

INQUIRY INTO THE INVESTIGATION AND
PROSECUTION OF DEREK HARVEY-ZENK

The Honourable Roger Salhany, Q.C., Commissioner

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

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Tuesday, July 8, 2008

Volume 10

INQUIRY PROCEEDINGS

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1 TUESDAY, JULY 8, 2008

2 UPON COMMENCING AT 9:30 A.M.

3 THE CLERK: All rise, please. This
4 Commission of Inquiry is now opened. Please be
5 seated.

6 MR. PACIOCCO: Mr. Commissioner.

7 JASON WOYCHUK: Previously sworn

8 BY MR. PACIOCCO:

9 Q Good morning, Mr. Woychuk.

10 A Good morning, sir.

11 Q At the end of yesterday, we had gone
12 to the point in time when the Preliminary for June
13 of 2006 was coming on, sir, and you had been
14 subpoenaed to attend. And you will recall we had
15 some discussion about February 24th, 2006, when
16 Chief Carter was meeting with Mr. Minuk, and you
17 were tasked with the function of picking him up
18 apparently. Do you recall that, sir?

19 A Yes.

20 Q And you described some concerns you
21 had to us with the Preliminary coming up, given
22 the state of your notes; correct, sir?

23 A Yes.

24 Q You described concern of having to
25 testify and you were worried that your notes were

1 not accurate and you did not want to testify
2 falsely and potentially get exposed during
3 cross-examination; is that fair, sir?

4 A Yes.

5 Q And you also, I suggested to you that
6 your conscience was bothering you and you agreed
7 with that?

8 A Yes.

9 Q And you had some conversation with
10 Chief Carter, but you couldn't recall much of what
11 you had said to him?

12 A Yes.

13 Q So we were going through the process
14 of reviewing his notes to try to determine whether
15 those notes would refresh your memory. We began
16 with a notation of Carter's from that date,
17 February 24, 2006. That has now become Exhibit
18 100 in these proceedings. It's a notation found
19 in book P-285.8?

20 THE COMMISSIONER: Excuse me. A
21 little bit of help again?

22 MR. PACIOCCO: P, Peter, 2.

23 THE COMMISSIONER: Peter 2, page?

24 MR. PACIOCCO: Page 2668.

25 THE COMMISSIONER: Thank you.

1 BY MR. PACIOCCO:

2 Q And that was the initial disclosure to
3 Carter apparently, sir?

4 A Yes.

5 Q And it says that you picked him up at
6 Minuk, and you disclosed, he says, that the notes
7 are not yours. It says:

8 "Disclosed notes not his. Wrote as
9 instructed to match 47 and 43."

10 And we have determined that 47 and 43 would be
11 Bakema and Graham.

12 "Said 47 told him Harveymordenzenk was
13 pissed, or Harvey M. Zenk was pissed."

14 And my recollection of our interchange
15 about that was this didn't really refresh your
16 memory, but you couldn't confirm or deny whether
17 what was contained in that note was accurate, sir?

18 A I don't recall the exact conversation.
19 I remember speaking to him about those
20 circumstances, though.

21 Q And you could not recall whether you
22 used the term "pissed," sir?

23 A I don't recall if I used that word or
24 not.

25 Q And you are aware, sir, that your

1 inability to give us more precision might look
2 incredible to some?

3 A Yes.

4 Q You are aware of that. And you'd be
5 aware of that because this is a pretty major event
6 in your life?

7 A Yes, it is.

8 Q And your claim not to recall what was
9 disclosed and what had took place during your
10 conversations with Chief Bakema might cause some
11 to be curious as to why you would not have a
12 better memory of details than you have today. Are
13 you aware of that, sir?

14 A Yes.

15 Q And it might look to some like you're
16 actually holding back information?

17 A Yes.

18 Q You are aware of that as well, sir?

19 A Yes.

20 Q You saw that you spoke to him again on
21 April 10th, 2006, a document that has become
22 Exhibit 101 in these proceedings. And that
23 document will be found at page 2669 of the same
24 document.

25 "Requested 45 to my office. Again

1 said 45 told him Mordenzenk pissed.
2 Again said 47 directed him how to make
3 notes. And 45 said he had cold and
4 could not smell properly, stuffed up.
5 Said knows it's wrong, shouldn't have
6 done it. Instructed by 47."

7 According to Carter's notes, it's the same basic
8 conversation that he had had with you on
9 February 24th, sir?

10 A Yes.

11 Q And this is being reaffirmed, he has
12 brought you into his office and you are repeating
13 exactly what you said to him at the time, sir?

14 A Yes.

15 Q Can you tell us whether you would have
16 been consistent in describing the events to
17 Sergeant Carter, sir?

18 A I believe I would have been.

19 Q And you couldn't help us out again as
20 to exactly what you said to him. You had some
21 general idea, but you couldn't confirm exactly
22 whether the term "pissed" was used and whether
23 this was, in fact, your words that the notes were
24 not yours, sir?

25 A I don't recall specifically using that

1 term, no.

2 Q But you couldn't say it didn't happen,
3 but your basic position is you don't remember,
4 sir, but you do recall the stuffed up nose?

5 A Yes.

6 Q The sucking Halls?

7 A Yes.

8 Q You realize that for some that too may
9 look like a convenient excuse for an inconsistency
10 in your observations, sir?

11 A Yes.

12 Q You are aware that a defence lawyer
13 might take that as an excuse on your part to
14 explain why later, when Sergeant Carter notices
15 signs of impairment, all of a sudden you are
16 mentioning signs of impairment that you didn't
17 observe earlier. And somebody else might look at
18 that and say that this is a case where it looks
19 like an excuse for not disclosing signs of
20 impairment at the scene. Are you aware of that,
21 sir?

22 A Yes.

23 Q We're going to come back to that in a
24 few minutes.

25 Sergeant Carter spoke to you again

1 about things on April 21, 2006, this one, Exhibit
2 102. It's found at page 2776 of book P-3 this
3 time, Peter 3. And at this meeting, he tells you
4 that he's disclosed things to the Crown, and you
5 had indicated to him that you wanted to speak to
6 him about information. You didn't feel that
7 Bakema intentionally covered things up. You said
8 that you thought he was being chicken shit and
9 that he didn't want to deal with Harvey Mordenzenk
10 because he was a cop. And you were advised by
11 Sergeant Carter to tell the truth when speaking to
12 Mr. Minuk; correct, sir?

13 A Yes, yes.

14 Q And that one was fairly consistent
15 with your impressions of what was going on. You
16 confirmed that that was your read on what had
17 happened to you, sir?

18 A Yes.

19 Q Now, by this point, sir, I put it to
20 you that you are pretty panicked about what's
21 taking place?

22 A I'm nervous being here, yes.

23 Q Yes. You are part of a coverup,
24 correct, sir?

25 A I don't believe I'm part of a coverup.

1 Q Well --

2 A I believe that at some point I was
3 given direction to do things that I didn't feel
4 were right, but I listened to the direction.

5 Q Okay. The direction including not to
6 really do anything at the scene of a fatal motor
7 vehicle accident, the direction not to bother
8 putting in observations of alcohol by a paramedic,
9 and the inclusion of a false explanation for why
10 this man was brought into the station; correct,
11 sir?

12 A Yes.

13 Q You knew that you had made an
14 acknowledgment to Carter that you had falsified
15 your notes and that this was information that was
16 now going to the Crown; correct, sir?

17 A Yes.

18 Q Now, on April 27th, sir, you had
19 another conversation with Sergeant Carter. This
20 document will be found at page 2777 of book P-3.
21 Madam clerk, if this can be made the next exhibit.
22 It's at P-3.85.13. P-3.85.13. And I believe that
23 will become Exhibit 103?

24 THE CLERK: Yes. Exhibit 103.

25

1 (EXHIBIT 103: P-3.85.13, Handwritten
2 note of N. Carter dated April 27,
3 2006)

4 BY MR. PACIOCCO:

5 Q This document records a conversation
6 with you on April 27th at 4:30 p.m. sir. Did you
7 have ongoing conversations with Sergeant Carter
8 about this?

9 A Yes.

10 Q And it says:

11 "Spoke to Jason Woychuk at his
12 request."

13 Do you remember asking to speak to Sergeant
14 Carter?

15 A Not on this particular day, but I know
16 I approached him on a number of occasions.

17 Q "Spoke to Jason Woychuk at his
18 request about Harveymordenzenk.
19 Wanted to know if he should be
20 worried. Writer explained that there
21 is concern but he should tell the
22 truth. He said he would. Again said
23 he only did what he was told by Chief
24 Bakema."

25 Do you see that, sir?

1 A Yes.

2 Q Is that an accurate, give an accurate
3 recollection of what took place in that meeting,
4 sir?

5 A Not this particular one, but I spoke
6 to him on numerous occasions and I think I had
7 made that point.

8 Q Okay. So you basically made the point
9 that you were wondering whether you should be
10 worried. And do you recall him telling you that
11 there are concerns, but you should nonetheless
12 tell the truth?

13 A I recall a conversation similar to
14 that, yes.

15 Q And then, sir, on May 15th, 2006, you
16 speak to him again. This one is at page 2778 of
17 the same volume, P-3.85. This time at tab 14.
18 Madam clerk, if this can be made Exhibit 104?

19 THE CLERK: Exhibit 104.

20 (EXHIBIT 104: P-3.85.14, Handwritten
21 note of N. Carter dated May 18, 2006)

22 BY MR. PACIOCCO:

23 Q All right, sir, on this occasion I'm
24 going to skip the first paragraph for now, we're
25 going to come back to that.

1 "Asked if Minuk wanted to speak with
2 him. Hadn't heard anything yet --
3 writer asked it will happen and to
4 tell everything."

5 Do you recall meeting with him on that occasion,
6 sir?

7 A Not particularly on this occasion.
8 Again, I do recall meeting with him several times.

9 Q And you met with him several times
10 because this was weighing on your mind, sir?

11 A Yes.

12 Q You were worried now. The Crown has
13 got this information. You know that you had
14 furnished the Crown with inaccurate notes and now
15 it was coming out?

16 A Yes.

17 Q And subsequently you learn that the
18 RCMP is actually going to be investigating the
19 investigation. Do you recall when you learned
20 that, sir?

21 A I don't recall exactly. I was told at
22 some point that I had an interview set up with the
23 RCMP.

24 Q And how did you feel about that?

25 A Nervous.

1 Q Apprehensive, you were concerned about
2 your own potential criminal liability; would that
3 be fair, sir?

4 A Possibly, yes.

5 Q Indeed, when you spoke to the RCMP on
6 May 24th, 2006, you go through the interview and
7 then you bring that up, sir. You ask them, do you
8 not --

9 A Yes.

10 Q -- about what your situation is and
11 what possible actions are going to be --

12 A Yes.

13 Q -- as far as you are concerned?

14 A Yes, sir, I recall that.

15 Q Do you recall how they responded to
16 that?

17 A I believe they said I was a witness at
18 that point.

19 Q And even though you were concerned,
20 sir, you continued to go forward with an
21 acknowledgment on your part that you had falsified
22 your notes?

23 A Yes.

24 Q And you took the view during your
25 interview, although your descriptions of exactly

1 what was said were, I think you would admit,
2 inconsistent at times, you continued to take the
3 position that it was Harry Bakema who told you
4 what to put in your notes?

5 A Yes.

6 Q And is that true, sir?

7 A Yes, it is.

8 Q Were any of the omissions or
9 falsifications in your notes your own idea?

10 A No.

11 Q But you made the decision to go along
12 with it, sir?

13 A Yes, I did.

14 Q Are you able to explain why?

15 A I guess my only explanation would be
16 that I was a new member to the service, and I was
17 under the leadership of someone who I thought that
18 would give me good direction. And I guess I can't
19 deny that I wasn't comfortable with it at the
20 time, but I did go along with it.

21 Q Okay.

22 A Something that I shouldn't have done,
23 but --

24 Q Okay. You saw the May 15th
25 conversation with Mr. Carter. That's Exhibit 104

1 at page 2778, 2778 of volume P-3?

2 A Yes.

3 Q And I was curious about the notation
4 at the top of the page where it indicates:

5 Woychuk advised he missed out on May
6 15th..."

7 A Missed court.

8 Q "...missed court on May 15th, date
9 mix up."

10 That's not related to this case then, sir?

11 A No, sir, that would be related to
12 probably a different matter.

13 Q Did you ever meet with Mr. Minuk, sir?

14 A No, I did not.

15 Q Did you ever have a meeting set up
16 with Mr. Minuk back in 2006, sir, at the time of
17 the first Preliminary?

18 A Yes, I did. I believe, I'm not sure
19 if it was the first Preliminary or the second
20 trial.

21 Q And sir, I understand that you had a
22 meeting that was meant to begin on July 16th,
23 2007, sir. Is that possible? I could have the
24 date wrong here?

25 A That sounds accurate. I'm not sure of

1 the date.

2 Q I'm going to take you to the document
3 so that we're sure, sir. This is a document found
4 at P-3.85.25 at page 2779. And the document
5 that's just been put in front of you, I believe,
6 is not the one I wanted to put in front of you.
7 Do you have the document 2799? Is that what the
8 clerk put in front of you?

9 A Yes.

10 Q I just misspoke everyone. The
11 document is at tab P-3.85.25, and the page is
12 2799, and I do apologize. And it says:

13 "Jason Woychuk advised at 1900 that he
14 is to meet Marty Minuk at 360 Main
15 Street, Winnipeg at 1:00 p.m."

16 Do you see that, sir?

17 A Yes, I do.

18 Q And are you able to tell us about a
19 meeting that you had arranged in some way with
20 Mr. Minuk? How was that meeting arranged, sir?

21 A It was arranged through Chief Carter.

22 Q And I may have that date, July 16th,
23 2007 wrong, sir. Are you able to tell us what
24 date that meeting was supposed to take place?

25 A No, I'm not.

1 Q Sir, did that meeting ever happen?

2 A No, it didn't. I went and Mr. Minuk
3 never showed up.

4 Q Sir, where did you go?

5 A To the Commodity -- to where
6 Mr. Minuk's office is, I believe the Commodity
7 Exchange Building.

8 Q Sir, was the building open that day?

9 A Yes, it was.

10 Q And was his office open?

11 A No, it wasn't. I had to wait in the
12 lobby. I believe it was a Sunday or a Saturday.

13 Q And so it was the lobby of the
14 building as opposed to the lobby of his law
15 offices?

16 A Yes, sir. It was on the main floor.

17 Q And how long did you wait?

18 A I believe it was an hour or maybe
19 more.

20 Q And what happened after that period of
21 time passed?

22 A I had conversations with the Chief,
23 who had given me Mr. Minuk's phone number, and
24 that at some point the Chief had told me that the
25 meeting wasn't going to happen.

1 Q Sir, did you -- after that, I take it
2 from your earlier answer, you never met with him
3 again?

4 A No, I didn't.

5 Q Did you try calling him after that?

6 A No, I didn't.

7 Q So you had no discussions at all with
8 him, sir?

9 A No, I did not.

10 Q So at no time were you interviewed by
11 him?

12 A No, I was not.

13 Q At no time did he approach you to ask
14 you about whether Carter had issued a breath or a
15 blood demand to Mr. Harveymordenzenk?

