.

8           "...he does not want any disclosure of this  
9           information as they want to proceed against  
10          the subject's sister for the offence."

11   A    Yes, sir.

12   Q    So it would appear that the investigation was  
13          open as against the sister?

14   A    It would appear that, yes, sir.

15   Q    Now, you will learn all of this a couple of days  
16          before you go to see Bruce Miller. So by the  
17          time you see Mr. Miller, you've had the benefit  
18          of your interview with Orr?

19   A    That's correct.

20   Q    And you've had the benefit of the memo written  
21          by Tom Anderson to Inspector Johns?

22   A    That's correct, sir.

23   Q    So you've had the perspective of at least two of  
24          the parties?

25   A    Yes, sir.

1 Q And then the purpose of seeing Mr. Miller, as we  
2 discussed yesterday and as your report  
3 indicates, was to ensure that the police had  
4 disclosed all pertinent information; true?

5 A That was one of the purposes of that meeting,  
6 yes, sir.

7 Q And that was in fact the mandate of your review,  
8 one of the issues of your review?

9 A That's correct, sir.

10 THE COMMISSIONER: I wonder if I might just  
11 interject? And when was it that you saw Burton  
12 in relation to this?

13 MR. WOLSON: They see Burton on the 18th I  
14 believe, that would be a week later.

15 THE COMMISSIONER: Okay.

16 BY MR. WOLSON:

17 Q That is so?

18 A That is correct, sir.

19 Q You were taken to a series of questions that you  
20 had prepared, or at least thought of for your  
21 interview with Crown Attorney Bruce Miller, and  
22 those appear again in volume two of 28B. If  
23 you'd look to page 197 of tab 7, please?

24 A I have it in front of me, sir.

25 Q So you go to see Miller with a plan, and that

1 plan includes trying to find out if he knew  
2 about what Anderson had disclosed to Johns,  
3 that's one thing, what you had found out from  
4 Orr, you wanted to find out whether the Crown  
5 was apprised of these factors?

6 A That certainly was one of the objectives of that  
7 meeting.

8 Q You wanted to find out, for instance, at page  
9 197 of tab 7, 28B, the second bullet, Zanidean  
10 may have perjured himself in respect to the  
11 Swift Current arson?

12 A That's correct, sir.

13 Q You wanted to raise that with the head of the  
14 Crown's office, Mr. Miller?

15 A We wanted to and we did raise it with him, sir.

16 Q Yes. Halfway down the page at 197,  
17 "What did the police tell the Justice  
18 Department about the Swift Current aspect  
19 prior to Zanidean taking the stand?"  
20 You wanted to know that?

21 A That's correct, sir.

22 Q "Was there a discussion between Manitoba  
23 and Saskatchewan...",  
24 the next bullet,  
25 "...over arson charges (Quinney) what was

1 the content of their discussions?"

2 You wanted to know that?

3 A Yes, sir.

4 Q Because that dealt with the issue of immunity?

5 A That's correct, sir.

6 Q Now, because you learned that issues relating to  
7 Swift Current were not in supplements, you  
8 wanted to ask Mr. Miller whether he knew about  
9 them?

10 A That would be accurate, sir.

11 Q And that's the context in which you spoke to the  
12 Crowns, Miller and Dangerfield?

13 A Yes, sir.

14 Q Now, your notetaking has been the subject of  
15 discussion, not just your penmanship, we'll get  
16 by that, but the fact that your notes don't  
17 spell out exactly what you said to Miller or to  
18 Dangerfield and what they said to you. You just  
19 have an overview in your notes, don't you?

20 A That will be accurate, sir.

21 Q This was not a re-investigation, was it?

22 A It was not a re-investigation of the homicide  
23 offence itself, no, sir.

24 Q This was an internal investigation that was  
25 meant only for your chief to determine whether

1 or not the police had done a proper job?

2 A I would term it, I guess, as an analysis of the  
3 investigation, of the activities of the members  
4 of the Winnipeg Police Service on this matter.

5 Q Did they disclose? That was one of the premier  
6 issues, wasn't it?

7 A Yes, sir.

8 Q If you learned all that you did from Orr, a  
9 couple of days earlier, from Anderson in his  
10 memo to Inspector Johns, you would be duty bound  
11 by the terms of your mandate to discuss these  
12 matters with the Crowns, to ensure or to make  
13 sure or to find out whether or not they knew  
14 about these things. And that's what you did?

15 A We certainly worked within that mandate, sir,  
16 and I believe we completed the objective of that  
17 mandate.

18 Q Now, that memo, which was one of the matters  
19 that you at least took the contents of and  
20 discussed it with the Crowns, if you take a look  
21 at that memo, which you have open to your left,  
22 Exhibit 6B of tab 10. This is a memo written,  
23 as we know, by Tom Anderson to Inspector Johns,  
24 and it's a memo as a result of some complaints  
25 that Anderson and Paul, or Anderson in

1 particular, were not cooperating with the RCM  
2 Police in Swift Current on their arson  
3 investigation. That was this memo?

4 A It's my understanding it was a response to  
5 questions relative to their involvement with the  
6 RCMP in Swift Current. Whether or not there  
7 were formal complaints filed, I can't recall.

8 Q We heard that there was. So my question, did  
9 you find the complaint letter, because we don't  
10 have it?

11 A I can't recall, sir. I don't know if there was  
12 a complaint letter.

13 Q We are advised that there was by Anderson. So  
14 the question that I have is --  
15 THE COMMISSIONER: Mr. Gates.  
16 MR. GATES: I hesitate to interject,  
17 Mr. Commissioner, but my very clear recollection  
18 is that the evidence from the RCMP is that there  
19 was never a letter of complaint. There was an  
20 interim document where they asked some questions  
21 about what had transpired as between the  
22 Winnipeg Police Service and the Swift Current  
23 detachment, and that that was inadvertently,  
24 according to Swift Current, sent to the Winnipeg  
25 Police Service.



1 THE COMMISSIONER: Well, if I might just add my  
2 recollection, and this is probably more vague  
3 than most, but that Burton specifically said he  
4 did not complain, but that there was a memo, at  
5 least a memo, if not a letter, about a concern.  
6 But I thought that Burton went to some length to  
7 say that it was not a complaint.

8 MR. WOLSON: Tom Anderson, though, said that  
9 there was. But let me deal with it this way,  
10 whether Mr. Gates is right and there was an  
11 internal memo that went to the Winnipeg Police  
12 Service, let's assume that's the case. We've  
13 never seen that memo, and I would expect it  
14 would be on the file, but it's not there. Now,  
15 it's gone missing. Is that something that  
16 happens from time to time from files? And I'm  
17 not suggesting that it's an epidemic, but if the  
18 letter is not on the file, is that where it  
19 should be, or at least the internal memo?

20 THE WITNESS: I would assume that if it had  
21 something to do with this matter, it would be  
22 somewhere within the file, if it existed.

23 BY MR. WOLSON:

24 Q Okay. And Tom Anderson also said that he used  
25 some notes when he prepared the memo to

1 Inspector Johns. They are not on the file?

2 A Not that I'm aware of, sir.

3 Q No. Now, given that the concern that prompted  
4 this memo of Exhibit 6B, tab 10, to be prepared  
5 for Inspector Johns, given the concern was a  
6 lack of cooperation, it wasn't, to your  
7 knowledge, about disclosure to the Crown.  
8 That's not what the concern was, to your  
9 knowledge? It wouldn't have been that way from  
10 Saskatchewan. It would be their lack of  
11 cooperation; is that so?

12 A I would draw the conclusion based on the memo  
13 submitted by Sergeant Anderson to Inspector  
14 Johns, that it was as a result of concerns that  
15 they would have relative to interaction between  
16 the Winnipeg Police Service and the RCMP in  
17 Swift Current.

18 Q And if you look at the memo, again tab 6 -- or  
19 Exhibit 6B, tab 10, you have at least on three  
20 occasions, if you look first at page 1, the  
21 October 8, '91 memo, and this memo was written  
22 when disclosure was not in issue, 1991. If you  
23 look at the fourth paragraph which talks about  
24 the October 10th, 1990 revelation by Zanidean to  
25 Anderson and Paul regarding Zanidean's

1           credibility as a witness may be a problem as he  
2           committed arson in Swift Current. That's how  
3           the fourth paragraph starts?

4    A       That's correct.

5    Q       And then he indicates, Sergeant Anderson does,  
6           in the last three lines of that fourth  
7           paragraph,

8                        "Sergeant Paul and I immediately notified  
9                        division 43 Inspector Randy Bell..."

10          Right?

11   A       That's correct, sir.

12   Q                "...and the officer in charge of the  
13                    investigation, Staff Sergeant William  
14                    Vandergraaf..."

15   A       Yes, sir.

16   Q                "...and later Crown Attorney Bruce Miller."

17   A       That's what it reads, yes, sir.

18   Q       And then if you go to the second page of the  
19           memo, looking at the third paragraph, the one we  
20           looked at already, where Anderson explains to  
21           Burton the dilemma. And the dilemma was that if  
22           there was an outstanding investigation or  
23           charge, Zanidean wouldn't be able to get into  
24           the witness protection program. That was the  
25           dilemma that he's talking about. And just

1           before I go further, you are of that view as  
2           well? That was your understanding?

3    A       That was my understanding, sir.

4    Q       Yes. That if you have an outstanding charge or  
5           investigation, you're not going to get into the  
6           program?

7    A       That's correct.

8    Q       And that's the conversation where Burton says he  
9           was going to withdraw the pursuit completely of  
10          Zanidean. That's what I took you to a short  
11          while ago?

12   A       That's correct, sir, that's my understanding of  
13          it.

14   Q       And at the bottom of that paragraph,  
15                 "Following this conversation, Staff  
16                 Sergeant Paul and I notified Inspector  
17                 Johnson...",  
18          that would be D.K. Johnson?

19   A       That's correct, sir.

20   Q       "...Staff Sergeant Vandergraaf and Crown  
21                 Attorney, Bruce Miller."

22   A       That's correct, sir.

23   Q       And then at page 5 of that document, and to put  
24           it in context, this is after Anderson receives a  
25           call from Burton, or has a discussion with

1           Burton that this arrangement was not going to  
2           take place. At page 5, first paragraph,  
3                    "On the 24th of July '91, Paul and I met  
4                    with senior Crown Attorney Bruce Miller.  
5                    We briefed him completely."

6           Do you see that?

7    A       That's correct, sir, I see that.

8    Q       Even though this document was not prepared in  
9           terms of addressing disclosure, it appears in  
10           this document that Bruce Miller, in 1991, was  
11           apprised of the circumstances regarding Swift  
12           Current?

13   A       That's how I took it, sir.

14   Q       Now, Bruce Miller, you testified regarding your  
15           knowledge and relationship with Mr. Miller when  
16           you were here last time, some weeks ago. I take  
17           it you would say that Bruce Miller was a  
18           straight-up kind of guy?

19   A       Absolutely, sir.

20   Q       If he were dissatisfied with something that the  
21           police had done or failed to do, he would have  
22           told you?

23   A       I believe, based on the relationship I had with  
24           Mr. Miller, and Inspector Hall had with  
25           Mr. Miller, he would have been very frank and

1 open about any dissatisfaction. He would have  
2 no problem certainly voicing that to us.

3 Q So we know from the evidence at this inquiry  
4 that Sergeant Anderson said that he had  
5 completely informed Mr. Miller of the  
6 circumstances of Swift Current. We have also  
7 heard it from Sergeant Paul. We have also heard  
8 that Vandergraaf had those kinds of  
9 conversations. We know that Orr testified that  
10 on the 29th of May, when he got the ultimatum  
11 letter, when he was told of the ultimatum letter  
12 by Mr. Miller, he phoned Swift Current and found  
13 that Swift Current wasn't going to proceed  
14 against Zanidean. And he said the inference was  
15 he told Miller that.

16 When you spoke to Miller, you believed he  
17 was fully informed about Swift Current?

18 A That certainly was the conclusion that we drew,  
19 based on our knowledge of all this information  
20 prior to speaking to Mr. Miller. And then  
21 subsequently speaking to Mr. Miller, we formed  
22 that conclusion that he was fully apprised of  
23 all the details surrounding this matter.

24 Q And you may not have known about it at the time,  
25 but there are the Quinney letters. You were

1           aware of Quinney by name at least?

2    A       That's correct, sir.

3    Q       If you could go to exhibit 30C?

4    A       Yes, sir.

5    Q       And if you'd please look to tab 61?

6    A       I have it in front of me, sir.

7    Q       This is a letter from Mr. Quinney to Mr. Miller  
8           about a little more than a year before you saw  
9           Mr. Miller?

10   A       Yes, sir.

11   Q       And it's a discussion that Mr. Quinney is having  
12           with Mr. Miller where he's pointing out certain  
13           things. If you'd look at page 2, second  
14           paragraph, where Quinney is advising Miller of  
15           this.

16           "I would like to advise you that during the  
17           course of their investigation and dealings  
18           with this particular matter, the RCM Police  
19           indicate on the 16th of July, '91, Sergeant  
20           Anderson advised them that Zanidean had  
21           stated to him, after the murder trial, that  
22           if he was charged with the arsons in  
23           Saskatchewan, he would go to the media and  
24           state that he only told the Winnipeg Police  
25           Service what they wanted to hear regarding

1           the murder so that Driskell would be  
2           acquitted on appeal or a new trial  
3           ordered."

4    A     Yes, sir.

5    Q     So the so-called recantation is put to  
6           Mr. Miller through Quinney?

7    A     It appears to be, yes, sir.

8    Q     We also know that on the 24th of July, in the  
9           Anderson memo to Johns, Anderson and Paul at  
10          page 5 of that memo, that's 6B, tab 10, Paul and  
11          Anderson say that on the 24th of July, '91, they  
12          briefed Miller completely, including, you'll see  
13          from the previous page, the discussions that  
14          Anderson had with Burton on the 16th of July?

15   A     That's correct, sir.

16   Q     And in the Quinney letter of January of '92, in  
17          the second page, the last paragraph.

18                 "With respect to the arson in this  
19                 province, it seems clear that Mr. Zanidean  
20                 is of the view that he was granted immunity  
21                 from prosecution no matter exactly how this  
22                 came about."

23                 Do you see that?

24   A     Yes, sir, I see it.

25   Q     So Miller, a long time before you go to see him,



1 was apprised of this by Mr. Quinney?

2 A It would appear so, sir.

3 Q And then a further Quinney letter, this is at  
4 the next volume of 30, 30C?

5 THE COMMISSIONER: Next volume or next tab?

6 MR. WOLSON: Same volume, I'm sorry, 30C, tab  
7 69, pardon me. Tab 69, if you'd go to the third  
8 page?

9 THE WITNESS: Tab 69, sir?

10 BY MR. WOLSON:

11 Q Yes.

12 A Oh, I see there's another letter.

13 Q Go to the third page, you'll see a further  
14 Quinney letter on April 28th, '93?

15 A Yes, sir.

16 Q And that letter comes to, or at least it's dated  
17 just a few weeks before you see Mr. Miller on  
18 May 13th?

19 A That's correct, sir.

20 Q And that letter sets out in the first paragraph,  
21 "There was no immunity granted from  
22 prosecution in the Province of Saskatchewan  
23 as a result of our respective departments,  
24 arising out of a meeting of representatives  
25 from both provincial departments."

1 True?

2 A Sorry, sir.

3 Q First paragraph of the letter?

4 A That's correct, sir.

5 Q Page 1?

6 A I see it.

7 Q Now, immunity, true immunity is dispensed from  
8 the Justice Department, is it not, of a  
9 particular province?

10 A That is correct, sir.

11 Q And it appears clear in this letter that there  
12 was no justice-to-justice immunity?

13 A That's what it appears, sir. Yes, sir.

14 Q If you'd go to the bottom of page 1 of that  
15 letter, April 28th, '93.

16 "With respect...",

17 third paragraph,

18 "...to Mr. Zanidean's involvement in this  
19 matter, it was brought to our attention  
20 through materials compiled by the RCMP that  
21 Mr. Zanidean did testify. The materials  
22 disclosed a considerable amount of  
23 confusion as to whether or not Zanidean was  
24 told by the Winnipeg Police, to testifying  
25 or after his testifying, that the police in

1           Swift Current were now going to grant him  
2           immunity with respect to the arson in Swift  
3           Current."

4    A     Yes, sir.

5    Q     It talks of the police granting immunity?

6    A     That's correct, sir.

7    Q     Not the Province of Saskatchewan?

8    A     That's correct, sir.

9    Q     Then he indicates at page 2, top of the page,  
10           "The Winnipeg City Police investigator  
11           maintained that he did not tell Zanidean  
12           about the immunity until after Zanidean had  
13           testified."

14   A     Yes, sir.

15   Q     And that's, by the way, the evidence that we've  
16           heard from Anderson and Paul, Vandergraaf. So  
17           Mr. Miller is advised of this, we know from the  
18           evidence of Anderson and Paul and Vandergraaf,  
19           that he was advised of it before Mr. Zanidean  
20           was told, and that it was on his instruction to  
21           tell him after he testified, Mr. Miller's  
22           instruction. At least that's the evidence of  
23           Anderson, Vandergraaf and Paul. But in any  
24           event, Mr. Miller is also told of this by  
25           Mr. Quinney two weeks before you see him?

1 A That is correct, sir.

2 Q Two weeks before you see Mr. Miller?

3 A That is correct, sir.

4 Q And on the second page, second paragraph, there  
5 appears to be no doubt, reading from the second  
6 sentence in, however, that Zanidean certainly  
7 thought that he had been granted immunity from  
8 prosecution?

9 A That's correct, sir.

10 Q And the next paragraph, last sentence,

11 "It had nothing to do with granting of  
12 immunity by the Saskatchewan Department of  
13 Justice."

14 A Yes, sir.

15 Q And it's here, in 1993, the 28th of April, where  
16 in the last paragraph he talks about the fact  
17 that the only other accused was Zanidean's  
18 sister who allegedly set up the deal as between  
19 Zanidean and herself. Driskell's testimony  
20 would, of course, be only hearsay with respect  
21 to the involvement of the sister and her  
22 agreeing to pay the money to have her home  
23 burned. So what he says is, we don't think now  
24 in April 28th, '93, that we can prosecute the  
25 sister?

1 A That would appear to be the conclusion.

2 Q So you have raised with Mr. Miller what you have  
3 learned in your investigation, or in your  
4 review, right?

5 A Yes, sir.

6 Q You have raised with him things that weren't in  
7 the supps that you became aware of?

8 A Yes, sir.

9 Q And according to your report, you don't have to  
10 go to it, but I'm going to reference it. And  
11 the reference is volume 1 of 28A,  
12 Mr. Commissioner. And it's in the last  
13 paragraph of, it's tab 3 by the way, volume 1,  
14 tab 3.

15 THE COMMISSIONER: Okay. Page?

16 MR. WOLSON: Page 81. That's the review.

17 BY MR. WOLSON:

18 Q The last paragraph,  
19 "Miller told us he was satisfied that he  
20 and his prosecuting attorneys had been  
21 fully advised of all aspects of what  
22 Zanidean had told police investigators  
23 during the course of their investigation,  
24 including his involvement in the arson."

25 A That was the conclusion that we came to and that

1 is why we wrote those words.

2 Q Now, the only two revelations by Zanidean that  
3 he was involved in the arson, one October 10,  
4 when Zanidean tells Anderson and Paul that there  
5 may be a problem with his credibility because he  
6 committed an arson with Driskell?

7 A Yes, sir.

8 Q And the second disclosure of October 29, when he  
9 indicates that the motive for committing the  
10 arson was revenge?

11 A Yes, sir.

12 Q And when you were here last, about three weeks  
13 ago, what you said, and we don't have to go  
14 there but I'm going to reference it,  
15 Mr. Commissioner, volume 15 of the evidence,  
16 page 3490, line 17, you said in response to a  
17 question by Mr. Code:

18 "I certainly had a strong sense that  
19 Mr. Miller was certainly aware of the  
20 details of the Swift Current arson."

21 Do you stand by that?

22 A Absolutely, sir.

23 Q Now, knowing as we do today that, and you may  
24 not have known this at the time, you probably  
25 didn't, that Mr. Miller received the Quinney

1 letter of April of '93, April 28th, just two  
2 weeks before you saw him. And in that letter,  
3 Mr. Quinney tells Mr. Miller that Zanidean  
4 believed he was given immunity. We covered that  
5 a short time ago?

6 A Yes, sir.

7 Q And it also described, Quinney does, the way in  
8 which he was told that he was getting immunity.  
9 The Winnipeg Police told him after he testified?

10 A That's correct, sir.

11 Q Did Mr. Miller say to you, oh, by the way,  
12 Inspectors Hall and Ewatski, I received just  
13 recently a letter telling me about immunity and  
14 telling me the way that Mr. Zanidean was told of  
15 the immunity after he testified? Did he say  
16 anything to you that he was upset by this, or  
17 that he couldn't understand it, or that he had a  
18 problem with any of this?

19 A No, sir.

20 Q Did he make any complaints about Sergeant  
21 Anderson or Paul?

22 A Quite the contrary, sir. I believe he said they  
23 were very pleased with the conduct of the  
24 investigators.

25 Q Now, while it's always preferable, you would

1           agree, for matters to be written down in a supp  
2           or in notes, there is such a thing as oral  
3           disclosure that happens?

4    A       I could agree with that, sir.

5    Q       There is reference at this inquiry to Anderson,  
6           Paul and Vandergraaf disclosing matters to  
7           Mr. Miller regarding the Swift Current arson,  
8           from Mr. Orr. Were you aware that Mr. Miller  
9           was in discussion with one of his Crowns, Sid  
10          Lerner, regarding situations of immunity in  
11          Swift Current?

12   A       I don't recall, sir.

13   Q       And now, of course, you know the Quinney  
14          letters?

15   A       Yes, sir.

16   Q       One of the troubling areas in the notes of  
17          Inspector Hall, and if you'd go to, I think you  
18          have it open before you, volume 28B, which is  
19          your book of documents, 28B, volume 2. If you'd  
20          go to tab 5, please?

21   A       Yes, sir.

22   Q       These are the notes of your associate, Inspector  
23          Hall?

24   A       That's correct, sir.

25   Q       At page 1 of those notes it sets out the date of



- 1 May 13th of '93?
- 2 A Yes, sir.
- 3 Q Two days after you see Orr, and with your  
4 knowledge of what Anderson had told Inspector  
5 Johns?
- 6 A Yes, sir.
- 7 Q And then if you'd go three pages in, and you  
8 were questioned about this by my friend,  
9 Mr. Code, at page 570 in the right-hand corner?
- 10 A Yes, sir.
- 11 Q Are you with me there?
- 12 A Yes, I have it in front of me there, sir.
- 13 Q Top of the page, with -- I don't know whether  
14 that's with or in.
- 15 "In respect to the arson in Swift Current,  
16 there was no way...",  
17 and this is the interview with Miller,  
18 "...that Manitoba Justice could provide  
19 immunity for a crime out of the province."  
20 That's what he says?
- 21 A That's what's in front of me, sir, yes.
- 22 Q And that's a clear statement. It would be up to  
23 Saskatchewan Justice, right?
- 24 A That's how I would take it, sir.
- 25 Q And we know Saskatchewan Justice, from the

1           Quinney letter, didn't dispense immunity?

2    A       That's my understanding, sir.

3    Q       And anything less, if a policeman were to say to

4           another policeman, we're not going to lay a

5           charge, that's not immunity. It may be what's

6           being referred to is de facto immunity, but it

7           isn't true immunity?

8    A       Not true immunity, no, sir.

9    Q       And it's not binding?

10   A       It's my understanding it would not be.

11   Q       Winnipeg, going back to this note, WPD, Winnipeg

12           Police Department had informed the Justice

13           Department about the arson in Swift Current?

14   A       That's my interpretation of this too.

15   Q       And you were aware that that's true?

16   A       That's correct, sir.

17   Q       That is what you found out in your

18           investigations?

19   A       Yes, sir.

20   Q       It is an open investigation?

21   A       That's what it says, sir.

22   Q       It was open regarding Zanidean's sister?

23   A       That is my understanding, sir, yes.

24   Q       And then it says that no promises had been made

25           about the charge?

1 A That's what it says, sir.

2 Q But if I take you to your report, you amplify on  
3 that point. I take it the notes are just a  
4 guideline?

5 A Those were Inspector Hall's notes.

6 Q Let me take you to page 81 of your report. It's  
7 tab 3 of Exhibit 28B?

8 A I have it in front of me, sir.

9 Q On this particular point, what you note is,  
10 "He also stated the investigators had  
11 indicated they had not made any promise to  
12 Zanidean regarding immunity in return for  
13 his testimony."  
14 Last line page 81?

15 A Last line.

16 Q "He also stated the investigators had  
17 indicated..."  
18 This is Miller telling you what your  
19 investigators, Anderson and Paul, had told him?

20 A Yes, sir.

21 Q "He stated the investigators had indicated  
22 they had not made any promises to Zanidean  
23 regarding immunity in return for his  
24 testimony."

25 A That's correct, sir.

1 Q That's exactly what Sergeant Anderson had told  
2 this inquiry, not in return for testimony.

3 Now, it would have been clear from the  
4 Quinney letter that I took you to of April of  
5 '93, that Zanidean thought that he had immunity.  
6 That's what Quinney told Miller?

7 A Yes, sir.

8 Q It was clear there was no province-to-province  
9 immunity. We know that?

10 A Yes, sir.

11 Q It was clear that he was told, Zanidean was,  
12 after he testified that he would not be charged?

13 A Yes, sir.

14 Q And that Saskatchewan had told the officers  
15 that?

16 A Yes, sir.

17 Q Saskatchewan RCMP. And it was clear that this  
18 was an open investigation regarding others?

19 A Yes, sir.

20 Q So when we look at all of the parties involved,  
21 Mr. Miller knew about Swift Current from not  
22 just the Winnipeg Police Service, but from Orr  
23 and from Saskatchewan Justice?

24 A Yes, sir.

25 Q Now, you went to Swift Current after you spoke

1 to Mr. Miller?

2 A That's correct, sir.

3 Q I think you went around the 18th of May, about a  
4 week later or five days later?

5 A Somewhere in that time frame, sir.

6 Q And you talked to Burton?

7 A Yes, sir.

8 Q You learned information that differed from  
9 Anderson's position?

10 A Yes, sir.

11 Q And this inquiry has been told of those  
12 differences from Anderson and Burton. Now, I  
13 want to look at a couple of those differences.  
14 If you would hopefully have it open, Sergeant  
15 Anderson's account in his memo of October of  
16 '91, that's Exhibit 6B tab 10. That's in  
17 Anderson's book of materials, Anderson  
18 Vandergraaf, tab 10 of 6.

19 A I have it in front of me, sir.

20 Q If you look at page 2, the first paragraph.

21 "On October 30, 1990, I telephoned Burton.  
22 He confirmed he was in charge of the  
23 investigation. I discussed the situation  
24 with him and he indicated that the entire  
25 Zanidean family was being interviewed with

1           respect to the arson. He said there was no  
2           other evidence against Reath Zanidean at  
3           the time. Burton made a suggestion to  
4           which I readily agreed. He offered to  
5           delay their pursuit of Zanidean until after  
6           he testified at our murder trial."

7    A    Yes, sir.

8    Q    So the essence of that conversation in October  
9           was that Swift Current was going to withhold the  
10          investigation of Zanidean until after Zanidean  
11          had testified?

12   A    That would be the essence of it, yes, sir.

13   Q    Now, while you have that book open, if you'd go  
14          to the next tab of 6B, tab 11?

15   A    Yes, sir.

16   Q    Because in this, on tab 11, that's an internal  
17          memo by Mr. Burton, and the date should be  
18          January 9, '92?

19   A    Yes, sir.

20   Q    And this is his criticism or his response to  
21          Anderson's memo. If you'd look at page 2, and  
22          he writes this response again in January of '92,  
23          and he's told us that at that time he had his  
24          file available, because we know that  
25          subsequently much of the file has been destroyed

1 or is not available. And this is what Burton  
2 says about that phone call. Top of the page on  
3 the part that said,

4 "Note: As a matter of logical deduction,  
5 one would have to wonder why I would offer  
6 to delay our pursuit of Zanidean on the  
7 arson. I had no knowledge of the  
8 circumstances of the murder and would have  
9 no idea that pursuing him would jeopardize  
10 a murder prosecution."

11 Do you see that?

12 A I see that, sir.

13 Q And he's told this inquiry that there was no  
14 such agreement for him to withhold the  
15 investigation. That didn't happen. And you  
16 learned that from talking to him, because that  
17 was one of the major differences between the  
18 two?

19 A It was one of the points of disconnect, yes.

20 Q But you had occasion to see the Swift Current  
21 file in '93 when you were there?

22 A Yes, sir.

23 Q Parts that are now destroyed, that were  
24 available when Burton prepared his memo that I  
25 have just referred you to?

1 A Yes, sir.

2 Q In your report, the homicide report review at  
3 page 76, so that would be for the record 28A,  
4 volume 1, tab 3, this is what you write, you  
5 actually saw the file, last paragraph,

6 "According to the RCMP file, on

7 90-10-27...",

8 so there's an issue as to the date,

9 "...Sergeant Anderson spoke with Burton

10 advising him that Zanidean had admitted to  
11 arson."

12 Now, this again is what you saw from the Swift  
13 Current file?

14 A That's correct, sir.

15 Q "He also advised Zanidean was a  
16 witness...",

17 Anderson did,

18 "...in the execution of Harder and was  
19 asked if the RCMP to keep this information  
20 confidential...",

21 top of page 77,

22 "...and hold off their pursuit of Zanidean  
23 as it would endanger the Driskell  
24 prosecution. It is indicated Burton agreed  
25 to this..."



1           You see that?

2    A       I see that, sir.

3    Q       That's not what he says in his '92 memo?

4    A       There seems to be a contradiction there, sir.

5    Q       Yes. That's not what he told this inquiry. But

6           you saw the file?

