

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

The Honourable Patrick LeSage, Q.C. Commissioner

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

Thursday, August 10, 2006

Volume 15

INQUIRY PROCEEDINGS

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1 THURSDAY, AUGUST 10, 2006

2 Upon commencing at 9:00 a.m.

3 THE CLERK: All rise. This Commission of

4 Inquiry is now in session. Please be seated.

5 THE COMMISSIONER: Good morning, Mr. Olson.

6 MR. OLSON: Good morning, Mr. Commissioner.

7 BY MR. OLSON:

8 Q Mr. Brodsky, I know you've only have about a

9 half an hour, and we will try to do this

10 quickly. We were dealing with Mr. Lawlor's

11 affidavit of February 4, 1991, at tab 8. If you

12 could turn to that, sir, again, court Exhibit

13 20A.

14 A Tab 8?

15 Q Yes.

16 A In volume 1?

17 Q Yes. And if you could turn to page 148, sir?

18 A 148, yes, the last page?

19 Q Yes. And at line 10 and following?

20 A Yes.

21 Q We heard this before, but on February 6th, at

22 the end of the submissions, Chief Justice Hewak

23 indicated he wanted counsel to get together to

24 decide what there is that Mr. Brodsky wants, et

25 cetera?

1 A Right.

2 Q And so he directed you to meet. And then you
3 would be convening again I think on Friday the
4 8th. That was the plan?

5 A Yes.

6 Q And then at tab 9 your memo to file indicates --
7 confirms, essentially, that it was until 3:30 in
8 the afternoon you were there. It was put over
9 for you to meet with the Crown on February 7th
10 and then you were to appear again on the 8th?

11 A Right.

12 Q And you met with Lawlor not on the 7th, but
13 rather on the 6th. And you told him, after
14 discussing it, that you would put it in writing;
15 right?

16 A Yes.

17 Q Then tab 9 is, or what follows in tab 9, what
18 follows that memo, is that letter that you then
19 sent to them on February 7th?

20 A Yes. He said to put it in writing and I did.

21 Q Right. And in that letter, sir, there is no
22 request for particulars of paragraphs 16, 21 or
23 24 of Mr. Lawlor's affidavit that had been sworn
24 on February 4th, and which you say you sought
25 particulars of?

1 A I wonder if you could repeat that?

2 Q Yes. There is nothing in your letter, sir --

3 A Yes.

4 Q -- on February 7th seeking particulars of the
5 matters referred to in paragraphs 16, 21 and 24,
6 of Mr. Lawlor's affidavit of February 4th, which
7 you say you sought particulars of?

8 A Yes.

9 Q Can you explain that?

10 A Yes. I don't know if I can explain it or not.
11 I can tell you that my thinking was that if the
12 Crown had something, we would get it. I had
13 said to the judge, if they don't have it -- I
14 had said to Mr. Lawlor, if you have it, produce
15 it. If you don't, keep quiet about it. I
16 didn't anticipate it would be an issue at trial.

17 Q When you were questioned by Mr. Lawlor --

18 A My job at this point was to defend the trial,
19 Mr. Driskell at that trial.

20 Q When you were questioned by Mr. Lockyer, your
21 recollection was that you had asked for
22 disclosure, that you questioned Lawlor about
23 these matters, that you met with him, which is
24 confirmed we've just seen. That you didn't get
25 disclosure.

1 A Yes.

2 Q And so you met with the judge the next day and
3 said, in Lawlor's presence, they should let me
4 have it, or words to that effect?

5 A Yes.

6 Q Is that your recollection?

7 A I accept that, yes.

8 Q So even though you say you asked Lawlor for it,
9 you didn't put it in your letter of
10 February 7th. And if we turn to tab 9, we know
11 that you didn't appear in court either because,
12 as your memo indicates at tab 11, you delivered
13 the letter of February 7th at 1:45 p.m. You
14 appeared before Chief Justice Hewak February 8th
15 at 9:00. And Dangerfield advised the court he
16 didn't have a response ready yet. It had been
17 being typed since 8:00 a.m. and that he would
18 have the response by Tuesday, the following
19 week. You said you wouldn't be back until
20 February 13th, so the matter was put over to
21 2:00 p.m. on February 13, I understand?

22 A I think it says that in tab 11, yes.

23 Q Right.

24 A The middle paragraph.

25 Q Yes. Sorry, I thought that's where we were.

1 A Yes.

2 Q Okay. So we know that you didn't go the next
3 day, but rather it was put over for some five
4 days from the 8th through to the 13th; right?

5 A Okay.

6 Q And is it your recollection that Mr. Lawlor was
7 present on February 13th when you addressed the
8 matter before Chief Justice Hewak again?

9 A I don't -- if it's in the memo, if I memoed
10 that, I would have that. If I didn't, I don't.

11 Q I don't recall seeing a memo detailing --

12 A All I can say is Mr. Lawlor was usually there.
13 Whether he was on this occasion or not, I don't
14 know.

15 Q I put that specifically to you to see what your
16 recollection was, Mr. Brodsky, because
17 Mr. Lawlor, in fact, left Winnipeg on
18 February 8th for two weeks vacation in Cozumel.

19 A I hope he had a good time.

20 Q He wasn't here.

21 A As I said before, he was usually there. I don't
22 recollect whether he was there or not on this
23 occasion.

24 Q Now, you spoke yesterday of, in your view, what
25 may be a lack of checks and balance in the

1 justice system, and you referred to four cases
2 illustrating that?

3 A Yes.

4 Q The case involving Mr. Sophonow?

5 A Yes.

6 Q We can agree that trial and matter rose prior to
7 the Driskell trial?

8 A Yes, it did.

9 Q Yes. Secondly, you referred to the Ostrowski
10 case?

11 A Yes, Michael Ostrowski.

12 Q I understand that was a case that was dismissed,
13 the appeal was dismissed by the Court of Appeal
14 in 1989?

15 A That sounds about right.

16 Q Yes. I understand, further, that there were no
17 systemic issues in that case?

18 A Such as?

19 Q Any at all, sir?

20 A I had been told -- I think we are still going to
21 get into that -- I had been told certain things
22 about witness arrangements that are still going
23 to be explored, whether they are correct or not.

24 Q I see. There hasn't been any 696 application in
25 that case?

1 A Well, I didn't act for him on the appeal, and I
2 think you would have to talk to Mr. Lockyer
3 about where that situation is now.

4 Q All right. You referred to the Unger case?

5 A Yes.

6 Q That was dealt with by the Court of Appeal, I
7 believe, in 1993?

8 A That could be.

9 Q All right.

10 A Sounds right.

11 Q Again, involved hair and fiber?

12 A It did.

13 Q That involved an RCMP investigation, not a
14 Winnipeg Police Service investigation?

15 A I didn't do that trial.

16 Q So you don't know that?

17 A I think it was an RCMP investigation, but I
18 didn't do that trial.

19 Q And finally --

20 A I know that that case was referred to the hair
21 and fiber committee to see if there should be a
22 review.

23 Q Right. And that's what I was coming to, sir.
24 And then the fourth case you referred to was the
25 Star case?

1 A Robert Star, yes.

2 Q Which was one that you had some involvement in,
3 obviously. That was a case where the original
4 conviction I think was in '94, eventually
5 overturned in 2000 by the Supreme Court. There
6 was a new trial ordered, and the conviction of
7 manslaughter was entered in 2001; is that about
8 right?

9 A Sounds right.

10 Q That also involved a hair issue?

11 A It did.

12 Q Right. Now, I have put before various counsel,
13 Mr. Commissioner, the remaining documents that I
14 was going to put to Mr. Brodsky, and the clerk
15 has them there. They are in the order in which
16 I will refer to them. And if a copy could be
17 put before Mr. Brodsky and for you, there are
18 five documents or bundles of documents, and I
19 think we were at 27D. I would appreciate it if
20 we could mark 27 E, F, G, H and I, respectively.
21 THE COMMISSIONER: It will be 27 E, F, G, H and
22 I.

23 (EXHIBIT 27 E-I: Bundle of documents for
24 examination of Mr. Brodsky by Mr. Olson)

25

1 BY MR. OLSON:

2 Q If you have those then, Mr. Brodsky, E is the
3 news release dealing with the Forensic Evidence
4 Review Committee report?

5 A Released in 2005, I have it.

6 Q Yes, released in 2005. If you turn that page
7 over, you will see that the background indicates
8 at the second last paragraph, that committee was
9 established by the former Deputy Attorney
10 General, Bruce McFarlane, in April of 2003, the
11 purpose of which was to actively seek out
12 possible miscarriages of justice that may have
13 resulted from a reliance on hair comparison
14 evidence in homicide cases. Is that your
15 recollection, sir?

16 A Yes.

17 Q And my understanding, sir, of that committee was
18 that there was -- it was chaired by Rick Saul,
19 who is a senior Crown with Manitoba Justice, Don
20 Slough, who is currently I believe an ADM in the
21 department. But it had representation from the
22 RCMP, the Winnipeg Police Service. Mr. Garber,
23 defence counsel, sat on the committee?

24 A He told me he did.

25 Q And finally a representative from AIDWYC; is

1 that your understanding, sir?

2 A I accept that.

3 MR. LOCKYER: Garber was the AIDWYC
4 representative.

5 BY MR. OLSON:

6 Q As the background indicates, the first phase of
7 that review looked at a range of homicide cases,
8 and the committee determined that, through DNA
9 testing, hair used in two cases, the Unger and
10 Sanderson case, did not come from the origins it
11 was thought to have?

12 A Right.

13 Q That's what you have just referred to with Unger
14 at least?

15 A Yes.

16 Q And we know that Sanderson is the other one the
17 Sanderson case ultimately determined that --

18 A I was giving examples. I didn't go through the
19 whole -- I was just giving examples.

20 Q Understand that, sir. And it is my
21 understanding that the committee then had an
22 expansion of the scope of their review beyond
23 homicide, and it went to all sexual assault and
24 robbery cases as well. And that was its second
25 report. Do you recall that, sir?

1 A Well, I remember it went to sexual assaults. It
2 could have gone to robberies.

3 Q At Exhibit 27F, which is the next document,
4 Mr. Brodsky, this is an office copy of a letter
5 sent to you December 17 of 2004?

6 A Right.

7 Q And I'm advised that it went to all senior
8 Crown, perhaps not so senior -- sorry, defence
9 counsel, and perhaps not so senior, in the
10 province, and in effect invited anyone to alert
11 the committee of any cases that they thought
12 should be reviewed on that broader mandate?

13 A Yes.

14 Q Did you receive that, sir?

15 A I recollect that I did.

16 Q Right. And then there was subsequently a second
17 report, which is the subject of the previous
18 document, after they have reviewed --

19 A The article, is that what you are referring to?

20 Q 27E, the one we looked at a minute ago, the
21 actual report on the front page deals with
22 having examined, the committee having examined
23 sexual assault and robbery cases prosecuted in
24 the past 15 years. Do you see that? A total of
25 492 cases were identified for review?

1 A No.

2 THE COMMISSIONER: No, it's 27E.

3 BY MR. OLSON:

4 Q 27E, the first document.

5 A The first document, okay.

6 Q Yes, sorry.

7 A Yes.

8 Q Some 492 cases were identified. Five of those

9 were pulled out and checked in more detail, and

10 ultimately eliminated because they didn't meet

11 the criteria that had been established?

12 A Right.

13 Q All right. In terms of prosecution culture,

14 which is another issue that was put to you, sir,

15 by both Mr. Lockyer and Mr. Kennedy, you

16 referred to a number of matters, or several

17 matters, rather. My recollection of my notes

18 indicate that you were talking of the Kara

19 brothers, Zanidean, perhaps Gumieny, having been

20 scripted, in effect, by the Winnipeg Police as

21 to what they would say?

22 A Yes.

23 Q We have dealt with this before, but we can agree

24 these people, as frequently occurs in these

25 cases, were unsavoury witnesses?

1 A They certainly were.

2 Q And this is a fairly common problem with
3 unsavoury witnesses, sir?

4 A Gumieny and Zanidean were unsavoury witnesses,
5 yes.

6 Q But it is a fairly common problem with all
7 unsavoury witnesses, that it is tough having
8 them hang on to what they told you the first
9 time because they are unsavoury?

10 A Yes.

11 Q Right?

12 A Yes.

13 Q Sure. And we're aware now, when I say now, the
14 practice, as I understand it, of the Winnipeg
15 Police Service since this investigation in the
16 Driskell case was done is now to videotape
17 interviews with witnesses?

18 A Actually, I thought it was another case that
19 Mr. Justice Schwartz presided on in which four
20 witnesses resiled from the statements they gave
21 for varying reasons. A number of senior police
22 officers came to the courtroom, and Mr. Justice
23 Schwartz said, well, you may not have known what
24 you should be doing, but you should be
25 videotaping, because this is a problem that we

1 get, and I'm warning you now.

2 Q Are you aware, sir, the practice now is to
3 videotape?

4 A Yes.

5 Q Yes.

6 A Yes, Mr. Justice Schwartz said there should be
7 videotaping of these kind of witnesses and we
8 shouldn't be relying on officer's notes.

9 Q Whatever caused it, in terms of prosecution
10 culture in recent years, sir, the next document,
11 which should be 27G, came from your disclosures,
12 and I think we put in some different form of a
13 similar document, but the current Manitoba
14 Attorney General is quoted in an article of
15 Lawyer's Weekly in April 2004?

16 A Right.

17 Q With a four or five part plan to deal with
18 disclosure?

19 A Right.

20 Q One of which was forming a joint police/Crown
21 disclosure working group to look at current
22 issues of disclosure. You're aware of that?
23 I'm in the fourth column, sir.

24 A Yes.

25 Q Right. And it was not just the Crown and

1 Winnipeg Police Service, but also the RCMP, to
2 develop solutions to what has been identified as
3 a current problem?

4 A Right.

5 Q Halfway down that fifth column, or a third of
6 the way, he also indicated that he was asking
7 Crown attorneys to attend a disclosure training
8 session, which would be part of a conference
9 that fall?

10 A Yes. What two recent prosecutions were stayed
11 due to -- I can't read that -- failure of police
12 to make a complete and timely disclosure. Yes,
13 I see that now.

14 Q Right. And we will come to the training
15 session, sir.

16 Then halfway down that fifth column, the
17 fourth strategy was the province's continued
18 investments in the state of the art technology
19 system to help the Crown gather and share
20 information?

21 A Yes.

22 Q About \$4 million invested.

23 A I see that.

24 Q I understand that's called Prism, that system?

25 A I have no idea.

1 Q You don't know?

2 A No.

3 Q When you get disclosure now, I understand the
4 Crown has a checklist where they, in fact,
5 insert all of the documents sequenced, and it is
6 much easier to track now to prove that
7 disclosure, complete disclosure, has been made,
8 sir?

9 A I think I already testified about that, and
10 how -- whether it was hand delivered or mailed.

11 Q Right.

12 A And to whom it was given.

13 Q Yes. Right. And then the fifth strategy, just
14 below that, was asking Judge Enns to continue to
15 review a second stage. And as it happened, I
16 think he went to a third stage after that. Do
17 you recall that?

18 A I recall the second stage. I don't know about
19 the third stage.

20 Q All right. The next document, sir, 27H, are
21 documents which are essentially the agendas of
22 the Crown defence conferences entitled
23 "Achieving Justice in an Adversarial System"
24 starting in 2002. And there should be a yellow
25 sheet separating the 2002 conference from 2003,

- 1 and then another yellow page separating them
2 from the 2004?
- 3 A Yes.
- 4 Q And those are conferences, and they will speak
5 for themselves, but you will see in the 2002, in
6 the first page of that agenda there was a panel
7 dealing with Mr. Sophonow's case then?
- 8 A I see that at 9:40.
- 9 Q Recommendations and vision?
- 10 A Yes.
- 11 Q Search and seizure was dealt with?
- 12 A Yes.
- 13 Q Over the next page, alibi identification
14 evidence?
- 15 A Yes.
- 16 Q And then the media disclosure on page 3 was
17 dealt with later on. And I won't go through all
18 of these, they will speak for themselves, as I
19 say. And finally professional courtesy. You
20 had some involvement in these conferences, sir?
- 21 A I'm listed as a speaker on page 4.
- 22 Q Right. And that's not a misprint, you were a
23 speaker, weren't you?
- 24 A Yes. I remember that.
- 25 Q Right. And then in 2003, the next one, again I

1 won't speak specifically about all of these, the
2 topics speak for themselves, sir. Those were
3 all attempts to have some common discussion and
4 education, if you will, of both Crown and
5 defence to better handle the problems that
6 develop from both sides during the course of
7 trials in Manitoba; is that fair?

8 A I don't dispute that.

9 Q All right. You're aware that Manitoba arranged
10 and then hosted an International Symposium on
11 Wrongful Convictions last year, sir?

12 A I am.

13 Q Right. You're aware that the Crown has
14 disclosure policies, both pre-Stinchcombe,
15 post-Stinchcombe, and most recently in 2001.
16 Are you aware of those?

17 A Crown disclosure policies?

18 Q Crown has internal disclosure policies as to
19 what Crowns are to do. Are you aware of those?

20 A No.

21 Q All right.

22 A I don't -- I mean, if you say they have them, I
23 guess they have them.

24 Q Well, with respect to the various efforts that
25 Manitoba has made in recent years, sir, would

1 you agree, to your knowledge at least, they are
2 far ahead of all other provinces in their desire
3 to address wrongful conviction issues?

4 A Far ahead?

5 Q Yes.

6 A I wouldn't make a comparison with Manitoba as to
7 any other province.

8 Q You accept Mr. Lockyer's judgment in that field,
9 sir?

10 A He would know. He would be more experienced in
11 various provinces on wrongful conviction than I
12 would.

13 Q The last document, sir, second paragraph, is a
14 letter from Mr. Lockyer in 2004, that is 27I.

15 A Yes.

16 Q And it reads,

17 "As you know, I have frequently
18 complemented Minister MacIntosh, yourself
19 and Manitoba Justice, publicly and
20 privately. I know that you are far ahead
21 in all other provinces in your desire to
22 address wrongful conviction issues."

23 A That may be his opinion. I suppose it is. He
24 signed it.

25 Q Thank you. Knowing as you did, sir, the various

1 efforts that Manitoba has made in the last four
2 or five years to address any potential systemic
3 issues or wrongful conviction issues, do you
4 agree that perhaps you originally did not give a
5 very balanced view of the Crown culture and
6 prosecution culture in Manitoba, sir?

7 A I am basing my opinion on what I have seen.

8 Q And basing it on --

9 A I mean, that's for the Commissioner or somebody
10 to decide if it's balanced or not.

11 Q And you will recall, when I started asking you
12 questions, sir, I suggested to you that perhaps
13 you had overstated your recollection and the
14 extent of your knowledge of some of these
15 events. As a result of the various matters that
16 I have brought to your attention, do you perhaps
17 now see my point, sir, that memory can play
18 tricks and perhaps a more balanced view is that
19 you did overstate your recollection?

20 A That could be your opinion.

21 MR. OLSON: Those are my questions, sir, thank
22 you.

23 THE COURT: Thank you, Mr. Olson.

24 BY MR. DAWE:

25 Q Good morning, Mr. Brodsky. I know you are

1 anxious to get out of here, and I'll be brief.
2 I just have five areas to cover in
3 re-examination, all arising out of questions
4 that were asked of you yesterday. The first
5 one, if you recall, Mr. Olson yesterday showed
6 you a document at his book, Exhibit 27A at tab
7 9?

8 A Additional book of documents?

9 Q That's right.

10 A Right.

11 Q And the last tab is a letter?

12 A Yes.

13 Q The very last page, it is a letter to you from
14 Mr. Lawlor dated May 28th?

15 A I see it.

16 Q Regarding complete records of police contacts?

17 A Yes.

18 Q And as I recall, the suggestion was made to you
19 that this letter was sent to you in response to
20 the question that you had asked in your
21 February 7th letter, and reiterated at the
22 May 10th pre-trial, when you had asked for all
23 of Zanidean's contacts with the police, whether
24 by way of formal statement or written
25 notification of the police officer's notebook?

1 A Right.

2 Q Do you recall that question?

3 A Yes.

4 Q If I can take you now to -- leave this tab open,
5 and if I can take you to tab 31 of volume 1 of
6 the main book of documents.

7 A Tab 30?

8 Q Tab 31. If you go to the last -- if I can take
9 you first to the last page of that tab, tab 31?

10 A Tab 31, yes.

11 Q If I can take you first, there are three pages
12 in the tab, if we can go to the final one, page
13 381?

14 A There are three pages in the tab? I have two
15 pages in the tab.

16 Q You have two?

17 A Sorry, there are three pages in the tab.

18 Q And I suggest this helps to put Mr. Lawlor's
19 letter into context and helps us understand what
20 it is about. And if you can read the first
21 paragraph?

22 A "I attended on Gregg Lawlor on May 27th."
23 This is in 1991.

24 "I told him I wasn't satisfied with the
25 criminal record produced for Zanidean. It

1 did not contain police contacts, stay of
2 proceedings, outstanding charges. I had
3 that for other witnesses, not Zanidean.
4 After some discussion we agreed that he
5 would go back to the police and see what he
6 could get for me."

7 Q Okay.

8 A "He will also..."

9 Q You can stop there, that's really the issue I
10 wanted to deal with. So if I could then get you
11 to turn back two pages to the beginning of the
12 tab?

13 A Right.

14 Q You will see there we have the same letter that
15 is in Mr. Olson's book?

16 A Yes.

17 Q Except the difference is that he is providing
18 you with the file copy from the DOJ file, and
19 this is the copy from your file, the signed
20 original. You will note the other difference,
21 of course, is that this one has the attachment?

22 A Yes.

23 Q If you turn the next page, and you will see
24 what's attached is a single page. It appears to
25 be a CPIC record?

1 A Yes.

2 Q So do you agree with me that this letter,
3 Mr. Lawlor is not, in light of what it says in
4 your memo, in light of what is attached to your
5 letter, you agree that Mr. Lawlor is not
6 responding to your request for statements and
7 police notebooks?

8 A I did, I do now, and I thought so then.

9 Q Thank you. The next area, you will recall
10 Mr. Prober took you to your May 24, 1991 memo to
11 file, which is at tab 29, if we could turn back
12 to that?

13 A Yes.

14 Q This is the memo in which you are setting out,
15 summarizing what was said to you at the late May
16 pre-trial by Mr. Lawlor and Mr. Dangerfield?

17 A Right.

18 Q And the suggestion was made to you, as I recall,
19 that as a result of this pre-trial, you knew
20 that the RCMP weren't going to pursue
21 Mr. Zanidean. And I think Mr. Prober, if my
22 notes are correct, went so far as to suggest
23 that you knew coming out of this pre-trial that
24 Mr. Zanidean had de facto immunity in the Swift
25 Current arson?

1 A Yes, I said that.

2 Q As I say, I don't read this memo that way, so I
3 have two questions of you arising out of this.
4 The first one is, was it your understanding
5 coming out of the pre-trial that the RCMP had
6 undertaken or committed not to charging Zanidean
7 with the arson, as opposed to merely having
8 decided not to charge him, for whatever reason?

9 A Yes, you're right.

10 THE COMMISSIONER: I'm not sure I understood the
11 question.

12 BY MR. DAWE:

13 Q Let me rephrase that. The suggestion is being
14 put to you that there was some sort of
15 undertaking amounting to immunity that they had
16 granted?

17 A That was not my understanding.

18 Q That was not your understanding.

19 A That was clearly not my understanding.

20 Q If I can just follow that up, based on the
21 information that you received from Mr. Savage
22 and your own contact with Staff Sergeant
23 Ferguson after the trial, was it your
24 understanding that the RCMP had decided to grant
25 Mr. Zanidean a form of de facto immunity?

1 A There was this blockage.

2 Q But at the time of the pre-trial and immediately
3 after the trial?

4 A There was no immunity that I thought, as a
5 result of meeting with anybody, that was granted
6 to Mr. Zanidean.

7 Q And, indeed, I would suggest that your
8 understanding at the time in June and July
9 was -- your hope was that they would charge
10 Mr. Zanidean?

11 A I wouldn't have wasted my time calling the RCMP
12 if I thought there was a grant of immunity that
13 wouldn't go any -- which meant there would be no
14 point to calling them and wasting everybody's
15 time.

16 Q Thank you. The third area, remember, you will
17 recall you were asked quite a number of
18 questions by Mr. Prober regarding your lack of
19 direct knowledge about exactly what
20 Mr. Dangerfield knew and didn't know?

21 A Yes.

22 Q And with respect to one specific issue, the
23 issue of witness protection arrangements, I
24 would just like to take you back to
25 Mr. Dangerfield's February 8th response to your

1 February 7th letter, and that's at tab 10?

2 A Tab 10, yes.

3 Q And in particular, page 159, paragraph 6, which
4 is a paragraph that we discussed in direct
5 examination?

6 A Yes.

7 Q My question arising out of Mr. Prober's question
8 is, would it be fair to say that in answering
9 this question Mr. Dangerfield is not saying that
10 he doesn't know the details of the Witness
11 Protection Program, but rather he is saying that
12 he is simply not going to give it to you? Is
13 that a fair reading of that paragraph?

14 A Yes.

15 Q Thanks. The fourth area, you recall Ms.
16 Carswell --

17 A It seems to say --

18 Q Sorry.

19 A -- he does know something about it.

20 THE COMMISSIONER: Maybe a little less leading.

21 BY MR. DAWE:

22 Q All right.

23 A He says he can assure me about it, so I assume
24 that he knew what it was about, otherwise he
25 wouldn't have given me the assurance.

1 THE COMMISSIONER: I'm not sure I understand
2 what you're saying, Mr. Brodsky?

3 THE WITNESS: It says,

4 "We cannot provide the details, but can
5 assure you that the protection amounts
6 to...",

7 and then he sets out what the protection amounts
8 to. And that to me, I read that as meaning he
9 knows what the program was in connection with
10 Mr. Zanidean and won't tell me.

11 BY MR. DAWE:

12 Q Exactly. The fourth area, you recall Ms.
13 Carswell questioned you at some length about the
14 meeting that you had with Mr. Kovnats on
15 June 2nd?

16 A Yes.

17 Q And suggested that because of this meeting you
18 knew that Zanidean was negotiating some kind of
19 witness protection agreement with the Crown?

20 A Yes.

21 Q And she then asked you questions about whether
22 you went back to Mr. Dangerfield at this point
23 and demanded that he disclose the details of
24 this deal that Zanidean was negotiating?

25 A Yes.

1 Q You recall me asking those questions?

2 A Yes, you did.

3 Q And as I understood your answer, what you said
4 was that you pointed out that you had already
5 asked for this information back in February, and
6 met with this refusal that we just saw in the
7 February 8th letter?

8 A Right.

9 Q Do you remember giving that answer?

10 A Yes.

11 Q Right. I have two follow-up questions arising
12 out of that. First, if you can just give me, in
13 your opinion, is there an obligation on the part
14 of defence counsel to go back and re-address a
15 question when you've been met with a refusal,
16 when you've learned more information about the
17 subject matter on your own?

18 A When you --

19 Q If you have --

20 A If I've learned more about it?

21 Q Yes. If you've learned more about something and
22 have already asked the question and been told
23 you are not going to get it, is there an
24 obligation on the part of the defence counsel to
25 go back and ask again?

1 A No. That's what I -- that's the example of the
2 fire and my involving Staff Sergeant Ferguson.
3 I didn't tell the -- I involved Staff Sergeant
4 Ferguson so I learned more.

5 Q And the second question, in your view, is the
6 Crown's obligation to provide disclosure
7 contingent on the defence being able to find out
8 something without the underlining subject
9 matter?

10 A No. They have to provide disclosure. They
11 can't assume or presume that I know this or
12 that, or if I hire this kind of a detective or
13 that kind of a detective, I will be able to
14 figure it out, or if I ask somebody on the next
15 block I'll get it. They can't presume that I
16 will do that.

17 Q Thanks. And the last area, as I recall, you
18 were asked by Mr. Prober whether you ever made a
19 blanket request for all of the notes of all of
20 the police officers involved in the case. And
21 as I recall, Ms. Carswell asked a similar
22 question as to whether you specifically
23 requested all of Sergeant Anderson's and
24 Sergeant Paul's notes. But as we discussed
25 earlier, we have taken you to the parts in your

1 disclosure letters where you do specifically
2 request disclosure of the police notes that
3 contain utterances from Zanidean?

4 A Yes.

5 Q And you were told by the Crown that you had
6 everything, all of the utterances that he had
7 made that were recorded?

8 A Yes.

9 Q So my question is, in that situation where
10 you've asked for a specific sub-set of notes or
11 materials, and you've been told that there is
12 nothing that meets your description, is it
13 appropriate at that point, having been told that
14 by an officer for the court, for defence counsel
15 to go back and make a broad-brush request for
16 every document?

17 A The answer is --

18 MR. PROBER: You know, Mr. Commissioner, before
19 Mr. Brodsky answers that, I have remained
20 silent, there is just a slew of leading
21 questions. This is another one. Mr. Brodsky
22 knows full well he can go to court and make an
23 application for further particulars. This is
24 not an area that requires clarification, in my
25 respectful submission. Mr. Brodsky said to two

1 counsel, Ms. Carswell and myself, he did not
2 make a blanket request for notes, end of story.

3 Where's the clarification that's required?

4 That's the purpose of re-examination, in my
5 respectful submission.

6 THE COMMISSIONER: What do you say about that,
7 Mr. Dawe?

8 MR. DAWE: Well, I think he has been asked --
9 the suggestion was put to him, as I understood
10 the questions, that he should have gone back and
11 asked for all of the notes, and he was somehow
12 remiss in not doing so. And what I question,
13 what I would like to explore with the witness is
14 what are his views on whether that's a necessary
15 step, once he has been told by the Crown that
16 the specific material he is seeking doesn't
17 exist.

18 THE COMMISSIONER: All right. I think
19 Mr. Prober's objection is a logical, reasonable
20 one, and certainly if it was a trial I would not
21 permit the question on re-examination. But I
22 will permit it, but don't lead. Okay.

23 THE WITNESS: Can I say one thing to Mr. Prober?

24 THE COMMISSIONER: Absolutely.

25 THE WITNESS: I apologize.

1 THE COMMISSIONER: Can you say one thing to who?

2 THE WITNESS: To you. My preamble is it's
3 difficult on this side -- it's difficult to be a
4 witness when you are usually a counsel.

5 THE COMMISSIONER: Yes.

6 THE WITNESS: It's difficult. Mr. Prober talks
7 about I could have gone to court to demand
8 particulars. I'm not sure that -- I am sure
9 that's not right. The particulars that the
10 Criminal Code sets out that I'm entitled to are
11 particulars of the charge. They are not -- they
12 don't have anything to do with disclosure. They
13 don't have anything to do with the evidence.
14 They are particulars of the charge. What
15 section of the code are you proceeding on? Can
16 you define whether the offence took place with a
17 gun, meaning there is an increased punishment.
18 It has got nothing to do with disclosure. I
19 apologize for interrupting.

20 THE COMMISSIONER: No, you are not interrupting
21 at all. Good refresher. But now I will have
22 Mr. Dawe ask his question and you can try to
23 answer.

24 BY MR. DAWE:

25 Q Well, the question was, in essence, in a

1 situation where have you asked for a specific
2 piece of information and have been told that it
3 doesn't exist, is it either necessary or
4 appropriate at that point to essentially
5 challenge the Crown's answer and demand, make a
6 broad-brush request for every document?

7 A No. But you see page 189, I did say in court to
8 the learned justice, in the presence of
9 Mr. Dangerfield, that I wanted to --
10 February 13, 1991, that I wanted to look at the
11 file, the whole file. And he says, Mr. Prober
12 says, I should put in writing every single
13 document, but I wanted to look at the whole
14 file. And Mr. Dangerfield says at line 17,
15 "I gave him that kind of disclosure
16 before."

17 But the reason to quote him, to read the
18 transcript,

19 "The reason we haven't done it in this case
20 is he has provided me with a shopping list.
21 I have tried to answer his questions. He
22 has got everything that we have at the
23 moment. I don't know what else to give
24 him. I don't know what else he can look
25 for."

1 And then he goes on to make the rest of his
2 statement that I've got everything already, .

3 And I took that as a refusal to provide me with
4 the police report.

5 MR. DAWE: Thanks. Those are my questions. And
6 you have 20 minutes to make your way to court.

7 Thanks very much. Thanks, Mr. Commissioner.

8 THE COMMISSIONER: Thank you, Mr. Dawe. Thank
9 you so much, Mr. Brodsky, you have been patient
10 and elucidating.

11 THE WITNESS: Thank you, Mr. Commissioner. I
12 appreciate your starting early today to allow me
13 to get to my next proceeding. And I hope this
14 Commission does its work well.

15 THE COMMISSIONER: Thank you. Well, I hope
16 that -- and you tell the Chief Justice, because
17 in case somebody moves on certiorari, tell him
18 that I did him a favour.

19 THE WITNESS: Yes. If you give me a moment to
20 clean up my books. I think the Chief Justice
21 has already been advised, Mr. Commissioner, that
22 you did him a favour because I told him I might
23 be late.

24 THE COMMISSIONER: Okay. Has the witness been
25 called?

1 MR. CODE: He has just been fetched,
2 Mr. Commissioner. Chief Ewatski is coming.

3 THE WITNESS: Good morning.

4 THE COMMISSIONER: Good morning and welcome.

5 THE WITNESS: Thank you.

6 THE COMMISSIONER: Just remain standing for a
7 moment.

8 Jack Joseph Ewatski, having been duly
9 sworn, testifies as follows:

10 BY MR. CODE:

11 Q Good morning, Chief Ewatski. You've got some
12 experience giving evidence, I take it, so you
13 are not unfamiliar with the witness box?

14 A That is correct, sir.

15 Q Take you back to your former life for a little
16 while here.

17 A Okay.

18 MR. CODE: The first step as always,
19 Mr. Commissioner, could I ask that the book of
20 documents we have prepared for this witness be
21 marked as the next exhibit? And I believe,
22 Madam Registrar, we are up to exhibit 28?

23 THE COMMISSIONER: 28. Exhibit 28A will be
24 volume 1 of the book of documents, exhibit 28B
25 will be volume 2 of the book of documents.