16 A I had never met Mr. Minuk before, or
17 spoke to him, or had any correspondence directly.

18 Q All right. So, sir, through this
19 whole voyage in which you tell Carter about your
20 allegations of Bakema, and it ends up in the hands
21 of the Crown, and it comes here today, sir, you
22 find yourself testifying before a public inquiry
23 about this matter. Certainly not something you
24 would have originally expected, sir?

25 A I guess I didn't know what I expected.

1 Q Some are going to suggest that the
2 omissions from your notes and the way you
3 approached the investigation was your own idea.
4 Are you aware that that's likely to happen, sir?

5 A Yes.

6 Q And if that happens, sir, you might be
7 in a position where you are not only responsible
8 for the charter violation that would have occurred
9 at the time, but maybe also you may be
10 responsible, the one who has effectively, to some
11 degree, undermined the investigation. Are you
12 aware of that, sir?

13 A It could be perceived that way, yes.

14 Q Are you aware that Constable Graham,
15 former Constable Graham, Ken Graham testified
16 before these proceedings suggesting that you had
17 your own motive?

18 A I'm aware of that, yes.

19 Q And he says you spoke to him the next
20 day probably, or later that day on February 25th
21 or February 26th, and that you were worried about
22 getting Mr. Harvey-Zenk in trouble because you
23 knew him and you were worried about being known as
24 someone who ruined a cop's career. You are aware
25 of that testimony, sir?

1 A I'm aware of that testimony, yes.

2 Q How did you learn of that testimony,
3 sir?

4 A I believe it was in the papers.

5 Q Sir, can you tell us about that
6 conversation?

7 A The conversation never happened. I
8 never -- I never said anything to Constable Graham
9 like that. To start with, I never did know Derek
10 Harvey-Zenk. I knew of him. I don't believe that
11 before this incident I had ever spoken a word to
12 him. After some time when I realized who it was,
13 I realized it was someone from Brandon that I knew
14 of.

15 Q Sir, that was basically the evidence
16 that you gave, and I'm just going to have to
17 explore that a little more closely. You testified
18 that Brandon is a pretty small place at the time
19 you were there, probably about 40,000 people?

20 A Roughly, yes.

21 Q And you and Harvey-Zenk basically were
22 at the same high school?

23 A The same high school, yes.

24 Q And both of you ended up in the
25 Winnipeg area, sir?

1 A Yes.

2 Q And both of you became police
3 officers?

4 A Yes.

5 Q Surely, you were aware that Zenk from
6 your high school was also a police officer in
7 Winnipeg, sir?

8 A No, I was not aware of that.

9 Q You had no mutual friends or anybody
10 who would have shared that coincidental
11 information with you, sir?

12 A Absolutely, no.

13 Q When you see identification handed to
14 you in the car with the name Harveymordenzenk on
15 it, sir, are you telling us that that didn't twig
16 any recollection --

17 A No.

18 Q -- of this guy?

19 A No, it didn't. I knew him as Derek
20 Zenk in high school and I did not even recognize
21 him.

22 Q How long had it been since you had
23 seen him, sir?

24 A Probably since 1992. I don't know.
25 It's been quite a while.

1 Q So at that point it could have been a
2 dozen years maybe?

3 A Could have been, yes.

4 Q Sir, were you on a first-name basis
5 with him?

6 A No, I wasn't.

7 Q Would you refer to him as Harvey as
8 opposed to Mr. Zenk?

9 A No.

10 Q I'm just going to show you what
11 happened during the course of the interview that
12 you had with the RCMP. If you take a look,
13 please, at Exhibit 90. This is at tab E.2.25.d.
14 E.2.25.d. And I'm going to be referring to page
15 638, if you have that first interview with the
16 RCMP in front of you, sir?

17 A 638?

18 Q Yes. You will notice a quarter of the
19 way down the page, page 638, Kennett asks you:

20 "Uh-huh, do you want to just check
21 your notes there and see?"

22 Sure, referring to his notes, yeah, it
23 was Ted Rosser speaking with Derek."

24 Do you see that, sir?

25 A Yes.

1 Q You'd agree with me you didn't use
2 Mr. Zenk or Mr. Harveymordenzenk, correct?

3 A I'd agree.

4 Q And you referred to him by first name?

5 A Yes.

6 Q Are you able to help us out as to why
7 you might have done that?

8 A No, I'm not. Just the way I said it,
9 I guess.

10 Q And you are also aware that to some
11 that may look like a lapse in which you refer to
12 this person in a way that you might customarily
13 refer to him?

14 A It may look that way. That's not the
15 way it is.

16 Q Okay. Now, sir, I'm going to go
17 suggest to you that the testimony leaves a fairly
18 troubling environment in which you had some memory
19 problems on some pretty key issues, sir?

20 A Yes.

21 Q Concern about what Harry told you
22 about the notes not really being clear, and what
23 you told Carter not really being clear. I'm going
24 to wrap up now, I'm going to wrap up by trying to
25 summarize what I understand your evidence to be,

1 and I'm going to make a few observations on what I
2 want you to comment on, okay?

3 A Yes, sir.

4 Q I'm going to suggest that you were
5 uncomfortable at the prospect of being the one who
6 might be perceived to ruin a police officer's
7 career? Would that be a fair statement, sir?

8 A No. I was -- I'd agree that I was
9 uncomfortable with the way the matter was dealt
10 with and the direction that I was given.

11 Q Now, it was not something you relish
12 being put in the position where, if anybody was
13 going to make any observations of impairment at
14 the scene, it was going to be you?

15 A I don't think -- if I was given the
16 direction to do a certain task, I would have done
17 it.

18 Q Okay. You feel that you were, in
19 effect, left holding the bag. Is that fair, sir?

20 A I guess I felt that it wasn't handled
21 properly, and that neither Harry Bakema or Ken
22 Graham wanted anything to do with it, so they put
23 it on towards me to in turn put on Sergeant Carter
24 at the time.

25 Q Okay. And basically dumped it on you,

1 I think it was an expression you had used from
2 time to time?

3 A I probably used that, yes.

4 Q And isn't that consistent with you not
5 wanting to be the one who ultimately has to expose
6 any evidence of alcohol, if there's any evidence
7 of alcohol to expose, sir?

8 A No.

9 Q What was being dumped on you?

10 A The fact that Harry made an
11 observation and a comment to me, and advised me
12 not to do anything and wait for Sergeant Carter.
13 And then at a later point told me to deliver him
14 to Sergeant Carter.

15 Q Okay. Now, at the scene you're not
16 really sure how to react. You don't like the
17 position you are being put in. You know that
18 Harvey-Zenk is not being investigated properly; is
19 that fair, sir?

20 A That would be fair.

21 Q There's no real effort being made to
22 determine impairment. Would that be fair, sir?

23 A That would be fair.

24 Q He's being put in a car, and you are
25 being directed by the Chief in a way that

1 undermines an investigation. Would that be fair,
2 sir?

3 A That would be fair.

4 Q And this obviously bothers you, as you
5 testified?

6 A Yes.

7 Q Troubles you?

8 A Yes.

9 Q And ultimately you are directed to
10 take him to the station and you get to the
11 station; correct?

12 A Yes.

13 Q And you are reasonably new to this
14 police culture, and would it be fair to say you
15 don't really know what to expect when you get him
16 to the police station?

17 A That would be fair.

18 Q You had seen what happened on the
19 scene with no one seriously investigating
20 Harvey-Zenk?

21 A Yes.

22 Q You didn't know what Sergeant Carter
23 was going to do at that point, did you, sir?

24 A I didn't have any idea of what he was
25 informed of, or what he wasn't, or what kind of

1 communication they had.

2 Q Okay. So as far as you know, there
3 may have been similar conversations with Carter to
4 the ones that were had with you, by Bakema or
5 whatever? You just don't know what took place?

6 A I don't know what took place.

7 Q You get there and you leave him in the
8 car, you leave Harveymordenzenk in the car and you
9 go inside the station?

10 A Yes.

11 Q Is that right, sir? And I suggested
12 to you, and I'm going to continue to suggest to
13 you that that's pretty unusual, sir, that you
14 would leave somebody in a police car that you
15 brought to the station and go in without them,
16 sir?

17 A Depending on the circumstances.

18 Q Have you ever done it before?

19 A Maybe not the same situation, but I
20 have left people in the car before if I had other
21 tasks to do.

22 Q You brought somebody into the station
23 and you left them in the car, and you went inside
24 the station, sir. Has that ever happened before?

25 A I don't recall that happening. It's

1 probably not a normal practice.

2 Q No. And if he had been a suspect, you
3 certainly wouldn't have done that, sir? You would
4 have brought him into the station with you,
5 correct?

6 A Correct.

7 Q You don't know at this point whether
8 anybody is treating him as a suspect, or is going
9 to treat him as a suspect; is that fair?

10 A I wasn't sure what was happening.

11 Q And by leaving him in the car, that
12 indicates that you weren't sure that he was wanted
13 inside. Is that fair, sir?

14 A I was told to take him to the station
15 and Sergeant Carter would meet me there. I
16 believe that when I got there, I went to the door
17 to see if Sergeant Carter was there. I went in to
18 find him.

19 Q Okay. But you are a police officer,
20 you have taken people into custody when you are on
21 duty before, sir?

22 A Yes, I have.

23 Q And you brought them into the station
24 without checking to see whether anyone was there,
25 sir?

1 A Yes.

2 Q You know, the fact that you left him
3 in the car like that might be interpreted by some
4 as a convenience, because at that point you don't
5 know whether you're going to be bringing the guy
6 in or driving him home. You've got to get
7 instructions. Can you see how somebody might
8 think that, sir?

9 A Yes.

10 Q Now, you go and have a conversation
11 with Chief Carter, and you don't really recall
12 very much of that conversation, sir?

13 A No, I don't recall exact words that
14 were said.

15 Q And you said to us that you may have
16 told him that you had a Winnipeg Police Officer in
17 the car?

18 A Yes.

19 Q And I'm going to suggest to you, sir,
20 that there's no maybes about it, that that's
21 something you told him?

22 A I don't necessarily recall that, but I
23 probably would have told him, I guess.

24 Q It was a big feature of what was
25 happening that morning, sir, correct?

1 A Yes.

2 Q And you said you mentioned something
3 about alcohol, but you weren't exactly sure
4 whether you said "possibly impaired" or "faint
5 smell of alcohol"; correct, sir?

6 A Correct.

7 Q You then see Carter go out and get the
8 man and bring him into the station, he is arrested
9 and you become a witness to the refusal. Correct,
10 sir?

11 A Correct.

12 Q And you record all of the information
13 with Carter there in a very detailed way as to
14 what was said between the parties. Correct?

15 A Correct.

16 Q At this point in your investigation
17 you've even got verbatim information in there?

18 A Correct.

19 Q And that's because you are with Carter
20 and you see that this case is being processed, and
21 that's your responsibility and you're doing it;
22 correct, sir?

23 A Yes, sir.

24 Q And then after that's done, you leave
25 for the day?

1 A Yes.

2 Q And I suspect, sir, that this was
3 really bothering you, everything that had
4 happened?

5 A Yes, it bothered me, yes.

6 Q And you came back for your shift that
7 evening and you are not sure whether you came back
8 early or not; correct, sir?

9 A I don't recall.

10 Q Okay. And had you come back early, it
11 might have been consistent with wanting to get in
12 there and find out what's going on because this is
13 really on your mind. Would that be possible, sir?

14 A Could be. I don't recall if I came in
15 earlier, when I came in.

16 Q And you fully realized by this point
17 that the way you conducted yourself constitutes a
18 charter breach, if, if you had reasonable and
19 probably grounds to arrest Mr. Harvey-Zenk at the
20 scene?

21 A Yes.

22 Q Correct, sir? And you have a
23 discussion with Chief Bakema about this when you
24 get into work, as you acknowledge, sir?

25 A Yes.

1 Q And this discussion occurs after
2 Harveymordenzenk has already been arrested and
3 things are set in motion; correct, sir?

4 A Yes.

5 Q And he's going to be charged at this
6 point?

7 A Yes.

8 Q This point, it's too late to avoid
9 charges, if that was your or anybody else's
10 intention at the time he was being dealt with at
11 the scene. Correct, sir?

12 A Yes.

13 Q Was it your intention to avoid having
14 charges on Harvey-Zenk when you were at the scene?

15 A No, it wasn't.

16 Q But you go and you speak to Chief
17 Bakema about the mess; correct?

18 A Yes.

19 Q And you feel that he's put you in an
20 extremely difficult position, I think you
21 testified?

22 A Yes.

23 Q And you testified that you tell him
24 you are worried about the delay?

25 A Yes.

1 Q And your version is that he told you
2 to leave out information about what the paramedics
3 said; correct, sir?

4 A Correct.

5 Q And you agreed, after having your
6 memory refreshed from the transcript, that your
7 read on things was that you thought that your
8 conversation with Bakema about your notes was to
9 make sure that your notes jibed with his and
10 Graham's, and to deal with the delay problem, sir?

11 A Correct.

12 Q And to deal with the delay problem,
13 you really need to do two things, don't you, sir?
14 Number one, you have to avoid having any grounds
15 for arresting the man at the scene. Is that
16 correct, sir?

17 A Correct.

18 Q And you have to have a reason why he
19 might be brought into the station, other than
20 having been put under arrest, because nobody has
21 chartered him at the scene. Correct, sir?

22 A Correct.

23 Q And true to that, there is no
24 reference in your initial notes or your initial
25 incident report of any alcohol, sir. Correct?

1 A That's correct.

2 Q No reference in either the notes or
3 the report. Then on February 27th, as we saw
4 through Exhibit 97, February 27th at 11:27:45, we
5 have a very significant transformation in the
6 incident narrative, sir. You will remember that
7 references to alcohol suddenly appear that weren't
8 there before. Correct, sir?

9 A Yes.

10 Q Slight impairment en route is the way
11 it's put. Correct, sir? Slight odour, I
12 apologize, slight odour en route is recorded?

13 A Yes.

14 Q And you cannot really help us in
15 explaining why and how that change occurred?

16 A I don't recall why or how, no.

17 Q Now, we haven't explored this with
18 current Chief Carter yet, but circumstances open
19 up the possibility that as the reader, Carter, who
20 had made the arrest, sees your incident report,
21 notes that you hadn't said anything about alcohol
22 and directs you to put in the relevant
23 information. Is that possible, sir?

24 A That's possible.

25 Q And me putting that possibility to you

1 doesn't jog your memory at all?

2 A No, it doesn't.

3 Q Now, it's interesting that when your
4 notes are amended, your incident narrative,
5 alcohol is cast in a way, or presented in a way
6 that may charter-proof this investigation. Do you
7 understand what I mean by that?

8 A Could you explain, please?

9 Q Well, the three alcohol related things
10 that you disclose in your notes all occur after
11 the scene when Woychuk is in your car. Correct,
12 sir?

13 A Zenk. Yes, sir.

14 Q Zenk, and I apologize. You are en
15 route at the time you say you smell the slight
16 odour of alcohol. Correct, sir?

17 A That's correct.

18 Q And the odour being slight might help
19 explain why you wouldn't have picked it up
20 earlier. Correct, sir?

21 A Correct.

22 Q And on this record that has been
23 created in the incident report, you have no reason
24 to arrest him on scene; correct?

