

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

Monday, August 14, 2006

Volume 17

INQUIRY PROCEEDINGS

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1 MONDAY, AUGUST 14, 2006

2 Upon commencing at 9:30 a.m.

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

5 THE COMMISSIONER: Good morning, Mr. Code.

6 MR. CODE: Morning, Mr. Commissioner.

7 Mr. Commissioner, we've now reach the fourth
8 group of witnesses, and I have a very, very
9 brief opening statement to make in relation to
10 this group. Mr. Dangerfield, Mr. Whitley and
11 Mr. Lawlor are the three witnesses we have
12 grouped together for this week. Obviously,
13 these three individuals are the senior Crown
14 counsel and senior Crown officials who, together
15 with Bruce Miller, were responsible for the
16 conduct of this case, so the subject matter of
17 their evidence is obviously linked.

18 I don't think at this point that there is
19 any great mystery about what the main issue is
20 in relation to this group of witnesses.
21 Clearly, what I will be focused on, the main
22 issue to emerge from their evidence will be the
23 question of whether full disclosure was made to
24 the defence of the information that was in the
25 possession and control of the Crown.

1 So with that very brief opening, if I could
2 call George Dangerfield as the first witness in
3 this group.

4 THE COMMISSIONER: Good morning,
5 Mr. Dangerfield.

6 THE CLERK: Do you wish to swear on the Bible or
7 to affirm?

8 THE WITNESS: On the Bible.

9 THE CLERK: Please take the Bible in your right
10 hand and state and spell your full name for the
11 record.

12 THE WITNESS: Jeremy George Bubb Dangerfield.

13 J-E-R-E-M-Y, G-E-O-R-G-E, B-U-B-B,
14 D-A-N-G-E-R-F-I-E-L-D.

15 JEREMY GEORGE BUBB DANGERFIELD,
16 having first been duly sworn, testifies
17 as follows:

18 MR. CODE: Mr. Commissioner, Madam Registrar
19 tells me that we've reached Exhibit 30 as the
20 appropriate number for this group of documents
21 that I've put together in three volumes. And so
22 if they could be numbered Exhibit 30A, 30B and
23 30C.

24 THE COMMISSIONER: So done.

25

1 (EXHIBIT 30A: Volume 1 of documents re
2 Dangerfield, Lawlor and Whitley)

3 (EXHIBIT 30B: Volume 2 of documents re
4 Dangerfield, Lawlor and Whitley)

5 (EXHIBIT 30C: Volume 3 of documents re
6 Dangerfield, Lawlor and Whitley)

7 MR. CODE: And I would be remiss if I did not,
8 once again express my extraordinary gratitude
9 for the work of the inquiry staff, who had very,
10 very hard work last week to get these last three
11 volumes of documents together, and I'm extremely
12 grateful for their long hours.

13 THE COMMISSIONER: I concur in that comment.

14 BY MR. CODE:

15 Q Good morning, Mr. Dangerfield.

16 A Morning, Mr. Code.

17 Q The first task we routinely have carried out
18 with each witness is to have them identify their
19 statement at the front of the book. Yours is
20 found at tab 1 of exhibit 30A. Is that the
21 statement that you gave to the inquiry at the
22 time of your preliminary interview?

23 A Yes, it is.

24 Q And did you have an opportunity to review it in
25 draft afterwards?

1 A Yes, I did.

2 Q And you're content with its accuracy?

3 A There's one minor change I might make, and that
4 is in the description of Mr. Kee's duties. He
5 actually didn't prosecute, he was more or less
6 an administrator of related departments
7 connected to the Attorney General's Department.

8 Q And that's Les Kee, who is referred to at page 2
9 of the statement?

10 A Yes.

11 Q One of the triumvirate of directors who reported
12 to Mr. Whitley?

13 A Yes.

14 Q So he was essentially an administrative
15 official?

16 A Yes.

17 Q Aside from that point, you're content with the
18 accuracy of the statement?

19 A Yes.

20 Q All right. I won't cover everything in your
21 statement, in light of that evidence you've just
22 given. And, for example, your background is set
23 out in the first couple of pages, if I could
24 just highlight a couple of points.

25 By the time you conducted the Driskell

1 trial in June of 1991, you had been a member of
2 the bar in Manitoba for over 25 years?

3 A Yes.

4 THE COMMISSIONER: Mr. Dangerfield, I wonder if
5 you might just move the microphone a little
6 closer to you?

7 THE WITNESS: Certainly. Sorry.

8 THE COMMISSIONER: Thank you.

9 THE WITNESS: Yes.

10 BY MR. CODE:

11 Q You had been Crown counsel doing major criminal
12 prosecutions for over 20 years?

13 A Around 20, yes.

14 Q And by 1991, you held the rank of general
15 counsel?

16 A Yes, I did.

17 Q And that position is the most senior
18 non-management position in the Crown attorney
19 system in this province?

20 A Yes, it is.

21 Q In other words, you were a very senior,
22 experienced criminal prosecutor by the time of
23 the Driskell trial in 1991?

24 A Yes, sir.

25 Q And your office arrangements are also set out on

1 page 2. And, in essence, you were on, you and
2 your colleagues, Mr. Whitley and Mr. Miller and
3 Mr. Lawlor, were all situated on the fifth floor
4 of the Woodsworth Building?

5 A As I recall, yes. I was between Miller and
6 Mr. Whitley, and Mr. Whitley's assistant. I
7 think she's named Cec.

8 Q In other words, the three offices of yourself
9 and Miller and Whitley were all adjacent?

10 A Yes, pretty well.

11 Q And Lawlor's office was nearby?

12 A I believe so, yes. I can't tell you where
13 exactly.

14 Q And he was your co-counsel on this case?

15 A Yes.

16 Q I hesitate to call him junior counsel because,
17 in fact, he also held the rank of general
18 counsel; is that correct?

19 A That's correct.

20 Q And there were only four general counsel in the
21 whole department?

22 A Yes, that's true.

23 Q And this position was created for very senior
24 prosecutors who didn't want to go into
25 management, essentially?

1 A Yes, I believe that's the case.

2 Q So the department, in essence, had assigned two
3 of its four most senior prosecutors to conduct
4 this case?

5 A Yes, sir.

6 Q And you and Mr. Lawlor had worked together on
7 previous cases?

8 A Yes, we had.

9 Q And you worked well together? You got along
10 well?

11 A Yes.

12 Q Now, the question of reporting relationships is
13 dealt with at pages 2 to 3 of your statement.
14 Again, if I could just quickly highlight a
15 couple of points and lead you through this,
16 Mr. Dangerfield, I think it's fully set out
17 there.

18 Amongst the four general counsel, you had
19 been given the title of senior general counsel;
20 is that correct?

21 A Yes. It was a courtesy title, because to make
22 me senior general counsel would have taken me
23 out of the rank and file of the association, and
24 the association didn't agree.

25 Q So it wasn't a formally recognized title --

1 A No.

2 Q -- within the bargaining unit. But Mr. Whitley,
3 nevertheless, had given you that title?

4 A And I used it from time to time, yes.

5 Q And in that position, you were given some
6 managerial responsibility over the group of four
7 general counsel?

8 A That's right. I had to prepare status reports
9 and that sort of thing. It wasn't very much.

10 Q And you reported to Mr. Whitley in theory and on
11 paper at least; is that correct?

12 A That's what it was. Now, I said in my statement
13 I was told to report to Miller. I believe that
14 was for the trial only, but nevertheless, I
15 didn't see much of Whitley, in any event.

16 Q I'll come to the practice in a moment.

17 A In theory you're right, yeah.

18 Q But if we looked at the organization chart for
19 the department, you would be reporting directly
20 to Whitley?

21 A Yes.

22 Q And Mr. Miller and the other two directors,
23 Mr. Watson and Mr. Kee, also reported directly
24 to Whitley?

25 A That's true.

- 1 Q So the four of you were all in a reporting line
2 with Whitley?
- 3 A Yes.
- 4 Q And Miller was the Director of Prosecutions for
5 Winnipeg?
- 6 A That's right.
- 7 Q And so with the Driskell case being a Winnipeg
8 case, we, in essence, had two senior Crown
9 officials, yourself and Mr. Miller, responsible
10 for the case and both of you reporting directly
11 to Whitley?
- 12 A Yes.
- 13 Q You were senior to Mr. Miller; is that correct?
- 14 A Yes, I was.
- 15 Q And as you've just adverted to and as set out in
16 your statement, because Mr. Miller -- sorry,
17 because Mr. Whitley was busy as an ADM with
18 various policy and management responsibilities,
19 he would ask you to report to Mr. Miller on
20 certain matters?
- 21 A That's right.
- 22 Q And you believe that this particular case was
23 one of the matters he had asked you to report to
24 Miller on?
- 25 A Yes.

1 Q So you had, in essence, a dual reporting
2 relationship. On some matters you reported to
3 Miller, on some matters you reported to Whitley?

4 A As a matter of convenience, I think that's
5 right, yes.

6 Q But most importantly here, and you acknowledge
7 this at the top of page 3 of your statement, I
8 take it you agree that you were an extremely
9 independent prosecutor, and neither of these
10 managers, Mr. Miller or Mr. Whitley, were the
11 kind of managers who interfered with, or dabbled
12 in, or oversaw your prosecutorial decisions?

13 A Yes. That's in connection with the prosecution
14 of an individual case, Mr. Code. I couldn't do
15 just exactly as I pleased, but I could run a
16 case the way I saw fit.

17 Q And I take it that would include disclosure
18 decisions?

19 A Absolutely.

20 Q Disclosure decisions were the responsibility of
21 the prosecutor in charge of the case?

22 A Yes.

23 Q And were Miller or Whitley the kind of managers
24 who would oversee and second-guess your
25 disclosure decisions?

- 1 A No. Mr. Whitley, from time to time, wrote
2 memoranda updating us on the procedures in other
3 provinces so we could adjust our disclosure
4 procedures to be as modern as we could make
5 them.
- 6 Q Disclosure was a hot policy issue in Attorney
7 General's departments in around this time
8 because the Marshall inquiry report had just
9 come down in 1989; is that correct?
- 10 A Yes.
- 11 Q And it had recommended a statutorily legislated
12 disclosure scheme?
- 13 A Yes.
- 14 Q And that was currently on the plate of the
15 Federal Department of Justice?
- 16 A I believe so.
- 17 Q And Mr. Whitley would obviously have been
18 engaged in that policy exercise surrounding
19 whether the Marshall recommendations should be
20 legislated into the Criminal Code?
- 21 A Yes.
- 22 Q So he would send you memos from time to time
23 about that?
- 24 A They were generally sent to the prosecutors.
- 25 Q But that policy exercise, that was going on?

1 A Yes.

2 Q All right. Now, I want to turn to this whole
3 issue of pre-Stinchcombe disclosure practices.
4 And, again, there is a helpful discussion in
5 your statement, Mr. Dangerfield, at pages 4 to
6 5, so I'll simply highlight this again with you.
7 If you could first tell us what it was that the
8 Crown got from the police, and then we will turn
9 to what the Crown gave to the defence in this
10 era shortly before Stinchcombe.

11 What was it that routinely, in all cases,
12 you would receive from the police?

13 A We would receive a copy of the information. We
14 would receive a copy of the file -- what we call
15 the pinks, it was pink in colour, I think it was
16 the third copy of four.

17 Q That's a copy of the police report, I believe?

18 A The police report, yes.

19 Q The supp reports, as they are sometimes called?

20 A This report was made up from the notes of the
21 investigating officers, and would take the form
22 of the initial team writing their investigation
23 down and reporting. A second team would come in
24 and usually repeat part of what the first team
25 had done, and then contribute their bit. So you

1 had this constant sense of repetition through
2 the thing. That and statements of witnesses, if
3 they had taken any, any physical evidence that
4 was available in the form of documents such as
5 blood samples, that sort of thing. Anything
6 that was available would come through this
7 reporting system, that's what we got.

8 Q Now, what about police notebooks?

9 A I don't think they were routinely sent to us,
10 no. I didn't get them.

11 Q Could you request police notebooks?

12 A Yes.

13 Q And we see that in this file --

14 A Yes.

15 Q -- that from time to time a specific officer's
16 notebook would be requested and it would be
17 produced, I take it?

18 A I didn't usually ask for the notebooks, because
19 the pinks were the notes expanded, so I just
20 relied on them.

21 Q We have heard, for example, from Chief Ewatski
22 just last week that the pinks were intended to
23 be a more detailed version of the notes prepared
24 at a time when the officer could flesh out all
25 of the details that might not be in the notes.

1 Was that your experience?

2 A Yes.

3 Q All right. So if that's what you got routinely
4 from the police, what did you routinely give to
5 the defence?

6 A Well, we gave them the statements of the
7 accused, of course, the informations that we
8 had. I think by this time I was letting them
9 see the statements of the witnesses. There was
10 really no guidelines because Stinchcombe hadn't
11 been formalized, but as much as I could give
12 them, I gave them, and especially in a case
13 where there was no inquiry.

14 Q We will come to the direct indictment situation.
15 I am just trying to get a picture of the
16 disclosure situation. I appreciate the direct
17 indictment is somewhat different.

18 A Besides that there would be any photographs
19 given, any physical evidence that was reduced to
20 document form would go.

21 Q What about the police reports? You told us you
22 would give the defence statements. What about
23 the report itself?

24 A The report itself, no, because there was this
25 theory that dates way back to when I first

1 started as a prosecutor, that the police
2 actually had a proprietary interest in the
3 report, and we couldn't give it without their
4 permission, and that seemed to hang around for a
5 long time.

6 Q Would you read the report to them?

7 A Sometimes I would, sometimes -- and Mr. Brodsky
8 I think would remember -- I would open the
9 report for them so they could read it for
10 themselves.

11 Q So you would let them read it or you would read
12 it to them, but you wouldn't physically give
13 them a copy of it?

14 A No.

15 Q All right. And a third area I want to just get
16 your general views on, before we turn to the
17 specifics of the direct indictment, what was the
18 practice when officers were called to testify,
19 especially in terms of their notes?

20 A I'm sorry, the practice?

21 Q Yes. In relation to -- you've told us that you
22 didn't routinely get the notes, but you could
23 ask for them. And what I would like to you
24 address now is when an officer was called to
25 testify, what was the practice with respect to

1 their notes?

2 A You mean did I obtain a copy and give them to
3 the other side?

4 Q Generally tell me what the --

5 A No.

6 Q -- arrangement was with notes when an officer
7 was actually testifying?

8 A By that time the officers were bringing their
9 notes into court and would, if asked, produce
10 them to the defendant and be cross-examined on
11 them.

12 Q While testifying in the hearing?

13 A While testifying. Prior to that, if the officer
14 went into court and didn't use his notes, then
15 there was no way to compel him to bring them
16 out. So we would step past that anachronism,
17 and they would carry the notes into court with
18 them and were very easy with them themselves. I
19 didn't ask for copies and I didn't forward them
20 on at that time, no.

21 Q So the notes would be producible when the
22 officer testified is what you are saying?

23 A Yes.

24 Q Regardless of whether they used them to refresh
25 their memory?

1 A That's right.

2 Q And in terms of the preparation of the witness
3 prior to testifying, would you request their
4 notes prior to calling them?

5 A No.

6 Q And would they produce their notes voluntarily,
7 prior to testifying, without being asked?

8 A I don't recall them doing that, no. I often
9 didn't speak to them. I had their evidence in
10 my head anyway.

11 Q And you said that was from reading the police
12 reports?

13 A Yes.

14 THE COMMISSIONER: When you say, when they are
15 in the stand and they would produce their
16 reports, Mr. Brodsky had described that, I think
17 colloquially, as looking over their shoulder. I
18 realize because of the physical location, you
19 wouldn't be looking over their shoulder.

20 THE WITNESS: Yes.

21 THE COMMISSIONER: But was that --

22 THE WITNESS: That's right. You would stand in
23 front of the witness and scan the notes in
24 court.

25 THE COMMISSIONER: Right.

1 THE WITNESS: And if it was a detailed thing, or
2 difficult, there would be an adjournment and he
3 could look at it by himself.

4 THE COMMISSIONER: This is a trite and trivial
5 question, but was that at a time, when they
6 scanned them, did the police officer still hold
7 them or did the officer physically turn them
8 over to the --

9 THE WITNESS: Sometimes they held them, because
10 the notes were continuous. Some officers would
11 write at the top of the page, date and shift
12 number and car they were riding in, and that
13 would direct the examiner to the note. Some
14 just kept on going. So they would pin the notes
15 together to identify them for themselves and
16 hold the book so the counsel could see what they
17 were doing. In other words, it just depended on
18 the situation how they managed that.

19 BY MR. CODE:

20 Q If we could use a real example here,
21 Mr. Dangerfield, to try to give some concrete
22 life to this point, Sergeant Paul testified as
23 the last Crown witness that you called before
24 closing your case. Do you recall that?

25 A No.

1 Q He testified on a very minor point relating to
2 the distance from the Driskell family home to
3 the grave site. He had walked up the street, up
4 a hill, and then along the railway tracks, and
5 he measured the distance and testified as to how
6 long it could take and whether you could drive a
7 car along the railway tracks. It was a very
8 brief piece of evidence that you closed the case
9 with.

10 A I remember that. There was some dispute about
11 the distance, I think, so I called him.

12 Q And it appears that his notes were photocopied
13 at some point late in May, shortly before he
14 took the stand, and sent into the Crown. We
15 find a copy of his notes completed up to about
16 May 17th, so they obviously were produced late
17 in the pre-trial period. We find a copy of his
18 notes in the Crown file that it appears that he
19 produced. Do you have any recollection of that?

20 A No, I don't.

21 Q And would you have prepared Sergeant Paul, would
22 you have had him in for a session prior to
23 testifying, and review his notes with him?

24 A It was late in the day. I imagine his evidence
25 was very short. I would speak to him and look

1 at his note, and then just ask him the questions
2 I needed to. There wouldn't be any formal
3 meeting, I don't believe. If I have this right,
4 it was a very late in the day thing, some
5 dispute had come up.

6 Q He was your last witness.

7 A Yeah.

8 Q And he testifies on a very minor point --

9 A Yes.

10 Q -- that I don't think is barely even mentioned
11 in his notes. His notes are about
12 three-quarters of an inch thick and they deal
13 primarily with Zanidean. He was one of
14 Zanidean's handlers. So there is a great deal
15 of material in those notes that doesn't touch on
16 the matters he was testifying to.

17 So my question to you is, would you have
18 reviewed those notes prior to his testimony?

19 A I wouldn't think so. We just talked briefly
20 about what I wanted from him and put him in the
21 box.

22 Q All right. And we see that there is no
23 suggestion that he has refreshed his memory from
24 his notes and Mr. Brodsky doesn't seek access to
25 his notes?

1 A It was a very minor point. I don't know why
2 Mr. Brodsky didn't ask for his notes. He just
3 didn't.

4 Q You are saying, as you understood the practice,
5 Mr. Brodsky could have stopped the court
6 proceedings at that point, brought an
7 application for access to the notes, and stood
8 the case down while he read three-quarters of an
9 inch of notes?

10 A Well, I think that if he wanted to examine the
11 notes and saw the size of them, he could ask for
12 time to examine them. I don't know how formal
13 the request would need to be.

14 Q When you were preparing Sergeant Paul, this
15 brief mention or meeting that you had with him,
16 would you have prepared him in relation to
17 issues relevant to Zanidean?

18 A No. I was wanting to know the information of
19 the distance to the grave, that's all.

20 Q All right. Then the last area of disclosure
21 practices I wanted to ask you about, in general
22 terms, before coming to this specific case, is
23 the direct indictment cases. Was there a
24 particular practice relevant to direct
25 indictment cases?

1 A My practice was to be much more open when we had
2 no direct indictment, because the defendant had
3 no opportunity to see the witnesses he was going
4 to face, so they would get statements and
5 anything I could provide to them.

6 Q Again, this is dealt with at page 5 of your
7 statement, and the assertion you make there in
8 the middle of page 5 is that in direct
9 indictment cases, you would produce the police
10 reports?

11 A Yes. I also in this case produced a trial brief
12 that I sent to the judge and to Mr. Brodsky to
13 alert them to the points I was going to make.

14 Q And that's because the judge wouldn't have a
15 preliminary inquiry transcript?

16 A That's right.

17 Q And that trial brief would contain an outline of
18 the case you intended to call?

19 A I believe it did. I've never seen it since I've
20 prepared it. There is no copy extant, as far as
21 I know.

22 Q And it also contains some legal issues, as I
23 recall?

24 A Cases I would rely on. There was one particular
25 area that we were interested in, and that was

1 the exception to the hearsay rule on intention.
2 And we had all of the cases, the American case,
3 the Australian cases. And it didn't look very
4 good for us, but we put up a show of an argument
5 and it went -- they were refused and we didn't
6 lead that evidence.

7 Q Now, the other point that you make about direct
8 indictment cases in the middle of page 5 is that
9 not only did you get the police reports in these
10 cases, but you could ask for additional material
11 and it would be provided; is that correct?

12 A That was true on any of the cases. If I thought
13 there was something needed to be done, I could
14 ask for it and it would have come in the form of
15 a special.

16 Q So that wasn't anything particular to the direct
17 indictment?

18 A No.

19 Q In a normal case with a preliminary inquiry, you
20 could request additional disclosure? You're
21 nodding your head.

22 A I could request additional facts if I thought I
23 needed them, if I realized there was something
24 missing or whatever, I could get them and they
25 would appear in the form of a special.

1 Q In the form of a?

2 A A special report.

3 Q From the police?

4 A From the police officer to his superior and I
5 would get a copy, also pink.

6 Q All right. I would like to turn to the subject
7 of witness protection.

8 A Yes.

9 Q And again ask you a number of general questions
10 in this area. And here we will begin to become
11 more specific to this case.

12 In the Driskell case it was obvious that
13 there were witness protection issues from the
14 start; is that fair?

15 A Yes.

16 Q And this was due to the Crown's theory of motive
17 for the homicide?

18 A Exactly.

19 Q And it was also due to certain witnesses
20 expressing fears early on in the investigation?

21 A That's true.

22 Q So can you tell us, generally, how did the
23 department handle witness protection matters?
24 Who took responsibility for them?

25 A Well, in ordinary cases where you had a witness

1 who felt himself in danger prior to testifying,
2 we could arrange with the police to have that
3 witness either put in a safe house under
4 surveillance or moved to another town. There
5 was a case earlier on against a man named
6 Neuman, where the witness was moved to Brandon.
7 His name was not changed, he was just housed
8 there for a period of time. That would all be
9 arranged so that we could pay the police back
10 for the monies they had expend on their behalf.

11 Q And you say that was done fairly commonly or
12 much more easily?

13 A Well, whenever it was necessary. It wasn't
14 common, but whenever it was necessary we would
15 do it that way. It didn't involve a change of
16 name. The most recent one I was involved in was
17 the two, Sanderson/Sanderson murder trial in
18 '98, I think it was, where we actually took two
19 witness and put them in other provinces for a
20 period of time, but again no change of name.
21 But the difference of this one was that it is
22 was a federally run program of witness
23 protection, and I didn't know what they could or
24 what they would do to protect these witnesses.
25 It involved changes of names and all sorts of

1 things.

2 Q So let's deal with the first situation where you
3 are just hiding a witness out locally somewhere
4 in the province pending the trial. Who would
5 look after that?

6 A The Winnipeg Police would do that. And they
7 would be compensated by the province when they
8 submitted bills.

9 Q And which Crown official would be responsible
10 for looking after those local interim
11 arrangements? Would the prosecutor handle that
12 or would it have to go to a director?

13 A I would get the information, or the prosecutor
14 would get the information. I think the
15 department accountant looked at it, and if it
16 was a very large sum of money, it would go
17 beyond him to treasury council. I really don't
18 remember because I had -- other than organizing
19 the retention of a witness inside a safe place,
20 I didn't deal much with the paying of them.

21 Q No. I appreciate you don't control the purse
22 strings, but I am just trying to get a sense
23 of -- my reading of your statement is those kind
24 of local interim measures were something that
25 you would have had more involvement in?

1 A I would have, yes, absolutely, yes.

2 Q Whereas the national program, when you wanted to
3 move somebody out of province and get a name
4 change, that was the kind of matter where,
5 again, as I read your statement, the director
6 would become more involved?

7 A Yes. That was the only one I ever did in my
8 career.

9 Q What was the only one?

10 A This particular Witness Protection Program was
11 the only one I ever did.

12 Q Driskell?

13 A Driskell. I had no knowledge of what this was
14 capable of or what this would entail or
15 anything.

16 Q And your understanding was that this was going
17 to involve the RCMP program. How did that
18 understanding come about?

19 A Either through Mr. Miller or Mr. Whitley, when
20 they told Mr. Lawlor and myself, we would not be
21 involved in the negotiations at any level, and
22 that this was a matter being handled by the
23 RCMP. And Mr. Miller was the liaison between
24 them and the government. And all we were to
25 know was that the monies expended would be used

1 to support these men in these programs for a
2 period of time.

3 Q Right. So at some point, as I understand your
4 answer, you have a meeting with Miller and
5 Whitley?

6 A I can't really recall, but my sense is that that
7 information came from both of them.

8 Q And was it through a meeting or was it through a
9 memo or through a phone call? How did it --

10 A Probably a meeting, a very casual one, but
11 probably a meeting.

12 Q And the instructions again that you received at
13 that meeting were?

14 A That we were not to be involved in any
15 negotiations, that we were told that the monies
16 were being used to support these men in a
17 program for a limited period of time, and that
18 we were to tell the judge and Mr. Brodsky, and
19 we were not to know anything more.

20 Q And you understood that the program was to be
21 the RCMP program?

22 A They were running it. They had access to the
23 records they would need to alter if they were
24 going to change names. I really didn't know
25 what they did. I mean, they would have to do

1 quite a bit if they were going to apply for jobs
2 or driver's licences in other provinces, I
3 suppose. I didn't look into it, I wasn't
4 concerned. I was more concerned with
5 prosecuting the case.

6 Q Now, these instructions that you received are
7 discussed in your statement at pages 6 to 7.
8 And as I read that statement, if you look, for
9 example, at the top of page 7?

10 A Yes.

11 Q The understanding that came out of the meeting,
12 this is about four or five lines down the top of
13 page 7, you say,

14 "He didn't know where they were before
15 trial and knew only there was an
16 arrangement to look after them afterwards."

17 Is that accurate?

18 A Yeah. Yes.

19 Q So, in other words, you knew there was going to
20 be something done for them pending trial and
21 something done for them after trial?

22 A Yes.

23 Q And, again, you go on to discuss this further at
24 page 8 when you are talking about the direct
25 indictment. If you look at the bottom of page

1 8, you make some submissions on this matter when
2 you are dealing with the direct indictment. You
3 see the last line at the bottom of page 8,

4 "He also knew in general terms that the
5 plan was for there to be a transition from
6 local protection arrangements to a national
7 long-term arrangement after the trial."

8 A That's right.

9 Q And finally on this point, do I understand your
10 evidence to be that the transition from these
11 local arrangements to the long-term national
12 arrangements is the essential reason why the
13 matter was eventually taken out of yours and
14 Lawlor's hands and put into Miller's hands?

15 A I think the reasons given were, first, that we
16 shouldn't be negotiating with these men if we
17 were going to use them as witnesses. It would
18 be difficult to maintain objectivity, and also
19 we could also become witnesses in our own case
20 if something was misstated or whatever. And the
21 other thing was that they were concerned about
22 secrecy, and the less we knew about their
23 whereabouts, the better it would be.

24 Q I wasn't asking about the rationale --

25 A Oh, sorry.

1 Q -- I am going to come to that in a minute. I am
2 still trying to make sure I understand who is
3 responsible for what.

4 If you look at page 9 of your statement,
5 you see at the bottom of page 8 you talk about
6 this transition from the local protection
7 arrangements to the national long-term
8 arrangements. And then over at page 9, the last
9 three lines or so of this section there, in the
10 middle of page 9 you say,

11 "The pre-trial protective measures that
12 were taken in this case were something they
13 did all the time and were no big deal."

14 That's the local arrangements, I take it?

15 A Yes.

16 Q "the major issue Miller dealt with was the
17 post-trial protective measures that
18 involved the RCMP."

19 A Yes.

20 Q "At the early stages when what was being
21 arranged was merely local protection,
22 Miller may not have been involved."

23 A That's true.

24 Q So the initial part of the protection
25 arrangements, where interim safehouses were

1 being set up for Zanidean, for example --

2 A Yes.

3 Q -- was something that you and Lawlor could have

4 more of a direct hand in, according to the

5 established practice?

6 A Yes. But as a matter of fact, we didn't. I

7 didn't.

8 Q And if we look to illustrate the point at tab

9 10, you see tab 10 is the memo dealing with

10 securing the monies from the financial director,

11 Mr. Arnason, to pay for the safehouse for

12 Zanidean?

13 A Yes.

14 Q \$1,300 is requested to move him to a secure

15 house?

16 A That memorandum would have been sent by this

17 Louise Beaudette who was an administrative

18 officer assisting Miller.

19 Q Yes. If you just follow me through here,

20 Mr. Dangerfield --

21 A Yes.

22 Q -- you see the monies are broken down as the

23 monthly rent, damage deposit and the moving

24 expenses?

25 A Yes.

1 Q Totalling \$1,300?

2 A Yes.

3 Q And you see Mr. Whitley and Mr. Lawlor get
4 copied on the memo, as well as the Deputy,
5 Mr. Garson?

6 A Yes.

7 Q And then if you look at the accounting sheet,
8 the spreadsheet that's attached, the memo is
9 dated November 26th. And the very next day,
10 November 27th, according to the spreadsheet,
11 it's Mr. Lawlor who gives the cheque for \$1,300
12 to Sergeant Paul. Do you see that,

13 "Received from Gregg Lawlor \$1300"?

14 A Yes.

15 Q At the top of the accounting spreadsheet?

16 A Yes.

17 Q And for the next couple of months, there is a
18 December 19th cheque received from Mr. Lawlor
19 for \$853. And in January, January 29th,
20 Mr. Lawlor gives Paul a \$1,000 cheque. And then
21 finally, the last one that comes from Mr. Lawlor
22 is February 21st, there is a \$1,000 cheque from
23 Mr. Lawlor.

24 A I'm not sure when I began looking at this case,
25 I might not have been involved in November of

1 1990.

2 Q You were clearly involved. You write the direct
3 indictment memo in November.

4 A Oh, I did?

5 Q Yes. You're involved from mid-November.

6 A Okay.

7 Q I will come to that in a minute, but what I'm
8 trying to get at here --

9 A Yes.

10 Q -- is the documentary record appears to show the
11 prosecutors, the line prosecutors responsible
12 for the case, handling these early local --

13 A Yes.

14 Q -- witness protection matters?

15 A Yes.

16 Q Which is consistent with what you've told us in
17 your interview as set out at page 9 in the
18 passage I just read to you; is that correct?

19 A Yes.

20 Q And we see Mr. Lawlor's continuing involvement,
21 for example, at tab 12, he asks for another
22 cheque, the \$853 cheque, Mr. Whitley asks for it
23 from Arnason for Zanidean and, again, Lawlor is
24 copied on it. And, again, back at tab 10, we
25 see him producing the cheque to Sergeant Paul?

1 A Yes.

2 Q And then, finally, his last involvement in these
3 early protection issues that I can find is at
4 tab 16, another one of these memos to Arnason,
5 this one from Miller, \$400 cheque for Gumieny.
6 And you see the attached note from Lawlor, the
7 original request for this money seems to have
8 come in to Lawlor. That handwritten note at tab
9 16 is in Lawlor's handwriting; is that correct?

10 A I suppose so, yes.

11 Q He has identified it as his.

12 A Okay.

13 Q And you see a call coming in about Gumieny
14 needing money urgently, may lose him as a
15 witness, thinking about getting a lawyer, need
16 \$400?

17 A Yes.

18 Q And then Miller sends the memo to Arnason at tab
19 16.

20 So coming back to your tab 1 statement at
21 page 9, this kind of involvement by Lawlor, your
22 co-counsel, is not inconsistent with what you're
23 telling us about Miller ultimately taking over
24 the matter?

25 A No, it isn't.

1 Q Because this was simply the early interim local
2 arrangements, and Miller was more responsible
3 for the long-term transition to the post-trial
4 measures; is that correct?