1 (EXHIBIT 28A: Volume 1 of book of
2 documents for Examination of Chief Ewatski)
3 (EXHIBIT 28B: Volume 2 of book of
4 documents for Examination of Chief Ewatski)

5 BY MR. CODE:

6 Q And, Chief Ewatski, the practice with all of the
7 witnesses is we have inserted in the front of
8 their documents book the witness statement or
9 summary of the interview conducted with
10 Commission Counsel. And in your case, as
11 always, it's at tab 1. Do you see that?

12 A Yes, I do, sir.

13 Q And did you have an opportunity to review that
14 statement when it was circulated in draft after
15 your interview?

16 A Yes, I did, sir.

17 Q And are you content with its accuracy?

18 A There is a couple of sections I would like to
19 comment on, sir, if I may?

20 Q All right. Do you want to do that as we proceed
21 through or do you want to do that now?

22 A We can do that as we proceed through.

23 Q All right. You tell me as we -- I am not going
24 to take you through everything in the statement,
25 but I will go through the key parts of it, of

1 course, and you tell me if there is anything
2 that I am referring to that you want to add to
3 or revise. But I take it that generally you are
4 content with its accuracy?

5 A Yes, I am.

6 Q Your background is set out at pages 1 to 2 of
7 that document; is that correct?

8 A That is correct, sir.

9 Q And it shows that you worked in the homicide
10 unit of the Winnipeg Police Service, which is
11 what we're particularly concerned with here, in
12 three different capacities in the 1980s and
13 1990s?

14 A That is correct, sir. At the investigator
15 level, or the Sergeant II level, at the
16 first-line supervisor level, that being a
17 Sergeant 1, as well as an inspector, which is
18 the officer in charge of the unit.

19 Q So as a frontline investigator, as a supervisor
20 in a sergeant capacity, and then finally as an
21 inspector, as the officer in charge?

22 A That is correct, sir.

23 Q And as a result of that, sir, you're familiar
24 with the practices of that unit in and around
25 the time period we're concerned with,

1 immediately before and immediately after the
2 Harder investigation; is that correct?

3 A That is correct, sir.

4 Q You were promoted to Chief of Police in 1998?

5 A In November of 1998, yes, sir.

6 Q And you are now the longest serving Chief of
7 Police in any major Canadian city?

8 A That's my understanding, sir.

9 Q And you are currently, indeed, the President of
10 the Canadian Association of Chiefs of Police?

11 A That is correct, sir.

12 Q Now, our interest in your evidence, of course,
13 and the reason you are here today, is because of
14 a very specific task you took on in a six-month
15 period in 1993, when you were tasked by the
16 Chief of Police to conduct a review of the
17 Harder homicide investigation?

18 A That's correct, sir.

19 Q And you and your partner, Inspector Hall, were
20 the leaders of that team?

21 A That is correct, sir.

22 Q And the Chief of Police spoke to you and
23 instructed you on March 31st, as I read the
24 review -- the review is at tab 3, and if you
25 look at page 2 of it, it indicates that you

1 received your marching orders on March 31, 1993;
2 is that correct? You will see at the bottom of
3 page 2 you refer to your meeting with the Deputy
4 Chief on March 31st, when you received your
5 instructions?

6 A That is correct, sir.

7 Q And just to get the basic biographical data
8 about the report, you delivered your report,
9 according to the cover sheet at tab 3, you
10 delivered the report on September 24th, 1993?

11 A That is correct, sir.

12 Q So it took you approximately six months, almost
13 exactly six months to complete your task?

14 A That is correct, sir.

15 Q Now, the background, or the main underlying
16 cause of the review, again, as I read these
17 introductory pages, particularly at pages 2 to 3
18 of the report, the principal underlying cause of
19 the review was that there had been a vigorous
20 attack in the media on both the police
21 investigation and the Crown's conduct of the
22 trial in the immediately preceding weeks. There
23 is reference, in particular, to three articles
24 in the Winnipeg Sun you see at the bottom of
25 page 2 on March 13th, 14th and 21st. Is that

1 correct?

2 A That is correct, sir.

3 Q So within two weeks of those articles coming
4 out, your chief had taken action by appointing
5 yourself and your colleague, Inspector Hall, to
6 conduct this review. Is that correct?

7 A That is correct, sir.

8 Q And, again, to just finish off this general
9 background in these early pages of the report,
10 if we turn to page 4 of the report, in terms of
11 the tasks that you were assigned in your review,
12 in the middle of page 4 we see that long
13 paragraph starting,

14 "One of the allegations being made in the
15 media..."

16 Do you see that?

17 A Yes, I do, sir.

18 Q And if I could just summarize that for you, one
19 of the main concerns that had been raised and
20 that the chief asked you to respond to was this
21 question of whether the police had fully and
22 accurately informed the Crown of all of the
23 material facts of the case?

24 A That is correct, sir.

25 Q One of the allegations in the media was that the

1 police withheld material information from the
2 Crown and you were to look into that?

3 A That is correct, sir.

4 Q And, again, to finish off that long paragraph at
5 page 4, the same one that I just referred you,
6 starting.

7 "One of the allegations...",
8 you state there that the concern was both with
9 information left out of reports, but also
10 information left out of the underling notebooks
11 on which the reports are based?

12 A We wanted to ensure that all the evidence that
13 was gathered by the police investigators had
14 been disclosed to the prosecution on this case.

15 Q Yes. And the point that you make in that
16 paragraph, that I'm trying to highlight, is that
17 you can do that in one of two ways, you can
18 leave it out of your notebook or you can put it
19 in your notebook and then leave it out of the
20 report; is that fair?

21 A That would be fair. That would be a fair
22 comment, sir.

23 Q And you were concerned with both of those
24 possible methods of withholding information from
25 the Crown?

1 A That's correct, sir.

2 Q All right. Now, if I can take you back to your
3 statement at tab 1, Chief Ewatski, there's a
4 very helpful section early on in your interview
5 with us, starting at page 3 and going over to
6 page 4, where you draw on your experience with
7 the homicide unit in the three capacities that
8 you've told us about. And you set out a general
9 summary there over that page and a half,
10 approximately, of both disclosure practices as
11 you understood them in the pre-Stinchcombe
12 period, and also the report writing and
13 note-taking practices of the homicide officers
14 here in Winnipeg.

15 A That's correct, sir.

16 Q And I want to highlight a couple of aspects of
17 this part of your statement. But did you want
18 to qualify anything in that particular section
19 there at pages 3 to the middle of page 4?

20 A No, sir. I have no concern with those two
21 pages.

22 Q You are content with that part.

23 Let me just pull out a couple of threads
24 that emerge from that and ask if we've
25 understood it accurately. First of all, you

1 make the point that the pink copy of police
2 reports was always sent to the Crown routinely
3 as part of the Crown brief; is that correct?

4 A That is correct, sir, that was the process of
5 sending that information to prosecution.

6 Q And it's been said that that was the normal way
7 in which police information was communicated to
8 the Crown; is that fair?

9 A That is correct, sir.

10 Q And you then state that, with the Crown having
11 come into possession of the pink copy of the
12 police report, disclosure to the defence is
13 obviously a Crown responsibility, not a police
14 responsibility. But your understanding was
15 that, even prior to Stinchcombe, the general
16 practice in Winnipeg was that the pinks went to
17 the defence as well; is that correct?

18 A Ultimately, the defence counsel could obtain
19 that information from the Crown.

20 Q And the third point that I draw out of this part
21 of your interview is that police notebooks were
22 not generally included in the Crown brief
23 materials that were routinely sent up to the
24 Crown; is that correct?

25 A At that time, sir, they were not.

1 Q And that is one of the post-Stinchcombe
2 developments where we started routinely
3 including police notes in the Crown brief?

4 A That is correct, sir. Today we include the
5 officer's notes in the brief, along with the
6 police report.

7 Q All right. And the way access to notebooks was
8 generally obtained in those days, again, as I
9 read this part of your statement, was that if
10 you were a witness and you brought your notebook
11 to court with you, and used it to refresh
12 memory, access to the notebook could be obtained
13 in that manner?

14 A That is correct, sir.

15 Q Now, finally, we see in the materials in this
16 particular case that although the notebooks did
17 not appear to be routinely provided,
18 automatically provided, consistent with your
19 testimony, they could be requested and on
20 request the notebooks would be provided to the
21 Crown and then to the defence?

22 A That is correct, sir.

23 Q In terms of the practices of your officers in
24 that unit, in terms of writing reports, again
25 it's helpfully explained here that notes were

1 often made hurriedly at the time of a relevant
2 event, and then the reports would be typed up
3 afterwards when the officer had time to fill in
4 all of the details; is that correct?

5 A Yes, sir. The training or the practice of the
6 police officer would be to take their notes at
7 the time of the incident, or shortly thereafter,
8 and then to use those notes to assist them in
9 writing their reports.

10 Q So the reports were based on the notes, but the
11 reports might add additional detail because of
12 the officer having more time to write it out
13 thoroughly?

14 A That is correct, sir.

15 Q And in terms of what should and would be
16 included in the police reports, the language
17 used here in your statement is that anything
18 relevant or anything that the Crown would need
19 to know is what was expected to be included in
20 the reports?

21 A That is correct, sir.

22 Q And did the officers on the homicide squad, or
23 doing homicide investigations, need to be told
24 to prepare a report or was this something that
25 was just routinely or automatically done?

1 A I think the best answer that, the individuals
2 who would work in that area were experienced
3 officers, and they would certainly know the
4 importance of writing reports relative to
5 information that is required by the prosecution.

6 Q On any homicide squad, I take it, that there
7 would be daily briefings, regular meetings held
8 with superior officers, supervisors?

9 A That would be the normal practice, yes, sir.

10 Q And was there a practice that those meetings
11 where oral briefings and discussions took place
12 would become a substitute for writing a written
13 report?

14 A There would be certainly sharing of ideas and
15 thoughts relative to, you know, investigations
16 that were going on amongst the officers, as well
17 as their supervisors. However, the gist of the
18 information that was important to a case would
19 be included in reports.

20 Q My question is the fact that meetings are taking
21 place, is that a substitute for writing a
22 written report of all relevant material that the
23 Crown needs to know?

24 A I wouldn't call it a substitute, no, sir.

25 Q Now, in the course of the inquiry's examination

1 of the file in this case, in the Harder homicide
2 investigation and the Driskell prosecution, we
3 came across a number of instances where relevant
4 information, or apparently relevant information,
5 was in an officer's notebook, but appears to
6 have been deliberately omitted from a report.
7 And I want to take you to three examples where
8 we see this, and ask for your views on the
9 practice that's revealed, and also whether this
10 was a matter that came up in the course of your
11 review. So if I could ask Madam Registrar to
12 give you Exhibit 6A and 6B? These are documents
13 that are already part of the record. And I just
14 want to give you a couple of examples of matters
15 that have come up in this area. If you look at
16 tab 5, we find Sergeant Paul's notebook?

17 A I see it here, yes, sir.

18 Q And you see the numbering in the bottom
19 right-hand corner?

20 A That's correct, sir.

21 Q If you turn to page 519 of Sergeant Paul's
22 notebook, you will have an entry for
23 October 10th?

24 A Yes, sir.

25 Q You see that in the middle of the page?

1 A Yes, sir.

2 Q Fortunately, his handwriting is quite legible.
3 And you see that he and Sergeant Anderson have
4 him down in their office on October 10th. This
5 is -- Zanidean comes in on October 9th, this the
6 first time he comes forward as a witness. And on
7 October 10th, the second day, they have got him
8 down at the station in an interview room. And
9 they go over a statement that they took the
10 previous day with him and they ask him various
11 questions. If you turn to the second page, page
12 520, about a third of the way down page 520, you
13 see the initials "TA" on the left-hand side of
14 the notebook?

15 A Yes, sir.

16 Q And at that point, where the initials, Sergeant
17 Anderson's initials appear in Sergeant Paul's
18 notebook, Zanidean raises a subject, he says,
19 Paul's note is.

20 "Ray then states that there could be a
21 problem with his credibility in court.

22 I asked him why."

23 And he proceeds to confess to them that he has
24 blown up a house in Swift Current. And the
25 admission, the oral admission recorded in

1 Sergeant Paul's notebook is fairly brief. And
2 then over on the next page, page 521, Sergeant
3 Paul advises him that they will make inquiries
4 with Saskatchewan about the matter, and cautions
5 him about his right to counsel in relation to an
6 admission of a serious crime that he has just
7 made to them. And Sergeant Anderson initials
8 off the end of the interview. And you see at
9 the end of that page Zanidean then goes home.

10 If you turn to the next tab, tab 6, we get
11 the police report prepared of that day's events.
12 Do you see that at tab 6?

13 A Yes, I do, sir.

14 Q And they are writing up the report of the
15 October 10th meeting with Zanidean at the
16 detective's office. And they, in the first two
17 paragraphs of the report they set out the events
18 at the station, the discussions with Zanidean.
19 Except what's omitted from it is the admission
20 about the Swift Current arson. It's just simply
21 not there. The rest of the discussion is
22 recorded there, but the admission about the
23 Swift Current arson is left out.

24 And they then go on in the third paragraph
25 to the events of October 11th, where they again

1 have Zanidean down at the station and take a
2 further statement from him.

3 And my question to you is, can you think of
4 any sound reason in police policy or practice as
5 to why, when a witness like Zanidean raises a
6 matter that may affect his credibility and he
7 acknowledges himself it may affect his
8 credibility, why that would be omitted from the
9 police report of that interview with him?

10 A Well, sir, obviously, I can't speak why it was
11 omitted from the report. However --

12 Q That's not my question.

13 A It's not in there.

14 Q That's not my question.

15 A Okay.

16 Q Obviously, we have spoken to -- we have had
17 Sergeant Paul and Sergeant Anderson. My
18 question is, was there any reason in police
19 policy or practice at the time, that you are
20 aware of, that would justify or explain omitting
21 that omission from the report?

22 A I don't believe that there was any policy that
23 would justify the omission of that.

24 Q Any practice that you are aware of that would
25 justify its omission?

1 A I am not aware of a practice that would cause
2 them to omit it.

3 Q And the same phenomenon is repeated, if you look
4 at tab 4, 19 days later, these are Sergeant
5 Anderson's notes at page 28 of tab 4, page 28?

6 A Yes.

7 Q We see Sergeant Anderson's notes for the 29th of
8 October, 19 days after the first admission.
9 Again, they have Zanidean down to the station.
10 This time they put a body pack on him, and he
11 goes out and takes a statement from Ron
12 Driskell. And they bring him back to the
13 station and they de-brief him on his meeting
14 with Ron Driskell. He is now an agent who has
15 gone out into the field and is tape-recording
16 conversations as part of the investigation. And
17 then specifically, if you turn to page 31 of
18 Sergeant Anderson's notes, I'm not going to read
19 this with you, we've been through it many times
20 before. But at the top of page 31, do you see
21 an entry, Sergeant Anderson, he has "me" in the
22 left-hand column. He says.

23 "Ray you told us before about that arson on
24 in Swift Current."

25 And he then proceeds to ask him a series of

1 questions about the Swift Current arson, which
2 goes on for a couple of pages, in which he
3 presses him to explain. And Zanidean is very
4 clear that he committed this arson with Driskell
5 in early July, shortly after Perry Harder
6 disappears. And so the police are questioning
7 him about the purpose of his and Driskell's trip
8 to Saskatchewan, and the reason for the arson,
9 why they carried out this arson in Saskatchewan
10 together as co-perpetrators.

11 And then he, in the middle of page 32,
12 Zanidean asks them,

13 "What do you think will happen to me about
14 that?"

15 Do you see that in the middle of page 32?

16 A Yes, I do, sir.

17 Q And Anderson's reply is.

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

22 And Zanidean replies that he will just have to
23 suffer the consequences at the bottom of page
24 32. And then at the top of page 33, Anderson
25 says,

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

2 And then at the end of the note,

3 "Ray leaves and goes home again."

4 So, again, we have a second discussion
5 about the Swift Current arson. And if you now
6 turn --

7 THE COMMISSIONER: What was the date of that?

8 MR. CODE: October 29th.

9 THE COMMISSIONER: Okay. 29th, okay.

10 BY MR. CODE:

11 Q It's two days after the first call to Swift
12 Current, October 27th, because Anderson has
13 clearly already told Swift Current about the
14 admission at this point. And Anderson's next
15 note is an October 30th note where he calls
16 Swift Current a second time.

17 But if you look at the police report, which
18 is in Exhibit 6B, so you have to pull out the
19 second Exhibit 6 there, and it's the very first
20 tab, tab 7. We again get the police coming back
21 and typing up a report afterwards based on their
22 notes. And you see, initially, they discuss the
23 events of October 26th. Do you see the first
24 five paragraphs or so is a meeting with
25 Zanidean, statements they received from him on

1 October 26th?

2 A Yes, I do.

3 Q And then if you drop down about two-thirds of
4 the way down that first page, you see an entry,
5 Monday, October 29th?

6 A Yes, I do, sir.

7 Q And they again recite the events of that date of
8 having Zanidean come into the station, fixing
9 him up with the wire, sending him out to meet
10 with Ron Driskell, having him back to the
11 station, debriefing him. And over at page 2,
12 they faithfully follow the note book description
13 of what occurred on the 29th with Zanidean, and
14 then once again omit the admission to the Swift
15 Current arson and his discussion about the
16 motives, the reasons behind him and Driskell
17 committing the Swift Current arson. It's simply
18 not there, and clearly a deliberate decision was
19 made, or the natural inference is that a
20 deliberate decision was made to omit it from the
21 report.

22 And so, again, my question to you is, is
23 there any appropriate reason in police policy or
24 practice at the time for this kind of reporting,
25 to your knowledge?

1 A Nothing in police policy that would justify the
2 omission of it.

3 Q And what about police practice, is this
4 appropriate police practice?

5 A The appropriateness, again, one can only --
6 well, I could only surmise that there is an
7 issue of relevance to this information to the
8 investigation that they are working on. But I
9 would think that that information should be
10 included in a police report.

11 Q There is no issue of relevance, according to the
12 officers, they acknowledge its relevance, that
13 it's relevant because it puts Driskell and
14 Zanidean together at the relevant time,
15 committing a very serious crime.

16 A Then it would seem that this information should
17 have been included in that report.

18 Q And it's clearly relevant to credibility, as
19 even Zanidean acknowledged it was relevant to
20 his credibility. So leaving aside questions of
21 relevance, assuming its relevance, is there any
22 police practice that would justify omitting
23 this, knowing practices at that time?

24 A My opinion would be no, sir.

25 Q Thank you. And finally the last report at tab

1 8, if I can deal with this one quickly. Tab 8
2 is again a statement taken from Zanidean on
3 November 2nd, and they ask him a series of
4 questions. They are going back and clearing up
5 various matters. And on the second page of the
6 report, you see halfway down the second page,
7 the question that's asked is,

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

11 They proceed to take a statement from Zanidean
12 about the fact that while they were travelling
13 to Saskatchewan in early July, to commit the
14 arson, that Driskell made an incriminating
15 statement about the Harder homicide. But what's
16 left out is the fact that the whole reason for
17 the trip was to commit the arson in Swift
18 Current. We get the incriminating statement
19 about the Harder homicide, but the context, the
20 reason for the trip is left out.

21 And, again, are you aware of any practice
22 or policy at the time that would justify that
23 kind of reporting?

24 A Well, the practice would be to record the
25 answers to the question. And if the answer

1 didn't include that information, then I could
2 see why it would not be in here.

3 Q Well, I appreciate that. But you see the date
4 of this statement is, it is taken on
5 November 2nd, after Zanidean has twice told
6 them, on October 10th and October 29th, that the
7 reason he and Driskell were travelling to
8 Saskatchewan was to commit an arson, to blow up
9 a house, as he described it?

10 A Yes, I understand that.

11 Q Which has not been reported in the previous
12 reports?

13 A Yes, that's correct.

14 Q So when the trip is the means by which an
15 incriminating statement is extracted, would you
16 expect the context or the reason for the trip to
17 be included?

18 A Well, again, all I could comment on, on this
19 document, is the fact that Mr. Zanidean was
20 asked a question, and it would appear that the
21 answer to the question given by Mr. Zanidean was
22 recorded, has formed part of the statement.
23 THE COMMISSIONER: Well, I think it's maybe a
24 little different than that. It's really the
25 formulation of the question, and the question is

1 formulated by the police officer. The
2 formulation of the question voids any comment
3 about the reason for the trip to Saskatchewan,
4 it is just sort of left out at the end of a limb
5 without any reason. And the questioner, of
6 course, knew what the reason was. Would you
7 have thought it necessary to put that as part of
8 your question?

9 THE WITNESS: I would have asked the question
10 differently, or I would have asked a subsequent
11 question.

12 BY MR. CODE:

13 Q Now, I've finished with Exhibit 6 for the time
14 being, but keep it handy, I'll be coming back to
15 it in a minute. I want to take you back to your
16 own documents during the Harder homicide review.

17 And did you and Inspector Hall, in the
18 course of your review, have a practice of
19 tape-recording your telephone calls during the
20 review?

21 A It is my understanding that we had a
22 tape-recorder connected to the telephone line
23 that was in-coming into the office, and that
24 upon answering each telephone call we would turn
25 the tape-recorder on. And there were times the

1 recorder would be turned off if we felt that
2 there was no necessity to record the telephone
3 call.

4 Q All right. So it was a practice you employed
5 sometimes, but not all the time?

6 A Well, no. What I said, sir, was that upon every
7 telephone call that came in, the tape-recorder
8 would be turned on. And then once it was
9 determined who was on the telephone, the
10 tape-recorder may be turned off.

11 Q So what was wrong about the way I put it? What
12 I'm interested in is, did you tape all of your
13 calls or only some of them?

14 A Well, there were --

15 THE COMMISSIONER: I think the answer is, he
16 taped all calls, but only some of many?

17 THE WITNESS: The fact of the matter is that
18 when the telephone rang, prior to us answering,
19 we would turn the tape-recorder on. Once it was
20 determined, if the call was relevant -- we had
21 calls of personal natures coming in, for the
22 most part the tape-recorder would be turned off
23 at that point of time. But if the call was
24 something relevant to the information in the
25 case that we were working on, it would be left

1 on.

2 BY MR. CODE: :

3 Q Got you.

4 A Okay.

5 Q So all relevant calls were recorded --

6 A That's correct.

7 Q -- is the gist?

8 A That's my understanding, yes, sir.

9 Q Now, could I ask Madam Registrar to put before

10 you a transcript of one of those calls which

11 I've asked to be added to volume 2, as a new tab

12 11. And this is a telephone call between your

13 colleague, Inspector Hall, and Sergeant

14 Anderson. And there's one passage in the call

15 that's relevant to this issue that we're

16 discussing. Do you have the new tab 11 before

17 you?

18 A Yes, I do, sir.

19 THE COMMISSIONER: And tab 11 will become part

20 of Exhibit 28B.

21 BY MR. CODE:

22 Q And can you identify that as one of the

23 transcripts of these telephone calls that you

24 and your colleague tape-recorded?

25 A I have no reason to say that it is not, sir.

1 Q And for purposes of the index, I can advise my
2 colleagues that it is found in volume 2 of the
3 documentary disclosure from the Winnipeg Police
4 Services at tab 2. Tab 2 and -- tabs 1, 2, and
5 3 of this volume, the entire volume, appears to
6 be the tape-recorded phone calls from the Harder
7 homicide review. And could I ask you to turn to
8 page 23, using the numbering in the top
9 right-hand corner? Do you have page 23, sir?

10 A Yes, I do, sir.

11 Q And Inspector Hall is discussing various
12 problems with Zanidean at this point with
13 Sergeant Anderson. And I just want to read you
14 the first two questions and answers, and then
15 ask you a question about them. Inspector Hall
16 says at the top of page 23.

17 "All we need is, is a feeling from you guys
18 is, like, right from the beginning,
19 obviously, things went -- see, we weren't
20 privy to this until yesterday -- things
21 went not too badly for the interviews, and
22 up until court time, then when he felt that
23 there was maybe money involved here, that's
24 when the problem started."

25 And the "he" that he is referring to from the

1 context is Zanidean. And Sergeant Anderson
2 replies,

3 "Oh, absolutely. And as far as his -- as
4 far as the evidence and everything, always
5 went smooth that way, except that little
6 hurdle, of course, when he drops it on and
7 says he has blown up a house, but --"

8 and Sergeant Hall interjects,

9 "Sure."

10 And Anderson says,

11 "other than that, everything went smooth.
12 It wasn't -- it was the only time he used
13 or caused trouble was with the, you know,
14 when it had to do with his negotiations
15 with the Justice Department."

16 So have I read that transcript accurately, Chief
17 Ewatski?

18 A Yes, you have.

19 Q And my question to you is, could it ever be
20 appropriate for a homicide detective to omit the
21 one little hurdle, as Sergeant Anderson calls
22 it, that they encounter with a key witness, from
23 a supplementary report?

24 A I would think that information should have been
25 included in a supplementary report.

1 Q Now, in the course of your review back in 1993,
2 to ask you to focus instead of on general
3 policies and practices, to the practical
4 realities of the review that you were
5 conducting. Did the Harder homicide review
6 discover these instances of apparently withheld
7 information from police reports? Do you recall
8 discovering these matters that I've just brought
9 to your attention?

10 A The discovery that we made, the observations
11 that we made during the course of the review,
12 that information relative to aspects surrounding
13 the investigation itself by the investigators
14 were contained in police reports, in police
15 notes, and obviously from conversations and
16 communications between different people. So
17 there was a combination of where information was
18 located.

19 Q My question is more specific than that. Do you
20 recall discovering these discrepancies between
21 the notebooks and the supplementary reports,
22 these specific ones I've just taken you to?

23 A From my recollection, obviously we would have
24 compared everything and obviously made that
25 observation.

1 Q So you think you probably did discover this
2 discrepancy, or you should have discovered it,
3 if you were comparing the reports with the
4 notes?

5 A To the best of my recollection, we would have
6 been aware of all of the information and made
7 those observations.

8 Q I don't find any reference to it in the report.
9 But what I do find, and if you've got your own
10 book of documents, at volume 2, tab 7, we see a
11 series of memos, a number of which are titled
12 "questions." Do you see these memos at tab 7?

13 A Yes. They were basically part of our working
14 notes relative to our review.

15 Q So when you were preparing for various
16 interviews, you would type up a series of issues
17 that you wanted answers to, that you wanted to
18 inquire into; is that correct?

19 A To my recollection, we did that from time to
20 time, yes, sir.

21 Q So you appear to be focusing on this particular
22 area that we're on right now, and asking the
23 right questions about it, if I could put it that
24 way. If we look at the very first memo at tab
25 7,

1 "Questions for Director of Winnipeg
2 Prosecutions Bruce Miller."

3 Do you see the sixth bullet down,
4 "What did police tell the Justice
5 Department about the Swift Current aspect
6 prior to Zanidean taking the stand?"

7 A Yes, sir.

8 Q And that would include these entries in the
9 notebook, presumably, that appear to have been
10 left out of the reports?

11 A We wanted to ascertain whether or not that
12 information had been passed on to prosecutions.

13 Q And then at page -- we use the pagination in the
14 bottom right-hand corner at this tab, if you
15 flip forward to page 206, again a memo titled
16 "questions, not specifically directed to any one
17 individual. But if you look at the fifth bullet
18 down, you see,

19 "When does Zanidean tell the police of the
20 fire?"

21 A That's correct, sir.

22 Q And then the next bullet,
23 "Exactly what does he tell them, i.e.
24 motive, who involved, details?"

25 You appear to be asking questions focused on the

1 kind of information we find in those notebook
2 entries; is that correct?

3 A Yes, sir. My recollection of this document
4 would be these were questions that would come to
5 our mind upon review of the reports and all
6 other material that was in the file.

7 Q And my question is, these particular bullets
8 I've directed you to appear to be directed to
9 the kind of information that is found in those
10 notebook entries we have just gone through?

11 A It would be related to that information.

12 Q All right. Because when we turn to your report,
13 if you could go back to volume 1 of the book,
14 where you set out the whole story about Zanidean
15 and the Swift Current arson, if you look at tab
16 3 of volume 1, pages 71 to 73. The whole story
17 about Zanidean starts at page 69. I'm using
18 your pagination from the report, the bottom
19 center of the page. Page 69 you begin your
20 discussion on Zanidean. And if you could flip
21 forward to page 72, we get the beginnings of the
22 story about the Swift Current arson. You see at
23 the bottom of page 72, the last two paragraphs,
24 you say:

25 "However, this was not the only information

1 Zanidean gave to police that would impact
2 on the investigation. Early into his
3 involvement with the police, Zanidean
4 admitted to investigators he was
5 responsible for an arson that occurred in
6 Swift Current."

7 And you then proceed to tell the story of the
8 Swift Current arson. And you include a
9 reference to the October 10th admission that we
10 saw in Sergeant Paul's notebook. And then if
11 you turn over the page, you carry on and discuss
12 a number of other matters you discovered about
13 the Swift Current arson, but there is no
14 reference to the second admission on
15 October 29th in Sergeant Anderson's notebook; is
16 that correct, the one where he discusses the
17 motive or the reason for the arson being revenge
18 as opposed to an insurance fraud. You've
19 referenced the one admission, but not the
20 second; is that correct?

21 A I don't see a reference to that specific
22 information on the 29th, no, sir, you're
23 correct.

24 Q And what we know is that Sergeant Anderson and
25 Sergeant Paul eventually produced a report about

1 those admissions. It took them about a year,
2 about three years, in fact -- no, I'm sorry, it
3 took them about a year to produce this
4 particular report. If you go back to Exhibit
5 6B, tab 9, you will find the report that they
6 prepared a year later. Do you have Exhibit 6B,
7 tab 9?

8 A Yes, I do, sir.

9 Q You see a report dated October 7, 1991?

10 A That's correct, sir.

11 Q You would have had access to that report at the
12 time of the Harder review in 1993?

13 A I would assume we did, sir.

14 Q And you see the report is prepared a year after
15 the admissions were made, and it only includes
16 the October 10th, at least it only expressly
17 quotes the October 10th notebook entry. You see
18 at the top of the report it refers to the
19 statement recorded in Sergeant Paul's notebook?
20 And then in the middle of the page it says,

21 "This interview took place on the 10th of
22 October."

23 A I see that, yes, sir.

24 Q And then it goes on to summarize some other
25 statements Zanidean made, but it says that they

1 are not recorded in notebooks. It says that
2 this is not recorded and is strictly from
3 memory, the rest of it.

4 So they set out one recorded statement, the
5 October 10th one, and then some recollections
6 that they say are not recorded.

7 So if you compare this one existing report
8 that we have that's prepared after the trial has
9 been completed, it's consistent with your
10 report, your review, in that it sets out this
11 one October 10th statement, but not the
12 October 29th statement. Do you see my point?

13 A I see your point, sir.

14 Q And so my question is whether it's possible
15 that, in the course of your review, what you had
16 access to was the police reports, but not the
17 notebooks? Do you recall expressly seeing the
18 notebooks, asking for the notebooks?

19 A I can't recall, sir.

20 Q You can't recall whether you had the notebooks
21 or not?

22 A No, I can't recall, sir.

23 Q Which may explain why your report doesn't advert
24 to the fact that certain entries in the
25 notebooks did not find their way into police

1 reports if you didn't review them?

2 A That would be a conclusion you could draw, sir,
3 if we didn't have the notebooks.

4 Q Were there any difficulties getting access to
5 the officer's notebooks? We've heard about the
6 difficulties in conducting formal interviews
7 with them. Were there similar difficulties in
8 getting access to their notebooks in the course
9 of your review?

10 A It would be my understanding the notebooks would
11 be in the possession of the officers. And I
12 can't recall whether or not we had access to
13 those notebooks.

14 Q Presumably, if the officers had possession of
15 their own notebooks, if they weren't in the
16 file, in the investigative file, to get access
17 to them you have to bring the officers in for an
18 interview and ask to see their notebook?

19 A Part of our -- part of our, I guess, strategy
20 was to interview some officers relative to their
21 involvement in this matter. And we were not
22 able to do so.

23 Q So is my premise correct that if the officers
24 physically had custody of their own notebooks,
25 in order for you to get access to them, you

1 would have to bring them in for a formal
2 interview?

3 A Unless there were copies of the notes or the
4 notes were provided with a file, that would be
5 the way we would have access to them, yes, sir.

6 Q In fact, we know that there was no interview of
7 Sergeant Anderson or Sergeant Paul; is that
8 correct?

9 A No formal interviews. There was communication
10 between both those officers and the members of
11 our team.

12 Q We see from --

13 THE COMMISSIONER: I just have a question. I
14 don't want to get into management/union
15 dialogue, but whose property are the notes?

16 THE WITNESS: The notes are the property of the
17 Winnipeg Police Service.

18 THE COMMISSIONER: Okay.

19 BY MR. CODE:

20 Q All right. If I could move on to a different
21 topic, Chief Ewatski, I want to ask you a few
22 questions about another area of your
23 investigation, or of your review, and that is
24 this whole question of Sergeant Ian Mann's arson
25 investigation, or Sergeant Ian Mann's

1 involvement in the arson investigation. Do you
2 recall that general topic?

3 A Yes, I do.

4 Q It was a matter that you and your colleague,
5 Inspector Hall, looked into.

6 And the context for this, as I read your
7 materials, is that at some point in your review
8 you became concerned about the possibility that
9 Zanidean may have committed perjury at trial
10 when he testified about the motive or the reason
11 for the Swift Current arson. And I'll come back
12 to that topic later, I just want to focus on
13 Sergeant Mann's involvement at this stage. But
14 as I read your records, because of that concern
15 about the possibility of perjury having been
16 committed at the Driskell trial, you had a
17 meeting with Deputy Chief Klippenstein fairly
18 early on, on May 12th, and sought his help in
19 getting access to the Swift Current
20 investigative file. Do you recall that?

21 A I don't have recollection of it, but if it's
22 documented --

23 Q Let me take you to the file records. If you've
24 got volume 2 in front of you, of your book.
25 First of all, was Deputy Chief Klippenstein the

1 officer who the chief asked you report to and
2 take your direction from?

3 A That is correct, sir.

4 Q So you would have regular meetings with him in
5 the course of your six-month review to seek
6 direction and assistance?

7 A That is correct, sir.

8 Q And the document at tab 4 of the book of
9 documents, volume 2 of the book of documents,
10 tab 4, is a logbook that you and Inspector Hall
11 kept; is that correct?