7    A       That's correct, sir.

8    Q       That no longer exists today?

9    A       That's correct, sir.

10   Q       And that file did exist in '92, because you saw

11          it in '93, when he prepared his memo?

12   A       Obviously, sir.

13   Q       Now, the other, I think you referred to it as

14          disconnect, one of the other differences between

15          Anderson and Mr. Burton, go one tab back to tab

16          10 of Exhibit 6B, please?

17   A       Yes, sir.

18   Q       That is again Anderson's response to Inspector

19          Johns. About five lines from, it's the

20          paragraph that I've referred you to, the third

21          paragraph, in the middle of it.

22                 "I explained the dilemma and I believe he

23                 had already spoken to Orr. In any case, he

24                 gave the matter thought and he offered to

25                 withdraw their pursuit of Zanidean

1                   entirely."

2                   He disagrees with that in his report, but what  
3                   you saw in the Orr material that we discussed a  
4                   little while ago was within a week of Anderson  
5                   and Burton's conversation on April 5th, actually  
6                   the day before, we have learned that there is a  
7                   call between Upton and Orr, and then a further  
8                   call. And Upton, you learned, was the second in  
9                   command of Swift Current?

10          A        That's my understanding, sir.

11          Q        On April 12, and we covered this a while ago,  
12                   Upton tells Orr that they are not pursuing  
13                   Zanidean at all?

14          A        That's correct, sir.

15          Q        Similar to what I just referred you to of  
16                   Anderson's memo to Johns?

17          A        That's correct, sir.

18          Q        Yes. Now, when you talked to Miller, and then  
19                   later I know you talked to Mr. Dangerfield in  
20                   August of '93, some months later, did either one  
21                   of them tell you that there was a wall between  
22                   them? I'm not talking about an office wall, I'm  
23                   talking about a wall that would prevent  
24                   information flowing from Miller to Dangerfield?

25          A        I don't believe they told me that, sir.

1 Q And you as a police officer know, or would  
2 expect, that if information went to Mr. Miller  
3 that was pertinent to the prosecution, the  
4 expectation would be that it would be given to  
5 the prosecuting attorney?

6 A That would certainly be my assumption, sir.

7 Q And of course, we know from your interview of  
8 Miller and your report, at page 81 of your  
9 report, you don't have to go there, I'll just  
10 read it to you. Page 81, last paragraph. For  
11 the record, this is volume 1, tab 3, page 81.

12 "Miller told us he was satisfied that he  
13 and his prosecuting attorneys...",  
14 that would be Mr. Dangerfield, was the lead of  
15 the prosecution; right?

16 A Yes, sir.

17 Q "...had been fully advised of all aspects  
18 of what Zanidean had told the Winnipeg  
19 Police investigators including the arson."

20 A Yes, sir.

21 Q So it's contrary to there being a wall between  
22 the two of them, between Miller and Dangerfield.  
23 Miller tells you that what the police told him,  
24 in effect, was given to Mr. Dangerfield?

25 A I would agree with that, sir.

- 1 Q Now, you've known Mr. Dangerfield for a long  
2 time?
- 3 A Yes, sir.
- 4 Q He is a most senior prosecutor. We know that?
- 5 A Yes, sir.
- 6 Q You would agree with this, that he wouldn't be  
7 happy at all, and he would be very vocal if he  
8 thought that the police had withheld evidence  
9 from him?
- 10 A That would be very accurate, yes, sir.
- 11 Q Now, to withhold evidence would be to  
12 potentially sabotage that the case, wouldn't it?
- 13 A It certainly could be described that way, sir,  
14 yes.
- 15 Q You know Sergeant Anderson and you have been on  
16 the force for many years, he's retired now?
- 17 A That's correct, sir.
- 18 Q You would say of him, I take it, that he's an  
19 honest man?
- 20 A I would say he was extremely dedicated,  
21 committed officer to the Winnipeg Police  
22 Service.
- 23 Q A man of integrity?
- 24 A A man of integrity, and I have no reason to  
25 doubt his honesty and truth, yes.

- 1 Q You wouldn't ever expect that he would withhold  
2 evidence from the Crown?
- 3 A No, sir.
- 4 Q You and Inspector Hall interviewed  
5 Mr. Dangerfield on August 23rd of '93?
- 6 A That's correct, sir.
- 7 Q By that time you had known, without question,  
8 Sergeant Anderson's position because you had the  
9 memo?
- 10 A Yes, sir.
- 11 Q You had the perspective from Orr because you had  
12 interviewed Orr?
- 13 A Yes, sir.
- 14 Q And you had also been to Swift Current and  
15 interviewed Burton?
- 16 A That's correct, sir.
- 17 Q And you had seen the file?
- 18 A That's correct, sir.
- 19 Q I want to take you to your volume, volume two,  
20 28B, tab 4?
- 21 A Yes, sir, I have it in front of me.
- 22 Q Those are your colleague's, Inspector Hall's,  
23 that's his logbook or his notes?
- 24 A I believe those are entries from the logbook.
- 25 Q Okay. And if you'd turn, please, in the bottom

1 right-hand corner to 810?

2 A Yes, sir.

3 Q Now --

4 THE COMMISSIONER: Just bear with me for a  
5 moment.

6 BY MR. WOLSON:

7 Q By the time you saw Mr. Dangerfield in August of  
8 1993, we know that he had seen at least the  
9 first Quinney letter. You may not know that,  
10 but we know that at this inquiry. In the letter  
11 it talks about immunity. We were there earlier  
12 today. You recall that?

13 A Yes, sir.

14 Q That Zanidean was of the view that he had it?

15 A Yes, sir.

16 Q We know that he had written a response to some  
17 articles in the newspaper and had had a  
18 discussion with Sid Lerner regarding the  
19 articles that were critical of the Crown and the  
20 police. Had he had those discussions with  
21 Lerner before you saw them. And the third  
22 thing, we know that he had a pretrial before  
23 Justice Morse with Mr. Brodsky. And if you'd  
24 just look at that pretrial for a minute, you  
25 wouldn't have known about this because it's in

1 Brodsky's file. If you turn to Exhibit 30B?

2 A Yes, sir.

3 Q And if you'd go to tab 44?

4 A I have it in front of me, sir.

5 Q At the top, it should say May 24th, '91?

6 A Yes, sir.

7 Q It's a memo that Mr. Brodsky had dictated from

8 his being at the pretrial. If you go to the

9 first page, about halfway down the page where it

10 says,

11 "They are not prepared ..."

12 Do you see that?

13 A Yes, sir.

14 Q "...to involve themselves in the Swift

15 Current fire. That is another police

16 force."

17 So he's basically saying that that's Swift

18 Current?

19 A I would believe so, sir.

20 Q The RCMP were, advised according to

21 Dangerfield and Lawlor, by Lawlor in

22 Dangerfield's presence in the office of Mr.

23 Justice Morse that Zanidean probably set

24 the fire."

25 A I see that, sir.

- 1 Q "The RCMP chose to do nothing about it."
- 2 A I see that, sir.
- 3 Q If you go to the next memo, just a couple of  
4 pages in, May 27th, '91. Are you there?
- 5 A Yes, sir.
- 6 Q Second paragraph,  
7 "The Crown makes the point the RCMP...",  
8 the Crown being Dangerfield,  
9 "...makes the point that the RCMP in Swift  
10 Current were notified of the involvement of  
11 Zanidean and it's up to them to pursue or  
12 not pursue the investigation."
- 13 A I see that, sir.
- 14 Q "The Winnipeg Police can only make  
15 agreements with respect to the area they  
16 are responsible for."
- 17 A Yes, sir.
- 18 Q Now, let me say that by the time you saw  
19 Mr. Dangerfield, there is evidence that at least  
20 we have heard that he knows about Swift Current  
21 and the happenings in Swift Current, right?
- 22 A Yes sir.
- 23 Q It would appear that way from the memo?
- 24 A It would appear that way, yes, sir.
- 25 Q The George Dangerfield you know, if he were



1 given a wee bit of information, he would seek it  
2 out and find out the whole story?

3 A That's the Mr. Dangerfield that I know, yes,  
4 sir.

5 Q Yes. We know that near the end of May, prior to  
6 the trial, he had a confrontation with  
7 Zanidean's lawyer at the Public Safety Building,  
8 in which Zanidean's lawyer indicated that unless  
9 his demands are met, Zanidean won't be a  
10 witness?

11 A I'm aware of that, sir.

12 Q Again, the Dangerfield you know, if he were told  
13 of demands that Zanidean was making, he would  
14 find out what they were?

15 A I believe so, sir, yes.

16 THE COMMISSIONER: I think it's fair to say that  
17 he wouldn't be a willing witness, he would  
18 attend when subpoenaed.

19 MR. WOLSON: He'd have to, of course.

20 BY MR. WOLSON:

21 Q So with all this information, some of which you  
22 didn't know at the time, you go and you  
23 interview, you and Inspector Hall interview  
24 Mr. Dangerfield and Mr. Lawlor?

25 A Correct, sir.

1 Q And there's no question, Dangerfield is the lead  
2 here?

3 A That's correct, sir.

4 Q And again, given that there were no supplements  
5 regarding Swift Current, and given that you  
6 learned quite a bit in your review, you would be  
7 duty bound to, in trying to find out whether  
8 Dangerfield knew of all of what you learned, you  
9 would be duty bound to put them to him in some  
10 fashion, to have a meaningful discussion with  
11 him?

12 A We certainly wanted to fulfil our mandate, which  
13 included that aspect of it in terms of ensuring  
14 that police had supplied them with all the  
15 information.

16 Q Yes. And you wanted to know, given what you've  
17 learned, that Dangerfield know it at the time of  
18 the prosecution. That's what you wanted to  
19 know?

20 A Yes, sir.

21 Q And while the notes or the log is not anywhere  
22 near complete, you would agree with that, the  
23 notes or the log of the interview with  
24 Mr. Dangerfield, you haven't recorded everything  
25 that was said by any stretch?

- 1 A I think my testimony was it certainly was not a  
2 verbatim account of those meetings, yes.
- 3 Q But in trying to fulfil your mandate, you were  
4 duty bound to raise issues that you found out,  
5 to find out whether Dangerfield knew about them?
- 6 A That's correct, sir.
- 7 Q Yes. And what he said to you, and this is at  
8 page 810 of your volume 2, tab 4 -- tab 4, 810  
9 in the bottom right-hand corner.
- 10 A Yes, sir.
- 11 Q In the margin it says Monday, 93-08-23,  
12 August 23rd?
- 13 A Yes, sir.
- 14 Q "Meet with Crown Attorneys George  
15 Dangerfield and Gregg Lawlor, discuss the  
16 case."
- 17 Do you see that?
- 18 A Yes, sir.
- 19 Q "They are happy with the information  
20 supplied by the police."
- 21 A That's correct, sir.
- 22 Q And that is after you had this discussion with  
23 them about the things that you've learned. Did  
24 you know these things, you say to Dangerfield,  
25 you ask him that. And he indicates to you he's

1 happy with the investigation and what he was  
2 told?

3 A That was our conclusion to that, the interaction  
4 that we had with him, the discussion we had with  
5 him.

6 Q And they say about five or six lines into your  
7 note,

8 "They have absolutely no complaints with  
9 how the investigation was landed by the  
10 WPD."

11 A That's correct, sir.

12 Q It was obvious to you that they were aware of  
13 what you had learned in your review?

14 A That was our conclusion, that was our position,  
15 yes, sir, and still is.

16 Q What you said for the record at page, volume 15,  
17 page 3562, line 6, for the record.

18 " I can't remember the exact  
19 conversation...",  
20 this is in a discussion with my friend,  
21 Mr. Code,

22 "I can't remember the exact conversation,  
23 sir, but it certainly was, we formed the  
24 opinion that Mr. Dangerfield and Mr. Lawlor  
25 were certainly aware of all the aspects

1                   surrounding this investigation."

2     A     Yes, sir.

3     Q     And that's a matter that you say that is  
4           absolutely so?

5     A     That's correct, sir.

6     Q     And one troubling aspect of your interview with  
7           Mr. Dangerfield is at the bottom of page 810 of  
8           your interview, or the notes of your interview.

9            "In relation to any deals made with Reath  
10           Zanidean, they both emphatically state no  
11           deals were made or proposed."

12           Do you see that?

13    A     I see that, sir.

14    Q     But that's contrary to what you learned, what  
15           you know today from the letter of Quinney that  
16           Mr. Dangerfield saw before you met him?

17    A     It's contrary to that, yes, sir.

18    Q     Did he say to you, by the way, there is this  
19           Quinney letter, I don't know what the heck  
20           Quinney is talking about. He didn't say that,  
21           did he?

22    A     I don't recall that, sir.

23    Q     No. That's something you would have made a note  
24           of?

25    A     More than likely.

1 Q And that kind of comment is contrary to what you  
2 know from the disclosures to Mr. Miller from  
3 Vandergraaf, Anderson, Paul, Orr, Quinney, isn't  
4 it?

5 A Yes, sir.

6 Q What you have written in your report, for the  
7 record, you don't have to go there, Chief  
8 Ewatski, unless you want to, volume 1, 28A, tab  
9 3, in the bottom right-hand corner, 6,224 is the  
10 number. You've written this in the summary.

11 "A committee was struck by Chief Henry to  
12 review the file and allegations. After six  
13 months of assessing reports, transcripts,  
14 wire taps, interviewing civilian witnesses,  
15 police investigators, Crown Attorneys, the  
16 accused and private investigator, the  
17 committee is confident the investigation  
18 was conducted within acceptable police  
19 standards."

20 A We wrote that, sir, yes.

21 Q Including issues of disclosure to the Crown, you  
22 were satisfied with that?

23 A That would include that, yes, sir.

24 Q Now, I want to deal very briefly with your  
25 interview with Commission Counsel, and that's

1 volume 1, tab 1, exhibit 28A?

2 A Yes, sir.

3 Q And it's headed at page 7?

4 A Which tab, sir, again, sorry?

5 Q Tab 1?

6 A Yes, sir.

7 Q "New information discovered in review."

8 Do you see that --

9 A Yes, sir.

10 Q -- at page 7. If you go to the next page, page

11 8.

12 "Zanidean's apparent perjury regarding

13 Swift Current arson."

14 A Yes, sir.

15 Q And what you have here is,

16 "Ewatski knew that Miller was aware that

17 the RCMP believed Swift Current arson had

18 been an insurance fraud and not an act of

19 revenge as Zanidean had maintained in his

20 trial testimony."

21 Do you see that?

22 A Yes I do, sir.

23 Q There is no question that Miller knew of this

24 concern?

25 A There's no question, sir.

1 Q He learned of it from you, true?

2 A That's correct, sir.

3 Q He knew of it from the Quinney letters that we  
4 discussed a little while ago, in which perjury  
5 is suggested by Mr. Quinney?

6 A I'm assuming that he knew of it by that means  
7 also, sir.

8 Q You say in the next page,

9 "Although there was nothing new....",  
10 page 9, top of the page, third sentence in,  
11 "Although there was nothing new or  
12 startling in the Swift Current RCMP file  
13 with respect to the perjury issue, Ewatski  
14 agrees Miller may not have known all of the  
15 details of the Swift Current arson that  
16 they learned from their perusal of the RCMP  
17 file."

18 A That's correct, sir.

19 Q The RCMP didn't give Miller their investigative  
20 file, that's clear?

21 A Not that I'm aware of.

22 Q They didn't give the Winnipeg Police Service  
23 their investigative file. They gave it to you  
24 when you went there, but it wasn't provided to  
25 the Winnipeg Police?



- 1 A Not that I'm aware of, sir.
- 2 Q But what you are aware of, or you may not be I  
3 should say, and I'm just going to point this  
4 out; we are aware that Mr. Quinney on March 9,  
5 '92 sent to Mr. Miller a review that the RCMP  
6 criminal analysts had done, indicating that it  
7 might appear that the motive was financial and  
8 not revenge. You didn't know that when you  
9 wrote this report?
- 10 A I don't believe so, sir.
- 11 Q No. Page 9 of your summary, point number 3,  
12 immunity for Zanidean on the Swift Current  
13 arson.
- 14 A Yes, sir.
- 15 Q You are aware now that, there is an abundance of  
16 evidence that Mr. Miller knew that there was a  
17 deal or an arrangement made with Swift Current  
18 related to Mr. Zanidean after he testified?
- 19 A I'm aware of that now, sir, yes.
- 20 Q Point 4, Zanidean's June 20th, '91 call to  
21 Brodsky?
- 22 A Yes, sir.
- 23 Q In effect, what you learned is a recantation of  
24 sorts?
- 25 A Yes, sir.

1 Q Because at page 10, you actually referred to  
2 Zanidean's recantation threats, top of the page?

3 A Yes, sir, I see it.

4 Q Zanidean's threat that he would claim his  
5 testimony had been lies were new facts in the  
6 sense they weren't recorded anywhere else in the  
7 file, and there's no record in the file that  
8 they were being passed onto the Crown?

9 A There was no record in that file, no, sir.

10 Q You didn't have the Quinney letters?

11 A No, sir.

12 Q Because in the January 16th Quinney letter,  
13 exhibit -- you don't have to go there -- exhibit  
14 30C, tab 61, on the second page, Quinney advises  
15 Mr. Miller, and I read this to you earlier, of a  
16 recantation by Mr. Zanidean?

17 A Yes, sir.

18 Q So Mr. Miller knew at least of one recantation,  
19 according to Mr. Quinney?

20 A I am making that assumption, yes, sir, he would  
21 know about it.

22 Q Page 11 of your report, of your statement,  
23 Zanidean's benefits, point 6. The evidence was  
24 quite clear that it was Mr. Miller who was  
25 negotiating the benefits aspect from Justice?

1 A That's correct, sir.

2 Q So it's clear the Crown would have knowledge of  
3 that?

4 A It's clear the Crown would have knowledge of it,  
5 yes, sir.

6 Q If, as a final note, if you had found, given  
7 what we discussed yesterday, that Sergeant  
8 Anderson or Sergeant Paul or Sergeant  
9 Vandergraaf, or any of the members of the  
10 Winnipeg Police Service, had not disclosed  
11 pertinent information to the Crown, is there any  
12 doubt in your mind that you would have  
13 highlighted it and brought it to the attention  
14 of your chief?

15 A There is no doubt in my mind, sir, we would have  
16 done that.

17 Q It's totally consistent with you as a police  
18 officer over many years?

19 A We took the role of that review very seriously,  
20 sir, and wanted to ensure that we met the  
21 objective of the review, and certainly provided  
22 an accurate and honest report to our chief.

23 MR. WOLSON: Thank you. Those are my questions,  
24 Chief Ewatski. Thank you.

25 THE COMMISSIONER: Thank you, Mr. Wolson.

1 MS. CARSWELL: Mr. Commissioner, I notice it's  
2 six minutes till we reach the break time, I'm  
3 wondering if we could break now. I'll move my  
4 material and then I won't get two minutes in  
5 before we start.

6 THE COMMISSIONER: Yes.

7 MS. CARSWELL: Thank you.

8 THE CLERK: All rise.

9 (Proceedings recessed at 10:56 a.m. and  
10 reconvened at 11:13 a.m.)

11 THE CLERK: This Commission of Inquiry is back  
12 in session.

13 THE COMMISSIONER: Good morning, Ms. Carswell.

14 MS. CARSWELL: Good morning, Mr. Commissioner,  
15 thank you for the opportunity to move around my  
16 volumes. There are some documents I would ask  
17 that we enter now as exhibits. I am going enter  
18 them, Mr. Commissioner, with your acceptance in  
19 one block, and then I will refer to them later.

20 THE COMMISSIONER: Yes.

21 MS. CARSWELL: The first, for counsel to whom we  
22 distributed this, is the blue volume entitled  
23 Winnipeg Police Service, Chief of Police Jack  
24 Ewatski Book of Documents, it is blue.

25 THE COMMISSIONER: And Mr. Registrar, what

1 number is that?

2 THE CLERK: 43A, Mr. Commissioner.

3 (EXHIBIT 43A: Winnipeg Police Service,  
4 Chief of Police Jack Ewatski Book of  
5 Documents)

6 MS. CARSWELL: The second is the legal sized  
7 logbook actually that we've heard much about in  
8 this. This is the complete logbook, if that  
9 could be exhibit B, I believe.

10 THE CLERK: 43B.

11 THE COMMISSIONER: Is that the one that says  
12 recycled account books?

13 MS. CARSWELL: Yes, that's the cover page.  
14 You'll see, if you look down, there's a CR  
15 number, and then it says "Murder of Perry Dean  
16 Harder." The cover page of the logbook is used  
17 by the investigative team.

18 THE COMMISSIONER: That will be 43B.

19 (EXHIBIT 43B: Logbook, recycled accounts  
20 book)

21 MS. CARSWELL: Next, it's got a cover page on it  
22 from the Canadian Association of Chiefs of  
23 Police, you'll note it's resolutions adopted at  
24 the 101st annual conference, which you'll  
25 recall, Mr. Commissioner, is why Chief Ewatski

1           wasn't available to continue his evidence.  If  
2           that can be entered as C of this exhibit.

3           THE COMMISSIONER:  That will be 43C.

4                     (EXHIBIT 43C:  Canadian Association of  
5                     Chiefs of Police, resolutions adopted at  
6                     101st annual conference)

7           MS. CARSWELL:  And then finally,  
8           Mr. Commissioner, I would ask all counsel to  
9           make sure they had on hand further disclosure we  
10          had sent to Commission Counsel last week, that  
11          being policy of the Winnipeg Police Service.

12          You'll recall that I had indicated I would  
13          provide, and Mr. Giasson has been very kind to  
14          provide the registrar with copies so that they  
15          can be entered as exhibits.  This can be D.

16          THE COMMISSIONER:  Actually some reference was  
17          made by Mr. Olson to this?

18          MS. CARSWELL:  That's correct.

19          THE COMMISSIONER:  So that will become 43D.

20                     (EXHIBIT 43D:  Policy of the Winnipeg  
21                     Police Service)

22          MS. CARSWELL:  If at the beginning,  
23          Mr. Commissioner, if I can indicate that the  
24          exhibit book was prepared in anticipation that  
25          we would be examining Chief Ewatski the last

1 time, so I may move not sequentially in tabs and  
2 I apologize for that. We felt, as opposed to  
3 pulling it apart, and trying to redo it again,  
4 we would leave it as is.

5 THE COMMISSIONER: Not a problem.

6 BY MS. CARSWELL:

7 Q Chief Ewatski, we've heard much evidence, and I  
8 don't wish to be repetitive here, that you were  
9 tasked, along with Inspector Hall, for  
10 conducting a review of this investigation for  
11 Chief Henry; is that correct?

12 A That is correct.

13 Q And there were a number of newspaper clippings  
14 that were referred to by other counsel in their  
15 examination that lead to or at least prompted  
16 that calling of the review in your mind; is that  
17 correct?

18 A That's correct.

19 Q And if you can pull out what has just been  
20 entered as Exhibit 43, I believe A, the blue  
21 book that was provided for you. You take a look  
22 at tab 1?

23 A Yes.

24 Q These appear to be the memorandum from Chief  
25 Henry and to Deputy Chief Klippenstein in

1 relation to the setting up of the review; is  
2 that correct?

3 A That's correct.

4 Q And you would have had occasion to have these  
5 as, if I could call them initiating documents  
6 when you got going with the review?

7 A That's correct.

8 Q And in addition to those, there would have been  
9 meetings that we can see in the logbook, and I'm  
10 not going to take you to the specific examples,  
11 I don't think it's in issue, with Deputy Chief  
12 Klippenstein about the review and your mandate  
13 and manpower and other resourcing issues?

14 A That's correct.

15 Q Fairly early on in the review process, or after  
16 you've been tasked with the review, it became  
17 clear to you and the rest of your team, at that  
18 point I think it appeared to be only Inspector  
19 Hall, that you needed to do a broader look at  
20 the situation in order to answer the questions  
21 you had been asked by the Chief; is that fair?

22 A That would be a fair statement.

23 Q And you make reference to that. And again you  
24 don't need to look at it if you don't want to,  
25 but the reference is in the tab 1, your



1 statement to Commission Counsel at Exhibit 28A.  
2 It's at page 11, Mr. Commissioner, for your  
3 reference.

4 Mr. Wolson asked you whether this was a  
5 re-investigation of the homicide, and you  
6 responded to him that that was not. Mr. Lockyer  
7 asked you if this was an investigation to  
8 determine if Mr. Driskell had been wrongfully  
9 convicted. Was it that type of investigation?

10 A It was our viewpoint the review was an  
11 analytical review of the investigation itself  
12 within the mandate.

13 Q In your mind, what other steps, if any, would  
14 you have had to take in order to ascertain or in  
15 order to conduct a wrongful conviction review?

16 A Well, there would be a number of other steps  
17 that we would have taken if we were looking at  
18 it as an investigation, or a review of a  
19 wrongful conviction or a miscarriage of justice.  
20 Obviously, we would have to speak to many more  
21 people, including defence counsel for  
22 Mr. Driskell at the time, including Mr. Driskell  
23 in detail and such.

24 Q All right. Would you have had to have had  
25 access as well to the Crown's file as well as

1 defence counsel's file?

2 A If we were going to do a full comprehensive  
3 review with that type of mandate, yes.

4 Q And in fact, is that the type of review that was  
5 conducted in respect of Mr. Sophonow's case that  
6 we heard about you launching that review on  
7 behalf of the Winnipeg Police Services'  
8 concerns, or in particular your concerns about  
9 Mr. Sophonow's case?

10 A The type of review --

11 Q The review conducted looked at the Crown's file,  
12 defence files, those type of materials were  
13 available for that review?

14 A Yes.

15 Q We've heard much about the difficulties involved  
16 in this that ultimately lead to you being unable  
17 to formally interview the members. And again,  
18 Mr. Commissioner, for the purposes of completing  
19 the record, Chief Ewatski, if you could look at  
20 tab 2 of that blue book, you'll see that the  
21 correspondence is set out in there that deals  
22 with the dispute that arose between the Winnipeg  
23 Police Association over the investigation and  
24 the Winnipeg Police Service; is that correct?

25 A That's correct.

1 Q And it was as a result of that dispute, I'm  
2 going to call it, for lack of a better word,  
3 that your instructions to interview members  
4 changed?

5 A That is correct. We were instructed that we  
6 would not conduct formal interviews with the  
7 members.

8 Q One of the features I noted, Chief Ewatski, of  
9 your interviews with anyone in this matter,  
10 witnesses who you re-interviewed, and there's a  
11 list of those contained within your report which  
12 is at tab 3 and set out in the index, is there's  
13 a number of individuals that you took statements  
14 from and spoke to, and there were other people  
15 you chose not to. One of the questions that you  
16 appeared to consistently ask at the end or  
17 during the course of the interview was whether  
18 or not those individuals had anything new to  
19 offer in relation to Mr. Driskell.

20 Can you tell me why you were asking that  
21 question?

22 A Again, when we first did our initial review  
23 basically of the file, I think it became very  
24 imperative of us, to us to go back to Chief  
25 Henry and to say that we would need to expand

1 somewhat our mandate. Because our concern was  
2 that if the investigation hadn't been handled  
3 properly, if there were concerns that were being  
4 raised, we felt that it would be imperative and  
5 incumbent on us to find any other information  
6 that may have been out there, may have been  
7 either suppressed or not taken into account by  
8 our investigators. So it was imperative that,  
9 when interviewing these individuals, that we  
10 would first of all confirm with them that what  
11 they have told investigators during the course  
12 of the investigation and what they had testified  
13 to was accurate, and there was nothing left out  
14 of that, as well as giving them an opportunity  
15 to provide any other information that would  
16 assist, not only in our mandate, but also assist  
17 Mr. Driskell. Because there certainly were  
18 indications from some of these individuals that  
19 they felt that Mr. Driskell was unfairly  
20 convicted of this offence.

21 Q And ultimately, what was the result of you  
22 asking persons for additional information, or  
23 whether they could supply any additional  
24 information? For your reference, you refer to  
25 this at page 35 of your report, which is located

1 in Exhibit 28A at tab 3, if you need to turn to  
2 it to answer the question?

3 A What is the page of the review report, please?

4 Q I'm sorry, it's tab 28A?

5 A The page number of the review?

6 Q 35, you'll see it in the large paragraph at the  
7 end of the page --

8 A Yes.

9 Q -- after the bracketed sentence?

10 A I just wanted to make sure I'm being consistent.  
11 I said that nobody provided us, supplied us any  
12 information that would be contrary to what we  
13 believed the investigation uncovered.

14 Q All right. I take it, though, from that  
15 paragraph that you were supplied with a volume  
16 of information from Ms. Duncan, who is  
17 Mr. Driskell's investigator; is that correct?

18 A Yes, that is correct.

19 Q And what did you do with that information?

20 A We actually spent a significant amount of time  
21 with Ms. Duncan, interviewing her and discussing  
22 the documentation that she provided to us,  
23 painstakingly going through that documentation  
24 and talking with her, and exploring everything  
25 that she brought forward to us in terms of

1 theory or motive, and her revelations of what I  
2 would call her investigation into it. We spent  
3 a considerable amount of time with Ms. Duncan on  
4 that issue.

5 Q And I ask you this, Chief Ewatski, because it  
6 was suggested to you by Mr. Lockyer, and to some  
7 extent by Mr. Prober, and my learned friend  
8 Mr. Wolson has referred to that, that you went  
9 into this investigation with preconceived  
10 notions about the investigation itself and  
11 scepticism into whether or not the claims being  
12 held out in the media were accurate. Do you  
13 recall that?

14 MR. PROBER: Well, I object to that. I never  
15 suggested that to Chief Ewatski. At one point I  
16 suggested there may be gaps in his notes, for  
17 various reasons, but I never suggested that he  
18 went into the investigation with any  
19 preconceived notions. I have the transcript  
20 here, if necessary.