5 A Yes.

6 Q Now, coming back then to the question of the
7 rationale for this decision that is passed down
8 to you by Miller and Whitley, you've said that
9 the idea was not to compromise you as a
10 prosecutor by implicating you in the deal. Did
11 I understand that rightly?

12 A That was one of the reasons, yes.

13 Q That you might be embarrassed, if the deal
14 turned out to be not a good one, you would have
15 more independence in front of the jury; was that
16 the idea?

17 A Or he would -- just that it would make it
18 difficult to deal with him as a witness and also
19 bargain with him.

20 Q You could keep more independence from the
21 witness?

22 A Yes, more objectivity, yeah.

23 Q And you also mentioned that it would also
24 protect you from becoming a witness?

25 A Yes.

1 Q So that if the matters being bargained over
2 became the subject of evidence, you wouldn't be
3 implicated as a witness?

4 A That's correct.

5 Q Now, that rationale, which frankly makes some
6 good sense to me at least, did that rationale in
7 any way involve keeping the prosecutor in the
8 dark about any agreement that was being
9 requested by the witness or ultimately reached
10 with the witness?

11 A I think the agreement was struck not to tell us
12 about the negotiations, because they were
13 monetary negotiations, and it was felt that if
14 we knew too much about the details, a trace
15 could be run. For example, if we produced a
16 bill of moving expenses, it would be pretty easy
17 to trace where that would take the protected
18 witness. I don't know about other deals. I
19 don't know whether they were bargaining on other
20 levels for other things, so I just didn't --
21 that just didn't cross my mind.

22 Q What I'm trying to understand here,
23 Mr. Dangerfield, is that you've told us sort of
24 a two-part rationale. Number 1, to not involve
25 you in the negotiations in order to keep you

1 independent?

2 A Um-hum.

3 Q And, secondly, to not turn you into a witness?

4 A Yes.

5 Q And my question is, do either of those
6 rationales require you to be ignorant?

7 A Of the details of the negotiation?

8 Q Of what Zanidean is demanding and of what is
9 ultimately agreed to, do either of those
10 rationales require you to be kept in the dark?

11 A No, they didn't. But, in actual fact, I got
12 these instructions from either Miller or Whitley
13 or both, and they were colleagues and friends, I
14 trusted them. I didn't question their
15 instructions. I didn't go into them in any
16 detail. I was not to know these details and
17 that was the end of it. I assumed they were all
18 monetary.

19 Q So although the rationales you've described as a
20 matter of logic don't require keeping you in the
21 dark --

22 A No.

23 Q -- you were simply following their orders?

24 A Yes.

25 Q And the orders, as are set out at page 6 of your

1 statement, is that you weren't to be told the
2 details?

3 A That's right.

4 Q But you were to understand the general
5 parameters of the negotiations?

6 A Well, I was told that the monies expended were
7 solely for the support of these men. That
8 excluded any reward for evidence, as far as I
9 was concerned. And I didn't think about
10 anything else, like charges being dropped,
11 because I didn't know that they existed.

12 Q Well, you are also told that there is short-term
13 arrangements and there is long-term
14 arrangements?

15 A That's right.

16 Q And there is going to be a transition --

17 A Yes.

18 Q -- as set out at pages 7 to 8 that we have been
19 through?

20 A Yes.

21 Q So you are told the general outlines of the
22 matter being negotiated, but not the details?

23 A That's right.

24 Q As a prosecutor calling a key witness in a
25 difficult case like this, would you want to

1 know --

2 A Absolutely.

3 Q -- what your witness is demanding?

4 A I would want to know all of the terms
5 surrounding his giving evidence, all of them.
6 That is demands for reduction in sentence to
7 pleas of guilty, or reduced pleas of guilty, or
8 stays of proceedings, or monies being paid for
9 reward.

10 Q And the reason you would want to know what he is
11 demanding and what he is being given is because
12 it's relevant to his credibility?

13 A Absolutely.

14 Q And because it could come out at trial and take
15 you by surprise?

16 A Yes. And I routinely insisted that when we use
17 witnesses of this kind that those matters were
18 dealt with before we put him in the box, so
19 there was no backlash of giving his evidence to
20 get a better deal type of question. That was
21 all dealt with.

22 Q So when they said that they didn't want you
23 negotiating the deal, which is the way you've
24 described it at the top of page 7, did you not
25 say to them, well, that makes sense, I don't

1 want to be doing the negotiating, but I want to
2 know the facts?

3 A Well, that was where the second arm of it came
4 in. They wanted to maintain this secrecy, I
5 suppose is the word, about the whereabouts, or
6 they didn't want me to know information that
7 might leak this out and give it to the other
8 side, so they just said, well, no, we will just
9 tell you this much and that's all you are to
10 know.

11 Q You didn't challenge that, even you have told us
12 it is something that you would like to know?

13 A Yes. I accepted their explanations, because as
14 I said before, they were friends and colleagues.
15 I had no reason to distrust them.

16 Q All right. The first document involving you,
17 and this is how we can date the time of your
18 involvement, Mr. Dangerfield, is at tab 6 and
19 that's the direct indictment. So I would like
20 to turn to the subject of the direct indictment,
21 please?

22 A Yes.

23 Q Your memo to Mr. Lawlor, which is originally a
24 handwritten memo, and then this is the typed up
25 version of it, is dated November 19th --

1 A Yes.

2 Q -- at tab 6; is that correct?

3 A Yes.

4 Q And we know that that is less than a month after
5 Driskell's charge. He is charged on
6 October 22nd?

7 A Right.

8 Q And within less than a month, you're reviewing
9 the file and preparing a memo to Mr. Lawlor
10 requesting a direct indictment; is that correct?

11 A Yes.

12 Q So it appears you get involved fairly early on?

13 A Yes.

14 Q And Lawlor follows up on your memo this very
15 same day, November 19th, things move quickly on
16 that day. He sends a memo on to Whitley the
17 same day --

18 A Yes.

19 Q -- attaching your memo and setting out the
20 rationale for the preferred indictment?

21 A Yes.

22 Q And then the third thing that happens, and
23 that's at tab 7, is the Lawlor to Whitley memo.
24 And then the third thing that happens on that
25 day is the Minister signs the direct indictment

1 that very same day, the 19th of November, and we
2 have that at tab 8; is that correct?

3 A Yes.

4 Q And that was Mr. McRae --

5 A Yes.

6 Q -- who was the Attorney General at the time?

7 A He was, yes.

8 Q Was that an unusually fast direct indictment, in
9 your experience?

10 THE COMMISSIONER: Do you mean from arrest to
11 the indictment or from the request to the
12 approval?

13 BY MR. CODE:

14 Q I'm thinking of both, actually.

15 A For the circumstances, that would dictate the
16 speed. There were other direct indictments
17 requested. As you remember, Mr. Code, when a
18 preliminary inquiry failed you could apply for a
19 direct indictment. Those would take more time.
20 They developed a practice at some stage where
21 defence counsel tried to get in on the
22 application for the direct indictment in
23 circumstances where a preliminary inquiry
24 failed, but generally we did that on our own.

25 Q Let's break it down the way the Commissioner

1 has; was it unusual to get the Minister's
2 approval the same day you sent a memo up to the
3 ADM?

4 A It was, but the circumstances in this case
5 seemed to dictate that kind of speed.

6 Q So it shows a sense of urgency?

7 A Yes.

8 Q And, similarly, applying for a preferred
9 indictment less than a month after the laying of
10 the charge, I take it, is a relatively
11 expeditious application?

12 A It was very quick, yes.

13 Q So what all this indicates is that there was a
14 sense of urgency about this, and we see that
15 from reading the memos; is that fair?

16 A Yes, that's right.

17 Q Now, turning to your memo first, I just want to
18 deal with the contents of it briefly. At tab 6,
19 again, if you could go back to tab 6, a number
20 of points emerge.

21 First of all, in the very first paragraph
22 it appears that you've had a chance to review
23 the file, to some extent at least?

24 A Yes.

25 Q And, secondly, if we look at the two issues that

1 you address, one is the direct indictment and
2 the other is witness protection. Is it fair to
3 say that the main issue you raise right off the
4 bat is this whole witness protection issue?

5 A Yes, it is.

6 Q And you advance it as the main reason for
7 seeking a direct indictment?

8 A Yes.

9 Q Over the page, at the second page of your memo,
10 you acknowledge the policy of full disclosure in
11 direct indictment cases, right at the top of
12 page 2?

13 A Yes.

14 Q Indeed, you use the word "everything," he's
15 entitled to everything?

16 A Yes.

17 Q And you were later to repeat that in front of
18 Chief Justice Hewak, we will see shortly. And
19 that was your understanding of the policy in
20 direct indictment cases?

21 A Yes.

22 Q And the reason, as I read the memo, that you
23 raise the issue of disclosure and full
24 disclosure is that the witness protection issues
25 and the disclosure issues become entwined?

1 A Yes, they do. And in this particular instance,
2 Mr. Code, there was no preliminary inquiry, so
3 defending counsel had no information whatsoever
4 about the details of this case. In other
5 applications where a preliminary had failed, he
6 had all of that, and so the disclosure might not
7 have been so full. But here it was full because
8 there was no inquiry.

9 Q So it was upon disclosure being made, full
10 disclosure once you had the preferred
11 indictment, that the defence, and thereby the
12 accused, was going to learn the identities of
13 the witnesses whose protection you were
14 concerned about?

15 A Yes.

16 Q And so the timing of disclosure becomes
17 intertwined with the witness protection
18 arrangements?

19 A That's right.

20 Q And you conclude the memo by asking that --
21 well, first of all, you conclude that first
22 paragraph at the top of page 2 by asking
23 Mr. Lawlor to inquire with the police about
24 whether they have taken steps to make
25 arrangements for the witness; is that correct?

1 A Yes.

2 Q And then at the end of your memo you ask that
3 the timing of the direct indictment be
4 co-ordinated with when the arrangements had been
5 made to protect the witnesses. In other words
6 that the arrangements be put in place before the
7 direct indictment and the disclosure --

8 A Yes.

9 Q -- obligations get triggered?

10 A Yes.

11 Q So once again what we're seeing here, I suggest
12 to you, is the importance of your having a
13 certain degree of knowledge about the witness
14 protection arrangements, because it impacts
15 on --

16 A Yes.

17 Q -- trial matters that you were responsible for?

18 A Yes.

19 Q You couldn't be kept in the dark about witness
20 protection because you needed to make decisions
21 about the case?

22 A These are handling the witnesses prior to any
23 protection on a national level, this is the
24 early stages. The Winnipeg Police would be
25 doing this, yes.

1 Q Exactly. So again it makes sense that Lawlor
2 was involved in all of these early arrangements,
3 because it was very much tied up with questions
4 like direct indictment and disclosure?

5 A And I knew what he was doing, yes.

6 Q He would keep you informed?

7 A Yes.

8 Q Now, there is an early police report that deals
9 with these protection arrangements that we see
10 at tab 9, if you could turn to Sergeant
11 Anderson's report at tab 9, please?

12 A Yes.

13 Q This is a supplementary report from the Winnipeg
14 Police Department, the kind of document you
15 would have received the pink copy of?

16 A Yes.

17 Q And it sets out the short-term plan for
18 Zanidean, in the middle of the page, you see?

19 A Yes.

20 Q And it also sets out a long-term plan --

21 A Yes.

22 Q -- to relocate him out of province?

23 A It actually states what Mr. Zanidean wanted to
24 do, I think.

25 "Mr. Zanidean and his wife wanted to move

1 to Calgary, Alberta as soon as they are
2 able to dispose of their house."

3 Q Yes. But the gist of it is consistent with what
4 you understood, that there was going to be
5 interim short-term local arrangements and then a
6 long-term permanent national arrangement?

7 A Well, this doesn't actually refer to the
8 national relationship, or the national
9 protection system. It is just a statement as to
10 what Zanidean wanted to do. And depending on
11 how the arrangement was made, the RCMP -- the
12 Winnipeg Police could have done this, moved him
13 to Alberta.

14 Q Well, I appreciate Sergeant Anderson is writing
15 this at a very early stage.

16 A Yes.

17 Q You see the date of the report is November 4th?

18 A Yes.

19 Q And we know it moves on from there. There is a
20 meeting with Kovnats on November 13th, and then
21 Miller becomes involved.

22 A Yes.

23 Q But regardless of whether he goes into the
24 formal RCMP program, the question I have for you
25 simply at this point is that it was understood

1 that you would need to make short-term pre-trial
2 arrangements?

3 A Oh, yes, absolutely.

4 Q And long-term post-trial arrangements?

5 A Eventually, yes.

6 Q There is no mystery about any of that?

7 A No.

8 Q He was going to be looked after, after the trial
9 was over?

10 A Long enough to get him on his feet in a new
11 location, yeah.

12 Q Now, turning to Mr. Lawlor's memo to Whitley the
13 same day as yours, if we could go back to tab 7?
14 Is it reasonable to assume that you would have
15 seen Lawlor's memo to Whitley in light of your
16 instruction at the end of your memo that you
17 wanted to,

18 "Please check with me at each stage."

19 A Yes.

20 Q And what Lawlor does is he encloses your memo?

21 A Um-hum.

22 Q And he goes on to also -- he sets out the
23 background of the case for Mr. Whitley. And
24 then at page 3, as you did, he lays heavy stress
25 on the witness protection issues?

1 A Yes.

2 Q You see that at the bottom of page 3?

3 A "...Your immediate attention Witness
4 Protection...",
5 yes.

6 Q No, you're on page 4. I am back on page 3,
7 Mr. Dangerfield.

8 A Oh, I'm sorry.

9 Q Under the heading "status" in the second
10 paragraph,

11 "We also have some serious concerns about
12 witness safety."

13 A Yes.

14 Q And he documents them. And over on page 4, at
15 the end of his discussion about witness
16 protection, he refers to the key witness in the
17 case. Do you see that?

18 A Yes.

19 Q And he says,

20 "The key witness in the case has obtained a
21 lawyer who tells me his client is jumpy and
22 nervous and very demanding."

23 Do I take it when you read that you understood
24 who the witness was he was referring to?

25 A Yes, it was Mr. Zanidean.

1 Q So there was no mystery early on to you and
2 Lawlor that Zanidean had gone off and got a
3 lawyer?

4 A No.

5 Q And there was no mystery to you that Zanidean
6 was very demanding?

7 A I don't know if I personally knew that, but I
8 probably was informed of it at that time, yes.

9 Q Well, when you read this memo?

10 A Yes, I would be informed of it.

11 Q Lawlor appears to have spoken to Kovnats himself
12 personally, as I read that memo; is that fair?

13 A Yes.

14 "...who tells me his client is jumpy and
15 Nervous, very demanding", those are
16 statements by Kovnats to Lawlor, yeah.

17 Q Now, the fact that a key Crown witness has gone
18 off and retained counsel, who was making
19 demands, is that normal in a homicide
20 prosecution or is that in itself an unusual
21 development?

22 A I think it's the first time I experienced it.

23 Q It's a pretty unusual development, I would
24 think?

25 A Yes, it is.

- 1 Q Is that not fair to say?
- 2 A Yes.
- 3 Q And the demands being made by that counsel, on
4 behalf of your key witness, are those relevant
5 to the credibility and motivation of the
6 witness?
- 7 A I expect they would be. I don't really know if
8 I knew what they were at that time.
- 9 Q I appreciate that. But what you know is he has
10 gone and got a lawyer and he is making demands?
- 11 A I would expect, yes.
- 12 Q And he is your key witness. Does that on its
13 face appear to be relevant to his credibility
14 and motivation?
- 15 A Yes.
- 16 Q And would those facts have been discloseable?
- 17 A Discloseable?
- 18 Q Yes.
- 19 A Yes. Yes.
- 20 Q So upon acquiring this information, did you go
21 back to Miller and Whitley and say, look, we've
22 got a problem here, I need to know this
23 information so that I can disclose it?
- 24 A No.
- 25 Q Why didn't you take that step?

1 A I assumed that these would all be resolved in
2 the negotiation process.

3 Q And then what would happen, assuming there was a
4 resolution, what did you then assume would
5 happen?

6 A I really don't know if I thought that far ahead.

7 Q But following your line of thinking, the
8 ultimate agreement would be discloseable at that
9 point?

10 A Yes.

11 Q That what you expected is Miller and Whitley
12 would do the negotiating, and then they would
13 come to you and say, all right, here is the
14 deal, George, disclose it to Brodsky?

15 A If there was -- I would expect that to be the
16 case if there were things like reduced charges,
17 shortened sentences, or things of that nature.
18 Monetary issues, I simply took at face value,
19 they were to be used to support these men, so I
20 didn't question any of that.

21 Q Well, as we know, what ultimately happens is he
22 is given a \$20,000 relocation payment. Would
23 that have been a matter that you would have
24 expected --

25 A Absolutely --

1 Q -- to know about if that was the ultimate
2 agreement?

3 A Yes.

4 Q And, again, that that would be a discloseable
5 fact, I take it?

6 A Yes.

7 Q If you look at the last line, or the last
8 paragraph of Mr. Lawlor's memo, he says,

9 "Witness protection must be discussed with
10 the Deputy as soon as possible."

11 Why is it that witness protection issues had to
12 go to the Deputy?

13 A I expect because of the complexity and the
14 possible cost that would be involved.

15 Q In fact, there's a very helpful memo from
16 Mr. Arnason, and I might as well deal with it
17 now rather than later, while we're on the topic.

18 If you look at volume 3 of the documents,
19 exhibit 30C, at tab 58, we've lumped together a
20 number of documents at tab 58 of exhibit 30C
21 that all deal with the requisitioning of the
22 \$20,000 cheque, the final payment to Zanidean?

23 A Yes.

24 Q And it begins with a handwritten note from
25 Miller to Louise about the process of

1 requisitioning the cheque. And then the second
2 document is a memo from Arnason, do you see
3 that --

4 A Yes.

5 Q -- a typed up October 21, 1991 memo. And
6 Arnason sets out the process in seven steps,
7 eight steps. Do you have that?

8 A Yes.

9 Q And at step two and step six, he emphasizes that
10 the Deputy's approval is required under section
11 15 of the Attorney General's Act?

12 A Yes.

13 Q Because of the funding involved, presumably
14 because of the requisitioning of monies of that
15 amount, the Deputy had to sign off on it because
16 of the statutory requirements of the Attorney
17 General's Act?

18 A That's right.

19 Q So it was your understanding that this memo of
20 Mr. Lawlor's had to go to Mr. Whitley and had to
21 go through the Deputy because both the direct
22 indictment and the witness protection matters
23 required very senior approval within the
24 ministry?

25 A Well, yes. The ADM is the Assistant Deputy

1 Minister, which is what Mr. Whitley was.

2 Q He is the one who briefs the Deputy?

3 A Yes.

4 Q The funding issues had to go to the Deputy and
5 the direct indictment had to go to the Attorney
6 General?

7 A That's right.

8 Q Because you see the memo, Lawlor's memo doesn't
9 go to Miller at all, it just goes directly from
10 you to Lawlor, to Whitley, to the Deputy, to the
11 Minister. Miller is bypassed on these memos?

12 A Yes.

13 Q Do I take it that that reflects the fact that
14 the authority to approve these matters lay
15 through Whitley and not through Miller?

16 A Yes, that would be reasonable. It was a large
17 sum of money for anyone to approve.

18 Q All right. The next development shortly after
19 all of these events of November 19th is that two
20 weeks later, consistent with what Mr. Lawlor had
21 just said at the end of his memo, Zanidean's
22 lawyer, David Kovnats, sends in a letter that
23 sets out a whole series of what one could refer
24 to as demands. And we have that letter at tab
25 11?

1 A Yes.

2 Q December 14th letter from Mr. Kovnats to
3 Mr. Miller setting out a 15 point list of
4 requests?

5 A Um-hum.

6 Q And included in it are a number of financial
7 arrangements?

8 A Yes.

9 Q And also a clear request at number 8 for
10 immunity for everything, any other matters
11 outstanding against Ray; do you see that?

12 A Yes.

13 Q Did you see this letter?

14 A No.

15 Q Regardless of whether you saw it, were you
16 generally aware that Zanidean's lawyer was
17 negotiating with Miller?

18 A I have no recollection of knowing that. I
19 wasn't -- I didn't pay attention to any
20 negotiating situations because I was warned off,
21 I was told I wasn't to be part of it. So I
22 might not have ever heard of this.

23 Q I don't want to you focus on the specifics of
24 the letter, because I know your position is that
25 you weren't aware of the details, you weren't to

1 be involved in the details. But my question is
2 broader than that. Were you generally aware of
3 the fact that there was a negotiation going on
4 between Miller and Zanidean's lawyer?

5 A At some time I was. I can't remember
6 specifically when.

7 Q I mean, we know later on, when we get into May,
8 May 26th and we have the meeting down at the
9 Public Safety Building that you become very
10 directly aware of it because you see Kovnats
11 there --

12 A Yes.

13 Q -- at the police station. But perhaps I could
14 help you here. If you look at your statement at
15 tab 1, page 10 at the top, the second sentence
16 at the top of page 10 you say,

17 "He probably was generally aware that
18 Zanidean's lawyer was negotiating with
19 Miller, but he did not know any of the
20 details."

21 Do you see that?

22 A I said that, but I don't know when I became
23 aware generally of anything. I have no
24 recollection of it.

25 Q Well, we know you are aware on November 19th

1 from Lawlor's memo --

2 A All right.

3 Q -- that there is a lawyer involved and he is
4 making demands.

5 A All right.

6 Q And we know that Kovnats, after this initial
7 contact with Lawlor, obviously gets passed on to
8 Miller?

9 A Yes.

10 Q Because he writes the December 14th letter to
11 Miller and not to Lawlor?

12 A Yes.

13 Q So is it likely that Lawlor would have briefed
14 you on that?

15 A I probably did know, I guess. I probably knew
16 about some negotiation or some demands being
17 made, not what they were, but that there was a
18 lawyer involved.

19 Q The fact of the negotiations?

20 A Yeah.

21 Q And we see Miller follows up by responding to
22 Kovnats, you will see at tab 13 is his response.
23 He says,

24 "We will be addressing this matter

25 internally at the earliest opportunity and

1 matters will progress from there."

2 That's at tab 13?

3 A Yes.

4 Q That's in late December?

5 A Yes.

6 Q And then at tab 14, more importantly for your
7 purposes, is Miller's memo of the same date to
8 Whitley where he attaches the correspondence
9 with Kovnats, and he suggests a meeting at the
10 earliest opportunity, perhaps together with the
11 Deputy and Mr. Dangerfield. He says,

12 "I await your further instructions."

13 Do you see that?

14 A Yes.

15 Q So the internal process that Mr. Miller has
16 advised Kovnats of, in the responding letter,
17 appears to be one that contemplates drawing you
18 in to some extent; is that fair?

19 A Seems to be, yes.

20 Q And that makes sense because of what you've told
21 us, that you need to know, without being
22 involved in the negotiating, you need to know
23 what the witness is asking for and what is
24 ultimately agreed to?

25 A Yes.

1 Q You see Mr. Miller's memo concludes by stating
2 to Mr. Whitley,

3 "I await your further instructions."

4 A Yes.

5 Q And he refers to the fact that they have already
6 had earlier discussions about the matter.

7 What was your understanding as to who was
8 in charge of this process, who was directing
9 these negotiations as to what kind of an
10 agreement was going to be made with Zanidean and
11 his lawyer?

12 A Well, I guess Mr. Whitley had the final say
13 before the Minister was approached. I suppose
14 the day-to-day negotiations were done by
15 Mr. Miller. I don't know.

16 Q Fair enough. So your understanding was Miller
17 was doing the hands-on negotiating and Whitley
18 would have the final say?

19 A Yes.

20 Q All right. In terms of this --

21 MR. TAPPER: Mr. Commissioner, I wonder if
22 Mr. Code, when he leads the witness, as he is so
23 persuasively, to use the witness's evidence, he
24 says "I guess", and then Mr. Code says "your
25 evidence." He didn't say "evidence," he said "I

1 guess."

2 MR. CODE: Perhaps, Mr. Tapper could come to the
3 mike?

4 MR. PROBER: Could we have the objection to the
5 mike?

6 THE COMMISSIONER: Yes, Mr. Tapper, I heard most
7 of what you said. I am not sure I heard all of
8 it.

9 MR. TAPPER: My objection is two parts. First,
10 Mr. Code is leading the witness dramatically,
11 and he can do that, of course, if he wishes.
12 But if the witness is going to say he guesses
13 something, Mr. Code should not then rephrase
14 that to a statement that "you assumed" or "your
15 evidence is." The witness said "I guess."
16 Mr. Code should be respectful of that and carry
17 with it, rather than re-leading it into a
18 different phrase. Thank you.

19 THE COMMISSIONER: Thank you, Mr. Tapper. If
20 that occurred, then Mr. Tapper's objection would
21 be a valid objection. Quite frankly, I didn't
22 pick up on it, but I don't know what was said or
23 not.

24 THE WITNESS: Perhaps I was a bit sloppy in my
25 use of language.

1 THE COMMISSIONER: No. Mr. Tapper was actually
2 concerned with Mr. Code's use of language.

3 MR. CODE: I'll watch for that,
4 Mr. Commissioner, and I appreciate the
5 objection. It's well taken.

6 THE COMMISSIONER: And I think also, on some of
7 the areas here, you may be leading just a little
8 more than is helpful. I know it's not easy to
9 separate out when it's helpful to lead and when
10 it may not be.

11 MR. CODE: What I've been trying to do is not
12 lead when coming to an important point, because
13 obviously we want Mr. Dangerfield's evidence.
14 But there are times when I have to -- having
15 done that as the initial approach, where I need
16 to challenge the evidence at that point.

17 THE COMMISSIONER: Okay.

18 MR. CODE: But I will certainly always, when I
19 come to an important area, try to elicit the
20 witness's evidence without leading as the
21 initial approach to the evidence.

22 BY MR. CODE:

23 Q Now, still on that memo of Mr. Whitley's --
24 sorry, of Mr. Miller's at tab 14 to Mr. Whitley
25 and awaiting his further instructions, the

1 reference to this meeting to consider our
2 position, in the last paragraph, can you assist
3 us at all as to whether that meeting took place,
4 to your recollection?

5 A I can't recollect, no.

6 Q Is it conceivable to you that Miller and
7 Whitley, knowing them as you do, would negotiate
8 an arrangement with a key witness in the case
9 without involving you?

10 THE COMMISSIONER: Without involving, I didn't
11 hear the last word?

12 BY MR. CODE:

13 Q Without involving you?

14 A Do you mean at this stage? Because when they
15 get into the Witness Protection Program, I am
16 excluded.

17 Q My question is, Miller and Whitley have received
18 a letter from Kovnats setting out 15 demands or
19 requests that he is making in relation to the
20 key witness to the case. And is it conceivable
21 that they would make decisions -- let's leave
22 out the negotiating -- is it conceivable they
23 would make decisions about whether to accede to
24 those requests without involving Crown counsel
25 in charge of the prosecution?

- 1 A I don't think it would matter very much to me
2 whether they conceded to them or not, so I don't
3 know that they would involve me necessarily.
4 The notes at the bottom seem to suggest that I
5 wasn't informed, the handwritten notes of that
6 memorandum.
- 7 Q I'm sorry, on the bottom of tab 14?
- 8 A I'm sorry, I am looking at tab 15. I beg your
9 pardon.
- 10 Q You were at tab 15?
- 11 A Yes.
- 12 Q And this is the follow-up memo. And what is the
13 note at the bottom that you're --
- 14 A It's from S to Bruce and Bruce to Cec, I gather,
15 and I am not mentioned anywhere here.
- 16 Q What is happening here is they are setting up a
17 meeting with Sergeant Orr at the RCMP?
- 18 A Yes. I must have skipped a page, I'm sorry.
- 19 Q Yes. I'm back on tab 14, still in December,
20 where the letter has come in from Kovnats. He
21 is making a number of demands about financial
22 arrangements for the witness, but also
23 requesting immunity on all outstanding matters?
- 24 A Yes.
- 25 Q And my question is, is it conceivable that

1 Miller and Whitley would make decisions of that
2 kind without consulting you?

3 A I suppose it is, yes. I can't recall seeing
4 that letter or any of its details.

5 Q And why do you say they would decide matters
6 like that without consulting you? How is
7 that --

8 A Well, I'm only surmising, Mr. Code. But if
9 these demands are met, there is a considerable
10 sum of money involved, and they would want
11 approval before they went very far with it.

12 Q Are these matters that are relevant to your
13 witness's credibility at trial?

14 A Some of them are, yes.

15 Q And were Miller and Whitley the kind of
16 managers, I suppose is what I'm getting at, who
17 would make decisions about issues going to the
18 credibility of your key witness without
19 consulting you?

20 A I don't think so, no. I had never had that
21 experience before.

22 Q If we go back to your statement at tab 1, page
23 10, when we questioned you about this memo
24 during your interview. Do you see at page 10,
25 the December 28th memo is put to you?

1 A Yes.

2 Q And that section of the interview concludes,
3 "While Dangerfield cannot recall exactly
4 when he received these instructions...",
5 these are the instructions you've told us about,
6 "...it's reasonable to infer that his
7 discussion with Miller and/or Whitley was
8 around the time of Miller's December 28th
9 memo to Whitley."

10 A Where are we reading from, paragraph 4?

11 Q Yes, the very last sentence of it.

12 A Yes.

13 Q And I'm trying to situate when it was that
14 Miller and Whitley meet with you and give you
15 the instructions. Is it reasonable to infer
16 that it's in and around this time frame of the
17 December 28th memo?

18 A I would think so, yes. I'm having difficulty
19 putting these things into sequence because my
20 memory isn't --

21 Q No. And I appreciate that, and all we can do at
22 this stage is draw reasonable inferences.

23 A Yes.

24 Q But the subject matters in Kovnats' letter,
25 you've agreed with us, are relevant to the

1 credibility of your key witness?

2 A Yes.

3 Q And you've agreed with us that Miller is
4 suggesting a meeting that would involve you?

5 A Yes, he is. Yes.

6 Q So the instructions you ultimately receive from
7 Miller and Whitley about the matter may have
8 occurred in and around this time frame?

9 A Yes, that's right.

10 Q Now, if we could go back to the preferred
11 indictment for a moment and pick up the sequence
12 of events in terms of your trial preparation,
13 the direct indictment is obtained the very same
14 day you ask for it, November 19th. But we see
15 that it's not provided to defence counsel until
16 December 27th, and is not lodged in the
17 assignment court until January 9th. And we can
18 pick up those events at tab 25, Mr. Dangerfield.
19 If you look in tab 25, again, we have bundled
20 together a number of documents, mainly
21 correspondence between Mr. Lawlor and
22 Mr. Garber, but also some of Mr. Brodsky's
23 documents. If you look at the -- these are all
24 the early correspondence.

25 A Yes.

- 1 Q If you look at the fourth document in, it's a
2 December 27th letter from Lawlor to Garber?
- 3 A Yes.
- 4 Q And he encloses the direct indictment?
- 5 A Yes.
- 6 Q And advises that the indictment will be placed
7 in the Assignment Court, on the Assignment Court
8 list on January 9th?
- 9 A Yes.
- 10 Q So what we've had occur here is about a five or
11 six week delay between the obtaining of the
12 original indictment and the providing of it to
13 the court and to counsel; is that correct?
- 14 A Yes.
- 15 Q And that delay, we know what's going on in that
16 time frame is that Zanidean is being moved into
17 the safehouse. If you go back to tab 10,
18 Lawlor's various dealings with the safehouse
19 move, at tab 10. The cheque is requisitioned on
20 the 26th?
- 21 A Yes.
- 22 Q It's obtained the 27th. If you look at the
23 accounting summary back at tab 10?
- 24 A Yes.
- 25 Q It looks like the move takes place on

1 December 18th. Do you see the moving expenses
2 are paid for, the gasoline expenses on
3 December 18th? Do you see that at the top of
4 the accounting summary?

5 A Yes. Yes.

6 Q So part of that \$1300, the part that's expended
7 on the actual move to the safehouse, appears to
8 be -- takes place on December 18th. So my
9 question is, was the reason for the delay in
10 providing the direct indictment to counsel and
11 to the court, was it tied up with these witness
12 protection arrangements that we see at tab 10,
13 or is there some other explanation for it?