12 A That is correct, sir.

13 Q And you both kept separate notebooks, which we
14 see at tab 5 is Hall's notebook, and tab 6 is
15 your notebook, or at least excerpts from them.
16 But tab 4 is the joint logbook that incorporates
17 both of your notes; is that fair?

18 A That would be a fair comment, sir.

19 Q And, fortunately, it's written by Hall, who's
20 writing is much more legible than yours, Chief.

21 A I was waiting for how long that would take to
22 come, sir.

23 Q And if you flip to page -- we will struggle with
24 your writing due course, I'm sure. Page 767,
25 the numbering at the bottom of the page is quite

1 faint. Page 25 at the top of the page, if you
2 want to use the numbering at the top of the
3 page, 767 at the bottom and 25 at the top. We
4 see an entry for May 12, 1993, about a month and
5 a half into your review. The note, as I read
6 it, says,

7 "Meet Deputy Klippenstein, our concerns
8 regarding Zanidean and the fact that he may
9 have perjured himself regarding his
10 testimony at trial concerning Swift Current
11 arson. All in agreement that this cannot
12 be ignored and should be pursued."

13 Have I read that accurately?

14 A I am following along, yes, sir, you did.

15 Q And without going through the note with you, the
16 gist of it is you are asking Klippenstein to
17 help you get access to the RCMP documentation so
18 you can pursue this issue of whether Zanidean
19 testified truthfully about Swift Current arson?

20 A That would be the gist of it, yes, sir.

21 Q And if you follow along, the next day you meet
22 with Klippenstein again, and he gives you the
23 okay to contact Staff Sergeant Ferguson in Swift
24 Current. And he's facilitated access to the
25 file for you, essentially. And you eventually

1 do get access to the file; is that correct?

2 A That's correct, sir.

3 Q And as a result of that access, if you flip

4 forward three or four pages, to page 771, or if

5 you are using the numbering at the top of the

6 page, page 29 at the top -- 29 at the top, 771

7 at the bottom. You see an entry for May 17th

8 recording your trip to Swift Current and your

9 gaining of access to the Swift Current file?

10 A That's correct, sir.

11 Q And the file appears quite substantial. It's a

12 four volume file on the 1990 arson; is that

13 correct?

14 A It was -- there was a lot of paper in that file,

15 yes, sir.

16 Q And a single volume on the 1998 arson?

17 A That's correct, sir.

18 Q And you and your colleague -- thankfully, you

19 had someone with you -- you probably divided it

20 up, and over the next three hours, the two of

21 you review the reports in the file; is that

22 correct?

23 A That's correct, sir.

24 Q And once again, we have one of these very

25 helpful little memos from you at tab 7 where you

1 summarize what you've learned from the Swift
2 Current file. So if you could leave the notes
3 at tab 4 and flip forward to tab 7, page 199,
4 using the pagination at the bottom of the page,
5 so tab 7, page 199, is a two-page memo that
6 starts at 198 headed up "Swift Current arson."
7 Is that correct?

8 A That's correct.

9 Q And it explicitly says that this is information
10 from the RCMP arson report; is that correct?

11 A That's correct, sir.

12 Q And the aspect of it that I want to focus on
13 here is the liaison between the RCMP and the
14 Winnipeg Police Department in their arson
15 investigation, which we find in the last four
16 bullets at page 199?

17 A I see that, sir, yes.

18 Q And specifically, what you learn in those
19 bullets, I want to highlight three of them. Do
20 you see the bullet for July 27th, 1990?

21 A Yes, I do, sir.

22 Q You see the CPIC message, the telex that the
23 RCMP sends to Winnipeg Police asking them to
24 locate Zanidean and interview him; is that
25 correct?

1 A I don't know if we had a copy of the message or
2 that was just included in the file, sir. I
3 can't recall.

4 Q We've got the actual document --

5 A Okay.

6 Q -- so we're familiar with it. But from a
7 reading of that bullet, you obviously saw that
8 on July 27, 1990, in the summer, within a couple
9 of weeks of the arson, the Swift Current RCMP
10 had contacted the Winnipeg Police and asked to
11 locate Zanidean and interview him; is that
12 correct?

13 A We were made aware of the contact, yes, sir.
14 Again, I have no recollection as to whether we
15 saw the original CPIC message or not, sir.

16 Q And then the next bullet you see, or you somehow
17 acquire information that on August 7th, 10 days
18 later, Sergeant Mann of the Winnipeg Police
19 arson unit calls Swift Current and advises that
20 he has found Zanidean's address and that he will
21 interview him that day. Is that correct?

22 A That's what we put in the report, yes, sir.

23 Q Again, we've seen that document ourselves. It
24 is part of Exhibit 1. But you obviously
25 discovered it in 1993 --

1 A Yes, sir.

2 Q -- when you were in Swift Current. And then
3 finally, the last bullet, you discover that on
4 December 14th a copy of the entire arson file
5 and the 1988 arson file was forwarded to
6 Sergeant Mann to assist in his interview of
7 Zanidean; is that correct?

8 A That's correct, sir.

9 Q And, again, we've seen that document, it is part
10 of Exhibit 1, and the information you've
11 recorded here accurately reflects the
12 document --

13 A That's correct, sir.

14 Q -- the information in the document.

15 Now, as a result of those discoveries on
16 your May 17th trip to Swift Current, you again
17 ask yourself a series of relevant questions
18 which we see in one of those memos. If you
19 could stay at tab 7 and flip forward to page
20 206, towards the middle of that tab you see the
21 memo. We've already looked at this one, the one
22 headed up "questions"?

23 A That's correct, sir.

24 Q We looked at a couple of the earlier questions
25 about when Zanidean told the police about the

1 arson. If you drop down a couple of more
2 bullets, do you see the first one that says.

3 "Does Ian Mann...?"

4 A I see that, sir.

5 Q "Does Ian Mann, following the CPIC
6 requests, seek out Zanidean and question
7 him?"

8 And the next one is,

9 "What happens when we get the full report
10 from Swift current in December of 1990?"

11 And the "we" there obviously refers to the
12 Winnipeg Police Department?

13 A That's correct.

14 Q And finally,

15 "Is Zanidean then questioned as a suspect
16 for this arson?"

17 So do I take it that having reviewed the
18 Swift Current file, and seeing that matters that
19 we just saw, these were the kind of questions
20 that you were asking yourself and that you
21 sought to inquire into?

22 A Sir, my recollection, of this sheet, along with
23 other ones that would have been titled
24 "questions," would probably have been formulated
25 sometime prior to that, probably -- my

1 recollection would be upon our first review of
2 the entire file and all of the information that
3 we had. And this would serve as a guide to us,
4 questions that would come to our mind as we were
5 reviewing this documentation. So my
6 recollection is that these questions were
7 formulated prior to attending to Swift Current.

8 Q So you may have been asking these questions
9 already, based on what you saw in the Winnipeg
10 file, the Winnipeg Police file?

11 A I believe the questions were formulated based on
12 what we saw in the Winnipeg Police file, so that
13 would have been early on in our process of
14 review. I recall reading the review, or reading
15 the report, and every time a question would come
16 to mind, including it, writing it down and then
17 putting it into this form, to say that this
18 would be a question that we would have, or at
19 least I would have relative to the information
20 that I was privy to.

21 Q Whether you had identified these issues from
22 your review of the Winnipeg Police file,
23 certainly by the time you went to Swift Current
24 and saw their side of the file, you would have
25 been asking yourself these questions?

1 A These questions would have still been in my
2 mind, yes, sir.

3 Q All right. Now, again, if I could ask Madam
4 Registrar to help us here, I need to take you to
5 Exhibit 1 where we find your interview with
6 Sergeant Mann. And this document was entered
7 when we had the Swift Current officers here on
8 the stand, but I need you to identify it.
9 Obviously, they were unable to identify the
10 document since it's a Winnipeg -- it's part of
11 the Perry Harder review. If you have Exhibit 1,
12 could you turn up tab 21? So Exhibit 1, tab 21.

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

14 Q Can you identify that document for us as a
15 transcription of a tape-recorded interview that
16 you and Inspector Hall carried out with Sergeant
17 Ian Mann on June 23, 1993?

18 A That would appear to be the case, sir.

19 Q So this interview is taking place approximately
20 a month after you've travelled out to Swift
21 Current. You are in Swift Current on May 17th,
22 and we know you carry on right out to B.C. to
23 interview Zanidean. But when you get back from
24 your trip out west, one of the interviews that
25 you conduct is with Sergeant Mann. Is that

1 correct?

2 A That's correct, sir.

3 Q And without going through the interview with you
4 in detail, we've been through it once already,
5 if I could just highlight for you: Mann
6 confirms that indeed he did receive the request
7 from Swift Current, the CPIC telex, and that he
8 received the entire investigative file. And he
9 also confirms that he located Zanidean's
10 residence and went around to it a few times, but
11 never succeeded in interviewing him. And he
12 says, at the bottom of page 320 he says,

13 "Every time I was there he was never home."

14 Do you see that?

15 A Which page is that, sir?

16 Q The bottom of page 3.

17 A Page 3.

18 Q Or 320, if you are using the larger numbers.

19 A Yes, I see that here, sir.

20 Q At the top of the next page, page 4, he
21 acknowledges receiving the complete file, at the
22 top of page 4?

23 A I see that, sir.

24 Q Finally, at page 6 of the interview, he, in this
25 long answer in the middle of page 6, or page 323

1 if you are using the other pagination, he
2 explains what happens to his whole investigation
3 and why it kind of petered out, or his
4 assistance to Swift Current petered out is
5 because he has this discussion with the homicide
6 officers who tell him that Zanidean is a witness
7 in a murder investigation. Do you see that at
8 the middle of page 6?

9 A Yes, I do, sir.

10 Q "I was informed that he was a witness in a
11 murder investigation."

12 And then a few lines further on he says,
13 "Rather than step on anybody else's
14 investigation, I said, well, okay, I got
15 this file or the information, if you guys
16 can look after that end and notify the RCMP
17 in Swift Current that you guys are looking
18 after it."

19 So he basically hands it over to homicide, is
20 that the gist of what Sergeant Mann told you?

21 A Yes, sir.

22 Q And he says,

23 "I think it was Tommy Anderson..."
24 at the bottom of the page, is the person he
25 handed it over to. And then over at page 7 he

1 says, after passing it to Anderson he has no
2 further involvement?

3 A That's correct, sir.

4 Q Now, I want to ask you a couple of questions
5 about this. First of all, if you go back to --
6 what he does with his own notes or his own file
7 is found at page 3 of the interview. Look at
8 the top of page 3 of your interview, you ask him
9 if he has got notes? Do you see your question
10 at the top of page 3?

11 THE COMMISSIONER: I'm sorry, I am just a little
12 behind here. Where are we now?

13 MR. CODE: I'm at the top of page 3. Tab 21,
14 the top of page 3 --

15 THE COMMISSIONER: Okay.

16 MR. CODE: -- of the interview.

17 THE COMMISSIONER: Okay.

18 BY MR. CODE:

19 Q You ask him if he's got notes; is that correct,
20 Chief Ewatski?

21 A That's correct.

22 Q He says,

23 "No. I looked last night for my notes and
24 I don't have any notes on this. What I
25 normally do with these requests, I keep

1 them in a file with notes, and if my memory
2 serves me, that's what I done with this
3 one. And when I left crime...",
4 which I take it to mean the crime unit?

5 A That's correct, sir.

6 Q "I was told to get rid of all of my
7 paperwork so I did."

8 Would there be any police practice or policy
9 that you're aware of that would permit or
10 encourage an officer to get rid of all of his
11 paperwork in this manner?

12 A No, sir.

13 Q Now, in terms of following the chain through,
14 what happens to this file that's sent by Swift
15 Current and the request from Swift Current, Mann
16 clearly tells you that he handed it off to
17 homicide. And Staff Sergeant Vandergraaf has
18 conceded that he spoke to Sergeant Mann and
19 essentially told him to back off, that he would
20 look after it. We see that the file is
21 eventually in the hands of the homicide
22 officers, or appears to be. If you go back to
23 6B, which you should have on the right-hand
24 corner of your table there, if you look at tab
25 16 of 6B, this is Zanidean's witness protection

1 application to the RCMP?

2 A Yes, sir.

3 Q It's a lengthy document, I just want to take to
4 you a brief excerpt, page 481, using the
5 numbering in the bottom right-hand corner, page
6 481 at the bottom?

7 A Yes, sir, I have it in front of me.

8 Q You see the reference in that text in the bottom
9 deals with the Swift Current arson. And you see
10 the reference to file 90-2787?

11 A Yes, sir.

12 Q Which is the Swift Current arson file. And it
13 appears that the homicide officers, when they
14 were preparing Zanidean's witness protection
15 application, had that file. So my question to
16 you is, based on all of this information you've
17 now collected from your review of the Winnipeg
18 file, your review of the Swift Current file, and
19 your interview with Sergeant Mann, where the
20 thread leads to Anderson, and presumably Paul
21 and Vandergraaf, did you follow up the interview
22 of Sergeant Mann by asking the questions that we
23 saw at tab 7 of Sergeants Anderson and Paul and
24 Staff Sergeant Vandergraaf?

25 A I have to go back to the questions at tab 7,

1 sir.

2 Again, I could reiterate the fact that my
3 recollection is that we did not have formal
4 interviews with Sergeants Anderson and Paul. I
5 cannot recall, I would have to check my notes to
6 see if we had a formal interview with Staff
7 Sergeant Vandergraaf, and whether or not we
8 asked specifically these questions. But I think
9 I could say that we certainly were able to glean
10 information during the course of the review that
11 would answer these questions.

12 Q And, again, there's nothing in the final report,
13 as I read it, that deals with this issue of what
14 became of the arson file, of the Swift Current
15 arson file that appears to have clearly been
16 passed to the Winnipeg Police. And we don't see
17 any records of interviews with Anderson, Paul or
18 Vandergraaf, which is consistent with your
19 recollection. So is it possible that those
20 questions ultimately were not followed up and
21 answered in the course of your review?

22 A We would have to go through each question. I
23 would have to determine whether or not I believe
24 that they were followed up.

25 Q Well, the thread has led to you Anderson, Paul

1 and Vandergraaf. Do you recall having
2 interviews with any one of those three?

3 A We spoke to Anderson and Paul, and I believe we
4 spoke to Vandergraaf too. I don't recall if it
5 was a formal interview, but there was
6 conversation that took place over the course of
7 the review.

8 Q Are there records of those conversations?

9 A I would have to check the logbook and the notes,
10 sir, to see what was said.

11 Q All right. We're not able to find any records
12 and their evidence is that they were not
13 interviewed.

14 A No. And I agree, being formally interviewed,
15 but there was conversation between us from time
16 to time.

17 Q Did you ask them to produce a report, a
18 supplementary report, to deal with these issues
19 of what became of the Swift Current arson file?

20 A I can't recall if we ever made that request,
21 sir.

22 Q You see, if you've got Exhibit 6B in front of
23 you still, I think it's still on the right-hand
24 corner of your desk, 6B is the large volume of
25 Winnipeg Police records. Mr. Brodsky makes a

1 direct request at trial, if you look at tab 33?
2 Tab 33 is one of his disclosure letter toss
3 Mr. Dangerfield. You see question 9 on page 2,
4 he asks,

5 "What do the Winnipeg Police have on the
6 fire in Swift Current?"

7 A I see that, sir.

8 Q This is Exhibit 6B, tab 33, question 9. And the
9 response that comes back, if you flip forward a
10 couple of tabs, tab 37, Mr. Lawlor writes the
11 response four days later. You have Mr. Lawlor's
12 letter at tab 37?

13 A Yes, I do, sir.

14 Q And you see his third response in that letter
15 is,

16 "Re paragraph 9, Winnipeg Police have
17 nothing on these incidents."

18 A I see that, sir.

19 Q Which doesn't appear to be consistent with what
20 you discovered; is that fair?

21 A I don't understand your question, sir.

22 Q Well, if you look at your tab 7 in your volume,
23 your memo to file where you told us that what
24 you discovered upon reviewing the Winnipeg
25 file -- do you remember the list of questions at

1 tab 7?

2 A These are questions that would come to our mind
3 as we were reviewing the file, yes, sir.

4 Q And specifically in relation to the Swift
5 Current arson, the list of information you
6 learned about the Swift Current arson; do you
7 have that?

8 A From the Swift Current file, sir?

9 Q Well, you told us it was from the Winnipeg file.
10 I had suggested to you it came from the Swift
11 Current file, but you said you would have got it
12 from the Winnipeg file as well?

13 A No, no, sir. I must be confused.

14 Q Tab 7?

15 A Tab 7, page 206?

16 Q Tab 7, page 199. Remember our discussion about
17 ten minutes ago about the July, August and
18 December entries and that list of information,
19 you said you would have learned that from your
20 review of the Winnipeg file?

21 A No, sir, I don't believe I said that. This
22 information was information from the RCMP arson
23 report, which would have -- my recollection is
24 that this would have been gathered when we were
25 in Swift Current reviewing the RCMP report.

1 Q The transcript will show us -- that's what I
2 assumed, and I thought you told me that you
3 would have got it from the Winnipeg file as
4 well, and that the Swift Current file simply
5 confirmed what was in the Winnipeg file?

6 A I don't recall saying that, sir.

7 Q In any event, I'm not concerned about whether
8 you did or didn't say that. We know that, from
9 the records, that that material was sent to the
10 Winnipeg Police. And we know from the records
11 that Staff Sergeant Vandergraaf and Anderson and
12 Paul, when they were preparing the witness
13 protection application, appear to have the file.
14 And we know from your interview with Mann that
15 Mann told you he handed it all over to the
16 homicide officers. Do you recall that whole
17 line of questioning we've just been through?

18 A Yes, I do, sir.

19 Q So the answer here at tab 37, when Mr. Lawlor,
20 Exhibit 6B, tab 37, when Mr. Lawlor tells
21 Mr. Brodsky that Winnipeg Police have nothing on
22 these incidents, does not appear to be truthful
23 or accurate?

24 A Well, we knew that the file had been sent to the
25 Winnipeg Police Service. And, obviously, the

1 answer that came back to Mr. Brodsky's question
2 suggests that we did not have the file at that
3 point.

4 Q What Winnipeg Police had on the Swift Current
5 arson is they had two admissions from Zanidean,
6 on October 10th and October 29th --

7 A Yes, sir.

8 Q -- in Sergeant Anderson's notebook and Sergeant
9 Paul's notebook, which had been omitted from the
10 police reports. Do you remember that area of
11 questioning this morning?

12 A Yes, sir.

13 Q They had the Swift Current file that was sent on
14 December 14th, which you document in your tab 7?

15 A That's correct, sir.

16 Q They had a CPIC request from Winnipeg to find
17 Zanidean?

18 A Can I just back up on that last question --

19 Q Yes, sir.

20 A -- which you say I documented. I believe I said
21 that the information in tab 7 was information
22 that we gleaned from the arson file as we read
23 it in Swift Current.

24 Q And that CPIC request goes to the Winnipeg
25 Police?

- 1 A Yes. I understand that, sir. And I would not
2 argue the fact that the file was sent to
3 Winnipeg. But what I'm saying is the file, when
4 we reviewed the arson file, it's my recollection
5 we reviewed it in Swift Current, the Swift
6 Current copy, when we were there, not in
7 Winnipeg, sir.
- 8 Q But what the Swift Current file revealed to you
9 is that all of this information was being sent
10 to Winnipeg; is that correct?
- 11 A That's correct, sir, I agree to that.
- 12 Q All right. And in addition, Mann calls back to
13 Swift Current and says, I have found him on
14 August 8th and I've got an interview set up with
15 him. Do you remember that entry in your tab 7
16 memo?
- 17 A Yes, sir.
- 18 Q Which is two months before Zanidean comes in as
19 a Crown witness --
- 20 A Yes, sir.
- 21 Q -- in the Harder case. So there's a bundle of
22 information that Winnipeg appears to have about
23 the Swift Current arson; is that fair?
- 24 A That would be fair, yes, sir.
- 25 Q And yet here in Exhibit 6B, we've got tab 37,

1 Mr. Lawlor saying that Winnipeg Police have got
2 nothing on it.

3 A I see that, sir.

4 Q And my question to you is, did you try to get to
5 the bottom of this when you conducted your
6 review in the summer of 1993, after asking
7 yourself a number of relevant questions about
8 the matter?

9 A The bottom of what is being communicated back to
10 Mr. Brodsky?

11 Q Yes.

12 A I don't recall ever seeing this document to
13 Mr. Brodsky indicating that we had nothing on
14 this.

15 THE COMMISSIONER: Mr. Code, when it's
16 convenient.

17 BY MR. CODE:

18 Q I'm just on the end of an area, if I could just
19 finish this up, that would be perfect.

20 Leaving aside the communication between
21 Mr. Brodsky and Mr. Lawlor, you were asking
22 yourself certain questions about what the result
23 of the Swift Current request to Mann was?

24 A Yes.

25 Q And did you ever get to the bottom that have

1 whole issue? Did you get answers to the
2 questions that you set out at tab 7 and report
3 on?

4 THE COMMISSIONER: I think you're referring to
5 tab 7, page 206?

6 BY MR. CODE:

7 Q Yes. What happens when we get the full report
8 from Swift Current in December 1990? Did you
9 ever get to the bottom of that and report on it
10 to your chief?

11 A I think that that would have been included in
12 the answers from Detective Mann.

13 Q Detective Mann doesn't give you the answers. He
14 says he just passed it off to the homicide
15 officers.

16 A That was his answer. I guess, if you are asking
17 me the question, did we get to the bottom of
18 whatever happened to the file from Swift Current
19 to Winnipeg?

20 Q And the request from the RCMP for assistance on
21 that?

22 A Well, the request, we were aware of the request.
23 We were aware of what Detective Mann did with
24 that request, that was do some preliminary work
25 and then pass on that to Anderson, who was

1 dealing with Mr. Zanidean at that point in time.
2 So we certainly got to that point. But if
3 you're asking whether or not we ever got to the
4 bottom of whatever happened to the actual
5 physical file that was sent, I don't believe we
6 dealt with that matter, sir.

7 Q All right. I can't find any reference to it in
8 your report.

9 A No, I don't -- I don't believe we dealt with
10 that matter at all, other than just documenting
11 the fact that this was the course of events
12 relative to that file.

13 MR. CODE: I don't think there is any reference
14 to it in your report at all, I don't think it's
15 documented. But in any event, this is a good
16 time to break.

17 THE COMMISSIONER: For what it's worth, Chief, I
18 understood, and I don't recall the words you
19 said, but I understood that what you were
20 referring to at page 199 was what you found at
21 Swift Current.

22 THE WITNESS: That's correct, sir.

23 THE COMMISSIONER: Yes.

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

1 (Proceedings recessed at 11:04 and
2 reconvened at 11:21 a.m.)

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

5 BY MR. CODE:

6 Q Chief Ewatski, you and I had a chance over the
7 recess to briefly chat about the
8 misunderstanding we had about the documents at
9 tab 7, and what came before you went to Swift
10 Current and what came after. And I think we've
11 cleared it up that the tab 7 questions memo, at
12 page 206, was formulated before you went to
13 Swift Current?

14 A That is correct, sir.

15 Q And the specific information at page 198 and 199
16 clearly comes from the Swift Current file; is
17 that correct?

18 A That is correct, sir.

19 Q All right. That's helpful.

20 And if I could just finish up in this area
21 of the Swift Current arson and the
22 communications between Swift Current and
23 Winnipeg about interviewing Zanidean about the
24 arson, and the contacts with Sergeant Mann, we
25 know that you reviewed Zanidean's

1 cross-examination carefully, Mr. Brodsky's
2 cross-examination of Zanidean at the trial,
3 because you have a separate memo on that; is
4 that correct?

5 A That is correct, sir.

6 Q And we find that again, sir, at tab 7, page 200
7 is a useful little summary of Mr. Brodsky's
8 cross-examination of Zanidean; is that correct?

9 A That's correct, sir.

10 Q And you would have gleaned -- I've checked these
11 bullets against the transcript, and the parts
12 you pulled out are at the core of Mr. Brodsky's
13 cross-examination from about page 40 to page
14 100, 60 odd pages of cross-examination of
15 Zanidean about various issues going to his
16 credibility. And I take it that you gleaned
17 from the cross-examination that Mr. Brodsky
18 repeatedly returns to this theme of whether
19 Zanidean's motive for implicating Driskell in
20 the Harder homicide was in order to protect
21 himself from jeopardy on the Swift Current
22 arson. That must have been apparent to you from
23 reading the transcript?

24 A That was my observation, yes, sir.

25 Q And, similarly, you must have noticed from that

1 cross-examination that Mr. Brodsky did not
2 appear to be armed with some of this material
3 that you had uncovered from the various files
4 you had examined, to the effect that Swift
5 Current had been looking for Zanidean in
6 Winnipeg through Sergeant Mann two months before
7 Zanidean came in. Brodsky never put that to
8 Zanidean in his cross-examination?

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

10 Q And, similarly, in relation to the motive issue,
11 Brodsky did not appear to be armed with all of
12 the material that you uncovered relating to what
13 the motive for the fire was?

14 A His questioning wouldn't suggest that that would
15 be the case, sir, that he was armed with that
16 information.

17 Q And my question is, did you do anything in your
18 discussions with Justice officials, we know you
19 meet with Miller and Dangerfield, and I'll take
20 you to those interviews in due course. Did you
21 do anything to suggest to them that this
22 material that you had uncovered about the Swift
23 Current arson may not have been disclosed to
24 Mr. Brodsky? Did you raise that subject with
25 them or did you advert to it in your report?

1 A I think our primary concern was whether or not
2 the prosecution team, Manitoba Justice, had been
3 advised of that information, had been made aware
4 of that information from the police. I cannot
5 recall whether or not I asked specifically if
6 that information had then been disclosed to the
7 defence. I would think that that was probably
8 not asked since it would have stepped outside of
9 our mandate.

10 Q In terms of the first part of your inquiry,
11 whether that information had been forwarded to
12 the Crown, I take it you didn't find any
13 supplementary report setting out that
14 information from the Winnipeg Police to Crown
15 counsel?

16 A I don't recall any specific information set out
17 in reports. However, I certainly had a strong
18 sense that Mr. Miller was certainly aware of the
19 details of the Swift Current file. And that is
20 as a result of a meeting that myself and
21 Inspector Hall had with him prior to travelling
22 to Swift Current.

23 Q All right. We will come to that meeting with
24 Mr. Miller in due course. But you weren't able
25 to find any supplementary reports reporting on

1 the information that you had uncovered that
2 we've just reviewed?

3 A To the best of my recollection, I believe that's
4 correct, sir.

5 Q All right. I would like to turn to a different
6 topic, but related topic, and that is the whole
7 question of immunity on the Swift Current
8 charges, or arrangements between the Winnipeg
9 Police and the Swift Current police concerning
10 whether Zanidean would or would not be charged
11 with the Swift Current matter. And I take it,
12 by way of overview, that by the time you had
13 reviewed the various files and conducted the
14 various interviews, it was clear to you that
15 there was a dispute about whether the Winnipeg
16 Police and Swift Current had come to an
17 arrangement in relation to immunity or not
18 charging Zanidean over the Swift Current arson?

19 A It was obvious to us, at the end of our review,
20 upon reviewing all of the material that we had
21 available to us, that there certainly was a
22 disconnect between what we had been provided in
23 terms of information from our investigators
24 compared to what Constable Burton and the RCMP
25 in Swift Current believed what happened relative

1 to this matter. It was apparent to us there
2 certainly was a disconnect in that information.

3 Q And you set that out in your report --

4 A Yes, we did, sir.

5 Q -- quite clearly. Let me take you through the
6 background to this to explain how you came to
7 discover this disconnect or disagreement between
8 the two police forces about what had happened
9 here.

10 If we start at tab 7, again, of your book
11 of documents, I think the first step in your
12 education about this matter is your review of
13 the D division file here in Winnipeg. And that
14 takes place on May 11th. And at tab 7 we have
15 again another one of these useful little
16 memoranda, it's at page 207, sir, so tab 7, page
17 207. You see a memorandum that's headed up
18 "Interview with Corporal Tom Orr, Source Witness
19 Protection, RCMP, D Division"?

20 A That's correct, sir, that would be a summary of
21 that interview with him.

22 Q And it's dated May 11th?

23 A That's correct, sir.

24 Q Which is about a week before you head out to
25 Swift Current. So this appears to be the first

1 discovery you make on this whole issue. And
2 without going through all of these bullet points
3 with you, you get access to Orr's file. And if
4 we look, for example, at the first page, page
5 207, the last four bullets at the bottom of that
6 first page,

7 "Indication that Swift Current RCMP per
8 Constable Burton has agreed to not pursue
9 the arson investigation until the
10 completion of the trial."

11 And that's something you learned from Corporal
12 Orr's file?

13 A That is correct, sir.

14 Q And that, again, we now have these documents and
15 that bullet is probably referable to the
16 discussions in October of 1990 between Burton
17 and Anderson.

18 The next bullet that you say,
19 "Subject's lawyer Kovnats has requested
20 immunity for the subject from the
21 Department of Justice per Bruce Miller."

22 And again we know that to be probably from
23 Kovnats' December 13, 1990 letter.

24 And the next bullet is,

25 "Subject's lawyer has asked for written

1 guarantee of immunity prior to trial."

2 And, again, we know that from the witness
3 protection application in March of 1991.

4 So do I take it that this is all
5 information you're learning for the first time
6 when you examine that file on May 11th?

7 A I believe that's my recollection, sir.

8 Q And, in fact, over the page, the second page,
9 you explicitly refer to Kovnats' December 14th
10 letter where he requests immunity, amongst other
11 things; is that correct?

12 A That's correct, sir.

13 Q So you appear to have actually seen Kovnats'
14 letter. And then at the middle of the page you
15 refer to -- do you see the April 12th and
16 April 16th entries?

17 A Yes, I do, sir.

18 Q Referring to conversations Corporal Orr has with
19 Sergeant Upton and with Inspector Preston,
20 dealing with whether Zanidean is in the clear on
21 the Swift Current arson, essentially. It
22 appears Corporal Orr is making some inquiries
23 with Swift Current on that subject?

24 A That's correct, sir.

25 Q And, again, you would be learning that for the

1 first time, there is no reports in the Winnipeg
2 Police file about these matters?

3 A That's correct, sir.

4 Q The next step is, when you proceed out to Swift
5 Current, the next week on May 17th, and again
6 you've got a separate memo here at tab 7 that
7 nicely summarizes the documents you see on this
8 subject in Swift Current. And we find those at
9 page 202 to 203 in the same tab. So tab 7,
10 pages 202 to 203 is a memo headed up,
11 "Correspondence with Swift Current RCMP"?

12 A That is correct, sir.

13 Q And specifically a report by Constable Burton?

14 A It was a report by Constable Burton. I can see
15 that the report was five pages in length,
16 however, the first page had been missing. So
17 this is a summary of information gleaned from
18 the four other pages.

19 Q And what it sets out is a number of developments
20 during the course of discussions, essentially,
21 between Burton and Anderson throughout the year;
22 is that fair?

23 A That would be a fair observation, sir.

24 Q And, in addition, you see, for example, a
25 July 13th report that Susan Fehr and Ray

1 Zanidean are picked up in Swift Current for
2 impaired driving and they believe that they
3 can't be charged because they are in the witness
4 protection plan; is that correct?

5 A Sir, I believe it indicates that Fehr is picked
6 up for impaired driving and that she tells the
7 RCMP that she and Ray are in the protection
8 plan. I don't recall the fact that Ray Zanidean
9 was involved in that incident with her.

10 Q Fair enough. But the implication is that they
11 believe they have got some kind of broad
12 immunity?

13 A That's her belief, at least that is what she is
14 telling the RCMP.

15 Q Very shortly after the trial?

16 A That's correct, sir.

17 Q And on July 16th, the last bullet under
18 July 16th there's a report of Sergeant Anderson
19 telling the RCMP that Ray has indicated that if
20 he's charged he will go to the media and say
21 that he only told Winnipeg Police what they
22 wanted to hear about the murder, so that
23 Driskell would be acquitted on appeal. You
24 learned that for the first time from the Swift
25 Current file?

1 A From the Swift Current file, yes, sir.

2 Q On May 17th, there is another entry -- sorry,
3 July 17th, there is another entry, the third
4 bullet there,

5 "Burton says that the Winnipeg Police asked
6 the RCMP to lay off on Ray as it would
7 endanger Driskell's prosecution."

8 Again, from the documents we know this would
9 appear to refer back to Burton's account of the
10 October 1990 telephone call with Anderson. Is
11 that information that you're learning for the
12 first time from the Swift Current file?

13 A From the Swift Current file, yes, sir.

14 Q And over the page, July 18th, again another call
15 between Burton and Anderson, and the second
16 bullet there, according to Burton,

17 "Anderson stresses that part of the deal
18 for Ray's testimony was that he not be
19 charged for the 1990 arson...",

20 based on earlier discussions they had had in
21 April; is that correct?

22 A That's correct, sir.

23 Q And again, that's new information you're
24 learning for the first time from the Swift
25 Current file?

1 A From the Swift Current file, yes, sir.

2 Q And then finally the last entry I wanted to
3 mention is the next one, August 8, 1990, you see
4 a letter from Chief Superintendent Egan in the
5 Regina CROPS office of the RCMP, and it asserts
6 that Winnipeg Police has told Zanidean that he
7 would not be charged if he testified in the
8 murder trial?

9 A That's correct, sir.

10 Q Again, that was new information to you from the
11 Swift Current file?

12 A All of this information was gleaned out of that
13 Swift Current file, which we had seen for the
14 first time on that day.

15 Q But the information was new to you? You hadn't
16 seen this anywhere else before?

17 A Not that specific information, no, sir.

18 Q Now, a number of these reports or entries that
19 you're referring to are ones that we don't have
20 anymore because there has been a lot of
21 documents lost from the Swift Current file. But
22 the substance of the information is consistent
23 with information we've seen.

24 If I could take you to your report, there's
25 an interesting reference to a document in your

1 report that's not exactly the same as what we
2 see here, but, again, appears to be a very
3 helpful document. You've got your report at tab
4 3 of volume 1?