21 MS. CARSWELL: Well, I believe I said  
22 Mr. Lockyer and Mr. Prober, and I don't believe  
23 I was quite finished.

24 MR. PROBER: Oh, okay, sorry.

25 MS. CARSWELL: I was going to try and

1 distinguish between the issues that they raised.  
2 But they were issues that were, in my mind, and  
3 perhaps I'm wrong, similar in that they  
4 suggested that there wasn't an open mind, or  
5 that there was some view not to come to the  
6 truth in this matter held by the  
7 re-investigation team. And I was going to ask  
8 the Chief to comment on that.

9 MR. PROBER: I repeat my objection. There's  
10 nothing in the transcript, in my  
11 cross-examination, that would support what  
12 Ms. Carswell is saying. I was critical of the  
13 fact that there's certain gaps in the notes, and  
14 I put various options as to why those gaps may  
15 have existed, but that's all. I never suggested  
16 the Chief, then Inspector Ewatski, came to this  
17 investigation with a closed mind, not at all.

18 THE COMMISSIONER: Thank you. Thanks  
19 Mr. Prober. That's not inconsistent with my  
20 recollection, but --

21 MS. CARSWELL: No. And again, my point was that  
22 the Chief had withheld the review for the  
23 purposes of protecting members is part of a lack  
24 of open mind, is my theory, which is what I want  
25 him to comment on.

1 THE COMMISSIONER: Go ahead.

2 BY MS. CARSWELL:

3 Q Chief, you've heard what I'm now in essence  
4 asking you to comment on?

5 A Well, I certainly think that we demonstrated the  
6 fact that we did not go into this review with a  
7 closed mind, but rather an open mind, by our  
8 actions that we took relative to going beyond  
9 the initial mandate, seeking further resources  
10 from the Chief of the day, and making a point of  
11 speaking to individuals and giving them an  
12 opportunity to provide us with any evidence, any  
13 sliver of evidence that would support some of  
14 their feelings and thoughts about Mr. Driskell,  
15 including Ms. Duncan, who certainly supplied the  
16 majority of that. Again, we spent a  
17 considerable amount of time with the information  
18 that she provided us, and going through her  
19 theories and all the other aspects of her  
20 investigation. If we were coming in with a  
21 closed mind, we certainly wouldn't have gone to  
22 that extent.

23 Q And I would suggest to you that your report, and  
24 again you can go to these particular pages, but  
25 just for the purposes of the record, sets out a



1 number of things which suggests you were trying  
2 to be frank. In particular, again, this is  
3 Exhibit 28A, tab 3. At page 3 you presented to  
4 the executive of the day the fact that you might  
5 carry baggage, which could be then later used to  
6 suggest that your objectivity could be attacked?

7 A That's correct. We wanted to make sure that the  
8 Chief certainly had a good understanding of our  
9 background and involvement with any of the  
10 officers who were involved in this.

11 Q Comments at page 34 with respect to your  
12 impressions of Mr. Zanidean's lack of candor,  
13 I'll call it, and the fact that he is a  
14 dangerous witness --

15 A That was certainly, you know, clearly laid out  
16 for the Chief in our review, our concerns.

17 Q At page 76 the, as you've called it, confusion  
18 in relation to whether or not there was immunity  
19 in relation to the Swift Current arson for  
20 Mr. Zanidean?

21 A Again, these were our observations based on a  
22 review of material, our interview with different  
23 people, including the RCMP in Swift Current.

24 Q At pages 78 and 79, the two versions of events  
25 that we have heard much about between Sergeant

1 Anderson and Constable Burton regarding their  
2 interactions, and the results of those  
3 interactions?

4 A Again, we certainly wanted to lay out everything  
5 that we had come across during the course of our  
6 review to Chief Henry.

7 Q And then finally, one example that Mr. Lockyer  
8 talked about, and that's at page 95 in relation  
9 to the Kara brothers --

10 A Yes.

11 Q -- and your finding that they were honest, hard  
12 working individuals. And to some extent you  
13 support some of the concerns that they raise in  
14 relation to contact they had with police, or at  
15 least raise questions about it?

16 A We certainly made the observations that there  
17 were concerns about the interaction they had  
18 with members of the police department.

19 Q And would it be fair to say that your response  
20 to Mr. Lockyer, which is located at page 3633 of  
21 the transcript, is that the investigation, I  
22 believe I took it down as "is what it is." That  
23 was the attitude that you went into this review  
24 with; would that be fair?

25 A Absolutely. We certainly laid out everything

1           that we uncovered during the course of our  
2           review, laid it out in the review report for the  
3           Chief.

4       Q     Would it be fair to say your review isn't a  
5           conclusive document, that there are questions  
6           left open in it, that there are things that you  
7           would have liked to do that you weren't able to  
8           do?

9       A     That would be a fair statement.

10      Q     Did you receive any instructions from the then  
11           executive of the day to follow up on any of the  
12           questions that were left open in this review?

13      A     I can't recall what type of dialogue we may have  
14           had with the executive subsequent to it.

15      Q     Was there any investigation done by you after  
16           you completed this review on the same matter?

17      A     No.

18      Q     There was some question, or at least some  
19           question I believe Mr. Gates mostly cleared up,  
20           in relation to whether or not you had the  
21           ability to access the member's notes during the  
22           course of your review. And that was an area  
23           that Mr. Olson also asked some questions on  
24           yesterday. If I could refer you please to the  
25           book that we have just filed, the blue book, at

1 tab 3?

2 A Yes.

3 Q And you'll see that the first two documents in  
4 that book are interviews that you conducted  
5 first with Sergeant Ron Oliver, and then with  
6 Sergeant Robert Marshall. The first is a two  
7 page document and the latter a three-page  
8 document?

9 A Yes.

10 Q Do you recognize those?

11 A Yes, I do.

12 Q Now, if you'll turn to the second page of  
13 Sergeant Oliver's interview? I can take you to  
14 both, but I don't think I will need to. After  
15 the signature of Inspector Hall, can you note  
16 the first line where it appears to be almost a  
17 postscript after the signature?

18 A Yes, it says that Sergeant Oliver turned over  
19 his notebooks to the writer and Inspector  
20 Ewatski.

21 Q All right. So was it then the plan, and you can  
22 see if you wish, if you turn to the interview of  
23 Sergeant Marshall, there is a similar entry at  
24 the last paragraph. It says, after the  
25 interview was concluded, Sergeant Marshall left

1 one black police notebook with us to review.

2 Was that the tact you were planning to  
3 take, because we know these interviews were  
4 conducted before the instructions came to cease  
5 interviewing members formally?

6 A Our operational plan was to interview these  
7 members, to tape-record our interviews with  
8 these members, and to have them produce and turn  
9 over their notebooks to us, as part of that  
10 formal interview process.

11 Q Taking you back just generally to that time  
12 frame, I understand that notebooks were  
13 retained -- although they were the property of  
14 the Winnipeg Police Service, who retained the  
15 notebooks?

16 A The individual officers retained their notes and  
17 they were instructed to retain them in a  
18 condition that would be suitable for the use of  
19 them at subsequent times.

20 MS. CARSWELL: And Mr. Commissioner, I'm not  
21 going to ask the witness to go here, but if you  
22 look at exhibit 43D, the training material that  
23 we've put at tab 3 of that exhibit confirms that  
24 that, in fact, was what was taught to recruits  
25 at the time, that they were responsible to

1 retain their own notebooks, and that training  
2 has later changed. And we provided a synopsis  
3 of training throughout a number of points  
4 between then and now in relation to notebooks.  
5 So I'm not going to ask the Chief to go to it  
6 because it's in the written record at tab 3.

7 BY MS. CARSWELL:

8 Q Was any copy of notes at that time retained in  
9 the file, in the investigative file that was  
10 held either in BPR, the Bureau of Police Records  
11 for the record, or in the divisional file?

12 A No, there were not.

13 Q And I'll get into changes that have been made  
14 towards the end in relation to this.

15 Certainly, there were individuals you've  
16 indicated that you wanted to interview but that  
17 you could not in this process; is that correct?

18 A That's correct.

19 Q And when you started the process, we have  
20 already referred to a number of those sheets  
21 that you prepared, Mr. Wolson had you look at  
22 Mr. Miller's sheet this morning. There were a  
23 number of those sheets made up. Some of them  
24 have been entered at exhibit 28A on tab 7, and  
25 others have been entered in our material, the

1 blue book at tab 3. If you can take a look, I  
2 have included some others for your reference,  
3 following the interview?

4 A Yes.

5 Q And if I understood you correctly, these would  
6 be documents that both you and Inspector Hall  
7 would have access to, or the ability to add  
8 questions to?

9 A I believe it was sort of a joint effort in terms  
10 of formulating the summary, as well as  
11 formulating questions.

12 Q And those questions would have been made as you  
13 reviewed the file, correct?

14 A That's correct.

15 Q And in preparation for potentially speaking to  
16 the individuals?

17 A That was the intent.

18 Q Were they ever added to later, after you had had  
19 an interview with another person where a  
20 question was raised in your mind. Do you  
21 recall?

22 A I don't recall if these were added to subsequent  
23 to that, but if during the course of an  
24 interview, if another person would bring  
25 something forward that would require us to go

1 back to another individual, we certainly would  
2 do that, but I don't think it would have been  
3 documented like that.

4 Q All right. When we went through the disclosure,  
5 Chief, would it surprise you that -- you appear  
6 to have lettered a number of these -- that you  
7 had letters going up to EE of people that you  
8 had question sheets for involved in this matter;  
9 would that surprise you?

10 A That wouldn't surprise me. There were a number  
11 of sheets that were produced.

12 Q There were a number of people that were  
13 important to you, I suggest, or important to the  
14 review, that you were unable to review. And  
15 perhaps we can deal with them in some order.  
16 And the first would be Mr. Zanidean; is that  
17 correct?

18 A That's correct.

19 Q We've heard some evidence about your attempts to  
20 interview Mr. Zanidean, and you talk about that  
21 in your statement. But perhaps you can describe  
22 for the Commissioner the lengths you went to, to  
23 try and get to speak to Mr. Zanidean. And those  
24 attempts are laid out, if you take a look at the  
25 logbook that's been entered as exhibit B, at



1 pages 30 to 35. And is also laid out in the  
2 report at tab 83, as well as your own notes?

3 A We certainly went to great lengths to facilitate  
4 an interview with Mr. Zanidean. It started off  
5 by us driving out to the place where he was  
6 residing, and developing a strategy to try to, I  
7 guess, give us an advantage to be able to fulfil  
8 that objective of speaking with him, because of  
9 our concerns and what we had understood about  
10 him. I spoke with Mr. Zanidean a considerable  
11 amount of time on different occasions while we  
12 were out in that location, Salmon Arm, British  
13 Columbia, and along with speaking with his  
14 counsel, trying to facilitate a meeting with  
15 him. I think we went to extraordinary lengths  
16 to try to have that interview, have that meeting  
17 with him, which never did occur.

18 Q And ultimately you, in your statement to  
19 Commission Counsel, described that as a bit of a  
20 defeat. And can you explain why you felt that  
21 way?

22 A Well, we certainly realized that it would be  
23 important, very important for us to speak to  
24 Mr. Zanidean, as a result of his role in this  
25 matter, as a result of our observations from the

1 file and from his testimony. We felt that he  
2 would be a key person to speak with. And I  
3 guess we prided ourselves on the ability to be  
4 able to not only locate some of these witnesses,  
5 but also to be able to secure their feeling of  
6 comfort or level of comfort to speak to  
7 Inspector Hall and myself, whether it be the  
8 Kara brothers or Mr. Gumieny. You know, all of  
9 them, I think many of them felt somewhat  
10 uncomfortable speaking to members of the  
11 Winnipeg Police Department. And we developed a  
12 strategy that we thought was sound, to try to  
13 bring that level of comfort to Mr. Zanidean. We  
14 certainly spent a lot of time trying to explain  
15 what our role was, what our mandate was, what  
16 our goal was. And when we were unable to do so,  
17 it was not only frustrating, but I would  
18 classify it as a bit of a defeat in our  
19 strategy.

20 Q Also something that left you with questions that  
21 you were unable to answer?

22 A Absolutely.

23 Q Would that be fair?

24 A Absolutely.

25 Q There were other individuals who declined to be

1 interviewed by you; is that correct?

2 A There were a small number of individuals that  
3 declined to be interviewed, yes.

4 Q You indicated earlier that you didn't have the  
5 opportunity to have a formal interview of Mr.  
6 Driskell as well?

7 A I wouldn't call it a formal interview. We were  
8 put in a position to have discussion with  
9 Mr. Driskell, in the company of Ms. Duncan and  
10 counsel.

11 Q And that was at the one meeting at the Stony  
12 Mountain Institution in August?

13 A That is correct.

14 Q During that meeting which is --

15 MR. LOCKYER: I'm not quite sure what my friend  
16 means by formal meeting. He met with

17 Mr. Driskell for four hours. It strikes me --

18 MS. CARSWELL: My words are my words, Mr.

19 Commissioner.

20 MR. LOCKYER: I don't know what formal means, or  
21 informal. It was a meeting, it was taped.

22 THE COMMISSIONER: Just while we have this  
23 little interlude, I'm not sure if the issue of  
24 the police notebooks and Chief Ewatski's access  
25 to them is significant or a relevant issue or

1 not, but I must say, I'm still not really clear  
2 on that. The position, as I understand it, is  
3 that they all are, or were at that time in 1993,  
4 the property of the Winnipeg Police Service,  
5 but, and it's the "but" I don't understand. Not  
6 that anybody said "but," but you obviously  
7 didn't have access?

8 THE WITNESS: That is correct, Mr. Commissioner,  
9 the officers were in possession of their own  
10 notebooks.

11 THE COMMISSIONER: Yes.

12 THE WITNESS: And we were not given authority by  
13 the Chief to order the officers to turn those  
14 notebooks over to us.

15 THE COMMISSIONER: Right, okay.

16 THE WITNESS: Which could have been done.

17 THE COMMISSIONER: Okay. Thank you.

18 BY MS. CARSWELL:

19 Q During your meeting with Mr. Driskell and his  
20 counsel, did counsel ever suggest that they were  
21 willing to allow you to examine that file to  
22 ascertain whether defence had everything from  
23 the police file?

24 A I don't believe so.

25 Q And that meeting is set out at tab 8,

1 Mr. Commissioner, Exhibit 28A. And again, I  
2 don't want to be repetitive. You will recall  
3 that during your examination, both by Mr. Code,  
4 as well as by other counsel, you were taken  
5 through a number of items that were designated  
6 as new in your interview. Would it be fair to  
7 suggest the context was how that was organized  
8 during the interview?

9 A That would be fair.

10 Q And that in some of those cases, new related to  
11 new information to the Winnipeg Police Service,  
12 but not necessarily information that was new to  
13 everyone involved in this matter. Would that be  
14 fair?

15 A That would be a fair statement, yes.

16 Q And I'm going to take you through some of those  
17 items now, Chief Ewatski, in order to place them  
18 into context. And Mr. Wolson has done some of  
19 that in relation to a few items this morning,  
20 and I will try not to repeat what he's done.  
21 I'm sure you'll be pleased to know, I'm not  
22 going to ask you questions about the Crime  
23 Stoppers information, that you have acknowledged  
24 I think four or five now, that should have been  
25 turned over and explained. So I will leave you

1 not to fall on your sword on that one again.

2 With respect then to the what's been called  
3 the Zanidean -- I am going to lump the Zanidean  
4 matters together as well, the Zanidean perjury  
5 in relation to the Swift Current arson,  
6 Zanidean's request for immunity benefits in  
7 relation to the charge, as well as financial  
8 benefits requested by Mr. Zanidean. If you  
9 could keep those three things in mind as I ask  
10 you questions.

11 If you could turn to tab 6 of Exhibit 28A,  
12 please, there are notes, those are your notes of  
13 your meeting with Mr. Miller.

14 THE COMMISSIONER: Actually, it will be 28B.

15 MS. CARSWELL: I'm sorry, 28B, I misspoke.

16 Thank you, Mr. Commissioner, tab 6.

17 THE WITNESS: Yes, I have it in front of me.

18 BY MS. CARSWELL:

19 Q All right. And it notes that the meeting starts  
20 at 11:30, and your notes go on for a number of  
21 pages. And what I'd like you to do, just to put  
22 some context surrounding this, is if you could  
23 go through and read those notes, because there  
24 have been a number of suggestions that the notes  
25 are deficient in ways, or not inclusive. So if

1           you could just read them so we can have them in  
2           their entire context, that would be helpful.

3           And I won't mention your handwriting.

4       A     I will mention it, you'll have to bear with me,  
5           Mr. Commissioner, I may stumble over some of  
6           these words.

7           THE COMMISSIONER: You mean you have trouble as  
8           well?

9           THE WITNESS: Occasionally.

10                   "Thursday, the 13th of May 1993,  
11                   11:30 a.m., attended to Woodsworth  
12                   Building, Criminal Prosecutions. Met with  
13                   Bruce Miller regarding Justice Department's  
14                   involvement with Ray Zanidean. Explained  
15                   our mandate to him about this review.  
16                   Explained that after reviewing the files  
17                   concerning Zanidean, we had concerns about  
18                   his testimony in regards to the fact that  
19                   he may have perjured himself when he  
20                   testified about the Swift Current arson as  
21                   an act of vengeance against his sister."

22           When there's a hyphen, Mr. Commissioner, in  
23           front of the words, this would be Mr. Miller  
24           saying something to us, not verbatim, but  
25           certainly a summary of what he said.

1           So he would say,  
2                 "Tells us that Saskatchewan Justice thought  
3                 that Driskell's version of the arson  
4                 supported him as compared to Zanidean. He  
5                 discussed this with George Dangerfield, who  
6                 felt that this probably wouldn't adversely  
7                 affect Zanidean's credibility due to the  
8                 corroboration of Gumieny regarding a  
9                 meeting with Driskell. Says that if  
10                Zanidean did perjure himself in this way  
11                that what he said was not related to the  
12                facts of the murder case and wouldn't be  
13                fatal. We discussed this aspect including  
14                how we should handle Zanidean if we have  
15                suspicions that he may have perjured  
16                himself. Says that our main mission  
17                appears to..."

18           THE COMMISSIONER: I'm sorry, what was the first  
19           word? Did you say "does"?

20           THE WITNESS: Says.

21           THE COMMISSIONER: "Says," I'm sorry.

22           THE WITNESS: "Says that our main mission  
23                 appears to be seeking out the truth of the  
24                 matter. And if a prosecution against  
25                 Zanidean for perjury would be lost, so be



1           it. Says that the chances of prosecuting  
2           Zanidean for perjury based on these facts  
3           were slim at best. Discussed what impact  
4           this may have in an inquiry if we did not  
5           pursue perjury aspect. Stated that we are  
6           damned if we do or if we don't. Could be  
7           accused of purposely getting him to remain  
8           silent by charge and cautioning him.  
9           Discussed what police told Justice  
10          Department about the arson investigation in  
11          Swift Current."

12          THE COMMISSIONER: I wonder if you can just stop  
13          there? I wonder if you can go back to the  
14          second last paragraph? Could be --

15          THE WITNESS: Accused of purposely getting him  
16          to remain silent by charge and cautioning him.

17          THE COMMISSIONER: Okay, all right.

18          THE WITNESS: Just finishing up that page.

19                 "Discussed what police told Justice  
20                 Department about the arson investigation in  
21                 Swift Current. They were made aware of all  
22                 known details, that the investigation was  
23                 open, that no deals were made or promises  
24                 made about this charge. Later learned  
25                 through Saskatchewan Justice that they were

1 not going to pursue Zanidean due to the  
2 confusion that arose between the RCMP and  
3 WPD in regards to what Zanidean may have  
4 been told and when. There was no approach  
5 by the Manitoba Justice to Saskatchewan  
6 Justice in terms of seeking immunity from  
7 prosecution. Thinks that Saskatchewan  
8 justice advised RCMP that files should be  
9 closed. Discussed Zanidean's compensation  
10 agreement. Given \$20,000. No promises of  
11 immunity. Can supply us with a copy of  
12 termination letter. Discussed what avenues  
13 Greg Brodsky may have to get a review in  
14 court. Has various avenues but all have  
15 limitations. Would need to provide fresh  
16 evidence to support claims. Discuss the  
17 Justice Department's review of this file as  
18 described by the media. Says that their  
19 review is not quite finished yet. Would be  
20 interested in what police learned from  
21 their review. Discussed Driskell's appeal  
22 to the Court of Appeal. Does not know the  
23 grounds for appeal. Crown was not asked to  
24 speak on appeal. "

25 And that concludes the notes made as a result of

1 the interview we had with Mr. Miller.

2 BY MS. CARSWELL:

3 Q All right. And you've already been taken to the  
4 list of questions that you had for Mr. Miller,  
5 and I'm not going to do that again. Those are,  
6 for the record, at Exhibit 28B, tab 7, page 197.

7 Those questions, as my learned friend  
8 pointed out, indicated that there was  
9 information exchanged, or at least an intent to  
10 ask about what police had provided to Justice in  
11 relation to the Swift Current arson. Would that  
12 be fair?

13 A That would be fair.

14 Q If I could take you now to, and again this is  
15 one of the things that's going to be out of  
16 order in the book I have provided. At tab 5,  
17 there are some transcripts of telephone  
18 conversations between Inspector Hall and a  
19 number of people. And I'd ask you to turn to  
20 the one at page 31, and this is a telephone  
21 conversation between Inspector Hall and  
22 Mr. Miller?

23 A I have it in front of me.

24 THE COMMISSIONER: I'm sorry, Ms. Carswell, I  
25 was writing some notes. The tab?

1 MS. CARSWELL: The tab is number 5 in the blue  
2 book, at page 31.

3 THE COMMISSIONER: Okay.

4 BY MS. CARSWELL:

5 Q And if you can see there, Inspector Hall is  
6 having a conversation with Mr. Miller, and it  
7 goes into about -- you'll see there's.

8 "Miller: What?

9 Hall: I don't know why, I mean, Zanidean  
10 has made a comment to them, 'I burned the  
11 house down,' right?

12 Miller: Right.

13 Hall: He tells everyone, or our guys tell  
14 their guys..."

15 They are talking about conversations between the  
16 Winnipeg Police Service and the RCMP,

17 'Zanidean burned the house down.'

18 Miller: Right.

19 Hall: He tells them the reason he burned  
20 the house down is because he has a vendetta  
21 against his sister.

22 Miller: Yeah, they believe that."

23 So certainly there were also specific  
24 discussions about that information, those two  
25 facts that were missing from the supplemental

1 reports, between Inspector Hall and Mr. Miller,  
2 at this one juncture in the course of the  
3 review; would that be fair?

4 A That is fair, yes.

5 THE COMMISSIONER: Can you just wait for a  
6 second?

7 MR. ABRA: I'm kind of confused what  
8 Ms. Carswell referred to as supplementary report  
9 between Hall and Miller. I don't know what  
10 she's talking about.

11 MS. CARSWELL: No, I didn't.

12 MR. ABRA: That was the expression that was used  
13 "supplementary report." Supplementary reports  
14 are police reports. I know of no police report  
15 between Hall and Miller.

16 MS. CARSWELL: I don't believe that's what I  
17 said. I said these two facts were the two facts  
18 that have been indicated to be missing from the  
19 supplementary reports. The admissions, and  
20 Mr. Code, I believe has my point, they are the  
21 admissions Mr. Zanidean makes to Anderson and  
22 Paul that are not contained in their  
23 supplemental reports. The October 10th, and  
24 what I said was, they are mentioned --

25 MR. ABRA: Three years later.

1 MS. CARSWELL: -- to Miller.

2 MR. CODE: I think it's safe to say Mr. Abra  
3 just missed the "not." She said they are not in  
4 the supplementary report.

5 THE COMMISSIONER: Well, I --

6 MS. CARSWELL: You missed the "not" as well?

7 THE COMMISSIONER: Let me say I wasn't clear on  
8 exactly what it was you were saying.

9 MS. CARSWELL: All right. I'll try and do  
10 better. Thank you, Mr. Code, I appreciate that  
11 small amount of support.

12 MR. PROBER: I heard the 'not' too.

13 MS. CARSWELL: Thank you, Mr. Prober.

14 THE COMMISSIONER: The ayes have it.

15 MS. CARSWELL: I'm not sure there's a final  
16 decision, but I'll take their advice and try and  
17 keep my voice up.

18 THE COMMISSIONER: Okay.

19 BY MS. CARSWELL:

20 Q When you look at, going to the questions you had  
21 prepared for Mr. Miller at tab 7 of Exhibit 28B,  
22 you have a reference to Mr. Quinney there. And  
23 that's in one of the bullet points my learned  
24 friend Mr. Wolson referred you to this morning.

25 A That's correct.

1 Q Had you ever met Mr. Quinney before then?

2 A Or subsequently have not, never met the man.

3 Q It's likely then that, as Mr. Wolson says, Mr.  
4 Quinney's name comes out of Sergeant Anderson's  
5 reports; would that be fair?

6 A I would make that assumption that's where we got  
7 that name.

8 Q And for the record, that is at Exhibit 6A, tab  
9 10, page 3.

10 THE COMMISSIONER: Yes.

11 BY MS. CARSWELL:

12 Q Certainly all of these things, as Mr. Wolson  
13 said, were in your mind when you spoke to  
14 Mr. Miller. Would that be fair?

15 A Absolutely.

16 Q If I can take you then to exhibit 28A, tab 3,  
17 page 81. This is your review report?

18 A Yes, I have it in front of me.

19 Q Okay. You talk in both the review report and  
20 you've discussed in evidence a confusion that  
21 arose between the Winnipeg Police Service, the  
22 RCMP, over whether or not Zanidean was to be  
23 offered immunity, whether it was immunity,  
24 whether it was de facto immunity for the  
25 purposes of these questions are not important.

1 But certainly your view was that when you  
2 finished the review, there was confusion between  
3 the various agencies about what offer had been  
4 made and even when that offer had been made.  
5 Would that be fair?

6 A That's fair, that's how we described it.

7 Q And to take you to a number of documents, some  
8 which Mr. Wolson has already taken you to, but  
9 in our material they are all located at tab 6 of  
10 the blue book?

11 A Yes, I have it in front of me.

12 Q Yes. And we've tried to put them in  
13 chronological order so we won't be jumping from  
14 book to book. The first is the letter of  
15 January 16th of 1992. And we've heard evidence  
16 at the inquiry from Sergeants Anderson and Paul  
17 that they believe that their last dealings with  
18 Mr. Zanidean were in June, in the hotel room, at  
19 the time there was what's been described as the  
20 blow-up in the hotel room?

21 A I accept that.

22 Q And accepting that, if you turn to page 2 of  
23 Mr. Quinney's letter, he lays out that Sergeant  
24 Anderson indicated that Mr. Zanidean made a  
25 threat to recant his evidence, to go to the



1 media?

2 A I see that.

3 Q Do you recall the context of the threat that  
4 Sergeant Paul put in his report. And that  
5 threat was, it's at tab, I believe, 9 of your  
6 second book, 28B. 28B, in the last large  
7 paragraph in the page it says,

8 "On the 20th of June 1991...",

9 do you have that?

10 A Yes, I have it in front of me here.

11 Q All right. It says,

12 "...Zanidean then threatened to go to the  
13 press and to tell the press that his  
14 testimony had all been lies."

15 Do you see that?

16 A Yes, I do.

17 Q Given that we have evidence that Sergeants  
18 Anderson and Paul didn't deal with Mr. Zanidean  
19 after that incident in the hotel room, I suggest  
20 it's likely -- reading that and reading the  
21 nature of the threat, what conclusion would you  
22 draw from it?

23 A I would certainly draw that the threat that's  
24 referred to in Mr. Quinney's letter is the same  
25 one that Sergeant Paul refers to in his

1 supplemental report. And I think I would also  
2 base it on the fact that I do not believe there  
3 is any other documentation that would suggest  
4 there was any other threat to recant made to  
5 either Sergeants Anderson or Paul.

6 Q And I'm not going to go into what he says about  
7 the other material, my learned friend Mr. Wolson  
8 has. But if you go on to the next document in  
9 that tab, which is a letter of March 9th of  
10 1992, and this is what we believe to be the  
11 second of the letters from Mr. Quinney to  
12 Mr. Miller, you will see that that is the letter  
13 that Mr. Wolson briefly referred to earlier as  
14 providing RCMP documentation to support the  
15 belief that Mr. Driskell's version of the arson  
16 was to be preferred over Mr. Zanidean's. You'll  
17 see that?

18 A I see that, yes.

19 Q The third document is one that we've looked at a  
20 number of times, it's dated July 7th of 1992  
21 from Mr. Miller to Mr. Dangerfield, which  
22 indicates that he is providing material from  
23 Saskatchewan Justice to Mr. Dangerfield?

24 A I see that, yes.

25 Q The next document is a further memorandum dated

1 March 11th of '93, from Mr. Miller to  
2 Mr. Dangerfield, indicating again there are some  
3 questions in relation to material from  
4 Saskatchewan Justice and asking for a response.  
5 And we are told that the writing below is  
6 Mr. Dangerfield's writing, indicating that he  
7 had received this memorandum. Do you see that?

8 A I see that.

9 Q Next is another document my learned friend,  
10 Mr. Wolson, briefly referred to. And that's  
11 dated March 16th of '93, from Mr. Dangerfield to  
12 Mr. Perozzo. And I'd just ask you to take a  
13 look at the first line of that, which indicates  
14 that as a result of articles appearing in the  
15 Winnipeg Sun on March 13th and 14th -- do you  
16 see that?

17 A Yes, I do.

18 Q Would those have been the same articles that  
19 your Chief read, as I understand it, to launch  
20 your review, the ones alleging lack of  
21 disclosure and the recantation of a witness?