25 A Correct.

1 Q Or even on the face of that record, to
2 investigate any further; correct, sir?

3 A Correct.

4 Q Now, the only thing you need to avoid
5 problems with the delay is a reason for bringing
6 him to the station. Correct, sir?

7 A Correct.

8 Q And the traffic accident report
9 supplies it. Correct?

10 A Correct.

11 Q And you say it's Harry Bakema who gave
12 that to you?

13 A Yes.

14 Q Sir, it doesn't appear that Harry
15 Bakema gave that to you on February 25th, 2005, as
16 your original recollection indicated, does it,
17 sir?

18 A I don't recall exactly when.

19 Q And the reason I'm suggesting that is,
20 you do your incident report on February 25th and
21 into the morning of the 26th, and your first
22 version doesn't have reference to TAR; correct?

23 A Correct.

24 Q And TAR doesn't appear until the
25 February 27th version that we looked at, shortly

1 after 11:00 o'clock in the morning, correct?

2 A Correct.

3 Q Had he told you that during your
4 conversation back at the station, it probably
5 would have been in your first incident report and
6 not shown up a couple of days later? Would you
7 agree with that, sir?

8 A It's possible.

9 Q And you say you had some later
10 conversations with him?

11 A I had some conversations, yes.

12 Q And you're not sure when this
13 discussion took place?

14 A I don't recall exactly, no, sir.

15 Q But it does, according to you, take
16 place and your incident report now looks like
17 you've got an explanation that's going to avoid
18 charter difficulties?

19 A Yes.

20 Q Correct, sir? The problem you have,
21 of course, is that it's not a true account, your
22 notes and incident report, sir. TAR is wrong,
23 correct?

24 A Correct.

25 Q And you still haven't included

1 receiving information from the ambulance
2 attendants about the odour of alcohol. Correct,
3 sir?

4 A Correct.

5 Q Because if that finds its way into
6 your notes or into the incident report, you no
7 longer have a reasonable explanation for the
8 delay. Is that correct, sir?

9 A Correct.

10 Q And so it's excluded, and it
11 effectively helps, the exclusion effectively helps
12 kind of charter-proof the way your incident report
13 appears. Do you agree with that, sir?

14 A Yes.

15 Q And you understand that my job here,
16 as Commission Counsel, is to try to help the
17 Commissioner arrive at the truth?

18 A Yes.

19 Q I want to see how you react, or what
20 your response is to the suggestion that alcohol
21 was more evident at the scene than your report
22 discloses?

23 A I recall making the observations that
24 I made.

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

1 to bail yourself out of the charter breach, you
2 had an interest in minimizing any observations of
3 alcohol at the scene. Do you not agree with that,
4 sir?

5 A Could you repeat that, please?

6 Q To bail yourself out of the charter
7 breach, to get rid of the delay problem, you had
8 to minimize any observations of alcohol at the
9 scene?

10 A Agreed, that would be correct.

11 Q So in order to accomplish that, if you
12 had taken the position in your notes that anyone
13 told you, anybody credible told you that
14 Mr. Harvey-Zenk was pissed at the scene, you would
15 have had to react at the scene, and you've got a
16 delay problem?

17 A Yes.

18 Q Casting a conversation as the mere
19 possibility of impairment kind of gets you out of
20 that. He says there's a possibility he may be
21 impaired, but it's not going to give you R&PG, is
22 it, sir?

23 A No.

24 Q So in the interest of saving the case
25 and avoiding the embarrassment of a charter breach

1 and a breach hanging on your head, you have an
2 interest in not acknowledging, if it happened, any
3 evidence from the scene that this man was pissed
4 or even had alcohol in his body, correct, sir?

5 A Correct.

6 Q What did you tell Sergeant Carter when
7 you got back to the station, sir?

8 A I don't recall.

9 Q Bearing in mind, sir, that this is an
10 event that was obviously of significance to you, I
11 want you to do your best and tell us what you
12 think you said to him?

13 A From what I've told you is that I
14 believe I told him he's a Winnipeg Police member.

15 Q Yes, sir?

16 A And that I got an odour of liquor, and
17 he was a driver of the truck.

18 Q What if somebody suggests to you that
19 you told him that you believed Harvey-Zenk was
20 impaired?

21 A I don't recall saying that.

22 Q Sir, are you saying you did not say
23 it?

24 A I'm saying I don't recall saying that
25 to him.

1 Q Not just possibly impaired, but
2 impaired, you don't recall that, sir?

3 A I don't recall.

4 Q How do you react to the suggestion
5 that your notes get toned down to save the case?

6 A I believe at some point there is
7 direction there for me to omit certain things from
8 my notes and to add certain things.

9 Q To save the case?

10 A Which would tone it down, yes.

11 Q And one final point I want to make
12 with you, sir. Your first incident report, which
13 I believe the best reference would be Exhibit 96.
14 I apologize for the delay, my frantic dash to get
15 out of the office this morning.

16 You will notice, sir, on Exhibit 96,
17 in the second page, in the fourth paragraph:

18 "At 808 hours writer transported
19 Harvey-Zenk to the East St. Paul
20 office to get him away from the
21 accident scene."

22 Do you see that, sir?

23 A Yes, I do.

24 Q And how do you react to the suggestion
25 that that was included in your instructions from

1 Chief Bakema, to get him away from the accident
2 scene?

3 A I recall my instructions at the scene
4 from Chief Bakema was to take him to the office
5 and Sergeant Carter was there -- would meet me
6 there.

7 Q All right, sir. Do you recall
8 everything about that conversation?

9 A Pardon me?

10 Q Do you recall everything about that
11 conversation?

12 A No, I don't, sir.

13 MR. PACIOCCO: I have no further
14 questions for you at this time, Mr. Woychuk, but
15 there will be other lawyers who do.

16 THE COMMISSIONER: Mr. Woychuk, I have
17 a question. You use the term "get him away from
18 the accident scene." It's very unusual.

19 THE WITNESS: Yes, it is.

20 THE COMMISSIONER: Why wouldn't you
21 just simply say "transported him to the station"?
22 Why "get him away from the accident scene"? Do
23 you not think that that suggests that there's some
24 unusual activity or unusual instructions, the
25 words "get him away"?

1 THE WITNESS: I don't know why I put
2 those words in there, sir.

3 THE COMMISSIONER: Thank you.

4 BY MR. ZAZELENCHUK:

5 Q Mr. Woychuk, you told us twice during
6 your evidence that you didn't know Mr. Harvey-Zenk
7 but you knew of him. Why did you know of him?

8 A I knew of, I knew of who he was, I
9 guess, but I didn't know him personally.

10 Q I didn't ask you if you knew who he
11 was. I asked you why you knew of him?

12 A I guess probably because I was in the
13 same high school as him.

14 Q Did you know of everybody that was in
15 the high school with you?

16 A No.

17 Q I mean, I know of George W. Bush
18 because he's president of the United States,
19 right?

20 A Okay.

21 Q I don't know him personally. So why
22 do you know of Harvey-Zenk? Was he the school
23 football star?

24 A No, it was a name that was familiar to
25 me.

1 Q Why?

2 A I don't know how to answer your
3 question, sir. I knew of him because I knew the
4 name, I recognized the name.

5 Q When did you recognize the name?

6 A I'm not sure, it was after the
7 occurrence.

8 Q I'm sorry?

9 A It was after -- I'm not sure of the
10 day, it was within a couple of days after.

11 Q Well, if the reason you knew of him
12 was because of the name, why did it take you two
13 days to recognize the name?

14 A I believe someone had mentioned to me
15 at one point, or made a comment that he was from
16 Brandon.

17 Q Who was that?

18 A I don't recall. I don't recall.
19 Maybe it was in the papers or something. I
20 don't --

21 Q Do you have a memory problem?

22 A No, I don't, sir.

23 Q No. Do you have a selective memory
24 problem?

25 A I'm just drawing from incidents that

1 happened three and a half years ago, so I don't
2 recall everything in great detail, sir.

3 Q But one of the things you can't recall
4 is why you knew of Harvey-Zenk?

5 A That's the best I can tell you, that I
6 knew of him because I went to the same high school
7 and it was a name that was familiar to me.

8 Q So why didn't you recognize the name
9 at 8:42 -- at 7:42 on February 25th, 2005?

10 A Because the name was different from
11 what I recognized. His name -- when I knew of him
12 his name was Derek Zenk, not Derek
13 Harveymordenzenk.

14 Q I see. So the Harveymorden really
15 threw you?

16 A I guess, and probably before that I
17 wouldn't have been able to recognize him if I ever
18 saw him, because I don't know if I ever knew what
19 he looked like.

20 Q You and he did go to the same school?

21 A Yes, we did.

22 Q Yes. Constable Graham is also from
23 Brandon, isn't he?

24 A He lived there, yes.

25 Q Yes. You and Constable Graham didn't

1 go to the same high school?

2 A No.

3 Q No. Were you friends with Constable
4 Graham when you lived in Brandon?

5 A No. I worked briefly with him when I
6 was an auxiliary with the Dakota Ojibway Police.
7 That's where I met him.

8 Q Yesterday morning at approximately
9 10:58, Constable Graham was seated in that chair.
10 And I was very careful to take a careful note. He
11 said, and I quote:

12 "I knew Woychuk from back in Brandon.
13 We were good friends."

14 A He's mistaken.

15 Q Is that true?

16 A No, it's not.

17 Q Okay. So you are telling us that when
18 constable -- or when Mr. Graham said that
19 yesterday morning, he wasn't telling the truth?

20 THE COMMISSIONER: No, no, that's
21 not -- that's an improper question.

22 MR. ZAZELENCHUK: Sorry, Your Honour.

23 THE COMMISSIONER: We don't suggest
24 that people are not telling the truth. They might
25 be mistaken. Go ahead.

1 MR. ZAZELENCHUK: Thank you. And I
2 apologize to the tribunal.

3 BY MR. ZAZELENCHUK:

4 Q It's your evidence today that when you
5 lived in Brandon, you were not good friends with
6 Ken Graham?

7 A That's correct.

8 Q I have told you that that's what
9 Mr. Graham told us yesterday at about 10:58. And
10 obviously you disagree with that?

11 A I do disagree, yes.

12 Q Can you think of any reason why he
13 might have said it?

14 A No, I can't.

15 Q No. Okay. In your notes, and in
16 particular at page 607 of E-2 -- sorry, my
17 mistake, 605, and that's Exhibit 88, E.2.25.a.
18 Are you there, sir?

19 A Which page, sir?

20 Q 605, at the bottom of the page?

21 A Okay.

22 Q That's where the number is. I'm
23 directing you to the top of the page?

24 A Yes.

25 Q And you have got:

1 "Harveymordenzenk indicates he doesn't
2 want to talk due to his condition."

3 Correct?

4 A Correct.

5 Q Okay. And I believe you gave us
6 evidence yesterday that you got the particulars of
7 his name off his driver's licence?

8 A Yes.

9 Q And he didn't want to talk to you
10 because of his condition?

11 A Yes.

12 Q So when you asked him for his name and
13 date of birth and things like that, which is
14 standard, correct?

15 A Correct.

16 Q He handed you his driver's licence?

17 A I believe I may have asked him for his
18 driver's licence.

19 Q Yes. But he didn't give you any
20 information?

21 A He really didn't speak to me much at
22 all.

23 Q Okay. And I don't think this was
24 entered as an exhibit, but if we go to volume
25 B.10.c.i, we have a photocopy of Harvey-Zenk's --

1 Harveymordenzenk's driver's licence, correct?

2 A Correct.

3 Q And I don't see the names Derek Grant
4 anywhere on there, do you?

5 A No, I don't.

6 Q However, at page 604 of your notes, we
7 have Derek Grant?

8 A Correct.

9 Q So that didn't come off the driver's
10 licence?

11 A No, it did not.

12 Q Did that come from your memory,
13 because you knew of him?

14 A No, it did not, sir.

15 Q Where did it come from?

16 A I don't know for certain where it came
17 from.

18 Q Another thing you can't remember?

19 A I don't know exactly where I got the
20 name. If he had told it to me or -- I don't
21 recall, sir.

22 MR. ZAZELENCHUK: Okay. Perhaps for
23 the sake of completeness, that document should
24 become the next exhibit?

25 THE CLERK: Exhibit 105.

1 (EXHIBIT 105: B.10.c.i, Manitoba
2 Driver Licence (copy) -
3 HARVEYMORDENZENK)

4 THE COMMISSIONER: May I see that,
5 please?

6 MR. ZAZELENCHUK: Madam clerk, I
7 wonder if you'd be good enough to hand the witness
8 E.1.23.i, please. And that's at page 453 for
9 those who are -- of volume E-1 for those who are
10 following with the books.

11 THE COMMISSIONER: Excuse me, you took
12 his name from his driver's licence, is that how
13 you got it, and put it in your notebook?

14 THE WITNESS: I don't recall where I
15 got the full name from, sir.

16 THE COMMISSIONER: This was at 7:42 in
17 the morning. You have no recollection of where
18 you could have gotten the name Derek Grant
19 Harveymordenzenk?

20 THE WITNESS: No, I don't, sir.

21 THE COMMISSIONER: The licence does
22 not refer to his first name, Derek?

23 THE WITNESS: Yes, sir, I see that.

24 THE COMMISSIONER: Nor does it refer
25 to his second name, Grant. It simply says D.G.

1 THE WITNESS: Sir, I don't know if
2 maybe he told me his name.

3 THE COMMISSIONER: I'm sorry?

4 THE WITNESS: I don't recall if he had
5 told me his full name or not, if I had questioned
6 on that.

7 THE COMMISSIONER: Thank you. The
8 next exhibit is 105, did you say? 106?

9 (EXHIBIT 106: E-1.23.i, East St. Paul
10 Police Prisoner Log Sheet

11 (HARVEY-ZENK, DEREK)

12 MR. ZAZELENCHUK: Yes. And it's
13 E.11.3.i and it's found at page 2 of volume E-1.

14 BY MR. ZAZELENCHUK:

15 Q What's that document, sir?

16 A It's a prisoner log sheet.

17 Q And when is it generated?

18 A Normally when someone is brought in,
19 arrested and brought into our station.

20 Q So when somebody is arrested, if they
21 are arrested out in the field, so to speak, and
22 brought into the station, one of the first things
23 that happens at the station is this log sheet is
24 filled out; correct?

25 A Normally, but not always. It could be

1 filled out a little bit later.

2 Q And if a person is arrested in the
3 station, which sometimes happens, correct?

4 A Yes.

5 Q Then one of the things that happens
6 shortly thereafter is the prisoner's log sheet is
7 filled out?

8 A At some point, for anyone that's
9 arrested and brought into the station, there would
10 be a prisoner log sheet.

11 Q And it's a printed form, a
12 fill-in-the-blanks form, correct?

13 A Correct.

14 Q Whose writing is that?

15 A It appears to be mine.

16 Q Did you fill it out?

17 A Yes, I did.

18 Q Do you have a memory of that?

19 A No, I don't.

20 Q You don't have a memory of that
21 either?

22 A No, I don't, sir.

23 Q I see. What was your badge number?

24 A Forty-five.

25 Q Did you have to look down at the paper

1 to see that?