5 A Yes, I do, sir.

6 Q If you go back to the discussion about Zanidean
7 that we looked at earlier, you remember the
8 chapter on Zanidean starts at page 69, and then
9 the discussion of the Swift Current arson starts
10 at page 72. And in the middle of that
11 discussion about the Swift Current arson at page
12 76, at the bottom, you have tab 3, page 76.

13 A Yes, sir.

14 Q At the very bottom of the page we have a
15 reference to an October 27th report from the
16 RCMP file. Do you see that?

17 A Yes, I do, sir.

18 Q And your summary of this particular report, over
19 at the top of the page, the next page at the top
20 of page 77, is useful reference. It says,

21 "The RCMP would keep this information
22 confidential and hold off their pursuit of
23 Zanidean as it would endanger the Driskell
24 prosecution. It is indicated Burton agreed
25 to this, but he would proceed against

1 Zanidean when the murder trial was
2 concluded."

3 Is that a reference to information you gleaned
4 from the Swift Current file about the
5 conversation between Anderson and Burton on
6 October 27th?

7 A To the best of my recollection, I would make
8 that -- I would agree with that, based on the
9 first line of that paragraph, which says,
10 "According to the RCMP file...",

11 and then,

12 "...it is indicated...",

13 I would make that assumption, sir.

14 Q It's certainly the way I read it, that you
15 appear to have seen a report in the RCMP file to
16 this effect about the October 27th call, that
17 because of the difficulties that the Swift
18 Current investigation was causing the Winnipeg
19 investigation, Burton agrees to hold off until
20 after the trial; is that fair?

21 A Sorry. Yes, I would agree that that was fair.
22 I wasn't too sure if that was a question, sir.

23 Q All right. So the second step, you've seen the
24 D division file in Winnipeg, and you've now seen
25 the Swift Current file in Swift Current. And

1 you're seeing the RCMP's side of the story, as
2 it were, which is that active steps are being
3 taken, as between Winnipeg and Swift Current, to
4 ensure that Zanidean is not charged with the
5 arson matter; is that correct?

6 A I have watched along the way, in terms of not
7 being charged with the fire?

8 Q Yes. You've got Anderson apparently telling
9 Burton that his investigation would endanger the
10 prosecution in Winnipeg. You've got Burton
11 agreeing to hold off. You have then got further
12 agreements in April that they will entirely
13 abandon the pursuit of him. You've got Kovnats
14 demanding complete immunity in his letters.
15 You're learning that there is a whole bunch of
16 negotiating and activity going in and around the
17 Swift Current immunity issue?

18 A That's fair, yes, sir.

19 Q And, finally, you also receive Sergeant
20 Anderson's report on this matter. He prepares a
21 report in the fall of 1991 to Inspector Johns
22 dated October 8, 1991. It's a document we've
23 seen a lot of in this inquiry. And it's
24 apparent you had it as well, as I read your tab
25 7 memos; is that correct?

- 1 A I'm aware of that, yes, sir.
- 2 Q You, again, do a useful summary of it at tab 7.
- 3 There is a memorandum at page 204 to 205?
- 4 A Yes, sir.
- 5 Q That summarizes Anderson's account?
- 6 A That's correct, sir.
- 7 Q And it sets out a slightly different version of
- 8 it, that Anderson hadn't been seeking these
- 9 favours from Swift Current, but Swift Current
- 10 had been offering them nonetheless; is that
- 11 correct?
- 12 A There's an entry in here saying that Burton
- 13 offers to delay. He makes the offer to delay
- 14 the pursuit of Zanidean.
- 15 Q Yes.
- 16 A Yes.
- 17 Q And finally, dropping down into April when the
- 18 key development happens, you see the bullet,
- 19 "Anderson speaks to Burton and Burton
- 20 immediately offers to give up pursuit of
- 21 Zanidean entirely."
- 22 There appears to be a complete cessation of the
- 23 investigation of Zanidean in April, according to
- 24 Anderson's account?
- 25 A That's correct, sir.

1 Q And then most importantly, the bullet at the
2 bottom of that page,

3 "Anderson tells Burton that they would not
4 disclose this to Zanidean until after he
5 testified."

6 Is that correct?

7 A That's correct, sir.

8 Q So Anderson's account is he reached an agreement
9 with Burton in April that put Zanidean in the
10 clear, but the understanding was that they would
11 keep the secret from Zanidean until after he had
12 finished his testimony?

13 A That's correct, sir.

14 Q And then at the top of the next page, Anderson's
15 account continues that after Zanidean completed
16 his testimony, they then revealed the secret
17 agreement to him that, in fact, he had immunity
18 and it became part of the protection agreement?

19 A That's correct, sir.

20 Q Now, that was sort of the final piece of the
21 puzzle. You had Corporal Orr's file, you had
22 Constable Burton's file, and now you've got
23 Anderson's version of it. So you've got sort of
24 all sides of the story; is that fair?

25 A I believe that would be a fair comment, sir.

1 Q Now, the developments noted in those documents,
2 whether you look at it from the Swift Current
3 side or from the Winnipeg Police side, all of
4 those developments in the negotiations and
5 discussions about immunity, I take it you found
6 no contemporaneous supplementary reports
7 recording that information in the Winnipeg
8 homicide file?

9 A That's my recollection, sir, that we did not.

10 Q Would you expect those kind of agreements, and
11 again I'm asking you a general question about
12 police policy or practice, those kind of
13 discussions between two police forces about
14 immunity arrangements, or not charging a key
15 witness who is seeking immunity, would you
16 expect those kinds of discussions and
17 arrangements to be reported to the Crown in a
18 supplementary report?

19 A I believe that there would be an onus to have
20 some form of communication with the Crown
21 relative to that information. Whether it be on
22 a supplementary report or not, I think it would
23 depend on the circumstances.

24 Q And in what circumstances would you not commit
25 those kind of discussions and arrangements to

1 writing in a supplementary report, or are you
2 saying that there is some other kind of report
3 that one would use?

4 A I think there would have to be sensitivity shown
5 relative to the confidentiality of any
6 information. If the parties that are relevant
7 to that information are in a Witness Protection
8 Program, or their identities or locations or any
9 information that would identify them or identify
10 their locations where they would be, that
11 sensitivity would have to be shown, you know, by
12 the police. So it would really depend on the
13 circumstances here.

14 Q Nobody would disagree with you that changes of
15 identity and locations of witnesses in
16 protection programs are entirely privileged
17 information, and would never be disclosed
18 publicly or disclosed to the defence. But my
19 question is not about the law of privilege and
20 whether something should be disclosed to the
21 defence or publicly. My question is, when these
22 kinds of police force to police force
23 arrangements are made in relation to witnesses,
24 do you document them? Is it normal, sound
25 police practice to document them?

1 A I think it certainly would be appropriate to
2 have some documentation relative to those
3 discussions. In what form and what manner,
4 again, would depend on the circumstances.

5 Q Well, you saw a great deal of documentation in
6 the RCMP files about these discussions.
7 Constable Burton puts dozens of reports in his
8 file --

9 A That's correct.

10 Q -- every time he has one of these discussions.
11 And Corporal Orr does as well. In the Winnipeg
12 Police Service file, all we get is Anderson's
13 after-the-fact report, when he was the subject
14 of a disciplinary complaint in October of 1991.
15 Did you regard that as appropriate
16 documentation, what you found in the Winnipeg
17 Police file?

18 A I think the best way that I could answer that,
19 if I was put in that position, having those type
20 of discussions, that I would certainly have some
21 form of documentation, in some form.

22 Q Not charging somebody or agreeing not to charge
23 somebody on a very serious matter, blowing up a
24 house as it was described, when you know that
25 witness is seeking immunity as a benefit that

1 his lawyer is negotiating for him, are obviously
2 important matters that there should be a record
3 of. Is that not fair?

4 A I think that, again, it would be wise to commit
5 those type of discussions to some form of
6 record.

7 Q All right. A further aspect of this matter is
8 that having reviewed the testimony of Zanidean,
9 the cross-examination of Zanidean by
10 Mr. Brodsky, which we see in your tab 7 memo at
11 page 200, again, you were aware that Brodsky's
12 whole thesis, or one of his major lines of
13 attack on Zanidean was to put to him that his
14 reason, his motive for testifying against
15 Driskell for the Crown was in order to obtain
16 immunity for himself on the Swift Current
17 charge?

18 A I think that's a fair statement, sir.

19 Q And you now knew, from your examination of the
20 file, that, in fact, he had counsel who he had
21 instructed to seek that very benefit; is that
22 not correct?

23 A That's my understanding, sir.

24 Q And yet his testimony was directly to the
25 contrary. He said he had not retained counsel

1 to seek that benefit for him?

2 A I believe that was his testimony, yes, sir.

3 Q Did you become concerned, after you saw these
4 documents and this course of negotiations that
5 had been going on, that, again, you may well
6 have an issue of perjury here in relation to
7 Zanidean's testimony?

8 A Yes, sir, we did.

9 Q So did you follow up, having acquired this
10 information, by seeking to interview Anderson or
11 Paul or Vandergraaf on this information?

12 A The information was laid out relative to our
13 concerns. The possibility of Mr. Zanidean
14 perjuring himself, it was laid out very clearly
15 in our report to the Chief of Police.

16 Q I think, in fairness, the perjury issue that's
17 set out in your report is his testimony about
18 the motive for the arson, when he said it was a
19 revenge arson as opposed to an insurance fraud.
20 I don't believe there's any reference to him
21 perjuring himself on the issue of whether or not
22 he was pursuing immunity on the Swift Current
23 charges?

24 A Obviously the report talks about the revenge
25 aspect of it, but we were certainly aware of his

1 answers during his testimony and how it compared
2 to this, what I would continue to say is a
3 disconnect of information and understanding on
4 immunity and all aspects around the Swift
5 Current arson.

6 Q Did you raise with Mr. Miller the question of
7 whether or not this information had been
8 disclosed to Mr. Brodsky, so that Brodsky could
9 back up his theory he was putting to Zanidean
10 with hard documents and facts on these points?

11 A I can't recall exactly what we raised with
12 Mr. Miller relative to disclosure, but I believe
13 I do have an entry, or Inspector Hall had an
14 entry in the book, or in our notebooks that I
15 would have to refer to in terms of an answer in
16 terms of what was disclosed to defence.

17 Q All right. Well, I am just about to come to
18 your meeting with Mr. Miller. Perhaps what I
19 could do is help refresh your memory again by
20 referring to the questions you were asking
21 yourself as you moved through this review. If
22 you could look at your tab 7 memos, your
23 questions memo at page 206 of tab 7 is helpful
24 on this point. You see at tab 7, page 206
25 towards the bottom of the list of bullets, four

1 questions from the bottom you have,

2 "What conversations were there between
3 Anderson and Paul and the Swift Current
4 RCMP?"

5 A Yes, sir.

6 Q "Any discussions as to deals?"

7 A Yes, sir.

8 Q So you were alive to this issue, as a result of
9 what you had seen, as an appropriate matter to
10 inquire into?

11 A Again, these questions were formulated early on
12 in our process, and I think also there was
13 reference, if my recollection serves me
14 correctly, there was reference in the media
15 relative to a possible deal. So that would have
16 formed part of my mindset in formulating these
17 questions. Again, these questions were
18 formulated early on in our process.

19 Q All right. And you've got another questions
20 memo at page 197, the first document at this
21 tab, that's specifically directed for
22 Mr. Miller.

23 A That's correct, sir.

24 Q You see the seventh bullet down, right in the
25 middle of that list,

1 "What did the police tell the Justice
2 Department about the Swift Current aspect
3 prior to Zanidean taking the stand?"

4 A Yes, sir.

5 THE COMMISSIONER: I'm sorry, what page is that?

6 BY MR. CODE:

7 Q Page 197 at the very front of tab 7, it's the
8 first memo in tab 7. And it's the sixth bullet
9 down right in the middle,

10 "What did the police tell the Justice
11 Department?"

12 THE COMMISSIONER: Okay.

13 BY MR. CODE:

14 Q And your conclusions, based on what you had
15 seen, if I could go to sort of the end of the
16 story, having reviewed these three sets of
17 files, Anderson's account, Burton's account and
18 Orr's account, your report very fairly,
19 summarizes it all in the whole question at tab
20 3. If I could take you to your report, it is
21 the last reference before we turn to the
22 interview with Miller. Your report at tab 3,
23 again the chapter on Zanidean, it was at page 72
24 that we began the discussion of the Swift
25 Current arson. And you set out this --

1 initially Sergeant Anderson's account. If you
2 look at page 74, for example, the two pages into
3 your discussion of the Swift Current arson, you
4 see at page 74 you have a paragraph,

5 "According to documentation submitted by
6 Paul and Anderson...",

7 at the top of page 74? Do you see that
8 paragraph?

9 A Yes, I see that, yes.

10 Q And for the next couple of pages, over page 74,
11 75 and 76, you set out Anderson's account,
12 essentially derived from his October '91 memo to
13 Inspector Johns. I don't need to review it with
14 you. You fairly summarized the information you
15 learned from that report. And your conclusion
16 based on that Winnipeg Police documentation
17 alone is then set out in the middle of page 76,
18 where you see the third paragraph on page 76,

19 "After reviewing the documentation
20 outlining the history of this matter..."

21 A That's correct.

22 Q And you haven't turn to the Swift Current
23 documents yet, you are saying just looking at
24 the Winnipeg documents alone, this post-trial
25 memo of Sergeant Anderson's that wasn't

1 available prior to the trial, your conclusion
2 there in the middle of page 76 is that this is a
3 cause for concern.

4 "The admission to the arson and the
5 decision not to prosecute is a cause for
6 concern. The issue of how he was treated
7 by the Winnipeg Police Department and the
8 Manitoba Justice Department, as well as his
9 credibility as a witness, comes into
10 question. We can see how a perception of
11 deal-making exists in the minds of
12 individuals who are calling for a review of
13 the investigation."

14 And I take it that that phrase, "a perception of
15 deal-making," which I think is a well chosen
16 phrase here, is referable to this idea that
17 Burton and Anderson had a secret agreement in
18 April, that they kept from Zanidean, and then
19 told Zanidean about it afterwards, after his
20 testimony was completed, in the context of a
21 witness who was seeking these benefits. Is that
22 what you were getting at with this conclusion?

23 A I think it goes well beyond that, Mr. Code.
24 Obviously, the history of this would also
25 include what was being communicated in the media

1 and the suggestions that there was a deal for
2 immunity. So there were a number of things that
3 came into play in us coming to that conclusion,
4 that we can see that there could be a
5 perception. Because I think it went on the
6 whole issue of immunity itself, not just whether
7 or not they should be told prior to testifying,
8 relative to the conclusion of the pursuit on the
9 arson charge.

10 Q Fair enough. Anderson's account is that there
11 was a deal. In April he and Burton reached a
12 final conclusion that he would not be pursued at
13 all on the arson. And then they make this
14 agreement not to tell Zanidean about it. And I
15 take it the timing of that, the fact that the
16 agreement is reached in April after Kovnats has
17 been demanding it in December is what creates
18 this perception of deal-making. Is that fair?

19 A Yes. That would be a fair statement, yes, sir.

20 Q You then proceed to review the RCMP
21 documentation. You see at the bottom of page
22 76, the paragraph I've taken you to already, you
23 begin the review of the RCMP documentation; is
24 that correct? Well, actually, the review of the
25 Swift Current file begins in the middle of that

1 page, I should say. I've misspoken there.

2 A Again, I think I need to bring some context in
3 terms of putting this report together. This is
4 not strictly a chronological report in terms of
5 doing things at that time and making notation.
6 This is a report that's written once we have all
7 this information, right from the beginning of
8 our review to the end of it, and then putting it
9 in this form. So I don't want to misrepresent
10 this as a true chronology of our review.

11 Q No. I'm not suggesting it's chronological. I
12 think what you're doing is you've got a dispute
13 between the two sides here. You set out the
14 Winnipeg documentation. And then in the middle
15 of page 76 you say,

16 "Due to this concern, it was decided to
17 pursue this matter further and on May 17th
18 we traveled to Swift Current."

19 And you get access to their file. And what
20 follows for the next three or four pages is a
21 summary of the Swift Current, the RCMP
22 documentation?

23 A That's correct.

24 Q Again, I won't go through this with you, we are
25 well familiar with this documentation. But

1 throughout page 77, page 78 and 79, you reviewed
2 the documents you obtained access to, including
3 documents in the restricted B file in Swift
4 Current. Is that correct?

5 A That's correct.

6 Q And then your conclusion, after setting out that
7 side of the story, is found at the bottom of
8 page 79, the paragraph starting,
9 "Nevertheless, after reviewing this aspect
10 of the investigation.n.n.",
11 do you have that?

12 A Yes, sir.

13 Q "...it is evident an issue can be made as
14 to how the Winnipeg Police Department dealt
15 with Ray Zanidean. A strong suggestion may
16 be made that some sort of a deal was struck
17 with him in which he would be granted
18 immunity from prosecution for the Swift
19 Current arsons if he testified against
20 Driskell."

21 And do I understand that paragraph to be the
22 inference that you concluded emerges from the
23 RCMP side of the story?

24 A That would be accurate, sir.

25 Q All right. So bearing that analysis of the

1 documentation in mind that you had reviewed,
2 could we turn to your meeting with Mr. Miller?
3 And we've got a number of records of this
4 meeting, and I want to take you to all three of
5 them, since we don't have Mr. Miller,
6 unfortunately anymore, as you know. So these
7 records of your conversations with him are quite
8 important, since he's not here to speak for
9 himself anymore.

10 If you turn to volume 2, I'm going to take
11 you to the logbook at tab 4, and then to Hall's
12 notes at tab 5, and then your notes at tab 6.
13 The logbook at tab 4 contains an account of the
14 meeting with Miller at page 768, using the
15 pagination, the faint pagination in the bottom
16 right-hand corner. You have page 768?

17 A Yes, I do, sir.

18 Q And you see at the top of that page the entry is
19 for May 13th, 1993?

20 A That is correct, sir.

21 Q And this is just before you go out to Swift
22 Current. So you've got Anderson's account and
23 you've got Corporal Orr's account, but you don't
24 yet have the Swift Current account; is that
25 correct?

1 A That's correct, sir.

2 Q And if I could take you to the bottom of the
3 page, there is only part of this that deals with
4 the Swift Current issue. Part of it deals with
5 the perjury issue that I'll come back to later.
6 But just dealing with the Swift Current issue,
7 the summary account in the logbook here is found
8 towards the bottom of this page. Do you see the
9 note,

10 "Inspectors Hall and Ewatski meet with
11 Bruce Miller in his office...?"

12 A Yes, sir.

13 Q "...regarding the Justice Department
14 dealings with their counterparts in
15 Saskatchewan and any promises of immunity
16 by them or authorized by them to Zanidean.
17 We discussed and were advised that no deals
18 were made by either party or authorized by
19 either party."

20 And you then go on to discuss the perjury matter
21 which, as I say, I want to leave aside for a
22 minute and come back to it. But on the issue of
23 immunity, is it fair that, contrary to the
24 accounts that we just went through in your
25 report, based on your review of the documents,

1 which is that either there is a perception of a
2 deal or there's a strong inference that there
3 was a deal, Miller is adamant that there was no
4 deal?

5 A That is correct, sir.

6 Q And if we look at this somewhat more detailed
7 account of it at tab 5, and this is Hall's
8 notes, I take it these are notes being made
9 contemporaneously during the interview?

10 A That's my understanding, sir.

11 Q And this is his note of your May 13th meeting
12 with Miller?

13 A It would appear to be so, sir.

14 Q And, again, we will come back to the part of
15 this that deals with the perjury issues, but if
16 you could turn to the third page of the notes,
17 the second to last page of the notes is where we
18 have Hall's notes of the discussions about the
19 immunity issue. At the top of the page, as I
20 read that, he says,

21 "With respect to the arson in Swift
22 Current, there was no way that Manitoba
23 Justice could provide immunity for a crime
24 out of province. Winnipeg Police had
25 informed the Justice Department about the

1 arson incident in Swift Current and that it
2 was an open investigation, that no promises
3 had been made about this charge. Miller
4 says that Zanidean had requested, through
5 his lawyer, immunity on other charges but
6 did not receive it. There was no request
7 from Manitoba Justice to Saskatchewan
8 Justice not to charge Zanidean."

9 Have I read the note accurately?

10 A Yes, sir.

11 Q Am I reading Paul's writing?

12 So, again, the somewhat more detailed
13 account of it is that, again, he's adamant that
14 there was no immunity agreement. And, in fact,
15 he says that Winnipeg Police had informed the
16 Justice Department about the arson incident in
17 Swift Current and that it was an open
18 investigation; is that correct?

19 A That's what the note says here.

20 Q So the information Miller is saying he got from
21 the homicide officers is that it's an open
22 investigation and there's no deals at all?

23 A That's correct, sir.

24 Q Again, that would appear to be contrary to what
25 you had read in Anderson's report and in the

1 Swift Current reports; is that fair?

2 A Contrary, sir?

3 Q Yes, with what you had read, which leads to your
4 conclusions at page 76 and 79, is that there is
5 either a perception of deal-making or there is
6 an actual deal. And far from it being an open
7 investigation, it's a closed investigation.
8 Burton and Anderson reached an agreement in
9 April that they would close the file, he
10 wouldn't be pursued, at least in relation to
11 Zanidean?

12 A I have to get back to your original question,
13 sir. I'm sorry, I'm confused.

14 Q So what Miller is telling you here, that there
15 is no deals and it's an open investigation, was
16 inconsistent with what you had been seeing in
17 the various reports you've been reading; is that
18 fair?

19 A It certainly added to the confusion, but at that
20 point in time we hadn't even read the Swift
21 Current file, because that was prior to Swift
22 Current.

23 Q Fair enough, and that's a good point.

24 A But it certainly -- it certainly added to the
25 confusion on this matter, about whether or not

1 there was a deal or not.

2 Q Finally, let's look at your notes, which are
3 consistent with Hall's. And I'll need a little
4 bit of help from you here. I think I've read
5 them accurately, but they are at tab 6, and it's
6 page 146 to 147 where you discuss the immunity
7 issue. At the very bottom of page 146, do you
8 see a note that starts,

9 "Discussed what the police told Justice
10 Department..."

11 A Yes.

12 Q "...about the arson investigation in
13 Swift Current."

14 A Yes. Would it be helpful for me to read this?

15 Q Please. I think I've got it, but it was a
16 challenge.

17 THE COMMISSIONER: But you do have a beautiful
18 flowing pen, it is just that it is a little hard
19 to read.

20 THE WITNESS: Thank you, Mr. Commissioner, I
21 appreciate that.

22 BY MR. CODE:

23 Q If you could read the bottom of page 146 and the
24 three bullets on the top of page 147?

25 A Yes, sir.

1 "Discusses what police told Justice
2 Department about the arson investigation in
3 Swift Current."

4 The first bullet was,
5 "They were made aware of all known
6 details."

7 The second bullet is,
8 "That the investigation was open."

9 And the third bullet was ,
10 "That there were no deals were made or
11 promises made about this charge."

12 And the fourth bullet,
13 "Later learned through Saskatchewan Justice
14 that they were not going to pursue Zanidean
15 due to the confusion that arose between the
16 RCMP..."

17 BY MR. CODE:

18 Q I don't need to go into that, officer, that's
19 all about the post-trial developments.

20 A Okay.

21 Q I am interested in the arrangements prior to
22 Zanidean testifying, and they are covered in
23 those three bullets at the top of the page.

24 So, again, the note's consistent with
25 Hall's?

1 A That's right.

2 Q Both of you are recording Miller as saying two
3 things, there is no deals and it's an open
4 investigation?

5 A That's correct, sir.

6 Q And the conclusion you ultimately arrive at,
7 after reviewing all of the documents, is that on
8 Anderson's account there's a secret deal that
9 they tell Zanidean about after he has testified;
10 is that correct?

11 A That is the way it's documented, yes, sir.

12 Q And on the Swift Current account, there is a
13 deal that is part of the witness protection
14 package that is negotiated with Zanidean; is
15 that correct?

16 A Perhaps I could just go back to my answer to the
17 previous question. I believe you asked whether
18 he described it as a deal. It was described in
19 his report as an agreement that wasn't going to
20 be pursued. The RCMP were not going to pursue
21 it. I do not believe there was a reference to
22 it being called a deal. What I would describe a
23 deal is quid pro quo, something for something.

24 Q Well, let's call it an arrangement, which I
25 think is the word that --

1 A I would call it a decision at that point in
2 time, a decision not to pursue him on these
3 charges.

4 Q And it's all tied up with the witness protection
5 arrangements that are being made for Zanidean
6 prior to his testimony?

7 A It was certainly part of that whole aspect of
8 the dealings with Mr. Zanidean, yes.

9 Q On the RCMP version of it, there's a much more
10 direct quid pro quo, that it's in return for his
11 testimony? You can look at your tab 7 --

12 A I just want to go back to confirm that.

13 Q -- summaries. If you look at page 203, for
14 example, there are two bullets at page 203 that
15 appear to indicate that, according to what
16 Anderson tells Burton, that part of the deal for
17 Ray's testimony was that he not be charged for
18 the 1990 arson?

19 A That is how that is described in that report,
20 yes, sir.

21 Q And Egan's letter, the next bullet,
22 "The Winnipeg Police has told Zanidean he
23 would not be charged if he testified in the
24 murder trial."

25 A That is how it is described in that report, yes,

1 sir.

2 Q So Anderson's account is an arrangement not to
3 charge him as part of a broader witness
4 protection package that they are working on.
5 The RCMP version is of a straight quid pro quo
6 in return for his testimony?

7 A As you can see, we made the observation that
8 there was much confusion about this matter.

9 Q Well, there's a conflict between them?

10 A There is definitely a conflict, a disconnect
11 between the information, yes, sir.

12 Q But on either account, what Miller is saying he
13 was told by the Winnipeg Police is that it's an
14 open investigation?

15 A That's what Mr. Miller told us, yes, sir.

16 Q Which is inconsistent, I take it, you concluded
17 with the inference that you drew from the
18 documentation?

19 A There would be inconsistencies, yes, sir.

20 Q Similarly, Miller is adamant that there was no
21 deal, whereas the two accounts you had received
22 were that there was some kind of a deal, some
23 kind of an arrangement had been made?

24 A At that point in time we had just received one
25 account.

1 Q Well, no, you had two. You had Corporal Orr's
2 as well?

3 A Oh, pardon me, sorry, Corporal Orr's, yes, but
4 not Burton's.

5 Q You eventually end up with three?

6 A Yes, that's correct.

7 Q So did you go back to Miller, after you had got
8 to the end of this story and you had reviewed
9 all of the documents, and go back to him and
10 say, we have got a problem here, Bruce, we're
11 about to write a report in which we're gonna
12 reach the conclusion that there is a strong
13 suggestion that some sort of deal was struck,
14 and yet you're telling us there was no deal at
15 all and it was an open investigation, and that's
16 what the police told you. Did you go back and
17 tell him that our report is inconsistent with
18 what you're saying the Winnipeg Police told you?

19 A I don't recall having further conversations with
20 him. I would have to check the logbook, sir.

21 Q There's no record of your going back to him
22 after the May 13th discussion.

23 When you met with Miller on May 13th, did
24 you give him a copy of Anderson's October 10th,
25 1991 report to Inspector Johns, as a result of

1 the RCMP complaint against Anderson?

2 A I don't recall doing that, sir.

3 Q Is that the kind of document, an internal report
4 from an officer to a senior officer on a
5 disciplinary matter, is that the kind of report
6 that would be circulated to Justice officials,
7 or would it be kept within the Police
8 Department?

9 A If it was an internal report relative to
10 answering questions to a senior officer, I would
11 assume that it would be meant as an internal
12 document, not to be shared outside the service.

13 THE COMMISSIONER: Inspector Johns was in what
14 department at that time, do you know, or what
15 branch?

16 THE WITNESS: I don't have a recollection,
17 Mr. Commissioner, sorry.

18 THE COMMISSIONER: All right.

19 BY MR. CODE:

20 Q If you look at the -- I don't know if you --
21 perhaps I could ask you to look at the copy of
22 that report that's found in Exhibit 6, I believe
23 it's in 6B. Madam Registrar, if you still have
24 it, it's at tab 10 of 6B. It's not made up as a
25 supplementary report. It's almost in the form

1 after letter to Inspector Johns, 22 division,
2 signed by Sergeant Anderson and Sergeant Paul
3 concurs. Do you see it at tab 10?

4 A Yes, I do. And I agree with you, that is not on
5 the Winnipeg Police Service supplementary report
6 form. And, Mr. Commissioner, to answer your
7 question, Inspector Johns would have been in
8 charge of division 22, which was our, at that
9 time our vice and morals unit. But I don't know
10 what position he would have been holding
11 relative to this matter.

12 Q Seeing the form of the report, is that a kind of
13 report that Miller was likely to have had?

14 A No, sir.

15 Q So you didn't put the contents of Anderson's
16 account in that report to Miller and ask him for
17 his comments on it?

18 A Not specifically, not directly, no, sir.

19 Q And I take it, again, it was apparent to you
20 from your examination of Brodsky's
21 cross-examination of Zanidean, that he was not
22 armed with this material, either Anderson's
23 account in the report to Inspector Johns or
24 Burton's account in the Swift Current files? He
25 had not been able to put that to Zanidean?

1 A I think I started to draw that conclusion.

2 Q Do you recall having any discussions with

3 Mr. Miller about whether that information should

4 be disclosed to Mr. Brodsky?

5 A Should be or was disclosed?

6 Q Either?

7 A Either, should be? I believe we may have had a

8 conversation with Mr. Miller about what was

9 disclosed to the defence. I would have to refer

10 to my notes whether it was to Mr. Miller or

11 Mr. Dangerfield.

12 Q I think your notes do refer to a discussion with

13 Dangerfield --

14 A Dangerfield.

15 Q -- along those lines. We will come to that in a

16 minute. But I can't find any notation in the

17 Miller notes that we just went through of a

18 discussion about disclosure with Miller?

19 A We may have or we may not, sir, I don't have a

20 recollection.

21 Q All right. Turning to another topic, I want to

22 come back and finish up this issue of the

23 perjury. The aspect of perjury that you clearly

24 were focused on and is discussed in a number of

25 places in your report is the issue about the

1 motive for the arson, Zanidean's testimony that
2 the motive had been revenge, and the RCMP theory
3 that the motive was an insurance fraud. You
4 recall being concerned about that issue?

5 A Yes, sir.

6 Q And your conclusion, in your report, is that it
7 was highly likely that Zanidean had committed
8 perjury on this issue; is that correct?

9 A That was our opinion, sir.

10 Q And it's set out fully in both yours and
11 Inspector Hall's interviews at tabs 1 and tab 2,
12 and the reference in the report is page 161. I
13 won't take you to it.

14 And the basis for that conclusion was that
15 you had had access to the RCMP file and had seen
16 the evidence that had been amassed by the RCMP
17 in Swift Current that was strongly suggestive of
18 an insurance fraud; is that correct?

19 A That was our opinion, sir.

20 Q And again, you produced a useful memo at tab 7
21 summarizing that information. And without going
22 through it with you, I'll just quickly refer you
23 to it. It's at tab 7, a two-page memo, it's the
24 second memo of tab 7, 198 to 199?

25 A Yes, sir.

1 Q You set out auto long series of bullet points,
2 over two pages, about the evidence suggestive of
3 an insurance fraud; is that correct?

4 A That's correct, sir.

5 Q And I've already taken you to your meeting with
6 Deputy Chief Klippenstein on May 12th, where you
7 expressed your concern about this matter. And I
8 read you the reference in your notes saying it
9 cannot be ignored and must be pursued; is that
10 correct?

11 A That's correct, sir.

12 Q That was at tab 4 at 767, I won't go back to it.
13 And it is right after that meeting with
14 Klippenstein on May 12th that you then meet with
15 Miller?

16 A That is correct, sir.

17 Q So you meet with him on May 13th. And it
18 becomes one of the main topics of your
19 discussion with Mr. Miller; is that correct?

20 A That is correct, sir, because that was in --
21 that was going to be the next step for us to
22 take prior to us going to Swift Current to
23 obtain further information and then attempting
24 to speak to Mr. Zanidean.

25 Q You were getting legal advice from Mr. Miller

1 about how to deal with Zanidean on this issue of
2 his apparent perjury, whether to caution him and
3 whatnot?

4 A I could -- yes, I would describe it as legal
5 advice, yes, sir.

6 Q So, again, to take you to tab 4, if we could
7 just go back to the logbook entries, the meeting
8 with Klippenstein that we've already reviewed is
9 at page 767 where you say,

10 "This cannot be ignored and should be
11 pursued."

12 That's May 12th. And then it's the next page,
13 May 13th, where you meet with Miller; is that
14 correct?

15 A That is correct, sir.

16 Q And I've already read you the passage at the
17 bottom of the page where you discuss the
18 immunity issue. And then immediately after that
19 you turn to the perjury issue. Could I read
20 from, it's five lines from the bottom of page
21 768.

22 "We spoke of our concern..."

23 Do you see that?

24 A Yes, sir.

25 Q "We spoke of our concern that Zanidean may

1 have perjured himself during the murder
2 trial in relation..."

3 is that,

4 "...only to the reason for the arson that
5 he and Driskell were involved."

6 A That would be my understanding of that word.

7 Q In other words, you are saying that the perjury
8 is on a somewhat collateral issue, not on the
9 central of his evidence against Driskell; is
10 that the inference there?

11 A No. It was relative to the reason, only on the
12 reason for the arson. We wanted to focus on the
13 motive.

14 Q Yes. All right.

15 "We agreed that we could not ignore this
16 fact and must realize that our main purpose
17 is to seek the truth."

18 Is that correct?

19 A That's correct, sir.

20 Q And you then talk about whether to caution him
21 or whether not to caution him, because you're
22 heading out on your trip to the west, both to
23 Saskatchewan and B.C.; is that correct?

24 A That's correct, sir.

25 Q And you conclude that paragraph by saying,

1 "We must know what our priorities are and
2 that it is to get the truth."

3 A That's correct, sir.

4 Q In other words, if you don't caution him and he
5 blurts out an admission to perjury, that's more
6 important than getting a statement that can be
7 used in court in a perjury prosecution is the
8 gist of it. Is that fair?