14 A I can't imagine what the delay was. There were
15 Assignment Court, I suppose they picked one that
16 was convenient more or less. I don't know what
17 it would have to do with the protection of
18 witness if he was at a safehouse out of site. I
19 really can't answer that question.

20 Q We see that the preferred indictment moves with
21 tremendous speed?

22 A That's right.

23 Q And then it suddenly seems to slow down once
24 you've got it?

25 A Um-hum.

1 Q And your memo to Lawlor, if you go back to it at
2 tab 6, you see the very last two sentences of
3 your memo at tab 6, page 2, tab 6.

4 "When we have permission and before...",
5 and you put that in bold,

6 "...before we draft the indictment for the
7 Minister's signature, arrangements should
8 be made to protect the witnesses. Please
9 check with me at each stage."

10 A Yes.

11 Q So it looked like your original plan was to get
12 the witness protection arrangements in place
13 before the Minister signed the indictment, and
14 then you got it rather more rapidly than you
15 were expecting and the witness protection
16 arrangements hadn't yet been put in place?

17 A Yes. Yes.

18 Q Because you wanted the protections in place
19 before your disclosure obligations were
20 triggered by the direct indictment?

21 A Before Mr. Driskell was alerted to the fact that
22 he was now going to be tried, yes.

23 Q Now, just to finish dealing up with this
24 business of the move to the safehouse at tab 10,
25 the various expenditures on rent and damage

1 deposit and moving expenses that we see in the
2 tab 10 documents. If you go back to tab 9, the
3 report that Anderson prepared for you very early
4 on about witness protection, I take it you
5 learned from that memo, that supp. report of
6 Anderson's, that Zanidean owned his own house?
7 It says it in the very first two lines --

8 A Yes.

9 Q -- of the memo?

10 A Yes. I would know -- I don't recollect knowing
11 it, but yes, from this I would know it.

12 Q And the long-term plan that he sets out in the
13 middle of the page required Zanidean to dispose
14 of his house; is that correct?

15 A Well, yes, if Mr. Zanidean was going to move to
16 Calgary, he would get rid of his house in
17 Winnipeg, that's right.

18 Q It says that they have contacted a real estate
19 agent and they hope to have their house listed
20 on the market soon?

21 A Yes.

22 Q So you would have known from this memo that
23 there was a plan in place to dispose of
24 Zanidean's house. And you also knew there was a
25 plan in place to move him to a safehouse; is

1 that fair?

2 A Yes, that was the initial plan, I suppose.

3 Q And the rationale for selling the house, as I
4 read Sergeant Anderson's memo, or his report, is
5 tied up with witness protection needs?

6 A To produce the costs -- is that the part that
7 you are referring to?

8 Q No. If you look at the first two lines,
9 "The house has been visited by the accused
10 and other associates."

11 In other words, that his location is known --

12 A Yes.

13 Q -- to the accused and his associates. So there
14 is a witness protection rationale for disposing
15 of the house that Anderson sets out in the
16 report; is that correct?

17 A Where in this does that -- I can't see where you
18 are talking about?

19 Q The very first line, he raises the issue --

20 A Oh, yes, I see that.

21 Q -- he raises the issue of the house --

22 A Yes.

23 Q -- in the very first paragraph, that the accused
24 and his associates are aware of the house. So
25 his proposal, the short-term proposal is to move

1 him into a hotel with a 24-hour police guard,
2 and the long-term proposal is to move him to
3 Calgary and buy a new house and sell the house?
4 A Yes.
5 Q So the whole idea is to get him out of this
6 house?
7 A That's right.
8 Q And sell the house, for witness protection
9 reasons?
10 A Yes.
11 Q Now, I want to turn to the next important
12 development, Mr. Dangerfield, and that is the
13 expedited trial motion before Chief Justice
14 Hewak?
15 A Yes.
16 Q And this takes us into the second volume, if we
17 can have it handy. And this expedited trial
18 motion, which we find at tab 26, is again all
19 tied up with your concerns about witness
20 protection; is that correct?
21 A Yes.
22 Q Is that correct, Mr. Dangerfield?
23 A Yes, it is, I'm sorry.
24 Q And at tab 26 we have the motion and the
25 supporting affidavit?

1 A Yes.

2 Q And the supporting affidavit is sworn by
3 Mr. Lawlor?

4 A Yes.

5 Q And he squarely raises the witness protection
6 issues, especially at paragraphs 22 to 28. Do
7 you see that?

8 A Yes, I do.

9 Q Paragraph 26 in particular he says,
10 "...more than one material witness and
11 their families are currently under 24-hour
12 police protection and will continue to be
13 so until the trial is completed."

14 A Yes.

15 Q So I take it, once again, you had been briefed
16 to some extent on the witness protection
17 arrangements?

18 A Yes.

19 Q And, again, the rationale for keeping you
20 informed of them is because they have an impact
21 on trial matters that you're responsible for?

22 A Yes. Yes.

23 Q And your submissions at tab 27 build on
24 Mr. Lawlor's affidavit, and then you add, if you
25 look at page, under tab 27, page 114, you will

1 see at the bottom of page 114 you specifically
2 state,

3 "They're under constant surveillance."

4 That's your witnesses.

5 "Efforts have been made to relocate. In
6 some instances, children have been taken
7 out of school."

8 Do you see that at the bottom of page 114?

9 A Yes.

10 Q So once again you've been briefed on some
11 details that we don't find in the Lawlor
12 affidavit. You are being kept informed about
13 the witness protection arrangements?

14 A Yes.

15 Q Now, Mr. Brodsky opposes the motion and his
16 primary argument is that he has not yet received
17 full disclosure; is that correct?

18 A That's right.

19 Q And you respond to that by making a very strong
20 commitment on the record to full disclosure in
21 this case. And I want to take you to a number
22 of your submissions, just to help refresh your
23 memory on the point. If you look at, for
24 example, page 117, line 5, I'm using the
25 numbering at the bottom of the page,

1 Mr. Dangerfield.

2 A Yes.

3 Q Line 5, page 117,

4 "They have all of the witness's statements,
5 all the reports, photographs, everything
6 that can possibly be turned over."

7 Again, using the same language as you used in
8 your memo to Mr. Lawlor on the 19th of November;
9 is that correct?

10 A Yes.

11 Q And that reflected the policy in relation to
12 direct indictment cases?

13 A Certainly in this one, yes, because of the lack
14 of preliminary inquiry.

15 Q And then at page 139 you again use that word
16 "everything" at the bottom of page 139, line 24.

17 "Now, we have given him everything that we
18 have. Now, if he wants the records..."

19 THE COMMISSIONER: Just wait until
20 Mr. Dangerfield and I catch up here.

21 BY MR. CODE:

22 Q Page 139 at the bottom, line 24.

23 "Now, we have given him records of
24 everything we have. Now, if he wants
25 records of a broken nose and who did it; if

1 it is available to us, he will have it. If
2 that information exists, he will have it."

3 Dropping down to line 6,

4 "But what he wants, he'll have. And that's
5 as far as we can go. What we have given
6 him now is as complete a case as the Crown
7 has produced to date."

8 I take it that last reference is you are making
9 a comparative reference to other cases, that you
10 have given more disclosure here than in any
11 other case prosecuted to date, is that the
12 meaning I am to take from that?

13 A I really couldn't tell you, Mr. Code. I expect
14 that's what I meant, or I'm referring to he has
15 got everything we've got.

16 Q Page 146 to 147 are the last two references I
17 wanted to take you to. And this is about the
18 business of all he has to do is ask. And you
19 see at page 146, line 13,

20 "The fact is that if Mr. Brodsky wants
21 these things or needs these things, or
22 information requiring his investigator --
23 whoever he might be -- to go and
24 investigate these things, he need only
25 ask."

1 And at the bottom of the page, line 24,

2 "And these things can be provided."

3 A Yes.

4 Q And then finally over at page 147, line 22.

5 "We have been absolutely fair with him. He

6 knows that anything he needs that we have

7 he will get, including an examination of

8 police reports if that becomes necessary.

9 Beyond that, we can't go."

10 Now, those final references to "all he needs to
11 do is ask and we will provide it," is referable
12 to the procedure you've told us about that if
13 something was missing, it was always open for
14 counsel to ask for it and you will follow up; is
15 that correct?

16 A Yes.

17 Q Now, what I wanted to ask you about these kinds
18 of statements that we've just reviewed at tab
19 27, do I take it that when counsel make those
20 kind of statements in a court of law, and
21 opposing counsel in the court rely on them, it
22 places an obligation or a responsibility on you?

23 A Yes.

24 Q It's not the same thing as what you might say in
25 conversation, or something that is said off the

1 record. What you are making here were
2 commitments to the court?

3 A Yes.

4 Q And in terms of your responsibilities as an
5 officer of the court, when you make commitments
6 like that, you are not entitled to claim lack of
7 knowledge. It's your duty to follow up and make
8 sure it happens; is that fair?

9 A Yes.

10 Q It's also interesting that Chief Justice Hewak
11 clearly, as I read it, and correct me if I'm
12 reading him wrong, took the view that there was
13 a right to disclosure, that Mr. Brodsky was
14 entitled to these things, that it wasn't just
15 out of the good graces of the Crown's
16 discretion. If you look at page 137, there is
17 two statements he makes on this point, you see
18 at tab 37, page 137?

19 A Yes.

20 THE COMMISSIONER: Just bear with me, just one
21 moment, please.

22 BY MR. CODE:

23 Q Sorry, it is at the very bottom of page 137, the
24 last line. He intervenes at one point during
25 the argument and he says,

1 "I am more concerned about the fact that
2 what they have done and the information
3 that they have should be disclosed...",
4 he is talking about the police,
5 "...should be disclosed to you. And if
6 that exists, then you are entitled to it."
7 You see he uses the words "you are entitled to
8 it" in relation to Mr. Brodsky?

9 A Yes.

10 Q And then over, the second reference is at page
11 148, he adjourns the matter over to Friday
12 because he says I wants counsel, this is at line
13 10, page 148, he wants counsel to get together
14 and see what's outstanding in the disclosure
15 department. And then at line 16 he says,
16 "But I want some assurance on Friday
17 morning, that whatever Mr. Brodsky wants,
18 in addition to what he has already received
19 that is in the possession of the Crown, or
20 can be obtained by the Crown, will be
21 obtained and provided to him."

22 A Yes.

23 Q So could you assist us as to whether, in
24 Manitoba, correct, six months prior to
25 Stinchcombe, at least in Chief Justice Hewak's

1 court on a direct indictment, it was the view
2 that you were entitled to disclosure?

3 A That was his view, yes. I don't know if it was
4 generally held.

5 Q All right. And what was your approach or
6 attitude to that view of the Chief Justice in
7 this case?

8 A Well, I intended to carry it out as far as I
9 could. I couldn't give him things I didn't
10 have.

11 Q Fair enough. But you accepted --

12 A Yes.

13 Q -- that this was his view of the law and you
14 didn't challenge it?

15 A That's right.

16 Q You see, the reason I go through this with you,
17 Mr. Dangerfield, is we heard last week during
18 Mr. Wolson's cross-examination of Mr. Brodsky,
19 Mr. Wolson put the proposition to Mr. Brodsky
20 that disclosure standards in Manitoba were very
21 poor prior to Stinchcombe, that you got
22 virtually nothing, and that there was tremendous
23 discretion in the Crown and things were much
24 better in Ontario across the border, that it was
25 an awful backwater here in Winnipeg.

1 A Isn't that where Stinchcombe originated?

2 THE COMMISSIONER: Well, I don't think he used
3 that expression.

4 BY MR. CODE:

5 Q As I read the transcript, Chief Justice Hewak
6 doesn't seem to take that view?

7 A No, that's true.

8 THE COMMISSIONER: What would you say the
9 standards were at that time?

10 THE WITNESS: I think in Manitoba we were
11 attempting to be more open with disclosure, but
12 it was uneven. There were some prosecutors who
13 is didn't give disclosure, or a lot of it.
14 Others gave more. But there were a constant
15 flow of memoranda from Whitley and his
16 predecessors that these times were changing and
17 we had better get up to speed. But there was no
18 hard and fast rule. I couldn't see a point in
19 hiding all of the stuff that somebody would, but
20 that was my point of view, that's all.

21 BY MR. CODE:

22 Q You've told us that in close cases you erred on
23 the side of disclosing?

24 A Yes.

25 Q But in any event, whatever the general practices

1 were, and I'm sure that Mr. Wolson had
2 difficulties in lots of his cases, it appears
3 that the practice in this case was a very
4 liberal one?

5 A Yes, it was.

6 Q And you made that commitment in court to the
7 Chief Justice?

8 A Yes, I did.

9 Q The last point that I want to ask you about the
10 pre-trial is your recollection, and I am talking
11 about first appearance, the February 6th
12 appearance, not the second appearance on the
13 13th. We see that Mr. Lawlor swore the
14 affidavit in support, and we also see that he is
15 not named as counsel on the record in the
16 transcript. What is your recollection as to
17 whether or not he was present in court?

18 A I have no recollection of it, but I have been
19 informed that he was in Cozumel, so he wasn't
20 there.

21 Q Well, this is what I'm concerned about. He
22 eventually goes to Cozumel, but on February 6th,
23 I don't think he is there yet.

24 A Well, I don't believe he was there, no.

25 Q Well, let's see what you said in your statement.

1 A Okay.

2 Q Tab 1, page 10, please?

3 A Page 10, sure. Oh, I see.

4 Q The very last line --

5 A Yes.

6 Q -- at the bottom of page 10.

7 A Yes.

8 Q "...Dangerfield's recollection is that
9 Lawlor attended ungowned and sat at the
10 counsel table."
11 Do you see that?

12 A Yes.

13 Q And that was your recollection at the time you
14 gave the interview?

15 A Yes. It was at the time I gave this. I've been
16 reading all of this material and I'm afraid I've
17 gotten myself scrambled.

18 Q And somebody has told you about Mr. Lawlor's
19 travel plans, he has taken a look at his diary
20 and told us about his travel plans.
21 Do you know what the date was that he left
22 for Cozumel?

23 A No, I don't.

24 Q Because you see Mr. Brodsky, if you go back to
25 volume 2, has a memo in his file, tab 28, that

1 after you had argued the motion and Chief
2 Justice Hewak had said, I want you to get
3 together and deal with these disclosure issues
4 before we come back on the 13th, you see
5 Mr. Brodsky's memo at tab 28?

6 A Yes.

7 Q He says,

8 "I met with Lawlor on February 6th, we
9 argued about what I had and what I didn't
10 have, and what Ian was told and what Ian
11 had. In the end I told him I would put in
12 writing my requests."

13 And then over the page at tab 28, we see his
14 lawyer of the next day, the day after the
15 motion, is addressed to Mr. Lawlor?

16 A Yes.

17 Q And the handwriting down the right-hand side of
18 the margin, whose handwriting is that?

19 A I believe that's Mr. Lawlor's.

20 Q It's not yours, is it?

21 A No.

22 Q So it appears that Mr. Lawlor was there at the
23 beginning of the week; is that fair?

24 A Yes.

25 Q And dealt with at least the initial issues prior

1 to the matter coming back on, on the 13th?

2 A Yes.

3 Q Which I think is when you will find that he was
4 in Cozumel.

5 This would be a good point to take the
6 recess. I'm about to turn to the content of the
7 disclosure.

8 THE COMMISSIONER: Morning recess.

9 THE CLERK: All rise. This Commission of
10 Inquiry is now in recess.

11 (Proceedings adjourned at 11:12 and
12 reconvened at 11:28)

13 THE CLERK: All rise this. This Commission of
14 inquiry is now re-opened. Please be seated.

15 BY MR. CODE:

16 Q Now, Mr. Dangerfield, I want to turn to the
17 disclosure process itself. And as we did during
18 your interview, there's three major letters or
19 requests from Mr. Brodsky that I want to take
20 you through.

21 A Yes.

22 Q Beginning with his first major disclosure
23 letter, the February 7th one that we just saw
24 briefly before the recess at tab 28.

25 Now, before I get to that, could I just ask

1 you a couple of questions? The letter itself is
2 addressed to Mr. Lawlor, as we saw. And it's
3 Mr. Lawlor who meets with him after the court
4 appearance, apparently, on the 6th. And it's
5 Mr. Lawlor who makes all of the notes in the
6 margin of the letter. Could I also direct your
7 attention to tab 25? And I am not going to go
8 through these individual letters with you. But
9 all of the early letters dealing with disclosure
10 in December, January, and even into February,
11 the last one is February 5th, are all dealt with
12 by Mr. Lawlor; is that correct?

13 A They appear to be, yes, that's true.

14 Q And when the disclosure meeting after court on
15 the 6th takes place, it appears it is Mr. Lawlor
16 who continues to deal with it and sets out the
17 notes of the preliminary responses in the
18 margins; is that correct?

19 A Yes.

20 Q And is that because these tasks of disclosure
21 had been generally delegated to him at the early
22 stages, that you had left that in his hands?

23 A Probably.

24 Q We don't see you involved --

25 A No.

1 Q -- at the early stages in disclosure matters?

2 A No.

3 Q There is also a reference to an M. Hurd --

4 A That's my --

5 Q -- on a couple of these letters. Who was M.

6 Hurd?

7 A M. Hurd was a secretary, her name is Monique

8 Hurd. She did my appellate preparation. She

9 also wrote the occasional letter for me. She

10 worked for two or three lawyers.

11 Q All right. And did she work for Mr. Lawlor as

12 well?

13 A Yes.

14 Q So she was an assistant to you and Mr. Lawlor --

15 A Yes.

16 Q -- who helped out on these disclosure matters?

17 A That's right.

18 Q All right. Going back then to volume 2, and the

19 letter Mr. Brodsky sends at tab 28, we know that

20 you quickly see it because the response on the

21 29th comes from you -- sorry, the response the

22 next day at tab 29 comes from you; is that

23 correct?

24 A Yes.

25 Q So it looks like Mr. Lawlor took a preliminary

1 cut through it and then you drafted the letter
2 to Mr. Brodsky; is that fair?

3 A Yes.

4 Q And in terms of what Mr. Brodsky was seeking,
5 and incidentally, that kind of arrangement, that
6 sort of collaborative arrangement with you and
7 Lawlor on disclosure was something we often see
8 in this file; is that correct?

9 A Yes.

10 Q You would divide up the disclosure and you would
11 consult with each other?

12 A Yes. Yes.

13 Q I want to take you to tab 28 and highlight just
14 five of Mr. Brodsky's 48 requests. Could I
15 quickly refresh your memory on them and then we
16 will deal with the substance of your response to
17 them.

18 A Yes.

19 Q Do you have tab 28, the letter? The first one
20 is number 5?

21 A Yes.

22 Q "We would like the police records of the
23 witnesses the Crown proposes to have
24 testify, together with the outstanding
25 charges that were not dealt with, and with

1 parole applications that the police or
2 others to the police knowledge offered
3 assistance in connection with."

4 A Yes.

5 Q And Mr. Lawlor's note beside that is "will
6 obtain"?

7 A Yes.

8 Q And the second one I want to note is number 6,
9 the very next one.

10 "We would like to have the detail of the
11 Witness Protection Programs Mr. Dangerfield
12 mentioned in court that have been offered
13 to various witnesses."

14 And Mr. Lawlor's note beside that is "no"?

15 A Yes.

16 Q Is that correct?

17 A Yes.

18 Q And then at the bottom of that second page,
19 number 16.

20 "We have 8 or 9 statements from Zanidean.

21 Are there more that we do not have?"

22 And the second part of the question is,

23 "I would like a record of all of his
24 contacts with the police, whether by way of
25 formal statement or written notification in

1 a police officer's notebook."

2 A Yes.

3 Q And Mr. Lawlor's note beside that is "has all
4 statements"?

5 A Yes.

6 Q And then over the page, the last two that I'm
7 interested in are numbers 22 and 23. Number 22.

8 "What motives do the police files have for
9 people to implicate Jim Driskell in the
10 killing?"

11 And then 23 is a variation on that,

12 "What motives do people have for assisting
13 the police that are demonstrated in the
14 police files and what do the police files
15 show in connection with these last
16 mentioned few items?"

17 So three times he refers to the police files.

18 And Mr. Lawlor's note beside both of those items
19 is cut off a little bit in the photocopy I've
20 got, but it appears the response to both of
21 those is "none"?

22 A Yes.

23 Q And we see that's a term he uses a number of
24 times in relation to these. So taking those
25 five requests cumulatively, what did you

1 understand to be the focus of these requests?

2 What was it, in a general sense, that

3 Mr. Brodsky was trying to get at?

4 A Looking for information which would reflect on
5 the credibility as witnesses of the people he's
6 referring to.

7 Q And in relation to that issue, this specific
8 aspect of motives that we see in 22 and 23, and
9 benefits that we see in number 5 and 6, would
10 those matters be relevant to credibility, in
11 your view?

12 A Are we talking about 22 and 23?

13 Q Yes, the question of the motives witnesses might
14 have for assisting the police, and the question
15 of benefits they might receive as a result of
16 assisting the Crown, would those kinds of
17 matters be relevant to credibility?

18 A Yes.

19 Q And was credibility an important issue in this
20 case?

21 A Yes. Our principal witnesses, Gumieny and
22 Zanidean, were both possessed of criminal
23 records so their credibility was in doubt. We
24 were relying on that and the fact that they
25 seemed to corroborate each other.

1 Q So you're relying on the mutual corroboration as
2 overcoming the credibility problems of their bad
3 character?
4 A That's how I read -- was it Guyatt (phon.) and
5 Vetrovec.
6 Q That one accomplice can corroborate another
7 accomplice --
8 A If there is nothing to be gained.
9 Q -- and overcome the credibility problems?
10 A Yes.
11 Q But first of all, you've got to test the
12 credibility in front of the jury?
13 A Exactly, let the jury -- let the jury see what
14 items they could use to examine credibility.
15 Q So you had no difficulty that Mr. Brodsky was
16 getting at a relevant issue here --
17 A No.
18 Q -- in these requests?
19 A No.
20 Q And in your interview at tab 1, you agreed that
21 information that's relevant to credibility is
22 discloseable; is that correct?
23 A Absolutely.
24 Q Now, your response is a very quick one. It
25 comes back the next day at tab 29. You see your

1 letter is dated February 8th, and I take it the
2 reason you wanted to get a very quick response
3 back, it's not complete, you say some issues are
4 going to require some follow-up.

5 A Where, 29?

6 Q 29 is your response. I take it, if we remember
7 the context here, the reason you wanted to make
8 a speedy response was because you knew you were
9 coming back before the Chief Justice on the 13th
10 and he wanted these disclosure issues resolved?

11 A Yes.

12 Q Before he was going to decide your motion?

13 A Yes.

14 Q Now, if we could deal with the substance of your
15 response at tab 29 to the five items that
16 Mr. Brodsky has raised that I'm interested in?

17 A Yes.

18 Q If you turn to page 3 of your letter, you
19 respond to his request number 5, which was for,
20 remember, criminal records, outstanding charges
21 and parole applications. And you agreed to
22 provide those?

23 A Yes.

24 Q And, again, your response is completely
25 consistent with Mr. Lawlor's note that the two

1 of you were ad idem on this?

2 A Um-hum.

3 Q But it was going to require some police
4 follow-up?

5 A Well, they would have to make a search against
6 each witness to make sure they had all of the
7 records, yes.

8 Q You specifically advert to police records and
9 say that you are going to ask the police to
10 conduct a search for you?

11 A They would also look at the Federal Penitentiary
12 System where outstanding charges, or where
13 charges outside the province would be located.

14 Q I don't think you had the problem with any of
15 your witnesses being in custody?

16 A No.

17 Q So that was going to be a fairly easy one?

18 A Yes.

19 Q Number 6, the request for details of the witness
20 protection arrangements. Your response is,

21 "In answer to your paragraph 6, we cannot
22 provide the details of the protection
23 offered witnesses for fear of giving them
24 away but can assure you that protection
25 amounts to provision of monies to help

1 support them while they are protected and a
2 constant surveillance over them."

3 So your response is both a denial and, at the
4 same time, is a positive assertion of what the
5 protection is?

6 A That's how I understood the protection, yes.

7 Q And the basis for that response? What did you
8 use, what did you rely on in order to draft that
9 response?

10 A I think probably that perhaps it was the
11 discussion limiting our involvement in the
12 negotiations. I don't know.

13 Q Would you have consulted with Mr. Miller or
14 Mr. Whitley before drafting this response?

15 A I can't remember. It's a statement that I
16 believed was accurate at the time. I still
17 believe it to be accurate.

18 Q In your statement to us at tab 1, page 14, you
19 said you thought it was likely you did not speak
20 to them before responding because of the speed
21 of your response?

22 A Perhaps that's true, yes, but it was a situation
23 I understood to be the correct one at the time.

24 Q And that was based on what you'd been told in
25 this general briefing you'd received, that you

1 told us about this morning?

2 A Yes, I believe that's the case.

3 Q The denial of disclosure of the details was what
4 you'd been told?

5 A Yes. Well, I mean there would hardly be any
6 point in putting him in safe houses if you told
7 the other side where they were. So, no, we
8 won't tell you the particulars.

9 Q We will come to the contents of the response and
10 the correctness of it in a minute.

11 A Thank you.

12 Q But I am just trying to understand the process
13 here. You had had this meeting where you had
14 been told not to disclose the details and,
15 indeed, that you wouldn't even be told the
16 details yourself?

17 A Yes.

18 Q But that this general understanding you had is
19 that there were protection arrangements in
20 place, you disclosed that in a general way?

21 A Yes.

22 Q In terms of the refusal to provide the details,
23 you didn't say in this response, I have no
24 knowledge of this matter, speak to Mr. Whitley
25 or Mr. Miller?

1 A No, I didn't.

2 Q And I take it that if you had made that
3 response, you wouldn't have had much credibility
4 when you came back on in front of Chief Justice
5 Hewak, having made the undertakings you had made
6 before?

7 A I really can't answer that question, Mr. Code.

8 Q Well, who is responsible for disclosure here?

9 A Oh, I am.

10 Q So if you had said to Mr. Brodsky --

11 A Oh, I see, yes.

12 Q -- Whitley and Miller have instructed me that I
13 am to know nothing about these matters, go speak
14 to them, would that have been consistent with
15 your responsibilities as Crown counsel?

16 A Strictly on the matter of disclosure of what I
17 suppose this is really, no, it wouldn't be
18 consistent.

19 Q You had made an undertaking to the Chief Justice
20 that you were going to provide full disclosure
21 of everything?

22 A As much as I could, yes.

23 Q And if what Mr. Brodsky was asking for was
24 relevant and discloseable, it was your
25 responsibility to deal with the matter?

1 A Yes.

2 Q So you didn't make the excuse that you didn't
3 know about this?

4 A No. I gave him what I knew, which is what you
5 see there.

6 Q And, presumably, if you had wanted to give him
7 more, you could have gone to Whitley and Miller
8 and said --

9 A What are the details?

10 Q -- what are the details? Brodsky has asked for
11 them. I need to disclose them. And there is no
12 suggestion that you would have been prevented
13 from going back to them; is that correct?

14 A I couldn't really answer that question either.
15 No. There is no suggestion, but then I don't
16 know if I ever -- I never made the request, so I
17 don't know what would have happened.

18 Q I am just trying to understand your thought
19 processes as to why you responded in this way?

20 A Because that's what I understood the protection
21 amounted to, provision of monies to fund their
22 location and their living while they were in
23 danger, that's all. That's what I understood so
24 that's what I told him.

25 Q Let's get to the correctness of your response

1 then.

2 A Okay.

3 Q The rationale for not disclosing the details, as
4 you refer to it, is that it would give them
5 away; is that correct?

6 A That's what I understood, yes.

7 Q And what you're concerned about there, when you
8 talk about giving them away, is you're concerned
9 about people learning the location of the
10 witness, where it is that the witnesses were --

11 A Yes.

12 Q -- being kept?

13 A Yes.

14 Q And the illustration that you just gave us is
15 the location of the safehouse?

16 A Yes.

17 Q That would obviously be a privileged piece of
18 information that you would never disclose; is
19 that correct?

20 A Yes.

21 Q Similarly, if there was a change in identity,
22 the name, the new name under which the witness
23 was living would equally be privileged?

24 A Yes.

25 Q And would never be disclosed?

1 A Yes.

2 Q Is that correct?

3 A Yes.

4 Q Financial benefits, would that give the witness
5 away?

6 A Looking back on it now, no. No.

7 Q Doing favours for him on his outstanding charges
8 in Saskatchewan, assisting him on his
9 outstanding charges in Saskatchewan, would that
10 give him away?

11 A No, it wouldn't have.

12 Q So is it fair to say that your response that you
13 won't provide the details is perhaps too broad?

14 A Yes. I was never told any of the details
15 myself, and didn't think to ask because of this
16 general prohibition about knowing about the
17 negotiations. So whatever went on in
18 negotiations, I wasn't aware of.

19 Q Well, now you're coming back to the explanation
20 that I don't know anything.

21 A Well --

22 Q And what I want to ask you about that is, is
23 that a principled way to respond to this
24 request, in light of what had happened in front
25 of the Chief Justice on the 6th of February, to

1 simply throw up your arms and say, I don't know
2 the details, I am being kept in the dark by
3 Whitley and Miller?

4 A I suppose not. I just took them at their word,
5 that's all. I wasn't to know the details of the
6 negotiations and I left it at that.

7 Q But the simple little rationale exercise we've
8 just gone through here --

9 A Yeah.

10 Q -- and we did it in the interview as well, it's
11 all there in your statement, is that it's quite
12 clear that many of the benefits --

13 A Exactly, right.

14 Q -- that Mr. Zanidean were seeking were perfectly
15 relevant and discloseable?

16 A Yes.

17 Q And yet you make this overly broad response that
18 you can't provide the details for fear of giving
19 him away.

20 A Yes.

21 Q I take it you were able to think your way
22 through this problem? You are not a man who
23 simply does what he's told to do because Miller
24 or Whitley think this isn't discloseable, it's
25 your responsibility to address your own mind to

1 it?

2 A Yes.

3 Q Number 16, over the page?

4 A Yes.

5 Q This is the request for all of the contacts in
6 the notebooks. It's a double barrelled
7 request --

8 A Yes.

9 Q -- for all of the statements is the initial
10 request, and then the second part of it is all
11 of the contacts in the notebook?

12 A Yes.

13 Q And your response is, with respect to paragraph
14 16,

15 "You have all of the statements taken from
16 Zanidean."

17 It is consistent with Mr. Lawlor's note that,
18 you remember Mr. Lawlor's note was "has all
19 statements." That's the first part of the
20 question. And then the second part,

21 "Beyond them, there is no further record of
22 contacts with the police except with
23 respect to caring for him pending trial.

24 To be absolutely certain, however, we will
25 supply you with any supplemental reports of

1 conversation, informal or otherwise, with
2 police officers."

3 A Yes.

4 Q So leaving aside the first part of the response,
5 which I'm sure is accurate, that he has all of
6 the statements, the positive assertion in the
7 second part of the statement,

8 "There is no further record of contacts
9 with the police except with respect to
10 caring for him pending trial...",

11 what was the basis for that positive assertion
12 that there was no such further record?

13 A My understanding of the situation at the time.

14 Q And was that based on a briefing from
15 Mr. Lawlor?

16 A I expect so.

17 Q You see Mr. Lawlor, this is his writing here
18 again?

19 A "Discuss with George," yeah.

20 Q He says "discuss with George" and then he has
21 written "none" with a circle around it, and two
22 lines through this response.

23 A Yes.

24 Q So it would appear that you and Lawlor had a
25 conversation about the matter and you relied on

1 his advice?

2 A Yes.

3 Q Did you review Anderson and Paul's notebooks,
4 the two handlers of Zanidean, who were the only
5 two officers that would be implicated by this
6 request?

7 A Not that I'm aware of, no. I can't remember.

8 Q In order to confidently make this assertion that
9 there was no further record of contacts, when
10 Mr. Brodsky has specifically asked for
11 references in the notebooks to contacts with
12 Zanidean, I take it you would have to review the
13 notebooks?

14 A Yes.

15 Q And my question to you is that in light of the
16 commitments and the responsibility you had taken
17 on in the February 6th appearance before Chief
18 Justice Hewak, did you see it as your duty to
19 review those notebooks?

20 A It would have been my duty. I don't know if I
21 did.

22 Q In any event, what you agreed to do is you said,
23 "To be absolutely certain, we will supply
24 you with any supplemental reports of
25 conversation, informal or otherwise, with

1 police."