2 A No, sir, I just glanced down briefly.

3 Q I see. Because it does say number 45
4 on your sheet?

5 A Yes, it does.

6 Q Yes. And is that your signature,
7 signature of officer receiving?

8 A Yes, it is.

9 Q Yes. And did you take all the
10 personal effects into custody?

11 A I don't recall if I did or if Sergeant
12 Carter did.

13 Q The box where you have identified your
14 signature says:

15 "I acknowledge the property recorded
16 next to this signature accurately
17 reflects the property surrendered for
18 safekeeping."

19 A Yes.

20 Q And that has your signature in that
21 box?

22 A Yes, it does.

23 Q But you don't remember filling out
24 this form and you don't remember if you were the
25 person who seized the personalty from

1 Mr. Harvey-Zenk or Sergeant Carter did?

2 A I don't know for certain. I believe
3 we both would have been there.

4 Q The bottom right-hand corner there's a
5 box and it's got the word "intoxicated" and then
6 "yes or no" underneath it, correct?

7 A Yes, it does.

8 Q And there seems to be an X on yes?

9 A Yeah.

10 Q Who put that X there?

11 A I don't know, I don't recall filling
12 this form out.

13 Q Okay. Now if we go back to Exhibit
14 88, which is your notebook, and that's at page 604
15 of volume E-2. There's an entry that looks like
16 7:22?

17 A Yes.

18 Q Second time in the -- second time,
19 there's an indication of time on the left-hand
20 column; correct?

21 A Yes.

22 Q What does 10-7 mean?

23 A This would be on scene or booking down
24 somewhere.

25 Q Okay. So 10-7 means that's when you

1 arrived or --

2 A I believe that's to the dispatcher
3 meaning that I was at that location, or in the
4 circumstance I'd say to him, 10-7, Highway 59,
5 101.

6 Q So 10-7 means you're relaying it to
7 dispatch?

8 A Yes.

9 Q Okay. So that means that you arrived
10 at 59 and 101 at 7:22?

11 A Yes.

12 Q Okay. And at 7:42, Chief Bakema puts
13 the driver of the Dodge truck into the rear of
14 RM2. That's your next notation?

15 A Yes.

16 Q Correct?

17 A Yes.

18 Q And that's in fact what happened, you
19 have told us that; correct?

20 A Correct.

21 Q Okay. What do you do between 7:22 and
22 7:42?

23 A I don't know for certain. I guess I
24 would be directing traffic. As I said before, it
25 says in my notes that I set up cones when I first

1 got there, but I don't recall the order that it
2 happened in.

3 Q How many cones did you set up?

4 A I'd have no idea, sir.

5 Q Well, how many cones did you have?

6 A I don't know how many cones are in
7 that unit or were in that unit.

8 Q Well, did you set up 20?

9 A I don't know how many I set up. I
10 don't believe there would be 20 in there.

11 Q Well, did you set up 10?

12 A I don't recall. Possibly.

13 Q Okay. Possibly 10. Did you set up
14 five?

15 A I don't recall.

16 Q Did you set up 15?

17 A I have no recollection of how many
18 cones I did set up.

19 Q Another thing that you can't remember?

20 A (Witness nodding)

21 Q Can you at least remember that you
22 didn't set up 20?

23 A I can't say that for certain. I'm
24 assuming there wouldn't be 20 cones in that unit,
25 but I don't recall how many were in there.

1 Q What kind of cones are we talking
2 about? Describe one to me?

3 A We have different types. There's
4 pylons and there's also cones that have a flasher
5 on them.

6 Q Well, were you setting up the ones
7 that had the flasher on them?

8 A I'm not sure which ones were in that
9 unit.

10 Q You're not sure what the cones looked
11 like?

12 A I'm sure what they looked like, sir.

13 Q What did they look like?

14 A I'm not sure which cones were in that
15 unit, I know what types we have, but I don't
16 recall which ones were in that unit or how many
17 there were.

18 Q Well, how many types do you have, and
19 by you I guess you mean the East St. Paul Police
20 Force?

21 A There's two different types that I'm
22 aware of.

23 Q Two different types that you are aware
24 of?

25 A Right.

1 Q What's one look like?

2 A It looks like an orange pylon.

3 Q How big is it?

4 A Maybe 18 inches.

5 Q Okay. And what's the other one look

6 like?

7 A I guess it's a fold-down cone that
8 would -- it's got a bottom on it, and then the top
9 would fold down, and it's got a flasher on it
10 that's operated by battery.

11 Q I see. And how tall is that one?

12 A Maybe six or seven, eight inches, I
13 don't recall for certain.

14 Q I see. And you don't know which ones
15 were in RM2?

16 A No, I don't.

17 Q And you don't know how many you set
18 up?

19 A No, I don't.

20 Q Okay. Where did you set them up?

21 A I would have set them up behind my
22 vehicle and possibly in front of my vehicle to try
23 and stop traffic from going through.

24 Q Okay. Now, your vehicle was on the
25 northbound part of Highway 59; is that not

1 correct?

2 A That's correct.

3 Q Sorry?

4 A That is correct, yes.

5 Q Okay. And it is -- it was where in

6 relation to the intersection?

7 A In relation to that black line in the
8 northbound lanes, I believe I would have been just
9 a little bit ahead of that.

10 Q Okay.

11 A In that turning lane.

12 Q On the -- in the south half of the
13 intersection proper, can I describe it that way?

14 A Yes.

15 Q You are comfortable with that?

16 A Would you repeat that, sir?

17 Q Well, I got the impression that you
18 are telling me it's just north of that black line
19 on the big board there; correct?

20 A Somewhere in that general area, yes.

21 Q So that would put you right into the T
22 intersection, if we can call it that. It's not a
23 cross intersection, but it's a T intersection;
24 correct?

25 A Yes.

1 Q Okay. Now, that intersection is, it
2 looks to me in this picture, at least two lanes in
3 one direction and two lanes in the other direction
4 and a median in between, and I'm talking about
5 101?

6 A Yes.

7 Q You're correct with that? You're
8 comfortable with that?

9 A Could you repeat that?

10 Q Sure. It looks to me on that big
11 blowup that we have in the hearing room here, it
12 looks to me like Highway 101 is two lanes in one
13 direction, a median in between, and two lanes in
14 another direction at the point where it meets 59?

15 A The eastbound lanes of 101, I don't --
16 I believe they are blocked off. There's --

17 Q Okay. They may be blocked off, but
18 they are there?

19 A They are there, yes.

20 Q Okay. And that black line that you
21 referred to is roughly parallel to the south end
22 of the eastbound lane of 101; isn't that correct?

23 A That's correct. I don't know if those
24 lanes even existed.

25 Q We know that. It doesn't matter

1 whether they are blocked off or not, okay. So you
2 have told us that your vehicle would have been
3 just north of that black line?

4 A Somewhere in that general area. I'm
5 not sure exactly.

6 Q And what I'm trying to determine from
7 you, which shouldn't be very difficult, is if you
8 take that area from the north side of the
9 westbound lane of 101, to the south side of the
10 eastbound lane, whether it's closed off or not, of
11 101, and I'm just trying to figure out if your
12 vehicle was in the north half of that area or the
13 south half?

14 A I don't recall. I could point to you
15 where I believe my vehicle was.

16 Q Well, that might be helpful. Is that
17 allowed, Mr. Commissioner?

18 THE COMMISSIONER: (Nodding)

19 THE WITNESS: I believe I would have
20 been somewhere in this area here.

21 MR. ZAZELENCHUK: Thank you.

22 THE COMMISSIONER: You're indicating
23 just above that black lane?

24 THE WITNESS: I believe it would have
25 been just somewhere above that black line.

1 THE COMMISSIONER: In the northbound
2 lane?

3 THE WITNESS: That's correct.

4 THE COMMISSIONER: You were in the
5 lane, not in the intersection?

6 THE WITNESS: I may have been up into
7 the intersection a little bit, but I was in the
8 northbound lanes.

9 THE COMMISSIONER: Basically in the
10 northbound lanes?

11 THE WITNESS: My vehicle came to rest
12 facing northbound, yes.

13 THE COMMISSIONER: And which way were
14 you facing?

15 THE WITNESS: I was facing north.

16 THE COMMISSIONER: Facing north, thank
17 you.

18 BY MR. ZAZELENCHUK:

19 Q Sir, you have told us that you set up
20 cones. What else did you do during that 20
21 minutes?

22 A I don't know, sir, directed traffic.

23 Q Where were you directing traffic?

24 A Northbound vehicles on 59.

25 Q Well, we will pass over what you were

1 doing for that 20 minutes, and let's get to the
2 part where you told us yesterday that you observed
3 Chief Bakema and the driver of the vehicle
4 approaching your vehicle in the rear view mirror?

5 A That's what I recall.

6 Q And you recall telling us that
7 yesterday?

8 A Yes.

9 Q And so you would have been seated in
10 the vehicle?

11 A That's correct.

12 Q Well, why did you stop directing
13 traffic to go sit in your vehicle?

14 A I don't recall, sir. I believe that
15 if I had set up cones that I wouldn't necessarily
16 be standing on the road the entire time.

17 Q Well, why did you go back to your
18 vehicle?

19 A I don't recall.

20 Q Did anybody order you to go back to
21 your vehicle?

22 A No, sir.

23 Q So that's something you did of your
24 own volition?

25 A I guess so.

1 Q We have heard evidence that this was a
2 pretty serious accident; correct?

3 A Yes.

4 Q You would agree with me on that?

5 A Yes.

6 Q And anybody who lives in Winnipeg or
7 in the surrounding area knows that on a weekday
8 morning, during the rush-hour between 6:30 and
9 9:00 o'clock, there's a lot of traffic there.
10 Isn't that correct?

11 A Yes, there is.

12 Q And there's three police officers at
13 the scene, yourself, the Chief and Constable
14 Graham; correct?

15 A And I believe Constable Pedersen.

16 Q Yeah. And Constable Pedersen's
17 several hundred yards north dealing with the
18 southbound traffic, correct?

19 A Yes.

20 Q So I'm talking at the junction of 101
21 and 59, there are three police officers, yourself,
22 your Chief and Constable Graham?

23 A Yes.

24 Q And you take it upon yourself to go
25 sit inside your vehicle?

1 A I guess I did, sir.

2 Q And you can't tell us why today?

3 A No, I don't have an explanation.

4 Q We know that Chief Bakema arrived at
5 your vehicle with Mr. Harvey-Zenk at 7:42, because
6 you wrote that in your notes; correct?

7 A That's what I have in my notes, yes.

8 Q Yes. And we know you were seated in
9 your vehicle at 7:42?

10 A Yes.

11 Q Because you have told us that,
12 correct?

13 A Yes.

14 Q How long had you been seated in your
15 vehicle, sir, at 7:42?

16 A I don't recall, sir, I believe that I
17 was in and out of the vehicle several different
18 times.

19 Q Why would you be in and out of the
20 vehicle several different times?

21 A I don't know for certain. I guess I'd
22 be directing traffic, because I said before I was
23 watching traffic, and there was other vehicles
24 that were coming northbound, almost causing other
25 collisions.

1 Q I can understand that. I can really,
2 really understand why you would be directing
3 traffic, you don't want another collision. It's a
4 busy corner, or busy intersection more accurately,
5 and I can really understand why you'd be directing
6 traffic. And I think there's evidence that there
7 were some lay people who were directing traffic
8 before the police arrived there. So I've got no
9 difficulty with any of that. What I have a lot of
10 difficulty with is why would you go back into your
11 police vehicle where you were at 7:42?

12 A I don't have an answer for you. I
13 don't have an explanation.

14 Q Okay. Did you see the Taman girls
15 arrive at the scene?

16 A No, I did not.

17 Q You didn't?

18 A No, I didn't.

19 Q Okay. Your then brother, Officer
20 Graham, gave evidence before this tribunal. His
21 notes are Exhibit E-3. For those following in the
22 book, they are at E.1.24.a. And your brother,
23 your then brother, Officer Graham, made a notation
24 in his book, in his notebook at page 559, that at
25 7:25 the Taman girls arrived. Will you accept

1 that? Do you want me to show it to you?

2 A No, that's fine, I take your word for
3 it, yes.

4 Q Okay. And the evidence of the Taman
5 girls, at least the evidence of Tara, who gave
6 evidence earlier to this Commission, is that they
7 were proceeding north on 59, and sort of turned
8 and got out and started running to the yellow
9 vehicle. So they would have had to run -- drive
10 right past your vehicle, and right past where you
11 were setting up cones?

12 A It's possible.

13 Q And then we heard evidence from Tara
14 that there was interaction between her and
15 Constable Graham, and Constable Graham put her and
16 her sister in his vehicle. Did you see any of
17 this?

18 A No, I didn't. I heard about it later
19 but I didn't see any.

20 Q You were right -- you agree with me,
21 though, that -- you'll agree with me that based on
22 what you have said and based on what I have
23 related to you that other witnesses said, you
24 would have been within feet of this happening?

25 A I don't even recall where the police

1 unit driven by Constable Graham was. I don't
2 recall seeing it at the scene.

3 Q But you've told us where your vehicle
4 was?

5 A Yes.

6 Q And you never got too far from your
7 vehicle, because you told us you were in and out
8 for those 20 minutes; correct?

9 A Yes.

10 Q And I have just related to you that
11 the Taman girls arrived, according to your brother
12 officer, at 7:25, three minutes after you arrived.
13 And you accepted that?

14 A Yes.

15 Q The evidence is before this tribunal.
16 And I have just related to you that they would
17 have had to have been within feet of your vehicle.
18 And you have no observations, no memory of that?

19 A No, sir, I don't.

20 Q On February 25th of 2005, you hadn't
21 been a police officer for very long; correct?

22 A That's correct.

23 Q About four months with East St. Paul?

24 A That's correct.

25 Q And you worked for some place else

1 before that?

2 A Very briefly, yes.

3 Q How long?

4 A Approximately two months, maybe just
5 under.

6 Q Okay. Well, inexperience is something
7 we've all been guilty of, myself included, and
8 that's just one of the things that happens in
9 life. Was this the first time you were involved
10 in the investigation of a serious traffic
11 fatality?

12 A Yes, it was.

13 Q Yeah. And you'll agree with me, it
14 didn't take a lot of rocket science to figure out
15 this was a serious one?

16 A Yes, I will agree.

17 Q It was ugly; correct?

18 A Yes.

19 Q So this is the first time you were
20 involved in a serious traffic fatality, in the
21 investigation of it. And you related at some
22 length that you were uncomfortable with some of
23 the directions that you were receiving from your
24 Chief?

25 A Yes.

1 Q And I guess that's pretty hard for
2 somebody who's that junior; correct?

3 A Correct.

4 Q And you told us this morning, just
5 about 52 minutes ago, I tried to make a good note
6 of it, you told us this morning and I quote:

7 "Neither Harry Bakema nor Ken Graham
8 wanted to have anything to do with it
9 so they dumped it on me."

10 A That was my opinion, yes.

11 Q Well, did you have an opinion of why
12 they did that?

13 A That was my opinion, I guess, that
14 they didn't want to be involved in it.

15 Q Well, why do you think they didn't
16 want to be involved in it?

17 A I don't know why. Probably because it
18 was a Winnipeg Police member.

19 Q So?

20 A That was my impression and my opinion,
21 sir.

22 Q Well, how did you come by that
23 opinion?

24 A That's how I felt about it.

25 Q But where did that feeling come from?

1 A Because I didn't understand why, at a
2 normal scene like that, it would be someone more
3 senior that would take charge of the scene and
4 investigate. And I felt that because I was a
5 junior member, that wasn't -- wouldn't be a common
6 practice to put someone in my care for such a
7 serious accident.