9 A I think we have to put -- I have to put this in
10 context in terms of exactly what we were doing
11 with this review was to get to the truth of the
12 entire matter surrounding the mandate of our
13 review. It was important to us that we did get
14 to the truth of this matter, because there
15 certainly was confusion, and I would probably
16 say differences of opinions in terms of how the
17 police investigation and prosecution of
18 Mr. Driskell took place.

19 Q All right. Turning to the notes at tab 5, these
20 are Hall's notes?

21 A That's correct, sir.

22 Q Again, we've been through part of these notes
23 dealing with the immunity issue. If I could
24 pick up the perjury issue at page 568 at the
25 start of the notes? He says,

1 "Meet with Bruce Miller, perjury, concern
2 with Zanidean and arson. Brought to
3 Miller's attention by Saskatchewan
4 Justice."

5 Is that what that next note says?

6 A I believe that's what it says.

7 Q In other words, Miller was already aware of this
8 perjury issue because Saskatchewan Justice had
9 told him about it?

10 A That's my understanding, sir.

11 Q And, in fact, the documents support that, that
12 he has had correspondence with Richard Quinney
13 on this matter throughout the previous year in
14 '92 and '93. And the next note is,

15 "Supporting Driskell more than Zanidean."

16 A That would be my understanding of what that
17 says, sir.

18 Q In other words, the Saskatchewan investigation
19 tended to support Driskell's version of the
20 arson more than Zanidean's?

21 A That's correct, sir.

22 Q And that's Miller telling you that based on what
23 he learned from Saskatchewan?

24 A That's correct, sir.

25 Q And then the next note is,

1 "Passed on to Dangerfield."

2 A That's correct, sir.

3 Q Again, I take it is that Mr. Miller telling you
4 that he passed this on to Dangerfield?

5 A That's correct, sir.

6 Q And then, finally,

7 "Dangerfield of opinion no effect on the
8 trial conviction because of corroboration
9 with witnesses."

10 A That's correct, sir.

11 Q And that appears to be the end of the discussion
12 about the perjury issue. So just to understand
13 that last point at the bottom of the page there,
14 Miller is telling that you Dangerfield's view is
15 that the perjury has no effect on the verdict,
16 in essence?

17 A What Mr. Miller told us is that he provided
18 Mr. Dangerfield's opinion relative to the
19 perjury, or alleged perjury issue.

20 Q In other words, they are saying that the perjury
21 doesn't carry much weight, it wouldn't have
22 affected the verdict because there was
23 corroborative evidence from other witnesses; is
24 that how we're to understand that?

25 A That was our understanding of what

1 Mr. Dangerfield told Mr. Miller, who was now
2 telling us.

3 Q All right. And then, finally, we have your
4 notes at tab 6. And if you could just quickly
5 review the notes, it's on the first page. I
6 believe it's the middle of that first page, the
7 starting at the break in the page right in the
8 middle that you raised this issue of the
9 perjury. Could you read out that note for us?

10 A Yes, Mr. Commissioner, I will refer to these
11 notes here.

12 "Explain that after reviewing the files..."

13 THE COMMISSIONER: Hang on. Is this on the
14 first page of tab 6?

15 MR. CODE: Tab 6, the first page, right in the
16 middle of the page.

17 THE COMMISSIONER: Oh, right.

18 BY MR. CODE:

19 Q At the break in the page, I think it says.

20 "Had concerns about his testimony."

21 A Well, it starts with the line above that,
22 "Explained that after reviewing the files
23 concerns Zanidean, we had concerns about
24 his testimony in regards to the fact that
25 he may have perjured himself when he

1 testified about the Swift Current arson as
2 an act of vengeance against his sister."

3 Now, this is Mr. Miller speaking,
4 "Tells us that Saskatchewan Justice thought
5 that Driskell's version of the arson
6 supported him, as compared to Zanidean. He
7 discussed this with George Dangerfield who
8 felt that this probably wouldn't have
9 adversely affected Zanidean's credibility
10 due to the corroboration of Gumieny
11 regarding the meeting with Driskell. Says
12 that if Zanidean did perjure himself in the
13 way that what he said was not related to
14 the facts of the murder case and wouldn't
15 be fatal."

16 Q And I think you move on at that point to a
17 discussion about strategy and whether to caution
18 him?

19 A That's correct, sir.

20 Q So your note and Hall's note are essentially
21 consistent in confirming that Miller already
22 knew about the problem from Saskatchewan
23 Justice; is that correct?

24 A That's correct, sir.

25 Q He had raised it with Dangerfield, and

1 Dangerfield had taken the position that it
2 wouldn't have affected the verdict?

3 A That is the information that was passed on to us
4 by Mr. Miller, sir.

5 Q Now, did you, again, after going to Swift
6 Current and reviewing the Swift Current file,
7 and discovering all of the information that you
8 set out in the memo at tab 7, page 198 to 199 of
9 tab 7, all of the detailed information that led
10 you to conclude that Zanidean likely had
11 committed perjury on this point, did you prepare
12 a report of that information for Mr. Miller so
13 that he knew of the strength of the Swift
14 Current case?

15 A We did not prepare a report for Mr. Miller on
16 this, no, sir.

17 Q And, finally, again, it must have been apparent
18 to you from your review of Brodsky's
19 cross-examination that he wasn't armed with that
20 information to challenge Zanidean's assertion
21 that it had been a revenge arson?

22 A I think it would be fair to draw that
23 conclusion, sir.

24 Q And, again, there doesn't appear to be any
25 discussion with Miller about the issue of

1 disclosure. And we will come to Dangerfield in
2 a moment. Is that fair?

3 A That would be fair, sir.

4 MR. CODE: All right. A couple of final topics.
5 I think I could cover one more before the lunch
6 recess, Mr. Commissioner.

7 THE COMMISSIONER: Sure.

8 BY MR. CODE:

9 Q The whole question of the financial benefits to
10 Zanidean, in the course of your review, as I
11 read your files, you learned of three aspects of
12 the financial arrangements, I won't call them
13 benefits, but the financial arrangements that
14 were made with Mr. Zanidean came to your
15 attention; is that correct? I will take you
16 through each one of them, but I'm talking about
17 the \$20,000 payment, the arrangements in
18 relation to the house on Chelsea Avenue, and
19 finally the payments by Crime Stoppers?

20 A That would be correct, sir.

21 Q So going through each one of those, first of
22 all, the \$20,000 payment made to Zanidean
23 shortly after his testimony was completed, you
24 learned of this information from your interview
25 with Mr. Miller; is that correct?

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

2 Q It's set out in your --

3 A Yes.

4 Q -- in your notes and in your interview that

5 Miller tells you about the \$20,000 cheque that

6 was paid to relocate Zanidean after he completed

7 his testimony. And that was the first time you

8 had heard about that?

9 A That's my understanding. That's my

10 recollection, sir.

11 Q There was no record of that in the Winnipeg

12 Police file that you have seen?

13 A Not that I could recall, sir.

14 Q And then, secondly, from Corporal Orr's file,

15 and I will take you to the reference here

16 because this is a little bit more detailed.

17 From examining Corporal Orr's file you learn

18 that arrangements had been made for Zanidean's

19 house. And we see that in your tab 7 memo?

20 A Yes, sir, I have it in front of me.

21 Q Have you got it in front of you? It is page 207

22 of tab 7. You find a reference in Corporal

23 Orr's file, it is at the very bottom of page

24 207, the last bullet, that there is arrangements

25 in relation to his mortgage after he has been

1 moved out of the Chelsea Avenue house into a
2 safe house?

3 A That's correct, sir.

4 Q And, finally, you learn about these Crime
5 Stoppers payments, which I think you and Hall
6 uncover for the first time in the course of your
7 review. I don't think there is any -- anybody
8 had known about them before, the two of you
9 uncovered them; is that correct?

10 A I believe my recollection is that Mr. Zanidean
11 testified to contacting Crime Stoppers, so it
12 was certainly known at the trial.

13 Q He testified that he called Crime Stoppers. He
14 never testified that he sought an award from
15 them.

16 A Okay.

17 Q Is that correct?

18 A I would have to have a look at the transcript,
19 but I won't debate that with you, if that's what
20 you believe his testimony was.

21 Q What you learn, and it is set out in both your
22 statement to the Commission and in your
23 colleague, Inspector Hall's statement, is that
24 after they had become witnesses, leaving aside
25 the question of did they or didn't they call

1 Crime Stoppers to report their information, but
2 after they had become witnesses, they had spoken
3 to the police, they apply for an award of money
4 from Crime Stoppers; is that correct?

5 A That's correct, sir.

6 Q And, again, as clearly set out in your statement
7 at tab 1, that wasn't normal police practice.
8 The awards paid by Crime Stoppers were for tips
9 from informants, they were not payments to
10 witnesses; is that correct?

11 A That's correct, sir.

12 Q So this was new information that two Crown
13 witnesses who had spoken to the police, went to
14 Crime Stoppers seeking money and got it?

15 A Yes, sir.

16 Q And it was both Gumieny and Zanidean?

17 A That's correct, sir.

18 Q So that bundle of information, then, that you
19 had about the \$20,000 payment, the arrangements
20 in relation to the house, and the payments from
21 Crime Stoppers, again, from reading Brodsky's
22 cross-examination, it was apparent that he was
23 interested in this whole issue of the financial
24 benefits paid to Zanidean. He cross-examined
25 him on it?

1 A That's my understanding, yes, sir.

2 Q And, again, it would have been apparent that his
3 testimony under oath was to the general effect
4 that he had done very poorly out of this whole
5 matter financially, that all he was being paid
6 was temporary room and board until his evidence
7 concluded. He explicitly testified that there
8 was no -- that start-up costs had not even been
9 mentioned, and he explicitly testified there had
10 been no arrangements made about his house and he
11 was about to lose it?

12 A That's my recollection of his testimony, sir.

13 Q So the information you discovered, again, raised
14 concerns about whether he had committed perjury
15 in relation to these issues; is that fair?

16 A That would be fair, sir.

17 Q And, again, it was apparent to you that Brodsky
18 was not armed with this information and able to
19 challenge Zanidean's testimony on these points?

20 A It certainly would appear that way, sir.

21 Q And, again, did you raise these issues, this
22 aspect of the perjury about the financial
23 arrangements, did you raise that with Mr. Miller
24 and ask whether or not there had been disclosure
25 on these matters?

1 A I can't recall if we asked whether there was
2 disclosure on the financial aspect, sir.

3 Q The anonymous call to Brodsky, if I could deal
4 with that quickly in the last five minutes we
5 have, Inspector Ewatski, you knew about the
6 anonymous call to Brodsky on June 20th because
7 it had figured in the media's stories in early
8 March of 1993 and you looked into it. Is that
9 correct?

10 A That's correct, sir.

11 Q And, in fact, you arranged with Mr. Brodsky's
12 office, through a young lawyer in his office,
13 Michael Fairney, I think his name was, to attend
14 at Stony Mountain and to have the tape played in
15 the presence of Driskell and Janie Duncan, the
16 investigator who was working with him?

17 A Yes, sir.

18 Q And in that interview Driskell positively
19 identified the voice on the tape as Zanidean?

20 A That's correct, sir.

21 Q And you and Ewatski were -- sorry, you and your
22 colleague, Hall, were inclined to agree with
23 that voice identification based on your own
24 interview with Zanidean?

25 A We formed that opinion, yes, sir.

1 Q We have the transcript of your meeting with
2 Driskell at tab 8 of your book, and I won't take
3 you through it, it confirms what you've just
4 told us.

5 And you then, the follow-up steps you take
6 in relation to this particular piece of
7 information is you speak to Sergeant Paul and
8 ask him to prepare a report about what he knew
9 about the events of June 20th; is that correct?

10 A That's correct, sir.

11 Q And we see that report, this is the one
12 supplementary report that does come out of your
13 review, at tab 9; is that correct?

14 A That is correct, sir.

15 Q And we have been through this report many times
16 in the inquiry so far, so everybody is well
17 familiar with it. But, in essence, what you
18 learned from this report is that on June 20th,
19 immediately prior to the call to Brodsky,
20 Zanidean had threatened to go to the press and
21 say that his testimony had all been lies. Is
22 that correct?

23 A That's correct, sir.

24 Q And Paul provides that account some two years
25 after the events, and then also provides you

1 with the phone records confirming that shortly
2 after he stormed out of the room, having made
3 that threat, that he in fact phoned Brodsky?

4 A That's correct, sir.

5 Q And as I understand your statement to the
6 Commission at tab 1, page 10, you're of the
7 view, with the benefit of hindsight, that that
8 report, that that is information that should
9 have been provided to the Crown once you
10 received it in 1993?

11 A That's correct, sir.

12 Q More fundamentally, at the time it happened, in
13 June of 1991, immediately after the events
14 happened, is this the kind of incident that
15 should have been put in a contemporaneous
16 supplementary report while the case was still
17 fresh and pending before the courts, at least
18 the appeal was still pending?

19 A I see no reason why not to put it in a report,
20 sir.

21 MR. CODE: I've got about two pages of notes
22 left, Inspector Ewatski. And we are at the
23 lunch recess, so I'll be very brief with you
24 after lunch, no more than about 15 minutes.

25 THE COMMISSIONER: Okay. We will adjourn until

1 2 o'clock.

2 THE CLERK: All rise. This Commission of
3 inquiry is adjourned until 2:00.

4 (Proceedings adjourned at 12:45 and
5 reconvened at 2:00 p.m.)

6 THE CLERK: All rise. This Commission of
7 inquiry is now re-opened. Please be seated.

8 MR. CODE: Good afternoon, Mr. Commissioner,
9 Chief Ewatski.

10 BY MR. CODE:

11 Q One small area I want to cover with you this
12 afternoon, Chief Ewatski, is the whole dealings
13 with Gumieny. And you've set out fully in your
14 statement and Inspector Hall's statement the
15 interview that you had with Gumieny in Ottawa, I
16 believe. And one piece of original evidence, if
17 I could call it that, in the sense that you and
18 Inspector Ewatski were actually witnesses to, or
19 Inspector Hall was a witness to, is Gumieny's
20 threat to go to the media and effectively recant
21 his evidence. And I would like to take you to
22 the reference to that in volume 2, tab 4, of
23 your book of documents. This is the joint log
24 book that was kept by Inspector Hall; is that
25 correct?

1 A That's correct, sir.

2 Q And using the numbering at the bottom of the
3 page, if you turn to page 779, in those faint
4 numbers at the bottom of the page.

5 A Yes, sir, I have it in front of me.

6 Q Tab 4, page 779, do you see an entry for
7 May 26th?

8 A Yes, I do, sir.

9 Q And at 10:00 o'clock there is a note of a phone
10 call from John Gumieny who wants to know when he
11 is going to be moved. Have I read that
12 correctly?

13 A That's correct, sir.

14 Q And he is concerned about a threat to him and
15 his family. And Inspector Hall advises him, in
16 the middle of that note, that a proper threat
17 assessment was done and the conclusion was that
18 it is not an immediate concern, especially since
19 there has not been any fresh media coverage; is
20 that correct?

21 A That's correct, sir.

22 Q And that Gumieny was not pleased with that. The
23 note is, he says he begs to differ. He may not
24 have used that language, I suspect. But in any
25 event, over the page at the top of page 780 you

1 see the note four lines down at the top of page
2 780,

3 "Threatens that he will not take this, and
4 he says 'talk to Cal, I'm going to do what
5 I said', (meaning tell the media and the
6 private investigator that he only said what
7 the police told him to say)."

8 Now this was a phone call between Inspector
9 Hall and Gumieny, and Inspector Hall has given
10 us the original evidence of it in his statement.
11 I take it that Inspector Hall communicated this
12 to you?

13 A To the best of my recollection, he did, yes,
14 sir.

15 Q Again, you have discussed this in your statement
16 to us at tab 1, pages 10 to 11, if you need to
17 refresh your memory about it, Chief Ewatski,
18 bottom of page 10 at tab 1 and the top of page
19 11.

20 If I could summarize your position, tell me
21 if this is correct, that you and Inspector Hall
22 tended to downplay the weight of this particular
23 statement made by Gumieny because you knew he
24 was using the threat as leverage in bargaining
25 with you for further benefits?

1 A That was an opinion we formed, yes, sir.

2 Q He wanted to move again away from Ottawa and he
3 wanted the Crown to pay for it, and this was
4 part of his bargaining strategy; was that the
5 way you took it?

6 A That was our opinion, sir.

7 Q And because you downplayed the weight of it, you
8 didn't prepare a supplementary report of the
9 statement, even though Inspector Hall was a
10 direct witness to the statement?

11 A After reviewing this material, Mr. Code, and I
12 hadn't been privy to other material, I now
13 understand that Inspector Hall did in fact
14 write, put some documentation together and
15 forward it to Mr. Miller in the form of a letter
16 or a memo, I believe it was, relative to this
17 issue.

18 Q Perhaps you could help us with that then. I
19 don't think that I'm aware of that. Do you
20 know --

21 A Perhaps my counsel could assist.

22 MR. LOCKYER: It might be in our materials for
23 cross-examining Mr. Orr, if that's of any help.

24 BY MR. CODE:

25 Q I think I know perhaps what you are talking

1 about. It is a letter that deals with whether
2 this was covered in the media and whether the
3 threat was made to the media or not?

4 A I know that there was documentation that was put
5 together by Inspector Hall and sent to
6 Mr. Miller.

7 Q My question is, was there ever a report made
8 setting out the threat, the statement made by
9 Gumieny over the telephone to Inspector Hall?

10 A A report in -- not a Winnipeg Police
11 supplementary report, it was not put in that
12 form. It was put in the form of a memo to
13 Mr. Miller.

14 Q And does the memo set out what Gumieny's
15 statement was?

16 A I would like to review that, if I can, Mr. Code.
17 MS. CARSELL: It is in exhibit 4A at tab 14, I
18 believe.

19 MR. LOCKYER: I have it here.

20 THE COMMISSIONER: Exhibit 4A, tab 14, I think.

21 MS. CARSELL: 4A, tab 14, it is dated 06/02/93,
22 directed to Bruce Miller re John Edward Gumieny.

23 THE WITNESS: It is included on what is page
24 number 2 of this memo or this letter to
25 Mr. Miller, on the last paragraph, about halfway

1 through it,

2 "He threatened that if he did not get what
3 he wanted he would go to the media."

4 BY MR. CODE:

5 Q So, the note that we find in the log book, that
6 he would tell the media and the private
7 investigator that he only said what the police
8 told him to say, does not appear to be in this
9 report; is that fair?

10 A There is more detail in the log book, obviously,
11 yes, sir.

12 Q Again, as I understand your statement to the
13 Commission at page 11, you are of the view that
14 that kind of information, the information set
15 out in the log book should have been set out in
16 a supplementary report; is that correct?

17 A I indicated that this kind of information should
18 be disclosed.

19 Q And the way one goes about that is by preparing
20 a supplementary report; is that fair?

21 A There are other ways of disclosing material to
22 the Crown, sir.

23 Q Such as?

24 A Such as a letter or memo to the Crown counsel.

25 Q But we just looked at it and it doesn't have the

1 threat to say that what he was going to say was
2 that his evidence had been fabricated?

3 A It is my opinion that it certainly alerts
4 Mr. Miller that there is this situation with
5 Mr. Gumieny. That is the way that Inspector
6 Hall wrote it and sent it, relative to this, in
7 the form of a letter to Mr. Miller instead of on
8 a supplementary report.

9 Q Let's go back to the note, Chief Ewatski. What
10 the memo says is that he is threatening to go to
11 the media; is that correct? He threatened if he
12 didn't get what he wanted, he would go to the
13 media?

14 A That's correct, sir.

15 Q Whereas what the log book says at tab 4, page
16 779, top of 780 in particular, is that what he
17 would tell the media and the private
18 investigator was that he only said what the
19 police told him to say?

20 A Those specifics are not in this letter, yes,
21 sir.

22 Q And the specifics, as you call them, that we
23 find in the log book, is referable to his trial
24 testimony, is it not?

25 A That would be correct, I would make that

1 assumption.

2 Q So, in essence, the substance of what he is
3 threatening to say is that his testimony was
4 false?

5 A No. What he was saying, Mr. Code, is that he
6 was threatening to go to the media to indicate
7 that he was told what to say.

8 Q He was threatening to tell the media that his
9 testimony was false, have I got that right?

10 A I could agree with that.

11 Q Is that the kind of information that should be
12 reported to the Crown?

13 A Yes, sir.

14 Q And is the normal way in which one reports it,
15 I'm not fussy about the vehicle, whether it be
16 by way of a memo such as this one or whether it
17 be by way of a supplementary report, it should
18 be reported one way or another, should it not?

19 A Yes, sir.

20 Q The interview with Dangerfield and Lawlor, if I
21 could come to that now, is towards the end of
22 your review. As I read your records, it takes
23 place on August 23rd, about a month before you
24 finalize your report. We find it at tab 4,
25 towards the end of tab 4 you should find an

1 August 23rd entry at page 810?

2 A Yes, I have it in front of me, sir.

3 Q This is right near the end of your work, you are
4 getting ready to start drafting your report, you
5 have collected all of your information; is that
6 fair?

7 A That would be fair, sir.

8 Q And the note in the log book -- and
9 incidentally, I don't believe that we have a
10 note in Inspector Hall's notebook about the
11 meeting, this is the only note that he appears
12 to make -- sets out a number of points that I
13 wanted to review with you. First of all, the
14 note says,

15 "Discuss case. They are happy with the
16 information supplied by the police. They
17 spent a lot of time with the police before
18 they would authorize charges laid. They
19 have absolutely no complaints with how the
20 investigation was handled by the Winnipeg
21 Police Department, stressing the fact that
22 it was a very difficult investigation
23 dealing with unsavory people."

24 If I could just stop there and deal with
25 that first point, their state of mind about the

1 police work and the information they had
2 received from the police. Is it fair to say
3 that they expressed complete satisfaction with
4 the information that they had received, the
5 work, the investigative work that had been done
6 for the case by the police?

7 A That was my opinion, based on what they told me,
8 sir.

9 Q There wasn't a hint, from what they said, that
10 they were aware that anything had been withheld
11 from them?

12 A That's correct, sir.

13 Q However, what you had learned in the course of
14 your report, your work, correct me if I'm wrong,
15 is that a number of things in fact had not found
16 their way into supplementary reports; is that
17 correct?

18 A There was a number of things that there was no
19 written documentation for.

20 Q We have reviewed a number of them, Sergeant
21 Paul's two year delayed report about the events
22 of June 20, 1991, hadn't been reported to them;
23 is that correct?

24 A There was no written documentation.

25 Q All right. Let's deal with written

1 documentation. There was no supplementary
2 report of the events of June 20th, 1991; is that
3 correct?

4 A It is my understanding, yes, sir.

5 Q Sergeant Anderson had prepared an October 7th,
6 1991 report, again, after the fact, about the
7 admissions that Zanidean made on October 10th,
8 1990 to the Swift Current arson. There had been
9 no supplementary report of that admission that
10 you are aware of?

11 A Sorry, which report are you referring to, sir?

12 Q The report that he prepares a year later, about
13 Zanidean's admission to the Swift Current arson,
14 on October 10th, 1990?

15 A That's in the form of response to inspector
16 Johns.

17 Q No, I'm just dealing with -- remember very early
18 in your testimony this morning we took you to
19 the notebook admissions, Zanidean admits to both
20 Paul and Anderson on October 10th and
21 October 29th, his involvement in the Swift
22 Current arson?

23 A Yes, sir.

24 Q And then they omit it from those supplementary
25 reports. Do you remember that?

- 1 A That's correct, yes, sir.
- 2 Q And then a year later, on October 7th, the day
3 before Anderson is to submit his disciplinary
4 report to Johns, they prepare a supplementary
5 report, it is at tab 9 of exhibit 6B, if you
6 want to pull it out again. Remember, it is the
7 supplementary report where he refers to only one
8 of the two admissions, he refers to the
9 October 10th --
- 10 A I just want to make sure we are talking about
11 the same report, sir.
- 12 Q 6B, tab 9?
- 13 A Yes, sir, I have it here.
- 14 Q It is the one that you thought you had relied on
15 in your review, and that you may not have access
16 to the notes, do you remember?
- 17 A That's correct, sir.
- 18 Q That report had not been prepared for
19 Dangerfield or Lawlor prior to the trial?
- 20 A It wouldn't appear so, sir. It appears that
21 this was prepared subsequent to our meeting with
22 Dangerfield and Lawlor.
- 23 Q And of course, at the next tab, at tab 10, while
24 you have got that in front of you, a great deal
25 of information in this report to Inspector Johns

1 about all of the dealings between Anderson and
2 Burton had not found its way into any
3 supplementary report; is that correct?

4 A This report was not written in a supplementary
5 report fashion, that is correct.

6 Q And it is written after the fact, it is written
7 a year later after the events?

8 A That is correct, sir.

9 Q After the trial has already been completed and
10 Driskell is in jail serving a life sentence?

11 A It is written on October 8th, 1991.

12 Q Well after the trial?

13 A That's correct, sir.

14 Q So, my question to you is, when Dangerfield and
15 Lawlor express their complete satisfaction with
16 the way the police had kept them informed, they
17 are happy with the information supplied by the
18 police is what they said, absolutely no
19 complaints. Did you tell them, by the way,
20 Mr. Dangerfield, Mr. Lawlor, you should know, we
21 have uncovered a fair bit of information that
22 appears never to have found its way into
23 contemporaneous supplementary reports prior to
24 the trial, and review it with them?

25 A I can't recall if we made that statement to

1 them, sir.

2 Q Did you ask them whether the information in
3 those reports, whether they had been briefed on
4 it orally, even though you knew there were no
5 supplementary reports?

6 A I can't remember the exact conversation, sir,
7 but it certainly was, we formed the opinion that
8 Mr. Dangerfield and Mr. Lawlor were certainly
9 aware of all of the aspects surrounding this
10 investigation.

11 Q They were aware of the blow-up with Zanidean on
12 June 20th, when he threatened to state that his
13 testimony had all been lies? Did you discuss
14 that with them?

15 A I don't recall asking that question
16 specifically, but it was certainly my
17 understanding that that information had been
18 supplied verbally.

19 Q And what was the basis for that understanding?

20 A The fact that it was included in Sergeant Paul's
21 report that he had briefed his inspector, and it
22 is my recollection that we were also told that
23 his inspector was going to brief the prosecution
24 relative to that matter.

25 Q Did you follow up and inquire of the inspector

1 whether he had done that?

2 A No, I did not, sir.

3 Q Did you follow up by asking Mr. Dangerfield and
4 Mr. Lawlor whether the inspector had done that?

5 A No, I don't recall asking that specifically,
6 sir.

7 Q Turning to the matters covered in Sergeant
8 Anderson's October 8th report, 1991, to
9 Inspector Johns. Did you inquire whether
10 Mr. Dangerfield and Lawlor had been briefed
11 about the secret arrangement made in April,
12 1991, according to Sergeant Anderson, with
13 Constable Burton not to have Zanidean charged,
14 but not to tell him?

15 A I can't recall the exact conversation, sir. The
16 notes that we have of the meeting with
17 Mr. Dangerfield and Mr. Lawlor are very short.
18 We may have, or we may not have, I can't recall,
19 sir.

20 Q Carrying on with the notes, the second topic
21 that Mr. Dangerfield and Mr. Lawlor turned to,
22 immediately following where we left off there in
23 the middle of page 810, tab 4, page 810, right
24 in the middle of the page.

25 "They are happy that full disclosure was

1 given to Greg Brodsky. "

2 Do you see that?

3 "Everything they received from the police
4 went to Brodsky."

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

6 Q So the topic now turns to not just their
7 satisfaction that they were fully informed, but
8 their satisfaction that Mr. Brodsky was fully
9 informed; is that correct?

10 A That's correct, sir.

11 Q And, of course, you've told us throughout your
12 evidence this morning that as you discovered
13 each one of these new areas, also it was
14 apparent to you from reading Brodsky's
15 cross-examination of Zanidean, that Mr. Brodsky
16 was not aware of the new areas that you were
17 discovering; is that correct?

18 A I believe I said I could draw that conclusion
19 based on what Mr. Brodsky said.

20 Q So did you raise that question again with
21 Mr. Dangerfield and Lawlor and say, well, that's
22 all very well that you say that you are happy
23 that full disclosure was given to Greg Brodsky,
24 but you should know what we have just discovered
25 in the course of our last five months of work.

1 Did you have that conversation with
2 Mr. Dangerfield and Mr. Lawlor?

3 A I can't recall the exact details of that
4 conversation. It was a lengthy conversation we
5 had with them.

6 Q Did you tell them, for example, that from our
7 reading of Mr. Brodsky's cross-examination, it
8 appears that he was not aware that Zanidean had
9 been seeking immunity, a guarantee of immunity
10 through his counsel, David Kohnats?

11 A We may have, sir, I can't recall.

12 Q Did you raise with them the fact that it
13 appeared, according to the Swift Current view of
14 the matter, that there was an agreement reached
15 with Zanidean in return for his testimony that
16 he would not be prosecuted on the Swift Current
17 matter?

18 A We may have, sir.

19 Q Do you have a recollection of doing that, or are
20 you just speculating?

21 A I can't recall the exact conversation, sir.

22 Q No notation of your challenging this assertion
23 that full disclosure was given to Greg Brodsky?

24 A I have no notation on challenging this
25 specifically, no, sir.

1 Q If you had corrected them and told them that
2 your review indicated that there were a number
3 of matters that we have reviewed this morning,
4 that it appeared Brodsky was not aware of, would
5 that be something that you would have made a
6 note of?

7 A I don't know, sir, I may have, I may not have.

8 Q In other words, if you were giving them new
9 information, new information that emerged from
10 your review, would that likely have been
11 something that you would have noted?

12 A I think if there was any information that was
13 exchanged between Inspector Hall and myself and
14 Mr. Dangerfield and Mr. Lawlor, that we believed
15 was new, that they didn't know about, then we
16 certainly would have gone into more detail and
17 made a note about that. But it was our opinion
18 that they were fully aware of everything.

19 Q So let's explore that. You keep saying that.
20 What is the basis for your opinion that
21 Dangerfield and Lawlor were aware of Anderson's
22 secret arrangement with Burton to not prosecute
23 Zanidean in Swift Current, and not tell him
24 about it until immediately after he testified;
25 what is your basis for believing that?

1 A To the best of my recollection, that was the
2 sense of the conversation that we had with these
3 two gentlemen.

4 Q And help me with that?

5 A Sir, I can't recall the exact conversation we
6 had with them about it, but we certainly talked
7 about the difficulties surrounding this case,
8 and the difficulties surrounding the prosecution
9 and the dealing with the witnesses. And you
10 know, we talked about all sorts of issues
11 surrounding that. But did I make a specific
12 note about those things? Obviously, I did not,
13 sir.

14 Q So you talked generally about the fact that it
15 was a difficult investigation with unsavory
16 witnesses, but you have no recollection of
17 specifically telling them that Zanidean was
18 seeking immunity and he got it, it was just kept
19 secret from him?

20 A I can't recall, sir, I can't recall the
21 specifics.

22 Q What about the financial benefits? You have
23 told us about the financial benefits that you
24 discovered, that they got these payments from
25 Crime Stoppers, that there had been arrangements

1 made for the house once he was moved out of it,
2 and that he had got this \$20,000 payment to get
3 him started in a fresh location, and the fact
4 that he had apparently perjured himself in
5 relation to those matters. Did you bring that
6 to Dangerfield's and Lawlor's attention?

7 A We would have talked about the perjury, sir,
8 because obviously that was further information
9 that we received from Mr. Miller, that he had
10 discussed the perjury issue with
11 Mr. Dangerfield, so we would have had discussion
12 about that.

13 Q Is there any note of discussing the perjury in
14 relation to the financial benefits?

15 A Obviously my notes, sir, are lacking in detail
16 relative to that meeting, sir. But the sense
17 is, in my recollection, there was significant
18 discussion about those issues.

19 Q I can't find any notation of any discussion,
20 whether significant or not, about Zanidean's
21 apparent perjury?

22 A Well, sir, I'm just basing it on my recollection
23 of the events.

24 Q Specifically on this subject of the disclosure
25 to Brodsky, you knew Brodsky had challenged him

1 about those benefits, had questioned him about
2 it, and that Zanidean had given an account that
3 was contrary to the facts that you had
4 discovered?

5 A That's correct.

6 Q Do you have any recollection of discussing that
7 with Dangerfield and Lawlor?

8 A Again, I'm certain that we discussed the issues
9 of perjury relative to Zanidean which would have
10 included all of his testimony too.

11 Q The only perjury that is discussed in your
12 report, a very lengthy report, over 170 pages
13 long, is on this narrow issue of the motive for
14 the arson; is that not correct?

15 A I believe that's all in our report, yes, sir.

16 Q There is no discussion of perjury in relation to
17 the financial benefits?

18 A Obviously it is not in the report, sir, but it
19 certainly was in our minds relative to
20 Mr. Zanidean's testimony, compared to what we
21 had discovered.

22 Q So it is not in your report and it is not in
23 your notes of any discussions with Dangerfield
24 and Lawlor, but you think you discussed it?

25 A Like I say, to the best of my recollection, we

1 had discussions relative to the perjury issue.

2 Q You keep saying that in a very general way, but
3 there are notes and there is a report about that
4 narrow aspect of perjury, the motive for the
5 arson, and that's all. Are you saying there was
6 a discussion of perjury generally?

7 A Mr. Code, I'm trying to tell you, to the best of
8 my recollection, I believe that there was
9 discussion relative to the whole issue of
10 perjury. I do not have notes, I'm admitting the
11 fact that my notes are lacking relative to that
12 meeting, that they are not comprehensive, but
13 I'm basing it on my recollection of the events.

14 Q So you recall a general discussion about perjury
15 that goes beyond the narrow issue of the motive
16 for the arson; is that what you are telling us?

17 A I believe it is very possible that that was part
18 of that discussion, sir.

19 Q And why would that not figure in your report?

20 A I don't know, sir, I can't answer that question.

21 Q Another aspect of the perjury that arises from a
22 reading of the information you discovered and
23 Zanidean's testimony is his perjury about
24 whether he was seeking immunity; is that not
25 correct? He testifies that he did not instruct

1 his lawyer to seek immunity for him, that's not
2 why he went out and retained a lawyer. And yet
3 you had discovered that his lawyer was actively,
4 vigorously seeking immunity for him; is that
5 correct?