2 A That's right.

3 Q So you clearly understand what it is Mr. Brodsky
4 is getting at, conversations, informal or
5 otherwise?

6 A Yes.

7 Q And you undertake to provide them to him?

8 A Um-hum.

9 Q How would you go about providing that, how would
10 you go about carrying out that undertaking?

11 A I suppose I would have set it out in a letter,
12 or given him the notebooks. I don't know.

13 Q No. You are agreeing to follow up on this
14 matter, as I read this. This is your 24-hour
15 response?

16 A Okay.

17 Q You are saying you don't believe there is any
18 further contacts, but to be absolutely certain,
19 you will supply the supp. reports. So what was
20 your follow-up? What steps did you take to --

21 A I can't remember.

22 Q -- carry out this number 16?

23 A I can't remember. I'm sure steps were taken,
24 but I can't remember now what they were.

25 Q And who would those steps have to be taken with?

1 A With the police and with Mr. Lawlor, yes.

2 Q Over the page, numbers 22 and number 23, you
3 remember the thrice repeated request for
4 anything in police files relative to the motives
5 of the witnesses?

6 A Yes.

7 Q And you answer both of those questions in the
8 negative. You say,

9 "In answer to your paragraph 22, police
10 files do not reveal anyone with a motive
11 for implicating Jim Driskell in the
12 killing."

13 And with respect to paragraph 23,

14 "These files do not reveal that those
15 assisting the police have independent
16 motives for assisting the police or in
17 giving evidence against Driskell."

18 What was the basis for those positive
19 assertions?

20 A Examination of the files in my possession, I
21 suppose.

22 Q Examination of the file in your possession?

23 A Yes.

24 Q So in those 24 hours, you combed through all of
25 the police reports you had?

1 A Well, I would -- I don't know if I combed
2 through them, but I went through them, I would
3 imagine. I can't really remember this,
4 Mr. Code.

5 Q But you see, Mr. Brodsky has already got those
6 police reports, does he not?

7 A Yes.

8 Q You said that the pinks that you got would go to
9 Mr. Brodsky in a direct indictment case,
10 according to what you said to Chief Justice
11 Hewak. So isn't Mr. Brodsky, when he refers to
12 police files, referring to what he doesn't have?

13 A I expect so. And I don't know what it is he's
14 talking about. I just gave him the answer
15 because that's what I understood.

16 Q Well, again, in order to respond to Mr. Brodsky
17 responsibly, when he asks you for whether
18 there's evidence of motivation in the police
19 files, aside from what I've already got, what
20 would you have to do to be able to responsibly
21 give the answer you've given?

22 A Ask the police for further information.

23 Q You see, Mr. Lawlor's note on these two requests
24 back at tab 29 was to write "none" beside them.
25 And I'm interested in whether you just took that

1 at face value --

2 A Maybe I did.

3 Q -- and gave it back to Mr. Brodsky without
4 taking any independent steps on your own?

5 A I might have done, yes. We were working
6 together on this.

7 Q Because, you see, we know that there is a great
8 deal of material in the police files relevant to
9 these two requests that had never been put into
10 supplementary reports.

11 A Um-hum.

12 Q And I take it you didn't do a review of those
13 files to satisfy yourself before making this
14 response?

15 A I'm not entirely sure I know which files you are
16 referring to. We had the pinks, we had the
17 supplementals. And I believe Mr. Lawlor at
18 points in time requested police for notebooks
19 and other notes, and that's what we had.

20 Q Well, let me tell you what there is in the
21 police file that at least on its face would be
22 responsive to these requests. The Winnipeg
23 Police were contacted by the Swift Current
24 police in July to try and find Zanidean in
25 relation to the arson. And there is a telex

1 from Swift Current to Winnipeg asking them to
2 locate Zanidean and interview him at the end of
3 July. And then in early August there is a
4 response back from the Winnipeg Police saying,
5 we've found him, we've got his address, we have
6 an interview set up, we are going to interview
7 him today. That's in early August. And then
8 the file goes silent. The homicide happens.
9 Zanidean comes in. And then when we pick it up
10 again, the thread, Zanidean immediately asks the
11 police about the Swift Current arson. He makes
12 admissions to it. He says it's gonna be a
13 problem for my credibility. And the police say,
14 we will speak to Swift Current. There is then
15 phone calls to Swift Current. And then Swift
16 Current sends the whole arson file down to the
17 Winnipeg Police. So there is a whole history of
18 information, and ultimately Sergeant Anderson
19 does a report about his calls to Swift Current,
20 an internal report. There is a whole bunch of
21 information here that a diligent defence counsel
22 like Mr. Brodsky could develop a theory of
23 motive around, about the Swift Current arson,
24 none of which was in the supp. reports.
25 A And I didn't know of this.

1 Q So my question to you is, in light of the
2 commitments you've made to Chief Justice Hewak
3 on the 6th, and given the categorical nature of
4 your responses here that the police files do not
5 reveal any motive, did you not have a
6 responsibility to review those files yourself?

7 A I didn't have the files to which you are
8 referring to. I believe some of them went to
9 the arson squad and some of them were not the
10 subject of specials.

11 Q Well, no, the homicide squad eventually has got
12 them all, by probably -- probably -- certainly
13 by March when they are preparing the witness
14 protection application, they have got it all.
15 So you could have asked for the homicide file?

16 A I could have asked for them. I wasn't aware
17 they existed, but I could have asked for them.

18 Q Those are the five requests I wanted to focus on
19 in that first letter, Mr. Dangerfield.

20 And just to complete the chronology here,
21 the motion resumes before Chief Justice Hewak on
22 the 13th, and we have the transcript of that at
23 tab 30; is that correct?

24 A Yes.

25 Q And you continue to positively assert before the

1 Chief Justice that Mr. Brodsky has everything?

2 If you look, for example, at tab 30, page 189?

3 A Yes.

4 Q And you refer to this prior case where, you see
5 in the middle of 189, Mr. Brodsky has raised
6 this previous case you had where you invited him
7 down to the office and showed him the entire
8 file. You will see that at line 15.

9 "...I called him down and showed him the
10 files and said, pick out what you want."

11 A Yes.

12 Q And then in the next paragraph you say,
13 "The reason we haven't done that in this
14 case is he has provided me with a shopping
15 list. I've tried to answer those
16 questions. He's got everything that we
17 have at the moment. I don't know what else
18 to give him. I don't know what else he can
19 look for."

20 So, again, you are making very strong
21 commitments to full disclosure; is that correct?

22 A Yes.

23 Q And, again, you agree with me that with those
24 kind of commitments comes responsibility?

25 A Yes.

1 Q Mr. Brodsky's second major disclosure request is
2 dated April 25th. And just to give you the
3 context leading up to it in the previous tabs,
4 tab 31, for example, things seem to go quiet
5 after your motion is denied and the trial date
6 is set for June 3rd. I'm sure you got busy and
7 Mr. Brodsky got busy. But on April 10th, he
8 sends you a reminder letter -- you have that at
9 tab 31 -- to remind you that a number of the
10 requests are still outstanding, for example,
11 such as the ones we've just been through where
12 you have agreed to do some follow-up?

13 A Yes.

14 Q And at tab 32, again, it's Mr. Lawlor who
15 responds to the letter?

16 A Yes.

17 Q And he gives a business records notice under the
18 Evidence Act. And in his last paragraph he
19 says, your requests are being followed up.

20 A Yes.

21 Q And he should be able to provide the information
22 shortly.

23 And Mr. Brodsky, after waiting for another
24 week, sends out a fresh letter, and that's what
25 I referred to as the second major letter at tab

1 33. And there is just three items I want to
2 highlight here with you, Mr. Dangerfield, if we
3 could do the same exercise of just reading them
4 first and identifying the issue, and then I will
5 go to the response.

6 So at tab 33, the first one is number 5,
7 "The criminal records of all witnesses on
8 your lists, what charges they had at the
9 time, what dispositions were made..."

10 and that somewhat replicates his earlier request
11 number 5 from the February 7th letter; is that
12 correct?

13 A Yes.

14 Q And then he broadens it in the second part of
15 the question. He says.

16 "...what favourable considerations were
17 given to them for not pressing charges or
18 laying of charges, and other matters that
19 would influence them to testify in a
20 particular fashion."

21 A Yes.

22 Q And, again, what's the issue here that he's
23 getting at?

24 A Credibility.

25 Q It's the same theme as the --

1 A Yes.

2 Q -- previous requests in a slightly, he has
3 really just re-framed his previous requests in a
4 somewhat more specific manner. Numbers 22 and
5 23 of the earlier letter had asked about
6 motives, and here he is referring to a specific
7 kind of motive, is he not?

8 A Yes.

9 Q Number 9, over the page,

10 "What do the Winnipeg City Police have on
11 the fire in Swift Current, Saskatchewan?"

12 A very explicit request for the material
13 relating to that incident; is that correct?

14 A Yes.

15 Q And you see, if I could go back to the notes in
16 the margin again, whose notes are these?

17 A I believe they are Lawlor's. Well, maybe
18 they're mine.

19 Q I beg your pardon?

20 A I don't recognize the handwriting.

21 Q I think Mr. Lawlor --

22 A I think they are Lawlor's.

23 Q I think Mr. Lawlor will say that they are his.
24 Beside both of those requests we see the note
25 "WPD."

- 1 A Yes.
- 2 Q What does that refer to?
- 3 A The Winnipeg Police Department.
- 4 Q And that indicates that these matters are going
5 to be passed on to the police?
- 6 A I guess so, yes.
- 7 Q At least that's his advice?
- 8 A Yes.
- 9 Q The last one I want you to look at is number 21,
10 over the page, it is the very last one in the
11 letter. He says,
12 "Do you have an objection to my reviewing
13 the Winnipeg Police Department file either
14 by myself, by the investigator I have
15 assisting me, or jointly?"
- 16 A Yes.
- 17 Q And, again, he has assigned that, it looks like
18 the Winnipeg Police Department has been asked to
19 comment on that? Presumably, because it's their
20 file?
- 21 A Yes.
- 22 Q But he seems to be taking up the issue he raised
23 before Chief Justice Hewak on the 13th; is that
24 correct?
- 25 A Yes.

1 Q This idea that you give him direct access to the
2 files --

3 A Yes.

4 Q -- like in the previous case?

5 A Yes.

6 Q Now, again, did you have any difficulty with the
7 relevance of these requests?

8 A No.

9 Q They all seemed to relate to relevant matters;
10 isn't that fair?

11 A Yes, and they seem to have been forwarded on to
12 the Winnipeg Police Department.

13 Q Now, in relation to the request for favourable
14 considerations and this disposition of it, that
15 you pass it on to the Winnipeg Police
16 Department, I take it from your earlier evidence
17 this morning that you were aware of the fact of
18 the negotiations going on between Kovnats and
19 Miller?

20 A Yes.

21 Q And did you review this matter, did you raise it
22 with Mr. Miller that Mr. Brodsky has made a
23 request for any favourable considerations to the
24 witness as something that you should be getting
25 Mr. Miller's input on in this regard?

1 A No, I didn't. I think the direction was to the
2 Winnipeg Police first to get the information.

3 Q But the Winnipeg Police are not conducting the
4 negotiation with Kovnats, are they not?

5 A No, but they would have had the files on which
6 those negotiation where is based, I suppose.
7 The request was to the Winnipeg Police, in any
8 event.

9 Q I am just trying to understand. You assumed the
10 Winnipeg Police were attending the negotiations
11 that Mr. Miller was carrying on with
12 Mr. Kovnats?

13 A Well, the request is for records and for
14 favourable considerations given to them.
15 Sometimes the police would offer things of this
16 nature. But we put this to the police first to
17 go to the root where the information would most
18 likely lie.

19 Q I am not criticizing your giving it to the
20 police. I am simply asking, would it not also
21 have been important to raise this matter with
22 Mr. Miller, in light of the fact that he was
23 conducting the negotiation with Kovnats?

24 A Well, I suppose, yes. I probably didn't because
25 of that general ban on information with respect

1 to the negotiations.

2 Q I will come to your response in a moment. And
3 in relation to Brodsky's request about what the
4 Winnipeg Police have on the fire in Swift
5 Current, what did you know about the fire in
6 Swift Current?

7 A Not very much.

8 Q And when you read this, did you say to yourself,
9 what fire in Swift Current, what's he talking
10 about, or did you know what he was talking
11 about?

12 A Well, there was some reference to the fire in
13 the transcriptions of the intercepted
14 conversations.

15 Q There's two conversations on the body pack
16 between Driskell --

17 A Yes.

18 Q -- and Zanidean about a fire, an arson?

19 A Yes, but they are not very specific. And this
20 request was "what did the Winnipeg Police have
21 on the fire in Swift Current?" So that is why
22 it was referred to them.

23 Q Let's just, again, establish your knowledge.
24 You didn't respond to this by saying, what on
25 earth are you talking about, Brodsky, I don't

1 know anything about a fire in Swift Current,
2 explain to me what this is all about? You just
3 passed it on to Winnipeg Police?

4 A My answer to you today is, no, I didn't. I
5 don't remember what I knew about the fire today.
6 But since it was in the transcripts of the
7 telephone conversations, the conversations, I
8 expect I knew there was a fire of some sort, and
9 that this request was for the information on
10 that that was held by the Winnipeg Police,
11 that's why we sent the request.

12 Q Clearly you had read the body pack transcripts,
13 had you not?

14 A Yes.

15 Q They were an important piece of evidence in the
16 case?

17 A Well, yes. I was doubtful if I could use them,
18 but yes, I had looked at them.

19 Q And in your statement to us at tab 1, page 15,
20 you state that you knew from the body pack
21 transcripts that Zanidean and Driskell had
22 talked about a house fire?

23 A Yes, I knew that.

24 Q So you must have known that there was a burning
25 somewhere in Zanidean's background?

1 A I must have known?

2 Q Yes. That's what your statement says.

3 A Yes.

4 Q Is that a fair summary of your knowledge?

5 A I have no present recollection, but I must have
6 known because of that information, yes.

7 Q The body pack also refers, when they discuss the
8 arson, it is clearly connected to Zanidean's
9 sister. Do you recall that?

10 A She's mentioned, yes.

11 Q You also knew that Zanidean alleged that
12 Driskell had made an incriminating statement
13 while on a trip to Saskatchewan. Do you recall
14 that?

15 A Is that in the -- are you saying that's in the
16 conversation?

17 Q In the statements taken from Zanidean, in which
18 he implicates Driskell in the homicide, there is
19 a particular statement that is said to have been
20 made by Driskell while on a trip to
21 Saskatchewan. Do you remember that?

22 A I don't remember it, no.

23 Q If I could ask Madam Registrar to show you
24 exhibit 6B, tab 8? Exhibit 6B, tab 8 is a
25 supplementary report of a statement taken from

1 Zanidean on November 2, 1990?

2 A I have tab 7 here .

3 Q I'm sorry?

4 A I have tab 7.

5 Q It's tab 8.

6 A Oh, it's exhibit 6B.

7 Q Tab 8, please?

8 A Yes.

9 Q Supplementary of a statement taken from Zanidean

10 on November 2, 1990. Do you have that?

11 A Yes.

12 Q You would have been provided with this report;

13 is that correct? It's the police officer's sort

14 of wrap-up statement from Zanidean where they go

15 back over a number of details and ask clarifying

16 questions about them.

17 A Yes.

18 Q And it's particularly the fourth question, the

19 last question on page 2, and you see in the

20 middle of page 2 .

21 "Ray, you told me before that you and Jim

22 took a trip to Saskatchewan and there was

23 some talk about Perry. What was that and

24 when?"

25 And he proceeds to provide a fairly

1 incriminating statement suggesting Driskell's
2 involvement in the homicide of Perry Harder
3 while they were at a gas station stop, I
4 believe, in Brandon. Do you remember that, you
5 elicited it as part of your case?

6 A I'm sorry?

7 Q It was part of your case?

8 A Yes.

9 Q You would have received this report, I take it?

10 A Yes.

11 Q And you also knew from Zanidean's statements
12 that he was originally from Saskatchewan?

13 A Yes.

14 Q So you've got a bunch of threads of information
15 here about Zanidean and Driskell being involved
16 in an arson, it is somehow connected to the
17 sister. They take a trip to Saskatchewan at
18 some point together, the two of them. And
19 that's Zanidean's original home is Saskatchewan.

20 When you got this question from Brodsky, if
21 you could go back to the letter, when he said,
22 "What do the Winnipeg Police have on the
23 fire in Swift Current?"

24 is it likely that you would have followed up by
25 asking Sergeants Paul and Anderson to clarify

1 for you what this arson business in Swift
2 Current is all about?

3 A Well, the note on the side of the letter is
4 "Winnipeg Police Department," so I suppose, yes,
5 that's what we did.

6 Q Well, I appreciate that you're asking for
7 material from their file. But for you to
8 understand the request, to understand what
9 Brodsky is getting at, did you seek
10 clarification as to what this was all about?

11 A From the police?

12 Q Yes?

13 A Well, that's what that note says, went to the
14 police.

15 Q So that's all you did is you just referred it on
16 to the police? You don't remember any
17 conversations seeking clarification?

18 A I don't remember it, no.

19 Q You see, we know that by the time you get to the
20 pre-trial, a month later on May 22nd, you've got
21 some information about this fire in Swift
22 Current. If you flip forward, just briefly, we
23 will eventually come to this in the chronology,
24 but if you flip forward to tab 44, Mr. Brodsky's
25 two file memos about the May 22nd pre-trial.

1 You have a discussion before Justice Morse about
2 the Swift Current arson --

3 A Yes.

4 Q -- according to Mr. Brodsky's two memos. And
5 I'll take you through these in due course when
6 we get to them.

7 So somewhere between April 25th and
8 May 22nd, you get briefed about the Swift
9 Current arson, it appears?

10 A Yes.

11 Q And what I'm trying to understand is when that
12 briefing took place and who briefed you?

13 A I don't remember. I notice the date on this
14 supplemental is --

15 Q You are back at 6B?

16 A Yeah, it looks to be about -- it looks to be the
17 7th of October, '91.

18 Q I think it's -- no, that can't be correct.

19 THE COMMISSIONER: I don't think so.

20 MR. CODE: 1990, and it's November. November 3,
21 1990.

22 THE COMMISSIONER: Yes.

23 BY MR. CODE:

24 Q They do the report up two days after -- one day
25 after the interview with Zanidean. They

1 interview Zanidean on November 2nd and they do
2 the report on November 3rd.

3 A I am looking at the bottom of the page,
4 "Sergeant T. Anderson '91/10/07, at 11:00."

5 Q You are at the wrong tab. Tab 8 is the tab.

6 A Oh, yeah, okay.

7 Q You are quite right, though, the report at tab 9
8 you would not have had about his admissions,
9 that is not prepared until almost a full year
10 later.

11 A Yes.

12 Q You are quite right about that one, but the one
13 at tab 8 you would have had.

14 So somewhere between April 25th and
15 May 22nd, you get briefed on the Swift Current
16 arson, it appears; is that correct?

17 A Presumably, yes. I don't remember this.

18 Q And does that make rational sense?

19 A Yes.

20 Q If Brodsky is asking you about the fire in Swift
21 Current, he is obviously on to something here.
22 You are going to want to know where it is,
23 what's defence counsel getting at here?

24 A Yes.

25 Q You are going to want a briefing on that fire;

1 is that rational?

2 A Yes.

3 Q Everybody says you are very well prepared,
4 Mr. Dangerfield. You like to go into battle
5 well armed?

6 A Yes.

7 Q So you would like to know what Brodsky is
8 talking about, I take it?

9 A As far as I could determine, yes.

10 Q All right. What happens to these requests,
11 consistent with the notes in the margins, if you
12 turn to the next tab, tab 34, Mr. Lawlor's fax
13 cover sheet, he sends it on to Staff Sergeant
14 Vandergraaf, and he specifically refers items 5
15 and 9, two of the three that we have looked at,
16 directly to the police; is that correct?

17 A Yes.

18 Q And was that done on your instructions,
19 consistent with your advice?

20 A Yes. We would be working together on this, yes.

21 THE COMMISSIONER: I'm sorry, Mr. Code, I have
22 slipped behind here. The last tab number?

23 MR. CODE: 34 --

24 THE COMMISSIONER: 34.

25 MR. CODE: -- is the fax cover sheet to the

1 police passing along items five and nine.

2 THE COMMISSIONER: Yes.

3 BY MR. CODE:

4 Q And Mr. Dangerfield agreed that he and Lawlor
5 were working together on that file.

6 The next event, there is three things that
7 happened on April 26th. First of all, Lawlor
8 sends the fax to the police at tab 34. And then
9 at tab 35 he sends a letter to Brodsky
10 responding to the February 7th letter. So he is
11 finally getting back to him after two and a half
12 months on the matters on which you have been
13 seeking, following up; is that correct?

14 A Yes.

15 Q And I'm specifically interested in item number
16 16, which you will remember, without having to
17 go back to the February 7th letter, was the
18 request for all contacts with Zanidean in the
19 police notebooks --

20 A Yes.

21 Q -- which you had undertaken to follow up on and
22 provide supplementary reports?

23 A Yes.

24 Q And the response here, you see in the letter at
25 tab 35 is,

1 "With respect to paragraph 16 of your
2 letter of February 7th, I am advised that
3 you have all statements/conversations of
4 Zanidean."

5 A Yes.

6 Q And my question in relation to that, you will
7 remember Mr. Lawlor's note beside that one had
8 been to discuss it with you back at tab 29?

9 A Yes.

10 Q And what was the basis for this assertion that
11 Brodsky already had all statements and
12 conversations of Zanidean?

13 A I imagine it was information he got from the
14 police. I don't know.

15 Q Well, when he says "I'm advised," what's the
16 natural inference as to who would advise him on
17 this matter?

18 A Well, if he sent the request to the police, that
19 would be the police who sent that back to him.

20 Q Well, we don't know if this one was -- remember,
21 we are here and we are dealing with the
22 February 7th letter. We are not dealing with
23 the most recent letter yet. We are still going
24 back to try to clean up the first disclosure
25 request. Who would one naturally seek out in

1 relation to a request for all notebook entries
2 of all contacts with Zanidean?

3 A Who would one go to? The police.

4 Q Exactly. So in relation to that request, in
5 which you've now made this response that you're
6 advised that all statements and conversations
7 have been disclosed, did you review the
8 notebooks themselves before providing that
9 response?

10 A I can't recall.

11 Q Was it your responsibility to review those
12 notebooks before making that response, in light
13 of the commitments you had made on February 6th?

14 A I can't recall if I knew of their existence, but
15 it would be my responsibility to look at them,
16 yes.

17 Q Because, you see, we know that this response is
18 not true. That Paul and Anderson's notes both
19 contain conversations with Zanidean on
20 October 10th and October 29th where he discusses
21 the Swift Current arson with him.

22 Have you had a chance to review those notes
23 previously?

24 A Previously to this memorandum?

25 Q I beg your pardon?

1 A Previous to what?

2 Q At any point in preparing for trial, did you
3 review the Anderson and Paul's notes?

4 A No, I didn't.

5 Q You have had a chance since, during the
6 interview that we conducted with you, to review
7 those notes. Do you recall that?

8 A You showed them to me, yes.

9 Q And you recall the discussion, for example --
10 this is all in exhibit 6A, Mr. Commissioner, I
11 don't think I need to pull it up, we have been
12 through these many times. But in Sergeant
13 Paul's notes, for example, at tab 5, the first
14 time the matter comes up, Zanidean says that
15 there could be a problem with his credibility in
16 court. Do you remember that?

17 A Yes.

18 Q And Paul says, well, what would that be? And he
19 says,

20 "Jim and I got involved in something this
21 summer in Saskatchewan. What were you
22 involved in? We blew up a house in Swift
23 Current, a relative's place."

24 Were you ever aware of that note in Sergeant
25 Paul's book?

1 A No.

2 Q And in Anderson's book, he comes back to it two
3 weeks later, on October 29th, and they discuss
4 the arson in a little more detail, in
5 particular, what the motive was for it, why they
6 were blowing up this house. And Zanidean
7 asserts it was to get revenge on his sister,
8 because he believed she didn't have insurance
9 and she would suffer an insurance loss on the
10 house.

11 Were you ever shown that note of Sergeant
12 Anderson's?

13 A Not that I recall, no.

14 Q Were those utterances in the notebooks of the
15 two officers relevant to the matter before the
16 court, the homicide, the Harder homicide?

17 A As far as credibility went, yes.

18 Q Is there any reason you can think of, in terms
19 of your knowledge of police and prosecution
20 practices at the time, as to why those matters
21 would be omitted -- and, incidentally, there are
22 supp. reports for those two interviews, but they
23 omit these two utterances. And Sergeant
24 Anderson has frankly conceded that it was
25 deliberate to omitting them. Is there any

1 reason you can think of, based in police or
2 prosecution practice or policy at the time, that
3 would justify leaving those utterances out of
4 the supp. report?

5 A No.

6 Q And, finally, that letter at tab 35 of
7 Mr. Lawlor's, you will see he is still
8 responding to the February 7th letter, the first
9 letter. And you see he states at the very
10 bottom of that first page, back at tab 35 of
11 exhibit 30B, Mr. Commissioner, you see he says
12 that paragraphs 4 and 5 of the original letter,
13 they are still seeking advice, he is still
14 seeking advice from the police?

15 A Yes.

16 Q And remember, number 5 is one of the ones I have
17 taken you to that we will eventually get the
18 response to. So it appears it is still with the
19 police as of April 26th.

20 The third event on April 26th is at tab 36,
21 another letter, this one responding to the most
22 recent letter. We are now getting current, this
23 is dealing with the April 25th letter.

24 A Yes.

25 Q It is just an initial place holder responding to

1 a number of the requests immediately. And then
2 at the end of the letter you see Mr. Lawlor
3 says,

4 "The remainder of your query has been
5 passed on to Winnipeg Police."

6 A Yes.

7 Q "You will receive the information that's
8 provided".

9 A Yes.

10 Q And then that response, at least the response to
11 one of those matters passed on to the police is
12 at tab 37, some three days later. And I want to
13 deal with this carefully with you. You see,
14 have you got the tab 37 letter, April 29th?

15 A Yes.

16 Q And it's the third response there, in
17 Mr. Lawlor's letter he says, "re paragraph 9,"
18 and you will remember paragraph 9 back at
19 Brodsky's letter at tab 33 --

20 A Yes.

21 Q -- is the one about what do the Winnipeg Police
22 have on the fire in Swift Current? And it
23 states,

24 "Re paragraph 9, Winnipeg Police have
25 nothing on these incidents."

1 A Yes.

2 Q And again my usual question, what was the basis
3 for that response?

4 A I expect he put a question to them and that's
5 what they told him.

6 Q Again, would this have been something on which
7 the two of you would have conferred and
8 collaborated jointly in this response? Would he
9 have briefed you on it?

10 A I expect he would have answered the letter, yes.
11 He may have done. He may have been just acting
12 on his own. I don't remember.

13 Q All right.

14 A But the source of the information would be the
15 police.

16 Q Again, you see, we know this response to be
17 substantially incorrect, that there is a great
18 deal of information in the Winnipeg file, the
19 police file --

20 A Yes.

21 Q -- about the Swift Current arson?

22 A That's what I learned later, yes.

23 Q And your awareness of the fact that the Winnipeg
24 Police knew about the arson, or had information
25 about the arson?

1 A I can only go by what's said here, that the
2 police have nothing on these files, that's the
3 information we received from them.

4 Q No. I appreciate that they are saying there is
5 nothing in the files. But, you see, you've told
6 us that somewhere between the April 25th letter
7 and the May 22nd pre-trial, you get briefed on
8 that Swift Current arson, because you address it
9 before Justice Morse. Do you recall that?

10 A Yes.

11 Q You remember the memos at tab 44 that set out
12 what was discussed at the pre-trial. And that's
13 now just three weeks away, a little over three
14 weeks away. So at some point in here you are
15 getting briefed about the Swift Current arson;
16 is that fair?

17 A Yes. I mean, Mr. Brodsky's note is that
18 Zanidean probably set this fire. I don't know.

19 Q Well, we will come to the memos in due course.
20 They set out a lot of information that Zanidean
21 probably set the fire, that the RCMP were
22 informed of his admissions, that there is no
23 deals in relation to it, that the RCMP has
24 chosen to do nothing. There is a number of
25 points in there that we will review when we come

1 to it in the chronology. But all I am trying to
2 reconstruct here is that on April 25th, Brodsky
3 alerts you to this issue of the Swift Current
4 arson?

5 A Yes.

6 Q Is that correct? And you already know something
7 about it from the body packs?

8 A It's been mentioned, yes.

9 Q And now you are getting a report back from the
10 police saying we've got nothing on it?

11 A Yes.

12 Q And somewhere in here you get a briefing from
13 them in which it appears that they have got a
14 fair bit about it, that eventually comes out at
15 the May 22nd pre-trial?

16 A Yes.

17 Q So my question to you is, did you follow up,
18 whenever it was you were briefed, and say, well,
19 listen, fellas, we've told Brodsky you've got
20 nothing on this, but it appears you've got a
21 fair bit on it?

22 A I don't think so. I really don't know. I would
23 imagine we should have, but I don't know if we
24 did.

25 Q Given the undertakings you had made in open

1 court on February 6th --

2 A Exactly.

3 Q -- was it your duty to follow up and check the
4 file and find out what, in fact, they did have
5 on that arson?

6 A Yes.

7 Q You see, if you look at the witness protection
8 agreement, and we are back in the witness
9 protection application, we are back in volume 1,
10 tab 19. Have you got tab 19 in volume 1?

11 A Yes.

12 Q And there's a whole section on the Swift Current
13 arson, page 481?

14 A Yes.

15 Q This is a document prepared by the homicide
16 officers, this is Vandergraaf and Paul and
17 Anderson --

18 A At a station of the RCMP?

19 Q -- who put this together and sent it into
20 Corporal Orr --

21 A Yes.

22 Q -- to try to get Zanidean into witness
23 protection?

24 A I never saw this.

25 Q I appreciate you didn't see it, but it shows the

1 kind of information they have got, if you look
2 at page 481. You will see it sets out the fact
3 of his admissions. Do you see that long
4 paragraph at the bottom of 481?

5 A The numbers are very faint.

6 Q "In the course of interviewing the witness
7 Zanidean regarding his knowledge of this
8 murder, he informed us that he and murder
9 accused Driskell..."

10 I'm at tab 19, Mr. Dangerfield.

11 A I am trying to find that page number that you
12 referenced.

13 Q Sorry, the pages are very faint. It is 481 at
14 the bottom.

15 A I've got it now.

16 Q It starts,

17 "In the course of interviewing witness
18 Zanidean..."

19 A Yes.

20 Q "...regarding his knowledge of this murder,
21 he informed us that he and murder accused
22 Driskell had travelled to Swift Current on
23 the 8th of July to burn the house of
24 Zanidean's sister. It is not clear what
25 the motive was, but the deed was done and

1 Swift Current RCMP Constable Burton
2 confirms that they are investigating the
3 same."

4 And they set out the RCMP file number, which the
5 entire file has been sent to them at this point.

6 "Constable Burton has agreed not to pursue
7 Zanidean at this time, but will continue
8 investigation once our trial is concluded.
9 We have made it perfectly clear to the
10 witness that he will not receive immunity
11 from this charge in exchange for his
12 evidence. We have told him that we
13 notified the RCMP and the outcome of the
14 investigation rests with them. In the
15 meantime, however, Zanidean's lawyer has
16 requested of Bruce Miller complete immunity
17 from prosecution and a written guarantee
18 stating the same prior to the murder
19 trial."

20 A Yes.

21 Q "This delicate matter has not yet been
22 resolved."

23 A lot of that information, eventually, in a
24 somewhat similar form finds its way into yours
25 and Lawlor's representations at the May 22nd

1 pre-trial.

2 So my question to you is, did you at some
3 point, were you at some point briefed generally
4 about these matters, even though you didn't see
5 the document?