8 Q Okay. You then discussed, and I'm
9 going to try not going over things -- no, I think
10 I'll just leave it there.

11 THE COMMISSIONER: Thank you.

12 MR. ZAZELENCHUK: If I might have a
13 moment, Mr. Commissioner?

14 There is one more point, I'm sorry.
15 Sometimes inexperience is helpful. My learned
16 junior told me about a point I had missed.

17 THE COMMISSIONER: Always helps. Go
18 ahead.

19 BY MR. ZAZELENCHUK:

20 Q You have told us where your vehicle
21 was parked, correct?

22 A Yes.

23 Q And which way was it facing?

24 A It was facing north.

25 Q Okay. So it's just by that black line

1 and it's facing north, and there is two lanes that
2 widen into four; correct?

3 A Correct.

4 Q Okay. Is it at the point where the
5 lanes have already widened into four?

6 A I don't recall for certain if it was
7 that far into the intersection or if it was closer
8 to the black line.

9 Q Okay. Which lane would it have been
10 in?

11 A Again, I don't recall for certain
12 which lane. I believe that I probably would have
13 pulled into the, I guess the inside turning lane
14 to try and, as well as direct traffic, to block
15 traffic from going through the intersection.

16 Q You were using your right hand. Does
17 that tell us anything?

18 A I was just motioning that I'd be on
19 the, if you're facing north it would be on the
20 inside lane.

21 Q Meaning the left-hand lane?

22 A Meaning the east lane, I guess, the
23 east turning lane.

24 Q The lane that turns that's on the east
25 side. Okay. That's fair enough.

1 A I believe that's where it would have
2 been, sir.

3 Q Okay. So there's four lanes, there is
4 the west turning lane, the east turning lane, the
5 west through lane and the east through lane;
6 correct?

7 A Yes, sir.

8 Q Pardon me?

9 A Yes.

10 Q And I had described the lanes from
11 east to west just there?

12 A Yes.

13 Q So you're telling us that you thought
14 you would be in the east turning lane?

15 A That's where I believe I would have
16 been. I don't know.

17 Q So of the four lanes, that would be
18 the second lane from the left?

19 A Yes.

20 Q Okay. And you observed Harry Bakema
21 and the driver of the Dodge truck coming to you in
22 your rear view mirror?

23 A Yes.

24 Q And you observed them, I believe you
25 have told us, for about 10 or 15 feet?

1 A Somewhere in that vicinity, yes, five
2 to 10, I believe I said.

3 Q I'm sorry?

4 A I believe I said five to 10.

5 Q That's fine, I will accept that. So
6 five to 10 feet behind your vehicle?

7 A Yes.

8 Q Do you have any idea where they could
9 have been coming from?

10 A I didn't see where they came from. I
11 am assuming from the south.

12 Q Do you have any idea how they could
13 have gotten there?

14 A I believe they walked up to the
15 vehicle.

16 Q No, no. Not how they got to your
17 vehicle, how they got to where they were coming
18 from?

19 A I believe they walked.

20 Q If they were coming -- if they were
21 approaching your vehicle so that you could see
22 them in your rear view mirror, then they were
23 coming from the south and walking in a northerly
24 direction?

25 A Yes.

1 Q And you saw them at least five to
2 10 feet back behind your vehicle in a southerly
3 direction?

4 A That's correct.

5 Q And the intersection is in front of
6 you in a northerly direction; correct?

7 A Yes.

8 Q And the accident occurred in the
9 southbound lanes of 59?

10 A Yes.

11 Q And there's a median with a ditch
12 between the southbound lanes and the northbound
13 lanes?

14 A Yes, there is.

15 Q And it's winter time?

16 A Yes.

17 Q And Winnipeg and the surrounding area
18 gets a fair bit of snow in the winter time?

19 A Yes.

20 Q And there's snow in that median ditch,
21 isn't there?

22 A Yes.

23 Q Do you have any idea how Harry Bakema
24 and Derek Harvey-Zenk got to the south side of
25 your vehicle?

1 A No, I don't, sir.

2 Q You'll agree with me that they would
3 have had to walk past your vehicle to get there?

4 A Not if they are coming from behind my
5 vehicle, no, sir.

6 Q But how would they get to behind your
7 vehicle?

8 A I don't know. I can't answer that
9 question.

10 MR. ZAZELENCHUK: Thank you.

11 THE COMMISSIONER: Mr. Zazelenchuk,
12 I'm a little concerned about your suggestion.
13 They are behind him. They are south of the
14 intersection, are they not?

15 MR. ZAZELENCHUK: Yes.

16 THE COMMISSIONER: Where the truck is
17 on the -- off the road in the median?

18 MR. ZAZELENCHUK: Yes.

19 THE COMMISSIONER: So they would be
20 walking from behind him, presumably, up to his
21 vehicle, which is in the left lane and facing
22 north. So he would see them coming from behind.
23 And as he says, he saw them five to 10 feet when
24 they were behind him. Am I incorrect in that?
25 Have I got that confused?

1 Can you go down and point to us where
2 you were and where you would see them coming,
3 where you would be and where they would be?

4 THE WITNESS: Sir, I would have been
5 somewhere in this area here.

6 THE COMMISSIONER: And you're
7 indicating the passing lane of the northbound 59?

8 THE WITNESS: Yeah, that's correct,
9 the eastbound.

10 THE COMMISSIONER: You're facing
11 north?

12 THE WITNESS: That's right, facing
13 north, I saw them coming up from behind me, also
14 coming north.

15 THE COMMISSIONER: You saw them coming
16 from where?

17 THE WITNESS: I noted them coming
18 north from behind my vehicle.

19 THE COMMISSIONER: Now, where --
20 assuming you are sitting in your vehicle, where
21 would -- and you are looking in your rear view
22 mirror, where would you see them, where would they
23 be? Can you point to it, where they would be?

24 THE WITNESS: As I said, it could be
25 about five to 10 feet when I noted them coming

1 from behind my vehicle. So my vehicle was in
2 here, they would have been somewhere in here.

3 THE COMMISSIONER: Wouldn't that be
4 how it would happen? If the truck is some
5 distance down the road, down in the southbound
6 lane, in the median, they'd be walking up from the
7 truck. At least that's what the other witnesses
8 have said.

9 MR. ZAZELENCHUK: The problem with
10 that, Mr. Commissioner, is that when I look at
11 Exhibit 62, and that's in volume B, page 147.

12 THE COMMISSIONER: D?

13 MR. ZAZELENCHUK: B for Bob.

14 THE COMMISSIONER: Oh, here, yes.

15 Page?

16 MR. ZAZELENCHUK: 147.

17 THE COMMISSIONER: Thank you. Yes?

18 MR. ZAZELENCHUK: Now, if we look, and
19 I realize that that's something for argument, but
20 I want to explain to Your Honour where I'm going.

21 THE COMMISSIONER: Page 127?

22 MR. ZAZELENCHUK: 147.

23 THE COMMISSIONER: 147, I'm sorry,
24 yes.

25 MR. ZAZELENCHUK: We have -- what we

1 have in that photo is we have the Dodge truck,
2 it's taken from, and the view is going northwards,
3 and we have the snow in the median ditch. And if
4 Constable Woychuk is parked in the second lane
5 from the right, at about the intersection, and
6 Bakema and Harvey-Zenk are walking towards him
7 from the south, they would have had to walk across
8 the snow in the median ditch. That's the problem
9 I'm having with the evidence, sir.

10 THE COMMISSIONER: Right. You mean
11 they would have had to walk up, or across, up and
12 around or across the snow. Ironically, that
13 photograph indicates that the cruiser is facing
14 south. At some point in time, it must have been
15 facing north.

16 MR. ZAZELENCHUK: And we don't know
17 when it was taken. It was taken afterwards. I
18 wonder --

19 THE COMMISSIONER: Madam clerk, if you
20 would show this -- do you have that photograph --
21 show it to the witness. Let him look at it, and
22 then you can ask him questions from there.

23 MR. ZAZELENCHUK: Your Honour, I note
24 that it's 11:03. I wonder if this might -- I
25 would probably be more efficient if I could

1 collect my thoughts for two or three minutes. I
2 wonder --

3 THE COMMISSIONER: We all are. Let's
4 take a break now for 15 minutes.

5 THE CLERK: All rise. This Commission
6 of Inquiry is in recess.

7 (Proceedings recessed at 11:03 a.m.
8 and reconvened at 11:30 a.m.)

9 THE CLERK: All rise, please. This
10 Commission of Inquiry is now re-opened. Please be
11 seated.

12 MR. PACIOCCO: Thank you for that
13 indulgence. Something materialized over the
14 course of the morning and we were required to deal
15 with and to make disclosure to the parties before
16 dealing with it, which caused the delay. We are
17 scheduled to hear from Constable Bryan Maloney
18 today. Mr. Maloney has furnished the Commission
19 with this statement relating to an event that
20 occurred today.

21 You will notice that Mr. Ken Graham is
22 in the body of the court room, and I'm bringing a
23 motion to you, Mr. Commissioner, to require
24 Mr. Ken Graham to leave the court room, and remain
25 outside of the hearing room rather, for the

1 duration of the evidence.

2 We will be putting Mr. Maloney on the
3 stand and seeking his testimony with respect to
4 this, but I'm going to pass up a copy of the
5 document that was prepared by Mr. Maloney as a
6 result of an incident he claims occurred today.

7 THE COMMISSIONER: Have other counsel
8 seen it? Anybody not seen it? Thank you. Give
9 me a moment to read it, please.

10 Do you want to make this an exhibit?

11 MR. PACIOCCO: I would like to make it
12 an exhibit, Mr. Commissioner, in connection with
13 the motion, that will be a matter that will be
14 canvassed when Mr. Maloney is testifying.

15 THE COMMISSIONER: Yes.

16 (EXHIBIT 1: Bryan Maloney's
17 handwritten statement of incident
18 dated July 8, 2008)

19 MR. PACIOCCO: In the meantime, given
20 the nature of the information contained in the
21 document, we felt it would be best to draw it to
22 your attention immediately. And the allegation is
23 one that suggests intimidation of a witness, and
24 should be addressed by removing Mr. Graham. Even
25 though this isn't a matter that has resulted in

1 testimony as to what he said/she said, there's
2 significant enough concern here under the
3 circumstances that to protect the integrity of the
4 record of this proceeding, the prudent thing, in
5 my respectful submission, is to ask that
6 Mr. Graham be removed.

7 In order to be fair to Mr. Graham, as
8 he sits here, I would like to put onto the record
9 the statement that has been made by Mr. Maloney.

10 THE COMMISSIONER: Yes. And then I'll
11 hear from counsel as to what they have to say.

12 MR. PACIOCCO: Mr. Maloney's statement
13 produced today reads as follows:

14 "At approximately 10:30 hours on
15 July 8, 2008, while sitting on a bench
16 outside the court room, Ken Graham
17 came walking down the hall from the
18 south toward the court room. Upon
19 coming up to me, I said, 'Mr. Graham.'
20 And he said, 'Maloney, Maloney, you
21 guys are nothing but a bunch of
22 fucking traitors.' I said, 'Ken, I
23 wasn't even there.' And he said, 'I
24 know you weren't,' and he walked back
25 into the court room. Mr. Graham was

1 slightly agitated when he said this.
2 There was a female photographer to the
3 north of the door on the other bench.
4 I continued to sit and then I was
5 taken to a sitting room to read a
6 previous statement, and I asked Bob
7 Giasson, 'Why is Ken Graham so upset?'
8 And he asked why, and I informed him
9 what Ken Graham had said. Mr. Vincent
10 Clifford attended the sitting room and
11 asked about what was said. I told him
12 what Graham had said, and he requested
13 that I write a statement of what
14 occurred. B.P. Maloney, Bryan
15 Maloney, 2008/07/08, 1115 hours."
16 THE COMMISSIONER: What do you say,
17 Mr. Paciocco?
18 MR. PACIOCCO: If we can file this as
19 an exhibit in connection of the motion to exclude,
20 that would be Exhibit 1 in that motion.
21 THE CLERK: Thank you.
22 MR. ZAZELENCHUK: I merely concur with
23 learned Commission Counsel.
24 THE COMMISSIONER: Yes, Mr. McDonald.
25 MR. McDONALD: I think what Commission

1 Counsel has requested is appropriate,

2 Mr. Commissioner.

3 THE COMMISSIONER: Yes.

4 Mr. Weinstein?

5 MR. WEINSTEIN: I have nothing to add.

6 THE COMMISSIONER: I'm sorry?

7 MR. WEINSTEIN: I have nothing to add.

8 THE COMMISSIONER: Mr. Jack?

9 MR. JACK: Nor do we,

10 Mr. Commissioner.

11 THE COMMISSIONER: Mr. Prober?

12 MR. PROBER: I have only one comment,
13 and you may be doing this in any event.

14 Mr. Graham maybe should be given the opportunity
15 to consult counsel if he wants to deal with this
16 motion. Thank you.

17 THE COMMISSIONER: Yes.

18 MS. DIXON: Nothing to add, sir.

19 THE COMMISSIONER: I'm sorry?

20 MS. DIXON: I have nothing to add,
21 sir.

22 THE COMMISSIONER: Yes.

23 MR. McFETRIDGE: I agree with
24 Mr. Prober's comments.

25 THE COMMISSIONER: It seems to be the

1 consensus of counsel that Mr. Graham should be
2 directed to leave the hearing, and I agree.

3 Before you go, Mr. Graham, I think you
4 should, for your own protection, in case you wish
5 to give evidence later in this hearing, consult
6 with counsel and take counsel's instructions.

7 I'm sorry, I can't hear you, sir?

8 MR. GRAHAM: He's very wrong in what
9 he said. He tried to have a conversation with me.
10 I said, "Maloney," I said, "I don't speak to
11 liars."

12 THE COMMISSIONER: Maybe if you could
13 just come up, I can't hear you. Speak loudly so
14 the reporter can get it.

15 MR. GRAHAM: Your Honour, what
16 happened is, as I was walking out the hall coming
17 into the room here, Maloney started to have a
18 conversation with me. At that time, I said,
19 "Maloney, I do not talk to liars." And then I
20 came into the room.

21 THE COMMISSIONER: All right.

22 MR. GRAHAM: Whatever his statement
23 is, he is not telling the truth.

24 THE COMMISSIONER: Mr. Maloney,
25 Constable Maloney is going to testify.

1 MR. GRAHAM: Yeah.

2 THE COMMISSIONER: So in view of the
3 testimony that he will probably give, I think you
4 should consult with counsel and take instructions.

5 MR. GRAHAM: Okay.

6 THE COMMISSIONER: Thank you.

7 You have a silent but effective voice,
8 and I can't hear you.

9 MR. WEINSTEIN: Thank you,
10 Mr. Commissioner. Just based on this last --

11 THE COMMISSIONER: Can you --

12 MR. WEINSTEIN: I'm sorry.

13 THE COMMISSIONER: Mr. Zazelenchuk
14 keeps pushing it back.

15 MR. WEINSTEIN: Just based on this
16 last conversation, where the proper advice to
17 Mr. Graham is to consult counsel, and I think
18 everyone is in agreement that he should be doing
19 that. And Mr. Maloney is going to be giving
20 evidence, as we all know. I just wonder,
21 Mr. Commissioner, if he is going to consult
22 counsel, if counsel should at least not be here --
23 should be here at least when Mr. Maloney gives
24 evidence. What participation he might or might
25 not take, that's a different story. And that's up

1 to him and naturally up to you.