6 A There were concerns about Mr. Zanidean's
7 testimony that we did have concerns with, and
8 obviously that would be one aspect of it too.

9 Q And yet once again, that aspect of the apparent
10 perjury is nowhere discussed in your report and
11 is nowhere mentioned in your notes; is that
12 correct?

13 A It is not in the report, that's correct, sir.

14 Q You believe you discussed that aspect of his
15 perjury with Mr. Dangerfield and Mr. Lawlor?

16 A Like I said, sir, the best of my recollection,
17 is we had a significant discussion about this
18 case.

19 Q I don't doubt that at all. The discussion about
20 the case goes on for three pages in your notes,
21 so obviously a substantial discussion. But it
22 is about how good a case it was, about how the
23 case holds up; isn't that what you were
24 discussing with them?

25 A Sir, there had to be basis behind making that

1 entry to say that they were satisfied with it.

2 There was discussion. I wish I could remember,
3 sir, and I wish I would have taken better notes,
4 but I didn't, sir.

5 Q What I am asking you is did you discuss the
6 failings in the case, the weaknesses in the
7 case, the things that didn't come out?

8 MS. CARSELL: I'm rising, Mr. Commissioner,
9 because I believe the witness has answered this
10 question a number of times to the best of his
11 ability. He said he doesn't have a specific
12 recollection. We are now into the area, I would
13 submit, of strict cross-examination. I know my
14 learned friend, according to the rules, can ask
15 leading questions and non-leading questions, but
16 I would suggest this is well past that at this
17 point.

18 THE COMMISSIONER: Ms. Carswell, it seems to me
19 that what Mr. Code is doing, he is going through
20 each incident, as it were, each event, and then
21 asking the question. And so it is not
22 repetitive, although it is the same form of the
23 question, the answer is for the most part the
24 same, but it is a different event that he is
25 asking about.

1 MS. CARSELL: Well, I will take your advice,
2 Mr. Commissioner. I believe that I was trying
3 to count the number of questions about the
4 incidences of perjury with respect to the
5 financial benefits, and I thought I heard it
6 well more than once, but --

7 THE COMMISSIONER: Well, that's true, but I
8 think he partly broke it down into different
9 components of it. But there is some merit in
10 what you say, but I don't think it has been
11 excessively repetitive.

12 MS. CARSELL: I will take my seat.

13 BY MR. CODE:

14 Q In any event, what I was trying to do at this
15 point was to move on to what you did discuss
16 about the case. Because you are quite right,
17 there is a substantial discussion about the
18 case, and I'm moving on to the last two pages of
19 your notes. We were on the first page, the
20 business about them being happy that full
21 disclosure was given to Brodsky.

22 What we find on the last two pages of the
23 notes, as I read them, is discussions about the
24 corroboration. You see about ten lines down on
25 page 69, they talk about how much corroboration

1 there was for Zanidean, that Gumieny
2 corroborated them, and the body pack comments
3 about the Karas on the body pack tape was
4 helpful corroboration, and then there is a
5 discussion about the Milgaard rule, about
6 cross-examination of hostile witnesses. A
7 little bit of law gets thrown in. We get a
8 reference to Tremear's Criminal Code; do you
9 see all of that?

10 A Yes, I do, sir.

11 Q Fairly arcane matters; you are making a note
12 about cross-examination of a hostile witness
13 under section 9 of the Evidence Act pursuant to
14 the Milgaard rule. Do you see that?

15 A That's correct, sir.

16 Q It is not a point of any great substance in this
17 case, is it?

18 A Pardon me, sir?

19 Q It is not a point of any great substance in this
20 case, is it?

21 A It was a point, obviously, we talked to them
22 about, sir.

23 Q It is about the Karas, minor witnesses in the
24 case, who ultimately did little or nothing for
25 the Crown's case?

1 A Well, they were part of our review in some of
2 the issues that we were concerned with, sir, so
3 we talked to them about it. But if I may,
4 Mr. Commissioner?

5 THE COMMISSIONER: Absolutely, go ahead.

6 THE WITNESS: Actually, I am glad I turned the
7 page over, there is a notation in here basically
8 talking about the deal, the supposed deal at the
9 top of that page.

10 BY MR. CODE:

11 Q That's the last topic that I'm coming back to.

12 A Well, again, I just want to go back to one of
13 the questions, because you asked whether or not
14 we had talked about the issues of immunity.

15 Q I am asking --

16 THE COMMISSIONER: Mr. Code. Go ahead.

17 THE WITNESS: I see that there is a note, and I
18 wish I would have made myself a little more
19 familiar with this, but there is a note relative
20 to the issue of a deal, and there is some
21 conversation. So it is obvious to me that we
22 did have conversation about the issue of
23 immunity and deals.

24 BY MR. CODE:

25 Q I'm coming to that, Chief Ewatski, I promise

1 you, I am coming to that.

2 A But I did answer a question relative to the
3 immunity without the benefit of turning the page
4 and looking at that note.

5 Q I have been asking you about two things so far.
6 At the start of your note, I have been asking
7 you about whether you made full disclosure to
8 the Crown, whether the police made full
9 disclosure to the Crown.

10 THE COMMISSIONER: I think, Mr. Code, just move
11 on to your next question.

12 BY MR. CODE:

13 Q Is the subject of the Milgaard rule and section
14 9 cross-examination of a hostile witness like
15 Kara, was that a matter of equal import in this
16 case to the issue of Zanidean's potential
17 perjury?

18 A Well, I don't think when we were discussing this
19 matter with Mr. Dangerfield and Mr. Lawlor that
20 we were weighing the importance of the
21 information. We were trying to clarify certain
22 things, we were trying to have conversation
23 about the entire case. That was one issue that
24 came up, and I'm trying to remember the context
25 it came up with, but we wanted to gain some

1 clarification. Because we believed that the way
2 it was being portrayed, that there was a
3 reference to trying to compare this case to the
4 Milgaard case, and I think we were just seeking
5 some clarification, that's all.

6 Q I'm not suggesting it wasn't a totally
7 legitimate matter to discuss and make a note
8 about it. You obviously had a very learned
9 discussion about the Milgaard rule and pulled
10 out Tremear's Criminal Code, and you referred
11 to the page references. My question is simply,
12 was that a matter of equal significance to the
13 potential perjury of the most important Crown
14 witness in this case?

15 A Well, sir, of course I would not admit it is of
16 equal significance. The issue of perjury was
17 certainly very significant.

18 Q The fact that you made a note about this
19 discussion about the Milgaard rule, and there is
20 no note about Zanidean's apparent perjury on a
21 number of points that we covered, does that
22 assist you as to whether that discussion did or
23 did not take place?

24 A I think what would assist me, sir, is the fact
25 when we talk about here, in this interview and

1 notes about the corroboration, and if we go back
2 to what Mr. Miller told us that Mr. Dangerfield
3 had told him about the issue of perjury not
4 being fatal to the case because of other
5 corroboration, to me, it even brings more
6 credence to the fact that I believe that we had
7 significant conversation about the perjury and
8 talking about still the strength of the case
9 beyond that.

10 Q And the aspect of perjury that I'm interested in
11 is, did you enlighten them to the new facts that
12 you had discovered that grounded the apparent
13 perjury?

14 A I --

15 Q Gave substance to it?

16 A I can't recall exactly what we told them in
17 terms of what we discovered in this review.

18 Q The last page of the notes, page 812, once again
19 what we get is a discussion of the strength of
20 the case, is it not, the three pillars of the
21 Crown's case. Is that correct?

22 A They basically say that they gained a conviction
23 based on three crucial points of the case, yes,
24 sir.

25 Q So they are talking about the strength of their

1 case, what a good case they had?

2 A They are talking about their opinion of why they
3 were able to convict Mr. Driskell.

4 Q Again, one of those pillars is Zanidean and
5 Gumieny; is that correct?

6 A And about them corroborating each other, yes,
7 sir.

8 Q Again, is it fair to say we don't see any
9 discussion of the weaknesses or the frailties
10 that had emerged through your review?

11 A No, because at this point in time we were asking
12 in terms of what their opinion was in terms of
13 what was the strength of the case, why was
14 Mr. Driskell convicted? And these are the
15 answers, or these are the points that
16 Mr. Dangerfield and Mr. Lawlor gave us.

17 Q Again, we don't see any discussion about you
18 alerting them to the frailties that you had
19 discovered?

20 A Again, to the best of my recollection, the
21 discussion relative to perjury and the deals
22 were all part of the overall discussion here.

23 Q The last point I want to touch on, Chief
24 Ewatski, is the business about the deal, whether
25 there was any deals with Zanidean, and

1 Dangerfield and Lawlor's apparent state of
2 knowledge about the issue of the deals. And
3 that's at the bottom of page 810 and the top of
4 page 811, the note that you have just made
5 reference to.

6 A Yes, sir.

7 Q And if we can read that carefully, what
8 Inspector Hall has noted, at the bottom of 810
9 he says,

10 "In relation to any deal made with Reath
11 Zanidean, they both emphatically state no
12 deals were made or proposed. That they
13 had, in fact, personally told Zanidean that
14 they could offer no assistance with the
15 Swift Current charges and made no attempt
16 to assist him. They are also adamant the
17 police made no deals with Zanidean. "

18 Have I read that accurately?

19 A That's my understanding of this too.

20 Q And that's the substance of what Dangerfield and
21 Lawlor had told you, that they had personally
22 spoken to Zanidean themselves on this topic and
23 had insisted with him that they could offer no
24 assistance on the Swift Current charges?

25 A That's what they told us, sir.

1 Q Did they clarify when that discussion had taken
2 place, where it had taken place, whether it was
3 in the presence of the police or separately in a
4 meeting with Zanidean?

5 A They may have, sir, but it doesn't appear that
6 we have a note to that.

7 Q And what I want to ask you about this, most
8 importantly, is the same series of questions I
9 asked you in relation to your meeting with
10 Miller back on May 13th, where he said to you in
11 substance much the same thing; isn't that fair?

12 A That's correct, sir.

13 Q He too was adamant that there was no deal
14 whatsoever and no assistance to Zanidean on the
15 Swift Current charges; isn't that correct?

16 A That's correct, sir.

17 Q And in relation to that issue, did you -- at
18 this point in your review, you have now seen the
19 Swift Current file?

20 A That's correct, sir.

21 Q You have collected all of the information that
22 leads you to conclude, in the Perry Harder
23 review, in your report, that a strong suggestion
24 may be made that some sort of a deal was struck
25 with him, in which he would be granted immunity

1 from prosecution for the Swift Current arsons if
2 he testified against Driskell. You had the
3 information that grounded that conclusion in
4 your report?

5 A That's correct, sir.

6 Q My question to you again is, did you challenge
7 or question or enlighten Mr. Dangerfield and
8 Mr. Lawlor on this point by saying, that's all
9 well and good that you believe that,
10 Mr. Dangerfield, Mr. Lawlor, but you should know
11 the material that we've uncovered from three
12 sources, Corporal Orr's file, Constable Burton's
13 file, and Sergeant Anderson's October report to
14 Inspector Johns, did you brief them on the
15 material that you had discovered that lead to
16 your conclusions in your report?

17 A I can't recall, sir.

18 Q Did you have any sense that they were aware of
19 the contents of the Swift Current file?

20 A I had a sense that they certainly had a high
21 level of knowledge of all of the aspects of this
22 case. Whether or not that included the contents
23 of that file, I can't say for certain, sir. I
24 can't recall asking that question and them
25 telling us that they had reviewed the contents

1 of that file.

2 Q Well, the content of that file, at least the
3 highlights of it that you note at tab 7 of your
4 report is that there was a straight quid pro
5 quo, that Zanidean got immunity in return for
6 his testimony exactly as he was demanding?

7 A Um-hum.

8 Q Did they seem to be aware of that?

9 A Well, they indicate there were no deals, sir.

10 Q Which flatly contradicts what they were saying
11 to you, doesn't it?

12 A Which still adds to the confusion relative to
13 this matter, sir.

14 Q It certainty does. My question is, did you try
15 to educate them on the facts that you had
16 discovered?

17 A I can't recall the conversation leading up to
18 the fact that they talked about having no deal,
19 whether that was in a form of an answer to a
20 question relative to this, or us posing that
21 information to them, I can't recall, sir.

22 Q Did you have a sense that they were aware of
23 Anderson's October 8th, 1991 report to Inspector
24 Johns? Did you go through that report with them
25 or ask them if they had ever received it or seen

1 it?

2 A I can't recall asking them that, sir, but I
3 think it would be highly unlikely that they
4 would have seen that report, sir.

5 Q All right. Let's turn to the last topic that I
6 want to cover with you, Chief Ewatski, and
7 that's the decision not to disclose the report,
8 or not to, I shouldn't say disclose the report,
9 not to provide the report to the Crown for the
10 Crown to decide what should be done with it.
11 And in this regard, let me make it clear at the
12 outset that I'm not interested in whether the
13 physical report itself at tab 3 should have been
14 delivered to the Crown. I understand your
15 position and Inspector Hall's position and the
16 Chief, the Chief at the time, who obviously
17 wasn't you, that the report was an internal
18 document. Is that correct? You took the view
19 that this was a confidential briefing for the
20 Chief, which contained a great deal of opinion,
21 and it was not an appropriate document to hand
22 over to outside parties; is that correct?

23 A That is correct, because that was the direction
24 that we received, to write this report as a
25 direct communication to the Chief of Police at

1 the time.

2 Q So accepting that, and I completely accept that,
3 that your Chief of Police is entitled to get
4 confidential advice in the form of opinions from
5 senior officers, which is what you were doing
6 for him, leaving that aside, what the report
7 contains, in particular the kind of materials
8 that we find at tab 7, these memorandum of the
9 various facts you had discovered, is it contains
10 factual information that could have been set out
11 in a supplemental report; is that correct?

12 A There was information that perhaps maybe could
13 have been put in a supplementary report, if need
14 be.

15 Q In other words, the form of the document or the
16 form of the information could have been put in
17 an appropriate form that would have allowed for
18 it to be appropriately reported to Crown
19 counsel?

20 A If it was necessary to do that, yes, sir.

21 Q And indeed, Inspector Hall's statement, he
22 expressly adverts to this, if you look at tab 2,
23 the last page I believe of tab 2 of your
24 colleague, Inspector Hall. Have you got tab 2,
25 page 14?

1 A Yes, I do, sir.

2 Q The very last five lines of tab 2, the sentence
3 starts,

4 "With his present knowledge..."

5 Do you see that?

6 A That's correct.

7 Q "With his present knowledge, Hall is of the
8 view that the new material should have been
9 disclosed to the Crown, although the best
10 way to disclose the new material would not
11 be by means of a report filled with
12 opinions. The proper way to disclose the
13 new information would be the preparation of
14 operational reports which would set out the
15 new evidence. These operational reports
16 would then be provided to the Crown."

17 Do you agree with that, that's the proper form
18 to report the new factual information that
19 emerged from your review?

20 A If there was new factual information in there
21 that we believed the Crown was not privy to,
22 that would be the proper way, yes, sir.

23 Q And we have reviewed a great deal of information
24 throughout the last few hours that there was at
25 least a serious issue as to whether it had been

1 properly reported; is that correct?

2 A I would agree with that.

3 Q So if we accept that there were valid reasons
4 for not disclosing the information in the form
5 of the report at tab 3, is there any explanation
6 for why the factual information was not reported
7 to the Crown in an appropriate form like a
8 supplemental report?

9 A I think just as Inspector Hall indicates too,
10 that we were of the opinion that this factual
11 information was already known by the Crown.

12 MR. CODE: I'm not going to go back over that
13 with you again. Thank you very much, Chief.

14 I believe Ms. Carswell wants to make a
15 brief submission before Mr. Lockyer starts. She
16 alerted me to it and I think it is appropriate
17 she say what she says now, and I think it will
18 save time of a series of objections during the
19 course of the cross-examination.

20 MS. CARSELL: Yes, Mr. Commissioner. Thank you
21 Mr. Code. I have discussed this matter with
22 Mr. Code, Mr. Commissioner, and I rise -- sorry,
23 I can't tell whether I'm in the mike.

24 I discussed this matter with Mr. Code
25 earlier this week, Mr. Commissioner, and I

1 suggested that I would be making this submission
2 to you, and he indicated, and I'm sure he will
3 tell you his position. It is my understanding
4 or my feeling that what we are going to
5 encounter in the next while is a significant
6 amount of questioning on systemic issues, and in
7 particular one systemic issue, that being post
8 conviction disclosure, by Mr. Lockyer. And I'm
9 not suggesting that this is not an issue that's
10 germane to this Commission, it obviously has
11 come out and it obviously is of interest. But
12 my understanding of the file is that the
13 information is well documented in the paper
14 file, that certainly a certain level of
15 questions would be appropriate for this witness
16 on that, but I don't want to be standing up and
17 objecting and saying, it is my view and my
18 understanding that the proper forum for dealing
19 with this would be in a panel discussion, as we
20 have discussed doing with the systemic issues at
21 the close of this. And given the wealth of
22 materials that we have on the post-conviction
23 requests that are being made, I would suggest
24 that there should be some reasonable limit to
25 the examination in that area. And I just alert

1 you to my position in advance so that I'm not
2 jumping up at a number of points, and I will
3 just leave it with you, Mr. Commissioner. My
4 sense was Mr. Code was of like mind, but I don't
5 wish to speak for him.

6 THE COMMISSIONER: Thank you, Ms. Carswell.
7 Thank you.

8 MR. CODE: If I could? I forgot this discussion
9 that I had with my friend, and she is quite
10 right, we did have a discussion about it. And
11 what I said I would say is that the whole
12 question of post-appellate disclosure remedies,
13 and whether the police and the Crown should have
14 a positive obligation to assist a 696
15 application, for example, by providing ongoing
16 disclosure at the post-appeal stage, is clearly
17 an important systemic issue in this case, and
18 that it is one that can effectively be explored
19 substantially on a paper record. And like, Ms.
20 Carswell, I don't think that Mr. Lockyer can be
21 stopped from asking questions of Chief Ewatski
22 on the subject. But I do agree that at some
23 point we can, after laying whatever foundation
24 Mr. Lockyer needs to lay on that issue, assuming
25 he is going to explore that issue, I think it

1 can be effectively done on a paper record.

2 There is correspondence between Mr. Lockyer and
3 Chief Ewatski on these subjects, and the
4 position that the two parties were taking on the
5 issue is well documented in the correspondence.

6 THE COMMISSIONER: Thank you, Mr. Code. Mr.
7 Lockyer, you may proceed.

8 MR. LOCKYER: I didn't hear what you said?

9 THE COMMISSIONER: I said you may proceed, with
10 the caveat that you have already had two
11 objections, and you haven't even asked a
12 question, so just remember that.

13 MR. LOCKYER: I know. I didn't know they were
14 coming either, what was just said, no one had
15 warned me in advance what was to be said. I
16 will just say very briefly --

17 MR. CODE: I had clean forgotten it.

18 MR. LOCKYER: That's all right.

19 THE COMMISSIONER: And he didn't make a note of
20 it.

21 MR. LOCKYER: From Mr. Driskell's point of view,
22 and this inquiry is about his case primarily,
23 with systemic issues obviously very much arising
24 out of it, from his perspective, the failure to
25 release the contents of this report back in 1993

1 means he has spent more than ten years
2 unnecessarily in prison. So I certainly intend
3 to get into that period. I'm amazed to think I
4 shouldn't. Certainly Mr. Driskell would be
5 equally amazed. If this report had come out
6 that soon, this inquiry would have been many,
7 many years earlier, or indeed never have
8 happened at all because the case could have been
9 cleared up quickly. But we will see what
10 happens.

11 BY MR. LOCKYER:

12 Q Chief Ewatski, I want to talk about, first of
13 all about how this, how you came to be one of
14 four officers assigned to the task of preparing
15 the review. I think Mr. Code introduced it this
16 morning by pointing out that there were some
17 articles in the Winnipeg Sun, in March 13, 14,
18 and 20, in which Mr. Driskell and Mr. Brodsky,
19 in particular, were saying that there had been a
20 miscarriage of justice in the case. Is that a
21 fair --

22 A That's a fair statement.

23 Q -- quick synopsis?

24 A Yes.

25 Q There were really two claims being put forward,

1 factual claims of substance, you might say, in
2 those two articles, or those three articles
3 rather, by Mr. Brodsky and Mr. Driskell, as best
4 I can understand it.

5 One was that Mr. Brodsky was suggesting
6 that he had received a phone call from a person
7 he believed was likely Mr. Zanidean, in which he
8 had told Mr. Brodsky just a week or so after the
9 trial that he had been lying and that the story
10 that he had told at the trial had been sort of
11 fed to him by the police. That was one aspect
12 of the articles, do you remember?

13 A It was relative to an anonymous call that he
14 received. I don't know if it went into that
15 detail though.

16 Q It actually quoted, it had actually extracts
17 from the call. I don't know if you remember,
18 Mr. Brodsky actually tape recorded it?

19 A Yes, and I remember reading the transcript of it
20 and actually hearing the tape, and there is
21 certainly suggestion. And as you know, the
22 caller bounces back and forth whether he
23 identified himself as being the person or as a
24 friend of the person, yes, sir.

25 Q And the other feature of the article, sir, that

1 seemed to be of particular interest in terms of
2 whether or not Mr. Driskell had been a victim of
3 miscarriage of justice was whether or not
4 Mr. Zanidean had received immunity from being
5 prosecuted for the arson in Swift Current. That
6 was in the articles too, do you remember that?

7 A That was my recollection, yes, sir.

8 Q In fact, although oddly enough, it hasn't come
9 out here, no one has actually brought this out,
10 it is all over the material that we have. Staff
11 Sergeant Ferguson, as I think he had by then
12 become, had been quoted in the article saying
13 just that; do you remember that, or in one of
14 the articles?

15 A He had been misquoted, according to Staff
16 Sergeant Ferguson, in an interview that we had
17 with him, yes, sir.

18 Q He subsequently said he had been quoted out of
19 context. I'm not sure he had been misquoted,
20 but he said that what he had said had been taken
21 out of context. Do you remember that?

22 A It certainly wasn't an accurate quote.

23 Q But that's some time later you hear that. When
24 you are in this March period, whether or not --
25 well, Ferguson's ultimate position was, I'm not

1 too caring, I'm more caring about what the
2 articles are saying in the Winnipeg Sun, which
3 leads to your then chief saying, we need a
4 review of this case. Those are the two primary
5 factors that were identified by Mr. Brodsky and
6 Mr. Driskell as being the basis for them saying
7 that Mr. Driskell had been a victim of a
8 miscarriage of justice. Am I right?

9 A That is what was reported in those Sun articles,
10 yes, sir.

11 Q Yes, and that's what I'm trying to get out of
12 you.

13 So in that context, sir, you are assigned
14 this task, presumably, or maybe I'm wrong, but I
15 wouldn't imagine you have taken on a task like
16 this too often, if ever at all before; am I
17 right?

18 A Actually I had just completed another review of
19 another case just prior to that, sir.

20 Q Is that back in '93 or '92?

21 A It would have been, I believe, in '92.

22 Q Was it anything like this size, sir?

23 A No, sir.

24 Q And was it reviewing a potential miscarriage of
25 justice in the case of someone convicted of a

1 homicide?

2 A No, sir.

3 Q All right. So this was probably a unique task
4 that had been assigned to you, in terms of size,
5 significance, importance and so on?

6 A I would agree with that, sir.

7 Q And it was already in the media before you even
8 got going. Indeed, it was the media that caused
9 it to get going in the first place?

10 A Well, I can't speculate exactly as to what
11 caused it to get going in the first place, but
12 that certainly had an impact on the chief's
13 decision.

14 Q I suspect if there hadn't been any articles in
15 the Winnipeg Sun, sir, we would never have seen
16 this document?

17 A I don't know, sir.

18 Q And your assignment, sir, as I read through the
19 review, seems to, first of all, fundamentally be
20 an assignment to determine whether the police
21 had conducted a good and proper investigation of
22 this case?

23 A That's accurate, sir.

24 Q And to determine whether there were, whether
25 there was any validity to the claims that were

1 being made by Mr. Driskell and his trial
2 counsel?

3 A I think it was to give the Chief of Police a
4 better sense of the circumstances surrounding
5 this case.

6 Q Right. But surely one of the things that you
7 are concerned with is whether what Mr. Driskell
8 is saying and Mr. Brodsky is reported saying in
9 the Winnipeg Sun are true?

10 A Well --

11 Q Were they victims of a miscarriage of justice?

12 A I think when we were given this task to look at
13 this, to ensure that the investigation was
14 conducted properly, that certainly formed part
15 of our mindset.

16 Q And certainly, when we look at your conclusion,
17 sir, you conclude, sort of in a negative sense,
18 and I don't mean to be negative in saying in a
19 negative sense, but you say there is no reason
20 for us to suggest that Mr. Driskell wasn't
21 properly convicted, I think is sort of the way
22 you put it at the end?

23 A No, that isn't how we put it, sir. Our
24 suggestion was that we have not uncovered
25 anything that would suggest that Mr. Driskell

1 was not involved in the murder of Perry Harder.

2 Q Well, I'm not sure it is that different from
3 what I said. But let's look at, first of all,
4 how you set out what you set out to do. Do you
5 have the review in front of you?

6 A Yes, I do, sir.

7 Q Would you look at the summary on page 1?
8 Actually, it doesn't have a page number.

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

10 Q It is the first page, so to speak. And you say
11 that a committee, and I'm looking sort of little
12 more than halfway down.

13 "A committee was struck by Chief J.B.D.

14 Henry to review the file and allegations."

15 So there is your purpose, to review the file
16 and allegations, namely the allegations, if you
17 look in the previous paragraph, that had been
18 made in the media. Do you see that?

19 A I see that, sir.

20 Q "After six months of assessing reports,
21 transcripts, wiretaps; interviewing
22 civilian witness, police investigators,
23 Crown attorneys, the accused, and the
24 private investigator, the committee is
25 confident that the investigation was

1 conducted within acceptable police
2 standards."

3
4 So that's sort of a statement of your primary
5 role in terms of your assignment, is that right,
6 sir? It is a good summary of your assignment?

7 A I believe so, yes, sir.

8 Q And then you say, and this is really what I put
9 to you as to how you summarized it.

10 "The committee..."

11 you end up saying in the last two lines,

12 "...has found nothing which would lead us
13 to believe that James Patrick Driskell was
14 not involved in the death of Perry Dean
15 Harder."

16 Is that right?

17 A That's correct sir.

18 Q And if you go to page 2 of the introduction,
19 sir, or page 2 of the report which is in fact
20 part of the introduction, you will see in the
21 last paragraph there, you again talk about the
22 purpose of what you were doing, what your
23 assignment was. You say that,

24 "We were informed that Chief Henry had
25 decided to initiate a review into the

1 arrest and subsequent conviction of James
2 Patrick Driskell for the murder of Perry
3 Dean Harder. "

4 Do you see that?

5 A Yes, I do.

6 Q "This decision was made due to the series
7 of articles in the Sun on March 13, 14 and
8 21, as well as publicity indicating
9 Driskell's lawyer was demanding a review by
10 the Justice Department with a view to a new
11 trial. If there were problems with the
12 police investigation, as was being
13 suggested in the media, Chief Henry feels
14 it incumbent on the Winnipeg Police
15 Department to identify and correct these
16 wrongs, if in fact the articles are true.
17 The public must have and can have
18 confidence in its police department."

19 And they talk about the final straw, which I'm
20 not too concerned with.

21 Is that a fair summary then of your
22 assignment, what you set out to do, sir?

23 A Yes, sir.

24 Q So if I can try and break it down a bit into
25 what you were doing; you were first of all, as

1 we have already said, trying to see whether or
2 not the police had conducted a good and proper
3 investigation; correct?

4 A Correct, sir.

5 Q You were also setting out to decide whether or
6 not there was validity to the claims being made
7 by Mr. Driskell and his trial counsel in the
8 media?

9 A Correct, sir.

10 Q Which in a sense is trying to determine whether
11 or not Mr. Driskell was indeed the victim of a
12 miscarriage of justice, is another way of
13 putting it?

14 A You could put it that way, sir.

15 Q That's what they were claiming, in effect?

16 A Yes, sir.

17 Q Which would involve, amongst other things,
18 besides simply looking at the police
19 investigation and going back over it, because
20 that's what you really did in many regards, you
21 went back over the case almost from square one;
22 am I right?

23 A Yes, sir.

24 Q Was to also see whether or not the Crown knew
25 everything it ought to have known from the

1 police, and I think there was a reference to
2 that on page 4 that Commission Counsel read to
3 you. Do you remember that?

4 A That's correct.

5 Q For what it is worth, I think that's the only
6 reference to that issue, as to what the Crown
7 knew, that that was one of the things that you
8 were going to look into, whether the Crown was
9 fully briefed by the police?

10 A That was certainly part of the general mandate,
11 the mandate that we had to ensure that -- well,
12 if there was any validity to the allegations
13 that were being made relative to a miscarriage
14 of justice, that obviously forms a part of it in
15 terms of the police supplying the information.

16 Q I understand it is a part of it. But Mr.
17 Brodsky and Mr. Driskell weren't claiming that
18 it was the fault of the police because they
19 hadn't advised the Crown of information that the
20 Crown should have had, so the Crown couldn't
21 have passed it on to them? They hadn't made
22 those kinds of specific allegations.

23 A I don't think so.

24 Q But a simple part of your review, in determining
25 whether there had been a miscarriage of justice

1 and in determining whether the police had done a
2 good job, was to see whether or not they passed
3 on all of the information they ought to, to the
4 Crown?

5 A We certainly felt it was imperative that we
6 conducted a comprehensive review of all aspects
7 of this matter, and I believe we did.

8 Q And a part of your goal, sir, would I be right
9 in saying, would be to tell the Crown anything
10 that you discovered they didn't know, that they
11 ought to know?

12 A I think that would depend on what we had
13 uncovered during the course of this review, if
14 it was relevant to further disclosure to the
15 Crown, yes, sir.

16 Q So it is a yes? I'm not quite sure if you said
17 yes to what I asked you?

18 A I will say yes to your question, yes.

19 Q Don't feel obliged, please.

20 And would I also be right, sir, in saying
21 in the context of whether or not Mr. Driskell
22 had been a victim of a miscarriage of justice,
23 you wouldn't just want to know whether the Crown
24 knew what it ought to know, and also ensure that
25 the Crown came to know what it hadn't known in

1 the past, but you would also want to ensure that
2 Mr. Driskell knew what the Crown had known and
3 Mr. Driskell came to know what the Crown hadn't
4 known that you advised them of; wouldn't that be
5 another part of it too?

6 A Not necessarily. I think you have lost me a
7 little bit.

8 Q It is not that complex really.

9 THE COMMISSIONER: Well --

10 THE WITNESS: Maybe it is -- it is not just me
11 then.

12 BY MR. LOCKYER:

13 Q Another important aspect, it is not just what
14 the Crown knew and to make sure that they knew
15 everything they ought to know, but to make sure
16 that Mr. Driskell knew the same things?

17 A Our concern was with the course of the
18 investigation and the proper actions that were
19 taken by the police relative to gathering the
20 evidence and providing it to the Crown. That is
21 our role as police officers, to provide it to
22 the Crown.

23 Q But if you were worried about whether
24 Mr. Driskell is the victim of miscarriage of
25 justice, sir, you are surely going to take it

1 that extra step and find out whether in fact he
2 knew through his counsel everything that he
3 ought to have known, because there is no other
4 way that you could determine if he was a victim
5 of a miscarriage of justice or not?

6 A Well, I don't think it was our role to see if he
7 was a victim of a miscarriage of justice. Our
8 role was to decide whether or not the police did
9 an appropriate job in this case. But this
10 mandate did expand, sir.

11 Q I understood that to be a part of it, I thought
12 we had cleared that up, that one of your roles
13 was to determine whether the claims of
14 Mr. Driskell and his counsel, that he had been
15 the victim of a miscarriage of justice, were
16 valid claims?

17 A Well, it goes beyond that, sir, too. If they
18 were valid claims and if Mr. Driskell was not
19 involved in this matter, then obviously we would
20 be concerned in terms of the person being
21 responsible for this murder was still not in
22 custody.

23 Q From the outset, is it fair to say, sir, that
24 from the outset of your review, and I say your
25 review, I mean the collective you, there were

1 four of you, I know that, but it seems to have
2 been you and Hall mostly, am I right, you played
3 the bigger role in this, the two of you?

4 A We lead the team, yes.

5 Q That from the outset there was a -- how would I
6 put it -- a good deal of scepticism about the
7 claims being made by Mr. Driskell and his trial
8 counsel?

9 A Scepticism by who, sir?

10 Q By you?

11 A No, sir.

12 Q You don't think so. Certainly, just reading
13 some of the things that you said, sir, in your
14 review, if you start, just go back to the
15 summary page, you talk about -- if you can go
16 back to that, that is the page without a number,
17 so to speak -- you talk about, in the middle of
18 the page,

19 "That the police was attacked in hope of
20 creating a public furore. "

21 Do you remember that?

22 A Yes.

23 Q At page 2, sir, you talk of,

24 "Driskell, through print and electronic
25 media, began a campaign to solicit public

1 support as in the David Milgaard
2 situation."

3 Remember that?

4 A Yes, sir.

5 Q At page 3 you say at the top,

6 "The committee believed from the outset..."
7 that's why I used the words, because they appear
8 in the report,

9 "Driskell was attempting to gain media
10 attention in a Milgaard style endeavor to
11 sway public sympathy."

12 A Um-hum.

13 Q That sounds like a rather skeptical view to me,
14 that you had from the outset, to use the words
15 from the report. Am I wrong?

16 A This report was written once we had conducted
17 our review, and it is not a chronology of our
18 thoughts and mind process and what was going on
19 in our minds at the time, sir.

20 Q I just take it --

21 A So by giving us the assignment to review this,
22 we went into this matter with a very open mind,
23 sir.

24 Q I just deal with this on the basis of the words
25 written, that the "committee believed from the

1 outset." Was that badly written?

2 A It could be, sir.

3 Q Okay. At page 4, sir, you come back to this yet
4 again -- sorry at page 32, go to page 32? You
5 come back to this again, where you talk about,
6 if you look at the end of the first paragraph at
7 the top under the heading media, you talk of
8 Mr. Driskell trying to,

9 "...bring his plight to the public, he is
10 soliciting public sentiment and searching
11 for the same considerations obtained by
12 David Milgaard in a wave of public
13 emotion."