6 A I don't recall being told that kind of detail,
7 no.

8 Q At some point you are told generally about the
9 fact that Zanidean made an admission?

10 A Involvement, yeah.

11 Q That it was passed on to the Swift Current RCMP?

12 A I guess. I can't -- I really can't recall,
13 Mr. Code.

14 Q And that Swift Current was doing nothing with
15 it, had chosen to do nothing?

16 A I don't remember that part at all.

17 Q You knew the negotiations were going on with
18 Miller?

19 A I knew negotiations were going on with Miller, I
20 did not know their substance.

21 Q Did you go back to him in relation to this
22 request, once you learned that this Swift
23 Current matter was a live issue, Brodsky was
24 very focused on it, It is being discussed at a
25 pre-trial?

- 1 A No, I didn't.
- 2 Q Did you ask Miller, has this matter come up in
3 your negotiations?
- 4 A Not that I can remember, no.
- 5 Q Was it your responsibility to make those
6 inquiries?
- 7 A I don't know if I even considered it at that
8 point because of the directions I had been given
9 with respect to the negotiations. I was not to
10 know anything.
- 11 Q Well, this --
- 12 A But --
- 13 Q -- summary that's set out here at tab 19 that we
14 have just read --
- 15 A Yes.
- 16 Q -- is that relevant to Zanidean's credibility?
- 17 A Of course it is. Yes, it is.
- 18 Q Is it discloseable?
- 19 A Yes, it is.
- 20 Q In light of the undertakings you've made to
21 Chief Justice Hewak, ought you to have looked
22 into that?
- 23 A Yes, I suppose. I don't know whether I did or I
24 didn't, but I suppose I should have, yes.
- 25 Q If Zanidean was demanding complete immunity, a

1 written guarantee prior to testifying at the
2 murder trial, as it is set out here, can you
3 think of any good reason why Bruce Miller would
4 not have alerted you to that?

5 A No.

6 Q It is highly relevant to you as Crown counsel?

7 A Yes, it is.

8 Q You would want to know that your chief Crown
9 witness was making those demands?

10 A Absolutely.

11 Q Now, Brodsky's final disclosure request comes in
12 his pre-trial memo, the third and last request.
13 And this is the questions memo, as we've called
14 it. And the chronology as to how this memo
15 comes to you, we find in tab 39. There is a
16 number of internal memos of Mr. Brodsky's to
17 this file where he sets out the fact that he
18 just gave it to you the morning of the May 10th
19 pre-trial. You see that in the first memo at
20 tab 39?

21 A Yes.

22 Q And on the third page, he, in his note to his
23 assistant Vera, he says that the Crown's
24 position is that you haven't had an opportunity
25 to go through it. Lawlor appears to have

1 attended and he wanted to discuss it with you.

2 Do you see that?

3 A Yes.

4 Q And accordingly the pre-trial gets put over to

5 the 22nd, and you both attend on the second

6 pre-trial?

7 A Yes.

8 Q Do you remember that? Is that consistent with

9 your recollection?

10 A I can't remember the specifics, no, but this is

11 what he has written.

12 Q You don't dispute the basic chronology there?

13 A The time of these various meetings, no.

14 Q And the time in which you got the memo and that

15 it resulted in the pre-trial being adjourned 12

16 days?

17 A Yes.

18 Q Now, in terms of the content of the requests set

19 out in this memo, we find it at tab 43, and this

20 is a marked up copy taken from the Crown's

21 files. Can you identify the handwriting on the

22 copy at tab 43? Have we got tab 43?

23 A I have tab 43.

24 Q And you see it's a copy of Mr. Brodsky's

25 questions memo for the pre-trial?

1 A Yes.

2 Q And you see the handwriting in the margin?

3 A Yes.

4 Q And can you identify that handwriting?

5 A It looks like mine.

6 Q It appears not to be Mr. Lawlor's this time; is
7 that fair?

8 A No, it isn't.

9 Q There's two specific questions I want to take
10 you to in this memo. First of all, number 6 at
11 page 2?

12 A Yes.

13 Q Which is simply a reiteration of his number 5
14 from the April 25th letter that we have seen
15 previously, namely the issue of favourable
16 considerations not pressing charges. He simply
17 repeats it, reiterates it and says.

18 "I am still waiting for a response."

19 And consistent with Mr. Lawlor's letter told him
20 it was still -- do you remember it was
21 Mr. Lawlor's letter back at tabs, I think it was
22 tab 36, had told Mr. Brodsky that most of his
23 requests were still with the police. So he is
24 reminding you of his previous request; is that
25 correct?

- 1 A Yes.
- 2 Q It's still outstanding. And he makes one
3 further new request that I want to take you to,
4 and that's number 23, the very last one.
- 5 "What information do the police have in
6 their files with respect to Zanidean's
7 involvement in the drug scene and has
8 Zanidean ever been an informant for the
9 police in terms of drugs or other matters?"
- 10 A Yes.
- 11 Q Again, what's the issue that Mr. Brodsky is
12 getting at here?
- 13 A Credibility, I expect.
- 14 Q Again, any suggestion that that was not relevant
15 to ask for Zanidean's history as an informant?
- 16 A No.
- 17 Q And finally the last one of these requests that
18 I want to draw your attention to is the previous
19 request he has made for access to the police
20 file. Do you see number 16 --
- 21 A Yes.
- 22 Q -- at page 4? He draws your attention to his
23 previous number 21 from the April 25th letter?
- 24 A Yes.
- 25 Q And that was for access to the police file.

1 A Um-hum.

2 Q And you see your note beside that? Is that your
3 note beside it?

4 A It looks like it.

5 Q It says "won't provide"?

6 A Yes.

7 Q And what was the basis for that decision not to
8 provide, assuming that was the decision?

9 A I guess because we had given him everything, I
10 thought.

11 Q We will come to that in a moment when we come to
12 your responses.

13 There is no note beside number 23. What's
14 the note beside number 6? Can you read that?

15 A "Where or when is fire?"

16 Q "Where or when is fire?"

17 A Yes.

18 Q So you appear to be making inquiries about the
19 Swift Current arson in relation to this whole
20 issue of favourable considerations; is that
21 correct?

22 A It is just a note, maybe to make inquiries. I
23 don't know.

24 Q Well, you appear to have drawn the link between
25 the Swift Current fire and the issue of

1 favourable considerations; is that correct?

2 A Yes.

3 Q Now, I think one of these three matters I can
4 quickly deal with the response before the lunch
5 recess, and then we will deal with the two
6 bigger ones later after the lunch recess.

7 The response to request number 16, which
8 was the request for direct access to the police
9 file, and your note "won't provide," it appears
10 that it gets addressed orally at the May 22nd
11 pre-trial. If you flip forward to tab 44, you
12 see Mr. Brodsky's memos from the pre-trial?

13 A Yes.

14 Q On the 22nd when you come back on. If you turn
15 to page 339 of those memos, the fourth page in.

16 A Yes.

17 Q So tab 44, page 339, you see about a third of
18 the way down the page Brodsky's note,

19 "With respect to question 16, Dangerfield
20 advises he will not provide."

21 So his memo is consistent with your note?

22 A Yes.

23 Q And when we interviewed you about this matter,
24 you twice told us in your tab 1 interview that
25 you were sympathetic to the idea of giving

1 Brodsky direct access to the file. I can take
2 you to those references, tab 1, page -- they are
3 at page 16 and 17. Because, you see, this
4 matter had come up before Chief Justice Hewak on
5 February 13th, and then it came up again in
6 Brodsky's April 25th letter. And it is now
7 being raised for the third time at the May 22nd
8 pre-trial.

9 So if you look at your interview, tab 1,
10 page 16, the very top of the page, this is when
11 we were interviewing you about the February 13th
12 pre-trial. You see it perhaps starting at the
13 bottom of page 15,

14 "If Brodsky had insisted on being open box
15 access in this case, Dangerfield would have
16 given it to him."

17 That's because you had done that before, had you
18 not?

19 A Yes. Yes.

20 Q And then we jump forward to page 17, to the
21 April 25th letter where he raises it for a
22 second time. And you see at the bottom of page
23 17,

24 "In his April 26th letter, Brodsky...",
25 I think that should be the 25th,

1 "...Brodsky also renewed his request for
2 open box disclosure that he had first made
3 at the February 13th appearance before
4 Chief Justice Hewak. Dangerfield does not
5 now specifically recall this request, but
6 he thinks that if Brodsky had really wanted
7 open box disclosure and pressed for it,
8 Dangerfield would have given it to him."

9 Is that the response you would you gave us in
10 the interview?

11 A Yes.

12 Q So this was an approach to disclosure that you
13 were sympathetic to because it cut out the
14 middle man, it cut out the police and your
15 dependency on the police for accurate responses
16 to your questions; is that correct?

17 A Yes.

18 Q So when Brodsky did press it a third time in the
19 pre-trial memo, why did you not accede to it at
20 that point?

21 A Because we had gone through all of his requests
22 and supplied him with answers to them. I saw no
23 point in going through it again.

24 Q You've told us that in responding to those
25 requests, you fundamentally relied on the

1 police?

2 A Yes.

3 Q And you've also agreed that it was your
4 responsibility to check the file yourself --

5 A Yes.

6 Q -- to ensure that full disclosure had been made?

7 A Yes.

8 Q Would this not have been the perfect device to
9 ensure that your responsibilities were carried
10 out, just give him the file?

11 A Yes. What I had of it, sure. I didn't.

12 MR. CODE: This is a good time. It's 12:46, I
13 note. I beg your pardon?

14 THE COMMISSIONER: 12:46:35.

15 MR. CODE: So I'm a minute over.

16 THE COMMISSIONER: No, that's very good,
17 Mr. Code. We will adjourn until 2:00. Thank
18 you.

19 THE CLERK: All rise. This Commission of
20 inquiry is Adjourned until 2:00.

21 (Proceedings recessed at 12:46 and
22 reconvened at 2:00 p.m.)

23 THE CLERK: All rise. This Commission of
24 Inquiry is now reopened. Please be seated.

25 MR. PROBER: Good afternoon, Mr. Commissioner,

1 there is a matter that I would like to briefly
2 address. I have spoken to Mr. Code about it.
3 It seems to me that there is a bit of confusion
4 between open box disclosure, so-called open box
5 disclosure, with respect to the boxes in
6 Mr. Dangerfield's office, to which Mr. Brodsky
7 had had access previously, and to which
8 Mr. Dangerfield told Brodsky that he could have
9 access when they were in front of Justice Hewak,
10 Chief Justice Hewak, confusion between that and
11 access to the police files. Mr. Code and I both
12 agree that what Brodsky was asking for was
13 access to the police files. And it wasn't just
14 my confusion, I have spoken to other counsel,
15 but these are separate matters. And I think
16 that the way that Mr. Code was putting the
17 questions confused the two or lumped the two
18 together. And I think now Mr. Code and I both
19 understand that open box disclosure of what
20 information Mr. Dangerfield had is different
21 than access to the police files. Thank you.
22 THE COMMISSIONER: Thank you, Mr. Prober. As
23 indicated earlier, that was a term that I have
24 not been familiar with, the open box term. And
25 I think it was said, you haven't had enough

1 trials with Mr. Pinkofsky. And I was almost
2 tempted to say how many is enough?

3 MR. PROBER: To Mr. Brodsky.

4 THE COMMISSIONER: No, no, to Mr. Pinkofsky.
5 Apparently it was an expression of his.

6 MR. PROBER: It was an expression of his, right.

7 THE COMMISSIONER: Anyways, I appreciate you
8 mentioning that.

9 MR. CODE: I think it is actually an American
10 term of American criminal procedure, but
11 Mr. Pinkofsky is very fond of it and has made
12 such applications. But Mr. Prober and I are
13 agreed that what Brodsky is seeking is clearly
14 access to the police files, because we are
15 operating on the assumption that what
16 Mr. Dangerfield has got has been given to him
17 already, and he is clearly asking for something
18 more. I will rely on the transcript. I thought
19 it was quite clear, and if it wasn't, I'm sure
20 that the transcript will reveal the lack of
21 clarity. But at least we are agreed that we are
22 talking about the same thing.

23 BY MR. CODE:

24 Q Now, Mr. Dangerfield, I was just finishing up
25 the tail end of the disclosure history, and that

1 was Mr. Brodsky's third request in the so-called
2 questions memo from the May 10th pre-trial. And
3 there were three items in that shopping list
4 that I went through with you and we have dealt
5 with one of them, and there is two left where I
6 have to review your responses.

7 So if you could have tab 41 open in front
8 of you, it is in volume 2, tab 41, which is
9 exhibit 30B, I want to take you to the responses
10 to Mr. Brodsky's requests number 6?

11 A Wait a second, I'm lost here.

12 THE COMMISSIONER: Volume 30B, which is the
13 second volume, volume 2, tab 41.

14 THE WITNESS: My tab 41 is a police report.

15 BY MR. CODE:

16 Q That's right. And if you look behind that
17 police report, you will see a note to Greg
18 Lawlor from Tom Anderson, do you have that?

19 A Yes.

20 Q Page 3. Dated May 15th, Mr. Anderson, Sergeant
21 Anderson is passing on supp report pages 182 to
22 183 to Lawlor?

23 A Yes.

24 Q And those are the two pages in front of it?

25 A Yes.

1 Q And then the letter at the back of the tab dated
2 two days later, May 21st, attaches police
3 reports and sends them on to Mr. Brodsky; is
4 that correct?

5 A That's right.

6 Q And this police report contains the substantive
7 response to the two items, number 6 and number
8 23, that we dealt with before the lunch recess.
9 So I just want to review those with you.

10 Number 6, the response is at the bottom
11 page 1, and you remember this request had --

12 A Where are we now?

13 Q We are in the police report at the front of the
14 tab.

15 A Okay, question 6, all right.

16 Q Question 6 at the bottom of the page, it was a
17 two part question, you will recall, it asked for
18 criminal records and outstanding charges.

19 A Yes.

20 Q And then it had this broad request for other
21 favorable consideration. And it is that second
22 aspect that I'm interested in, if you read the
23 last paragraph there.

24 "With respect to the second part of this
25 question, we are not aware of a single

1 criminal charge outstanding...",
2 that's still part of the first request.

3 "Furthermore, protection is the only
4 favorable consideration given to any
5 witness. We are not aware of any stayed
6 charges or any other deals made with any
7 witness in exchange for testimony."

8 Now would you have received that report and
9 reviewed it?

10 A Well, since Mr. Lawlor is forwarding it to
11 Mr. Brodsky, yes.

12 Q Sorry?

13 A Since Mr. Lawlor is forwarding it to
14 Mr. Brodsky, I expect I did.

15 Q You would have reviewed it?

16 A Yes.

17 Q And again we know from the various documents
18 that we've reviewed so far with you this
19 morning, and in particular you will recall the
20 witness protection application at tab 19 that
21 nicely summarized the situation with respect to
22 Swift Current and the arson, that Sergeant
23 Anderson had had discussions with Constable
24 Burton and they had an agreement in place with
25 respect to not pursuing Zanidean until after the

1 trial initially. And also we know that Kovnats
2 was demanding complete immunity. And finally
3 one further development that had taken place by
4 this time that I need to take you to is at tab
5 20. So if you could leave that police report at
6 tab 41 open, but also go to the previous volume,
7 they are in two separate volumes so you can keep
8 them both open at once.

9 A Where is tab 20?

10 Q In the first volume.

11 A Oh, yes.

12 Q Tab 20 is a report that was prepared afterwards.
13 You see it is dated October 8, '91, it is after
14 the trial.

15 A Yes.

16 Q And if you turn to page 2 of that -- it is a
17 report of Sergeant Anderson.

18 A Um-hum.

19 Q If you turn to page 2 of that report, you see in
20 the middle paragraph, that long paragraph in the
21 middle, he relates what happens in March and
22 April after the witness protection application
23 has been tendered?

24 A Yes.

25 Q And if you drop down to the middle of that, he

1 is advised that the outstanding jeopardy in
2 Saskatchewan is going to be a problem with
3 witness protection. And so in the third
4 sentence he says,

5 "Consequently, I had two conversations with
6 Constable Burton. During the first
7 conversation I explained the dilemma and I
8 believe he had already spoken to Corporal
9 Orr. In any case, he had given the matter
10 thought and he immediately offered to
11 withdraw their pursuit of Zanidean
12 entirely. He explained that he planned to
13 interview James Driskell after the murder
14 trial in an effort to gain evidence against
15 both Zanidean and his sister, but that he
16 would only charge the sister.

17 Approximately one week later I telephoned
18 Constable Burton again to ensure that his
19 proposal was agreed to by his supervisors.
20 He assured me that his detachment commander
21 had approved, and I reminded him that we
22 not make Zanidean privy to this arrangement
23 until after he testified."

24 So according to Anderson's subsequent report,
25 this agreement with Burton was in place as of

1 April, and then he prepares this report for you
2 in May, approximately a month later.

3 So my question to you is, looking at those
4 two documents that we have just gone through,
5 the witness protection application at tab 19
6 that we reviewed just before lunch, and Sergeant
7 Anderson's report, at tab 20, is the response
8 that we find in this police report a full, fair
9 and accurate account of those facts, or would
10 you have been satisfied with it had you known of
11 those accounts in those other documents?

12 A Well, no. I accepted the police answers to all
13 of those questions without question because I
14 trusted them. If this came through as an
15 example of what the answer was to questions five
16 and six, I would accept it.

17 Q And --

18 A I had no reason to go back and ask questions of
19 police officers. If I asked a direct question,
20 is such and so the case, and they said yes, I
21 would not go back down and say I don't believe
22 it, let's see your notebooks and files.

23 Q I appreciate that, that's not quite the question
24 I'm asking you. I'm simply saying, looking at
25 these two documents at tab 19 and 20 --

1 A Yes.

2 Q -- which sets out information that we know is
3 within the police possession as of May, when
4 they were writing this report to you, had you
5 been aware of that information, would you have
6 been satisfied with this response? Would you
7 think this was a fair response to Brodsky's
8 question about favorable consideration?

9 A Are you asking me if I had this memorandum to
10 Inspector Raymond Johns in my hand and saw this
11 police report?

12 Q Yes?

13 A I would ask Mr. Anderson what he was writing
14 about. But I didn't have that.

15 Q No, I understand that, and I'm simply trying to
16 get your sense of the kind of disclosure that
17 you had committed to the Chief Justice, which
18 was not stinting disclosure, whether you would
19 have regarded this response as adequate?

20 A I promised to give Brodsky everything that I had
21 and I did.

22 Q And your position is simply that you didn't
23 have --

24 A I didn't have that, no.

25 Q -- the documents at tabs 19 and 20?

1 A No.

2 Q Now, in terms of the other request for
3 disclosure, number 23, you will remember was the
4 question about Zanidean's history as a police
5 informant. And if you turn to the second page
6 of the police reports, still at tab 41?

7 A Yes.

8 Q You see question number 23?

9 A Yes.

10 Q "The Winnipeg Police Department has no
11 information on file, that we are aware of,
12 relating to Zanidean's involvement in the
13 drug scene."

14 That was the first part of the question.

15 "We are not aware of Zanidean ever having
16 acted in the capacity of a police informant
17 prior to his involvement with James
18 Driskell."

19 Do you see that?

20 A Yes.

21 Q Now, again, I take it that response was the
22 response that the police gave you and you took
23 it at face value?

24 A Yes.

25 Q If you turn to the next tab, tab 42?

1 A Yes.

2 Q We have a set of notes that Sergeant Paul took
3 on October 9th, 1990, some nine months before
4 that police supplementary report was prepared.
5 This is his first meeting with Zanidean on
6 October 9th, when Zanidean first comes in and is
7 interviewed by the police?

8 A Yes.

9 Q And you see on the first page of the notes, the
10 interview begins with a discussion of the chop
11 shop situation, and the chop shop that Driskell
12 and Perry Harder were allegedly working at
13 together. Do you see that on the first page?

14 A Yes.

15 Q "Jim had a shop fixing cars. Ray helped
16 him out sometimes. Jim and Perry got
17 together. Things changed."

18 A Yes.

19 Q And dropping down to the bottom of the page.
20 "Jim said he would do anything to build his
21 empire. Ray had nothing to do with them.
22 Ray phoned Crime Stoppers about them."
23 Do you see that?

24 A Yes.

25 Q "Ray had just left the shop when it was

1 raided, got stopped by the police. Got
2 \$700 from Crime Stoppers."

3 A Um-hum.

4 Q Now, the officers have conceded that it was
5 their understanding that Zanidean was the
6 informant on the Crime Stoppers charge, on the
7 chop shop charge and received a payment from
8 Crime Stoppers?

9 A They did.

10 Q And again, if we go back to the report at tab
11 41 --

12 A Did you ask me if they had agreed, I'm not --

13 Q I'm talking about their testimony here before
14 this --

15 A I didn't hear it.

16 Q I appreciate that. I'm just giving you the
17 premise of my question --

18 A Sorry.

19 Q -- that there is no dispute that Zanidean was
20 the informant it appears on the chop shop charge
21 and indeed received a payment for it.

22 So if you go back to the report at tab 41,
23 and question 23, the answer to question 23,
24 again you will recall -- you may want to just
25 refresh your memory how the question is framed

1 at tab 43, do you remember how Mr. Brodsky
2 frames his question?

3 "Has Zanidean ever been an informant for
4 the police in terms of drugs or other
5 matters?"

6 In other words, has he ever been an informant
7 was the question at tab 43?

8 A Yes.

9 Q If we go back to Sergeant Anderson's answer at
10 tab 41.

11 "We are not aware of Zanidean ever having
12 acted in the capacity of a police informant
13 prior to his involvement with James
14 Driskell."

15 A Um-hum.

16 Q You see the way he has responded to that
17 question?

18 A Yes.

19 Q And again, if you had been aware of the notes at
20 tab 42, would you have been content with that as
21 an appropriate answer to Mr. Brodsky's question?

22 A No.

23 Q I am sorry, I didn't hear your answer?

24 A I am sorry, did you not hear me? I believe I
25 said no.

1 Q You would not have been content with that?

2 A No, it is clearly wrong.

3 Q Thank you. I want to now turn to the oral
4 representations made by yourself and Lawlor at
5 the May 22nd pre-trial?

6 A Yes.

7 Q They are at the next tab, tab 44?

8 A Yes.

9 Q In which Mr. Brodsky sets out two file memos
10 summarizing the gist of what he recalls being
11 told. You have had a chance to review those two
12 memos, both at our interview and prior to
13 testifying?

14 A Yes.

15 Q And I would like to go through the two relevant
16 paragraphs relating to the Swift Current arson,
17 which Mr. Brodsky characterizes as being in
18 response to question 6. You remember question 6
19 in his memo at tab 43 is the question about
20 favorable consideration?

21 A Um-hum.

22 Q So it appears there was an oral response made to
23 question 6 at the May 22nd pre-trial, and here
24 is what he says at tab 44.

25 "They..."

1 being yourself and Lawlor,
2 "...are not prepared to involve themselves
3 in the Swift Current file, that is another
4 police force. The RCMP were advised
5 according to Dangerfield and Lawlor (by
6 Lawlor) in Dangerfield's presence in the
7 office of Mr. Justice Morse that Zanidean
8 probably set the fire. The RCMP chose to
9 do nothing about it. Any favour extended
10 to Zanidean did not cover anything outside
11 of Manitoba and nothing was held out to
12 Zanidean, in any event, within Manitoba."
13 And then in the second memo, slightly different
14 elaboration on it, but much the same. You see
15 the second paragraph,
16 "With respect to question 6, the Crown says
17 that no favorable consideration was
18 offered. The Crown makes the point that
19 RCMP in Swift Current were notified of the
20 involvement of Zanidean and it is up to
21 them to pursue or not pursue the
22 investigation. The Winnipeg Police can
23 only make arrangements with respect to the
24 area that they are responsible for, the
25 area of Manitoba. They are not able to

1 make agreements with respect to what some
2 other police force, particularly the RCMP
3 will do, and they did not."

4 Now, we have no other record of what was
5 said at that pre-trial by yourself and
6 Mr. Lawlor, other than these two memos. Could I
7 ask you, first of all, do you have a
8 recollection of what you said at that pre-trial?

9 A No, I don't.

10 Q And do you challenge or contest or disagree
11 with -- is there anything in Mr. Brodsky's
12 account that you know to be untrue or
13 inaccurate?

14 A Well, this is Mr. Brodsky's interpretation of
15 what went on. I can't really comment on it.
16 The police report says there was no favour
17 offered to him. I don't know what this says,
18 "...not prepared to involve themselves in
19 the Swift Current fire, that's another
20 police force."

21 I don't know where that's coming from.

22 Q My question at this stage, before we get into
23 the content of it, is, simply, does your
24 recollection allow you to dispute anything that
25 Mr. Brodsky has put in his contemporaneous file

1 memos?

2 A I have no recollection of this conversation as
3 he set it out, no.

4 Q So you are in no position to challenge his
5 account of it?

6 A I can't comment on it either way.

7 Q Fair enough. But sometimes when you don't
8 remember an event, something in a record of it
9 rings untrue or rings false to you, and I'm
10 wondering if there is anything in here that you
11 positively believe to be inaccurate?

12 A Where is this memorandum from --

13 Q It is all at tab 44, both memos are at tab 44.

14 A I'm looking back at the police report.

15 Q The police report at tab 41?

16 A I don't know where he got this information from,
17 because some of it is in this memorandum or
18 report to Johns, which we agree I didn't see.

19 Q Some of it is in the memo to Johns, some of it
20 is in the witness protection application at tab
21 19.

22 A I didn't see that either.

23 Q I'm not suggesting that you saw those documents.
24 What I'm suggesting to you is that if Brodsky's
25 account is reasonably accurate, it suggests you

1 had a briefing at some point from the police or
2 from Mr. Miller about these matters; is that
3 correct?

4 A It may suggest it, but I don't recall any
5 briefing of that kind.

6 Q I appreciate that, but is it reasonable to
7 infer, assuming this memo is the only record
8 that we have, that you must have received a
9 briefing at some point?

10 A I don't agree that I received a briefing. I
11 have simply no memory of it.

12 Q I appreciate your lack of memory. I'm trying to
13 ask you on the basis of reasonable hypothesis?

14 A I suppose you could infer it, but I don't accept
15 there was one.

16 Q You don't accept that you were ever briefed on
17 any of this?

18 A I don't recall it for sure.

19 Q I appreciate you don't recall it, but do you
20 have a memory of not being briefed on it, of
21 being completely in the dark?

22 A I have no memory about a lot of this stuff,
23 Mr. Code. If you want me to suggest that maybe
24 there was a briefing, fine, maybe there was a
25 briefing. But that's just me supposing, I don't

1 know for a fact.

2 Q Mr. Dangerfield, what I am trying to do, I know
3 your position is you have no actual
4 recollection, but you know the kind of
5 prosecutor you were?

6 A Yes.

7 Q You know you were thorough and hard working and
8 well prepared?

9 A Um-hum.

10 Q Is that correct?

11 A Yes.

12 Q You also took a liberal view of disclosure, as
13 you have told us?

14 A Absolutely.

15 Q You also took the position that any deals made
16 with your key witnesses were relevant to their
17 credibility and something you would want to know
18 about?

19 A If I knew about them, yes.

20 Q And something you would want to inquire about --

21 A Yes.

22 Q -- so you would be well prepared?

23 A Um-hum.

24 Q So you wouldn't be blind-sided at trial, isn't
25 that correct?

1 A Yes.

2 Q So knowing the kind of man you were, the kind of
3 prosecutor you were, and the kinds of disclosure
4 requests that you are receiving from Brodsky,
5 and the threads of information that you had from
6 the body packs, is it reasonable to infer that
7 you would have made some inquiry about the Swift
8 Current arson and what its status was?

9 A Well, we made several inquiries along those
10 lines that brought negative results. Maybe I
11 made others that weren't recorded, but I have no
12 knowledge or no recollection of ever being
13 briefed in that fashion.

14 Q And you can't tell us -- I'm trying to move
15 beyond that --

16 A Okay.

17 Q -- and to look at your character, your manner of
18 prosecuting, and the way you prepared for trial,
19 and ask you what is reasonable in the
20 circumstances. Accepting that you have got no
21 actual recollection, can you assist us as to
22 whether it is reasonable that you would have
23 asked for a briefing on these matters?

24 A Well, depending about my knowledge at the time,
25 yes.

1 Q You see in the interview we had with you at tab
2 1, you didn't appear to have so much difficulty
3 with this question. If you look at tab 1, page
4 20?

5 A Um-hum.

6 Q You see tab 1, page 20, the last three lines at
7 the bottom?

8 A Yes.

9 Q After we reviewed the two memos with you, your
10 position at the bottom of the page is,

11 "Presumably here Lawlor must have received
12 some kind of oral briefing from someone
13 that enabled them to make these assertions
14 at the pre-trial."

15 MR. PROBER: In order to put it in context, my
16 friend should read the rest of the paragraph,
17 please.

18 BY MR. CODE:

19 Q I'm happy to read the rest of it.

20 "It is possible that Lawlor found out about
21 it and told Dangerfield, or they could have
22 received the information from Miller or a
23 police officer such as Anderson or
24 Vandergraaf. Since Dangerfield has no
25 recollection of this, he can only

1 speculate."

2 A Yes.

3 Q Do you still accept that position as set out
4 there?

5 A Yes.

6 Q Let's look at the specific content of what is
7 said.

8 A By whom, Mr. Brodsky?

9 Q In Mr. Brodsky's memo of the pre-trial,
10 recording his best recollection of what you
11 and/or Lawlor said in Mr. Justice Morse's
12 presence. And he has come here and testified
13 about it.

14 A Okay.

15 Q So this is in evidence, and I'm obliged to put
16 it to you.

17 First of all, the assertion is made in the
18 first memo that Zanidean probably set the fire.
19 Do you remember being aware of the fact that
20 Zanidean probably set this fire?

21 A Well, it comes from that intercepted wire,
22 intercepted conversation, they talk about
23 setting a fire.

24 Q Exactly, so clearly that was within your
25 knowledge?

1 A Oh, yeah.

2 Q You knew he had set a fire together with
3 Driskell?

4 A Um-hum.

5 Q And here it is being tied in specifically to the
6 Swift Current arson that Mr. Brodsky has been
7 asking about; is that correct?

8 A Yes.

9 Q So the question is, how did you come to learn
10 that that fire, referred to on the wire taps,
11 was the Swift Current arson?

12 A I think it is suggested in the wire taps
13 themselves, isn't it?

14 Q Well, the exact location of it isn't suggested,
15 but it is linked to the sister, and we know he
16 is from Saskatchewan and he took a trip to
17 Saskatchewan with Driskell. There is a number
18 of threads one could put together.

19 A Um-hum.

20 Q And my question is, do you recall, being the
21 kind of carefully prepared prosecutor you were,
22 of putting the threads together and asking some
23 questions and finding out about it?

24 A I suppose I did. I cannot recall doing it
25 but --

1 Q The second fact that is asserted in these memos
2 about this evidence that Zanidean is the
3 perpetrator, is that the RCMP in Swift Current
4 have been notified about it. You see that in
5 the second memo, it is expressly set out that
6 the RCMP and Swift Current were notified of
7 Zanidean's involvement. And we know that to be
8 a fact, that that happened in a phone call in
9 the fall of 1990.

10 A Where are we looking at now?

11 Q The second memo?

12 A Yes.

13 Q We are still at tab 44, the second memo.

14 "The Crown makes the point that the RCMP in
15 Swift Current were notified of the
16 involvement of Zanidean."

17 As I say, we have police notebooks that confirm,
18 or assert that Sergeant Anderson phones Burton,
19 on October 27th and October 30th, and passes
20 along to Burton the evidence, orally over the
21 telephone, that Zanidean is the culprit, he is
22 the perpetrator of their arson.

23 So my question to you is, did you make
24 inquiries to find out that piece of information
25 about the arson and Zanidean's involvement?

1 A Could you repeat that again, please?

2 Q Did you make inquiries or were you briefed at
3 some point and advised that Zanidean's
4 involvement in the Swift Current arson had been
5 passed along to the RCMP in that jurisdiction,
6 they had been made aware of the Winnipeg Police
7 discoveries?

8 A I cannot recall ever being told that, no.

9 Q The third point asserted in these memos is that
10 the RCMP chose to do nothing about it. You see
11 that in the first memo?

12 A Yes.

13 Q That there is some kind of inaction by the RCMP
14 as a result of being given this information, or
15 after being given this information, they are not
16 acting on it. Again, we know from the various
17 documents such as the witness protection
18 application at tab 19 that I took you to, that
19 there is initially a stand-still agreement and
20 then there is an agreement not to pursue the
21 matter at all.