22 A I would make that assumption, yes.

23 Q I'm sorry?

24 MR. LOCKYER: I cleared my throat.

25 MS. CARSWELL: I'm sorry, I thought I might have

1 misspoke again and you were going to correct me.

2 MR. LOCKYER: No.

3 MS. CARSWELL: I've become paranoid. It is only  
4 you I have to worry about, Mr. Lockyer.

5 THE COMMISSIONER: It just shows the prominence  
6 that Mr. Lockyer has here.

7 MS. CARSWELL: My deference towards him.

8 BY MS. CARSWELL:

9 Q The next document is dated April 13th of 1993,  
10 from Mr. Miller to Mr. Whitley, indicating in  
11 his view and Mr. Dangerfield's view that the  
12 Saskatchewan material should be disclosed and  
13 that it had not been disclosed to defence.

14 Had you ever seen this, until we reviewed  
15 the matter in preparation?

16 A No, I had not.

17 Q April 28th of 1993, another letter from  
18 Mr. Quinney, and this is one Mr. Wolson has  
19 taken you to a number of times this morning, but  
20 chronologically it's the last piece of this  
21 puzzle. And you'll see in that Mr. Quinney at  
22 two points talks about considerable confusion in  
23 relation to whether or not Mr. Zanidean received  
24 immunity, and if so, when?

25 A That's correct.

1 Q Do you see the use of that specific terminology?

2 A Yes.

3 Q My learned friend, Mr. Wolson, pointed out that  
4 this letter was sent to Mr. Miller some two  
5 weeks before your interview with him. If you  
6 take a look, it appears to have been received at  
7 the Department of Justice, there's a received  
8 stamp on May 4th. So that would be nine days  
9 before your attendance to speak to Mr. Miller.  
10 So it wasn't a chronologically old document when  
11 you spoke to him?

12 A It appears it wouldn't have been, no.

13 Q All of this material, and I bring this to your  
14 attention because I take it from the answers to  
15 your question, this was material that, until you  
16 were preparing to testify, you had not seen  
17 during the course of your review; is that fair?

18 A That is correct.

19 Q Does this put for you into context your sense,  
20 as you kept testifying, that Manitoba Justice,  
21 in particular Mr. Miller, Mr. Dangerfield,  
22 Mr. Lawlor to a lesser extent, were aware of the  
23 issues that you were there to discuss with them?

24 A I believe that this reinforces that view. The  
25 opinion, the conclusion that we drew from the

1 interviews we had with those three gentlemen,  
2 that they were aware of these details. This  
3 material would certainly reinforce that.

4 Q We have become aware, as Mr. Wolson indicated at  
5 the inquiry, that it was the Crown Attorney's  
6 office and, in particular, Mr. Miller who was  
7 negotiating with Mr. Zanidean for his, both  
8 financial benefits and in respect of his request  
9 for immunity. And you were aware of that from  
10 your perusal of Corporal Orr's file?

11 A That's correct.

12 Q And I can take to you the reference if you need  
13 to, but it appears at Exhibit 28B, tab 7, page  
14 208, for the purposes of the record.

15 Again, in relation to the discussions with  
16 Manitoba Justice about particular concerns that  
17 were raised, you will recall that a number of  
18 people asked you questions about why you  
19 specifically didn't put issues to Mr. Miller  
20 when you spoke to him, Mr. Dangerfield when you  
21 spoke to him, why didn't you say, or can you  
22 say, Mr. Miller, we have now gone here and we've  
23 done this and we found this out, what do you  
24 have to say about that? You recall those lines  
25 of questions?

1 A Yes, I do.

2 Q I'm going to show you some material, I suggest,  
3 that would seem to support that there may have  
4 been those types of conversations going on with  
5 the Crowns. If I can take you first to Exhibit  
6 28A, tab 3. This is the review report at page  
7 59?

8 A I have it in front of me.

9 Q All right. In the paragraph commencing after  
10 the number 20, you'll see that there's a  
11 discussion about whether the statements taken by  
12 police were forwarded to Crown Attorneys. And  
13 you'll see there that you specifically appear to  
14 have asked Mr. Dangerfield and Mr. Lawlor about  
15 their receipt of the statement of Mr. Moss?

16 A That is correct.

17 Q And confirmed that that statement had been sent  
18 to Mr. Brodsky?

19 A That's correct.

20 Q All right. If you'd go then to --

21 THE COMMISSIONER: Ms. Carswell, you'll have to  
22 refresh my memory, who or what Allan Moss had to  
23 do -- I have forgotten. Has his name come up  
24 before?

25 MS. CARSWELL: No, he's just a witness who was

1 interviewed by police. There's a suggestion in  
2 Ms. Duncan's material that there were two  
3 statements taken, an allegation, and then  
4 certain material was not provided from police  
5 on. And this is an example of a specific, a  
6 reference I can find to specific questioning  
7 about material that there were allegations that  
8 were not passed on.

9 THE COMMISSIONER: Okay.

10 BY MS. CARSWELL:

11 Q If you go again back to tab 5 of the blue book,  
12 the Winnipeg Police Services material for you?

13 THE COMMISSIONER: Just for the record, the blue  
14 book is 43A.

15 MS. CARSWELL: Sorry, Mr. Commissioner, 43A.

16 BY MS. CARSWELL:

17 Q There is a sequence of conversations. There is  
18 a conversation between Inspector Hall and  
19 Sergeant Anderson about his discussions with  
20 Manitoba Justice, in which he references talking  
21 to Mr. Miller about the perjury issue, and that  
22 is contained starting at page 24, and going on  
23 from page 24. And Anderson says,

24 "What concerns me is every, your suspicion  
25 and Vandergraaf's and everyone else that



1 Miller is not going to remember this. And  
2 I don't like that, because I can't, to tell  
3 you the truth, I don't know what Miller is  
4 all about, you can't get, he doesn't get  
5 back to you, but I haven't..."

6 And Hall says,

7 "Oh, he's always gotten back to us."

8 And he goes on to say, it's not his experience  
9 that Mr. Miller has ever been an issue, but then  
10 he goes on to indicate, at the bottom of the  
11 page,

12 "He was and to tell you the truth, this  
13 conversation I'm telling you about, he had  
14 no need to talk to me about it at all.

15 This was something between him and Richard  
16 Quinney. And Richard Quinney is his  
17 counterpart."

18 And then they go on to talk about the cessation  
19 of the investigation in relation to the Swift  
20 Current arson.

21 And at page 27, there is again discussions  
22 between Sergeant Anderson and Inspector Hall  
23 about conversations he's had with Inspector  
24 Miller -- or sorry, Bruce Miller, Mr. Miller.

25 A Yes, I see those.

1 Q Yes. And Anderson says,  
2 "...it was his, my, the impression I got  
3 from him was informal. Like Quinney wasn't  
4 sending him a letter saying 'hey, what do  
5 you think about charging your witness with  
6 perjury?"

7 Hall: That's right."

8 And then they go on and talk about the perjury  
9 aspect of it. And then that's followed up in  
10 this conversation, which is the next  
11 conversation in the tape between Inspector Hall  
12 and Mr. Miller, where they talk about the  
13 conversation that Mr. Miller had with Sergeant  
14 Anderson. And he says, about that, that there  
15 was conversation between them.

16 "I might have said to Tom and Al, well, the  
17 chances for prosecuting..."

18 THE COMMISSIONER: Sorry?

19 MS. CARSWELL: Page 33.

20 THE COMMISSIONER: And about where?

21 MS. CARSWELL: At the bottom third of the page,  
22 "ironclad guarantee."

23 THE COMMISSIONER: Okay.

24 MS. CARSWELL: All right.

25

1 BY MS. CARSWELL:

2 Q So I only point this out, not necessarily, Chief  
3 Ewatski, to demonstrate the conversation, but to  
4 demonstrate that there obviously was  
5 conversation going on, on specifics about the  
6 concerns in the investigation, the perjury, the  
7 admission of the arson. I took you to that  
8 telephone conversation earlier, the revenge  
9 motive, as well as whether certain statements  
10 made it from police files to the Crown files.  
11 Does that assist you at all?

12 A Again, you know, I believe that this reinforces  
13 the opinion that we came to, that we developed,  
14 that the Crowns were fully aware of all the  
15 aspects of Mr. Zanidean in relation to the Swift  
16 Current issue itself. You know, there was a lot  
17 of material, phone calls, the meetings, the  
18 discussions, things that are not documented  
19 fully in our notes, that lead us to that  
20 discussion. And now, seeing some of the letters  
21 and reminding myself of some of these  
22 transcripts of the telephone calls, again, that  
23 just reinforces the fact of why we drew that  
24 conclusion.

25 Q Right. Again, you'll see at page 30 of that

1 transcript we were just in, there's a discussion  
2 about the revenge motive, and Mr. Miller  
3 confirming that -- he wouldn't deny that he had  
4 a discussion with Sergeant Anderson -- who is  
5 Tommy, I take it from that transcript, that's  
6 right at the top of page 30 -- about the perjury  
7 aspect. You'll see that?

8 A I see that, yes.

9 Q Then turning to Mr. Zanidean's telephone call to  
10 Mr. Brodsky, what we've been calling the  
11 recantation phone call, you indicated in your  
12 statement to Commission Counsel, it's at Exhibit  
13 28A, tab 1, page 10, that part of what factored  
14 in to your thinking surrounding this telephone  
15 call was the fact that Mr. Brodsky was aware of  
16 the call. Is that correct?

17 A Absolutely.

18 Q Is this the type of context of the call, which  
19 you've now heard, you know what the caller says,  
20 is that the type of information that if it had  
21 been provided to police would have been  
22 investigated?

23 A Absolutely.

24 Q You've already agreed that a report should have  
25 gone in at the time; is that correct?

1 A By Sergeants Paul and Anderson, yes.

2 Q And in fact, you indicated that you had them  
3 prepare such a report?

4 A That is correct.

5 Q If I could then go to what's been termed as the  
6 sixth new item, that being the Gumieny  
7 recantation threats?

8 A Yes.

9 Q And I ask you to turn to tab 4 of Exhibit 43A,  
10 our material. And again, there are a number of  
11 documents in here I think which put into  
12 context -- if you can go then to the letter that  
13 you referred to in your evidence yesterday. And  
14 I think, Mr. Commissioner, if it wasn't clear on  
15 the record earlier, I think we need to make it  
16 clear that after Inspector Hall's statement was  
17 approved and provided to Commission Counsel,  
18 Inspector Hall always had a sense of unease that  
19 he had done something with Mr. Miller, notified  
20 him in some way in relation to the call. And we  
21 sent e-mail after that fact to Commission  
22 Counsel, at which point we had found this  
23 letter. So you'll recall yesterday, Chief  
24 Ewatski referring to a letter and there being  
25 some confusion about the letter, this is the

1 letter that was being referred to. Just to  
2 clear that up.

3 And if you go to page 2 of that letter.

4 MR. PROBER: What tab please?

5 MS. CARSWELL: Tab 4.

6 THE COMMISSIONER: Exhibit 43A.

7 MS. CARSWELL: 43A, tab 4, it's a letter from  
8 Winnipeg Police Service dated 93-06-02, directed  
9 to Mr. Miller.

10 THE WITNESS: Yes, I see it.

11 BY MS. CARSWELL:

12 Q If you go to page 2, you'll see that there's an  
13 indication there, in the large paragraph at the  
14 end of the page, it's dealing with Mr. Gumieny,  
15 and he indicates that Inspector Hall received a  
16 telephone call from him 93-05-26. And in the  
17 paragraph, the one portion I wish to draw your  
18 attention to, he says,

19 "He threatened that if he did not get what  
20 he wanted, he would go to the media."

21 Do you see that?

22 A I see that, yes.

23 Q Is that what you were referring to, the letter  
24 or the documentation yesterday?

25 A Yes.

1 Q In addition, if you turn a few pages on in the  
2 material, there's a number 6 at the top of the  
3 page Mr. Commissioner. Again, it's a transcript  
4 you've heard of the telephone calls coming in  
5 and out of the review office. You will see that  
6 Inspector Hall phones Public Prosecutions and  
7 leaves a message for Mr. Miller. And we know  
8 what it's about, because as you go down, the  
9 receptionist says,

10 "Can I tell him what it's regarding?"

11 And Hall says,

12 "Mr. Gumieny."

13 And the receptionist says,

14 "Oh, yes. He's not going away, eh?"

15 And Hall says,

16 "Well, I understand he's now gone to the  
17 press down in Ottawa."

18 So again there's a reference to Mr. Gumieny, and  
19 obviously the receptionist in Manitoba Justice  
20 is familiar enough with him that she recognizes  
21 that there's some difficulties involving him.

22 Following that --

23 THE COMMISSIONER: Do we have a date for that?

24 MS. CARSWELL: One has to infer the dates.

25 THE COMMISSIONER: Circumstantially.

1 MS. CARSWELL: Yes. Unfortunately, the  
2 telephone log does not have a timer on it, it  
3 was an old recorder.

4 THE COMMISSIONER: That's fine.

5 BY MS. CARSWELL:

6 Q Following that you'll see at page 32, there's a  
7 conversation between --

8 THE COMMISSIONER: Just bear with me. Page?

9 MS. CARSWELL: 32, it's the next call, the page  
10 after the one we were just looking at.

11 THE COMMISSIONER: Yes, okay.

12 BY MS. CARSWELL:

13 Q At the bottom of the page, they are talking  
14 about Mr. Gumieny. And you'll see Inspector  
15 Hall say,

16 "Thank you very much. It's in regard to  
17 Mr. Gumieny."

18 And he says,

19 "...that he has gone to the press down in  
20 Ottawa."

21 That's the fourth line up from the bottom of the  
22 page, he tells Mr. Miller:

23 "Miller: Oh I'm well aware of that. They  
24 called me --

25 Hall: You are?



1 Miller: --on Friday.

2 Hall: Did they?

3 Miller: Yeah.

4 Hall: Okay. They called Paul Wiecek out  
5 here as well...",

6 who is a reporter for a local paper. And you  
7 go down and Mr. Miller indicates,

8 "I suspect I have Mr. Wiecek to thank for a  
9 young female reporter from the Ottawa  
10 Citizen calling me at home on Friday  
11 night."

12 So there certainly was conversation going on  
13 about Mr. Gumieny and his threat to go to the  
14 media between Inspector Hall and Mr. Miller,  
15 that you obviously were not personally privy to?

16 A That's correct.

17 Q And again, this is to put into context the sense  
18 that you had, or the feeling that you had that  
19 the Crowns were aware of certain things, as you  
20 testified to?

21 A Again, I'll say that this reinforces that  
22 opinion that we formed, and that the conclusion  
23 that we came to that they were aware of this  
24 information.

25 Q And Mr. Commissioner, in response to your

1 question, there may be some assistance in the  
2 logbook that was entered as exhibit 43B, in that  
3 there's a notation that Inspector Hall and  
4 Mr. Miller talk on June 1st. But there's other  
5 notations, there's not context around it, but  
6 it's in and around June we can tell from the  
7 context of the conversations.

8 THE COMMISSIONER: Thank you.

9 MR. LIBMAN: Mr. Commissioner, the letter of  
10 June 2nd, the first paragraph I believe says the  
11 conversation was June 1st.

12 MS. CARSWELL: Thank you, Mr. Libman.

13 BY MS. CARSWELL:

14 Q In relation to the discussions that surrounded  
15 hindsight and the hindsight that you applied in  
16 coming to the determination that some of this  
17 material, or the material was in the hands of  
18 Manitoba Justice, you are aware now through  
19 discussions and correspondence that you viewed,  
20 Mr. Olson's question, Manitoba Justice is of the  
21 view that there were three items in the review  
22 that were not disclosed to them; is that  
23 correct?

24 A That's my understanding, yes.

25 Q Can you please turn to Exhibit 43 A, tab 7? And

1           this is from the Crown's file. And there's two  
2           documents there I want to refer you to, and they  
3           are the first two documents, Mr. Commissioner.  
4           The first indicates that, it's a cover page of a  
5           transcript, it indicates the transcripts were  
6           provided to you April 6th of 1993.

7                     Do you recall attending the Crown's office  
8           and picking up the transcripts to assist you in  
9           your review?

10    A       I don't have a clear recollection of this, but  
11           obviously I will believe what is put on here  
12           saying it was given to me on that day.

13    Q       And if you turn over the page, it appears that  
14           the very next day, April 7th of 1993, you  
15           attended and you picked up the pink copies of  
16           the investigative report from the Crowns office?

17    A       That's what's indicated on here, yes.

18    Q       Do you recall why you did that?

19    A       I think it would probably be best to describe it  
20           in terms of trying to follow along the path of  
21           our mandate to ensure that the pink copies, we  
22           could examine the pink copies, which were the  
23           action copies of the police report, or the ones  
24           that would have been turned over to the Crown --  
25           well, at the conclusion of the investigation.

1 We wanted to do a comparison with the file that  
2 we had at the Police Service, which would be the  
3 white copy or our records copy, then make a  
4 comparison to see if there was any pages missing  
5 or if there was any inconsistencies with those  
6 files.

7 Q All right. And there's nothing in your report,  
8 I've read through it, about naming any  
9 inconsistencies. If there had been  
10 inconsistencies between your comparisons with  
11 the white copy, or the copy that would be the  
12 Police Records Bureau copy of the report, and  
13 the pink copies, would that have been something  
14 you'd put in your report?

15 A Yes.

16 THE COMMISSIONER: It is probably irrelevant,  
17 but from who were those transcripts received?  
18 The name looks like Cecile.

19 MS. CARSWELL: Cecile was a secretary,  
20 Mr. Whitley's secretary at that time. You'll  
21 recall he referred to as Cece.

22 THE COMMISSIONER: Okay.

23 BY MS. CARSWELL:

24 Q There's also included for completeness, Mr.  
25 Commissioner, although I don't need to refer to

1           it, an analysis conducted by Mr. Burchill,  
2           Detective Sergeant Burchill, at the request of  
3           Mr. Schille, about the Crown's file, and his  
4           conclusion that there were likely five pages of  
5           police report not provided to the Crown  
6           Attorneys. That's at page 3. And he details  
7           what those pages are.

8           With that in mind, if we can turn then to  
9           tab 9 again of exhibit 48A. It lists --

10          THE COMMISSIONER: Just wondering, Ms. Carswell,  
11          where does it say five copies?

12          MS. CARSWELL: It says five items at the bottom  
13          of page 3. Just a second I'll go back. Oh,  
14          sorry, four, four pre-conviction police  
15          identification reports and one statement. So  
16          I've added those together for a total of five.

17          THE COMMISSIONER: And where do I find that?

18          MS. CARSWELL: It says missing pages, page 3,  
19          second paragraph of that letter, of  
20          Mr. Burchill's memorandum.

21          THE COMMISSIONER: Oh, I'm sorry, I was looking  
22          at the page number at the bottom. Thank you.

23          BY MS. CARSWELL:

24          Q       At tab 9 in Exhibit 43A is the memorandum that  
25          you have been shown before by Mr. Olson

1           yesterday, that sets out Manitoba Justice's  
2           review of your review report, and their view in  
3           relation to three items that were not contained,  
4           in their view, in the Crown file. Do you see  
5           that?

6    A       Yes, I do.

7    Q       It's summarized in a very helpful way on the  
8           last page of the tab which is numbered 1124 at  
9           the bottom?

10   A       Yes, I have that in front of me.

11   Q       And the three items that are listed there that  
12           Mr. Schille felt were not contained in the Crown  
13           file, that were referenced in your review, were  
14           the Crime Stoppers tip. And again, I'm  
15           mentioning that for completeness, I'm not going  
16           to ask you to go there.

17           The second point was the recantation threat  
18           in relation to the charge, if he was charged  
19           with the Saskatchewan arson. And I've already  
20           taken you to the Quinney documents that seem to  
21           contain that same threat, so I'm not going to  
22           take you there again. But the first is the  
23           Zanidean telephone call to Mr. Brodsky. Do you  
24           see that?

25   A       Yes, I do.

1 Q And again, I'm not going to go through the fact  
2 that Mr. Brodsky had this call and it was a  
3 matter discussed in the media, but if you can  
4 turn to what I'm calling the buff tab number 3  
5 in our document book, same exhibit, the second  
6 number 3, you'll see there's a letter there from  
7 Mr. Lockyer to Mr. Finlayson dated January 20th  
8 of 2003?

9 A I have it in front of me.

10 Q If you could go to page 11 of that letter?

11 A Yes, I have it in front of me.

12 Q And there's a heading, "Additional New  
13 Evidence," number 1, "The Brodsky Phone Call."  
14 Do you see that?

15 A Yes, I do.

16 Q It says,

17 "On June 20, 1991, only six days after  
18 Mr. Driskell's conviction, Greg Brodsky  
19 received a telephone call from Ray  
20 Zanidean. The police are aware this call  
21 was made. Mr. Zanidean did not actually  
22 identify himself but spoke in the third  
23 person."

24 And then it goes into the context of the call  
25 which is recorded as Zanidean, Brodsky,

1           Zanidean, Zanidean. Do you see that?

2    A       Yes, I do.

3    Q       You would agree with me that that type of  
4           information would be distinguished from the  
5           actual police having the telephone records --

6    A       Yes, I would.

7    Q       -- of that call?

8    A       Yes, that is correct.

9    Q       And you are not disputing and you haven't  
10          disputed that those, in fact, should have been  
11          shared with the Crown through a report, and  
12          you've testified to that a number of times?

13   A       That's correct.

14   Q       Chief Ewatski, I feel that I have to put to you,  
15          I am sure you read the news reports about  
16          testimony at this hearing and evidence, in  
17          particular, of now Inspector Burton in relation  
18          to your review?

19   A       Yes, I have.

20   Q       Could I ask you again to keep book 43A in front  
21          of you and go to tab 10? If you take a look at  
22          page 2, paragraph 5, this sets out now Inspector  
23          Burton's view of the discussions you and  
24          Inspector Hall had with him in relation to  
25          Sergeant Anderson?



1 A That's correct.

2 Q And in particular, I'd like you to focus on the  
3 reference to the protected B file and whether or  
4 not those opinions would be made public at any  
5 point?

6 A Yes.

7 Q And once you've had the opportunity to do that,  
8 could you compare that, please, with the second  
9 document in that tab, which is a summary of your  
10 interview with then Constable Burton at page 3?  
11 And it's at the very bottom of that page,

12 "When asked about if he still held that  
13 opinion..."

14 MR. PROBER: I didn't hear the question.

15 MS. CARSWELL: I just referred him to the bottom  
16 of page 3, Mr. Prober.

17 THE COMMISSIONER: The question began,

18 "When asked about if he held that  
19 opinion..."

20 MS. CARSWELL: Thank you.

21 THE COMMISSIONER: Carry on, Ms. Carswell.

22 MS. CARSWELL: I noticed that, Mr. Commissioner,  
23 thank you.

24 THE WITNESS: I have compared both of them.

25

1 BY MS. CARSWELL:

2 Q All right. Inspector Burton testified that your  
3 version of this interaction was inaccurate. And  
4 to be fair to you, I think it only fair to ask  
5 for your comment on the interaction you had with  
6 him?

7 A I'll stand by the version that we supplied,  
8 that's at page number 3, that we wrote at the  
9 time, shortly after our interview with Constable  
10 Burton at the time. I stand by that information  
11 that we provide that he provided to us.

12 Q Do you recall if he mentioned consulting with  
13 RCMP counsel about whether or not information  
14 would be released out of a protected B file, and  
15 taking their instruction, which is what he  
16 testified to?

17 A I don't have clear recollection of it, but if he  
18 would have, I'm sure I would have made a note of  
19 that.

20 Q And one further thing, if you can go back to  
21 then Constable Burton's report, the third page,  
22 which is titled "investigator's comments," it is  
23 paragraph 10.

24 A Yes, I have it in front of me.

25 Q All right. Can you read, please, that paragraph

1 in respect to his view of what your review was  
2 to accomplish?

3 A Would you like me to read it out loud?

4 Q No, just to yourself.

5 A Thank you.

6 Q We've heard it read aloud a number of times.

7 A I've read it.

8 Q Again, in fairness to you, do you have a comment  
9 on the opinions of Constable Burton in relation  
10 to what you were trying to achieve during the  
11 review?

12 A I think in fairness to Constable Burton, or  
13 inspector Burton, I would have to say if that is  
14 his opinion, that is his opinion.

15 Q Were his impressions correct with what you were  
16 setting out to do?

17 A Absolutely not.

18 Q Had you ever met him before you spoke to him on  
19 May 17th of 1993?

20 A No, and I have not met him subsequent to that.

21 Q Did he give you any indication in that meeting  
22 he was not comfortable with you, or with  
23 speaking to you or Inspector Hall?

24 A Not at all. He seemed to be very, very open and  
25 forthright with us, and very cooperative with

1 us.

2 Q Mr. Lockyer, when he was examining you when you  
3 were last here, took you to some material from  
4 Corporal Orr's file, and he had one page of it.  
5 And I provided the rest at tab, the second  
6 number one, the yellowish colour, in our book of  
7 documents, Exhibit 43A. And he did that in  
8 reference to the comment written by Corporal Orr  
9 that you had some questions to ask Mr. Zanidean.  
10 In fact, you felt it was possible that  
11 Mr. Zanidean may have been involved in the  
12 murder, the Harder murder?

13 A That's correct.

14 Q Do you recall that line of questioning?

15 A Yes.

16 Q Do you recall where you might have gotten that  
17 impression from, or where you, I mean, other  
18 than what you've indicated, you're holding all  
19 possibilities open?

20 A Well, certainly, obviously by our experiences as  
21 investigators, both Inspector Hall and myself  
22 certainly would have looked at all aspects, all  
23 possibilities relative to this investigation, as  
24 well as reference that Mr. Brodsky made during  
25 the course of his cross-examination of

1 Mr. Zanidean, that was posed to Mr. Zanidean  
2 that perhaps he was involved with this too.

3 Q And I have included those references, again  
4 following in the same tab, Mr. Commissioner,  
5 there's two references to the cross-examination.  
6 The first is page 116, line 10 through 14,  
7 Mr. Brodsky says --

8 THE COMMISSIONER: 116, line 10?

9 MS. CARSWELL: Yes.

10 "My suggestion to you, Mr. Zanidean, is  
11 that you were afraid John was going to tell  
12 the police that you, Ray Zanidean, was  
13 responsible for the killing.

14 Why would he do that?

15 Well, maybe because you were."

16 And there's a further reference at page 136, the  
17 next page I have included at line 115.

18 BY MS. CARSWELL:

19 Q Chief Ewatski, I neglected to do something  
20 earlier that I had intended, and Mr. Prober in  
21 addition also asked me if I could ask you to  
22 read your notes in relation to the meeting with  
23 Crown Attorney Dangerfield, just from the  
24 standpoint of ensuring that we are all able to  
25 interpret them correctly. That's at tab 6 of

1 Exhibit 28B, bottom page number appears to be  
2 249, Mr. Commissioner, partly cut off on my  
3 copy, but tab 6?

4 THE COMMISSIONER: 249 or 149?

5 MS. CARSWELL: It appears 249, it looks like on  
6 mine.

7 THE WITNESS: I believe it's 249.

8 THE COMMISSIONER: Okay. The page immediately  
9 preceding is 149.

10 THE WITNESS: I will make the attempt again.

11 "Monday, the 23rd of August, 1993,  
12 10:00 o'clock in the morning. Met with  
13 Crown Attorneys George Dangerfield and  
14 Gregg Lawlor. Explained our role in  
15 review. Discussed the case in general."

16 Again with the hyphens meaning information  
17 coming from these gentlemen.

18 "Happy with info supplied by investigators.  
19 Were involved with investigators as to when  
20 there was enough evidence to charge  
21 Driskell. Realized that it was a tough  
22 investigation. Just about everyone  
23 involved were difficult people. Everything  
24 they received went to the defence. Full  
25 disclosure of evidence. First aware of

1 trouble with Kara brothers was in the  
2 morning that they were supposed to testify.  
3 Dangerfield thinks that Ashif Kara was  
4 involved more than he lead on in court. No  
5 deals made with Zanidean by them or police.  
6 Knew Zanidean was problem due to the way he  
7 is but they felt comfortable due to the  
8 corroboration that Gumieny gave also what  
9 was recorded on tape. Explained to us  
10 about the Milgaard comment by judge, how it  
11 relates to hostile witnesses. Gave us the  
12 Notice of Appeal submitted by Brodsky.  
13 Feel he was convicted on evidence of  
14 Zanidean and Gumieny and who corroborated  
15 each other. Tape conversation Driskell  
16 telling..."

17 MS. CARSWELL: Kara, I believe.

18 THE WITNESS: Pardon me, Driskell talking --  
19 telling, I can't make out that word, Kara being  
20 involved?

21 BY MS. CARSWELL:

22 Q I believe it is about Kara being involved?

23 A Thank you.

24 "...about Kara being involved credit card  
25 issue, telling people about this before the

1 court case."

2 That was the extent of my notes of that meeting.

3 Q I now want to talk about post-conviction  
4 disclosure of the report. And your reasons for  
5 taking the position you did have already been  
6 explored, and they are also set out at Exhibit  
7 28A, tab 1, page 12. And you spoke to some  
8 extent to Mr. Code in examination about the way  
9 that the report was written. And that was done  
10 because of what the report was intended to be, I  
11 take took it from your evidence. Is that right?

12 A That is correct. The report was written in a  
13 manner that it was to be a frank document, a  
14 candid document to the Chief of Police, where  
15 opinions were expressed, you know, by the review  
16 team. It was certainly not written in the way a  
17 normal police investigative report would be  
18 written.

19 Q And in your experience now, having had both the  
20 ability to write a review report like this, and  
21 now a Chief, being in a position where you might  
22 order a report like this, what's the advantage  
23 to you in your current role of having the  
24 ability to access information like this?