14 Right?

15 A Yes, sir.

16 Q You don't think that's a rather cynical,
17 skeptical view of the whole thing?

18 A Those are our observations as a result of our
19 entire involvement in this matter, sir.

20 Q Now, Mr. Code, Commission Counsel has taken you
21 through a number of items of new information,
22 sir, that you acquired during the course of your
23 work on this review. And to some extent, I have
24 to sort of cover that ground, but obviously I
25 can cover it much quicker and more summarily

1 than Mr. Code, because of the thoroughness with
2 which he has gone through it.

3 I wanted to take you to the statement of
4 Inspector Hall that he gave to Commission
5 counsel, because he gives us a nice sort of
6 framework within which to see, at least in my
7 view, within which to see the kind of new
8 information that you acquired. If you turn to
9 tab 2, sir, of the materials provided by
10 Commission counsel, you will see there we have
11 Mr. Hall's statement?

12 A Yes, sir.

13 Q And if you go to page 10, you will see that --
14 actually go to page 9, you will see a heading
15 item D, the heading, "New Facts Discovered
16 During Hall and Ewatski's Review." Do you see
17 that?

18 A That's correct, sir.

19 Q And then we have items 1 through 6, with
20 headings, and I'm going to take you through each
21 one of those, which Mr. Code also took you
22 through, but I'm going to use Mr. Hall's order,
23 just because I find that a convenient way of
24 doing things.

25 And the first thing that Mr. Hall refers to

1 as being, in his opinion, new information that
2 was obtained by those -- by you who did the
3 review, was the payments that had been made by
4 Crime Stoppers to Mr. Gumieny and Mr. Zanidean.
5 Is that right?

6 A That's correct, sir.

7 Q And you agree that that was new information?

8 A That was information that we had discovered that
9 obviously was not documented within the
10 investigative file.

11 Q And seems to have been previously unknown, as
12 far as you are aware, to both -- well, I don't
13 know about to the investigators, it wasn't
14 documented by the original investigators, and
15 was likely unknown to the prosecutors unless
16 verbally given to them by the investigators?

17 A That is correct, sir, but there was no
18 documentation to suggest that.

19 Q As I think through those Crime Stopper payments,
20 sir, the existence of which you discovered, it
21 seems to me that there is two potential aspects
22 of them that could undermine the case against
23 Mr. Driskell, and I want to see if you agree
24 with me. The first one being the very simple
25 one, that it means that Mr. Zanidean and

1 Mr. Gumieny applied for and received payments of
2 a sum of money, I think it was \$400 in one case
3 and \$500 in Zanidean's case, that as far as you
4 could tell, Mr. Brodsky at trial, and
5 Mr. Driskell, if you like, perhaps we will talk
6 of Mr. Driskell rather than Mr. Brodsky, that
7 Mr. Driskell didn't know about. That's one
8 potential significance of that knowledge that
9 you acquired?

10 A The payment relative to Mr. Zanidean,
11 Mr. Zanidean had disclosed that he had contacted
12 Crime Stoppers, but I do not believe he
13 disclosed the award that he was given.

14 Q Right. And the understanding, and the way it
15 came across was -- sorry, you are quite right,
16 it came out in cross-examination at some point
17 that he had contacted Crime Stoppers at one
18 point.

19 The second thing, sir, that your discovery
20 of these Crime Stoppers involvement and
21 payments, I'm going to suggest to you, would
22 have been of assistance to Mr. Driskell in his
23 defence was because it, in a way, went to the
24 integrity of the police officers whom you came
25 to believe had put Zanidean and Gumieny up to

1 getting monies out of Crime Stoppers to which
2 they weren't entitled; is that fair?

3 A We didn't come to the conclusion that they put
4 them up to contact Crime Stoppers.

5 Q You came to the conclusion that they may well
6 have?

7 A We said there was a possibility, sir. We didn't
8 come to a conclusion. There was no conclusive
9 evidence to say that they did, sir.

10 Q It just seems a bit unlikely that these two
11 chaps would independently both make late calls
12 to Crime Stoppers, so to speak, secondary calls
13 to Crime Stoppers, and then claim the reward,
14 without someone giving them the notion, don't
15 you think?

16 A There was no evidence discovered, that we found,
17 that suggested that the police officers directed
18 them to the Crime Stoppers, sir.

19 Q Well, hold it. Certainly in your report, sir,
20 you leave that inference as a reasonable
21 inference, do you not?

22 A It is a possibility, sir.

23 Q Did you ask any of the four police officers in
24 question, sir?

25 A No, we did not, sir.

1 Q Why not?

2 A We didn't have the opportunity to interview
3 them, sir.

4 Q Well, you had an opportunity to speak to them,
5 did you not? You already told us you spoke to
6 Anderson and Paul?

7 A In informal conversations, yes, sir.

8 Q Well, can't you ask them in an informal -- is
9 there something about an informal conversation
10 that prevents you from asking them?

11 A Well, there was certainly an issue relative to
12 our ability to formally interview these
13 officers, sir.

14 Q Do you think it might have been nice for
15 Mr. Driskell to know at his trial, this thought
16 might have crossed your mind, that he could have
17 potentially asked these officers about it, and
18 see what they have to say and how they could
19 explain what Zanidean and Gumieny had done?

20 A Again, sir, that information came forward to us.
21 There was nothing to substantiate the fact that
22 these officers had done that. We also looked at
23 the information relative to Crime Stoppers in a
24 different light at that time, whether or not
25 that information was information that was even

1 subject to disclosure.

2 Q Of course, if these four officers, because there
3 is four officers involved here, aren't there,
4 with Gumieny and Zanidean, you came to know
5 that?

6 A That's correct, sir.

7 Q If these four officers had between them
8 encouraged or suggested or arranged for Zanidean
9 and Gumieny to do what they did, would you at
10 least agree with me that that would potentially
11 undermine the integrity of the investigation,
12 certainly as far as they are concerned?

13 A It would be inappropriate for them to do that,
14 sir.

15 Q It is a little more than that. It would really
16 be a corrupt practice on their part, don't you
17 think, sir, to rip off the public funds in that
18 way for the benefit of people like Zanidean and
19 Gumieny? I mean, that's what it was.

20 A Crime Stoppers is a program, again, I will
21 just -- Mr. Commissioner.

22 THE COMMISSIONER: I don't --

23 MR. LOCKYER: I think we all know what it is. I
24 am sure we do.

25 THE WITNESS: I just want to ensure that

1 everybody knows what the program is, and who
2 actually runs Crime Stoppers. It is not the
3 police. It is not intended to be set up for
4 police officers to, what I would say funnel
5 witnesses to. It is intended for people, on
6 their own, to provide information anonymously on
7 cases. So it would be inappropriate for police
8 officers to suggest, direct or funnel witnesses
9 into the Crime Stoppers.

10 BY MR. LOCKYER:

11 Q You don't like the word "corrupt"?

12 A It would be inappropriate, sir.

13 Q So, tell me this, sir, apropos what Commission
14 counsel was asking you this afternoon, did you
15 pass this information on to Mr. Miller when you
16 spoke to him?

17 A No, we did not, sir.

18 Q Did you pass this information on to
19 Mr. Dangerfield and Mr. Lawlor when you spoke to
20 them?

21 A No, we did not, sir.

22 Q Did you pass the information on in any way so
23 that Mr. Driskell could become aware of it?

24 A No, sir.

25 Q Why not?

1 A Again, I will go back to our opinion relative to
2 Crime Stoppers information at that time. We
3 felt that it was not discloseable, but in
4 hindsight, that information, we should have
5 documented and passed it on.

6 Q You say in hindsight, Chief Ewatski, and I
7 understand what you mean, obviously. But as we
8 stand here now, it is easy to be 20/20, but is
9 this really 20/20? And I will get into this
10 more as we go along. But you had ten years to
11 think about this, from 1993 to 2003, as we are
12 going to see, you had so many requests coming
13 from this person and that person on
14 Mr. Driskell's behalf. We had at least three
15 police chiefs in that period, there may have
16 been more for all I know. We had Henry,
17 Cassells and yourself, I don't know if there
18 were more in between?

19 A No.

20 Q All right. Just the three. We had all of those
21 requests. And did you not think about it as
22 those requests came in? Why do we have to wait
23 ten years plus before we get the benefit of
24 hindsight?

25 A Are you referring to the entire file Mr.

1 Lockyer? What are you referring to?

2 Q Right now -- I'm going to come back to it, but
3 just in the context of this Crime Stoppers
4 issue, to say hindsight, I can't understand why
5 it took you so long to get to realize the
6 hindsight that you now have.

7 A On this point, sir, on this point specifically.

8 Q We will come back to it.

9 MR. LOCKYER: Is this a good time to break?

10 THE COMMISSIONER: Yes.

11 THE CLERK: All rise. This Commission of
12 Inquiry is now in recess.

13 (Proceedings recessed at 3:25 p.m. and
14 reconvened at 3:45 p.m.)

15 THE CLERK: All rise. This Commission of
16 inquiry is now reopened. Please be seated.

17 BY MR. LOCKYER:

18 Q The second item, sir, if we go back to Mr.
19 Hall's statement to Commission Counsel, it is
20 item 2 on page 10, Zanidean's apparent perjury
21 regarding the Swift Current arson, and we have
22 heard during your examination by Commission
23 Counsel that that was essentially the conclusion
24 that you came to in your work on the review; is
25 that right?

- 1 A That's correct, sir.
- 2 Q And Mr. Code pointed out the note that Inspector
3 Hall had made, that we are all in agreement that
4 this can't be ignored, presumably all including
5 you?
- 6 A That's correct, sir.
- 7 Q And of course, you knew that this was exactly
8 what Mr. Brodsky had cross-examined Mr. Zanidean
9 on unsuccessfully at the trial?
- 10 A We realized that there was cross-examination on
11 this point, yes, sir.
- 12 Q And it was alluded to as well, and I don't think
13 that I brought this out earlier, in the Winnipeg
14 Sun articles, this issue that Mr. Brodsky was
15 still alleging that?
- 16 A That's possible, sir.
- 17 Q And you say that you didn't -- or rather you did
18 discuss this with Mr. Miller; is that right,
19 sir?
- 20 A Yes, we did, sir.
- 21 Q And he told you that he had passed it on to
22 Mr. Dangerfield, who had no concerns about it,
23 wouldn't have made any difference as far as he
24 is concerned?
- 25 A Or words to that effect, sir.

1 Q And so you presumably came to believe that this
2 information was not going to be passed on to
3 Mr. Brodsky or Mr. Driskell, is that right?

4 A No. We formed the opinion that both Mr. Miller
5 and Mr. Dangerfield were fully aware of the
6 issues surrounding the possible perjury by
7 Mr. Zanidean, that was certainly clear in our
8 minds, that the Crown or prosecution was
9 certainly aware of that issue.

10 Q But you had no reason to think that the
11 information had been passed on to Mr. Driskell?

12 A I had no information to tell me whether it had
13 been passed on or not passed on, sir.

14 Q Did you ever make inquiries in that regard, sir,
15 in the ensuing ten years?

16 A I don't believe so, sir.

17 Q Did you care?

18 A Did I care?

19 Q Yes?

20 A I don't think it was part of my responsibility
21 to ensure whether it was passed on or not, sir.

22 Q So in that ten year period that various people
23 on Mr. Driskell's behalf were trying to get the
24 report out of you, or the contents of the report
25 out of you, or -- I will leave it at that -- you

1 never made inquiries as to what Mr. Driskell may
2 or may not know that you had uncovered in your
3 work in 1993?

4 A The Police Service is separate and apart from
5 Crown Prosecutors, as you know, sir, and we have
6 a specific role in the criminal justice system.
7 And my prime concern, and it continues to be my
8 prime concern, is for the role of the police
9 officers and the work that we do relative to the
10 criminal justice system, sir.

11 Q Do I assume the answer then to my question is
12 no, sir? Is that a roundabout way of saying no?

13 A Could you ask the question again, sir?

14 Q I say in all of those ten years that various
15 people on Mr. Driskell's behalf were trying to
16 get this report or its contents out of you, you
17 never made inquiries as to what Mr. Driskell may
18 or may not know that you had learned in the
19 course of your review?

20 A I did not make those inquiries to the --

21 Q That was the question.

22 A Yes, sir, that is correct.

23 Q Move on to item 3, sir, it is at page, the next
24 page of Mr. Hall's statement to Commission
25 Counsel under the heading,

1 "Zanidean's request for immunity on the
2 Swift Current arson charge."

3 Do you see that?

4 A Yes, I do, sir.

5 Q Now, just before I get into that actual issue,
6 sir, there is one thing that you put in your
7 report that intrigued me. You are aware from
8 what Mr. Code asked you or put to you this
9 morning, from the notes of Anderson and Hall,
10 that the claim is that on October 10th,
11 Mr. Zanidean is the one who brought up,
12 seemingly out of the blue, this issue of having
13 committed the Swift Current arson and that it
14 could damage his credibility. Do you remember
15 those notes, Anderson's notes in particular
16 being read to you in that regard, by Mr. Code?

17 A I believe it was in answer to a question that
18 was posed to him, so not out of the blue, I
19 wouldn't agree with that.

20 Q I don't think it was. I think he just came up
21 with it, he just volunteered it, by the way, I
22 have got some credibility problems.

23 A I would have to reference it.

24 Q We have all heard it countless times in the last
25 four weeks so --

1 THE COMMISSIONER: It came up both ways, but
2 initially it came up pretty spontaneously,
3 according to the notes. The subsequent one that
4 you are referring to is more or less the sort of
5 formal statement.

6 MR. LOCKYER: They are following up on -- they
7 are questioning him on October 29th about
8 presumably something to do with what he had said
9 before.

10 BY MR. LOCKYER:

11 Q If you look at page 53 of your report, sir, you
12 say, if you look at that paragraph in the middle
13 of the page,

14 "Reath Zanidean's situation is different."
15 You see where I'm at?

16 A Yes.

17 Q "Mr. Zanidean was involved with
18 Mr. Driskell in the arson of Zanidean's
19 sister's residence in Swift Current,
20 Saskatchewan. Zanidean made investigators
21 aware of this when they pressed him on any
22 criminal activity he may have been involved
23 in with Mr. Driskell."

24 A Yes, sir.

25 Q Presumably, to make that statement, sir, you

1 would have had to receive that information
2 really from the investigators, from either
3 Anderson or Paul in one of these informal chats;
4 is that right?

5 A That is possible, sir. I can't recall what lead
6 to us write that line.

7 Q Well, the only people who could have come up
8 with that information, one would think, would be
9 either them or Zanidean himself. And we all
10 know Zanidean didn't talk to you.

11 A That's correct, sir.

12 Q And, of course, the new information that was
13 uncovered, Chief Ewatski, that's referred to by
14 Mr. Hall in his statement to Commission Counsel,
15 this request for immunity, really revolved
16 around, more than anything, what you discovered
17 in Swift Current, and when you went through the
18 files and spoke to Mr. Burton, and also as a
19 result of your discussions with Mr. Orr; is that
20 right?

21 A There was information that we were made privy
22 to, yes, sir, that could be classified as new
23 information, yes.

24 Q Now, you spoke to Mr. Miller, as we have seen,
25 on May 13th, before you went out to Swift

1 Current and I think before you spoke to Orr as
2 well; is that right?

3 A That's correct, sir.

4 Q Sorry, here it is, after Orr, sorry.

5 So you went out to Swift Current after you
6 spoke to Miller. Did you speak to Miller again
7 about what you had discovered in Swift Current,
8 sir, after you had been out there?

9 A I can't recall if we did, sir. I know that
10 Inspector Hall had some conversations with
11 Mr. Miller subsequent to that, but I do not
12 believe I did.

13 Q Because that was surely, leaving everything else
14 aside, extremely important information that you
15 obtained from those files in Swift Current; am I
16 right?

17 A It was my understanding that Mr. Miller
18 certainly had a good grasp of the issues
19 relative to this matter. The confusion, as he
20 put it, was in the disconnect between what
21 Anderson and Burton were suggesting what
22 happened. During the conversation with him, we
23 talked about this confusion. You know, I
24 believe he was aware, he had documentation from
25 Saskatchewan Justice that also spoke about this.

1 Q Well, you say you believe he had documentation
2 from Saskatchewan Justice. Did he tell you
3 that, sir?

4 A Could I check my notes on that?

5 Q By all means. We are talking May 13th.

6 A Yes.

7 MS. CARSWELL: I think they are in Hall's notes.

8 THE COMMISSIONER: Do you have a page number,
9 Ms. Carswell?

10 MS. CARSWELL: First page.

11 THE COMMISSIONER: First page of Hall's?

12 MS. CARSWELL: Brought to Miller's attention by
13 Sask Justice.

14 THE WITNESS: That is correct, there is a
15 notation there, so there was some documentation.
16 I am just going to see if I have anything in my
17 notes.

18 BY MR. LOCKYER:

19 Q Why do you say documentation, I'm not sure I
20 understand why you say that. What is in the
21 note that suggests he had documentation?

22 A Well, I am suggesting it was brought to his
23 attention by Saskatchewan Justice. Let me check
24 my notes, sir, to see if I have anything,
25 please?

1 Q If you look at your report, sir, could you go to
2 the report for a minute, the review itself, page
3 81?

4 A Page, sorry?

5 Q 81, the second to last paragraph,
6 "Regarding the question of immunity, Miller
7 stated his department never promised or
8 suggested immunity to Zanidean or his
9 lawyer. The only contact he had with the
10 Saskatchewan Justice Department was a
11 conversation he had with Mr. Quinney, DPP."

12 A Then it was a conversation, sir, not
13 documentation.

14 Q Right, nothing about documentation. And that's
15 kind of an important, potentially an important
16 point here, sir, that you sit down and discuss
17 this immunity issue with Mr. Miller on May the
18 13th of 1993, and he doesn't happen to mention
19 to you some letters that he has been receiving
20 from Saskatchewan Justice about this case.

21 A Again, I would like to just go back to my notes
22 to make sure that I don't -- to see how I
23 characterize it.

24 THE COMMISSIONER: Absolutely.

25

1 BY MR. LOCKYER:

2 Q Let me help you, sir.

3 A I think I found it, sir. I don't see in here
4 what I refer to as documentation --

5 Q No, I don't think you do.

6 A -- but there are references to -- that he
7 learned from Saskatchewan Justice, there is some
8 type of communication with Saskatchewan Justice.

9 Q Right, which you then describe as a conversation
10 in your ultimate review?

11 A Obviously we described it that way, sir.

12 Q And we happen to know, sir, that Mr. Miller had
13 received correspondence from Saskatchewan
14 Justice about this very issue, the immunity
15 issue. Have you now come to know that?

16 A I have come to know that now, sir. Yes, sir.

17 Q I think it would be kind of hard for you not to.
18 And let me ask you this, sir; if Mr. Miller had
19 mentioned this correspondence to you, the last
20 letter of which he had received a mere two
21 months before you spoke to him, I suspect you
22 might have asked if you could see it, wouldn't
23 you, as part of your review?

24 A We may have, sir.

25 Q If you heard that it was directly on point about

1 whether or not Saskatchewan had granted --
2 whether or not Swift Current had agreed to give
3 immunity to Mr. Zanidean on the arson charge,
4 and coming from someone in Saskatchewan Justice,
5 I kind of suspect as a part of your review you
6 might have wanted to see it.

7 A We may have asked him, sir, but it was certainly
8 obvious that, as Mr. Miller described it, there
9 was confusion about this issue.

10 Q Maybe confusion for you, it is kind of a little
11 difficult for you to suggest that he was
12 confused.

13 A I have no idea if he was confused or not, sir.

14 Q So suffice to say, sir, you never saw these
15 letters; is that right?

16 A I don't recall seeing them, sir.

17 Q And once again, sir, with respect to what you
18 have discovered in Swift Current, and with
19 respect to what you have discovered from Orr,
20 and with respect to the different stories that
21 you are getting at this end, you might say, from
22 your own service officers and from the Crown,
23 you have now got information, at the very least,
24 and indeed information that you thought was
25 potentially believable, that established one of

1 the very items being alleged by Mr. Brodsky and
2 Mr. Driskell in those Winnipeg Sun articles;
3 correct?

4 A Relative to --

5 Q Immunity?

6 A -- immunity?

7 Q Yes?

8 A There were certainly issues surrounding that
9 itself, and there was confusion, and we had
10 various pieces of information, and there was
11 conflict between those pieces of information.

12 Q But the way you drew your conclusion, sir,
13 was -- I forget the exact words you used,
14 perhaps I can go to them.

15 "A strong suggestion may be made that some
16 sort of a deal was struck with Zanidean in
17 which he would be granted immunity from
18 prosecution for the Swift Current arsons if
19 he testified against Driskell."

20 That's page 79 of your review?

21 A That was our observation, sir.

22 Q Yes. So you have come to a conclusion that
23 there is a strong suggestion that can be made,
24 on the basis of the evidence that you have
25 gathered, that would establish the very thing

1 that Mr. Brodsky and Mr. Driskell were alleging,
2 in the very articles which lead to your
3 investigation in the first place?

4 A Well, obviously by analyzing the information
5 that we had and by seeing that there was
6 conflict and contradictory information, one
7 could draw the conclusion that something
8 happened and that is what was being alleged in
9 the newspapers.

10 Q You have also got, sir, whether subsequently
11 revised or not, you have also got proof through
12 Swift Current materials that what Sergeant
13 Ferguson had said to the Winnipeg Sun, from the
14 perspective of Swift Current, was bang on. He
15 wasn't misquoted at all. He got it exactly
16 right, according to the documents that you had
17 read in Swift Current. He had told the Winnipeg
18 Sun that there had been a deal done for
19 immunity, and that's what you were reading in
20 the Swift Current documents; right?

21 A It was part of the contradictory information,
22 obviously, that we had compared to the
23 information from Winnipeg.

24 Q Did you think, sir, that this information, since
25 one of your concerns was whether or not

1 Mr. Driskell was a victim of a miscarriage of
2 justice, did you think it was your duty to make
3 sure that somehow this information got to
4 Mr. Driskell? Did you?

5 A Again, our role is to gather the evidence and
6 give it to the Crown. We formed the opinion,
7 and we took the position that the information
8 relative to the matter of immunity or no
9 immunity, or deals or no deals, was certainly
10 well known by the Crown.

11 Q So the answer to the question is that you didn't
12 feel that you had to do anything yourself?

13 A It is the role of the Crown to provide
14 disclosure to the defence.

15 Q Not your job?

16 A It is not our role, sir.

17 Q Not your job to see whether they have done it,
18 not your job to ask them whether they have done,
19 let alone your job to do it; am I right?

20 A Our role is very distinct and separate from
21 that, sir.

22 Q Was a part of this reticence, sir, in passing
23 the information on to the person who could
24 really have done with it, this person who was
25 claiming the miscarriage of justice that had

1 lead to you doing the review in the first place,
2 a part of it, sir, was it reflected in what you
3 wrote at page 162 of your report?

4 A Where is that, sir?

5 Q Where you talked about the differences between
6 Swift Current and Winnipeg, and then concluded
7 in the last three lines,

8 "Although this issue did not become vitally
9 important during the Driskell trial, one
10 can be assured that it could and probably
11 would be a serious source of embarrassment
12 if this matter is reviewed in another type
13 of public forum."

14 Was that a part of what played in your mind,
15 sir, as to why you wouldn't pass this
16 information on?

17 A No, sir.

18 Q Because there is really two points that come out
19 of that. You say,

20 "Although this issue..."

21 whenever I say you, I understand there is four
22 of you writing it. Did you write it, are you
23 the author of this?

24 A I think Inspector Hall and I wrote portions of
25 this.

1 Q Okay.

2 "Although this issue did not become vitally
3 important during the Driskell trial..."

4 Well, that's hardly surprising, sir. It didn't
5 become vitally important during the Driskell
6 trial because certainly Mr. Driskell and his
7 counsel didn't know anything about it, right, so
8 that's hardly surprising?

9 A I know that now, sir, that they didn't know
10 anything about it, yes, sir.

11 Q Well you sort of knew it then. I thought you
12 read Mr. Zanidean's evidence?

13 A Yes, I did, sir.

14 Q So you must have picked up from there that
15 Mr. Brodsky didn't have a clue about what Swift
16 Current was saying?

17 A You could draw that conclusion, sir, yes.

18 Q Didn't you?

19 A I certainly looked at that and wondered why
20 those questions wouldn't have been asked, him
21 going down that road any further.

22 Q And then you say,

23 "It could be..."

24 just the same three lines,

25 "...a serious source of embarrassment if

1 this matter is reviewed in another type of
2 public forum."

3 Of course, if it doesn't get passed on to the
4 person who counts, the person who is doing the
5 life sentence, Mr. Driskell, then it is not
6 really likely to get into a public forum, is it?

7 A Sir, I wasn't concerned whether or not it would
8 cause embarrassment if it would come out. It is
9 what it is. There was a disconnect, there was
10 contradiction. Obviously the communication
11 between the agencies certainly was not at the
12 level where it should have been. And between
13 two professional police agencies, that could
14 come out as embarrassment to one or both police
15 agencies. That's what we meant by that line,
16 sir.

17 Q Don't you think, sir, that perhaps the real
18 disconnect was between the authorities in
19 Winnipeg and Mr. Driskell? That's where the
20 real disconnect was, because Mr. Driskell didn't
21 know any of this. He didn't find it out until
22 2003.

23 A Again, the information relative to this matter
24 was certainly well known by the Justice
25 Department. And it is my understanding that it

1 is their role to disclose all information to the
2 accused person or accused person's lawyers, not
3 the police.

4 Q Item 4, sir, if move on to page 12, if we could
5 go back to Mr. Hall's statement to Commission
6 Counsel. The heading "Zanidean's telephone call
7 to Brodsky." This is, as you know, the
8 June 20th call; right, sir?

9 A That's correct, sir.

10 Q Now, it is referred to as the June 20th call to
11 Mr. Brodsky, but actually it was a little more
12 to it than that. You came to know that in fact
13 the same kind of recantation that was made in
14 the anonymous phone call to Mr. Brodsky had been
15 made directly by Mr. Zanidean in person to
16 Sergeant Paul, the same day. You knew that,
17 right? That's in Paul's report?

18 A We knew that. There was certainly a
19 disagreement between Mr. Zanidean and Sergeant
20 Paul on that day, yes, sir, just prior to this
21 phone call.

22 Q That's true. There was certainly a
23 disagreement, but you also knew that
24 Mr. Zanidean told Mr. Paul that he was going to
25 call the media and recant his evidence?

1 A That's correct, sir.

2 Q And say that they had told him what to say?

3 A That's correct, sir.

4 Q Okay. And so, in a sense, you have not just a
5 recantation to the defence counsel, but you have
6 got one to the very person who has been dealing
7 with him throughout, one of his handlers,
8 Mr. Paul. You acquired this information that he
9 did this on June 20th?

10 A That's correct, sir.

11 Q And I know Mr. Zanidean refused to be
12 interviewed by you, sir, in preparation for this
13 review, but in so far as he did speak to you, he
14 told you that, one of the things he did tell
15 you, whilst refusing to speak to you, was that
16 he hoped Mr. Driskell was going to get a new
17 trial. Isn't that right?

18 A That was one of the things he said, yes, sir.

19 Q Apart from that, he basically told you he wasn't
20 going to talk to you?

21 A He said many, many more things, sir.

22 Q I'm not sure he said anything to you of
23 particular importance, apart from this one
24 point, that he did tell you that he hoped
25 Mr. Driskell would get a new trial, which is not

1 inconsistent with the June 20th recantation; is
2 that right?

3 A And we tried to find out what he meant by that
4 and he refused to tell us.

5 Q I understand that. Nevertheless, just even
6 hearing him say that at least has a glimmer of
7 consistency with what he had said on June 20th
8 to Paul and Brodsky?

9 A No, I think it reinforced -- it reinforced the
10 opinions that had been provided to us relative
11 to Mr. Zanidean and his volatile nature in
12 dealing with authorities.

13 Q Now, you told Commission Counsel, sir, in your
14 interview -- and I'm at page 10, go to it if you
15 wish, but I imagine you have probably read it
16 pretty recently -- that Mr. Zanidean's
17 recantation was not passed on by Paul and
18 Anderson because they didn't think it was
19 important enough. That's presumably something
20 they told you, is it?

21 A I believe they said they didn't put a report in
22 to that effect.

23 Q The words "pass on" actually appear in your
24 statement; do you see that?

25 A But apparently it was passed on according to

1 Sergeant Paul's report.

2 Q Well, it was in '93, when he did it in '93, at
3 your insistence?

4 A No, he is referencing the event that took place
5 back in '91 --

6 Q Right?

7 A -- in his '93 report. And in it he says that he
8 passed that on to his inspector.

9 Q Right.

10 A And led us to believe that his inspector was
11 passing that on to Mr. Miller.

12 Q What makes you think that, sir? What makes you
13 think that the inspector was passing it on to
14 Mr. Miller? We have no reason to think he did.

15 A I don't know if he did or not, sir, but I
16 believe that's what he told us.

17 Q Sorry, I don't know who 'he' is now?

18 A Sergeant Paul.

19 Q Sergeant Paul told you that he was doing it --
20 all reports presumably go to the inspector, is
21 that right?

22 A Well, there is a chain of command, but in that
23 report he indicated that he informed Inspector
24 Johnson, who was the inspector at the time. And
25 I have recollection of him saying that Johnson

1 was going to then notify the Crowns.

2 Q Did you make a note of that conversation
3 anywhere, sir?

4 A I don't know if it is in my notes. I don't
5 think so.

6 Q Don't you think that that was an important
7 enough matter to be worth noting, that the
8 prosecution was going to hear about a
9 recantation of a key witness in a first degree
10 murder prosecution?

11 A I assumed that would have been the course of
12 action, that would have been passed on, you
13 know, to the Crown.

14 Q So, when you said to Commission Counsel that,
15 with the benefit of hindsight, you should have
16 passed this information on, perhaps it should be
17 better said that you didn't pass it on because
18 you thought someone had already done it?

19 A Well, I guess if it was determined to be new
20 information that there was no documentation on,
21 then we should have put in a report to pass it
22 on. But it certainly was -- it was well known
23 that Mr. Zanidean made that telephone call.

24 Q But it wasn't well known that he had recanted to
25 Mr. Paul, sir. No one knew that --

1 A Other than --

2 Q -- until 2003. Mr. Driskell found that out in
3 September of 2003?

4 A And that was as a result of a report that was
5 submitted by Sergeant Paul.

6 Q No, it wasn't. It was a result of your review
7 being provided to Justice, finally, who then
8 forwarded it to Mr. Driskell and his counsel in
9 2003?

10 A Okay. I am sorry, I didn't hear your question
11 in terms of who heard it. Mr. Driskell heard it
12 first of all in 2003?

13 Q Yes, September of 2003, the first he knew that
14 Mr. Zanidean had recanted to Mr. Paul?

15 A Threatened to recant to Sergeant Paul, yes.

16 Q It took more than 12 years to get that through.
17 He sat in jail for 12 years, for more than 12
18 years, before he heard that. Does that trouble
19 you? As you sit there now, do you say to
20 yourself, that's just not right that that's what
21 happened, does it?

22 A Sir, this whole investigation is certainly
23 troubling in a lot of fronts. We made that very
24 clear when we began the review, that this
25 investigation was troubling, and that's why we

1 went to great lengths to ensure that we -- we
2 went outside of our mandate, or asked to go
3 outside of our mandate relative to this
4 investigation.

5 Q I'm in 2006 now, sir. I'm asking you, does it
6 trouble you today that it was more than 12 years
7 before Mr. Driskell found out that a key Crown
8 witness had recanted, I think I'm right in
9 saying, six days after his trial had concluded
10 in 1991? It should trouble you, don't you
11 think, sir?

12 A Well, sir, all I could say is that the Police
13 Service, we performed our role in this in
14 providing information to the Crown, and
15 regardless -- or how that information eventually
16 got into the hands of Mr. Driskell, obviously
17 there was a process that was followed and we
18 followed that process.

19 Q It strikes me, obviously, there was a process
20 that wasn't followed by virtue of the fact that
21 he didn't hear the information for more than 12
22 years. To say a process was followed seems
23 extraordinary to me. It wasn't followed. There
24 was no process. He didn't hear.

25 A Well, I am suggesting, and we have taken the

1 opinion that the Police Service followed the
2 process in terms of passing that information on.

3 Q But even you told Commission Counsel that,
4 "With the benefit of hindsight..."

5 I am reading from page 10, these are your words,
6 "...the information in Paul's report should
7 have been disclosed to the Crown."

8 So you seem to have acknowledged there that it
9 wasn't, but now you are saying you think it was?

10 A Our knowledge of that information, perhaps we
11 should have put a supplementary report in just
12 to ensure that information was there, but we did
13 have Paul's report.

14 The question in the context of my answer to
15 Mr. Code during our interview was the fact --
16 talking about the new information and whether
17 any new information that was relevant to this,
18 that was not known by anybody, should have gone
19 in as a report.

20 Q I think I'm right in putting this to you, sir,
21 and I will be corrected if I'm not, that you
22 never told Commission Counsel in your interview,
23 it certainly doesn't appear in your interview,
24 that you understood that Paul's report of 1993
25 would have gone to his inspector, who in turn

1 you understood passed it on to the Crown?

2 A I can't recall if I said it to Mr. Code or not.

3 Q It is certainly not here.

4 A This is a summary of my interview, sir.

5 Q I kind of suspect Commission Counsel might have
6 picked up on it if you had said that?

7 A I don't know. Maybe I did. I can't recall,
8 sir.

9 Q All right. The fifth item, sir, as we move
10 along the same page, bottom of 10 of Mr.
11 Anderson's interview with Commission Counsel is
12 under the heading,

13 "Gumieny's threat to Hall to say that he
14 was 'told to say what he said' at trial."
15 And I guess by the time this happened in 1993,
16 and you became a part of Gumieny's recantation,
17 I know it wasn't directly to you, but you were
18 in the thick of it, so to speak. I guess by
19 this time, sir, is it starting to cross your
20 mind that this is getting to be a bit of a
21 familiar refrain, you have got the Karas saying
22 that the police put words in their mouth, or put
23 words down on paper and got them to sign it; you
24 have got Zanidean now saying, June 20th, he did
25 the same thing, of 2001, and here we are in

1 1993 -- sorry, I said 2000, I meant to say
2 1991 -- and now here we are in 1993 and Gumieny,
3 he is sort of the last chap in the row doing
4 this. Did you get that sense, sir, at the time,
5 that everyone seems to be doing this?