22 Would that have been the kind of thing that
23 you would have wanted to know about?

24 A I suppose I would have asked a question.

25 Q If you knew Zanidean was involved in a serious

1 arson, which you have already conceded you did,
2 surely, as a matter of common sense --

3 A Probably did.

4 Q -- you would want to know. You would say, what
5 is the status of it?

6 A I don't recall the answer we got.

7 Q I appreciate that, but it is common sense --

8 A I probably would have asked, yes.

9 Q And finally, the position set out there in both
10 documents, both memos, is that there was no
11 immunity agreement, that this was a matter
12 beyond Manitoba's jurisdiction. And
13 specifically it is asserted that Manitoba is not
14 able to make agreements with another police
15 force in another jurisdiction. Do you see that?

16 A Yes.

17 Q Did you accept that as true, that Manitoba is
18 unable to make agreements with a police force in
19 another jurisdiction?

20 A Well, I mean, by that I would have meant that
21 they couldn't do it unilaterally. I mean, they
22 couldn't make an agreement, they would have to
23 get the consent of the people with whom they
24 were involved in the other province. And if the
25 other province dug its heels in and said no,

1 there was nothing that could be done.

2 Q Assuming the other province agrees?

3 A Yes.

4 Q Which is what we see --

5 A That's what I was getting at there. I don't
6 think I meant it was never possible to do those
7 things.

8 Q In any event, what I'm most interested in about
9 this point is this sort of defensive assertion
10 that is being made that there is no deals, there
11 is no agreement anywhere. What inquiries did
12 you make to satisfy you on that point, that
13 there was no deals, no agreements?

14 A I took that answer from the police report that
15 there was nothing, no arrangements made with
16 anybody, and that was what I relied on, I think.

17 Q That's the report back at tab 41 --

18 A Yes.

19 Q -- we have just gone through?

20 A Yes.

21 Q And if I could come back to a question that I
22 asked before lunch on this point, that you knew
23 that Miller and Kovnats were negotiating a
24 series of demands?

25 A Yes.

1 Q Did you inquire with Miller as to whether this
2 whole issue of is there a deal on Swift Current
3 was the subject of his negotiations?

4 A No, I took my answer from the police.

5 Q So Miller is in the office right next door to
6 you, and you never raise the matter with him
7 before making these representations at the
8 pre-trial?

9 A I don't recall whether I did or didn't, but I
10 might not have, no.

11 Q The cumulative effect of these four points,
12 again, if we assume for the sake of argument
13 that something along these lines was discussed
14 at the pre-trial, the cumulative effect of the
15 discussion must have been to impress upon you
16 that the police obviously knew something about
17 this matter. Is that fair?

18 A Well, I expect so, but we had not got any
19 answers from them so --

20 Q You are getting briefed from somewhere here.

21 A Yes.

22 Q It had to be either from Miller or from the
23 police?

24 A Yes.

25 Q They are the ones that we know have knowledge

1 about these matters. So as a result of whatever
2 briefing you received that allowed you and
3 Lawlor to make these kinds of representations,
4 it must have been apparent to you that there is
5 information somewhere, in some file, about this
6 matter. Is that not fair?

7 A I don't know what I thought, Mr. Code.

8 Q Well, you know that whoever is briefing you
9 knows --

10 A Got the information from somewhere, yes.

11 Q So did you not revisit the tab 37 letter that
12 you had sent to Mr. Brodsky, less than a month
13 ago, it is only three weeks, 23 days earlier you
14 had sent him the letter at tab 37 saying,
15 Winnipeg Police have nothing on these incidents.
16 Did you realize at this point that that letter
17 was false, must be false?

18 A Where are we looking again?

19 Q Tab 37?

20 A Yes.

21 Q The April 29th letter to Mr. Brodsky, the third
22 item where Lawlor says,

23 "Re paragraph 9, Winnipeg Police have
24 nothing on these incidents."

25 And you remember his question number 9 was,

1 "What have you got on the Swift Current
2 arson?"

3 A Yes. Well, Mr. Lawlor must have asked the
4 police and got a negative reply and responded in
5 that fashion. It came up again in his later
6 police report, apparently, again with a negative
7 response.

8 Q Everything that you are giving Mr. Brodsky is
9 negative.

10 A Yes.

11 Q Until this May 22nd pre-trial?

12 A And I don't know where we were briefed on this
13 or how.

14 Q So, as a diligent, responsible, thorough Crown,
15 was it not your obligation to revisit that
16 answer that you had given Mr. Brodsky just 22
17 days earlier, 23 days earlier, that we know to
18 be false today, and that you must have known was
19 false by the time of that pre-trial?

20 A I'm not so sure that I did actually. We were
21 talking in the pre-trial, we have these notes of
22 Mr. Brodsky's. We spoke about Mr. Zanidean's
23 involvement, according to Mr. Brodsky. That's
24 all I could give him. I didn't have these other
25 files, I don't know why, but I just didn't have

1 them.

2 Q But you had a briefing, Mr. Dangerfield?

3 A Yes, we had a briefing I guess.

4 Q You had been told information about the Swift
5 Current arson that came from somewhere?

6 A Yes.

7 Q And yet three weeks earlier you told him we have
8 got nothing on it?

9 A That was the position, yes.

10 Q Surely, you must have realized that that was
11 untrue?

12 A I suppose, but I think we made an effort here to
13 clear it up in this pre-trial hearing.

14 Q So you may have taken the position that your
15 oral disclosure at the pre-trial was a
16 substitute for documentary disclosure?

17 A Um-hum. I didn't know the existence of some
18 these documents, for example. I didn't know the
19 existence of an application to go into the
20 program, which would have revealed a lot of this
21 information.

22 Q Did you ask for them? Did you say, would you
23 please produce a report?

24 A I didn't know of their existence, so I didn't
25 ask for them, I wouldn't know what to ask for.

1 Q A supplementary report?

2 A No, I didn't ask for that.

3 Q You see, when we confronted you with these two

4 memos, or I shouldn't say confront, when we

5 showed them to you at the interview --

6 A Um-hum.

7 Q -- a few weeks ago, you expressed surprise at

8 the contents of these memos. Do you remember

9 that?

10 A Which memos are we talking about now?

11 Q These ones at tab 44, I'm still at tab 44, the

12 pre-trial memos?

13 A Yes.

14 Q They surprised you, didn't they?

15 A Yes.

16 Q And that's because you say you had no knowledge

17 of the Swift Current arson negotiations with

18 Zanidean?

19 A When did I say this?

20 Q Well, your general position is that the Swift

21 Current arson, Zanidean's admissions to it, the

22 discussions with the police about it, the

23 discussions between the two police agencies

24 about it, these are not matters that you were

25 aware of, and it surprised you when you saw

1 these memos, did it not?

2 A It did, yeah. I hadn't seen them in, I don't
3 know if I had ever seen them, in a long, long
4 time, Mr. Code.

5 Q You would have never seen them, because they are
6 in Mr. Brodsky's files. The content of them was
7 surprising to you?

8 A It did.

9 Q It is at page 20 of your interview. Because the
10 clear inference from these memos is that did you
11 have knowledge about these matters, some
12 knowledge about them?

13 A Um-hum.

14 Q Sufficient to put you on inquiry? I suppose,
15 and this is the last question I will have on
16 this; again, in light of the position you had
17 taken in front of Chief Justice Hewak, was it
18 not your duty to get to the bottom of this and
19 say, produce the documents in your file relating
20 to the Swift Current matter so I can decide for
21 myself whether Brodsky is being properly
22 informed on this?

23 A Yes, I suppose in hindsight it was.

24 Q And you are agreed that the facts at tab 19 and
25 20 are all discloseable, the two key documents

1 that we have at tabs 19 and 20?

2 A Yes.

3 Q All right. Those are my questions on the area
4 of disclosure. I want to now turn to the
5 subject of Zanidean's flight and arrest on the
6 material witness warrant on May 26th.

7 A Yes.

8 Q You recall that subject?

9 A I recall talking to you about it, yes.

10 Q The application for a material witness warrant
11 appears to have been brought in Provincial
12 Court, and your statement to us is that you
13 didn't recall being told about the application,
14 but you agree that you would have learned about
15 this because the flight of a key Crown witness
16 immediately before trial is a significant
17 development that you would have had to have been
18 briefed about. Is that a fair summary of your
19 statement to us at page 22?

20 A Um-hum.

21 Q In any event, you quickly become aware of it
22 because after Zanidean has been arrested on the
23 26th, two days after the warrant was obtained,
24 he is brought back to Winnipeg in custody and
25 you are called down to the Public Safety

1 Building upon his return to deal with the
2 matter?

3 A Yes.

4 Q You are not sure who called you down, but it may
5 have been Bruce Miller?

6 A It may have been.

7 Q According to the account that you gave to us at
8 page 23, is that correct?

9 A Yes.

10 Q Now, your statement, you deal with this
11 thoroughly in your statement, this whole
12 incident at the Public Safety Building at pages
13 22 to 24. There is some two and a half pages,
14 and I don't intend to go into it in any detail,
15 as there is no great conflict in the various
16 statements that we have got about the matter.
17 But let me just review a couple of the salient
18 points that are covered in your statement, as I
19 say, at pages 22 to 24.

20 First of all, when you get down to the
21 Public Safety Building, you find that
22 Mr. Kovnats and his client are both there
23 together with some police officers. Is that
24 correct?

25 A Yes. I didn't see Mr. Zanidean or the police

1 officers. I spoke to Mr. Kovnats.

2 Q You could hear Mr. Zanidean, though, because he
3 was yelling; is that correct?

4 A Yes.

5 Q And could you hear Mr. Kovnats because he was
6 yelling?

7 A He was, he and I were face to face, yes.

8 Q So the client is yelling and the lawyer is
9 yelling and there is a dispute going on?

10 A Yes.

11 Q And the substance of what Kovnats is saying, as
12 I read your statement at page 22, is that if he
13 didn't get what he wanted there would be no
14 cooperation?

15 A Actually, he said he would instruct his client
16 not to testify.

17 Q Fair enough, which is a pretty good sign of lack
18 of cooperation?

19 A Yes.

20 Q But you weren't going to have a cooperative
21 witness unless he got what he wanted?

22 A Yes.

23 Q And specifically, he was demanding certain
24 things that had to be done, and if they were
25 refused, then he would give the instructions

1 that you have spoken of?

2 A He didn't bring those up to me, he just said
3 unless his requests were met, he would tell his
4 witness not to testify.

5 Q Well, if you look at page 22, I mean, he has
6 clearly got to be asking for something in return
7 for his cooperation. You see page 22, five
8 lines up from the bottom,

9 "Dangerfield became visibly angry when
10 Kovnats began talking about the things
11 Dangerfield had to do and what Kovnats
12 would do if he refused."

13 A I don't think that Mr. Kovnats told me what he
14 wanted. He was telling me that if he didn't get
15 what he wanted, I would be in difficulty.

16 Q So what was it that you understood that he
17 wanted that you had to produce for his
18 cooperation?

19 A He had been discussing something with somebody,
20 they were not getting anywhere, he was in a
21 rage. I came down. He told me point blank if
22 he didn't get what he wanted, he was not going
23 to call his witness. And I lost my temper and
24 told him I would prosecute him for obstruction
25 or something. He didn't tell me what he wanted,

1 if that is what you are getting at.

2 Q I understand your position is that he didn't
3 give you a shopping list --

4 A No.

5 Q -- the way he had in his letters to Mr. Miller?

6 A No.

7 Q But I think you have answered my question by
8 saying that what he told you is that he had been
9 in discussions with Mr. Miller. The discussions
10 had broken down?

11 A Yes.

12 Q He wasn't getting what he wanted, and that
13 unless he got it there would be an end to
14 cooperation?

15 A That's right.

16 Q So, in other words, what he did is he referred
17 you back to the negotiations that you already
18 knew had been going on with Mr. Miller; is that
19 correct?

20 A He referred me back to negotiations, not the
21 substance of them. I didn't know the substance
22 of the negotiations.

23 Q I appreciate that. Again, you don't have the
24 shopping list but you know the fact of the
25 negotiation?

- 1 A Yes.
- 2 Q Is that correct?
- 3 A Yes.
- 4 Q And again, that's not anything that was new to
5 you, you had known about the fact of those
6 negotiations since you got that preferred
7 indictment memo back in November, and since
8 Whitley and Miller had their meeting with you?
- 9 A Yes, I know there were negotiations going on.
- 10 Q So what you learn now that's new, is that those
11 negotiations which have now been going on for
12 six months?
- 13 A I don't know how long they were going on.
- 14 Q Five months?
- 15 A Well -- but not every single day.
- 16 Q Fair enough, but you are told about them in mid
17 November; right?
- 18 A Right.
- 19 Q Lawlor says I have spoken to Kovnats, he has a
20 list of demands.
- 21 A Yes.
- 22 Q And the next month Miller and Whitley are
23 following up with you and having their process?
- 24 A Yes.
- 25 Q What you now know is that the negotiations have

1 been going on for some six months and they have
2 not yet been successful, indeed, they have
3 broken down?

4 A Yes. I gather because Mr. Zanidean kept
5 advancing more and more demands.

6 Q All right. You gather that from where?

7 A Just from -- I don't know whether I heard that
8 post facto or when I heard it, but that he was a
9 difficult man to deal with.

10 Q And your answer is consistent with everything we
11 know, that there were a constant series of
12 demands, and the general consensus was that he
13 was too demanding. So somehow you knew that the
14 negotiations had broken down as a result of
15 Zanidean being very demanding?

16 A Yes.

17 Q Is that sort of the general gist of what you
18 knew?

19 A Yes. By the end of the evening everything had
20 calmed down and I went home.

21 Q And you've agreed with me that the demands that
22 a key witness is making, as a pre-condition to
23 his cooperation in testifying as a Crown
24 witness, is relevant to his motivation and
25 credibility?

1 A Yes.

2 Q Did it occur to you that Zanidean's flight to
3 Alberta prior to trial and these threats of
4 refusing to cooperate was all part of a
5 negotiating strategy?

6 A I don't know what I thought of it. He had run
7 away, he was a volatile man, I don't know what I
8 thought of it.

9 Q In any event, the clear threat that was being
10 made was that unless he got what he wanted, he
11 wasn't going to testify?

12 A That's what he said. And at the end of the
13 evening, all of that had calmed down. I don't
14 know what was said between them, I wasn't there.

15 Q Between Miller and Kovnats?

16 A And Kovnats, I wasn't there, I went home. I
17 didn't even see Miller that night, as far as I
18 know.

19 Q Miller eventually comes down, I take it?

20 A I guess, but I think I had gone by the time he
21 got there.

22 Q And they resolve it in some fashion after you
23 have left?

24 A I guess.

25 Q Well, you are telling us that that was your

1 state of mind and now you are saying "I guess."
2 Did you know they had worked out --
3 A Everything had calmed down by the time I left.
4 Zanidean -- not Zanidean -- but Kovnats was all
5 right, I was all right, we had gone. Miller
6 came back, I presume, I don't know that for
7 certain, and whatever was arranged was arranged.
8 Q All right. You knew that Brodsky was intensely
9 focused, in his disclosure requests, on the
10 credibility and motivation of these witnesses,
11 especially Zanidean?
12 A Zanidean, yes.
13 Q Did you conclude that it was your responsibility
14 to get briefed by Miller as to what the
15 ultimatum was from Kovnats, what the demands
16 from Zanidean were that were a condition
17 precedent to his cooperating?
18 A No, I didn't think I would be advised as to what
19 the negotiations were. I don't believe I did
20 ask him, no. I assumed that much of
21 Mr. Brodsky's information was coming from his
22 own client.
23 Q I'm not asking about the negotiations, I'm
24 asking about his demands. What is it that he is
25 insisting on? You say it wasn't whispered even

1 in your presence that night. Did you have an
2 obligation to make an inquiry with Miller so
3 that you would know what your key witness's quid
4 pro quo was for testifying?

5 A No. I suppose I did, but I didn't think of it,
6 I was still in that position of the agreement
7 between Miller and Whitley and I and Lawlor that
8 we wouldn't know the negotiation terms, that
9 they were all about money. That was all I knew.
10 I know it sounds weird, but by that point I was
11 still thinking that way.

12 Q Well, if it is about money, and we know in fact
13 at this point --

14 A I mean, money to support them.

15 Q I mean, Kovnats is about to put his \$30,000
16 demand on the table within a few days of this
17 dispute down at the Public Safety Building?

18 A But once Mr. Zanidean put his demand for money
19 down, and once it was apparent, I gather, that
20 these negotiation were not going to include a
21 protection program, I should have been told
22 everything, yes.

23 Q I appreciate your position, it is very clear in
24 your interview that you should have been told.

25 A Yes.

1 Q That Miller had an obligation to brief you on
2 it. But my question to you is, in light of the
3 undertakings and responsibilities you had as
4 Crown counsel, was it your duty, now that you
5 knew there was brinkmanship going on, there was
6 a demand that was a pre-condition to testifying,
7 was it your duty to find out what that was and
8 disclose it?

9 A I suppose it was, but I just didn't think of it,
10 I guess.

11 Q Three days later on May 29th -- I'm just
12 finishing up the documents at the end of volume
13 1, going back to pick up the ones that we
14 skipped over, at tab 24. Your meeting down at
15 the Public Safety Building is on the 26th, this
16 is three days later on the 29th, consistent with
17 your evidence -- do you have tab 24?

18 A Yes.

19 Q This is Corporal Orr's note of a conversation
20 that he has with Miller on the 29th May.

21 A Yes.

22 Q And he had just received an ultimatum, a three
23 point ultimatum from Kovnats, one of which
24 includes immunity on the Swift Current arson; do
25 you see that?

1 A Yes, yes.

2 Q Mr. Miller is given a day to respond?

3 A Um-hum.

4 Q And they start talking, you see the next
5 paragraph,

6 "I discussed a number of points including
7 an aspect of a single payout to Zanidean."

8 So the idea of a single cash payment is on the
9 table in Miller and Orr's discussions within
10 three days of the blow-up at the Public Safety
11 Building?

12 A Um-hum.

13 Q Was that a discloseable fact, that these
14 ultimatums respecting immunity and consideration
15 of a cash payment were under discussion?

16 A Yes.

17 Q And at this point we are four days before the
18 start of the trial, May 29th is just before the
19 trial is about to start. Miller's office is
20 right next door to yours. Did he stick his head
21 in your office and advise you of these
22 developments?

23 A No.

24 Q Can you think of any good reason why he would
25 not keep the lead prosecutor informed of these

1 kinds of developments?

2 A No.

3 Q It is clearly something that you needed to know
4 to be prepared for trial?

5 A Yes.

6 Q Two days later on May 31st, which I believe
7 would be the Friday before the weekend, before
8 the start of the trial -- we are now back into
9 volume 2, Mr. Dangerfield.

10 A Tab?

11 Q Tab 48. So this is May 31st, tab 48, Miller
12 sends Kovnats a letter that essentially settles
13 the house deal, he has already sent him about
14 \$7,200 in trust, he now sends him a further
15 \$500. Have you got tab 48 there?

16 A Yes.

17 Q He sends him the further \$500 payment to
18 Kovnats' law firm in trust to your client. He
19 says,

20 "This is intended to afford your client the
21 opportunity to proceed to complete the
22 transaction with respect to Chelsea
23 Avenue."

24 In other words, they have got a deal in place to
25 buy out Zanidean's equity in his house on

1 Chelsea Avenue and to free him up from his
2 mortgage obligations. Was that a discloseable
3 fact?

4 A Yes.

5 Q And can you think of any good reason why Miller
6 would not tell you this agreement was now in
7 place, on the eve of trial, respecting about a
8 \$7,700 payment to Zanidean for the equity in his
9 house?

10 A Other than the fact that he was still operating
11 under the presumption that I was not to know
12 anything about these negotiations, no.

13 Q But that presumption is based on the idea that
14 this is going to give him away, that you are not
15 to disclose anything that would give him away.

16 A Mr. Code, I'm not arguing with you. You asked
17 me for a reason. The only reason that I think
18 of is that he is still operating under that
19 presumption that we are not to know anything.

20 Q That's the presumption that comes out of the
21 meeting that you and he and Whitley have?

22 A Well, where Lawlor and I were advised that we
23 were not to know anything about the
24 negotiations. Yes, I think he should have told
25 us. I don't know why he didn't.

1 Q It is clear that a \$7,700 payment for the equity
2 in your house and relieving of your mortgage
3 obligations doesn't give you away in any
4 fashion?

5 A No, no.

6 Q Four days later on June 4th, we are now, if you
7 jump ahead two tabs to tab 50, Kovnats sends
8 Miller a letter -- you see that at tab 50,
9 June 4th letter. You are now calling the
10 evidence at trial.

11 A Is this entitled 'memo'?

12 Q No, tab 50.

13 A 50, I am sorry.

14 Q June 4th letter from Kovnats to Miller?

15 A Um-hum.

16 Q This is now week one of the trial, you are in
17 your second day of trial calling the evidence,
18 and Kovnats again has a shopping list of
19 demands, 12 of them this time?

20 A Um-hum.

21 Q Including, if you look at the second page, that
22 is number 3,

23 "My client wishes full witness protection."

24 And the fifth subparagraph under that is an
25 undertaking of immunity, for my client's past,

1 "...no recriminations for my client's
2 past..."

3 Do you see that?

4 A Um-hum.

5 Q And number 6, the alternative proposal is,
6 instead of witness protection, he will take
7 \$30,000 cash. Do you see that?

8 A Yes.

9 Q And he also, with that cash payment, he again
10 wants immunity for his past activities?

11 A Yes.

12 Q So both proposals include immunity as a
13 component?

14 A Yes.

15 Q Again, were those demands being made on the
16 first week of the trial relevant to Zanidean's
17 credibility and motivation?

18 A Credibility, certainly, yes.

19 Q Can you think of any good reason why Mr. Miller
20 wouldn't brief you on this when you got back
21 from court that evening?

22 A No. Except, as I said before, he was labouring
23 under the conclusion he was still bound by not
24 disclosing the negotiations.

25 Q Again, as I understand you, the premise of that

1 is nothing that would give the witness away is
2 to be disclosed?

3 A I'm not justifying it as an excuse, Mr. Code.
4 I'm just stating that may have been the reason
5 he acted that way. I think he should have told
6 me, yes.

7 Q Now, in terms of the cash payment option, we
8 have been told by Orr and Vandergraaf, who both
9 testified here, and we can see it in the
10 documents that are referable to Mr. Miller, that
11 they had all progressively come to believe
12 during the preceding months, especially during
13 April and May, that Zanidean was not a likely
14 candidate for the Source Witness Protection
15 Program, and that a straight cash payment to
16 finance his relocation was the more likely
17 outcome of the negotiations?

18 A Yes.

19 Q And I understand from your interview that you
20 regard that as an obviously discloseable fact?

21 A Certainly. There was no need to be secretive
22 about his location since he wouldn't be in any
23 program, he would take the money and go wherever
24 he wanted to.

25 Q The sensitivity around disclosure was, if he

1 went into the program, where is he being
2 relocated to and what is his name going to be?
3 A And that had vanished apparently. I didn't know
4 that, but that's the effect of what you are
5 saying to me.
6 Q So when that all vanishes and he is going to
7 keep his own name and he is going to go his own
8 way with a cheque in his pocket, there was no
9 sensitivities about disclosure in your mind?
10 A That's right, I should have known that. That
11 should have been done before he went in the box,
12 should have been finalized.
13 Q Again, you can think of no rational reason why
14 Miller would keep that from you?
15 A No.
16 Q Finally, two days later on June 6th, still in
17 the first week of trial, and this further event
18 is at tab 51, Sergeant Paul meets with
19 Mr. Kovnats and Zanidean, or takes Zanidean to a
20 restaurant, down by the river, and there is a
21 confrontation or an argument. Do you see that
22 at tab 51 --
23 A Yes.
24 Q -- Mr. Kovnats' memo to file?
25 A Yes.

1 Q And the dispute is over whether, Kovnats has
2 received some annotated statements, Zanidean's
3 police statements that he has marked up, and
4 Paul is trying to prevent him from taking them
5 away, on the theory that you have told us about
6 before, that they are police property.

7 A Yes.

8 Q And Kovnats is ultimately allowed to keep them.
9 Were you briefed on that development?

10 A No.

11 Q Is that a matter on which you would have liked
12 to have been informed, should have been informed
13 before calling Zanidean?

14 A Yes, I would like to have known about that.

15 Q And the reason why it would have been relevant
16 or useful for you to know about this?

17 A Well, it would have given me an insight into the
18 state of Zanidean's mind.

19 Q He is having some discussions with his lawyer
20 about his statements, I take it?

21 A Yes.

22 Q In your interview at tab 1 when you discuss this
23 matter, you see in the middle of page 24 at tab
24 1, after referring to the incident at the
25 restaurant on June 6th, you say,

1 "In his view, he should have been told
2 about this, as this was the sort of thing
3 he would have had to raise with Zanidean
4 when he put him on the stand, as it
5 appeared to relate to the accuracy of his
6 prior statements."

7 A Yes.

8 Q Is that correct?

9 A Yes.

10 Q Again, is there any rational explanation as to
11 why a trial-related matter like that would have
12 been kept from you by Sergeant Paul or
13 Mr. Miller?

14 A No.

15 Q All right. I want to turn to Zanidean's trial
16 testimony at tab 52, Mr. Dangerfield?

17 A Yes.

18 Q Prior to Zanidean taking the stand, you are
19 informed that an agreement had been reached with
20 him, as I understand your evidence?

21 A I am sorry?

22 Q Is that correct? Tell us what you recall about
23 that?

24 A Of what?

25 Q What were you told prior to Zanidean taking the

1 stand? You knew these difficult negotiations
2 had reached a crisis point on the 26th, that he
3 wasn't going to be a cooperative witness unless
4 he got what he wanted. What were you told some
5 15 days later, when you put him -- before
6 putting him in the stand?

7 A I don't remember.

8 Q If anything?

9 A I don't remember, I don't think I was told
10 anything.

11 Q In general terms, leaving aside the details?

12 A I don't remember.

13 Q You don't remember anything about what you were
14 told, what was your state of mind about the
15 negotiations?

16 A No.

17 Q Well, let's take you to your statement then.

18 A I simply don't remember.

19 Q Tab 1, page 23?

20 A Yes.

21 Q You see at the very bottom of page 23,
22 "When Dangerfield was told Zanidean was
23 ready to testify, he assumed that the
24 matters between Kovnats and Miller had been
25 resolved."

1 A Yes.

2 Q "His understanding was that Zanidean had
3 agreed to enter the RCMP Witness Protection
4 Program and was agreeing to testify."

5 A And I don't know who told me that.

6 Q "He can't recall who told him, it may have
7 been a police officer, it could have been
8 Miller. He recalls receiving this
9 information because he was trying to work
10 out the timing of when he would call
11 Zanidean at trial."

12 Do you recall that?

13 A Yes.

14 Q Does that accurately set out your state of mind?

15 A Yes, that's what I believed.

16 Q Now, this business of it being relevant and
17 important for you to know it because it related
18 to the timing of when you would call Zanidean,
19 can you explain that to us, as to what your
20 thoughts were about this timing issue?

21 A No, I can't remember what I was thinking of when
22 I said that to you.

23 Q So you called Zanidean very late, he was one of
24 your last witnesses?

25 A Yes, he was.

1 Q And is it fair to say that you were holding off
2 on calling him until the end, until you knew
3 whether he was going to be a cooperative witness
4 or a hostile witness? Obviously --

5 A Yes, I suppose.

6 Q The way you approach a hostile witness is
7 obviously very different than the way you
8 approach a cooperative witness?

9 A Yes.

10 Q You have to start thinking about Canada Evidence
11 Act cross-examinations, and indeed there is
12 going to be a tactical decision whether you call
13 him at all?

14 A Yes.

15 Q That will be based on sizing up your case, how
16 you think your case has gone, whether you really
17 need to take the risk. Is that likely the
18 reasoning that was --

19 A That could have been it, yes. I wanted him in a
20 position to be able to testify without any
21 problems, so I wanted to know what the status
22 was of the negotiations. And I was assured that
23 he was in the program and was agreeing to
24 testify, so I called him.

25 Q We know from Kovnats' dockets that there are a

1 number of last minute meetings, at least two it
2 appears on June 10th, including an evening
3 meeting just before Zanidean was called the next
4 day on June 11th?

5 A Yes.

6 Q We have no records of the substance of those
7 11th hour discussions. And do I take it your
8 best recollection is simply that he was going to
9 go into the Witness Protection Program?

10 A That's what I was given to understand.

11 Q And that he had agreed to testify?

12 A He agreed to testify.

13 Q He was a willing cooperative witness.

14 A Yes. I don't know how willing he was, but he
15 was agreeing to testify.

16 Q In other words, the interim measures that had
17 been put in place were now going to transition
18 into the long-term measures that had been
19 contemplated from the beginning?

20 A Yes, for he and Gumieny. Yes.

21 Q So, in essence, the plan that you had hoped for
22 from the start looked like it had come to
23 fruition?

24 A Yes.

25 Q Now, the facts as we know them, at least as best

1 we can reconstruct them from the documents and
2 the evidence we have heard so far, is that he
3 never entered the formal RCMP program and,
4 indeed, that there was no real prospect of his
5 ever entering that formal RCMP program. Can you
6 think of any reason why you would be misled on
7 this? Was there any reason for anyone to
8 misinform you about his prospects of entering
9 that program?

10 A I don't know why they would, no.

11 Q Pretty dangerous thing to do, don't you think?

12 A Well --

13 Q To tell the prosecutor something completely
14 false on the eve of calling a witness?

15 A All I know is that he was in the program, that's
16 all I know.

17 Q Is it possible that what you were told is that
18 he is likely not going to go into the program,
19 but we will arrange some substitute for it?

20 A No.

21 Q Or that he will either go into the program or
22 into some substitute for it?

23 A I don't think so, no.

24 Q You have a clear recollection that what you were
25 told is that he would go into the formal

1 program?

2 A That's what I was operating on, he was in the
3 program, and that's how we conducted the
4 examination of him.

5 Q All right. Let's turn to his evidence then at
6 tab 52. And Mr. Commissioner, we have been
7 through this transcript a number of times now,
8 and I will try to summarize it rather than
9 reading it line by line, but if you have got a
10 marked up copy from the previous trips we have
11 taken through this, it is also in exhibit 15B,
12 at tab 38, the same excerpts. So either in the
13 new exhibit 30B at tab 52, or in exhibit 15B at
14 tab 38, you will find the same excerpts.

15 And I just want to put three points from
16 Zanidean's evidence to you, Mr. Dangerfield,
17 essentially the same ones we went through in
18 your interview. And it is all in Mr. Brodsky's
19 cross-examination and it starts at page 42. He
20 is questioning him about the Swift Current
21 arson, and this is the first area I want to
22 question you about at pages 42 to 43. And
23 obviously you are present in court when this
24 cross-examination is going on.?

25 THE COMMISSIONER: I am sorry, I am a little

1 behind here. At 15B, tab --

2 MR. CODE: It you are in 15B, it is tab 38, is
3 where I have my marked up copy.

4 THE COMMISSIONER: Okay.

5 MR. CODE: Starting at page 42.

6 THE COMMISSIONER: Yes.

7 BY MR. CODE:

8 Q You see in the middle of the page he is
9 cross-examining him about the Swift Current
10 arson, and Zanidean acknowledges that he did
11 this?

12 A Yes.

13 Q And at the bottom of the page he says,

14 "What they...",

15 that is the police,

16 "...told me was they give the Swift Current
17 RCMP the information I give them, and that
18 was it. Then I talked to my lawyer."

19 So, again, consistent with what we know about
20 what happened in October is Zanidean admits to
21 the arson to the police, they pass it on to
22 Swift Current, and then he goes to his lawyer.
23 And again, we know he meets with Mr. Kovnats and
24 the police in mid November, November 13th.

25 And it is the passage at the top of the

1 page 43 that I'm concerned about.

2 "You talked to your lawyer?

3 A Right.

4 Q About making a deal to avoid being
5 charged in Swift Current?

6 A No, that's not what I said."

7 He appears to categorically deny instructing his
8 counsel to make a deal on Swift Current.

9 Now, again, you knew that Kovnats and
10 Miller had been negotiating an agreement for
11 some six months?

12 A Yes.

13 Q And you knew that Kovnats and Zanidean had been
14 making a lot of demands?

15 A Yes.

16 Q And you knew that the negotiations had come to a
17 crisis on May 26th, that the demands weren't
18 being met and ultimatums were being made about
19 cooperation; is that correct?