2 THE COMMISSIONER: That would be very
3 good advice to Mr. Graham.

4 Now, Mr. Zazelenchuk, you were in the
5 midst of cross-examination. Just before you get
6 into it, have you got that photograph in front of
7 you?

8 THE WITNESS: Yes, I do, sir.

9 THE COMMISSIONER: There is a cruiser
10 that is facing south. Do you see that in the
11 photograph?

12 THE WITNESS: Yes, sir.

13 THE COMMISSIONER: Is that your
14 cruiser?

15 THE WITNESS: No, it is not.

16 THE COMMISSIONER: Okay. Is that the
17 position in which your cruiser was located at the
18 time that you saw Mr. Bakema bring Mr. Harvey-Zenk
19 towards your vehicle?

20 THE WITNESS: No, sir, my vehicle was
21 where I pointed on the board, in that turning lane
22 and I was facing north.

23 THE COMMISSIONER: Well, that vehicle
24 is facing south.

25 THE WITNESS: That's correct. I

1 believe these photos were probably taken by the
2 traffic analyst at a time when I would have
3 already been gone from the scene.

4 THE COMMISSIONER: That's fine. What
5 I want to know is, and maybe I misunderstood you,
6 was your vehicle, when you saw Bakema bring
7 Mr. Harvey-Zenk, located where that vehicle is
8 only facing north, or further, maybe I
9 misunderstood your evidence, further to, we'll
10 make it simple, to the left in the intersection,
11 or was it located where that is?

12 THE WITNESS: Sir, it would be located
13 more to the right.

14 THE COMMISSIONER: More to the right?

15 THE WITNESS: Where you see the large
16 pylon set up by the Highways Department, I would
17 have been more in that area.

18 THE COMMISSIONER: All right. And
19 then I'll let Mr. Zazelenchuk go from there.
20 Because as you can see, his evidence, or at least
21 his question to you was, that if you're facing
22 north, you are further to the right, and
23 Mr. Bakema and Mr. Harvey-Zenk are coming along,
24 they would be in fact more to your left, wouldn't
25 they?

1 THE WITNESS: Yes.

2 THE COMMISSIONER: And yet you said
3 you saw them in your rear view mirror when they
4 were five to 10 feet behind you?

5 THE WITNESS: I don't recall if I said
6 rear view or side view.

7 THE COMMISSIONER: So it could have
8 been your side view?

9 THE WITNESS: It could have been the
10 side view.

11 BY MR. ZAZELENCHUK:

12 Q I'll try to get through this quickly.
13 The problem that I had with your evidence, sir,
14 was that if Chief Bakema and Harvey-Zenk were
15 approaching your vehicle as you say they were,
16 then they would have had to have gone from the
17 Harvey-Zenk vehicle to the intersection, back
18 south past your vehicle for some reason, turned
19 around, and then be approaching your vehicle.
20 That's one possibility, correct?

21 A Correct.

22 Q The other possibility is that they
23 would have gone across the median ditch?

24 A Correct.

25 Q And when I look at, and I'm going to

1 direct you to five photos, when I look at the
2 photos, that's where I have the problems. The
3 photos are Exhibit 62, and they are at volume
4 B.8.a. Do you have them in front of you, sir?

5 A I do. You'll just have to direct me
6 to which --

7 Q Yeah. Well, we'll start at 145, page
8 145. Now, that's a view from the north to the
9 south, and we have the Harvey-Zenk vehicle in the
10 median ditch, at least in part; correct?

11 A Correct.

12 Q And we see all kinds of footprints
13 going to the southbound lane, but there might be
14 footprints going to the northbound lane, but they
15 seem to be angled towards the south, which would
16 be opposite from your vehicle; correct?

17 A Correct.

18 Q So you look at that picture the way I
19 do?

20 A I see the footprints on the, I guess
21 the west of the truck, as well as I do see what
22 appears could be footprints on the east side as
23 well.

24 Q That's right. But the footprints on
25 the east side would be in a south easterly

1 direction. They are angled, aren't they?

2 A Somewhat.

3 Q Yeah. And you are north of that
4 vehicle?

5 A Yes.

6 Q Okay. So if we go two pages to 147,
7 and we have looked at that picture before, but
8 again, that's a view looking north. And if there
9 are footprints crossing the median ditch, they
10 seem to me to be angled in a southerly direction;
11 correct?

12 A They look similar to the last photo --

13 Q Yeah.

14 A -- just at a different angle.

15 Q But they are slightly -- they are not
16 due east, or they are not perpendicular, they are
17 angled slightly southerly?

18 A Yes.

19 Q Okay. And if we go to the next
20 page -- you are at 148?

21 A Yes, sir.

22 Q Okay. Again, there might be some
23 footprints just at about halfway from the top to
24 bottom at the -- on the left-hand side, but it
25 looks like only one person. I mean, you can't

1 really tell too well, can we?

2 A No, sir, I can't tell from this photo.

3 Q Okay. Again, if we flip the page,
4 this is a view to the west; correct?

5 A Correct.

6 Q And there is some footprints in the
7 lower right-hand corner, but, again, they seem to
8 be sort of angled in a southerly direction?

9 A Yes.

10 Q Correct?

11 A They appear to be, and they appear to
12 scurry north at the end, but it's hard to tell.

13 Q Yeah. Lastly, if we go to 152?

14 THE COMMISSIONER: Why don't you go to
15 149?

16 MR. ZAZELENCHUK: We were just there,
17 sir.

18 THE COMMISSIONER: I'm sorry?

19 MR. ZAZELENCHUK: We were just there,
20 sir.

21 THE COMMISSIONER: Oh, I am sorry,
22 yes.

23 BY MR. ZAZELENCHUK:

24 Q If we go to 152, there seem to be some
25 footprints crossing the ditch, but they look to me

1 like they are going from east to west and not from
2 west to east. Would you agree with me?

3 A Yes, sir.

4 Q Yes. Okay. So do you understand the
5 difficulty I had with your evidence when you told
6 us that you saw Chief Bakema and Derek Harvey-Zenk
7 approach your vehicle from the south, in either
8 your rear view mirror or your side view mirror?

9 A I understand, but that's what I saw.

10 Q Okay. Are you able to help me out at
11 all as to how I can resolve my difficulty?

12 A No, sir, I don't know how they got to
13 that direction they were going.

14 Q Okay. One more thing you don't know,
15 that's fair enough.

16 One last point, and probably be very
17 quick. In your notes, and you can look at them if
18 you wish but I don't think it's necessary, in your
19 notes you indicate a time of 7:42 when Chief
20 Bakema brought Harvey Zenk to your vehicle,
21 correct?

22 A Yes, sir.

23 Q Okay. Do you have any idea where you
24 got that time from?

25 A No, I don't.

1 Q Okay. I wonder if Madam clerk would
2 be good enough to give you Exhibit 64? And that,
3 Your Honour, is located at volume D for David,
4 page 347, tab 19.e.

5 This is a letter from the Interlake
6 Regional Health Authority with respect to the
7 timing of the ambulance attendants. And you'll
8 agree with me that the ambulance attendants, at
9 one point, both of them entered your vehicle to
10 see if Mr. Harvey-Zenk wanted medical attention;
11 correct?

12 A Correct.

13 Q Okay. And this log says that they
14 arrived at 7:38 at the scene. And Mr. Rosser, I
15 believe, gave us evidence that it was in less than
16 a minute he was inside the vehicle where
17 Harvey-Zenk was located. You weren't here, but
18 I'm telling you that's what he said. And if it's
19 less than a minute, that tells me that he would
20 have been in the vehicle as early as 7:39,
21 correct?

22 A Correct.

23 Q If he's correct, then that time moves
24 up to at least 7:39. So that's in direct
25 contradiction to the fact that Chief Bakema put

1 Harvey-Zenk into your vehicle at 7:42. You'll
2 agree with me on that?

3 A I agree with you, yes.

4 Q Is it possible that you are wrong
5 about the time?

6 A It's possible. I'm not, as I said
7 before, I'm not sure in which order, what happened
8 in which order when I got to the scene, whether I
9 put the cones over or he was brought to the
10 vehicle first.

11 Q Is it possible you're wrong about the
12 time of 7:42 by as much as four or five minutes?

13 A It could be possible.

14 MR. ZAZELENCHUK: Thank you. Those
15 are all my questions.

16 MR. PACIOCCO: Mr. Commissioner.

17 MR. PROBER: There's somebody in
18 distress back here. The sheriffs are looking
19 after him.

20 MR. PACIOCCO: It's a medical
21 emergency.

22 THE COMMISSIONER: We'll take a short
23 break.

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

1 (Proceedings recessed at 11:55 a.m and
2 reconvened at 2:00 p.m.)

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

5 THE COMMISSIONER: Are you finished?

6 MR. ZAZELENCHUK: I have finished,
7 yes, sir.

8 THE COMMISSIONER: Mr. McDonald.

9 MR. McDONALD: I will exercise my
10 right to finish, thank you, Mr. Commissioner.

11 THE COMMISSIONER: All right.
12 Mr. Jack.

13 BY MR. JACK:

14 Q Constable Woychuk, I just have a few
15 questions for you, relating mainly to the time you
16 spent in the company of Derek Harvey-Zenk and/or
17 the time he was in your custody. And I want to
18 deal specifically with any searches you may have
19 performed in the course of your handling of
20 Mr. Harvey-Zenk.

21 Now, there is nothing in the material
22 to suggest this, so I just want to confirm with
23 you, that at no time when Derek Harvey-Zenk was in
24 your custody, including whether it be in the
25 vehicle or at the East St. Paul Police station, at

1 no time did you perform a search of his person,
2 that's correct?

3 A Not at the vehicle. I don't recall
4 who performed a search once he was arrested at the
5 station.

6 Q Okay. But just to confirm you did not
7 perform that search, correct?

8 A I don't recall if it was myself or
9 Sergeant Carter that performed the search.

10 Q When you say performed the search, are
11 you telling me that you are recalling a search?

12 A It would be policy to search anyone
13 that is arrested and detained.

14 Q But did you perform any such search?

15 A Sorry, I don't recall if it was me or
16 Sergeant Carter. It would have been one of the
17 two of us.

18 Q And I don't believe you have made any
19 note of having personally performed a search of
20 Derek Harvey-Zenk?

21 A I don't have any note.

22 Q Do you have any recollection of being
23 directed by Sergeant Carter or any other officer
24 to actually perform a search of his person?

25 A No, I don't, sir.

1 Q And am I also correct when I state
2 that at no point did you actually perform a search
3 of the vehicle that Derek Harvey-Zenk had been
4 driving prior to the accident?

5 A That's correct, I did not.

6 Q Am I also correct in stating that at
7 no time were you directed by any other officer
8 within the East St. Paul Police department to
9 conduct a search of that vehicle?

10 A That's correct.

11 (Brief recess)

12 THE COMMISSIONER: We are ready.

13 BY MR. JACK:

14 Q Thank you, Constable Woychuk. Just a
15 few more. I don't know if you still have it in
16 front of you, I'm going to be referring to exhibit
17 106, that's found at the materials tab E-1.23.i.
18 You have that in front of you?

19 A Yes, I do.

20 Q And this is the East St. Paul Police
21 prisoner log sheet; that's correct?

22 A Yes, it is.

23 Q It has already been referred to
24 before. This was completed by you, is that
25 correct?

1 A That's correct.

2 Q And I note on the right, in the mid
3 section of the page, we have a box for property
4 surrendered to police. Do you see that?

5 A Yes, I do.

6 Q Were you the one dealing with
7 Mr. Harvey-Zenk in the surrender of those items?
8 Do you recall that?

9 A I don't recall, sir.

10 Q Do you recall having taken any of
11 those items from him?

12 A I don't recall who performed the
13 search. It would have been either myself or
14 Sergeant Carter.

15 Q And I'm now not necessarily talking
16 about a search, of course. The form speaks to
17 property surrendered to police. Do you have any
18 recollection of when that might have been
19 surrendered to the police?

20 A When?

21 Q Do you have any recollection of those
22 items being turned over, either to you or Sergeant
23 Carter or to any other officer?

24 A I don't recall them being turned over.

25 Q And you will note that one of the

1 items that are listed within that box, that being
2 wallet with contents; do you see that line?

3 A Yes, I do.

4 Q Do you have any recollection of a
5 wallet with contents being turned over?

6 A No, I don't, sir.

7 Q So, therefore, I would take it, you
8 have no recollection of whether or not you may
9 have performed a search of the contents of that
10 wallet?

11 A No, I don't recall if I did or not.

12 Q Absolutely no recollection?

13 A No, I don't.

14 Q No recollection of even seeing the
15 wallet in question?

16 A I don't recall it. The normal
17 practice would be, if you see something you would
18 look in there to make sure, I guess to account for
19 money or something that would be in there.

20 Q And it would be fair to say,
21 particularly given a review of your notes, that
22 despite your lack of recollection of whether or
23 not you looked at any of these items, whether or
24 not these items were turned over to you, it would
25 be fair to suggest that at no time did you obtain

1 anything you considered evidence of anything,
2 either in dealing with those items or in dealing
3 with Mr. Harvey-Zenk?

4 A That's correct.

5 Q That's correct?

6 A Yes.

7 MR. JACK: Thank you, constable. I
8 have no further questions.

9 THE WITNESS: Thank you.

10 BY MR. WEINSTEIN:

11 Q Constable, Woychuk, just to perhaps
12 put you at ease I can advise you that I will not
13 be cross-examining you on the number of cones that
14 were there, or the colours of the cones, so you
15 can put that out of your mind for now. Nor will I
16 be cross-examining you on what people may think,
17 because, as we know, you can't control what people
18 think; correct?

19 A Correct.

20 Q Now, let me ask you about your
21 experience again, and I think you referred to it
22 yesterday, dealing with impaired drivers; correct?

23 A Correct.

24 Q And you've dealt with several in the
25 past; correct?

1 A Correct.

2 Q And you've arrested several, some of
3 those in the past?

4 A Up to this point?

5 Q Yes?

6 A Yes, sir.

7 Q Yeah. And you have observed symptoms
8 of impairment in the past; is that correct?

9 A Yes, sir.

10 Q So would I be correct to say that some
11 of the answers you gave today, as far as not
12 observing symptoms of impairment, that's somewhat
13 also based on your previous experience; is that
14 correct?

15 A That would be correct.

16 Q All right. You attend to the scene,
17 you are on an overlap, you have just come off
18 shift; correct?

19 A Yes.

20 Q And you attend at the scene, and I'm
21 not going to go through everything, or where you
22 were and all of that. One of the functions you
23 were doing is traffic control. Would that be a
24 fair statement?

25 A Yes, it would.

1 Q And you've had experience in traffic
2 control; correct?

3 A Yes, I have.

4 Q All right. So no one had to give you
5 instructions at the scene how to do traffic
6 control, is that correct?

7 A That's correct.

8 Q All right. You based it on your
9 experience, correct?

10 A That's correct.

11 Q Okay. In other words, Mr. Bakema did
12 not have to give you directions on how to do
13 traffic control, you knew how to do it, correct?