25 THE COMMISSIONER: The ability to?



1 MS. CARSWELL: Access information in this  
2 fashion.

3 THE COMMISSIONER: Okay.

4 THE WITNESS: I would think that if I was put in  
5 a position to ask for this type of report and  
6 ask for an analytical review of an  
7 investigation, that I would like to have the  
8 officers reviewing that to provide me with not  
9 only their observations in terms of fact, but  
10 also their opinions and such. I think that  
11 would be valuable in a circumstance such as  
12 that. Otherwise, there may be more questions  
13 left than answers.

14 BY MS. CARSWELL:

15 Q When did you come to realize, or did you, I  
16 guess when did you come to realize that  
17 Mr. Brodsky and Mr. Driskell didn't have all of  
18 the information?

19 A I believe it was towards the end of November of  
20 2003 that I became aware of the fact that there  
21 was certain material that had not been disclosed  
22 to Mr. Brodsky on this case.

23 Q How was it that you became aware of that?

24 A It is my understanding that that was  
25 communicated, I believe to Mr. Lockyer and

1 others, perhaps by Manitoba Justice.

2 Q And was that in relation to the release  
3 application Mr. Driskell was making before the  
4 court at that time?

5 A I believe that was the time that was rebuilt.

6 Q If you had been aware that Mr. Brodsky did not  
7 have the information, that we now know he didn't  
8 have, would you have had a position different  
9 than the one you took in this matter?

10 A Yes, I would have.

11 Q And what would that position have been?

12 A I think if we would have, at the time even in  
13 1993, if we would have -- if that would have  
14 been revealed to us that he did not have certain  
15 material, that we knew that the Crown was aware  
16 of, that certainly would have been documented,  
17 you know, to the Chief of Police of the day.

18 THE COMMISSIONER: Ms. Carswell, it's about  
19 break time, a little past it.

20 MS. CARSWELL: I probably have no more than five  
21 or 10 minutes, and you're asking me to stop.

22 THE COMMISSIONER: I think we should stop, and  
23 then there may be re-examination, I don't know.  
24 I have no idea.

25 MR. CODE: I have none so far.

1 THE COMMISSIONER: Well, I'll leave it in your  
2 hands.

3 MS. CARSWELL: I'll leave it to the witness.  
4 He's the one who probably --

5 THE WITNESS: I am fine for another five or 10  
6 minutes, Mr. Commissioner, if you are.

7 MS. CARSWELL: And the court reporter?

8 MR. PROBER: There may be another issue,  
9 Mr. Commissioner. A number of us are of the  
10 view that there may be new material that's been  
11 disclosed this morning in relation to Chief  
12 Ewatski. I want to explore that with  
13 Ms. Carswell. And if, in fact, there is, we may  
14 have some comments to make.

15 THE COMMISSIONER: Right. I think that is a  
16 conclusion. We will adjourn until two o'clock.

17 THE CLERK: All rise.

18 (Proceedings recessed at 12:49 p.m. and  
19 reconvened at 2:00 p.m.)

20 THE CLERK: All rise. This Commission of  
21 Inquiry is now in session.

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

23 BY MS. CARSWELL:

24 Q Just before the break, Chief Ewatski, we were  
25 talking about the portion of your statement

1           where you talked about wanting the process  
2           followed, or the process followed I think were  
3           your words. And perhaps you can explain your  
4           thinking in that?

5    A    I think when I made reference to following the  
6           process, it was certainly in relation to the  
7           application of, I guess back then it would be a  
8           690, under section 690 of the Criminal Code. It  
9           is now a 696 application to it. You know, in  
10          the early discussions we had with Mr. Driskell's  
11          counsel, we certainly -- I certainly voiced my  
12          opinion that the Winnipeg Police Service would  
13          follow that process and if an application was  
14          filed that we would cooperate fully with it. I  
15          guess --

16   Q    Now -- sorry, go ahead. I don't want to cut you  
17          off.

18   A    No. I think that, if I may, Mr. Commissioner, I  
19          would like to comment on that itself.

20          THE COMMISSIONER: Absolutely, absolutely.

21          THE WITNESS: Because there was an interaction  
22          between Mr. Lockyer and myself relative to that  
23          process, and I think he used the term catch 22,  
24          which I agreed that he was in a catch 22. And  
25          quite frankly, I could certainly understand the

1 frustration that Mr. Lockyer had and, more  
2 importantly, Mr. Driskell's frustration relative  
3 to this matter. And I guess it leaves me with  
4 the thoughts of whether or not the process in  
5 place right now, under section 696 of the  
6 Criminal Code of Canada, really serves us well,  
7 the citizens in this country. And I think that  
8 we have learned a lot as a result of -- at  
9 least, I have learned a lot as a result of my  
10 involvement in this matter itself. And I would  
11 really question whether or not the process  
12 that's in place right now, a process that I  
13 followed, really does serve everyone well in  
14 this country and, most importantly, people who  
15 have felt that they have been wrongfully  
16 convicted.

17 THE COMMISSIONER: What would you do to change  
18 it?

19 THE WITNESS: Well, I think I would very popular  
20 if I could come up with an answer that would  
21 meet everybody's needs. I think that having an  
22 inquiry such as this to look at the issues  
23 surrounding that type of process would be a good  
24 first step to try to identify how it could be  
25 improved and changed.

1 I am certainly well aware of the  
2 frustration and the angst that this has caused  
3 Mr. Driskell and Mr. Lockyer, and probably  
4 everybody. Because when you talk about a  
5 wrongful conviction, we are talking about the  
6 erosion of our confidence in the criminal  
7 justice system. And I think that it's incumbent  
8 on all of us who are players within that  
9 criminal justice system to try to find something  
10 that's much more palatable, something that is  
11 much more -- that would serve everybody's  
12 purposes much better. I wish I had a silver  
13 bullet to this, but I think we are probably  
14 going in the right direction in terms of trying  
15 to address these issues.

16 THE COMMISSIONER: Thank you.

17 BY MS. CARSWELL:

18 Q And if I could just take you, then,  
19 Mr. Commissioner if you're done, and keeping in  
20 mind I have promised Mr. Code that I will try to  
21 keep to certain time limits and I don't like to  
22 disappoint your counsel. If I could take you,  
23 then, to Exhibit 43D which is entitled "Further  
24 Disclosures from the Winnipeg Police Service"  
25 and this is the document that Mr. Olson referred

1 to.

2 THE COMMISSIONER: Yes.

3 BY MS. CARSWELL:

4 Q And it's also a document that I know counsel  
5 have been anticipating, and I have promised to  
6 provide. And, Chief Ewatski, I am not going to  
7 take you through all of the individual policies  
8 and training pieces that are contained within  
9 this material. I'm just going to ask you if you  
10 could take a look at it, please, and whether you  
11 recognize these as current Winnipeg Police  
12 Service policies?

13 A Yes, I do.

14 Q And, in particular, just with a couple of the  
15 items that we have been dealing with, it is now  
16 the policy of the service that notebooks must be  
17 retained by the service itself, and that was  
18 something that was put in place some time ago  
19 prior to, I believe, the Sophonow case in this  
20 jurisdiction?

21 A Yes. Again, I think that all of these policies  
22 certainly reinforce what I testified in the  
23 past, that our police service is an evolving  
24 police service, and we have evolved over time to  
25 try to ensure that we do have policies in place

1           that will allow us to not only do our job more  
2           effectively, but be able to do our job in a  
3           manner that will be seen as, what we need to be  
4           seen as, objective investigators of facts.

5    Q    And certainly, Mr. Commissioner, I am just going  
6           to refer to the last page of tab 1, and that's  
7           the current notebook policy. You'll see that  
8           major cases, which are defined in the policy,  
9           and I am not going to go back and forth, I don't  
10          think it's necessary, it is going to be part of  
11          the record. The notebooks and materials from  
12          major cases, and certainly homicide would be a  
13          major case, are retained indefinitely now; is  
14          that not correct?

15   A    That is correct.

16   Q    Just on that note, the Winnipeg Police Service,  
17          I take it, has always had a policy in relation  
18          to what are considered open investigative files;  
19          is that correct?

20   A    That would be correct, yes.

21   Q    Are they ever destroyed?

22   A    No, they are not.

23   Q    Should material from them ever be destroyed?

24   A    No, they should not.

25   Q    The Winnipeg Police Service is also an



1 accredited police agency. That's happened since  
2 the investigation in Driskell; is that correct?

3 A That is correct. We are a member of the  
4 Commission of Law Enforcement Accreditation, one  
5 of the few police services within Canada. That  
6 is an international body that accredits a number  
7 of police services. We have been a member of an  
8 accreditation probably from the mid-nineties, or  
9 so.

10 Q All right. And that's not just a process where  
11 the accreditation people come in and give you an  
12 accreditation, they do a regular audit on your  
13 policies, procedures, practices, to determine  
14 whether you are in compliance with appropriate  
15 progressive police standards, would that be  
16 fair?

17 A It's a very comprehensive process. Every three  
18 years it incorporates an on-site visit by a  
19 panel that will ensure that we are in compliance  
20 with the standards. And there is numerous  
21 standards, hundreds of standards that we have to  
22 be in compliance with. And it's a process that  
23 takes a significant amount of time, of review.  
24 And I'm happy to say that last year we received  
25 a re-accreditation.

1 Q Now, you'll recall when Mr. Kennedy asked you  
2 some questions, he asked you in particular about  
3 a heads of prosecutions report and were you  
4 familiar with it? And I, at this point,  
5 Mr. Commissioner, if we could refer to exhibit  
6 43C, and that's a resolution, Chief Ewatski.

7 THE COMMISSIONER: Yes.

8 BY MS. CARSWELL:

9 Q We also heard that you were the president of the  
10 Canadian Association of Chiefs of Police?

11 A That's correct.

12 Q And after you left here, I take it you knew you  
13 were going to Halifax, and on the agenda was a  
14 resolution to adopt that report for the police  
15 forces that are members of CACP; is that  
16 correct?

17 A That's correct.

18 Q And what was your position in relation to  
19 adopting the report?

20 A I fully support the resolution that was brought  
21 forward by the CACP Law Amendments Committee.

22 Q And then, finally, and I think I will be  
23 finished within my ten minutes that I said,  
24 looking back on this particular case and your  
25 experiences involved in this case, Chief

1           Ewatski, do you have any other observations you  
2           wish to make?

3       A     Perhaps one last observation, Mr. Commissioner,  
4           if I may.

5           THE COMMISSIONER: Absolutely.

6           THE WITNESS: Obviously, you know, in 1993, as a  
7           result of the review that we did for Chief  
8           Henry, we concluded, made certain conclusions  
9           and formed an opinion relative to this matter.  
10          And I think I have articulated them on more than  
11          one occasion, both in this forum and in other  
12          forums itself. And our position was that in  
13          relation to the actions of the Police Service,  
14          we certainly held the opinion that our review  
15          did not contain any material that was not known  
16          in some way, shape, or form by the prosecutors.  
17          And we maintain that position.

18                 I guess November 2003 was a turning point.  
19                 Certainly being made aware of the fact that  
20                 certain material had not been disclosed to  
21                 Mr. Driskell's counsel, at that point of time,  
22                 that was the first I had certainly been made  
23                 aware of that. I had always worked under the  
24                 assumption for those past ten years that  
25                 everything had been, because that was the

1 information that was provided to me, documented  
2 in this report.

3 And I think based on that, and based on  
4 everything that I have learned up to this point  
5 in time, Mr. Commissioner, I have to say that  
6 Mr. Driskell did not receive a fair trial in  
7 this matter, a trial, a fair trial that he was  
8 entitled to. And I think that it's blatantly  
9 obvious to me, as a result of the lack of  
10 disclosure relative to this matter, that a fair  
11 trial did not occur. And that is my observation  
12 at this point in time, sir.

13 THE COMMISSIONER: Thank you.

14 MS. CARSWELL: Thank you, Chief.

15 THE COMMISSIONER: Well, before you conclude, I  
16 just wanted to -- I am sure Mr. Kennedy wanted  
17 to raise this. Miss Carswell said that when you  
18 left here on the last occasion you went to  
19 Halifax, and then this resolution was passed,  
20 but I note that the resolution at least was  
21 adopted in St. John's, Newfoundland.

22 THE WITNESS: Oh, yes. And I should have  
23 corrected that, the conference was in St.  
24 John's, Newfoundland. And I must say that it  
25 was a very hospitable place to have our

1 conference.

2 MR. LOCKYER: You didn't run into Jerome  
3 Kennedy.

4 MS. CARSWELL: But I must say, Mr. Commissioner,  
5 he did go via Halifax first.

6 THE COMMISSIONER: All right. Okay.

7 MS. CARSWELL: Thank you.

8 THE COMMISSIONER: Thank you, Miss Carswell.  
9 Mr. Code?

10 MR. CODE: I have no re-examination.

11 THE COMMISSIONER: Thank you very much, Chief,  
12 you are now given your ticket of leave.

13 THE WITNESS: I hope I have been of assistance  
14 to you. Thank you.

15 THE COMMISSIONER: You have been most helpful.  
16 Thank you.

17 MR. CODE: Mr. Commissioner, while we allow  
18 Chief Ewatski to pack up, the last witness on  
19 the list of witnesses that Commission Counsel  
20 had prepared is Gregg Lawlor. And I'm ready to  
21 call him next, but my colleagues have a  
22 scheduling issue that probably the sooner we  
23 speak to it the better.

24 THE COMMISSIONER: Okay.

25 MR. CODE: And there is concern being expressed

1 about the timing of final submissions, which are  
2 currently set to begin next week on Thursday.  
3 And given that the evidence is running -- is  
4 going to run right up until the end of the week,  
5 I am hopeful we can finish Mr. Lawlor by the end  
6 of the day Friday, we have scheduled a full day  
7 on Friday in the hopes that with this afternoon,  
8 tomorrow afternoon, and a full day on Friday we  
9 can finish him. But there is still the Schille  
10 matter to address, and there are still the  
11 conduct notices which have to go out. So the  
12 scheduling of final submissions for next  
13 Thursday may be somewhat over ambitious. But,  
14 in any event, if I could invite my colleague,  
15 Mr. Prober, I believe he is the spokesperson on  
16 this issue.

17 MR. PROBER: Not officially the spokesperson,  
18 Mr. Commissioner, but I've met with some of my  
19 colleagues, I've met with all of them, actually,  
20 and I can say on behalf of my client,  
21 Mr. Dangerfield, and I have spoken to Mr. Olson  
22 who agrees, Ms. Carswell who agrees, Mr. Abra  
23 who agrees, Mr. Gates who agrees, I believe as a  
24 result of a discussion with Mr. Lockyer at  
25 lunch, he agrees somewhat with the position that

1           it would be unfair to our clients to have us  
2           make final submissions on this matter as soon as  
3           next week. We will only have completed the  
4           evidence, of course, this week, if it is  
5           completed, in fact. And as Mr. Code said, we  
6           may have additional evidence, depending on your  
7           ruling with respect to the application to call  
8           Mr. Schille.

9           Other counsel may want to make other  
10          comments in relation to that, but we thought we  
11          should raise it today rather than interrupt the  
12          panel discussion tomorrow morning. And I've  
13          raised it informally with Mr. Code as well. So  
14          subject to -- now, we do have the end of October  
15          set for -- we weren't sure what it was,  
16          actually, we thought it was argument perhaps on  
17          systemic issues. We thought we might be able to  
18          use that time and some additional days somewhere  
19          to make final submissions on the systemic  
20          issues.

21          Subject to any questions you have, we can  
22          meet, and we don't have to do this on the  
23          record, obviously, we can meet amongst ourselves  
24          and suggest other dates. Now, you may have  
25          noted that I did not mention Mr. Wolson, nor

1 Mr. Tapper. They may be taking the position  
2 that they want to argue next week. And I mean,  
3 I suppose a compromise could be that if they  
4 want to argue next week, they could argue next  
5 week. That would be up to them. If they are  
6 arguing that all of us should argue next week, I  
7 think in Mr. Tapper's case the weight attached  
8 to his argument should be based on the amount of  
9 time that we have seen him here, which would be  
10 very minimal. Those are my comments. Thank  
11 you.

12 THE COMMISSIONER: Thank you, Mr. Prober.

13 MR. WOLSON: Mr. Commissioner, my preference  
14 would be for arguments to be when they were  
15 scheduled, which was at the end of next week.  
16 The problem will be to find time. We have two  
17 days set at the end of October, but I doubt very  
18 much whether two days will be sufficient. So  
19 it's a matter of finding other time. In that  
20 regard, we could endeavour to do so if you  
21 thought that submissions should be made then, as  
22 opposed to next week. My preference is for next  
23 week, but I would want to argue when the others  
24 argue, not separately.

25 And then order of argument should be



1 another issue. And the question is, is your  
2 counsel making a submission on other issues such  
3 as time limits? Perhaps you would like to  
4 impose some time limits on submissions.

5 Otherwise, we may need a week for argument. But  
6 in any event, if your choice is to have all  
7 arguments heard at one time, which I think makes  
8 good sense, then it's a matter of finding the  
9 time into November, I suppose.

10 MR. TAPPER: I'm almost afraid to speak at this  
11 stage.

12 MR. PROBER: Do you recognize this individual?

13 MR. TAPPER: Mr. Prober, understandably from his  
14 questions has not learned that quantity and  
15 quality do not track the same, they might track  
16 universally. I commence a lengthy trial in a  
17 short period of time, and that was my concern.  
18 I agree, however, arguments have to be at the  
19 same time. I certainly don't want my argument  
20 to precede Mr. Code's or Mr. Lockyer's, so I'm  
21 in your hands in that regard. What I will  
22 simply have to do is whine and snivel with my  
23 trial judge to excuse myself, since I am used to  
24 that anyway, for an hour or so and attend before  
25 you.

1 THE COMMISSIONER: Well, in my usual definitive  
2 way, I will say that I agree with everyone.

3 MR. CODE: Without taking a firm position one  
4 way or the other on this, because I would very  
5 much like to get it completed, I do think there  
6 are some equities in favour of the position that  
7 Mr. Prober has mapped out, in the sense that  
8 when we set this week of September 18th and then  
9 blocked off two days next week for final  
10 submissions, it was on the assumption that we  
11 were doing systemic issues this week, which is  
12 why we put the systemic issue submissions to the  
13 end of October. So given that we are still  
14 dealing with adjudicative facts this week, I  
15 think there is a fairly sound argument that the  
16 dates at the end of October were the ones that  
17 we contemplated would be sufficient time to  
18 respond to the matters that arose this week.  
19 But I'm very much in your hands. And I can be  
20 ready to go next week, if that's your wish.

21 If you do agree to Mr. Prober's suggestion  
22 of putting it over to the October date, I would  
23 strongly encourage the suggestion that we do it  
24 all at once. And if it's possible, I don't know  
25 if your calendar would permit you to stay in

1           Winnipeg for two more days, for example,  
2           November 1st and November 2nd, in order to  
3           complete the submissions. And if we take up my  
4           friend Mr. Wolson's suggestion of having an  
5           agreed order and agreed time limits, then  
6           counsel can organize their calendars in the way  
7           that Mr. Tapper has suggested, that if you need  
8           to get time off of a scheduled matter, everybody  
9           will know when their submissions are and for how  
10          long they are.

11          THE COMMISSIONER: Since we haven't even sent  
12          out our notices yet to people about findings  
13          that could be made, I agree with counsel that it  
14          would be difficult for some, and perhaps many,  
15          to be expected to make your submissions next  
16          week. I also haven't ruled on the Schille  
17          matter, and I won't until the statement has been  
18          circulated. So it may be that part of next week  
19          could be taken up with the evidence of  
20          Mr. Schille, but, as I say, I have not ruled on  
21          that matter yet. But, in any event, I would  
22          think it would be exceedingly difficult for  
23          counsel to be ready to make final submissions in  
24          two days or even three days, well, two days of  
25          next week. But I hope that eventually we could

1 do it all in two days. But I think the longer  
2 time of preparation, it's like the person who  
3 wrote the long letter because he didn't have  
4 time to write a short one. So I would hope that  
5 time might help to compress the submissions.

6 So I will give -- I have already given  
7 Mr. Giasson my dates when I'm available, and  
8 I'll give them to Mr. Code as well. But I can  
9 tell you, in short, in response to Mr. Code's  
10 comment, I can be available on November 1st and  
11 2nd. I cannot be available on November 3rd.  
12 And I can also be available any day the  
13 preceding week, the week of October 23rd.

14 MR. WOLSON: I was just going to say,  
15 Mr. Commissioner, I'm out of the country the  
16 preceding week and the preceding three weeks.

17 THE COMMISSIONER: All right.

18 MR. WOLSON: And in terms of the November dates,  
19 I know I have some matters scheduled for court.  
20 I will have to try to find someone to fill in  
21 for me. And perhaps without fixing those dates,  
22 we can set about seeing whether we can free  
23 ourselves.

24 THE COMMISSIONER: Yes. I have no intention of  
25 fixing any dates at this time. And I will leave

1           it to counsel to sort out and to tell me when  
2           the appropriate time would be. And also, I  
3           think there is some merit in having some time  
4           limits. I like oral submissions. I like oral  
5           submissions with a written outline of them, of  
6           those submissions. So I'm never -- I have never  
7           been a big fan of pure written submissions  
8           because I think they tend to be -- well, I've  
9           always believed that it makes more work for me.  
10          I believe that as counsel and I believe that as  
11          a judge. So I wouldn't rely exclusively on  
12          written submissions, but I would like written  
13          material in advance of, and perhaps with the  
14          oral submissions, more or less as an outline of  
15          where it is you're going and what it is you are  
16          relying on.

17                 I will leave it to counsel to sort out but,  
18                 as I say, we are not going to be able to make a  
19                 very informed decision until after I rule on the  
20                 Schille matter. But you can start, I would  
21                 invite you to explore dates of availability, and  
22                 also explore what would be reasonable time  
23                 limits.

24                 I just happened to have lunch today with  
25                 Mr. McNeilly of Manitoba Legal Aid who told me

1 he recently attended at an inquiry that's been  
2 going on in Ontario for a year and a half, two  
3 years. And they had 45 minutes to make their  
4 submissions, each party. That may be a little  
5 truncated. But I'm open to any reasonable  
6 suggestions. I would prefer not to arbitrarily  
7 impose to fix the time limit, but I think it's  
8 helpful if there is a time limit.

9 So I will just leave it at that. I'm  
10 available and I will make myself available to a  
11 time that's convenient to everyone.

12 MR. CODE: Thank you very much,  
13 Mr. Commissioner.

14 THE COMMISSIONER: Okay.

15 MR. CODE: So I suggest maybe at the end of the  
16 day today counsel could stay behind for five,  
17 ten minutes, and we can have a discussion  
18 amongst ourselves.

19 THE COMMISSIONER: Good.

20 MR. CODE: If I could then call Gregg Lawlor.

21 THE COMMISSIONER: Mr. Giasson, I have noticed  
22 that you managed to get us a little heat, after  
23 the Monday and Tuesday, maybe they are putting  
24 it all in today.

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

1 make a solemn affirmation?

2 THE WITNESS: I will swear.

3 GREGG ALLAN LAWLOR, having first been duly  
4 sworn, testifies as follows:

5 THE COMMISSIONER: Good afternoon.

6 MR. CODE: Mr. Commissioner, I can advise that I  
7 think I will be almost exclusively in the three  
8 volumes of exhibit 30.

9 THE COMMISSIONER: Okay.

10 MR. CODE: If those could be available to both  
11 yourself and the witness.

12 THE COMMISSIONER: Okay.

13 MR. CODE: I doubt that I am going to go outside  
14 them.

15 BY MR. CODE:

16 Q Mr. Lawlor, do you have exhibit 30A before you?

17 A I do.

18 Q The first volume of the Crown documents, and if  
19 you turn to tab 2, you will see the statement  
20 that was drafted after your interview and  
21 circulated to you?

22 A I do.

23 Q And were you content that you had appropriate  
24 opportunity to review it and satisfy yourself as  
25 to its accuracy?

1 A I reviewed it and I have no complaints about  
2 what is in it.

3 Q If you want to keep it handy, I am not going to  
4 go through everything in it, but you may want to  
5 refer to it on occasion or I may refer to it on  
6 occasion.

7 In terms of your background, it's set out  
8 in the first section, in the first couple of  
9 pages, and if I could just highlight the key  
10 points. You were called to the bar in 1974?

11 A Yes.

12 Q And you joined the Crown Prosecution Service  
13 almost immediately, in 1975?

14 A The beginning of 1975, yes.

15 Q So that by the time of the Driskell trial in  
16 June of 1991, you had slightly over 15 years  
17 experience as a Crown prosecutor?

18 A Right.

19 Q And by that time you had risen to the highest  
20 rank in the Crown prosecution system known as  
21 general counsel?

22 A Yes.

23 Q And your expertise, or your workload had shifted  
24 primarily to appellate work in the late 1980s, I  
25 believe?



1 A Yes, 1988 I think I --

2 Q So you spent 12 years or so doing predominantly  
3 trial work, and then progressively shifted into  
4 the appellate area in the late '80s?

5 A Yes.

6 Q And as general counsel, once you assumed that  
7 position, who did you report to?

8 A It would be the Director of Prosecutions and the  
9 Assistant Deputy Minister, depending on what the  
10 topic was.

11 Q In your statement you describe it that way and  
12 you say it was a bit of a grey area; is that  
13 correct?

14 A Yes. There was no formal process set out.

15 Q You could report to either Bruce Miller or to  
16 Stu Whitley, depending upon the particular  
17 issue?

18 A Yes.

19 Q And in terms of the location of your office,  
20 again this is covered early on in your  
21 statement, have you been able to recall exactly  
22 where your office was located in the -- at the  
23 time of the Driskell case, late 1990, early  
24 1991?

25 A No, I can't say exactly where it was in relation

1 to George Dangerfield's or Bruce Miller's or Stu  
2 Whitley's.

3 Q But what you do recall, as I understand you, is  
4 at some point in and around this time period  
5 when Miller was in his position and Dangerfield  
6 was in his and Whitley was in his, you were all  
7 located close together on the fifth floor?

8 A On the fifth floor, yeah.

9 Q You just can't pinpoint exactly on what dates  
10 that was that you were there?

11 A No, I can't.

12 Q And in terms of that time period, when you do  
13 recall that the four of you were located close  
14 together on the fifth floor, were you able to  
15 observe whether there were any communication  
16 problems or difficulties between the three  
17 individuals I've just named, Mr. Whitley,  
18 Mr. Miller and Mr. Dangerfield? How did they  
19 seem to get along and how did they seem to  
20 communicate?

21 A I never saw any difficulties between the three  
22 of them.

23 Q There were no clashes of personality?

24 A No.

25 Q Or discord or anything like that --

1 A No.

2 Q -- that you saw?

3 A No.

4 Q And in terms of your own relationship, did you  
5 have any problems in terms of communication with  
6 those three?

7 A No, I didn't.

8 Q And I believe in your statement you told us that  
9 you got along well with Mr. Dangerfield and the  
10 two of you kept each other apprised of what was  
11 going on in the case?

12 A In a general sense.

13 Q Now, I want to ask you about pre-Stinchcombe  
14 disclosure in Manitoba, as we know this was a  
15 trial that took place shortly before  
16 Stinchcombe, and again this is discussed in your  
17 statement at page 4. What is your recollection  
18 of what was routinely given to the Crown in all  
19 cases by the police in this pre-Stinchcombe  
20 period in early 1991?

21 A We would get the police summary, the police  
22 reports, the accused's statement, criminal  
23 record. I don't know -- I don't think we got  
24 witness statements right off the bat.

25 Q But at sometime prior to trial, you must have

1 got the witness statements --

2 A Yes.

3 Q -- in order to call the witness's evidence?

4 A Yes.

5 Q So the police reports would always be provided

6 to you?

7 A Yes.

8 Q And what about police notebooks?

9 A No.

10 Q Could you ask for police notebooks?

11 A I can't answer that. I suppose we could. I

12 mean, I don't recall that there was any policy

13 that the police had that we couldn't have them.

14 I don't know. I can't say if anybody ever had

15 any difficulty obtaining police notebooks.

16 Q We see in this case, for example, and I am going

17 to come to a preferred indictment case in a

18 minute, which may or may not be slightly

19 different, but we see in this case there clearly

20 was a practice of asking for police notebooks in

21 some specific circumstances. And I suppose my

22 question to you is, was that aberrant or

23 unusual?

24 A I can't say whether it was aberrant or usual, I

25 can't comment on that.

1 Q Was it something specific to the preferred  
2 indictment case?

3 A I can't -- I can't say that it was, no.

4 Q Assuming you got all police reports, and  
5 eventually you would get witness statements  
6 prior to trial if a case was going to trial, but  
7 not the notebooks, what would you give to the  
8 defence? Again, in this pre-Stinchcombe period,  
9 what was the practice in relation to defence  
10 disclosure?

11 A As I recall, we would pass on everything that we  
12 got from the police.

13 Q So whatever came to you would go to the defence?

14 A Yes.

15 Q All right. And what about preferred indictment  
16 cases, was there a different policy or practice  
17 in preferred indictment cases, first of all, in  
18 terms of what you got from the police?

19 A Generally speaking, I don't think so. But I  
20 imagine if it was a direct indictment, inquiries  
21 would be made of the police to ensure that we  
22 had everything that was available.

23 Q If you look at page 4 of your statement, you say  
24 towards the bottom of the page, about five lines  
25 from the bottom that there was an obligation to

1 be particularly careful to ensure that the  
2 defence received full disclosure in a direct  
3 indictment case. Does that accurately reflect  
4 your recollection?

5 A Yes. And that's why I say, I would think that  
6 we would make sure, we would make inquiries with  
7 the police to make sure that we had everything.

8 Q So there wasn't necessarily a different class of  
9 material that you would get, you would just be  
10 somewhat more assiduous to make sure that you  
11 would have it?

12 A A little more diligent.

13 Q All right. I would like to turn to the subject  
14 of witness protection, and ask you some general  
15 questions about the way witness protection was  
16 organized in the department and how it was run,  
17 and then specifically in relation to this case.