20 A Yes.

21 Q So, when Mr. Brodsky repeatedly, and we have got
22 other excerpts from his cross-examination at the
23 next tab, 53. Throughout his cross-examination
24 he returns to this theme of Zanidean wanting a
25 deal on Swift Current, that's his motivation,

1 why he goes to the police.

2 Once this became such a prominent issue at
3 trial, surely you would have raised the matter
4 with Miller when you returned to the office
5 after court and said, Brodsky is heavily relying
6 on this theory of Zanidean's motivation, can you
7 tell me whether this figured at all in your
8 negotiations? Why wouldn't you raise that with
9 Mr. Miller?

10 A I don't know. I didn't.

11 Q You see now you have got a witness giving sworn
12 testimony that he was not seeking a deal through
13 his lawyer on Swift Current. We know it is
14 demonstrably false.

15 Once it is out in the open on the record
16 and being discussed in sworn evidence before the
17 jury, don't you have a duty to make sure that he
18 is being truthful on this matter?

19 A I don't know what I thought at that point. The
20 whole cross-examination on this subject began
21 rather oddly, and I just thought it was Brodsky
22 pressing points.

23 Q But my question to you is, we are not talking
24 about disclosure any more, your understanding
25 from Whitley and Miller is that there is

1 sensitivities about disclosure?

2 A Yes, yes.

3 Q You are not to know about the negotiations. We
4 are now in a different ballpark, aren't we? We
5 are in sworn evidence in front of the jury?

6 A Yes.

7 Q It has nothing to do with you being kept out of
8 the loop on the negotiations.

9 Don't you at this point have an obligation
10 to find out what the true facts are from Miller?

11 A I suppose. I didn't.

12 Q And my question is why not?

13 A I have no answer for that.

14 Q The second aspect of his evidence, page 44,
15 starting in the middle of page 44 is about the
16 house, the arrangements in relation to the house
17 deal. And you see at line 16, he denies having
18 been paid for moving out of his house, you see
19 that?

20 A Yes.

21 Q We know Lawlor was aware of this cheque from the
22 memo back at tab 10, which included moving
23 expenses. Mr. Lawlor shared that with you?

24 A Yes, I guess so, yes.

25 Q Clearly, you wouldn't move him out of his house

1 into a safe house without paying his moving
2 expenses?

3 A I really don't know.

4 Q You must have known any witness protection
5 arrangements --

6 A We would pay his expenses, yes.

7 Q -- would include his moving expenses?

8 A Yes.

9 Q That's the essence of relocation, is it not?

10 A Yes.

11 Q So he denies being paid to move out of his
12 house. And over the page, page 45 at line 16,
13 Mr. Brodsky asks him about his mortgage
14 payments. Do you see that, page 45, line 16?

15 A Yes.

16 Q He says,

17 "My mortgage payments are in arrears right
18 now. I'm on the verge of losing my house,
19 and you can check that out."

20 And Mr. Brodsky asks him a very broad question,
21 he said,

22 "What arrangements have you made for that?"

23 And his answer is,

24 "I've made no arrangements for that."

25 You knew from the police report at tab 9

1 that moving him out of his house was part of the
2 witness protection arrangements, selling the
3 house was part of the witness protection
4 arrangements, did you not?

5 A Yes.

6 Q From the very start it simply made rational
7 sense that you had to get him out of that
8 Chelsea Avenue house because the accused and his
9 associates knew about it; is that not correct?

10 A Yes, but those negotiations went on long after
11 the trial.

12 Q But my point is simply, you must have known
13 there was some arrangements about the house?

14 A Yes, yes.

15 Q So this evidence that his moving expenses
16 weren't being paid, there were no arrangements
17 about the house, he was about to lose it,
18 surely, once again, now this is sworn evidence
19 before the jury, you knew enough to know that
20 that was probably false, did you not?

21 A Yes.

22 Q Again, why did you not correct it on the record
23 or make inquiries?

24 A I don't know why I didn't make the inquiries.

25 Q You had a duty to get to the bottom of this and

1 find out the true facts and you didn't do it;
2 isn't that correct?

3 A I don't know what prompted me to leave that
4 matter untouched.

5 Q You would agree with me that it is unacceptable
6 for Crown counsel to deliberately keep himself
7 in ignorance on a relevant matter?

8 A I wasn't deliberately doing any of this,
9 Mr. Code.

10 Q Clearly, if you had deliberated on it, you would
11 have realized this was false and you should have
12 done something to correct it?

13 A Yes.

14 Q Is that correct?

15 A This witness was over in a day, I think, wasn't
16 he?

17 Q He is about a day exactly.

18 The third matter, go back to page 44, it
19 starts there at the bottom of page 44. This is
20 the money he is being paid. You see at line 21
21 he says they are only paying for my room and my
22 meals, do you see that at line 22?

23 A Yes.

24 Q And then over on 45, he comes back to it again
25 in terms of how long he is going to be supported

1 financially. In the middle of page 45, at line
2 9 to 12 he says,
3 "Only until the end of today..."
4 A Yes.
5 Q "...unless I'm needed tomorrow."
6 A Yes.
7 Q In other words, the financial support is going
8 to come to an end --
9 A Um-hum.
10 Q -- when his testimony ends. And then over the
11 page at 46, he is asked about start-up costs
12 after he is relocated, and he says,
13 "They never mentioned start-up costs."
14 So the impression he leaves is that these
15 payments to support him are temporary and are
16 going to end as soon as his evidence ends; is
17 that correct?
18 A Yes.
19 Q And your understanding, again from the start, is
20 that the witness protection arrangements were to
21 relocate him after the trial and get him started
22 afresh in a new place?
23 A That's what I understood.
24 Q And that clearly would include start-up costs?
25 A Yes.

1 Q So again, you must have known that this evidence
2 was false?

3 A He had already talked about going to the
4 program, I believe, hadn't he? I can't remember
5 his examination-in-chief.

6 Q No, he says they are going to relocate him. You
7 don't deal with it.

8 A Okay.

9 Q All he says is they are going to relocate him.
10 You see at line 14, he says,

11 "I engaged a lawyer to take care of the
12 Witness Protection Program."

13 A Yes.

14 Q At page 46, and Brodsky says,

15 "Wasn't that payment of money?"

16 And he says,

17 "No. What that is, is relocation and new
18 identity, if needed."

19 And Brodsky says,

20 "And start-up costs?"

21 And he says,

22 "No, they never mentioned start-up costs."

23 The impression is that he is being paid a daily
24 allowance up until today, and they are going to
25 put him on a plane and move him somewhere, and

1 there is going to be no money involved, no
2 start-up costs. Is that a fair reading of his
3 evidence?

4 A Yes.

5 Q Is that the way you understood his evidence?

6 A Yes.

7 Q And my question to you is that you must have
8 known that that wasn't accurate?

9 A Yes.

10 Q Again, why did you take no steps to correct
11 that?

12 A I think the trial was finishing, we went right
13 on to the end from there. I don't know why I
14 didn't go over it.

15 Q If I could conclude on this matter, and then
16 this would be a good point for the afternoon
17 recess, Mr. Commissioner.

18 Brodsky had been seeking disclosure on
19 these issues for some time, since his first
20 letter in February?

21 A Yes.

22 Q And you had given him, specifically on all of
23 these witness protection issues, you had given
24 him an answer that said you can't give him any
25 of the details because it would give the witness

1 away?

2 A That's right.

3 Q Now, we have had all of this testimony on the
4 record --

5 A Um-hum.

6 Q -- about what the arrangements are. He is
7 testifying about the witness protection
8 arrangements, is he not?

9 A Yes, appears to be.

10 Q He is doing exactly what you said in the
11 February 8th letter would give him away?

12 A Yes.

13 Q So now that we have gotten over the hurdle, the
14 witness protection issues are out in the open,
15 you haven't objected to this cross-examination?

16 A No.

17 Q You clearly appear to accept that it is relevant
18 and appropriate cross-examination; is that
19 correct?

20 A Yes.

21 Q Why would you not now go back and revisit that
22 February refusal and say, listen, Mr. Brodsky, I
23 have rethought this, my refusal back in February
24 was too broad, this is clearly a relevant line
25 of inquiry and I need to speak to Miller and get

1 the details and make disclosure to you?

2 A I don't know.

3 Q You could quite easily have got the information
4 from Mr. Miller, I take it?

5 A I expect so, yes.

6 MR. CODE: This is a good time to break,
7 Mr. Commissioner.

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

10 (Proceedings recessed at 3:27 p.m.
11 and reconvened at 3:45 p.m.)

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

14 BY MR. CODE:

15 Q Mr. Dangerfield, I'm just now in the post-trial
16 area, so I think we can finish this up
17 reasonably quickly.

18 In the post trial -- and the trial
19 concludes, as you know, with a verdict of guilty
20 on, I believe it is June 14th. A number of
21 significant events happen in the week
22 immediately after the conclusion of the trial,
23 and I want to review four of them in particular
24 with you, and ask you about your knowledge of
25 them and their importance, and whether you

1 should have been informed of them, if you
2 weren't. So this is a little bit repetitive,
3 but I need to go through all four of these
4 incidents with you.

5 First of all, on June 19th, that's five
6 days after the verdict, there is a meeting
7 between Miller, Orr, Kovnats and Zanidean. And
8 the record we have of it is at tab 55, right at
9 the end of volume 2. The only record we have of
10 the meeting is a note of Corporal Orr's, where
11 it appears Mr. Miller is now ready to take up
12 the offer Mr. Kovnats made in his June 4th
13 letter. You see Corporal Orr's note for
14 June 16th at tab 55, and towards the end of the
15 first, the third paragraph --

16 A June 19th you mean?

17 Q Sorry, what did I say?

18 A 16th.

19 Q Sorry, June 19th, the third paragraph,

20 "Arrangements finally made for a meeting at
21 9:00 a.m. today for all parties. I believe
22 Mr. Miller is going to recommend a
23 relocation fee to help him relocate and set
24 up a new life."

25 Do you see that?

1 A Yes.

2 Q And the intention to relocate him and get him
3 started in a new life had always been there; is
4 that correct?

5 A As a member of the Witness Protection Program?

6 Q Yes?

7 A Yes.

8 Q So the fact that they were going to do it by way
9 of a cash payment, the purpose of the payment
10 was the same, to get him started in a new life
11 in his new location?

12 A Yes.

13 Q And the note of the meeting at 9:00 o'clock
14 states,

15 "The idea of a relocation fee is attractive
16 to Zanidean, but he was promised the sun
17 and the moon by the Winnipeg Police in the
18 first instances and he is sticking with
19 that misconception. I imagine that will be
20 the way the things will go and that witness
21 protection is out of the picture, but we
22 will see."

23 So my question is, were you briefed or told
24 about these developments at the June 19th
25 meeting?

1 A No.

2 Q Was this a discloseable fact that Zanidean was
3 being offered a post-trial cash payment?

4 A I suppose.

5 Q Was it something that, if you had been briefed
6 on it, you would have disclosed to Mr. Brodsky
7 given the pending appeal?

8 A Yes.

9 Q Was it also relevant to Zanidean's sworn
10 testimony that the whole idea of start-up costs
11 hadn't even been mentioned. You remember that
12 evidence that I just took you to?

13 A Yes, yes.

14 Q It clearly appears that it is being mentioned
15 quite a lot at this point?

16 A But in the program, if he was in the Witness
17 Protection Program, he wouldn't have seen any of
18 the start-up costs, as he put them. So when he
19 answers the question, I didn't receive any
20 start-up costs, he is actually being correct.

21 Q If he is in the program?

22 A If he is in the program, but at that point I
23 didn't know he wasn't, so I have no way of
24 knowing if he is telling the truth or not.

25 Q I understand that, Mr. Dangerfield. But I can

1 assure you that the evidence is that
2 Mr. Zanidean was nowhere near the program and,
3 indeed, hadn't even himself committed to the
4 program.

5 A I think there is a confusion by what
6 Mr. Zanidean recognizes as monies he received
7 and monies that were paid on his behalf. Monies
8 paid on his behalf, he wouldn't see, might not
9 have thought that they were his.

10 Q I don't want to go through the evidence about
11 what Zanidean was doing. We have Corporal Orr's
12 file. But Zanidean himself had not made any
13 decision he even wanted in to the Witness
14 Protection Program, according to Corporal Orr?

15 A In any event, I didn't know about this.

16 Q So my question to you is, was this information
17 also relevant to Zanidean's sworn testimony that
18 start-up costs hadn't even been mentioned in the
19 negotiations?

20 A I couldn't possibly say. I don't know what they
21 told him. And this start-up costs is a term
22 that I don't know they used all of the time.

23 Q Was the intention, whether it was in the program
24 or out of the program, that the Crown would help
25 him get started in a new location?

1 A By paying expenses to set him up, yes, but not
2 to him.

3 Q If we assume that's the natural meaning of the
4 phrase "start-up costs," it was always
5 contemplated as part of the agreement that was
6 being negotiated, wasn't it?

7 A Here you are talking about giving him a sum of
8 money in his own hands.

9 Q The means is different, but the purpose is same,
10 is it not?

11 A The purpose is the same but the means are
12 different.

13 Q So this is even more discloseable than the prior
14 discussions is what you are saying?

15 A I would have liked to have known that, yes. If
16 you are relating it to Mr. Zanidean's lying, I
17 don't know how that quite fits, but anyway, go
18 ahead.

19 Q I will move on Mr. Dangerfield. The second
20 event is the next day, June 20th, Zanidean and
21 Sergeant Paul get into a serious argument over
22 his negotiations, which he doesn't feel are
23 going very well. And we see the eventual report
24 that's produced some two and a half years later
25 at tab 56. Do you see that?

1 A Um-hum.

2 Q And in particular, in the course of the argument
3 with Sergeant Paul, if you look three bullets
4 from the bottom, do you see the bullet on
5 June 20th, 1991?

6 A Yes.

7 Q "...made numerous phone calls to his
8 attorney and became increasingly upset,
9 finally exploding and accusing the writer
10 of screwing up the package. The writer
11 finally had enough of Zanidean's ranting
12 and raving and argued with him. Zanidean
13 then threatened to go to the press and tell
14 the press his testimony had all been lies
15 and that would be really..."

16 and he uses a expletive.

17 A Um-hum.

18 Q As a result of this blow-up, the Winnipeg Police
19 terminate their interim protection arrangements
20 for Zanidean and essentially put him out on the
21 street. Do you see that at the conclusion of
22 that page?

23 A Yes.

24 Q "After a meeting with Inspector Johnson,
25 this team removed all police supplies from

1 the room and informed Zanidean that he
2 would have to find his own accommodations."

3 And finally they seize the phone records, or
4 they are given the phone records so they can
5 trace the phone calls that Zanidean was making,
6 and they find out that he placed a call to
7 Brodsky's phone number immediately after the
8 blow-up. Do you see that over the page?

9 A Yes.

10 Q And my question to you is, did Sergeant Paul or
11 Inspector Johnson or Anderson or Vandergraaf or
12 any police officer brief you about these
13 developments?

14 A No.

15 Q And we see that the report is not produced until
16 September of '93, so it would have to be an oral
17 briefing, if there was one.

18 A I was not told any of this. After the appeal, I
19 simply stopped worrying about the file, I just
20 went on about --

21 Q This is a good year and a half before the
22 appeal, this is a week after the verdict at this
23 point. My question is --

24 A Yes, but I wasn't told anything about it, no. I
25 thought you were referring to the document

1 itself.

2 Q Is this kind of event a dramatic event, the kind
3 of event you would be inclined to remember?

4 A What? A report of a blow-up with Zanidean and
5 the police officer?

6 Q Yes, saying his testimony had all been lies?

7 A Well, yes, I would remember that.

8 Q If you had been told seven days after the
9 verdict that your key Crown witness had
10 threatened to go to the media and say that his
11 evidence had all been lies and he had been
12 putting in phone calls to the defence counsel,
13 is that something that you likely would have
14 been interested in?

15 A I would have passed it on to Brodsky, yes.

16 Q Well, aside from whether you pass it on to
17 Brodsky, would it be something --

18 A I would remember it, I think, if I had been told
19 it, yes. I certainly would at the time. I
20 don't know if I would remember it now.

21 Q Can you think of any good reason why you
22 wouldn't be briefed on this?

23 A No.

24 Q The third event I want to cover with you again
25 is the next day, June 21st. We are now a week

1 after the verdict, and that's at tab -- the next
2 tab, tab 57 is Mr. Miller sends Kovnats a
3 letter. Remember, this is the day that the
4 police have terminated their arrangements with
5 Mr. Zanidean --

6 A Yes.

7 Q -- to protect him. And Mr. Miller's June 21st
8 letter to Mr. Kovnats refers to,

9 "...the plan arranged for your client..."

10 Do you see the third paragraph?

11 A Yes.

12 Q "...is one that has been worked out with
13 the police and is one which your client is
14 comfortable."

15 And he reaffirms their support for witness
16 protection and says that the costs of the
17 relocation are not to exceed \$20,000?

18 A Yes.

19 Q It is not the clearest letter in the world, but
20 it seems to be saying that they have moved to
21 plan B, which is that they will relocate him
22 outside of the Witness Protection Program
23 through a straight payment. Is that the way you
24 read it? And that there is a cap on the
25 relocation expenses at \$20,000?

1 A They were going to pay him a sum of money and he
2 could relocate himself, yes. All of this --
3 there is a file I saw a couple of days ago,
4 which is marked Whitley and Miller only, and all
5 of this stuff is in there. I never saw any of
6 it.

7 Q Well, that particular file is in volume 3, and
8 obviously it will be of more interest to
9 Mr. Whitley than to you. But you are quite
10 right, there is a file that says "Miller and
11 Whitley only" on the cover. But this letter,
12 was this ever brought to your attention, whether
13 you saw the actual document, but the substance
14 of the agreement that appears to have been
15 reached on June 21st?

16 A No. But later on, much later on when all of
17 this was beginning to burst around in the
18 complaints by Ms. Janie Duncan and others,
19 office gossip, I got some information through
20 that.

21 Q You heard about the \$20,000?

22 A I heard about a payment, yes, but it was a long
23 time afterwards.

24 Q A long time later. You see, staying at that
25 same tab, 57, there is a second version of the

- 1 letter in draft form. Do you see that?
- 2 A Yes.
- 3 Q That has got some handwritten notes at the top?
- 4 A Yes.
- 5 Q And it appears that Mr. Miller sends it to
- 6 Whitley, the right-hand note on June 24th?
- 7 A Yes.
- 8 Q And asks him to have the Deputy approve it?
- 9 A Yes, that's Graeme Garson.
- 10 Q The left-hand note, are you able to recognize
- 11 that?
- 12 A The G is the late Graeme Garson, he was the
- 13 Deputy Minister at that time.
- 14 Q And he writes back to Mr. Whitley saying, I see
- 15 nothing wrong with this letter?
- 16 A Yes.
- 17 Q So it appears that the agreement with Zanidean
- 18 was approved at the highest levels by the ADM
- 19 Whitley and the Deputy Garson?
- 20 A The Deputy Attorney General Garson, yes.
- 21 Q And did any of these three officials, who appear
- 22 to be in the loop on it, Miller, Whitley and
- 23 Garson, did any of them ever mention to you
- 24 anything about this development?
- 25 A No.

1 Q Again, was it a discloseable fact, in the appeal
2 pending period, that you were in at this point,
3 that this payment had been made to Zanidean, an
4 agreement had been reached to pay it?

5 A Yes, I suppose so.

6 Q And what would you have done with this
7 information had you been briefed on it?

8 A I would have passed it on to Mr. Brodsky, I
9 expect, or I would have advised them to do it,
10 one of the two.

11 Q The fourth and last development I want to review
12 with you, and you have to go back to volume 1
13 for this, Mr. Dangerfield, is what happens with
14 the whole Swift Current immunity issue, and the
15 negotiations between the Winnipeg Police and the
16 Swift Current RCMP and Mr. Kovnats and
17 Mr. Miller. If you turn to tab 20 at volume 1,
18 you again have Sergeant Anderson's October 8th,
19 1991 report to Inspector Johns. Do you see
20 that?

21 A Um-hum.

22 Q And his account of what happens immediately
23 after the trial, you see it, if you turn to page
24 2, that long paragraph in the middle we dealt
25 with before about the April agreement, that

1 Zanidean wouldn't be charged; you remember that?

2 A Yes.

3 Q And then at the bottom of page 2 you see the
4 reference to his testimony on the 11th of June?

5 A Yes.

6 Q And then over the page at the top of page 3, if
7 I could read you a couple of passages at the top
8 of page 3, about what Anderson says happened
9 next. He says,

10 "On that date at the conclusion of
11 Zanidean's testimony..."

12 that's on the 11th of June,

13 "...Sergeant Paul and I informed Zanidean
14 that we had assurances from Swift Current
15 RCMP that he would not be charged with the
16 arson that he had admitted to us. Zanidean
17 expressed disbelief, but we assured him
18 that the decision not to charge him came
19 from the officer in charge of the
20 investigation. Prior to this date,
21 Zanidean clearly expected to be charged
22 with the Swift Current arson."

23 And then the next paragraph,

24 "Negotiations relating to Zanidean's long
25 term protection continued at this time and

1 involved Corporal Tom Orr, Staff Sergeant
2 Vandergraaf, Zanidean, his lawyer, David
3 Kovnats, and senior Crown Attorney Bruce
4 Miller. Zanidean's immunity became a
5 component of the protection agreement
6 reached by Bruce Miller and lawyer
7 Kovnats."

8 Were you ever briefed on those developments
9 immediately after the trial --

10 A No.

11 Q -- in relation to Swift Current immunity?

12 A No.

13 Q Again, these post-trial developments, were they
14 discloseable facts, in your opinion?

15 A Yes. They changed the whole -- he got a large
16 sum of money rather than a transfer to another
17 city.

18 Q But specifically here we are talking about this
19 whole business of him having sought immunity,
20 and then being told after the trial that he had
21 immunity, and that immunity becoming a component
22 of the protection agreement?

23 A Yes, the jury should have known about his
24 immunity when he was giving evidence.

25 Q Now, you see the specifics of the way Sergeant

1 Anderson describes this is that he reaches the
2 immunity agreement with Burton in April, you see
3 in the middle of page 2. And the agreement is
4 they will keep it secret from Zanidean. And
5 then only after Zanidean testifies does he tell
6 him about it, and then after his testimony, it
7 becomes part of the agreement. And what I want
8 to ask you about this kind of a deal that
9 Anderson is describing, or this kind of an
10 arrangement, as he calls it, where you have got
11 a key witness who is concerned about a serious
12 criminal jeopardy he has got and he is seeking
13 immunity on it, and the police secretly arrange
14 for that immunity without telling him about, is
15 that the kind of arrangement, assuming it was
16 being considered and discussed, was that
17 properly within Miller's province or should that
18 have been within Crown counsel's province, the
19 prosecutor? Is that something that's the
20 responsibility of the prosecuting attorney or is
21 it the responsibility of the negotiator who is
22 negotiating the witness protection arrangements?

23 A I should have been kept advised of these
24 negotiations and the direction they were being
25 aimed, and that is an immunity agreement.

1 Because I would have wanted that immunity
2 agreement in place before I ever put him in the
3 box.

4 Q And the reason you would want it in place before
5 you put him in the box was?

6 A Because there would be no hope of a question
7 being asked along the lines of, "and I expect if
8 your evidence is even stronger, the likelihood
9 of you getting immunity grows, does it," which
10 blows away the witness altogether. So I would
11 like that out front and done. To do it the way
12 it is being suggested in that letter is to do it
13 exactly backwards, in my view.

14 Q If I could follow up on your answer a bit, the
15 ideal scenario you are hypothesizing is in fact
16 what the English Common Law requires. There is
17 case law to that effect, is there not?

18 A Yes. In every instance where I used witnesses
19 in that fashion, the arrangements with them had
20 been formalized before they went into the box.

21 Q And then when you lead the witness in chief,
22 what do you do?

23 A I have him tell us what the arrangements were
24 that he struck with the prosecution before he
25 gives his evidence.

1 Q You bring it out in chief, then the witness has
2 no hope that if he testifies favourably to you,
3 he is going to get his deal?

4 A Or get any more.

5 Q Or get any more, the deal has been done and is
6 sealed?

7 A Yes. That's the best he is going to get. It
8 still doesn't stop the question being asked, and
9 it still leaves suspicions in people's minds, of
10 course, but at least it is out front.

11 Q And you are familiar with that body of case law?

12 A Yes. I couldn't tell you the names of them now,
13 but, yes.

14 THE COMMISSIONER: I would suggest common sense.

15 THE WITNESS: Yes, that too, sir.

16 MR. CODE: Something that is sadly missing in
17 the law. The genius of the English common law,
18 I always thought, was that it was based on
19 common sense. Certainly, that's what Lord
20 Denning would tell us.

21 BY MR. CODE:

22 Q Had you ever heard of this kind of secret
23 arrangement, where a deal is made with a witness
24 that he has been seeking but he is not told
25 about it, the benefit is kept from him until

1 after he testifies?

2 A Not that I'm aware of, no.

3 Q Now, I haven't seen the materials in relation to
4 this, but I'm told, I have never heard of it
5 either, but when I was making some inquiries as
6 to whether this had ever happened in Manitoba
7 before, I was told about a case named Ostrowski,
8 which, as I say, I haven't reviewed any
9 materials on this so I'm not familiar with it.
10 But are you aware of this having been done,
11 something like this, of a benefit for the
12 witness --

13 A Yes, the name of the witness is Dunkley, there
14 were four witnesses, he was the second accused,
15 he was the second defendant.

16 Q Ostrowski was the second defendant?

17 A No, Ostrowski was the first defendant,
18 Ostrowski, Dunkley, Luzny and Correia. Midway
19 through the trial, Mr. Dunkley approached us and
20 said, I am prepared to plead guilty to second
21 degree murder for a sentence of 15 years, and I
22 will tell you that I got the gun from Luzny, the
23 gun that I used.

24 Q Was there a secret deal?

25 A No, no, no. We agreed with him that we would

1 recommend that to the judge.

2 Q But, as I say, I don't know the facts of this
3 case so I should probably stop asking you about
4 it.

5 A There was no secret deal.

6 Q There were no Crown witnesses, I'm not talking
7 about the co-accused, I am talking about the
8 Crown witnesses.

9 A No Crown witnesses as far as I remember the
10 case, and I prosecuted it, that ended up that
11 way. But the trouble was that Dunkley betrayed
12 us. There was no evidence against Luzny. We
13 stopped the case against Luzny and Luzny went
14 home and we went on with the rest.

15 Q Turning to the post-trial requests made by
16 Gumieny, I'm not going to cover this with you,
17 Mr. Dangerfield. If you look in your statement,
18 at tab 1, there is a considerable amount of
19 documentation dealing with Gumieny's post-trial
20 requests for various assistance and benefits.
21 And you see it starts at page 26, your interview
22 on that point and continues through to page 27
23 and on to the top of page 28. Are you content
24 with the accuracy of the discussion there, tab
25 1, pages 26 to 28?

1 A I seem to be in the wrong --

2 THE COMMISSIONER: Volume 1, tab 1, page 26 to

3 28.

4 BY MR. CODE:

5 Q It summarizes your various post-trial contacts

6 with Gumieny where he is seeking certain

7 benefits and makes some threats related to

8 recantation. And I'm simply asking you, do you

9 have anything to add to the discussion that's

10 set out there at pages 26, 27 and 28?

11 A Can I just look through it?

12 Q Yes, absolutely.

13 A No, there is a piece missing out of here. He

14 actually phoned me twice. Yes, here it is

15 further on down.

16 Q It carries on, I think there is about three

17 separate times?

18 A He asked for the payment of moving expenses, and

19 I tell him that I would refer him to -- I would

20 refer his request on. There are actually two

21 requests that I remember. One about living

22 accommodations and the area in which he was

23 housed in the new location. And the second half

24 of that was, he was having very great difficulty

25 with his RCMP handler. That I forwarded to

1 Miller. I heard no more about it.

2 Q I don't want to go into any of this. Have you
3 had an opportunity to review the statement in
4 relation to the Gumieny matter?

5 A Well, the second part where he asks for recovery
6 of the moving expenses seems to be missing from
7 here. I didn't notice it.

8 Q I think you will find there is actually three
9 separate times discussed here where he contacts
10 you?

11 A He contacted me twice asking for relief in
12 relationship to his move under the program. A
13 couple of more times he phoned just to say
14 hello. The last time I remember he was on his
15 way out west, having been released from prison.
16 I don't know why he phoned me, but he did.
17 There were two occasions when he phoned
18 requesting help.

19 Q With that clarification, are you content with
20 the description there?

21 A Yes.

22 Q All right. The last major topic that I want to
23 deal with you with is the whole question of
24 Saskatchewan Justice Department disclosure.

25 A Yes.

1 Q The Richard Quinney letters?

2 A Yes.

3 Q And you recall that in early 1992, Mr. Quinney,
4 the Saskatchewan Director of Prosecutions,
5 completes a review of the Swift Current arson
6 and gives certain legal advice to the RCMP in
7 Saskatchewan, and then writes a couple of
8 letters to Mr. Miller?

9 A I'm aware from what date you say?

10 Q We will come to the chronology, but you are
11 aware of the subject matter?

12 A Now that I see the letters, yes.

13 Q I'm directing you to a topic simply,
14 Mr. Dangerfield, are you familiar with this
15 topic?

16 A The letters?

17 Q Yes?

18 A Now I am, yes.

19 Q The subject of Mr. Quinney's review and the
20 letters he wrote to Mr. Miller, do you know what
21 I'm talking about?

22 A Yes, it is about the fire in Swift Current.

23 Q Those two letters are at tab 61 and 62, we are
24 now in volume 3, is that correct? Quinney's
25 first letter is at tab 61 and his second letter

1 is at tab 62?

2 A Yes.

3 Q You see the dates on those letters, the first
4 one is January 16th, 1992, and the second one is
5 dated March 9th, 1992?

6 A Yes, the first one contained a statement
7 apparently, and the second one contained the
8 statement and what purported to be a police
9 report.

10 Q Just focusing on the dates for a minute,
11 Mr. Dangerfield, did you have carriage of the
12 Driskell appeal at that time?

13 A Yes.

14 Q And that appeal, which was launched presumably
15 after the verdict in June of '91, it doesn't get
16 heard until December of '92?

17 A That's right.

18 Q So the time these letters were being written
19 were about nine months, approximately,
20 pre-appeal; is that fair?

21 A Yes.

22 Q And as the Crown counsel with carriage of the
23 appeal, you were Crown counsel with carriage of
24 the appeal?

25 A Yes.

1 Q Whose responsibility would disclosure decisions
2 in the appeal period lie with?

3 A Me.

4 Q And if I could just go through the content of
5 these two letters, the January -- which
6 eventually come to your attention, we will deal
7 with the timing as we go through this -- but the
8 content of the first letter at tab 61, is it
9 fair to say that the first page of the letter,
10 in summary, deals with the RCMP conclusions that
11 the motive for the arson was an insurance fraud,
12 as opposed to the revenge that Zanidean had
13 testified to? Does that summarize it in a
14 nutshell?

15 You see the last four lines at the bottom
16 of page 1..."

17 "The result of investigation is that
18 they..." ,

19 that is the RCMP,

20 "...are satisfied that Driskell's statement
21 is substantially correct and that the
22 motive for burning the house in Swift
23 Current was reward as opposed to revenge."

24 Does that summarize --

25 A Yes, that summarized the --

1 Q -- the first page of the letter?

2 A The actual purpose of the burning was to
3 perpetrate a fraud on the insurance company.
4 The payment was for the services rendered.

5 Q Exactly. And this is the subject of some
6 discussion in the body pack, the conversations
7 that you were talking about?

8 A All of this comes from Driskell, and there is a
9 vague representation of a burning and some I
10 think monies owed, \$800 to one, \$100 to another.

11 Q The RCMP investigate the matter thoroughly and
12 have got a big four volume file on the matter.
13 And Quinney is simply summarizing the conclusion
14 of their investigation; is that not correct?