6 A Well --

7 Q Everyone who matters in this case?

8 A Well, in terms of Mr. Gumieny in particular,
9 sir, I think we should put this threat to recant
10 in perspective too. This was subsequent to a
11 lengthy interview actually, on a couple of days,
12 that we had with Mr. Gumieny, and based on those
13 two days of meeting with him and speaking with
14 him, we formed the opinion that what Mr. Gumieny
15 had told police officers during the course of
16 this investigation and what he testified to was
17 the truth. And we had no reason to disbelieve
18 him. When there became an issue relative to how
19 he felt about the treatment he was receiving,
20 and the fact that there were some media reports
21 that identified him and he was concerned about
22 his own safety, he began to make some demands
23 relative to his safety. And as he was not
24 satisfied with some of the answers he was
25 getting, that's when he made the threat to go to

1 the press and say something.

2 Q He wanted more money out of you?

3 A He wanted to be moved from Ottawa --

4 Q And he wanted you guys to pay for it?

5 A He wanted somebody to pay for it -- to be moved

6 from Ottawa to a safe location. And he was

7 starting to obviously get very agitated about

8 this, and that's when he made this comment.

9 Q So in order to persuade you to move him, he was

10 prepared -- and when I say you, you understand

11 what I mean by that -- he was prepared to say

12 that his statements to the police had been made

13 up by the police; right?

14 A Well, he certainly made a threat to recant to

15 say that.

16 Q Well, he did it. He called the media, didn't

17 he? He called the Ottawa Citizen?

18 A He called the Ottawa Citizen --

19 Q Yes, he did.

20 A -- so he did it. But that was contrary to

21 everything that we had known about Mr. Gumieny

22 up to that point in time, including recent

23 interviews with him, that he stated very

24 clearly, and we had absolutely no reason to

25 disbelieve what he had told us relative to his

1 knowledge of this matter.

2 Q Did he sound like the kind of guy, sir, who
3 would make up a story for \$400, or make up a
4 story for \$20,000?

5 A Make up a story?

6 Q Yes?

7 A No, he sounded like a guy that we ended up
8 believing at the end of the day.

9 Q I understand.

10 A If I could elaborate a little bit on that,
11 because we were skeptical, just like we were
12 skeptical of Mr. Zanidean and the Kara brothers,
13 we were skeptical of Mr. Gumieny. And we
14 purposely, when we went to interview
15 Mr. Gumieny, we purposely sat down with him,
16 which was three years, two years after the
17 trial, and had him recount all of his knowledge
18 of this case prior to us allowing him to read
19 his statement. And he was extremely consistent
20 with all of that information. And in my
21 experience as an investigator, that speaks to a
22 person's truthfulness, in terms of, it is
23 certainly much easier to remember the truth than
24 it is to remember lies that you said two years
25 previous.

1 Q As I hear this, I get a sense that you are
2 playing God, sir. You have decided Gumieny is
3 truthful, so the fact that he is prepared to
4 recant because we won't pay for him to move
5 somewhere is meaningless, because I have decided
6 he is truthful. Is that how it works?

7 A No, sir, I don't play God and I wouldn't even
8 suggest that I wanted to --

9 Q You didn't disclosed this, did you? You didn't
10 disclose this.

11 THE COMMISSIONER: Ms. Carswell.

12 MS. CARSWELL: I'm rising to ask that the
13 witness be allowed to finish his answers.

14 MR. LOCKYER: The witness is doing a lot of
15 talking.

16 MS. CARSWELL: Well, he is entitled to talk in
17 answering questions.

18 THE COMMISSIONER: The objection is sustained.

19 MR. LOCKYER: Fair enough. I have let him talk
20 a lot, Mr. Commissioner, non-responsively to
21 questions.

22 THE COMMISSIONER: I'm sure if Chief Ewatski had
23 the opportunity to say, he would say you have
24 talked a lot too, so --

25 MR. LOCKYER: Fair enough.

1 BY MR. LOCKYER:

2 Q Tell me, sir, Mr. Gumieny doesn't strike me as
3 the kind of chap that a police officer would be
4 very prepared to believe. Did you go -- let me
5 ask you this, sir, one document that we have
6 obtained that, unfortunately, Mr. Brodsky didn't
7 obtain by way of disclosure, is we have
8 discovered that on May 22nd of 1991, just a week
9 and a bit before Mr. Driskell's trial commenced,
10 the Vancouver Police Department sent a fax to
11 Sergeant Osborne of the Winnipeg Police
12 Department, which outlined the circumstances
13 behind Mr. Gumieny's rape conviction. Did you
14 ever look at that document, sir? Did you ever
15 see that in the police files, because that's
16 where it came from, the Winnipeg Police files?

17 A I can't recall, sir.

18 Q You can't recall. And that document, sir,
19 reveals that the crime --

20 THE COMMISSIONER: Sorry.

21 MS. CARSWELL: I'm rising again, because the
22 document comes from Winnipeg Police Service
23 members, who provided it to their counsel, and
24 was not included in the Winnipeg Police Service
25 files, I believe. Is that not correct, Mr.

1 Libman? You pulled the document out.

2 MR. LOCKYER: Sorry, I wasn't trying to --

3 Winnipeg Police Service member --

4 MR. CODE: Could I suggest that when an
5 objection is made that counsel cede the
6 microphone to the objector and then the record
7 is properly kept?

8 THE COMMISSIONER: I second that, Mr. Code.

9 MR. LOCKYER: And I will third it.

10 BY MR. LOCKYER:

11 Q And it revealed, sir, that Mr. Gumieny's crime
12 involved a particularly nasty assault on a lady
13 who had just got off a bus and was walking down
14 the street, a complete stranger to him, did you
15 know that, sir? This is the kind of person that
16 you prepared to accept his word on a murder
17 charge. Did you know that?

18 A I can't recall.

19 Q Did you investigate his background, in other
20 words?

21 A Did I investigate his background?

22 Q Yes?

23 A I don't think we did any investigation into his
24 background, sir. We were concerned about what
25 he had told our investigators, the context of

1 the interactions with our investigators, what he
2 had testified to in trial, and what he was
3 saying two years subsequent to trial. And
4 again, the word consistency certainly is front
5 and centre in Mr. Gumieny's interactions with
6 us.

7 Q And did you follow up, sir, with what this
8 person, on whose word you have relied in a
9 homicide case in your report -- I mean, you
10 wouldn't have known this at the time that you
11 did your report -- but did you subsequently come
12 to know that he was convicted of an
13 extraordinary crime in May of 2004, another
14 sexual assault where he cross-dressed before he
15 raped a woman?

16 A I'm not aware of the details, but I'm aware that
17 he had come into conflict with the law
18 subsequent to this matter.

19 Q Put on his victim's dress and panties first,
20 sir, before he raped her?

21 A Sir, I'm not aware of details.

22 Q Right. Interestingly enough, sir, even in 2004,
23 he has his -- and I'm reading from a transcript
24 here -- that Mr. Gumieny even then is trying to
25 claim advantage from the information he had

1 provided you, I say you, the Winnipeg Police
2 Service, some 13 years earlier, or 14 years
3 earlier, where his counsel is saying to the
4 court,

5 "Mr. Gumieny is a well known individual in
6 the criminal justice system in Manitoba,
7 having testified in a particular case which
8 is now subject to some type of independent
9 review, and has remained in the facility
10 that he is in a protective environment
11 because of his circumstances."

12 And he uses that to suggest he should get a
13 shorter sentence. So Mr. Gumieny, even 14 years
14 later, is trying to take advantage of what he
15 did. Do you see that?

16 A Well, obviously, that's your conclusion to that,
17 sir.

18 THE COMMISSIONER: I'm not sure I would
19 necessarily draw that conclusion. He is simply
20 setting out his state.

21 MR. LOCKYER: No, it is a sentencing submission
22 as to why he should get a shorter sentence.

23 THE COMMISSIONER: Well, he is setting out
24 Mr. Gumieny's state.

25

1 BY MR. LOCKYER:

2 Q And the other thing is, sir, did you ever
3 investigate Mr. Gumieny's claim, and indeed
4 Mr. Zanidean's claim, that he had been seen by
5 Mr. Zanidean outside of his residence in a
6 police car? Did you ever investigate that?

7 A Investigate?

8 Q Do you remember that that's supposedly the basis
9 on which Mr. Zanidean came forward? You refer
10 to in your report?

11 A I think the extent of our, what you call
12 investigation in that matter, was to go over
13 with Mr. Gumieny the information that he had
14 supplied to the police and had testified to,
15 which again was consistent.

16 Q Well, it was except the problem was he didn't
17 come into contact with the police that day, sir,
18 until such time as Mr. Zanidean was already in
19 the presence of the police himself. You didn't
20 know that?

21 A Sir, I'm basing it on what I know from the file
22 and the way the file is written, and what
23 Mr. Gumieny provided to officers and testified
24 to in court.

25 Q I have an extract from your interview with

1 Mr. Gumieny in that regard, sir. Could that be
2 the next exhibit, sir?
3 THE CLERK: 29.
4 THE COMMISSIONER: Exhibit 29A and B.
5 (EXHIBIT 29A: Extract from interview of
6 Mr. Gumieny by Ewatski)
7 (EXHIBIT 29B: Notes of Sergeant Osborne)
8 MR. LOCKYER: Mr. Gumieny -- sir, I have given
9 you an extract from his interview, told you on
10 April 27th of 1993, that this claim that he was
11 in a police car outside of Mr. Zanidean's
12 home --
13 MR. ABRA: What page are you at?
14 MR. WOLSON: What page are you at?
15 MR. LOCKYER: It is the first page really where
16 it starts.
17 MR. WOLSON: I don't have it.
18 THE COMMISSIONER: I assume that Osborne, is
19 that the one that you are referring to first?
20 MR. LOCKYER: No, I'm not. I am referring to
21 the other document.
22 THE COMMISSIONER: So the Ewatski/Gumieny
23 interview will be 29A.
24 MR. LOCKYER: Yes, I just said that's April 27th
25 of 1993.

1 THE COMMISSIONER: Okay.

2 BY MR. LOCKYER:

3 Q And in this, he made this claim and told you
4 that on the day -- if you look at page 20, do
5 you see that?

6 A Yes, sir.

7 Q Ewatski, halfway down,

8 "The day that you pointed out Ray's house
9 and you had this chance meeting with Ray,
10 was that the same day that they took the
11 statement from you?

12 A No, I don't think so.

13 Q So that would be maybe that--

14 A We were just touring around to show all
15 the places that Jimmy Driskell had taken
16 me.

17 And I basically pointed everything out,
18 Ray's house, Perry Dean Harder's father's
19 house, his step-parent's house, and his
20 girlfriend's place on Sherbrook I think it
21 was, or up downtown area I guess."

22 All right?

23 A Sure.

24 Q And when you go to the other document that is
25 before you, sir, and that's an extract from

1 Osborne's notes, and you look at his notes for
2 9:40 p.m., 2140, you will see that that's when
3 Mr. Gumieny is showing the police all of these
4 various addresses. Do you see that, on
5 October 9th of 1990?

6 A Yes, sir.

7 Q And by that time Mr. Zanidean is more than four
8 hours into being in the presence of the police.
9 Did you ever work that one out, sir?

10 A Pardon me, what is the question?

11 Q Did you ever work that out?

12 A Did I work it out?

13 Q In other words, did you pick up on that in the
14 course of your review --

15 A In the course of the review was we reviewed --

16 Q -- that the claim doesn't make any sense.

17 A Well, we reviewed what was in the police files
18 and, obviously, what Mr. Gumieny had provided to
19 the police and what he testified to.

20 Q All right. Can I -- by the way, just carrying
21 on with Mr. Gumieny's statements to, first of
22 all, Osborne on May 18th of 1993, and then to
23 Hall on May 26 of 1993, did you pass this
24 information on to Mr. Miller, sir? I think you
25 said you did; is that right?

1 A On --

2 Q Or you did in a form that didn't really detail
3 what he had said?

4 A Inspector Hall sent a letter to Mr. Miller.

5 Q Right, yes. Did you discuss it with
6 Mr. Dangerfield, sir, in August, when you spoke
7 to him and Mr. Lawlor?

8 A I can't recall, sir. We may have.

9 Q And you certainly didn't pass it on to
10 Mr. Brodsky or Mr. Driskell; am I right?

11 A We didn't directly, no, sir.

12 Q Right. I mean, there was really no way, at
13 least that I can think of because this didn't
14 get any media, there was certainly no way that
15 you can think of, is there, that Mr. Brodsky or
16 Mr. Driskell could have found this out other
17 than through you or the Crown?

18 A It would have to be through the Crown, sir.

19 Q Yes. There is one conversation, not unlike the
20 one that Mr. Code took you through this morning,
21 sir, one of these taped phone conversations that
22 I wanted to ask you about, that relates directly
23 to your dealing with Mr. Gumieny around this
24 time. I think it is with the registrar, it is a
25 long sheeted document, Mr. Commissioner.

1 THE COMMISSIONER: Yes.

2 MR. LOCKYER: Could that perhaps be C of the
3 last exhibit.

4 THE COMMISSIONER: All right 29C.

5 MR. LOCKYER: And we have distributed this
6 document as well.

7 (EXHIBIT 29C: Taped phone conversation
8 between Hall and Potvin)

9 BY MR. LOCKYER:

10 Q And what you are going to see, it is a
11 conversation between Inspector Hall, who is -- I
12 have to ask you about it because you are the
13 closest we are going to get to Inspector Hall,
14 all right, and Mr. Potvin, who was the handler
15 of Mr. Gumieny in Ottawa from the Ottawa drug
16 squad; is that your understanding?

17 A I don't know that I would call it a handler, but
18 certainly he was in contact with Gumieny.

19 Q Gumieny was an informant for him; is that right?

20 A I'm not going to agree with that, sir.

21 Q Sorry?

22 A I'm not going to agree with that, sir. I don't
23 know what the relationship was.

24 Q Okay. We have heard it, sir, in evidence here.

25 I just want to take you through parts of

1 this. You will see, first of all at the bottom,
2 whenever the he is Mr. Gumieny, I'm just going
3 to put his name in, all right, because that's
4 really what this whole conversation is about.
5 Hall says, and this is the talk about whether
6 there is a need to move Mr. Gumieny, and Hall
7 says towards the bottom at the end of the
8 statement he says,

9 "We understand though that he..."

10 meaning Gumieny,

11 "...has gone to the Ottawa Chronical.

12 Potvin: Has he?

13 Hall: Yes. And the reason we found out
14 about that was that they must have phoned
15 one of the reporters out here at the
16 Winnipeg Free Press who phoned our people
17 and made an inquiry, and basically the
18 question was, we are not going to go
19 further with this unless there is something
20 to it, and if you can confirm this guy is
21 as goofy as we think he is, then we are not
22 going to write anything on it. And they
23 said, well, as far as we are concerned, he
24 is as goofy as you think he is, so they are
25 not even writing anything on it."

1 Is that how you understand the media story never
2 came out from the Ottawa Citizen, sir?

3 A I can't comment on this, sir. This is a
4 conversation between Inspector Hall and Potvin.
5 I don't know the context of it, and quite
6 frankly, I don't think that I have ever seen
7 this transcript.

8 Q It would be late May, early June of 1993 that
9 this conversation would have taken place, sir.
10 At the bottom of page 16, the same conversation,
11 sir?

12 A Yes.

13 Q Sorry, 16 at the top. Hall says in the last
14 quote there, on the page,
15 "Yeah he...",
16 this meaning Mr. Dangerfield,
17 "...has been talking with his boss, his
18 name is Bruce Miller. And Bruce, the last
19 time we spoke to him in person, wasn't even
20 aware of all of these little phone calls
21 going back and forth. Then when I talked,
22 when I got this call from Gumieny last
23 week, I got hold of Bruce the next, or I
24 tried to get ahold of him that day and got
25 ahold of him the next day, and he basically

1 said he was now well aware of what was
2 going on. He said Gumieny had been in
3 touch with Dangerfield, Dangerfield had
4 come in to see him in a panic, that we had
5 to move this guy because of this reason and
6 that reason, whatever Gumieny was throwing
7 to him, I have no idea. So Bruce said,
8 well, you know, just relax, we are not
9 going to move anybody until there is some
10 kind of an assessment from the RCMP coming
11 in. So Dangerfield left the office and
12 Bruce then got in touch with Tom Orr and
13 while he was on the phone with Orr,
14 Dangerfield returned to his office
15 basically after saying he had seen one of
16 the top dogs here and had made arrangements
17 for \$2,000 to be allotted for a move if it
18 was necessary."

19 Now that jibes with some of the documents that
20 we have seen at this inquiry, sir, in relation
21 to the dealings that you and other officers were
22 having with Mr. Gumieny around this time. Does
23 that make sense to you, that conversation there,
24 sir?

25 A Again, sir, I wasn't privy to this conversation.

1 And reading this, in the context I have never
2 seen this transcript before so --

3 Q Do you remember Mr. Dangerfield got involved in
4 the dealings with Mr. Gumieny, who was trying to
5 get more money from you, sir?

6 A It is my understanding, but Inspector Hall was
7 handling those aspects of it. I didn't have any
8 further contact with Mr. Gumieny relative to
9 this, his movement and those issues. Inspector
10 Hall did.

11 Q The middle of page 19, sir, Hall says, they are
12 continuing to discuss the problem, because
13 Dangerfield seems to be saying one thing, that
14 he is going to get his money and then Miller is
15 saying no, he is not. And Hall says,

16 "And that's something that I have no
17 control over, what George Dangerfield is
18 saying, and then I think his boss is
19 unhappy..."

20 That would be Miller, in the context of this
21 conversation,

22 "...with the way he is responding to it,
23 because Dangerfield is saying things
24 without confirming with Miller. And that's
25 the problem we got."

1 And then at the bottom of the page,
2 "He..."
3 this means Gumieny,
4 "...is being told something different from
5 Dangerfield.
6 Potvin: That's just it, and he..."
7 being Gumieny
8 "...is holding on to that, that version of
9 it.
10 Hall: Well, that's, and whatever he wants
11 to do with that, I have no control over
12 what Dangerfield says. Dangerfield doesn't
13 work for me or with me or anything.
14 Potvin: Yeah.
15 Hall: He's a total different entity. And
16 what Dangerfield wants to say or if he
17 wants to jump on the wagon or off the wagon
18 and change back and forth, but what we are
19 saying to Gumieny is consistent. Every
20 single time we are telling him the same
21 thing."
22 And does that sort of fit in with the dealings
23 that were going on with Gumieny, sir, in late
24 May, early June of 1993?
25 A I can't comment on that, sir.

1 Q Well, you are the nearest person that we have
2 who can, sir, that's why I'm putting it to you?

3 A Unfortunately, even though there were four of us
4 on this team and Inspector Hall and I were
5 working together as partners on this, we did
6 things separate and apart. To me it would be
7 very -- I can't comment on this conversation.

8 Q At page 22, sir, I think it is fair to say that
9 Mr. Hall had a somewhat different view of what
10 Mr. Gumieny was trying to do than you presented
11 to us. Hall says in the middle of the page,

12 "Because what Gumieny has done on the
13 stand, he has given evidence under oath.
14 We come down there and on tape he tells us
15 the whole same thing right through the
16 whole bit that he was treated fairly,
17 nobody offered him anything that, the whole
18 bit. And now he is trying to come around
19 and say he changed, and change his story.
20 He is only bringing problems on himself.

21 Potvin: Well, I think he is going to milk
22 it, to try and put mud on somebody's face.

23 Hall: You know, let's make it very clear
24 that we, and I can only speak for the
25 Winnipeg Police Service Department and not

1 the Justice Department.

2 The Winnipeg Police Department is in no way
3 trying to screw this guy, but we also have
4 got to be put in a position where we can't
5 be held ransom every time he wants a move."

6 Is that how you sense Gumieny, sir, that he was
7 trying to hold you to ransom?

8 A It was not my opinion that he was holding us to
9 ransom. Obviously he was unhappy with the
10 answers that he was getting relative to being
11 relocated.

12 Q So you wouldn't agree with Mr. Hall's assessment
13 of the situation?

14 A Well, is it an assessment or is it a
15 conversation that he has with Mr. Potvin? I
16 can't answer for Inspector Hall, sir.

17 Q Then Hall says,

18 "I firmly believe we have been very honest
19 in our dealings with him and we have made
20 it very clear to Gumieny when and if we
21 would move him. And each and every time he
22 has phoned out here, we have clarified that
23 point. And again when he doesn't like what
24 we tell him at that end, then he goes to
25 Dangerfield and he seems to hear what he

1 wants from Dangerfield. And that's just
2 the problem for everyone."

3 And then over the page Potvin says,

4 Well, he was given, I think Dangerfield
5 didn't know how to deal with him and just
6 made him a whole bunch of promises and he
7 has got stuck with that."

8 Do you have a memory of this going on, sir? I
9 am surprised you don't remember something about
10 this through hearing it through Hall, who you
11 seem to have been spending an awful of time with
12 around this period of time.

13 A Well, again, Inspector Hall was tasked with
14 dealing with this follow-up with Gumieny
15 relative to his relocation, and that was his
16 role and he was performing that role by himself.
17 We probably had conversation relative to Gumieny
18 being unhappy about the circumstances, but I
19 certainly was not privy to these telephone
20 calls, sir.

21 MR. CODE: If I can assist, I certainly am
22 content to have the conversation go in as
23 original evidence of what was said between Hall
24 and Potvin. I don't think we need Chief Ewatski
25 to comment on it to give it evidentiary value,

1 if that helps.

2 MR. LOCKYER: All right. That does help.

3 BY MR. LOCKYER:

4 Q I will make one more reference to it, sir.

5 Could you go to page 30. This is Hall again

6 talking about Gumieny. He says, a little more

7 than halfway down,

8 "Well, and that seems to me, like I get, he

9 is a nice guy to talk to and that was great

10 and all, all fine and dandy, as long as

11 Gumieny thought he was getting something

12 out of it.

13 Potvin: Of course. Aren't they all?

14 Hall: Well, that's it. Hey listen, if you

15 think Gumieny is bad, you should have seen

16 the other one. His twin in this thing. We

17 had conversations and dealings with him

18 last week out in a different place, and I

19 will tell you, if you had, if you could

20 picture the worst kind of person you have

21 ever had to deal with, and then go and deal

22 with this guy, you couldn't even come close

23 to what you thought you were going to deal

24 with.

25 Potvin: So Gumieny was an angel in

1 comparison.

2 Hall: Absolutely. An absolute angel. But
3 anyway --

4 Potvin: He get a lot of stuff, this guy
5 too. He got his house bought for and --

6 Hall: He got a lot more than he should
7 have.

8 Potvin: Yeah.

9 Hall: To be honest.

10 Potvin: A lot more that Gumieny did.

11 Hall: Yeah, there is no doubt about it,
12 but you know, it is the old story, I guess
13 the squeaky wheel gets the grease, you
14 know."

15 Was what Hall was saying there, sir, could you
16 equally have shared those sentiments about both
17 Mr. Gumieny and Mr. Zanidean?

18 A I certainly have an opinion relative to
19 Mr. Zanidean, sir.

20 Q But you wouldn't necessarily share the same
21 sentiments about Mr. Gumieny that Mr. Hall had?

22 A Again, I had no reason to disbelieve Mr. Gumieny
23 and what he provided to the police or what he
24 testified to in court. But certainly, I
25 observed that when things weren't going his way

1 relative to relocation, he certainly was trying
2 to kick up a fuss.

3 Q That's your view of it. It doesn't seem to be
4 Mr. Hall's view of it, at least in that phone
5 conversation.

6 A What do you mean? I'm sure Inspector Hall felt
7 that Mr. Gumieny was kicking up a fuss too.

8 Q Kicking up a fuss, he wanted money out of you as
9 well?

10 A We made it very clear in our report that many,
11 many people involved in this investigation,
12 including Mr. Gumieny and Mr. Zanidean, were
13 unsavory. We agreed with Mr. Brodsky's
14 description of them during trial, that they were
15 slimy, and very, very difficult to deal with and
16 work with.

17 Q You didn't put it in your report that
18 Mr. Gumieny had recanted, did you, sir?

19 A Sorry?

20 Q You didn't put in your report that Mr. Gumieny
21 had recanted?

22 A There is a notation on file that he had
23 threatened to recant.

24 Q You didn't put it in your report?

25 A We put it in to the Crown Attorney, to the

1 Crown's office.

2 Q You didn't put it in your report?

3 A That he made a threat to recant? I don't
4 believe it is in the report, no.

5 Q Or that he recanted. As we have already heard,
6 the letter that you wrote to Mr. Miller, you
7 simply said he threatened to go to the media,
8 you didn't say what he was going to say?

9 A That is the way Inspector Hall characterized
10 that, and whether he had subsequent
11 conversations with Mr. Miller about that, I
12 can't say for certain.

13 Q Item 6, sir, that Mr. Hall has listed as to the
14 new knowledge that you had obtained, it is page
15 11.

16 A Yes, sir.

17 Q "Zanidean's benefits," do you see that?

18 A Yes, sir.

19 Q Okay. And you discovered, in the course of your
20 preparation for this review, that substantial
21 sums of money had been paid to Mr. Zanidean,
22 including a \$20,000 payment in December of 1991;
23 am I right, sir?

24 A We discovered that there were a number of
25 expenses that were incurred by Manitoba Justice

1 relative to Mr. Zanidean and his involvement in
2 his protection, as well as a \$20,000 payment
3 directly to him.

4 Q Did you access all of the payments made to and
5 on behalf of Mr. Gumieny and Mr. Zanidean, do
6 you know?

7 A I don't know if we had access to all of the
8 financial records or not.

9 Q Did you try and get it? Did you go to Manitoba
10 Justice and ask for it?

11 A I --

12 Q Did you ask Mr. Miller?

13 A I can't recall. We did have conversation with
14 Mr. Miller in which he outlined the fact that
15 Manitoba Justice had given Mr. Zanidean \$20,000
16 in lieu of him becoming involved in the Witness
17 Protection Plan.

18 Q Were you surprised, sir, when you heard
19 eventually that Mr. Zanidean had received more
20 than \$20,000 -- sorry, I forgot what I said --
21 that Mr. Gumieny had received more than 20,000
22 and Mr. Zanidean more than 84,000? Did that
23 surprise you?

24 A First of all, I don't think that it is accurate
25 that he received that. Obviously, there were

1 expensed incurred.

2 Q Either paid to him or on his behalf?

3 A Well, in terms of his expenses and relative to
4 keeping him safe and moving him, I can't recall
5 the exact amounts.

6 Q All right. I asked you, when you heard those
7 figures, sir, it was the Department of Justice
8 in Ottawa that finally came up with the best
9 figures that they could, did it surprise you to
10 hear that Mr. Zanidean had cost the state
11 \$84,000, for example?

12 A I don't think that I had any reaction, so I
13 don't think surprise would be a reaction that I
14 would have.

15 Q Now, you said, sir, you said some things that I
16 want to read back to you, to Commission Counsel,
17 with respect to the disclosure or non-disclosure
18 of the benefits paid to Zanidean we are talking
19 about here. If we go to your interview, at page
20 11, sir. So tab 1 of the same document.

21 A Yes.

22 Q You said, I will read out everything -- as it
23 turns out, under item 6 as well, Zanidean's
24 benefits.

25 "Ewatski and Hall first learned of the

1 \$20,000 payment to Zanidean when they
2 interviewed Miller in May of '93. As far
3 as they knew, this was new information to
4 the Winnipeg Police Service inasmuch as
5 they had not learned about it when they
6 reviewed the police file. Documents in
7 Corporal Orr's RCMP file also indicated
8 that Zanidean's mortgage arrears had been
9 paid by Manitoba Justice, contrary to
10 Zanidean's testimony at trial."

11 So you knew in effect that, as Mr. Code pointed
12 out, that Mr. Zanidean had lied at the trial
13 under oath in this regard; correct?

14 A We certainly had concerns about his testimony in
15 that respect.

16 Q "Ewatski cannot recall whether he and
17 Hall ever raised the issue of Zanidean's
18 potential perjury regarding his past and
19 future benefits (as distinct from his
20 apparent perjury regarding the Swift
21 Current arson) during their meetings with
22 Miller and with Dangerfield and Lawlor.
23 The Crown already had this information, and
24 if the Crown was not concerned about
25 Zanidean's apparent perjury on these

1 points, it was not for him and Hall to
2 raise the matter."

3 Is that a fair summary, sir, of your position?

4 A Well, the position was that the Crown was very
5 much aware of the issues of Zanidean's benefits
6 itself, and they were very aware of what
7 Mr. Zanidean had testified to. We had
8 identified concerns with his testimony during
9 the trial. That is one of the reasons why we
10 went to see Mr. Miller, to seek some legal
11 guidance on how to approach Mr. Zanidean
12 relative to that matter itself. So we were
13 taking the issue of perjury very seriously.

14 Q From what you say there, sir, in essence what
15 you are saying is, the Crown is blocking us from
16 any responsibilities surrounding Zanidean's
17 perjury?

18 A No, sir, I'm not saying that he is blocking us.

19 Q You are saying, if the Crown wasn't concerned
20 about Zanidean's apparent perjury on these
21 points, it is not for me and Hall, for Ewatski
22 and Hall to raise the matter. That's surely not
23 an appropriate way to go about things, is it,
24 sir?

25 A But we did raise the matter, sir, we did raise

1 the matter.

2 Q I'm not sure how you raise it. I mean, did you
3 say to Miller, we really have a problem here?
4 Remember, this all came out of a claim by
5 Mr. Driskell that he is a victim of a
6 miscarriage of justice, and everywhere I turn I
7 seem to find that Mr. Zanidean has been
8 perjuring himself at his trial, and that's one
9 of the very things that he was claiming?

10 A Well, we raised the matter, and actually we
11 raised it in the report, and subsequently to the
12 report another investigator was tasked with
13 looking at the whole issue of perjury. It was
14 Detective Bell, I believe it was, who was tasked
15 with that, and conducted an investigation and
16 followed through with our concerns relative to
17 perjury.

18 Q That's in the context, sir, of the motivation
19 for the Swift Current arson?

20 A It was in the context of all of Mr. Zanidean's
21 testimony, sir.

22 Q It really wasn't.

23 A Well, sir, we raised the issue of potential
24 perjury in our report. The chief of the day
25 decided to then follow up on that concern that

1 was raised and had another investigation take
2 place relative to that matter.

3 Q Explain, if you would, sir, what you meant,
4 "If the Crown was not concerned about
5 Zanidean's apparent perjury on these
6 points, it was not for him and Hall to
7 raise the matter."

8 That struck me when I read it. It brought me to
9 an abrupt halt.

10 A I can't recall even if those were my words or if
11 it was a summary of things that I said. I would
12 have to look at the transcript.

13 MR. LOCKYER: Is this a good time to break,
14 Mr. Commissioner?

15 THE COMMISSIONER: Yes, it is. We will adjourn
16 until -- tomorrow is -- Mr. Abra, did you have
17 something?

18 MR. ABRA: Yes, just there seems to be some
19 misunderstanding, Mr. Commissioner, amongst some
20 of us as to what the hours tomorrow are. I must
21 admit that I had assumed that since tomorrow was
22 the last day that it would be the hours of 9:30
23 to 1:30, which is what we are doing the last day
24 most weeks. But apparently some of the others
25 are of the view that we are sitting all day

1 tomorrow. I'm wondering what your intentions
2 are?

3 THE COMMISSIONER: My intentions are what the
4 intention of everyone else is. Mr. Code doesn't
5 want me to say this, I don't think, he wants to
6 get up -- but I thought our arrangement would
7 apply, and our four day week would just move,
8 instead of from Monday to Thursday, from Tuesday
9 to Friday.

10 MR. ABRA: Well, that's what I wondered, at
11 least that is what I had assumed. I made other
12 appointments for tomorrow afternoon after 1:30,
13 but they can be changed if need be.

14 THE COMMISSIONER: Mr. Code, what is your
15 interpretation?

16 MR. CODE: I think it is clear that everybody
17 would like tomorrow's schedule to be the usual
18 Thursday schedule and that we sit from 9:30 to
19 1:30. The reason for there being some doubt on
20 the point is Chief Ewatski's schedule.

21 Ms. Carswell has informed me that the Chief has
22 to be out of town, I believe, next week, and is
23 flying out on the weekend. He has, I think it
24 is the Association of Chiefs of Police meetings
25 out of town. So we are going to lose him if we

1 don't finish him tomorrow. So I think --

2 THE COMMISSIONER: He is going to come back some
3 time, and we are going to come back some time,
4 and I think everybody start thinking about that,
5 that we are going to be coming back perhaps for
6 more than the few days that we have scheduled in
7 September. But I think I guess I have made a
8 commitment to the lawyers that we would have a
9 certain schedule. You know, initially I wanted
10 to go five day weeks and longer hours, and all I
11 can say is, thank goodness they didn't agree to
12 that.

13 MR. CODE: Perhaps I could check with the Chief.
14 Is your schedule as I stated, I'm not sure if I
15 have it right?

16 THE WITNESS: I'm not available after end of
17 business day tomorrow.

18 THE COMMISSIONER: Fine. We will, you know, if
19 we have to finish you off in September, we
20 will -- I don't mean that the way it sounds.

21 THE WITNESS: I was demoted already by
22 Commission Counsel.

23 THE COMMISSIONER: So, I think we should stick
24 to our schedule. And I know that Mr. Giasson is
25 not going to be very pleased with me either, but

1 I will have to face that.

2 THE WITNESS: Whenever I am required back,
3 Mr. Commissioner.

4 MR. PROBER: There are a lot of people who will
5 be pleased, though, Mr. Commissioner.

6 THE CLERK: All rise. This Commission of
7 Inquiry is now adjourned.

8 (Proceedings adjourned at 4:55 p.m.)

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CECELIA REID and LISA REID, duly appointed
Official Examiners in the Province of Manitoba,
do hereby certify the foregoing pages are a true
and correct transcript of our Stenotype notes as
taken by us at the time and place hereinbefore
stated.

Cecelia Reid

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