18 First of all, do I take it that witness  
19 protection issues got raised from the beginning  
20 in this case, and we see them adverted to in  
21 your very first document in this case, your  
22 preferred indictment memo?

23 A Yes. When the direct indictment was being  
24 discussed, witness protection became an issue  
25 intertwined with that.

1 Q So assuming this was an issue in this particular  
2 case from the beginning, how did the department  
3 generally handle witness protection matters?  
4 And then we will talk specifically about this  
5 case. What was the general lines of  
6 responsibility and what were the practices in  
7 relation to witness protection matters?

8 A Witness protection was left up to management  
9 director, or at least the Deputy Minister. I  
10 can't say what the practice was. I had very  
11 little knowledge even of what the concept of  
12 what witness protection was in those days.  
13 Witness protection to me meant making sure the  
14 witness was kept safe. Maybe if you had to, to  
15 move him to a different location, to provide  
16 expenses. Just a very general idea.

17 THE COMMISSIONER: Mr. Lawlor, I didn't hear the  
18 beginning of your answer. Witness protection  
19 was left to -- you said somebody or the Deputy  
20 Minister, I didn't hear the first?

21 THE WITNESS: The director.

22 THE COMMISSIONER: Director.

23 BY MR. CODE:

24 Q I think he said it was a management matter?

25 A Yes.

1 Q Management was the word that you used?

2 A Yes.

3 Q And it could be either the director or the  
4 Assistant Deputy Minister who took  
5 responsibility for it, or was it higher than  
6 that?

7 A No. As I recall, that's where it stayed.

8 Q So as between the director, who was Mr. Miller  
9 at the time, and the ADM, who was Mr. Whitley at  
10 the time, what was your understanding of who was  
11 responsible for witness protection decision in  
12 this case, or was it joint between the two of  
13 them?

14 A I don't know the answer to that. We weren't  
15 involved in it.

16 Q All right. And in relation to this specific  
17 case then, assuming that it was a matter between  
18 Whitley and Miller on your evidence, was  
19 there -- at some point early on -- you say the  
20 matter gets raised right away in the preferred  
21 indictment memo in mid-November -- at some point  
22 was there a briefing or a decision or a meeting  
23 where the whole subject was discussed? What  
24 were your instructions, if any, in relation to  
25 the witness protection arrangements in this



1 case?

2 A I don't remember ever attending any meeting to  
3 discuss that topic. I raised it in my memo to  
4 Whitley on the instructions of Dangerfield.

5 Q Yes, and we will come to that memo shortly --

6 A Yes.

7 Q -- where you clearly squarely raise it, and you  
8 say take it up with the deputy?

9 A I don't remember getting involved in it any  
10 further.

11 Q Did you ever receive any instructions about  
12 witness protection in this case?

13 A No, I didn't.

14 Q Were you ever told how you were to handle it if  
15 the subject of disclosure of the witness  
16 protection arrangements came up?

17 A No, I wasn't.

18 Q So there were never any express instructions to  
19 you, if defence counsel asks about these  
20 arrangements, you are to take X position or Y  
21 position?

22 A No.

23 Q That never came up?

24 A No.

25 Q Now, in spite of, as you've told us, the

1 director and the Assistant Deputy Minister being  
2 responsible for this, and it's set out in your  
3 witness statement at page 6 to that effect, did  
4 you have a need to know about witness protection  
5 matters in certain circumstances in order to  
6 make certain legal decisions in the case,  
7 procedural decisions in the case?

8 A No, I didn't. No.

9 Q You had no need to know about witness protection  
10 matters for any of your responsibilities as  
11 prosecutor?

12 A No. I wasn't involved in it. We were to  
13 prosecute the case. Witness protection was  
14 somebody else's responsibility.

15 Q But let me take to you page 6 of your statement,  
16 please, Mr. Lawlor. If you look at the  
17 paragraph in the middle of page 6:

18 "Lawlor agrees that there was a  
19 relationship between witness protection  
20 issues and some legal issues in the case.  
21 For instance, witness protection was a  
22 major factor in the decision to seek a  
23 direct indictment. It was the main reason  
24 for the subsequent Crown motion to expedite  
25 the trial, and it potentially had a bearing

1 on witness's credibility. Accordingly,  
2 Lawlor had some interest in the issue of  
3 witness protection insofar as he was  
4 concerned about the safety of his witnesses  
5 and about anything that might affect their  
6 credibility at trial."

7 Do you agree with that statement today?

8 A I do. And that is why I raised it in my memo to  
9 Whitley requesting a direct indictment.

10 Q So perhaps I didn't phrase my question very  
11 well. There were some legal and procedural and  
12 substantive issues in the case that required you  
13 to know a certain amount about the witness  
14 protection matter. Is that fair?

15 A I suppose.

16 Q You had a need to know in certain circumstances,  
17 in order to make these motions and decide these  
18 issues?

19 A Yes.

20 Q And if we look in the file, for example, at tab  
21 9, if you flip forward to tab 9, you will see a  
22 police report prepared by Sergeant Anderson  
23 shortly before you prepared your preferred  
24 indictment memo. Tab 9, Sergeant Anderson's  
25 report, is dated November 4th, and your

1 preferred indictment memo that we will come to  
2 in a minute is about two weeks later, on  
3 November 19th. You see Sergeant Anderson  
4 setting out the witness protection needs of  
5 Mr. Zanidean in that police report?

6 A I do.

7 Q Both the short-term needs pending trial and then  
8 the long-term needs once he has testified, you  
9 see how he has divided it up?

10 A Yes.

11 Q And is that the kind of general information that  
12 you would need to know, for example, to prepare  
13 your preferred indictment memo two weeks later?

14 A I don't know if we would need this much as to  
15 future things. The main concern was before and  
16 during the trial that the witnesses were safe.

17 Q You needed to make sure that your witness made  
18 it into the witness box?

19 A Exactly.

20 Q And gave his evidence?

21 A Yes.

22 Q And so there needed to be a plan to make sure  
23 that happened, which is the short-term plan that  
24 Sergeant Anderson is setting out there?

25 A Yes.

1 Q And the long-term plan of what was going to  
2 happen afterwards was fundamentally what Bruce  
3 Miller was responsible for dealing with?

4 A That was somebody else's concern. Our main  
5 concern was, as you said, to have our witnesses  
6 show up and testify.

7 Q In any event, Sergeant Anderson saw fit to put  
8 these matters into a police report. And I take  
9 it you would have received that report?

10 A I can't specifically remember receiving this  
11 report. I know I had some information from the  
12 police, it may have been in the form of this  
13 report, it may have been verbal, which led me to  
14 do the memo to Whitley, in which I set out that  
15 witness protection was an issue.

16 Q You have told us that the practice was you  
17 received all police reports, you received the  
18 pink copies?

19 A Yes.

20 Q And certainly all of the file reviews that have  
21 been done in this case, and Ms. Carswell just  
22 went through them recently with Chief Ewatski,  
23 indicated that these, the pinks were provided to  
24 the Crown?

25 A I would have this then, yes.

1 Q Now, you've told us that you had no involvement  
2 in the long-term relocation negotiations that  
3 were going on, that was the responsibility of  
4 the management people above you. Were you  
5 aware, however, of the fact that such  
6 arrangements were under discussion, that there  
7 was a long-term plan that was being discussed  
8 and that was the responsibility of management to  
9 look after?

10 A No, I wasn't, at least not that I can remember.

11 Q Again, if I could maybe help you to go back to  
12 your statement at tab 2, if you could look at  
13 page 7. You see at the top of page 7, the first  
14 new paragraph:

15 "With respect to the long-term post-trial  
16 arrangements, Lawlor knew only that  
17 arrangements were being made to place  
18 Zanidean and Gumieny in some kind of  
19 Witness Protection Program; he did not know  
20 the specific details."

21 A Yes.

22 Q And similarly, if you go forward a few pages to  
23 page 11, you see under the heading "The RCMP  
24 Witness Protection Application," and about a  
25 third of the way down page 11:

1 "Lawlor was aware that Miller was dealing  
2 with Kovnats in the winter of 1990 and knew  
3 in general terms what was being discussed."

4 Does that assist in refreshing your memory that  
5 you were aware of the fact of these long-term  
6 arrangements being under negotiation, but not  
7 the details of them?

8 A Not necessarily long-term, witness protection, I  
9 can't say I ever knew anything about a long-term  
10 plan.

11 Q Well, what's stated here at the top of page 7 is  
12 described as the "long-term post-trial  
13 arrangements," which if you go back to the memo  
14 at tab 9 is the way that Sergeant Anderson  
15 divided it up. That the short-term plan is to  
16 get the witness safely to trial and get his  
17 evidence in, the long-term was to relocate him  
18 after his testimony. That's what witness  
19 protection is all about, isn't it?

20 A I suppose it is. But, again, our concern was  
21 the short-term, having our witness available to  
22 testify at trial.

23 Q I appreciate that.

24 A I may have had some general idea that other  
25 discussions were taking place for long-term, but

1 nothing specific.

2 Q No. I appreciate your point that your  
3 preoccupation qua prosecutor was the short-term  
4 arrangements?

5 A Yes.

6 Q I am going to come to those in a minute, because  
7 we see your name on a number of documents  
8 relating to those short-term arrangements. But  
9 I am just trying to establish what your general  
10 state of awareness was with the long-term  
11 post-trial arrangements that were being  
12 negotiated at a level above you. Were you or  
13 were you not aware of the fact that there were  
14 such arrangements under discussion, although you  
15 didn't know the details?

16 A I knew there were discussions ongoing. I didn't  
17 know the details. I didn't know that they  
18 were --

19 Q All right. Fair enough.

20 A -- "long-term."

21 Q Well, by long-term I simply mean, and I will use  
22 the term post-trial --

23 A Post-trial.

24 Q -- if you prefer that. Your preoccupation was  
25 getting them to trial.



1 A Pre-trial.

2 Q The post-trial arrangements were Mr. Miller's  
3 and Mr. Whitley's responsibility?

4 A As far as I understood, yes.

5 Q So you knew the fact that that was being looked  
6 after above you, you didn't know the details  
7 about it?

8 A That's right.

9 Q Now, in terms of what Sergeant Anderson calls  
10 the short-term, and what you and I have been  
11 referring to as getting the witness safely into  
12 the witness box at trial, could I take you to a  
13 number of documents, consistent with what you've  
14 told us, that this was your main preoccupation  
15 as a prosecutor.

16 If you look, for example, at tab 10, it is  
17 a memo that you are copied on, on November 26th,  
18 that deals with getting Zanidean into a  
19 safehouse. Do you see that?

20 A I do.

21 Q Again, if you go back to Sergeant Anderson's  
22 memo at tab 9, he had expressed concerns about  
23 the fact that Zanidean lived in a house that he  
24 owned, which the accused and his associates were  
25 well aware of?

1 A Yes.

2 Q Do you see that? It is in his very first  
3 paragraph at tab 9?

4 A I see it, yes.

5 Q So the memo discusses, at a number of points,  
6 the need to get him out of that house, to get  
7 him placed --

8 A Get him moved.

9 Q -- get him moved somewhere else. And we see  
10 about two weeks after Sergeant Anderson writes  
11 that report, you are being copied on a memo  
12 that's providing a cheque to Sergeant Anderson,  
13 a \$1,300 cheque, to effect that move to a secure  
14 house and to pay the rent and the moving  
15 expenses?

16 A Yes.

17 Q And, again, is that consistent with what you've  
18 told us, that your concern was the immediate  
19 pre-trial arrangements to make sure your key  
20 witnesses were safe?

21 A It is.

22 Q These were matters that you were being kept  
23 informed of that were relevant to the safe  
24 conduct of the prosecution?

25 A Yes.

1 Q And the --

2 A I'm not sure that's why that memo was copied to  
3 me. I spoke to Louise Beaudette about these  
4 issues that you are raising and going to raise,  
5 and she told me she copied the memo to put on  
6 the prosecution file.

7 Q Well, if you look at the attachment to the memo,  
8 the reason that it may have been copied to you  
9 is because according to Sergeant Paul's  
10 accounting document --

11 A He received --

12 Q -- he received a cheque from you?

13 A Yes.

14 Q And the first four cheques, again in this early  
15 pre-trial period, November, December, January  
16 and February, are all recorded as being received  
17 from you, and then the responsibility is passed  
18 along to others thereafter. Do you see that in  
19 the accounting document?

20 A I do. And I can't explain why it says received  
21 from me. I don't remember ever passing on  
22 cheques to the Winnipeg Police. And, again, I  
23 spoke to Louise Beaudette about this after we  
24 met in July. She recalls Anderson and Paul  
25 having regular contact with Bruce Miller.

1 Q I am not sure we should be having you reporting  
2 on your conversation with Louise Beaudette.

3 A She helped refresh my memory so I can answer  
4 this question.

5 Q Well, your memory is you don't recall --

6 A Ever receiving cheques.

7 Q -- being the person who was the cheque conduit  
8 person?

9 A Yes.

10 Q And I am not particularly concerned about that  
11 one way or the other, Mr. Lawlor. What I am  
12 concerned with is, you had a need to know that  
13 your witness was safe in the pre-trial period?

14 A Yes.

15 Q And this memo was consistent with keeping you  
16 informed that he was now securely placed in a  
17 safehouse?

18 A It is.

19 Q And if you turn to tab 12, we have another one  
20 of these memos. This is the second cheque, the  
21 December cheque, this one for \$853 that is again  
22 related to the moving Zanidean to the  
23 safehouse --

24 A Yes.

25 Q -- and the related expenses. And again we see

1           you copied on that memo?

2    A       I was.

3    Q       Consistent with the functional reasons you've  
4           given us of your need to know in that time  
5           frame?

6    A       Yes.

7    Q       Tab 16 is a similar memo in relation to Gumieny.  
8           You will see it says "re Gumieny" at the bottom?

9    A       Yes.

10   Q       And this one is a \$400 cheque being paid to  
11           Sergeant Williams, who is Gumieny's handler, in  
12           order to look after some of his expenses?

13   A       Yes.

14   Q       Rent, rent for February and utilities; is that  
15           correct?

16   A       Yes. This is a memo to Brian Anderson from  
17           Bruce Miller with copies to no one.

18   Q       And if you look -- I appreciate you are not  
19           copied on this one, but if you look at the  
20           attachment to it, the handwritten document that  
21           goes with it that requests the \$400?

22   A       Yes, that's my handwriting.

23   Q       It appears to have been authored by you, does it  
24           not?

25   A       Yes.

1 Q And your recollection of how this handwritten  
2 note of yours came about?

3 A I must have received a phone call from the  
4 police officers who were responsible for looking  
5 after Gumieny, asking me to pass on that request  
6 to Bruce Miller.

7 Q And the substance of what the police pass on to  
8 you is that Gumieny needs assistance, he needs  
9 money urgently?

10 A Yes.

11 Q "We may lose him as a witness."

12 A Yes.

13 Q And that, again, is consistent with what you  
14 told us about the functional reasons of why you  
15 would need to be informed of these matters,  
16 because it was your responsibility to get the  
17 witness -- to get the prosecution to trial?

18 A Yes, that's correct.

19 Q And it also states that he is thinking about  
20 getting a lawyer?

21 A Yes.

22 Q He did not have a lawyer, as far as you knew?

23 A As far as I knew, no.

24 Q Tab 17 is the last one in this group of  
25 documents, Mr. Lawlor.

1 A Yes.

2 Q If you could flip to it? Again, a handwritten  
3 note, is that your handwriting?

4 A It is.

5 Q And this note, unlike the previous one, relates  
6 to which witness?

7 A This would be Zanidean because it mentions  
8 Saskatchewan charges.

9 Q And the Saskatchewan charges was something that  
10 you eventually came to know was associated with  
11 Zanidean?

12 A Yes.

13 Q And he is inquiring about the status of the  
14 Saskatchewan charges?

15 A Yes.

16 Q And --

17 A Again, I expect that these notes would have been  
18 as a result of a conversation with the police  
19 officer.

20 Q And what would you have done with these  
21 particular requests relating to relocation and  
22 the status of Saskatchewan charges?

23 A I would have passed them on to Bruce Miller.

24 Q And dealing with each of the particular  
25 requests, the fact that he says he wants

1 relocation after trial and an assurance, which  
2 you've underlined, that he will be relocated,  
3 again, do I take it that, consistent with what  
4 you have told us, you understood that there was  
5 a post-trial plan to relocate him?

6 A Of some sort, yes.

7 Q Without knowing the details of it, although here  
8 he tells you that he did -- that it is B.C. that  
9 he has got in mind. The witness protection  
10 arrangements traditionally involve some kind of  
11 post-trial relocation?

12 A That's my understanding.

13 Q So this didn't surprise you when you received  
14 this request from the police that he was  
15 concerned about post-trial relocation?

16 A No, it wouldn't .

17 Q And, similarly, the request that he wanted to  
18 know the status of the Saskatchewan charge,  
19 again, that was something that you came to  
20 generally understand that there was an issue, he  
21 was under investigation in Saskatchewan for an  
22 arson; is that correct?

23 A Yes, I knew at some point in time that he was  
24 being investigated.

25 Q And you knew that he was concerned about it?



1 A Yes.

2 Q Does the fact that you underlined the word  
3 "assurance," was that reflective of the style of  
4 communication that you understood Zanidean made,  
5 that he was asking for guarantees, in essence?

6 A It may have been something in the tone of the  
7 police officer's voice.

8 Q We have heard a great deal of evidence to that  
9 effect, and it's consistent with that other  
10 evidence that there was a sort of demanding  
11 quality about the particular request, which  
12 presumably may explain why you underlined it; is  
13 that fair?

14 A Yes. That's what I said, it may have been  
15 something in the police officer's, in the tone  
16 of his voice that caused me to highlight it.

17 Q And if you look at the last entry, your fourth  
18 bullet point?

19 A Yeah.

20 Q "Wants to know by next Monday."

21 A Yes.

22 Q There is an ultimatum quality to it, is that  
23 fair?

24 A There is urgency to it.

25 Q And, again, we have heard a lot of evidence on

1           this. Was this something that you came to  
2           associate with Zanidean and the nature of his  
3           requests, that they often came with deadlines  
4           and ultimatums attached to them?

5    A       I didn't know much about Zanidean or his  
6           character or his dealings, if anything, his  
7           dealings with the police.

8    Q       All right. Is the fact that a witness is  
9           seeking these kinds of assurances and is making  
10          these kinds of requests, is that a discloseable  
11          fact, in your view?

12   A       I would think so.

13   Q       Did you take any steps to ensure that these  
14          matters were disclosed?

15   A       No. As I say, I would have passed this note on  
16          to Bruce Miller.

17   Q       Bruce Miller wasn't responsible for disclosure  
18          in this case, was he?

19   A       No, he wasn't.

20   Q       So who was responsible for disclosure?

21   A       George Dangerfield and myself.

22   Q       So as between yourself and George Dangerfield,  
23          did you have a discussion as to whether these  
24          kinds of communications ought to be disclosed to  
25          the defence?

1 A No. I don't remember ever discussing those  
2 topics with George.

3 Q And is there any explanation for why not?

4 A No specific explanation. I wasn't spending a  
5 lot of time on Driskell during that time period.  
6 I had a very heavy caseload in the Court of  
7 Appeal. We weren't having regular meetings or  
8 sitting down and chatting about the case.

9 Q All right. That note, incidentally, is undated.  
10 Can you help us as to when that communication  
11 with Zanidean would have taken place?

12 A I have no idea.

13 Q It could have been on the eve of trial?

14 A It could have been. It could have been.

15 Q Let me take you to the preferred indictment  
16 memos. We have gone through them very carefully  
17 already, Mr. Lawlor, and your statement deals  
18 with them, so I am going to be fairly brief.  
19 They are at tab 6 and tab 7. Tab 6 is  
20 Mr. Dangerfield's memo to you?

21 A Yes.

22 Q Is that correct?

23 A Yes.

24 Q And it immediately raises the witness protection  
25 issues in the case; is that correct?

1 A Yes.

2 Q And your memo then at tab 7, following up to  
3 Mr. Whitley, again stresses the witness  
4 protection issues as being the driving reason  
5 for the preferred indictment; is that fair?

6 A Yes. I was echoing what Dangerfield said in his  
7 memo.

8 Q And obviously to raise those matters, to state  
9 the self-evident here, you had to be briefed on  
10 the witness protection issues?

11 A I had to be told it was an issue.

12 Q Somebody had to give you the information for you  
13 to satisfy yourself --

14 A That it was an issue, yeah.

15 Q -- that it was a valid and proper reason for  
16 taking an unusual step in the criminal process?

17 A Yes.

18 Q Now, if you look at your memo at tab 7, I don't  
19 need to go through it carefully with you, most  
20 of it is self-evident, Mr. Lawlor, but if you  
21 could turn to the last page, page 4?

22 A Yes.

23 Q You conclude by stating, and I'm reading the  
24 first new paragraph at page 4:

25 "As set out in the memo of G. Dangerfield,

1           we have to move quickly in two areas: The  
2           direct indictment to secure an early trial,  
3           and witness protection."

4           And in relation to witness protection you state  
5           the following:

6           "The key witness in this case has obtained  
7           a lawyer, who tells me his client is jumpy  
8           and nervous, and very demanding."

9           Do you recall the basis for that assertion that  
10          he had obtained the lawyer who tells me that his  
11          client is jumpy and nervous and very demanding?

12        A       No, I don't. I don't know why I worded that the  
13          way I did.

14        Q       Do you recall an individual by the name of David  
15          Kovnats?

16        A       I do.

17        Q       And do you recall having a discussion with him  
18          along these lines?

19        A       I don't remember having any discussion with  
20          Mr. Kovnats.

21        Q       You agree with me, the memo, on its face, the  
22          plain meaning of it is that you had a  
23          conversation with him?

24        A       Yes.

25        Q       And I take it you are not denying that plain

1 meaning, that at some point --

2 A No, I have no memory of being with Mr. Kovnats.

3 Q You simply don't remember the conversation; is  
4 that correct?

5 A Yes.

6 Q And, again, the assertion that the witness is  
7 very demanding, if you go back to your  
8 handwritten note at tab 17, it has much the same  
9 flavour to it, does it not?

10 A Yes, it's consistent.

11 Q Is the fact that a witness has gone out and  
12 retained counsel to negotiate demands, to  
13 advance demands on his behalf with the Crown, is  
14 that something normal in your experience or is  
15 it unusual?

16 A It's not normal, no.

17 Q And would the demands being advanced on behalf  
18 of a key witness through counsel be a  
19 discloseable fact, in your view?

20 A Yes. Well, if I could back up a moment, when I  
21 say it's not normal, that's a difficult question  
22 to for me to answer, because I wasn't involved  
23 in that aspect of the thing.

24 Q But, Mr. Lawlor, you're an extremely experienced  
25 prosecutor, indeed, you were already experienced

1 by this time. All I mean is, had you  
2 encountered cases before where you had a key  
3 witness who had gone out and retained counsel,  
4 who was advancing a series of demands on behalf  
5 of the witness?

6 A No. No, I hadn't.

7 Q So it is unusual in terms of your experience?

8 A In terms of my experience, I have to admit to  
9 that.

10 Q Now, the direct indictment we know is obtained  
11 the very same day, November 19th. If you want  
12 to actually look at the indictment, we've got it  
13 here. But it is not disclosed to defence  
14 counsel until much, much later, and it is not  
15 placed in the Manitoba Queen's Bench Assignment  
16 Court until even later still. It's about a  
17 month later, on December 27th, when it is  
18 disclosed to defence counsel. And January 9th,  
19 it's lodged in the Queen's Bench Assignment  
20 Court. And you can see all of that at tab 25,  
21 if you want to follow through the chain of  
22 documents.

23 Can you assist us as to the reason for  
24 holding back the preferred indictment for that  
25 approximately six-week period from counsel and

1 from the filing it in the court? What was the  
2 reason for that?

3 A I can only assume it was to enable time to put  
4 the witness protection in place.

5 Q Exactly.

6 A Because they are both requested at the same  
7 time. The direct indictment comes the same day.  
8 Obviously, the witness protection issues have  
9 not been addressed.

10 Q And, indeed, Mr. Dangerfield's memo adverts to  
11 this at tab 6, where he cautions you to  
12 communicate with the police, if you want to go  
13 back to the last page of tab 6, to make sure  
14 that the witness protection arrangements are in  
15 place before the preferred indictment is  
16 obtained. Do you see that at tab 6, page 2, the  
17 long paragraph at the top of the page?

18 A Yes.

19 Q "Before taking these steps, we ought to be  
20 fairly certain how long the police require  
21 to tie up the loose ends."

22 And then his last sentence is:

23 "The arrangements should be made to protect  
24 the witnesses before we draft the  
25 indictment for the Minister's signature."



1 A Yes.

2 Q Which is consistent with the answer that you  
3 have just given us?

4 A Yes. That would be my expectation.

5 Q So, again, is this another example of an area in  
6 which you had a need to know the pretrial or  
7 short-term witness protection arrangements  
8 because they affected legal decisions and  
9 procedural decisions you had to make?

10 A As to when the direct indictment was disclosed  
11 and lodged in the court, yes.

12 Q And then thereafter disclosure to defence  
13 counsel would flow from the lodging of the  
14 direct indictment; is that correct?

15 A Yes.

16 Q Now, we saw from the memos that we just reviewed  
17 with you, for example, at tab 10 and tab 12,  
18 that the moment of Zanidean, for example, to the  
19 safehouse takes place, it appears in December.  
20 And, again, keeping you informed of that would  
21 allow you to know when the arrangements were in  
22 place so that you could then move forward with  
23 the direct indictment and with disclosure; is  
24 that fair?

25 A Yes.

- 1 Q All right. I want to turn to the next  
2 procedural step, which is the expedited trial  
3 motion before Chief Justice Hewak on  
4 February 6th. And the affidavit in support of  
5 that motion we find at tab 26, Mr. Lawlor. It's  
6 in volume 2 now we're into, exhibit 30B.
- 7 A Yes.
- 8 Q And that's an affidavit that you swear?
- 9 A Yes, it is.
- 10 Q And if you look, for example, in the last two  
11 pages of the affidavit, starting at around  
12 paragraph 22, and through to the end of the  
13 affidavit, you aver a number of assertions of  
14 fact about witness protection matters?
- 15 A Yes.
- 16 Q And the basis, the factual basis for the  
17 expedited trial motion was fundamentally tied up  
18 with witness protection issues; is that fair?
- 19 A Yes, it is.
- 20 Q You were trying to secure an early trial date  
21 because you had witnesses who were under  
22 protection and you wanted to get that trial on  
23 quickly to make sure nothing untoward happened?
- 24 A Exactly.
- 25 Q And, again, in order to make those averments in

1           your affidavit, you would have had to have been  
2           briefed about these matters?

3       A     Yes, this is information that I would have  
4           received from the police. That is how I have  
5           set it out here, so that's where it would have  
6           come from.

7       Q     Now, Mr. Dangerfield argues the motion in court,  
8           it appears on the afternoon of February 6th.  
9           And I don't need to go through his submissions  
10          with you in any detail, we have already covered  
11          them with him.

12                 The upshot of the motion on this first day,  
13           it eventually gets adjourned to the 13th, is  
14           that Chief Justice Hewak, if you look at the  
15           transcript at tab 27, he asks counsel to get  
16           together and try and resolve the disclosure  
17           issues and report back to him; is that correct?

18       A     Yes, I see that.

19       Q     He puts it over to February 13th at 2:00 p.m. to  
20           report back to him on the disclosure, the state  
21           of disclosure, as Mr. Brodsky has made a number  
22           of complaints or requests about incomplete  
23           disclosure?

24       A     Yes.

25       Q     And Mr. Brodsky has a memo at tab 28 where he

1           says that it was -- you see at tab 28 he has the  
2           time of the motion.  It's argued in the  
3           afternoon from 2:00 p.m. to 3:30 p.m.?

4    A       Yes.

5    Q       And then he says he meets with you after the  
6           motion?

7    A       Yes.

8    Q       And the agreement the two of you reach is that  
9           he is going to put his requests in writing?

10   A       Yes.

11   Q       And do you have any disagreement or dispute with  
12           Mr. Brodsky's contemporaneous memo recording the  
13           fact of those events?

14   A       No, I don't.

15   Q       And sure enough, at that same tab we get his  
16           letter written to you the very next day,  
17           February 7th?

18   A       Yes.

19   Q       And your counsel, Mr. Olson, has provided us  
20           with information from your passport showing that  
21           two days later, on February 9th, you arrived in  
22           Cancun.  But I take it on February 7th you were  
23           still in Winnipeg and would have received that  
24           letter at tab 28?

25   A       Yes.  I would not have left -- as I recall,

1 February 9th was the Saturday, I would have left  
2 early in the morning. So, as a matter of fact,  
3 all of this handwriting, these notes in the  
4 margin of the letter, that's my handwriting.  
5 So, obviously, I got that letter and I assume I  
6 made those notes that day.

7 Q That was the next point that I was going to  
8 raise with you is that not only did you receive  
9 it on the 7th, but you dealt with it to some  
10 extent by going through it and making some  
11 handwritten notes on it?

12 A Yes, either on the 7th or on the 8th. Although,  
13 as I recall, I was in the Court of Appeal on the  
14 8th. So it was either the 7th or the 8th I  
15 would have made these notes.

16 Q And Mr. Dangerfield then writes the response on  
17 the 8th at tab 29. He gets a very quick reply  
18 back to Mr. Brodsky, presumably to try to  
19 satisfy Chief Justice Hewak's concerns?

20 A Yes. I assume I would have written these notes  
21 on here and passed this document on to  
22 Mr. Dangerfield so he could reply to the letter.

23 Q Now, the functional reason for that as to likely  
24 why you were taking up the initial  
25 responsibility, both to meet with Mr. Brodsky

1 and discuss his disclosure concerns, and then to  
2 brief Mr. Dangerfield with these handwritten  
3 notes, is that you had been handling disclosure  
4 in this case up to now, up to this point, had  
5 you not?