14 A I don't recall him giving me any
15 directions on traffic, sir.

16 Q Right, because you didn't need it, did
17 you?

18 A That's correct.

19 Q Now, as you are at the scene, and
20 we've heard before it was somewhat chaotic; is
21 that correct?

22 A That is correct.

23 Q Because you are dealing with a busy
24 area of the city road-wise, you are dealing with a
25 particular time where people are generally going

1 to work, traveling to work; correct?

2 A Yes, sir.

3 Q It was chaotic at the scene?

4 A Yes, it was.

5 Q And when you got there, and I've read
6 your interviews, as you have, your three
7 interviews, two with the RCMP and one with
8 Commission Counsel, and we will get into those.
9 But in your first interview with the RCMP, and
10 you've read your interviews, no doubt, correct?

11 A Yes, I have.

12 Q Prior to yesterday, correct?

13 A Yes.

14 Q Did you reread them last evening?

15 A I did not, sir.

16 Q All right. In your first interview
17 with RCMP, you were fairly positive at that time
18 that the first thing that happened, and you
19 mention it more than once in your first interview,
20 that as soon as you pulled up and Mr. Bakema
21 brought Woychuk -- excuse me, Mr. Zenk, over,
22 correct?

23 A Yes.

24 Q And to this day --

25 THE COMMISSIONER: Just a second.

1 Yes?

2 MR. PACIOCCO: I was going to suggest
3 that if counsel is going to refer to the
4 transcript and what it contains, we should be
5 given precise references so that we can verify and
6 satisfy ourselves that it is being completely and
7 accurately related to the witness.

8 THE COMMISSIONER: I think you were
9 just generally doing a background?

10 MR. WEINSTEIN: Correct.

11 THE COMMISSIONER: All right. If you
12 are going to be, it might be of assistance to
13 counsel if you could at least point to the
14 pages --

15 MR. WEINSTEIN: All right.

16 THE COMMISSIONER: -- when you get to
17 more specifics.

18 BY MR. WEINSTEIN:

19 Q The points I asked you up to date, you
20 recall those being in your first interview with
21 the RCMP; correct?

22 A Yes.

23 Q Page 7 of the, I'm talking about the
24 first interview, page 7 near the top, is your
25 answer:

1 "I just pulled up, he was walking up,
2 and then I got out and then he put him
3 in the back of the vehicle. And then
4 he shut the door."

5 Do you see that in your first interview?

6 A Yes, I do.

7 Q So you told the RCMP in your first
8 interview, early on at page 7, that basically as
9 soon as you pulled up, got out of the car,
10 Mr. Zenk was being brought to your vehicle;
11 correct?

12 A Yes.

13 Q And just again for the benefit of
14 Mr. Commissioner and counsel, page 5:

15 "Well, I pulled up here. Just as I
16 pull up, I wasn't even out of my
17 vehicle yet, Chief Bakema was walking
18 up to the vehicle with
19 Harveymordenzenk."

20 All right. You saw that, page 5, sir, the top?

21 A Yes, I see that, sir.

22 Q Yeah. So, at least your recollection
23 was that he was brought up basically as soon as
24 you got there; correct?

25 A That's correct.

1 Q Okay. And to this day, can you
2 positively state that that wasn't the case?

3 A I don't recall exactly, I can't
4 positively recall that.

5 Q Okay. But that's what you recalled,
6 at least when you gave your interview on May 24th,
7 2006?

8 A Yes, sir.

9 Q And take my word for it, that is the
10 time of your interview at 12:55 p.m. So are you
11 sure you weren't standing outside of your vehicle
12 when Mr. Zenk was brought up?

13 A I believe I was inside my vehicle.

14 Q I believe -- does that mean you are
15 positive or that's what you think?

16 A I recall seeing him come up through
17 the rear view or the side mirror, one of the
18 mirrors.

19 Q Side mirror, rear view mirror, both,
20 which one?

21 A I believe it is a side view, but I
22 think I have referred it to as a rear view.

23 Q Yeah. That's why I'm raising it now.
24 Is there any doubt in your mind that there was
25 only person with Mr. Zenk?

1 A No, there is not.

2 Q Just Mr. Bakema?

3 A That is correct.

4 Q All right. And you certainly didn't
5 go up to the truck where Mr. Zenk may have been,
6 did you --

7 A No, I did not.

8 Q -- at any time?

9 A Not at any time, I did not.

10 Q Did you see Constable Graham go up to
11 the truck at any time and help bring Mr. Zenk to
12 your vehicle?

13 A No, I did not see him do that.

14 Q So your evidence is, and there is no
15 doubt in your mind, that there was only, when you
16 saw Mr. Zenk, there was only one policeman with
17 him; correct?

18 A That is what I recall, yes.

19 Q Yeah. And as soon as he was brought
20 up, he was put in your vehicle; correct?

21 A That's correct.

22 Q No doubt about that?

23 A That's what I recall, yes, sir.

24 Q Yes. And that's what you told us
25 yesterday, and that's what you told the RCMP, that

1 he was put in your vehicle. He wasn't taken over
2 to Mr. Graham, Constable Graham's vehicle and
3 stood outside for 15 minutes. Did you ever see
4 that happen?

5 A No, I did not, sir.

6 Q He brings him to your vehicle, he puts
7 him in. And is it your evidence -- well, what did
8 he first say?

9 A After he was in the vehicle?

10 Q Yeah. As soon as he puts him in the
11 vehicle, I assume the door is closed, correct?

12 A Correct.

13 Q What is the first thing he says?

14 A I don't recall what the first thing he
15 said or --

16 Q And I assume also, sir, and you
17 correct me if I'm wrong, that you in fact don't
18 remember the exact words; correct?

19 A I don't remember the exact words.

20 Q Okay. And my learned friend yesterday
21 put to you a different version, something about
22 "put him in, see if you can smell anything," do
23 you recall something like that, sir?

24 A No, I don't. That wasn't said to me.
25 I recall the general idea of the conversation but

1 I don't recall the exact words or which order they
2 were in.

3 Q There was also mention that he appears
4 to be distraught, correct?

5 A I don't necessarily recall hearing
6 that word.

7 Q Well, it is in your notes. It is in
8 your narrative that Chief Bakema said he appeared
9 to be distraught; correct?

10 A Correct.

11 Q It is your narrative, correct?

12 A Yes.

13 Q And it is not -- your narrative isn't
14 that you said the word distraught, it is that
15 Harry Bakema said the word distraught; correct?

16 A Correct.

17 Q And I think you mentioned yesterday
18 that your conversation at this point was
19 approximately 20 to 30 seconds. We are talking
20 about a brief conversation, correct?

21 A That's correct.

22 Q Okay. He told you he is a cop or WPS
23 member, is that correct? Did he tell you that at
24 the time?

25 A I believe he did, yes.

1 Q Okay. But no name was given, correct?

2 A Correct.

3 Q Now, he is in your vehicle, and Chief
4 Bakema goes off to do other duties; correct?

5 A Correct.

6 Q And the instructions were that I've
7 called or I'm calling Chief Carter out, or
8 Sergeant Carter out, to come to the office to deal
9 with that individual; correct?

10 A The original direction was that
11 Sergeant Carter would be coming to the scene.

12 Q At the scene, okay. And that changed
13 that he is going to the office, correct?

14 A At some point it changed to the
15 office, yes.

16 Q And your instructions, and they
17 weren't that complicated instructions, was wait
18 until Sergeant Carter is at the office and take
19 this person to the office; correct?

20 A I was told at one point that Sergeant
21 Carter is at the office, or meeting me there, to
22 go there.

23 Q Right. But my point is, the
24 instructions weren't that difficult. When Carter
25 gets to the office, take him in, basically turn

1 him over to Carter; isn't that what your
2 instructions were?

3 A My instructions were to take him there
4 and meet Sergeant Carter there, yes.

5 Q Well, what did you think you were
6 going to do with him once you got to the office?
7 Did you think you were going to turn him over to
8 Carter?

9 A I guess that's what I would have
10 thought, yeah.

11 Q Yeah. And Carter, and I'm not
12 belittling your experience, Constable Woychuk, but
13 Carter had more experience than you; correct?

14 A Yes, he did.

15 Q He has dealt with a lot more impaired
16 drivers than you have, correct?

17 A Yes, sir.

18 Q So it made sense that you are turning
19 him over to Carter, correct?

20 A Correct.

21 Q Did Harry Bakema tell you to -- that
22 you are turning him over to Carter because Carter
23 has more experience?

24 A I was only told to take him to
25 Sergeant Carter.

1 Q Why I'm putting that to you, in
2 fairness, is in the material Sergeant Carter says
3 that you told him, Harry said he should be turned
4 over to you because you've got more experience.
5 You don't recall that?

6 A No, I don't, sir.

7 Q All right. Now, you indicate at the
8 scene you had a brief conversation with
9 Mr. Rosser, correct?

10 A Correct.

11 Q And we are talking the paramedic who
12 is in the car with Mr. Zenk, correct?

13 A Correct.

14 Q And are you in the car when the
15 examination is taking place of Mr. Zenk by
16 Mr. Rosser?

17 A No, I was outside the vehicle.

18 Q Okay. And any idea, not that a lot
19 turns on it, but any idea how long Mr. Rosser was
20 in the vehicle with Mr. Zenk?

21 A I don't recall for certain. It was
22 not a long duration, though.

23 Q We are talking what, ten minutes, less
24 than ten?

25 A Probably maximum ten minutes.

1 Q All right. He comes out, and
2 according to your evidence, he tells you that he
3 refused medical attention, correct? He signed a
4 waiver, or words to that effect, correct?

5 A Yes.

6 Q And you said, according to your
7 evidence, did he say I smelt liquor or did he say
8 he could be impaired? What did he say?

9 A I don't recall if it was a comment or
10 if it was a hand gesture.

11 Q Okay. And I will find it and I will
12 come to it. If I could just have a moment.

13 Page 41, page 41, Mr. Commissioner,
14 first interview with the RCMP. I'm sorry, page
15 42:

16 "KENNETT: All right. And Ted Rosser
17 gave you the indication. You are not
18 sure of the wording or something like
19 that?

20 WOYCHUK: Yeah, I don't recall. I
21 think he just kind of said, he got
22 out, kind of shut the door."

23 It says I might have been, it should be I believe
24 it might have been.

25 "He is done? He is like, yeah.

1 KENNETT: Um-huh.

2 WOYCHUK: He told me that he refused

3 and he said..."

4 this is in quotes,

5 "...he might be drunk, eh," or, "he

6 could be drinking." I don't recall the

7 wording."

8 So it appears from page 42 that there was some

9 verbal communication between Rosser and you?

10 A Yes.

11 Q You would agree with that. And in

12 fairness to you, we have heard from Mr. Rosser,

13 who is firm in his evidence that he never told any

14 police officer about any smell of liquor, or could

15 be drinking, nothing like that, in fairness to

16 you?

17 A Okay.

18 Q And you say otherwise?

19 A That's who I believe to be Ted Rosser.

20 Q Well, that was the guy that was in the

21 car, that's the guy who got the waiver signed;

22 correct?

23 A Correct.

24 Q And we have heard that was Mr. Rosser,

25 okay. So let's assume from your evidence then

1 that Mr. Rosser said it. And I assume you would
2 have passed this on. Would you have passed it on
3 to Mr. Bakema?

4 A I believe I would have. I don't
5 recall if I did or not.

6 Q It makes sense you would have, does it
7 not?

8 A It would.

9 Q Yeah. So let's assume, let's just
10 assume for the moment that you passed this on to
11 Mr. Bakema. Okay. And let's just assume for the
12 moment that Mr. Bakema said he could be impaired,
13 okay. Something like that, okay?

14 A Okay.

15 Q He didn't use the word "pissed";
16 correct?

17 A I don't recall that word.

18 Q .No?

19 A I don't recall, no.

20 Q You recall more a word "impaired" than
21 "pissed"; would that be fair?

22 A I recall it being impaired or possibly
23 impaired or something.

24 Q Thank you. All right. So now you've
25 got this conversation, you say from Rosser, that

1 you think you passed on to Mr. Bakema. And you've
2 got the conversation from Mr. Bakema about,
3 according to your evidence, he is impaired or
4 possibly impaired. You were given instructions to
5 take him to Carter; correct?

6 A Correct.

7 Q He didn't give you any other
8 instructions, did he?

9 A No, he didn't.

10 Q That you are positive on, correct?

11 A I don't recall any other instructions,
12 no, sir.

13 Q Well, is it your best evidence that
14 that was the extent of the instructions you
15 received from Mr. Bakema?

16 A That's what I recall, take him to the
17 office and meet Sergeant Carter.

18 Q Harry Bakema didn't tell you, you
19 know, you shouldn't make your own observations
20 about whether he is impaired? He didn't say that
21 to you, did he?

22 A No, he didn't.

23 Q He didn't say to you, don't tell
24 Carter what Rosser said. He didn't tell that to
25 you either?

1 A No, he did not.

2 Q He didn't tell you not to say that he
3 could be possibly impaired, correct? He didn't
4 say that, that you shouldn't tell Carter that,
5 correct?

6 A I don't recall him saying that, no.

7 Q Because he didn't say that, correct?

8 A I don't recall him saying that, sir.

9 Q Is your best evidence he didn't say
10 that?

11 A I guess, I don't recall, so I guess I
12 would.

13 Q You see, later on, and we will get to
14 your part of the evidence later about note-taking
15 and all of that. What I'm getting at, in fairness
16 to you, you have this conversation with Rosser,
17 best of recollection, you tell it to Mr. Bakema.
18 Mr. Bakema doesn't tell you not to tell it to
19 Carter. Do you tell it to Carter?

20 A I don't recall if I did. I believe I
21 did.

22 Q Well, "I believe I did." Surely, you
23 would pass on something like that? Why won't you
24 pass on something like that?

25 A I don't know, sir.

1 Q Okay. Surely you passed on -- did you
2 pass on the conversation about what Harry
3 supposedly said to you, Harry Bakema said to you?

4 A Which conversation?

5 Q About possibly being impaired?

6 A I don't recall if I relayed that
7 either.

8 Q If you didn't, shouldn't you have?

9 A I should have.

10 Q After all, Harry didn't tell you,
11 don't tell that to Carter, so there was nothing to
12 stop you from telling that to Carter; correct?

13 A That's correct.

14 Q And also, you know, you have this
15 conversation with Rosser, et cetera, and later
16 on -- and again, I'm sorry for jumping ahead
17 because I'm going to come back to it -- you know,
18 you are told not to put in your notes about what
19 Rosser said, but yet you were absolutely free to
20 tell Carter about your conversation with Rosser
21 once you got to the station; correct?

22 A Correct.

23 Q Yeah. And are you aware that it was,
24 in fact, Mr. Bakema that took the statement from
25 Rosser later on, not that day, not next day, but

1 took a statement from Rosser that there is a
2 statement about the smell of liquor; correct?

3 A Possibly.

4 Q Accept what I'm saying. Okay.

5 A Correct.

6 Q It was Mr. Bakema that said that,
7 okay. So does it make any sense that Mr. Bakema,
8 number one, would take that statement from Rosser
9 that talks about alcohol, or liquor, excuse me,
10 that Bakema didn't tell you, don't tell Carter
11 that, okay. And yet you are saying later on
12 Bakema says, well, don't put what Rosser said in
13 your notes. Do you see why to me it doesn't make
14 sense, sir?