15 A Seems to be.

16 Q And what this must have raised in your mind,
17 when you eventually came to read this letter, is
18 the question of whether Zanidean committed
19 perjury at the trial, is that fair, on this
20 point?

21 A I don't know when I actually saw this letter.

22 Q Well, we are going to come to that in a minute,
23 I'm not concerned about timing, I'm just dealing
24 with content. When you came to read this
25 letter, did reading this first page of the

1 letter raise in your mind the possibility that
2 Zanidean had committed perjury on this point at
3 trial, about the motive for the fire?

4 A Yes, he had used the excuse of revenge rather
5 than implicating his sister in a fraud, yes. He
6 didn't say anything about Driskell either.

7 THE COMMISSIONER: He didn't say anything about
8 which, I'm sorry?

9 THE WITNESS: He didn't say anything about
10 Driskell at trial either.

11 BY MR. CODE:

12 Q I'm not sure about that but --

13 A Later in cross-examination he did, yes.

14 Q -- I don't want to take the time go through it
15 now. It is clear the two of them did it
16 together, from all of the evidence, it appears.

17 In any event, was that matter a matter that
18 was a discloseable fact, in your mind, the fact
19 that there was now evidence from the RCMP
20 investigation that Zanidean may have committed
21 perjury on this point?

22 A Yes.

23 Q Turning over the page to page 2 of the letter,
24 the second paragraph on page 2,

25 "I would also like to advise you..."

1 Do you see that?

2 A Yes.

3 Q And what Quinney refers to in that paragraph is
4 a July 16th, 1991 statement that Sergeant
5 Anderson is said to have made to the RCMP, to
6 the effect that Zanidean had stated to him -- so
7 it is double hearsay -- after the murder trial
8 that,

9 "If he was charged with the arsons in
10 Saskatchewan, he would go to the media and
11 state that he only told the Winnipeg Police
12 Service 'what they wanted to hear regarding
13 the murder' so that Driskell would be
14 acquitted on appeal or a new trial would be
15 ordered."

16 Now, upon reading that when you eventually
17 got to it, did this appear to you to be similar
18 material to what you eventually learned about
19 the June 21st threat, to go to the media and say
20 his evidence had all been lies, an analogous
21 kind of statement; is that fair?

22 A A threat to recant.

23 Q It is a threat to recant, so we now have
24 potentially two threats to recant, if you had
25 known about the June 21st one. Is that correct?

- 1 A Yes.
- 2 Q Again, it all appears to be part of bargaining
3 or negotiating over whether he is going to be
4 charged with the Swift Current arson. Is that
5 the way you read it?
- 6 A It seems that way.
- 7 Q And again, would that be a discloseable fact?
- 8 A What, the recantation?
- 9 Q The threat to go to the media and say that he
10 had simply testified to what the police wanted
11 to hear?
- 12 A Yes.
- 13 Q I beg your pardon?
- 14 A Yes.
- 15 Q And the third point in the letter, next
16 paragraph, you see the reference to Stinchcombe
17 and Mr. Quinney tactfully recommends disclosure
18 of this material; do you see that?
- 19 A Yes.
- 20 Q In the long middle paragraph?
- 21 A Yes.
- 22 Q Did you agree with Mr. Quinney's analysis, or
23 disagree?
- 24 A No, I agreed with it.
- 25 Q Finally, the last paragraph at the bottom, he

1 states,

2 "The basis for the decision not to charge
3 Zanidean in Saskatchewan...",
4 you see that last paragraph?

5 A Yes.

6 Q "...with respect to the arson in this
7 province, it seems clear that Zanidean is
8 of the view that he was granted immunity
9 from prosecution, no matter exactly how
10 this came about."

11 A Yes.

12 Q Again, was that a discloseable fact, the
13 conclusion from the RCMP investigation that
14 Zanidean had believed he had immunity?

15 A Yes.

16 Q And that, of course, is directly contrary to
17 what you and Mr. Lawlor had said at the May 22nd
18 pre-trial before Justice Morse, when you said
19 that there was no immunity; is that fair?

20 A That's what we understood at the time from the
21 police reports to us, yes.

22 Q So that would make this particularly
23 discloseable, because you had represented to the
24 trial judge and to counsel the exact opposite of
25 these facts?

1 A Um-hum.

2 Q Is that correct?

3 A Yes, unwittingly, we had, yes.

4 Q So, when you read this letter with these three
5 separate issues that it raises, the perjury on
6 the motive for the arson, the threat to recant,
7 and the assertion by Zanidean that he had
8 immunity, or the belief that he had immunity,
9 how did this letter strike you in terms of its
10 importance or its significance when you came to
11 read it?

12 A I can't remember when I actually did read it,
13 Mr. Code.

14 Q I think we will come to that shortly. I think I
15 can reconstruct it for you. I'm more interested
16 in the substance of it, the content of it, was
17 it something that struck you as important?

18 A I'm not sure how it struck me. All of this
19 information in here comes from Zanidean -- from
20 Driskell, all of it. If you read the statement,
21 it is a complete analysis of the whole crime.

22 Q Well, with respect, the RCMP investigation which
23 we have looked at reasonably carefully here, we
24 have excerpted it in exhibit 1, it is a four
25 volume file, a fairly thorough investigation,

1 and Driskell's statement comes fairly late in
2 the investigation. In any event, the matters,
3 two out of the three matters, Quinney is drawing
4 to your attention, one of them comes from
5 Sergeant Anderson and the other comes from the
6 reconstruction of the whole immunity
7 negotiations. So none of that is connected to
8 Driskell, Mr. Dangerfield.

9 So my question remains, of these three
10 separate issues he is bringing to your
11 attention, what was the impact of it on you? If
12 you thought nothing of it, then tell me?

13 A I can't remember when I saw it, and I can't
14 remember what I thought about it.

15 Q It sounds to me like you are downplaying its
16 importance, that this is all coming from
17 Driskell, it is not worth anything, Mr. Brodsky
18 already knows it; is that your attitude?

19 A No, no. All I said was that Mr. Brodsky would
20 have known all of this before he even went to
21 trial, because Mr. Driskell would have told him
22 before he even began asking questions in the
23 fashion that he did.

24 Q Would Mr. Brodsky have known -- look at page 2
25 of the letter -- the July 16th conversation

1 between Anderson and Burton, was Mr. Brodsky
2 aware of that?

3 A No, no, I'm talking about the facts of the
4 arson, sir, that's all.

5 Q The assertion at the bottom of page 2, that
6 Zanidean was of the belief that he had been
7 granted immunity on the Swift Current arson, did
8 Mr. Brodsky know that?

9 A No, he wouldn't have known that.

10 Q Were those matters that he was pursuing
11 diligently?

12 A Yes, yes.

13 Q And on which you were telling him exactly the
14 opposite?

15 A Unwittingly, yes.

16 Q How important was this letter?

17 A I can't tell you any more, Mr. Code, because I
18 don't remember where I saw it. But it would be
19 important, I expect, as a matter of disclosure.

20 Q All right. The second letter, at tab 62 is much
21 shorter?

22 A Yes.

23 Q Mr. Quinney had asked, Mr. Quinney had said in
24 the first letter that he would forward the
25 summary of the RCMP investigation. Presumably,

1 he had to get permission to do it, so it is a
2 couple of months later on March 9th. This
3 letter encloses the RCMP analytical document
4 that summarizes much of the investigation; is
5 that correct?

6 A Yes.

7 Q It encloses Driskell's statement, and also
8 encloses this document that you have to turn
9 sideways, that's compiled by two F division
10 officers who prepared an analysis of the
11 investigative file?

12 A Yes.

13 Q And Mr. Quinney again notes in the second
14 paragraph that the investigation concluded that
15 Driskell's version of the incident is the
16 correct one, as opposed to Zanidean's testimony
17 at the murder trial. So he explicitly states
18 this second time that this relates to the
19 truthfulness of Zanidean's testimony; is that
20 correct?

21 A Yes.

22 Q And then finally, in the last paragraph, he
23 again gently reminds you of your disclosure
24 obligations. Is that correct?

25 "I trust this will be of assistance to you

1 in providing appropriate disclosure."

2 A Yes.

3 Q And you agreed with that when you received it,
4 or disagreed with it?

5 A I don't recall seeing this letter at all.

6 Q All right. Do you have any disagreement with
7 the analysis that this was all discloseable?

8 A Oh, no. No.

9 Q Tab 63, Mr. Miller appears to take about two
10 months to review the materials?

11 A Well --

12 Q I am sorry, three months?

13 A Well, the first one arrived on his desk some
14 time in January.

15 Q But he asks for, he asks Quinney to send him the
16 RCMP file materials. And Quinney says he will
17 get it to him as quickly as he can. And then
18 that comes on March 9th, and he sits on it for
19 about three months. And then on July 7th, it
20 gets forwarded to you at tab 63; is that
21 correct?

22 A Yes.

23 Q And he notes that you have carriage of the
24 appeal in the first paragraph?

25 A Um-hum.

1 Q And he asks you in the third paragraph to make
2 whatever use of it is appropriate in the
3 circumstances; is that correct?

4 A Yes.

5 Q He doesn't expressly instruct you to make
6 disclosure of it.

7 A No.

8 Q And was that approach appropriate, in terms of
9 the relationship that you had with him and whose
10 responsibility it was?

11 A Well, let me reiterate, I don't believe I saw
12 this memorandum. But, yes, the approach was
13 correct, I just didn't have the opportunity to
14 exercise it.

15 Q So he was doing the right thing and leaving the
16 disclosure decision to you?

17 A Yes.

18 Q Instead of directing you on the point?

19 A Well, I would have been happier if he had told
20 me in the memorandum what it actually contained
21 and what he wanted done with it, yes.

22 Q He might have highlighted it for you a little
23 bit better?

24 A I might have understood what he was talking
25 about.

1 Q Fair enough. But he is being differential to
2 you, it appears. Is that not true?

3 A I don't know what he is being, but it isn't very
4 clear. We weren't on any formal sort of
5 boss/slave relationship, we played baseball
6 together. He could have told me in simple terms
7 what he wanted, but he didn't.

8 Q In any event, it was your decision and you agree
9 with that, as to whether to disclose it?

10 A Yes.

11 Q And at this point on July 7th, the appeal is
12 about five months away; is that correct?

13 A Yes.

14 Q And in that five-month time frame, with the
15 appeal pending and the heading on the document
16 is, you see the re: line is Regina vs Driskell,
17 Court of Appeal?

18 A Yes.

19 Q So you knew what the subject matter related to?

20 A Yes.

21 Q Did you read it during that five-month period?

22 A Not that I'm aware of. I don't recall seeing
23 this.

24 Q We know from the file that nothing seems to
25 happen until some three months after the appeal.

1 If you turn to tab 64, it is the next document
2 that we have, where a fellow by the name of Sid
3 Lerner --

4 A Yes.

5 Q -- writes a handwritten memo to Mr. Miller about
6 the matter?

7 A Yes.

8 Q And the bottom line on the first page of the
9 memo has been cut off, and I had Commission
10 staff circulate a better copy of that first
11 page, I hope you have all got it now.

12 Could you tell us, first of all who is Sid
13 Lerner, who sends this handwritten letter to
14 Bruce Miller almost a year, at least a year
15 after Miller first received these materials?

16 A He was a prosecutor working in the department.

17 Q Okay. And he is now a judge, as I understand
18 it?

19 A Yes.

20 Q And if you read his memo, the first few lines of
21 it, he appears to have become involved in this
22 matter as a result of an inquiry from the
23 Minister's office; is that correct?

24 A Yes.

25 Q And presumably he was assigned the task of

1 looking into the question from the Minister's
2 office. And the source of the Minister's
3 inquiry is a reporter from the media, you see
4 four lines in?

5 A Yes.

6 Q Who is asking about the nature of any immunity
7 agreement?

8 A Um-hum.

9 Q Is that correct?

10 A Yes, it is written there.

11 Q And we know that within a few days the media,
12 the Winnipeg Sun is about to publish a big
13 series of articles alleging that there was an
14 immunity agreement; is that correct?

15 A I don't know that, no.

16 Q If you look at tab 65, we have got them there?

17 A Okay, yes.

18 Q You remember these articles over two weekends
19 that you write the briefing note at tab 66 in
20 response to. Do you see that?

21 A Yes.

22 Q Tab 65 and 66?

23 A Yes.

24 Q The question appears to have come in as a
25 precursor to the impending media articles, and

1 Lerner looks into it for the Minister's office
2 and he ends up having discussions with Miller,
3 and the memo summarizes his discussions with
4 Miller; is that correct?

5 A Yes.

6 Q And what he discovers by looking into it is that
7 the Saskatchewan Justice documents, you see he
8 refers to them at the bottom of the page,

9 "This will confirm our discussion re the
10 material on the Driskell file from the RCMP
11 dealing with the issue of Mr. Zanidean's
12 credibility. As you know now from our
13 discussions of March 9th, although that
14 material was forwarded to Mr. Dangerfield
15 by you (and indeed appears on the Driskell
16 file), Mr. Dangerfield does not recall
17 receiving it. In any event, the material
18 was not passed along to Mr. Brodsky. I
19 understand that you will be taking this up
20 with Mr. Dangerfield so that material can
21 be provided to counsel to now do with it as
22 he sees fit."

23 Have I read that accurately?

24 A Yes.

25 Q So it appears he discovers the Saskatchewan

1 Justice documents in the file, and discovers
2 through discussions with you that you don't
3 recall receiving it. Is that correct?

4 A Yes.

5 Q Do you remember those discussions with
6 Mr. Lerner?

7 A No.

8 Q In any event, Mr. Miller agrees, or appears to
9 agree with Lerner that they are discloseable and
10 agrees to take it up with you. Is that the way
11 you read the memo?

12 A Yes, it seems that was right.

13 Q And indeed, if you carry on in this tab to the
14 last document that we see, that Mr. Miller does
15 exactly what the Lerner memo says he would do.
16 A day later on March 11th, we are still two days
17 before the media deluge that's coming, two days
18 before the media articles, Mr. Miller reminds
19 you in this March 11th memo of the materials
20 from Saskatchewan Justice. Is that correct?

21 A Yes.

22 Q And indeed, this time he does formally use the
23 "disclosure" word in the middle paragraph?

24 A Yes.

25 Q He asks,

1 "Was this information disclosed to counsel
2 for Mr. Driskell? If not, should we do so
3 at this time?"

4 So he is firmly bringing the disclosure issue to
5 your attention, is he not?

6 A Yes.

7 Q And your handwritten notes on the memo is to
8 repeat what you said to Lerner, that you don't
9 recall the material, and you ask him to resend
10 it; is that correct?

11 A Ask him to send it -- no, I ask him to refresh
12 my memory so I can send it on.

13 Q His memo, this March 11th memo, doesn't reattach
14 the materials that had been attached to the
15 earlier memo a year earlier on July 7th, 1992;
16 is that correct?

17 A That's right.

18 Q So you are asking him to let you see the
19 materials, because you didn't see them the first
20 time, or you don't recall them. Is that the way
21 it works?

22 A Yes, I don't recall the materials and I ask him
23 to clarify it before I tell him to go ahead.

24 Q And did he do that, did he resend them to you?

25 A Not that I'm aware of, no.

- 1 Q You don't recall him sending them to you a
2 second time?
- 3 A No.
- 4 Q You are shaking your head?
- 5 A No, I don't.
- 6 Q All right. Who is responsible for disclosure at
7 this stage? We are now three months after the
8 appeal, early March. The Court of Appeal has
9 dismissed his appeal to the Manitoba Court of
10 Appeal. Who would be responsible for post Court
11 of Appeal disclosure?
- 12 A Well, I suppose Miller could have done it
13 himself if he wished to, or he could send it on
14 to me.
- 15 Q Where, again, was there anything inappropriate
16 in asking you to make the disclosure decision?
- 17 A No. But I had gone by this file now, it was no
18 longer with me, as far as I know.
- 19 Q Who would have been responsible for any leave
20 application to the Supreme Court of Canada?
- 21 A Mr. Brodsky -- you mean from the department?
- 22 Q Yes?
- 23 A I would have.
- 24 Q Or an application to re-open the appeal in the
25 Court of Appeal presumably would have come to

1 you?

2 A Probably.

3 Q The next development at tab 65 is the media
4 articles come out on Saturday, the 13th of
5 March, Sunday, the 14th of March, and then on
6 the following weekend on the 21st of March as
7 well?

8 A Yes.

9 Q Is that correct?

10 A Yes.

11 Q And if you look at the third one of those
12 articles, page 259 of the numbering in the top
13 right-hand corner, do you see an article that's
14 headed up,

15 "Conviction Review: Was Driskell Murder
16 Trial Manipulated?"

17 A Yes.

18 Q And the article written by one Heidi Graham, a
19 Sun staff writer says,

20 "Opposition justice critics yesterday
21 called for a full review of the Justice
22 Department's handling of the Perry Dean
23 Harder case to determine if key evidence
24 was withheld from the jury. The NDP critic
25 Becky Barrett and Liberal Paul Edwards want

1 to know if the department made a deal
2 without telling the defence or the jury,
3 with Reath Zanidean, to drop outstanding
4 charges against him in order to get him to
5 testify against Jim Driskell."

6 And there is a quote from Mr. Edwards, the
7 Liberal MPP,

8 "...because it goes to the witness's
9 credibility if he stood to gain from giving
10 evidence, Edwards said."

11 And further on in the second column of the
12 article, Edwards is quoted again to the effect
13 that,

14 "Edwards said it appeared Zanidean
15 presented himself to the jury as someone
16 who was taking a big risk by testifying,
17 instead of someone who stood to gain by
18 it."

19 Did you read those articles identifying this
20 issue of whether the issue of a deal had been
21 kept from the jury and had left the jury with a
22 false impression?

23 A I don't know whether I did or not.

24 Q You have no idea whether you read the articles?

25 A No.

1 Q Look at your memo of tab 66, Mr. Dangerfield?

2 A Yes, I did. I must have. I recognize them.

3 Q You prepare the briefing note in response to
4 these articles?

5 A Yes.

6 Q So in reading that particular article about the
7 deal with Zanidean and whether it was kept from
8 the jury and the jury got a false impression,
9 did you recognize that that's the very issue
10 that Mr. Quinney had been addressing in his
11 letter?

12 A Again, when I saw that letter first was in
13 Mr. Olson's offices, as far as I can recall. I
14 did not recognize that letter when I first saw
15 it at all.

16 Q Well, let's deal with that.

17 A Again, my memory isn't what it was.

18 Q Mr. Dangerfield, if you jump forward to tab 67,
19 the next memo that Miller sends, this time he
20 sends it up to Whitley. You see the second
21 paragraph he says,

22 "As you know, I asked Mr. Dangerfield to
23 review the material in question and to make
24 a recommendation as to how we deal with it
25 at this time. In my humble opinion, it

1 would be inappropriate for us to withhold
2 the information. From what I gather, it
3 was due to an oversight that Mr.
4 Dangerfield did not address this issue when
5 it was first brought to his attention last
6 July. As you can see from materials
7 attached, Mr. Dangerfield clearly agrees
8 that the material should be sent to
9 Mr. Brodsky with an accompanying
10 explanation. At my request, George has
11 compiled a draft letter serving that
12 purpose."

13 A Yes.

14 Q So that memo appears to say that not only did
15 you eventually get this material, but you
16 drafted the draft response to Mr. Brodsky --

17 A That's right.

18 Q -- disclosing it?

19 A Yes.

20 Q Saying it should be disclosed?

21 A Yes.

22 Q If I could come back to my question at tab 65?

23 A Um-hum.

24 Q When you read these media articles suggesting
25 that that there was a deal in relation to

1 Zanidean's outstanding jeopardy, and it was kept
2 from the jury, and the jury was left with a
3 false impression, did you put two and two
4 together, that the issue was the same issue as
5 Quinney's letter addressed when he said that
6 Zanidean believed that he had an immunity deal?
7 A I really can't recall. I really can't.
8 Q Is that a logical deduction?
9 A Yes, it certainly is, yes.
10 Q And those materials that Quinney had sent to
11 Miller in early 1992 have now been sitting in
12 the department for disclosure to Brodsky for
13 over a year?
14 A Yes.
15 Q And for whatever reason, the disclosure had not
16 been made?
17 A That's right.
18 Q Did it cross your mind when you read these
19 articles that if you now disclosed the Quinney
20 material, after sitting on it for a year, that
21 it would just add more fuel to the media fire?
22 A I don't think so, no. Because I recommended it
23 be disclosed.
24 Q You did recommend, according to memo, that it be
25 disclosed. My question is simply, I'm not

1 questioning the ultimate correctness of your
2 decision, but was there concern in the
3 department that you have got this media storm
4 going on that's alleging the very thing that the
5 Quinney material is now going to add weight to?

6 A I think my view was as expressed in the
7 memorandum, in fact, it was, disclose it. There
8 was no point in hiding the thing.

9 Q I appreciate that's your ultimate
10 recommendation. Again, my question is, was
11 there a concern that you were in the middle of a
12 media storm and this was going to make it worse?
13 Was that discussed?

14 A I don't recall that being discussed, no.

15 Q All right. Tab 66, I have just got two final
16 memos here, so I think we can finish in time.
17 Tab 66, you prepare the briefing note for the
18 Deputy and for the Minister --

19 A Yes.

20 Q -- in response to the articles in the Sun; is
21 that correct?

22 A Yes.

23 Q And in response to the questions raised by the
24 opposition that are documented in those
25 articles; is that correct?

1 A Yes.

2 Q I take it in the Attorney General's department
3 it is unusual to have a major prosecution that
4 becomes the subject of questions in the House?

5 A Yes.

6 Q This is the last thing that prosecutors want, to
7 have their cases become political footballs?

8 A That's right.

9 Q And who was managing this whole media effort,
10 taking charge of the department, the Criminal
11 Prosecutions Branch response to these matters?

12 A I don't know.

13 Q Who was responsible, whose position made them
14 responsible for dealing with these kinds of
15 issues?

16 A I would expect it would be Whitley, I would
17 expect, I'm not sure.

18 Q Fair enough. And I don't think he would suggest
19 otherwise, but we will hear from him shortly.

20 If you turn to the last -- your memo,
21 without going through it line by line, is it
22 fair to say that it is a forceful defence, or a
23 vigorous defence of the correctness of the
24 verdict?

25 A Yes. I was rather unhappy having to write the

1 thing, because I was the prosecutor, it should
2 have been done by someone else really. But they
3 had no time, it was a briefing note, they wanted
4 it that day or the next day. So I went through
5 my memory and wrote this note.

6 Q And the only part of it I'm particularly
7 interested in is the last page, the second to
8 last paragraph?

9 A "In short the trial was fairly
10 conducted...",
11 that paragraph?

12 Q Exactly, and the first two sentences there,
13 "In short the trial was fairly conducted
14 with the defending counsel being provided
15 with full particulars of the evidence to be
16 called against Driskell. Nothing was kept
17 from him."

18 You wrote those words?

19 A Yes. That's what I believed at the time.

20 Q And I suggest to you that in light of the
21 Quinney materials, you must have known by this
22 point that the whole question of immunity on
23 Swift Current, whatever the arrangements had
24 been, as Mr. Quinney puts it, had not been
25 disclosed to the defence?

1 A Yes, but I was dealing with the trial per se. I
2 began and ended with the trial. I didn't go
3 beyond it.

4 Q But at the trial, Mr. Brodsky had repeatedly
5 asked about whether there was a deal, whether
6 Zanidean was seeking a deal?

7 A Working from memory to prepare this note, I
8 wrote what I believed was a correct version of
9 the trial.

10 Q I appreciate that, but I'm saying to you that
11 what is going on in the department at this very
12 time is the Quinney letters have resurfaced.
13 Lerner surfaced them. He has had a chat with
14 you about it. Miller surfaced them. He has had
15 chats with you about them and sent them to you.
16 It must have been on your mind that the whole
17 Swift Current arson immunity issue that was also
18 in the media had not properly been disclosed to
19 Brodsky?

20 A Again, all I can say, Mr. Code, is at the time
21 that I wrote this memorandum, I tried to write a
22 dispassionate explanation of the trial, not what
23 happened afterwards, which threw some doubt on
24 the trial. And that's what I did, I wasn't
25 trying to deceive anybody, I was just writing a

1 plain note, that's all.

2 Q I appreciate that. But you are saying that
3 nothing was kept from Mr. Brodsky --

4 A As I believed it at the trial, that was the
5 right thing, yes.

6 Q -- you now knew in fact that material had --

7 A I'm not sure I did, Mr. Code.

8 Q Isn't Quinney -- when Quinney says there was
9 some kind of a deal, there is conflicts over it,
10 but Zanidean believes he had a deal, isn't he
11 referring to Anderson's memo at tab 20?

12 MR. PROBER: I object to that. How would this
13 witness know what Mr. Quinney is referring to?
14 Perhaps Mr. Quinney can be called and he can
15 explain it.

16 THE WITNESS: He is dead, unfortunately.

17 BY MR. CODE:

18 Q Fair enough. Let me rephrase it, you must have
19 understood that he was referring to something
20 like the tab 20 materials, the account that we
21 now have from Anderson about the dealing that
22 was going on?

23 A I can't recall any of this really. I just -- as
24 far as I can remember, I was asked by Mr.
25 Perozzo to write a briefing note and that's what

1 I did.

2 Q The arson investigation that Mr. Quinney refers
3 to as well, you knew that hadn't been disclosed?

4 A The arson investigation?

5 Q Yes. You remember Mr. Brodsky had asked you for
6 what Winnipeg Police have on the arson, and you
7 had replied to him, or Lawlor had replied to him
8 that they have nothing on it?

9 A Yes.

10 Q And the results of the arson investigation
11 suggested that Zanidean had perjured himself,
12 you knew that hadn't been disclosed, even though
13 Brodsky had been seeking it?

14 A Yes, I guess I must have, yes. I was working
15 from memory on this, Mr. Code, under pressure,
16 that was it. I should not have been asked to do
17 this.

18 Q The last document at tab 67 is the one we've
19 already briefly referred to?

20 A Yes.

21 Q And that is the memo that Miller eventually
22 sends to Whitley --

23 A Yes.

24 Q -- attaching your draft letter to Brodsky, is
25 that correct?

1 A It seems to, yes.

2 Q So by this point, it is clear that you have
3 reviewed the material; is that fair?

4 A Yes.

5 Q And you and Miller were ad idem that the
6 material was to be disclosed?

7 A Yes.

8 Q And you prepared the draft letter and you sent
9 it up to --

10 A Miller sent it up.

11 Q Did you review his memo, did you know he was
12 doing this, that this was the plan, to send it
13 up to Whitley for his decision?

14 A I don't know if I saw his memorandum, no. I
15 assumed that's what he was going to do with it.
16 He wanted a draft letter for approval, that is
17 what he wanted, so I must have written one for
18 him. I don't know what the contents were or how
19 I framed anything.

20 Q Well, it says, the contents are apparent from
21 the memo, that it was to make disclosure to
22 Mr. Brodsky, isn't that correct?

23 A Yes.

24 Q And it refers to the failure to make disclosure
25 in the previous years having been due to an

1 oversight. What was that oversight?

2 A I don't know what he is talking about. I don't
3 recall seeing that material.

4 Q Do you remember having discussions with
5 Mr. Miller that the failure to have disclosed
6 this prior to the appeal was due to an
7 oversight?

8 A No.

9 Q In any event, you are now agreed that it should
10 be disclosed and it is being sent to
11 Mr. Whitley. The second to last paragraph
12 refers to there being, Miller is asking Whitley
13 both to review the contents of the letters and
14 also the issue of who should be signing off on
15 the matter?

16 A Yes.

17 Q And what was the issue of who was to sign off on
18 it?

19 A No idea.

20 Q I beg your pardon?

21 A I have no idea.

22 Q Well, in your statement, tab 1, you offered some
23 rational hypothesis as to what the reason might
24 have been. Do you remember that?

25 A No, I don't know. This is on page 30, I say

1 that I assume that Miller's memo, Miller did
2 this because Whitley has spoken to Miller about
3 the matter; is that it? Is that what you are
4 looking at?

5 Q "Whitley might have become involved
6 because of the media attention the case was
7 receiving, because of the questions that
8 the Minister was having to answer in the
9 legislature."

10 A Yes.

11 Q It is the next paragraph, the top of 31.

12 "With respect to Miller's query about who
13 should sign the letters, Dangerfield does
14 not recall what choice of signatures was
15 presented, but imagines that they may not
16 have wanted Dangerfield to sign the
17 letters."

18 Is that correct?

19 A That's the explanation that I have. I don't
20 know.

21 Q What I'm trying to get at is, why would it have
22 been potentially inappropriate for you to sign
23 the letters?

24 A I don't know. That's the only explanation that
25 I could have as to why I didn't sign the

1 letters, that somebody else decided to do it for
2 me.

3 Q Well, who is the person who is supposed to have
4 suffered from the oversight and didn't address
5 this issue prior to the appeal, according to the
6 second paragraph?

7 A What?

8 Q Second paragraph of the memo says,
9 "It was due to an oversight that
10 Mr. Dangerfield did not address this issue
11 when it was first brought to his attention
12 last July."

13 Do you see that?

14 A Yes.

15 Q Is it not reasonable that you were the counsel
16 with conduct of the appeal, and you were the
17 counsel who apparently had had an oversight, and
18 now we are in the post appeal period, it
19 wouldn't look very good for you to be the one
20 who was explaining your own oversight. Is that
21 a recent reading of what happened?

22 A I suppose, I don't know.

23 Q In any event, it was sent up to Mr. Whitley on
24 April 13th, according to this memo. Did you
25 ever hear back from Mr. Whitley?

- 1 A No.
- 2 Q Did you ever casually discuss the matter and
3 say, by the way, Stu, what did you do with that
4 draft letter to Brodsky?
- 5 A No.
- 6 Q What about Mr. Miller, did you ever raise it
7 with Mr. Miller and say whatever became of that
8 disclosure matter with Mr. Brodsky?
- 9 A No, I didn't.
- 10 Q Why would you not have made inquiries, whether
11 formal or informal, about what transpired?
- 12 A I don't know, Mr. Code, I was doing other
13 things, I had done what they asked me to do and
14 I went on with my life.
- 15 Q Did you have any further cases with Mr. Brodsky
16 after this one?
- 17 A Oh, yeah.
- 18 Q Were you on friendly terms with Mr. Brodsky?
- 19 A Absolutely.
- 20 Q Did you ever mention it to him, what did you
21 ever make of that Saskatchewan material, Greg?
- 22 A No.
- 23 Q Any casual conversation with him about it?
- 24 A I can't recall any, no.
- 25 Q You just let the whole thing lapse and had no

1 follow-up at all?

2 A It was some years after the event, the trial was
3 over, the appeals were over. I just let it slip
4 away, yes. I don't the remember cases forever
5 and ever anyway.

6 Q Could I suggest to you that the whole matter
7 went into a black hole in the department because
8 of the media storm? Is that a reasonable
9 explanation for what had happened here?

10 A Once I had completed that task, I never really
11 considered it again. It came up in casual
12 conversation around the coffee table, guesses,
13 suppositions.

14 Q Casual conversation --

15 A Casual conversation.

16 Q -- about the disclosure issue with Brodsky?

17 A No, just about the case itself, that's all.

18 Q And nobody ever mentioned this, the Quinney
19 correspondence?

20 A Mentioned it specifically? I don't recall.
21 Certainly I wasn't -- after that letter had been
22 drafted and sent on, I didn't think any more
23 about it, unless it came up in conversation, my
24 mind would recall to it, but --

25 Q Mr. Commissioner, I have one last document that

1 I want to take the witness to, but it deals with
2 the Hall and Ewatski review, the interview, and
3 it will take five minutes, but I'm happy to do
4 it first thing in morning.

5 THE COMMISSIONER: I would prefer.

6 MR. CODE: Thank you for letting me finish that
7 topic, though, I appreciate it.

8 THE CLERK: All rise. This Commission of
9 Inquiry is now adjourned.

10 (Proceedings adjourned at 5:00 p.m.)

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COURT REPORTER'S CERTIFICATE

CECELIA REID and LISA REID, duly appointed
Official Examiners in the Province of Manitoba,
do hereby certify the foregoing pages are a true
and correct transcript of our Stenotype notes as
taken by us at the time and place hereinbefore
stated.

Cecelia Reid
COURT REPORTER

Lisa Reid
COURT REPORTER

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