6 A I had, at least the requests.

7 Q Okay.

8 A And following them up with the police and trying  
9 to reply to everything that I could.

10 Q I am not going to go through these letters with  
11 you, Mr. Lawlor, but if you look at tab 25 of  
12 the first volume of your documents here, we have  
13 grouped together all of the early disclosure  
14 letters. And they are with Mr. Garber before  
15 Mr. Brodsky comes on the case. But every single  
16 one of them is addressed to you or is from you?

17 A Yes.

18 Q With the one exception, there is one from an M.  
19 Hurd. And we have heard something about who he  
20 or she is. Can you assist us as to M. Hurd was?

21 A She would have been the assistant to George  
22 Dangerfield and myself.

23 Q So you were --

24 A She was the secretary who was in charge of doing  
25 all of the administrative work for appeals.

1 Q So although George Dangerfield was the lead  
2 prosecutor from about mid-November, it appears,  
3 it looks like in these early stages you were  
4 handling disclosure; is that fair?

5 A Yes.

6 Q So to come back to the earlier question I asked  
7 you flowing from the from the tab 17 note  
8 relating to Zanidean's requests, and the tab 7  
9 telephone conversation you have with Kovnats,  
10 given your apparent responsibility for  
11 disclosure, why would you have not raised with  
12 Mr. Dangerfield the issue of disclosure of the  
13 fact of these requests or demands that were  
14 being made by and on behalf of Zanidean?

15 A I don't know -- I don't know whether or not  
16 George and I discussed that independently, or if  
17 it was in the context of discussing the letters  
18 that we were getting from Mr. Brodsky, I can't  
19 recall any specific type of discussion about  
20 those issues.

21 Q You had initially, when I had raised the  
22 question the first time, you had suggested that  
23 you were very busy with other matters and that  
24 this was Dangerfield's case and that this  
25 wasn't -- the disclosure of these matters wasn't

1 something that you would have addressed your  
2 mind to, or words to that effect. I am  
3 summarizing the gist of my recollection of your  
4 response?

5 A Well, no, disclosure is one issue. You asked a  
6 question to the effect of were we meeting and  
7 discussing these various issues. That's  
8 something we weren't doing on a regular basis.  
9 Certainly, we were both involved in replying to  
10 Mr. Brodsky's request for disclosure.

11 Q So you were jointly responsible for the  
12 disclosure matters?

13 A Yes.

14 Q Let's turn to his specific requests in this  
15 first letter at tab 28, and your marginal notes  
16 in relation to them. There is a couple of the  
17 points here that I wanted to highlight. Have  
18 you got tab 28 open and your handwritten notes?

19 A No, that's not tab 28.

20 Q Yes, tab 28 is the letter from Mr. Brodsky.

21 THE COMMISSIONER: The second page.

22 THE WITNESS: Oh, I'm sorry, I have it.

23 THE COMMISSIONER: Second and subsequent.

24 BY MR. CODE:

25 Q Tab 28, Mr. Brodsky's February 7th letter, item



1 number 5 could I have you look at?

2 A Yes.

3 Q Is the police records, which presumably refers  
4 to criminal records, outstanding charges and any  
5 parole applications, assistance being provided  
6 by the police to witnesses, is what he is after  
7 there; is that correct?

8 A Yes. And I have a note "will obtain." So I  
9 would have passed those requests on to the  
10 police.

11 Q And you will agree, consistent with the evidence  
12 that you've given so far, that those are clearly  
13 discloseable matters, any assistance or favours  
14 that are being provided to witness, or the  
15 witnesses are requesting; is that correct?

16 A Most certainly.

17 Q Number 6, the details of the witness protection  
18 programs that Mr. Dangerfield mentioned in  
19 court, that have been offered to various  
20 witnesses?

21 A Yes.

22 Q Do you see that?

23 A Yes.

24 Q And your note beside that is "no"?

25 A Yes.

1 Q And what would be the basis of your negative  
2 response to that request, unlike number 5?

3 A I remember seeing some kind of comment made by  
4 Mr. Dangerfield, whether it was -- I don't know  
5 whether it was during the February 6th pre-trial  
6 meeting, about, something about he didn't want  
7 to put witnesses in jeopardy so he didn't want  
8 details.

9 Q Perhaps we could turn to Mr. Dangerfield's  
10 response, which I think is what you're thinking  
11 of at the next tab, tab 29. If you look at  
12 Mr. Dangerfield's letter, consistent with your  
13 note "no," he writes, you will see it is at page  
14 3 of his letter of tab 29:

15 "In answer to your paragraph 6, we cannot  
16 provide the details of the protection  
17 offered for fear of giving them away."

18 A Yes.

19 Q Is that what you're thinking of?

20 A Yes. So I may have written that note during or  
21 after some brief discussions with  
22 Mr. Dangerfield as to --

23 Q So the two of you discussed it and thought--

24 A We split up what we were going to do. He  
25 assigned certain things to me and there were

1 things he was going to do. He obviously wrote  
2 the reply to the letter. From these notes, he  
3 asked me to follow things up so he could answer  
4 Mr. Brodsky's requests.

5 Q If you could be aware of the microphone,  
6 Mr. Lawlor --

7 A Yes.

8 Q -- and stay close to it. Some of my colleagues  
9 are having difficulty hearing you.

10 THE COMMISSIONER: Some of your older  
11 colleagues, I'm sure.

12 MS. CARSWELL: That was me, Mr. Commissioner.

13 THE COMMISSIONER: Oh, I'm sorry, Ms. Carswell.  
14 I never would have said that.

15 MR. CODE: You thought it was that white haired  
16 fellow back there.

17 THE COMMISSIONER: I notice it's approximately  
18 the time for a break, but I leave it to you --

19 MR. CODE: If I could just finish up this item  
20 then, that would be a perfect time.

21 THE COMMISSIONER: Absolutely.

22 BY MR. CODE:

23 Q So, Mr. Lawlor, is your reading of these two  
24 documents, your note "no" beside it and  
25 Mr. Dangerfield's response at tab 29, suggestive

1           that the two of you got together and agreed that  
2           you would give a negative response to this  
3           particular request?

4    A       That's consistent, yes.

5    Q       And the rationale for it was this assertion and  
6           belief that it would give the witnesses away,  
7           that it would disclose their whereabouts; is  
8           that what you were getting at?

9    A       It would put them in jeopardy, yes.

10   Q       And what I want to ask you in relation to that,  
11           reflecting on it now, or at the time did you  
12           reflect on it, as to whether that was perhaps an  
13           overly broad response, that there were some  
14           aspects of witness protection that would not  
15           give the witness away such as the quantum of  
16           monies or any immunity that came along with  
17           witness protection?

18   A       No, I agree with that.  But Mr. Brodsky's  
19           request is very broad.  He didn't ask for  
20           particulars.  Details, what does he mean by  
21           details?

22   Q       He asked for the detail of the Witness  
23           Protection Program.

24   A       He didn't ask for payments, you know.  I mean,  
25           if he would have broken it down, maybe we would

1           have broken it down. I can't say we would have,  
2           I'm speculating. But his question, his request  
3           was very general and our response was very  
4           general.

5    Q       And as I understand your interview, you can see  
6           that things like the quantum of monies --

7    A       Yes.

8    Q       -- paid on behalf of the witness would not give  
9           them away?

10   A       No, and they would be relevant.

11   Q       And are properly discloseable?

12   A       Yes.

13   Q       And similarly, any immunity arrangements made on  
14           behalf of a witness, whether related to witness  
15           protection or not, would equally not give them  
16           away?

17   A       No, and it would be relevant, It would be  
18           discloseable. You would have to disclose it, of  
19           course.

20   Q       So you say "no" because his request was too  
21           broad and covered things that would have given  
22           the witness away?

23   A       I assume that that is why we answered the way we  
24           did.

25   Q       Just a couple of other items in this letter and

1           then we will take the afternoon recess,  
2           Mr. Lawlor.

3           Do you see number 16 at tab 28,  
4           Mr. Brodsky's number 16? He says he has got  
5           Zanidean's statements, but he wants the records  
6           of all of his contacts with police officers?

7    A       Yes.

8    Q       Including in their notebooks?

9    A       Yes.

10   Q       And your note beside that is, "he has all the  
11           statements"?

12   A       Yes.

13   Q       Which deals with the first part of it. He is  
14           saying he has got the statements. What about  
15           the second part of it, is he entitled to the  
16           record of all of their contacts in the  
17           notebooks?

18   A       Yes.

19   Q       And if you look at Mr. Dangerfield's response at  
20           tab 29 to item 16, tab 29, page 4, you see some  
21           handwritten notes beside that response?

22   A       Yes.

23   Q       First of all, there is a "none" written above it  
24           and then a "discuss with George" in the margin?

25   A       Yes.

- 1 Q And whose handwriting is that?
- 2 A That's mine.
- 3 Q You see his response, consistent with your note,  
4 says that he has all of the statements. And,  
5 again, consistent with what you have just told  
6 us in your evidence, he says,  
7 "To be absolutely certain, we will supply  
8 you with any supplemental reports of  
9 conversations, informal or otherwise, with  
10 police officers."
- 11 A Yes.
- 12 Q So you are agreeing to follow up and provide the  
13 evidence of any contacts demonstrated in the  
14 police officer's notebooks. Is that fair?
- 15 A Yes, double-check with the police to make sure  
16 that we have everything.
- 17 Q And, finally, the last two requests in this  
18 letter that I want to mention are over the page,  
19 back at tab 28, Mr. Brodsky's letter. If you  
20 could look at items 22 and 23?
- 21 A I'm sorry?
- 22 Q Tab 28, page 3 of the letter, items 22 and 23?
- 23 A Yes.
- 24 Q He is asking about the motives of the witnesses  
25 to implicate Driskell?

1 A Yes.

2 Q Both questions are directed to that same issue,  
3 one is just a little bit more specific. And he  
4 is asking for information in the police files  
5 that would disclose the motives of the witnesses  
6 for assisting in the prosecution of Driskell; is  
7 that correct?

8 A Yes.

9 Q And your notes beside both of those items is  
10 "none"; is that correct?

11 A Yes.

12 Q And what would be the basis for that?

13 A Reviewing the police reports that we did have.

14 Q But his request is directed to police files?

15 A Yes.

16 Q So would you have done anything before making a  
17 note like that "none"? And if so, what would  
18 you have done?

19 A I would have checked through our police reports  
20 that we have to see if that issue was dealt with  
21 anywhere.

22 Q So all you did was an examination of your file  
23 of what you already had?

24 A I expect that that's what I did.

25 Q If you look at your statement, Mr. Lawlor, again



1 at tab 2, and tell me if this refreshes your  
2 memory?

3 A Sure.

4 Q Tab 2, page 14, two-thirds of the way down the  
5 page, the last sentence of that long middle  
6 paragraph:

7 "Likewise, Dangerfield's response to  
8 Brodsky's questions..."

9 Perhaps I should take you to the response first  
10 before I -- that might assist you. If you look  
11 at tab 29 at paragraphs 22 and 23, do you have  
12 tab 29, page 5? Do you see the response at tab  
13 29, page 5 is,

14 "In answer to your paragraph 22, police  
15 files do not reveal anyone with a motive  
16 for implicating Driskell in the killing."

17 And then number 23 is,

18 "With respect to paragraph 23, these files  
19 do not reveal that those assisting the  
20 police have independent motives for  
21 assisting the police or in giving evidence  
22 against Driskell."

23 Can you assist us as to what the basis for those  
24 assertions would have been?

25 A No, I can't.

1 Q So, again, taking you back to your statement at  
2 tab 2, page 14, the last sentence of the middle  
3 paragraph:

4 "Likewise, Dangerfield's response to  
5 Brodsky's question about witnesses '  
6 motives suggests that an inquiry must have  
7 been made with the police."

8 A You can't suggest -- you can read it that way,  
9 but I really can't say that there was further  
10 inquiries made with the police.

11 Q What about his response to paragraph 16 where he  
12 says -- go back to page 4 of his letter?

13 A Yes.

14 Q He says,

15 "You have all of the statements. Beyond  
16 them there is no further record of contacts  
17 with the police except with respect to  
18 caring for him pending trial."

19 What would be the basis for that assertion?

20 A That would be based on what we had received from  
21 the police.

22 Q And, again, if you look at your statement to us  
23 at tab 2, page 14, right in the middle of the  
24 page:

25 "He expects that since Dangerfield asserted

1           that there is no further record of contacts  
2           with the police, one or the other of them  
3           must have spoken to the police and inquired  
4           whether the police had anything else in  
5           writing."

6           Do you recall saying that in the interview?

7    A       I do.  And that's what I have to assume, that we  
8           were following up.

9    Q       So I guess what I'm trying to understand is, was  
10           it your practice, upon receiving a request like  
11           these last three we have been dealing with, 16,  
12           22 and 23, to make positive inquiries with the  
13           police, or would you simply review your existing  
14           file?

15   A       Both.

16   Q       You would have done both?

17   A       Review our existing file to see if there was  
18           anything that had not been passed on  
19           inadvertently, and make inquiries of the police.  
20           In fact, I do recall on at least one occasion  
21           sending a request to the police to follow up on  
22           certain of Brodsky's requests.

23   Q       We are going to come to that one in a moment.  
24           But what you told us about the practice in  
25           direct indictment cases is that you had a duty,

1 an obligation I think is the word you used, to  
2 make positive inquiries?

3 A With the police, to make sure.

4 Q Is that correct?

5 A Yes.

6 MR. CODE: This would be a perfect time to  
7 break, and it's 3:30.

8 THE COMMISSIONER: Good, 15 minutes.

9 THE CLERK: All rise. This Commission of  
10 Inquiry is adjourned for a 15-minute recess.

11 (Proceedings recessed at 3:30 and  
12 reconvened at 3:47 p.m.)

13 THE CLERK: All rise. This Commission of  
14 Inquiry is back in session.

15 BY MR. CODE:

16 Q Mr. Lawlor, I would like to turn to  
17 Mr. Brodsky's second major disclosure request,  
18 which is the April 25th letter. There is, after  
19 the February 13th motion is denied, we have a  
20 quiet period of a couple of months where not  
21 much happens on the disclosure front. And then  
22 on April 25th, if you turn to tab 33, you will  
23 see Mr. Brodsky's second request letter. Do you  
24 have tab 33 there?

25 A I have it.

1 Q And, again, there are just a couple of the  
2 requests here that I want to focus on. If you  
3 look at number 5, this is very similar to number  
4 5 in the earlier letter, but he has broadened it  
5 a little bit. Instead of just asking for  
6 criminal records and outstanding charges and  
7 parole application, he is now asking for  
8 favourable considerations given to witnesses,  
9 such as not pressing charges or laying charges.  
10 Do you see that?

11 A I see that, yes.

12 Q And then this broad basket clause, other matters  
13 that would influence them to testify in a  
14 particular fashion. And, again, did you have  
15 any difficulty with the relevance of that  
16 request, the appropriateness of that request?

17 A No. I see my handwriting on the side dated  
18 April 20 something, it is cut off, WPD, so I  
19 must have passed that on to the Winnipeg Police  
20 to follow up.

21 Q So you thought it was an appropriate request and  
22 you passed it on to the police to respond to?

23 A It appears so.

24 Q And today do you see it as an appropriate  
25 request? He is asking for something relevant?

1 A Yes.

2 Q Over the page, number 9,  
3 "What do the Winnipeg Police have on the  
4 fire in Swift Current, Saskatchewan?"  
5 Do you see that?

6 A Page number?

7 Q On the second page.

8 A I'm sorry?

9 Q Number 9.

10 A Oh, I thought you said page 9, okay.

11 Q I'm sorry. Number 9?

12 A Yes.

13 Q "What do the Winnipeg Police have on the  
14 fire in Swift Current, Saskatchewan?"

15 A Yes.

16 Q And, again, do I take it you thought that was an  
17 appropriate request and you passed it on to the  
18 police?

19 A Yes, my notes indicate that.

20 Q And there was no mystery to you what Mr. Brodsky  
21 was talking about here. You knew what the Swift  
22 Current arson was?

23 A Yes.

24 Q You acknowledged --

25 A I can't say that I knew until I saw

1 Mr. Brodsky's letter that it was specifically  
2 Swift Current, but I knew there was some type of  
3 investigation ongoing in Saskatchewan.

4 Q And that it implicated Zanidean, that he  
5 personally was under investigation, and that he  
6 was concerned about it?

7 A Yes.

8 Q And the phone call you receive at tab 17 is  
9 consistent with that. It may have been at that  
10 time that you got briefed about it?

11 A Yes.

12 Q But at some point you get briefed about it. And  
13 so when Brodsky asks for it, you know what he is  
14 talking about?

15 A Yes.

16 Q It also is discussed on the body pack tapes; is  
17 that not correct? Driskell and Zanidean discuss  
18 an arson involving Zanidean's sister on the body  
19 pack tapes, do they not?

20 A I recall something to that effect, yes.

21 Q All right. So it actually had something to do  
22 with your case?

23 A Yes. And I don't know when I first saw those  
24 transcripts.

25 Q There was also a statement that Zanidean alleges

1           that Driskell made while they were on a trip to  
2           Saskatchewan, an incriminating statement about  
3           the murder of Perry Harder during a trip to  
4           Saskatchewan; do you remember that?

5    A       No, I don't.

6    Q       All right. So, in any event, you understood  
7           what the Swift Current arson was and you sent it  
8           on to the police?

9    A       Yes.

10   Q       Now, if you flip forward, just for a moment, to  
11           tab 44, the pre-trial, which is about a month  
12           later. Brodsky's second letter here comes in on  
13           April 25th, and the pre-trial before Justice  
14           Morse is on May 22nd, ultimately, where you and  
15           Dangerfield, according to Brodsky's memos at tab  
16           44, provide some information about the status of  
17           the Swift Current arson matter and the  
18           investigation of Zanidean?

19   A       Yes, I have it.

20   Q       You are familiar with those memos at tab 44?

21   A       Yes. I've seen them, yes.

22   Q       And my question is that obviously somewhere in  
23           this month, between Brodsky's April 25th letter  
24           and the May 22nd pre-trial before Justice  
25           Morse --



1 THE COMMISSIONER: Is it May 22nd or 23rd?

2 MR. CODE: I believe it's May 22nd.

3 THE COMMISSIONER: Okay. Right.

4 MR. CODE: Mr. Brodsky's memo at one point  
5 refers to it as May 22nd and another point as  
6 May 23rd.

7 THE COMMISSIONER: That's fine.

8 MR. CODE: And I believe that the best evidence  
9 is that it is May 22nd.

10 THE COMMISSIONER: Okay.

11 MR. CODE: He uses both dates on the two  
12 separate memos.

13 THE COMMISSIONER: Good.

14 BY MR. CODE:

15 Q Is it fair to say that somewhere between the  
16 April 25th letter at tab 33 and the May 22nd  
17 pre-trial at tab 44, you get a further briefing  
18 about the status of this letter that allows you  
19 to make the oral representations that were made  
20 before Justice Morse?

21 A It appears we did, yes.

22 Q And do you have any recollection of who provided  
23 you with that briefing?

24 A No, I don't.

25 Q Do you remember, as between the police and

1 Mr. Miller, who appear to be the ones who knew  
2 about it, which it was, whether it was the  
3 police or Mr. Miller that briefed you?

4 A No, I don't have any recollection of getting any  
5 information. It wasn't until I saw this memo  
6 written by Brodsky that it was obvious that we  
7 did get something. And I can't say who I got it  
8 from. I can't recall.

9 Q Fair enough. Tab 34 is the fax cover sheet  
10 passing along those two requests, number 5 and  
11 number 9, to the police?

12 A Yes.

13 Q And on this same date that you are passing along  
14 these new requests from Mr. Brodsky, you also  
15 respond to an old request. If you turn to the  
16 next tab, tab 35, this is all happening on  
17 April 26th. You are getting a new request and  
18 passing them on. You also, at tab 35, respond  
19 to his earlier request, the paragraph 16 request  
20 for -- if you remember that --

21 A Yes.

22 Q -- back at tabs 28 and 29, Mr. Brodsky --

23 A Wants to know if he has all statements made by  
24 Zanidean.

25 Q Well, it is all contacts is what he asks for,

1 recorded, whether by way of formal statement or  
2 not, in police officer's notebooks. He said he  
3 had all of the statements, what he wanted was  
4 all of the contacts.

5 A Um-hum.

6 Q In the notebooks, and you agreed to follow up;  
7 do you remember that?

8 A Yes.

9 Q And here we get the response back at tab 35:

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

14 A And that would have been as a result of making  
15 the inquiries with the police, I expect.

16 Q So, again, your practice would have been to  
17 follow up with the police?

18 A Yes.

19 Q And, again, can you assist us as to who you  
20 would have been dealing with in this regard, who  
21 was the point person in relation to disclosure  
22 issues with the police you were dealing with?

23 A I can only assume it was Sergeant Vandergraaf,  
24 because the memo or the fax at tab 34, that's  
25 who it's addressed to, so I assume that is who I

1 was dealing with.

2 Q You've got no recollection specifically?

3 A I have no independent recollection.

4 Q You simply read your response here at tab 35 as  
5 indicating -- is it the use of the words "I am  
6 advised" that leads you to believe that you  
7 dealt with the police on this one?

8 A Yes, that's the only place we could get that  
9 type of information.

10 Q Now, Mr. Lawlor, in the course of your interview  
11 in July at tab 2, we put to you two entries in  
12 Sergeant Paul and Sergeant Anderson's notebooks,  
13 that have been referred to many times in this  
14 inquiry, I am not going to pull them out again.  
15 But if you look at your statement at tab 2, page  
16 16, you remember we provided the two notebook  
17 entries?

18 A Yes. I remember you showed them to me, yes.

19 Q And do you have any -- these are Sergeant Paul  
20 and Sergeant Anderson's October 1990 notes of  
21 Zanidean's two statements to them about the  
22 Swift Current arson; is that correct?

23 A Yes. Yes.

24 Q And do you recall ever having seen those  
25 notebook entries?

1 A As far as can I remember, the first time I saw  
2 them was when you showed them to me during our  
3 meeting in July.

4 Q And were, in your view, Zanidean's discussions  
5 with the police about the Swift Current arson a  
6 relevant matter in this case?

7 A Yes.

8 Q And do you know of any reason why it would not  
9 be appropriate to put those oral statements into  
10 a supplementary report?

11 A No. If we received them, they would have been  
12 passed on, I'm sure. Because Brodsky was asking  
13 for all contacts, all conversations.

14 Q And why was it your practice here to simply rely  
15 on what Staff Sergeant Vandergraaf or any of the  
16 police were telling you on these disclosure  
17 matters? Why did you not independently request  
18 the notebooks, which is what Mr. Brodsky was  
19 asking for back in his tab 28 letter, or was  
20 asking for "all contacts as revealed by the  
21 notebooks"?

22 A We would have expected and assumed that anything  
23 recorded in the notebooks would have been  
24 transcribed into the typewritten police reports  
25 that would have been passed on to us.

1 Q Have you ever asked for the police file, the  
2 police notebooks, so that you could inspect it  
3 yourself and satisfy yourself that you were  
4 making proper disclosure?

5 A No, I haven't. I relied on the police to put  
6 everything into their reports and I assumed that  
7 they did. I never specifically asked for the  
8 notebooks so I could check myself that  
9 everything was recorded in the police reports.

10 Q All right. Moving to the responses to the  
11 April 25th letter, the one at tab 33, you'll  
12 remember at tab 33 he was asking for favourable  
13 considerations, and he was asking you about the  
14 Swift Current arson. You get a very quick  
15 response back to him on the Swift Current arson,  
16 and that's at tab 37. Do you have tab 37?

17 A I do.

18 Q Your letter, four days later you are responding  
19 to paragraph 9? Do you see that? It's at tab  
20 35?

21 A Yes.

22 Q The third item in your letter?

23 A Yes.

24 "Winnipeg Police have nothing on these  
25 incidents".

1 Q And that includes the Swift Current arson; is  
2 that correct? If you go back to Mr. Brodsky's  
3 request, the main one, the first one he is  
4 asking for there under that item 9 is the Swift  
5 Current arson?

6 "What do the Winnipeg Police have on the  
7 fire in Swift Current, Saskatchewan?"

8 Is that correct?

9 A I am just checking.

10 Q I can assure you that's what it is.

11 A Okay.

12 Q So what was the basis for that response, Mr.  
13 Lawlor, at tab 37, that the Winnipeg Police have  
14 nothing on these incidents?

15 A The basis of that response could only be what I  
16 received from Winnipeg Police.

17 Q And how would you have communicated with the  
18 Winnipeg Police about this matter?

19 A Either in memo form or telephone call. I'm sure  
20 when we got these requests, these letters from  
21 Brodsky, we would have passed the whole letter  
22 on to the police.

23 Q All right. Now, at this point, or certainly by  
24 this point you are aware of the fact that  
25 Zanidean is under investigation for the Swift

1 Current arson?

2 A Yes.

3 Q And you're aware that he is concerned about it?

4 He is asking questions about it?

5 A Yes.

6 Q And at some point you get briefed up even more

7 in order to make the representations that we

8 find at tab 44?

9 A That's Brodsky's pre-trial memo?

10 Q By the time of the pre-trial.

11 A Yes.

12 Q Which is three weeks away at this point?

13 A Yes.

14 Q When you got asked when Zanidean's request, his

15 inquiries at tab 17 were passed on to you by the

16 police, you told us that you in turn passed them

17 on to Mr. Miller. Do you remember that?

18 A Yes.

19 Q Your tab 2 statement is to the same effect. And

20 if you look at page 10 of your tab 2 statement,

21 where you discuss passing that note on to

22 Mr. Miller, passing those requests of Zanidean's

23 on to Mr. Miller, you said that -- and this is

24 about five lines from the bottom of page 10 --

25 that you assumed that Miller knew more about it



1           than you did. Is that correct?

2    A       Yes.

3    Q       You assumed Miller was dealing with this matter  
4           of the status of the Swift Current arson, and  
5           accordingly, you passed the request on to him,  
6           Zanidean's requests?

7    A       I don't know if I specifically knew that Miller  
8           was dealing with the Saskatchewan arson. I knew  
9           he was dealing with the witness issues in  
10          general.

11   Q       What you told us at page 10 of your statement is  
12          that you knew very little about this  
13          Saskatchewan arson until it was raised in  
14          Zanidean's cross-examination. You would assume  
15          that Miller knew more about it than you did?

16   A       Assumed, yes.

17   Q       Is that accurate?

18   A       I suppose, yes.

19   Q       And that's why you handed it on to him, you  
20          figure this is within his bailiwick, it's his  
21          responsibility?

22   A       He is taking care of the witness issues.

23   Q       All of the witness's demands and negotiations  
24          that Kovnats has got going on are going on with  
25          Miller?

1 A Yes.

2 Q So my question to you is, when this request from  
3 Mr. Brodsky comes in on April 25th, and you  
4 respond to it on April 29th, did you check with  
5 Mr. Miller before you sent this response out --

6 A No.

7 Q -- as to what was going on in relation to the  
8 Swift Current arson?

9 A No, I assume I didn't.

10 Q And why not? Why would you not have checked  
11 with Bruce Miller before sending off this  
12 categorical response that there is nothing on  
13 these incidents?

14 A I can only assume I was relying on what the  
15 police were telling me.

16 Q You've agreed that Zanidean's concerns and  
17 requests in relation to the Swift Current arson  
18 were relevant matters?

19 A Yes.

20 Q And we know from many documents in this file  
21 that there is a great deal going on in and  
22 around the Swift Current arson negotiations, as  
23 between Zanidean and Kovnats and Miller and the  
24 police, both in Swift Current and in Winnipeg.  
25 And you were aware of some of that in a general

1 sense, as I understand you?

2 A Yes.

3 Q Is that correct?

4 A Yes.

5 Q So how could you have sent this response out to  
6 Mr. Brodsky on April 29th saying that there was  
7 nothing on this matter?

8 A As I say, I would have been relying on the  
9 information that I was getting from the police.

10 Q But the information --

11 A And I had no reason -- I'm speculating,  
12 probably -- I had no reason to believe that  
13 Miller didn't have the same information that we  
14 had.

15 Q Had Miller briefed you on the fact of the  
16 negotiations, the status of the negotiations?

17 A No.

18 Q You see, if you look at a document like tab 19,  
19 if you're in volume 1, Zanidean's witness  
20 protection application is at tab 19.

21 A I have it.

22 Q And there is a whole section devoted to the  
23 Swift Current arson. If you look at, the  
24 pagination is very faint in the bottom  
25 right-hand corner, but there is a page 481? Do

1           you see page 481 in the bottom right-hand corner  
2           of tab 19?

3    A       I can't read this.  What does it say on the top  
4           of the page?

5    Q       It says "part VII continued" on the top.  And  
6           then it has got a 3 and a 4.  It is about five  
7           pages from the end of the tab.

8    A       "Part VII assessment of the case"?

9    Q       No.  "part VII continued" is the heading on page  
10           481.

11   A       With the number 3?

12           THE COMMISSIONER:  Yes.

13           THE WITNESS:  I have it here.

14           BY MR. CODE:

15   Q       Yes, that's it.  If you look at the bottom of  
16           that page under letter C there is a long  
17           paragraph.  In the course of interviewing  
18           Zanidean he informs them about the Swift Current  
19           arson, they discuss the motive of it.  Constable  
20           Burton confirmed they are investigating it.

21                   "Constable Burton has agreed not to pursue  
22                   Zanidean at this time but will continue  
23                   investigation once our trial is concluded."

24           So there is an agreement with Swift Current to  
25           hold off pending completion of the trial?

1 A Yes.

2 Q They have made it perfectly clear that they are  
3 not granting immunity in exchange for his  
4 evidence, but they go on to say that his --  
5 Zanidean's lawyer has requested complete  
6 immunity, a written guarantee, prior to his  
7 testimony.

8 "This delicate matter has not yet been  
9 resolved."

10 A Yes.

11 Q So the whole thing has been the subject of  
12 discussions, it appears, as between the two  
13 police forces and between Kovnats and Miller.  
14 Do you see that?

15 A Yes.

16 Q And is there any reason why Miller would keep  
17 you in the dark about all of that?

18 A I can't think of any. I can't think of any  
19 reason why he would keep us apprised at the same  
20 time.

21 Q I beg your pardon?

22 A I can't see why he would keep us in the dark.  
23 At the same time, I don't know why he would keep  
24 us apprised or up-to-date on the details of  
25 these questions.

- 1 Q Well, these are all relevant to Zanidean's  
2 motivation?
- 3 A And credibility, yes.
- 4 Q And credibility. This is what Brodsky is  
5 getting at through these various requests?
- 6 A Yes.
- 7 Q He wants to know Zanidean's motivation?
- 8 A Yes.
- 9 Q He wants to know any favours being offered him?
- 10 A Yes.
- 11 Q So it is all discloseable?
- 12 A Yes.
- 13 Q So can you explain to us why you would not be  
14 briefed on this as the person who is responding  
15 to these disclosure requests?
- 16 A No, I can't.
- 17 Q Can you explain why you would not simply ask  
18 your colleague, Mr. Miller, who you knew was  
19 dealing generally with this area?
- 20 A No, I can't.
- 21 Q All right. If I could turn to the third and  
22 last of Mr. Brodsky's major disclosure requests,  
23 and this is the one that happens at the  
24 pre-trial. And, again, if you take  
25 Mr. Brodsky's account of how this all comes

1           about at tab 39, he has got a file memo saying  
2           that he -- have you got tab 39 there?

3    A       I do.

4    Q       And he says that he only served you with this  
5           document titled "questions" on the morning of  
6           the pre-trial. And that as a result you asked  
7           for an adjournment. Do you see the third page  
8           at tab 39? He has you asking for an adjournment  
9           because you needed an opportunity to go through  
10          the questions with Mr. Dangerfield. Do you see  
11          that about a third of the way down page 300, at  
12          tab 39?

13   A       Yes, I do.

14   Q       And do you recall that chronology or do you  
15          dispute it?

16   A       I don't dispute it and I don't recall it.

17   Q       It makes sense, though?

18   A       Yes.

19   Q       And so the pre-trial goes over to the 22nd to  
20          allow you and Dangerfield an opportunity to  
21          respond to it?

22   A       Yes.

23   Q       And we find that document at tab 43, the  
24          questions memo from the pre-trial. Do you have  
25          tab 43?

- 1 A I do.
- 2 Q And there is handwritten notations in the  
3 right-hand margin of this document at tab 43.  
4 Can you identify that handwriting?
- 5 A The first I see is at page 288. I don't know  
6 whose writing that is. Page 289, I don't know  
7 whose writing that is. And going through it --
- 8 Q It's not your writing?
- 9 A It's not my writing, no.
- 10 Q Does it appear to be Mr. Dangerfield's writing,  
11 or are you able to say?
- 12 A I'm not able to say.
- 13 Q Again, there is just a couple of the requests  
14 that I want to draw to your attention. Number 6  
15 on page 2 is simply a repetition of the old  
16 number 5 from April 25th, the April 25th letter,  
17 the request about favourable considerations? Do  
18 you see that?
- 19 A It's at what page?
- 20 Q At page 2, number 6, he is just repeating the --
- 21 A Criminal records, yes.
- 22 Q -- the favourable considerations?
- 23 A Yes.
- 24 Q And there is one that I want to draw to your  
25 attention, it is number 23 on the last page? He



1 wants to know whether Zanidean has ever been an  
2 informant?

3 A Yes.

4 Q And do you recall what you did with those  
5 particular requests?

6 A No, I don't.

7 Q Were they relevant, appropriate requests? Would  
8 you simply have said no to them or were they  
9 requests that merited a response, number 6 and  
10 number 23? Number 6, we have dealt with  
11 already, the favourable considerations.

12 A Okay. I don't know what he means by  
13 "involvement in the drug scene." does that mean  
14 his convictions? We would have passed on  
15 Zanidean's criminal record, which would have  
16 included any convictions involving drugs.

17 "Has he ever been an informant for the  
18 police?"

19 That's a very broad, general and a potentially  
20 delicate question.

21 Q Do you remember whether these two requests were  
22 passed on to the police?

23 A No, I don't.

24 Q So let me take you to the response. The  
25 response is at tab 41, Mr. Lawlor, and we get a

1 supplementary report that deals with both number  
2 6 and number 23. Do you see that?

3 A I do.

4 Q And if I could take you to the attachments to  
5 it, behind the supplementary report there is a  
6 note to you from "T.A." I take it that's Tom  
7 Anderson?

8 A Yes.

9 Q Saying that he is attaching the supplementary  
10 report; is that correct?

11 A Yes.

12 Q On the 19th of May. And then there is a letter  
13 from you on the 21st of May passing along the  
14 police reports to Mr. Brodsky?

15 A Yes.

16 Q And the answers to number 6, first of all, the  
17 favourable considerations one, do you see the  
18 last three lines at the bottom of the page?

19 "Furthermore, protection is the only  
20 favourable consideration given to any  
21 witness. We are not aware of any stayed  
22 charges or any other deals made with any  
23 witness in exchange for testimony."

24 A Yes, I have that.

25 Q And in relation to that response that you passed

1 on to Mr. Brodsky on the 21st of May, were you  
2 aware of the matters summarized back at tab 19  
3 that we have just covered, in the witness  
4 protection matter, the witness protection  
5 application, these discussions and negotiations  
6 and arrangements that were going on in relation  
7 to the Swift Current arson?

8 A No, I wasn't.

9 Q And had you been aware of those arrangements,  
10 would you have agreed that this was a full, fair  
11 and accurate response to Mr. Brodsky's  
12 questions?

13 A Anderson's supplementary?

14 Q Yes.

15 A No, it isn't.

16 Q The number 23, question number 23, the response  
17 is:

18 "We are not aware of Mr. Zanidean ever  
19 having acted in the capacity of a police  
20 informant prior to his involvement with  
21 James Driskell."

22 A Yes.

23 Q Do you see that? And in relation to that  
24 particular response, if you could look at tab  
25 42, a set of handwritten notes of Sergeant

1 Paul's?

2 A Yes.

3 Q At the bottom of that first -- this is, I  
4 believe, the very first interview with Zanidean  
5 when he first comes in, in early October of  
6 1990. You see they initially discuss the chop  
7 shop charges on the first page? And the last  
8 line of the first page says,

9 "Ray phoned Crime Stoppers about them. Ray  
10 had just left the shop when it was raided,  
11 got stopped by the police, got \$700 from  
12 Crime Stoppers."

13 A I see that, yes.

14 Q So it appears that Zanidean was the informant on  
15 the chop shop charges and that he received a  
16 \$700 payment from Crime Stoppers?

17 A It appears so, yes.

18 Q Were you aware of those handwritten notes?

19 A The first time I saw them is when I got these  
20 volumes to review. That's the first time I saw  
21 this document.

22 Q And had you been aware of them, would you have  
23 allowed this response to go out to Mr. Brodsky:

24 "We are not aware of Mr. Zanidean ever  
25 having acted in the capacity of an

1 informant prior to his involvement with  
2 Driskell."

3 A No.

4 Q Now, I want to deal with the oral  
5 representations that Mr. Brodsky has set out at  
6 tab 44 of the supplement, the way you  
7 supplemented these continuation reports at the  
8 actual pre-trial through some oral statements.  
9 Do you have tab 44?

10 A I do.

11 Q And again, as I understand your position in  
12 relation to this, you don't recall these  
13 matters, or you certainly didn't recall them  
14 before reading Mr. Brodsky's memos. Is that  
15 correct?

16 A Yes.

17 Q And reading Mr. Brodsky's memos, does that  
18 refresh your memory that you must have been  
19 briefed about these matters?

20 A No, it doesn't.

21 Q And although it doesn't refresh your memory, as  
22 I understand you, you don't dispute the gist of  
23 what Mr. Brodsky has set out here?

24 A No, I can't dispute it.

25 Q And the substance of what Mr. Brodsky records

1           you as telling both Justice Morse and himself,  
2           apparently in Mr. Justice Morse's chambers, is  
3           first of all that Zanidean was responsible for  
4           the fire. It says,

5                        "Zanidean probably set the fire."

6           Do you see that?

7    A       Yes.

8    Q       And did you make inquiries as to what the basis  
9           for that was? Was there any documentary  
10           material that was discloseable that would back  
11           up that assertion or was the foundation for that  
12           assertion?

13   A       I don't, today, as of now, I can't recall  
14           whether I got that in written form or orally.  
15           If it was in written form, it would have been  
16           passed along to Mr. Brodsky, certainly. I don't  
17           know how I got that information, I can't  
18           remember.

19   Q       Well, the written record of it, as we now know,  
20           is the two notebook entries --

21   A       Yes.

22   Q       -- in which Zanidean admits to the police that  
23           he set the arson?

24   A       So it must have been an oral briefing of some  
25           sort.

1 Q So my question is that in order to be confident  
2 to assert this as a fact, you are asserting as a  
3 fact in the pre-trial that Zanidean is the  
4 arsonist, he is the Swift Current arsonist, a  
5 matter that you know Mr. Brodsky is very  
6 interested in, would you have asked for the  
7 basis for that, that would give you confidence  
8 to be able to assert that as a fact? Did you  
9 see some documentation in relation to that?

10 A I don't know. I can't remember how I came into  
11 possession of that information.

12 Q I appreciate that --

13 A You know, I assume I was just told that by the  
14 police, and I took their word for that and I  
15 didn't follow up or pursue it.

16 Q I appreciate you don't have any recollection  
17 today of any of this, so what my question is  
18 directed to is simply ordinary, good Crown  
19 practices here. You are an experienced Crown,  
20 you are in a serious case. Brodsky has been  
21 asking about this Swift Current arson, and  
22 you're making oral representations about it.  
23 Would it have been your practice to say, let me  
24 see the documentation in relation to this before  
25 I go into this pre-trial and start answering

1           these questions?

2    A       Not necessarily, not if I relied on what the  
3           police told me, I wouldn't necessarily have  
4           asked for anything in writing.

5    Q       The second thing you assert, in sort of the  
6           chain of the story that you are passing on to  
7           Mr. Brodsky and Justice Morse, is if you look at  
8           page 338, is that the RCMP in Swift Current were  
9           notified of Zanidean's involvement, that he is  
10          their arsonist, he is their culprit?

11   A       Um-hum.

12   Q       So the Swift Current RCMP got told?

13   A       Um-hum.

14   Q       Again, we know that to be a fact and we know  
15          that there are records to that effect. And my  
16          question to you is, again, would you have asked  
17          for, before asserting that as a fact, for the  
18          documentary backup?

19   A       No, not necessarily. Again, if I was advised by  
20          the Winnipeg Police verbally that that was the  
21          case, I wouldn't necessarily have asked for  
22          confirmation in writing or any written  
23          documentation to that effect.

24   Q       And, thirdly, the next part of the story that  
25          you pass along orally to Mr. Brodsky is that the



1 RCMP chose to do nothing about it. Do you see  
2 that on the first page?

3 MR. OLSON: This is not Mr. Brodsky.

4 BY MR. CODE:

5 Q I'm sorry, this is Mr. Lawlor and/or  
6 Mr. Dangerfield advising Justice Morse and  
7 Mr. Brodsky at the pre-trial that the RCMP chose  
8 to do nothing about it. Do you see that?

9 A Yes, I do, yes.

10 Q And, again, we have some records suggestive of  
11 that, in particular, this witness protection  
12 application in which it is asserted that Burton  
13 has agreed not to pursue the matter pending the  
14 trial, that there is an agreement in place or an  
15 arrangement in place that he is going to hold  
16 off on pursuing Zanidean pending the trial.

17 Would you have asked for the documentary basis  
18 for this assertion before making it at a  
19 pre-trial?

20 A Again, I would have, or I must have relied on  
21 what the police were telling me and obviously  
22 didn't ask for any confirmation.

23 Q And then finally, the fourth and last part of  
24 what is asserted orally to Justice Morse and  
25 Mr. Brodsky is that there had been no favours

1 extended to Zanidean in relation to this, that  
2 the Manitoba authorities were unable to make  
3 agreements with the RCMP about out-of-province  
4 matters. It's referred to in both of the memos.  
5 Do you see that?

6 A I do.

7 Q And, again, in order to be confident when you  
8 were asserting that as a disclosure matter at  
9 the pre-trial, would you have asked for  
10 documentary backup?

11 A I don't know if that was something I would have  
12 received from the police or something I just  
13 would have stated myself, that the Winnipeg  
14 Police have no control over what the police in  
15 another police agency, in another jurisdiction  
16 chooses to do.

17 Q Well, it's saying more than that, Mr. Lawlor, it  
18 is saying nothing was held out to Zanidean.  
19 There are factual assertions being made here  
20 about what is the position being taken with  
21 Zanidean.

22 "Nothing was held out to Zanidean."

23 Do you see that --

24 A I do.

25 Q -- on the first page? What would be the basis

1 for that assertion?

2 A I don't know. That's Brodsky putting words in  
3 my mouth, which I can't recall anything about.

4 Q Were these matters relevant? Is the reason you  
5 are providing these matters orally at the  
6 pre-trial because you've come to the conclusion  
7 that they are relevant matters that should be  
8 disclosed to Mr. Brodsky?

9 A I expect so.

10 Q They are all going to this question of  
11 Zanidean's motivation?

12 A His credibility.

13 Q Is that correct?

14 A Yes.

15 Q So you are trying to provide disclosure to the  
16 defence on a matter that they have been  
17 inquiring about, that you have concluded is  
18 relevant and appropriate?

19 A I am trying to answer all of Mr. Brodsky's  
20 requests.

21 Q So my question to you is, if that is the case,  
22 how can Mr. Brodsky make use of any of this if  
23 you don't provide him with the documentation?  
24 How can he use this in cross-examination without  
25 the documentation?

1 A No. I see your point.

2 Q My question is about your means of disclosure,  
3 your manner of disclosure, not the fact that you  
4 are disclosing it. Obviously you are in good  
5 faith trying to make disclosure of a matter that  
6 you have decided is relevant, but why did you  
7 choose this method, instead of giving him the  
8 documentary material so he could make of it what  
9 he wanted?

10 A I don't know if I knew that there was anything  
11 documented in writing.

12 Q But surely that's --

13 A I don't know if Mr. Brodsky ever asked for  
14 anything in writing.

15 Q Well, we have his requests, Mr. Lawlor.

16 A We have his requests, and he doesn't ask for  
17 documents, and I don't know if there were any  
18 documents.

19 Q Well, with respect, he asks what the Winnipeg  
20 Police have got on the Swift Current arson?

21 A Yes.

22 Q And he asks for what the police files show about  
23 the motivations of the witnesses. He is  
24 repeatedly, he is asking you for notebook  
25 entries of all contacts, he is repeatedly asking

1           you for documentation, and I don't want to go  
2           back over that again.

3                       Why did you choose to give him this  
4           disclosure orally, without making inquiries,  
5           according to what you're telling us now about  
6           the documentation?

7    A       I can't answer that. I don't know why I didn't  
8           ask for written documentation. Maybe I assumed  
9           Brodsky was satisfied at that point in time with  
10          the information I was giving him orally, which I  
11          got from the police orally.

12   Q       Is this the normal way to make disclosure in  
13          response to relevant and appropriate disclosure  
14          requests, to make these kinds of oral statements  
15          in a pre-trial, as opposed to providing  
16          documents to the defence and letting the defence  
17          use them as they see fit?

18   A       I'm asking -- I'm answering his concerns.

19   Q       My question is, is this the normal way to make  
20          disclosure?

21   A       If we had anything in writing, it would have  
22          been passed on. That's all I can say.

23   Q       Well, we know --

24   A       And I don't know why I didn't ask the Winnipeg  
25          Police to put it in writing and send it to us

1 and pass it on to Brodsky. I don't know why I  
2 didn't do that.

3 Q You see, you told Brodsky just less than a month  
4 earlier, on April 29th, this is back at tab 37,  
5 you told him that the Winnipeg Police have got  
6 nothing on the Swift Current arson. Do you  
7 remember that at tab 37?

8 A Yes.

9 Q 23 days earlier.

10 A Um-hum.

11 Q And now it appears you've got a fair bit about  
12 this arson?

13 A Now I have found it.

14 Q Which you have been briefed on?

15 A Yes.

16 Q So did that not cause to you question the  
17 correctness of the information you had been  
18 given just three weeks earlier, that you had  
19 sent out a false letter to Mr. Brodsky, in  
20 substance?

21 A Well, we are passing on to Brodsky what we now  
22 know. I mean --

23 Q I appreciate --

24 A -- in retrospect, or subsequent to the letter,  
25 we came into possession of some information from

1 the police, that what we had told the police,  
2 based on what we got from the police in April,  
3 was incorrect. We get further information that  
4 there is information about this arson  
5 investigation, and we pass it on to Brodsky  
6 during the pre-trial on May 24th.

7 Q I'm assuming that what we see you doing here at  
8 tab 24 is a good faith effort to make disclosure  
9 on a relevant matter, Mr. Lawlor. My question  
10 is, did you not then become concerned that what  
11 you had done just three weeks earlier, at tab  
12 37, had been misleading and that perhaps you had  
13 been misled? Did it make you worry?

14 A I don't know that when this pre-trial took place  
15 I had any recollection of sending that letter  
16 out in April. There was so much paper going  
17 back and forth between Brodsky's office and  
18 Garber's office and our office on this case, I  
19 don't know -- I can't say that I remember each  
20 and every request and each and every response  
21 and the details of them. I may, during the  
22 pre-trial on May 22nd, not specifically recalled  
23 one sentence in an April, a letter that was sent  
24 in April.

25 Q All right. Mr. Lawlor, let me move on to a

1 different topic. Let's leave disclosure.

2 Very shortly after that pre-trial on the  
3 22nd, there is a big brouhaha that happens down  
4 at the Public Safety Building on May 26th, a  
5 Sunday evening when Mr. Zanidean is brought back  
6 to Winnipeg in custody on a material witness  
7 warrant. Did you ever come to learn about those  
8 events down at the Public Safety Building that  
9 night?

10 A No.

11 Q Leaving aside then the whole question of what  
12 happened with Mr. Dangerfield and Mr. Miller and  
13 Mr. Kovnats and Zanidean at the Public Safety  
14 Building that night, and just focusing on the  
15 fact of Zanidean having left town and a material  
16 witness warrant having been issued for him a  
17 week prior to the commencement of the trial, is  
18 that something that would have been brought to  
19 your attention?

20 A No. I don't recall ever being told anything  
21 about that.

22 Q Let me take you back to your statement,  
23 Mr. Lawlor, at tab 2, and see if this refreshes  
24 your memory. Is the key witness in your case  
25 leaving town and a material witness warrant



1           having to be issued for him a significant  
2           development in the case?

3    A       It certainly is.

4    Q       Something the prosecutor needs to know?

5    A       Yes.

6    Q       If you look at tab 2, page 21, the last  
7           paragraph at the bottom of page 21:

8                   "Lawlor has no present memory of Zanidean  
9                   taking off for Alberta shortly before the  
10                   trial, although he may have known about it  
11                   at the time. He expects that he and  
12                   Dangerfield would have been told about it  
13                   by the police, since it is obviously a  
14                   significant pre-trial development for a key  
15                   witness to skip town."

16           Is that an accurate statement of your assumption  
17           of whether you would have been told about this  
18           or not?

19   A       Yes. As I say, I have no memory of any of that  
20           occurrence.

21   Q       But you expect you would have been told about  
22           it?

23   A       I expect that the police would have advised us,  
24           yes. It's a major development.

25   Q       It's a fairly important development to lose your

1 key witness on the eve of trial?

2 A Yes.

3 Q And to have to take him into custody. Is the  
4 fact that the witness may have been engaged in  
5 this kind of behaviour as part of brinkmanship  
6 or negotiation over certain benefits or requests  
7 that he or she is seeking, is that a  
8 discloseable fact, in your view?

9 A Yes.

10 Q And were there ever discussions about disclosing  
11 the fact that Zanidean had taken off, a material  
12 witness warrant had been sought, and it appears  
13 to all be tied up with his attempts to raise the  
14 stakes in his negotiations?

15 A I don't remember ever being involved in those  
16 type of discussions. If there were any, I can't  
17 say.

18 Q So you believe you would have been told about  
19 this, but you don't recall there ever being  
20 discussions about disclosure of it?

21 A Well, I don't know if I can say I believe I  
22 would have been told about it. I would have  
23 hoped that I would have been -- that we would  
24 have been told about it.

25 Q There are a number of events happen very quickly

1 after this, Mr. Lawlor, and I want to just put  
2 them to you and ask you whether you were aware  
3 of these developments in your role as one of the  
4 prosecutors on the case.

5 Three days after these events at the Public  
6 Safety Building, on May 29th, Mr. Kovnats gives  
7 Mr. Miller an ultimatum, it appears, about the  
8 Swift Current immunity issue. And you will find  
9 that at tab 24 is a note of the conversation  
10 between Mr. Miller and Corporal Orr about this  
11 last-minute demand for immunity?

12 A Yes, I see that.

13 Q Were you advised of that development?

14 A No, I wasn't.

15 Q Was it a discloseable fact, that your key  
16 witness is demanding immunity on an outstanding  
17 investigation on the eve of trial?

18 A I'm looking at this very quickly, but if  
19 that's --

20 Q Item 3?

21 A -- if that's in here, yes, of course, it's  
22 discloseable.

23 Q "Unless his client is given immunity to  
24 prosecution for the Swift Current arson, he  
25 would be taking steps to ensure his

1 client's protection."

2 Mr. Miller was given a day to respond.

3 A I see that.

4 Q Is that a discloseable fact, in your view?

5 A Immunity, yes, discussions about immunity, of  
6 course it is.

7 Q Two days later on May 31st, Mr. Miller and  
8 Mr. Kovnats reach an agreement on Zanidean's  
9 demands about buying out the equity in his house  
10 and freeing up his indebtedness on his mortgage.  
11 And that's all at tab 48, volume 2 of the  
12 documents before you?

13 A I have it.

14 Q A letter from Mr. Miller to Mr. Kovnats on  
15 May 31st, essentially saying that they have  
16 reached agreement on the buyout of the Chelsea  
17 Avenue house. Were you aware of that  
18 development?

19 A No, I wasn't.

20 Q Is it a discloseable fact that the Crown has  
21 agreed to buy the house of the chief Crown  
22 witness and take over, have his mortgage freed  
23 up?

24 A I suppose it is, yes.

25 Q Can you think of any good reason why Mr. Miller

1 would not have briefed you of that development  
2 on the eve of trial?

3 A No.

4 Q A few days later on, on June 4th, if you turn to  
5 tab 50, you see Mr. Kovnats' letter back to  
6 Mr. Miller on June 4th. This is now in the  
7 first week of trial.

8 A Yes.

9 Q And you see, again, he is demanding immunity and  
10 various financial benefits. In particular, if I  
11 could direct your attention to page 2 of the  
12 letter, item 6, his client is willing to take  
13 \$30,000 instead of witness protection. Do you  
14 see that?

15 A I do.

16 Q Is that a discloseable fact?

17 A Yes.

18 Q And were you made aware of that development?

19 A No, I wasn't.

20 Q Can you think of any good reason why Mr. Miller  
21 would not have briefed you on that matter?

22 A I can't think of any reason, no.

23 Q And finally, the last one of these developments  
24 that happen in this time period immediately  
25 prior to Zanidean's testimony is, tab 51, is a

1 memo to file?

2 A Yes.

3 Q Where Mr. Kovnats records an incident with  
4 Sergeant Paul and Zanidean where Zanidean has  
5 been annotating his witness statements, and  
6 there is a dispute over whether Mr. Kovnats is  
7 allowed to take away these annotations on the  
8 witness statements and an account that  
9 Mr. Zanidean has been writing out. Were you  
10 informed of those developments?

11 A No, I wasn't.

12 Q And is the whole issue of any qualifications  
13 that Zanidean might be asserting about his prior  
14 statements, is that a discloseable fact?

15 A Which paragraph specifically are you referring  
16 to there?

17 Q You see the third paragraph:

18 "We reviewed the police statement. They  
19 showed me where they had made alterations  
20 that the police had misunderstood or  
21 changed their statements as the case may  
22 be."

23 A Yes, I see that.

24 Q Paragraph 3 of the memo?

25 A Yes.

1 Q Are those discloseable facts?

2 A Of course.

3 Q You see Mr. Kovnats says he was discussing these  
4 matters with Mr. Miller. Did Mr. Miller bring  
5 them to your attention?

6 A No.

7 Q Is there any reason you can think of why he  
8 would not bring them to your attention at this  
9 point on June 6th, shortly before Zanidean took  
10 the stand?

11 A No. I have no answer to that, no.

12 Q They are clearly relevant?

13 A They are relevant, yes. If he is changing his  
14 statement, of course they are relevant.

15 Q All right. The last point I want to ask you  
16 before -- I notice it is 4:40 and I don't want  
17 to -- I have got one last major area to cover  
18 with the witness, so I think I'll be another 15,  
19 20 minutes with him, and it would be best to put  
20 that over until tomorrow afternoon. But just  
21 one final matter I want to finish up on,  
22 Zanidean takes the witness stand in the second  
23 week of trial, at the very end of the Crown's  
24 case. It's on -- I think we have established  
25 that it's Tuesday, June 11th that he testifies

1 as the penultimate Crown witness.

2 Do you remember any discussions about  
3 holding Zanidean back until the end of the case  
4 while these last-ditch negotiations between  
5 Kovnats and Miller went on?

6 A No. No.

7 Q What was your --

8 A I can't think of any specific reason why he  
9 would be the last witness. Maybe, in our  
10 opinion, he tied the evidence up to that point  
11 in time together.

12 Q I didn't say he was the last witness, I think  
13 Sergeant Paul was the last witness.

14 A Okay.

15 Q But he is the penultimate witness.

16 A But as a prosecution strategy, I can see that's  
17 perhaps why we called him last, because there  
18 are bits and pieces coming through, and if he  
19 can tie everything together for the jury, then  
20 that would be the logical reason for calling him  
21 at the end.

22 Q And what the --

23 A That's the only explanation I have for it.

24 There wouldn't be any other explanation. We  
25 would not have been holding him back until the



1 negotiations as to witness protection were --  
2 while they were ongoing. It would have been a  
3 prosecution strategy, not a witness issue.

4 Q What about the fact that there are tremendous  
5 difficulties with him? We now know that he has  
6 left the province, there had to be a material  
7 witness warrant issued for him, there is a big  
8 dispute down at the Public Safety Building, and  
9 then there is all of these subsequent  
10 developments that I've just gone through with  
11 you of ultimatums going back and forth, and  
12 demands being made, suggestions of money instead  
13 of witness protection?

14 A You would think that would have motivated us to  
15 call him first and get him out of there.

16 Q Do you have any recollection of any of these  
17 matters?

18 A No, I don't.

19 Q As to why he was held back?

20 A No.

21 Q And what was your --

22 A The things you mention, though, I would think  
23 that if we knew there were difficulties, ongoing  
24 difficulties with him, and it may cause problems  
25 with him as a witness on the stand, we would

1           have liked to have called him as early as  
2           possible in the trial and get him done and out  
3           of there.

4       Q     Call him as an uncooperative witness is what you  
5           are saying?

6       A     Uncooperative, cooperative, whatever, but if  
7           there are difficulties arising that we were  
8           informed of, I would have thought that we would  
9           have liked to get him on the stand and get him  
10          out of there as early as possible during the  
11          trial.

12      Q     You wouldn't rather call him as a cooperative  
13           witness than as an uncooperative witness?

14      A     Well, I don't know if that was a factor.

15      Q     Well, you tell me, as a prosecutor, would you  
16           rather have your witnesses cooperative or  
17           uncooperative?

18      A     Well, cooperative.

19      Q     Would you rather be able to interview them and  
20           know what they are going to say before you put  
21           them on the stand?

22      A     Sure. But we didn't know about all of these  
23           things going on.

24      Q     So what was your understanding of the status of  
25           Zanidean's negotiations, if I can call them

1           that? You knew that Miller is looking after all  
2           of this stuff --

3    A       Yes.

4    Q       -- the long-term plan, as we called it. What  
5           was your understanding, when he finally gets  
6           called on June 11th, as to what the status of  
7           those negotiations were with Mr. Miller?

8    A       I didn't know what the status was.

9    Q       Had they been concluded successfully, or were  
10           they still ongoing? I don't mean the details of  
11           any agreement that had been worked out, or the  
12           specific items in Mr. Kovnats' letters, I am not  
13           talking about that level of detail. Just in a  
14           general sense, was it your understanding that  
15           some kind of an agreement had been reached, or  
16           was it still up in the air?

17   A       I can't say that I had any knowledge as to what  
18           stage it was at.

19           MR. CODE: This is a perfect time to break  
20           today.

21           THE COMMISSIONER: Thank you. Mr. Lawlor, if  
22           you will return for 2:00 o'clock tomorrow.

23           THE WITNESS: I will.

24           THE COMMISSIONER: Thank you. And we will  
25           adjourn until 9:00 tomorrow morning.

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THE CLERK: All rise.

(Proceedings adjourned at 4:45)

COURT REPORTER'S CERTIFICATE

DEBRA KOT and LISA REID, duly appointed Official  
Examiners in the Province of Manitoba, do hereby  
certify the foregoing pages are a true and  
correct transcript of our Stenotype notes as  
taken by us at the time and place hereinbefore  
stated.

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Debra Kot

COURT REPORTER

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Lisa Reid

COURT REPORTER

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