15 A I see that.

16 Q Yeah. I'm sorry for jumping around a
17 bit. But when you got to the station, sir, did
18 you tell Carter that he hasn't been charged and
19 cautioned?

20 A I don't recall if I did or not. I
21 probably would have said that. I don't recall.

22 Q Let me ask you this: Do you recall
23 Carter asking you if he had been chartered?

24 A No, I don't.

25 Q Is it your best evidence, and I

1 appreciate we all have trouble with recall, I'm
2 just asking you to give your best evidence. Is it
3 your best evidence that you didn't tell him that
4 you hadn't chartered him, or he hadn't asked you
5 about that?

6 A I don't recall either way.

7 Q Okay. Getting back -- I'm sorry for
8 jumping back -- back at the scene you see them
9 walking, albeit a short period of time, correct?
10 Walking, Mr. Bakema walking Mr. Zenk, correct?

11 A Correct.

12 Q Ten feet, something like that, okay.
13 Nothing in the walk that you came to the opinion,
14 hey, this person could be impaired because of his
15 manner of walking; correct? There was nothing
16 there, correct?

17 A Correct.

18 Q You are in the car, albeit Mr. Zenk is
19 not a chatter box, but he is answering some of
20 your questions; correct?

21 A Correct.

22 Q Okay. No slurring of his words,
23 correct?

24 A Correct.

25 Q Those two are some of the two classic

1 symptoms of an impaired driver, or possible
2 impaired person, let's put it that way; correct?

3 A Correct.

4 Q You know that from your experience,
5 you know that from reading that; correct?

6 A Correct.

7 Q And nothing -- another one is glassy
8 bloodshot eyes. Nothing -- you didn't observe
9 that either, correct?

10 A No, sir, not that I recall.

11 Q And you had occasion to see his face,
12 correct?

13 A Correct.

14 Q That's another symptom of possible
15 impaired driving, or an impaired person, correct?

16 A Correct.

17 Q And you might have been asked this.
18 He produced his driver's licence?

19 A Yes, sir.

20 Q Okay. One of the symptoms of an
21 impaired person is poor coordination or, you know,
22 we've heard this, if you are defence or Crown for
23 a number of years, fumbled for his wallet. Did he
24 fumble for his wallet at any time that you saw?

25 A Not that I recall, sir.

1 Q And surely, if you had observed any of
2 those symptoms, it would have lead you to believe
3 at that time you are dealing with an impaired
4 person, correct?

5 A Yes, sir.

6 Q But at that time you did not think you
7 were dealing with an impaired person, because you
8 didn't have any signs of impairment, correct?

9 A Correct.

10 Q And I believe, I will just double
11 check the page -- did you think he was perhaps in
12 shock?

13 A That was what I felt, yes, sir.

14 Q Yeah. Because he had been in an
15 accident?

16 A Yes, sir.

17 Q Correct?

18 A Yes.

19 Q And so it is not an opinion of
20 impairment, it is an opinion of perhaps being in
21 shock?

22 A Yes, sir.

23 Q And possibly injured?

24 A Yes, sir.

25 Q Because -- well, you did see some dry

1 blood or blood around his nose?

2 A Yes, sir.

3 Q At that stage, sir, did you have any
4 grounds to make an arrest of Mr. Zenk?

5 A No, sir.

6 Q Okay. And I assume, since you didn't
7 have the grounds to make an arrest, you wouldn't
8 have told him you are under arrest for whatever;
9 correct?

10 A That's correct.

11 Q And if you are not telling him that he
12 is under arrest, you are not giving him a charge
13 and caution, correct?

14 A Correct.

15 Q You are not giving him his charter
16 rights because there is no grounds for his arrest,
17 correct?

18 A Correct.

19 Q Then I will jump again. You told this
20 inquiry that in your opinion Harry Bakema told you
21 about the TAR, traffic accident report, so it
22 would align with his notes. Do you remember
23 saying that clearly, sir?

24 A I remember a conversation, I remember
25 reading it in my interviews.

1 Q Well, from your reading and from your
2 evidence, did you not say one of the reasons you
3 thought that Harry told you to put that in, to
4 line with his notes?

5 A Yes.

6 Q Well, again, why that doesn't make
7 sense, sir, is because there is nothing in Harry
8 Bakema's notes about a TAR. So, do you see my
9 problem with an alignment here?

10 A I can see your problem, yes, sir.

11 Q Still in the car with Mr. Zenk, I will
12 use the term "right off the bat," right off the
13 bat did you smell an odour of liquor, right off
14 the bat?

15 A Are you asking if I did?

16 Q Yes, I'm sorry?

17 A No, sir.

18 Q It was later on, after Mr. Zenk had
19 been in the car for a while, correct?

20 A That's correct.

21 Q You are on your way to the office, you
22 may be close to the office; that's when you detect
23 "a slight odour of liquor," correct?

24 A Correct.

25 Q So it wasn't something that was

1 overpowering, correct?

2 A Correct.

3 Q And you never smelled it, and I
4 appreciate your evidence that you had a cold and
5 Halls and all of that, but towards the end of your
6 journey to the detachment, or to the office, then
7 you smelled the odour of liquor; correct?

8 A Correct.

9 Q You get to the office. Does Carter
10 ask you anything about, you know, what you
11 observed at the scene about him?

12 A I don't recall.

13 Q If you had told Carter that Harry said
14 he could be possibly impaired, did you -- did he
15 ask you, do you know on what basis Harry said
16 this? Did he ask you that? Do you recall that?

17 A No, I don't.

18 Q That day -- and I will just touch upon
19 something. Did you tell Sergeant Carter that day
20 that you were unhappy with the directions?

21 A I don't recall if I told him that day
22 or not.

23 Q Okay. And unhappy because you didn't
24 feel you were given enough direction, correct?

25 A That's correct.

1 Q The direction of take him to the
2 office, Carter is there, wasn't enough direction
3 for you; is that what you are telling us, sir?

4 A Yes, sir.

5 Q And you saw, was it a bit of
6 stumbling -- and Mr. Paciocco went over it, and
7 I'm not going to go through that again --
8 stumbling or unsteady on his feet, you saw that
9 when? When he got out of the car?

10 A I believe it was at the office. I
11 don't necessarily recall that myself right now.

12 Q Did it trigger in your mind also that,
13 fine, he could be impaired, but it also could be
14 as a result of being in the accident; correct?

15 A Correct, it could be.

16 Q Yeah. Because you have seen that in
17 the past. You've attended an accident scene, a
18 person is not impaired by alcohol or drug, but as
19 a result of the accident, unsteady on their feet.
20 You've seen that, correct?

21 A Yes.

22 Q Because you said, page 27 of your
23 first interview:

24 "But, I mean, at that time too I could
25 still have mistaken those same

1 symptoms for being in an accident."

2 And you answered it there and you answered it

3 truthfully here, correct?

4 A Yes.

5 Q So that part of your evidence is

6 certainly consistent.

7 Now, according to your evidence, Harry

8 said, you know, don't put in about Rosser and put

9 in about the TAR; correct?

10 A Correct.

11 Q And we know the TAR doesn't align with

12 his notes. We've gone through that?

13 A Correct.

14 Q And we've gone through the Rosser

15 situation, what we heard from Rosser in who took

16 his statement later.

17 You knew at the time, and there is no

18 question about it, I don't think there is any

19 dispute, that Sergeant Carter, on February 25th,

20 was the reader; correct?

21 A For most files, yes.

22 Q Yeah. For most files, yes. And we

23 will hear evidence from Sergeant Carter, this file

24 became his that day when they cleared the scene?

25 MR. McDONALD: Well, I have to rise on

1 that, because I think when counsel puts
2 anticipated evidence to a witness, it must be
3 fairly characterized. And I, sitting here, cannot
4 agree that that's a fair characterization of
5 Sergeant Carter's evidence.

6 MR. WEINSTEIN: Then we will do it
7 another way.

8 BY MR. WEINSTEIN:

9 Q Whose file -- I'm talking now at the
10 time that you got to the detachment that day, next
11 day -- whose file was it? Who is the investigator
12 now?

13 A I'm not sure if I know who it was at
14 that time.

15 Q Who dealt with the accused?

16 A Sergeant Carter.

17 Q Is it a big leap of faith not to know
18 that it is probably his file, with his experience?
19 Does that sound strange to you?

20 A No, it doesn't sound strange.

21 Q It is probably logical that it would
22 be his file, correct? With his experience, he
23 dealt with him, he charged and cautioned him and
24 did all of that, correct?

25 A Correct. I don't recall knowing whose

1 file it was, though, but that would be logical.

2 Q And a reader, assume for a moment that
3 Carter was the reader. I am talking him -- a
4 reader is a person who goes through files,
5 correct?

6 A Correct.

7 Q To make sure things are proper,
8 correct?

9 A Correct.

10 Q Anything that has to be redone is
11 redone. And I'm not saying there is anything
12 wrong, I'm not getting to there, but anything that
13 has to be redone or clarification, that comes from
14 the reader, correct?

15 A Correct.

16 Q That's who it comes from. And in the
17 past, when Sergeant Carter has been the reader and
18 you've been on a file, am I not correct, on
19 occasion, not every file, I'm not suggesting that,
20 Constable Woychuk, but on occasion Sergeant Carter
21 would say to you, I'm not clear in your notes
22 about this, or I'm not clear about that; correct?

23 A Correct.

24 Q And what you do -- and I'm not again
25 suggesting anything is wrong in my question to

1 you -- and after that inquiry by the reader, and
2 giving you his opinion, you would add things,
3 correct?

4 A Correct.

5 Q To make it clearer, correct?

6 A Correct.

7 Q And that's the job of the reader, to
8 make sure that things are correct, to make sure
9 things make sense; correct?

10 A Correct.

11 Q Just talking about the alignment --
12 and being fair to you, this is page 63, again,
13 RCMP interview, Mr. Commissioner.

14 THE COMMISSIONER: 63?

15 MR. WEINSTEIN: Page 63.

16 BY MR. WEINSTEIN:

17 Q Mr. Doyle is asking you questions, and
18 he is asking you your impression about being asked
19 to add something or take something out.

20 "Well, I guess my impression would be
21 that probably to align with what they
22 wrote or what Harry wrote in his
23 notes. And then probably also to make
24 up for time, the time delay or for the
25 reason why he never formed any grounds

1 and arrested him for impaired

2 driving."

3 You saw where I read?

4 A Pardon me, sir?

5 Q Were you following along as I was

6 reading?

7 A Yes, sir, I was.

8 Q Just there, the first impression is

9 the alignment, correct?

10 A Correct.

11 Q That's the first sort of answer you

12 give about your impression of why, you know, you

13 were asked, as you claimed, to put things in or

14 take things out, correct, or not put things in,

15 correct?

16 A Correct.

17 Q Still sticking to that first

18 transcript, turn to page 51, near the top, I will

19 read it, 51, and Woychuk, this is what you say:

20 "Then I went in there and I talked to

21 Norm. I told him there were some, I

22 told him the comment that Harry told

23 me.

24 KENNETT: Um-huh. Which one?

25 WOYCHUK: That he could be impaired.

1 KENNETT: Uh-huh.

2 WOYCHUK: I mean so I told Norm that
3 there is a possibility that he's
4 impaired and obviously he talked to
5 Harry on the phone. So I don't know
6 what was said between the two of
7 them."

8 Does that refresh your memory, that you told him,
9 according to this, that you told Carter apparently
10 what Harry said to you?

11 A I still don't recall, sir.

12 Q Okay. Well, there is something about
13 a phone call. Do you see that?

14 A I don't recall ever knowing of the
15 phone call or any way of communication. That
16 might have been something I --

17 Q I'm having trouble and, again, sir, I
18 know people have problems with recall. When you
19 were giving this, or having this interview, okay,
20 and you had no recollection of the phone call,
21 okay, are you following me?

22 A Yes, sir.

23 Q Why in God's name would you talk about
24 a phone call if you didn't have any recollection
25 of a phone call? Why out of the blue are you

1 telling the RCMP that Harry, or that he, being
2 Carter, talks to Harry on the phone? Why would
3 you bring that up?

4 A I don't know. Maybe that's what I
5 thought at the time there. I don't recall it now.

6 Q Did you -- obviously he talked to
7 Harry on the phone. So -- and you didn't know
8 what was said between the two of them, but from me
9 reading this, perhaps it is just me, it is pretty
10 clear that you told them, the RCMP, that there is
11 a phone call, Carter calls Harry or speaks to
12 Harry on the phone. And this is after, if you
13 followed along, it appears that that's after you
14 tell Carter that he is possibly impaired.

15 Correct?

16 A Correct.

17 Q At what stage did you come to the
18 opinion that Zenk was impaired? Was it back at
19 the station, or did you ever come to an opinion he
20 was impaired?

21 A I don't recall the exact time.

22 Q Did you ever come to an opinion that
23 he was impaired?

24 A Possibly, after getting an odour of
25 liquor, and then that I had that he stumbled. I

1 don't recall at what point it came.

2 Q But in all likelihood, if you did come
3 to the opinion of Derek Harvey-Zenk being
4 impaired, it would have been at the station;
5 correct?

6 A Correct.

7 Q Where you now, nearing the station,
8 you have got the smell of liquor, he is unsteady,
9 he is stumbling, whatever you want to call it;
10 correct?

11 A Correct.

12 Q But at the scene, and you were asked
13 this -- and in fairness to you, you were asked
14 about whether you were trying to minimize, at the
15 scene or being in the car with Derek Harvey-Zenk,
16 minimizing your observations for symptoms of
17 impairment. And I'm suggesting to you that you
18 weren't trying to minimize them, you just didn't
19 see the symptoms of impairment, because based on
20 your observation, they were not there; correct?

21 A I don't recall getting signs and
22 symptoms in the vehicle.

23 Q Right. So it is not as though anyone
24 suggested to you that you, in your report or
25 anything like that, is minimizing your symptoms --

1 observation of symptoms of impairment. Your
2 answer is, I wasn't minimizing the symptoms of
3 impairment, I didn't see them. I just smelled
4 liquor as I was getting closer to the station,
5 correct? Isn't that correct?

6 A That's correct.

7 Q You said, and I'm still sticking to
8 the first interview, sir -- I'll probably move on
9 soon to the second -- page 57?

10 THE COMMISSIONER: 57?

11 MR. WEINSTEIN: 57, Mr. Commissioner.

12 THE COMMISSIONER: Thank you.

13 BY MR. WEINSTEIN:

14 Q Top of the page 57:

15 "KENNETT: Do you think he was trying
16 to get this Harvey..."

17 And you interrupted him,

18 "No."

19 Did you already assume what the question was going
20 to be?

21 A I guess so, yes.

22 Q Because it goes on, Kennett, if we
23 read the two comments of Kennett together, it
24 would read:

25 "Do you think he was trying to get

1 this Harveymordenzenk off of any
2 charges at all?

3 WOYCHUK: No, I don't."

4 And you were quite emphatic, sir.

5 "Absolutely not. You know what? I
6 thought about that before but I really
7 don't think that was the case. I
8 think it was just the case that he
9 didn't want to have his name attached
10 to it. He didn't want to have to
11 testify against Harveymordenzenk. He
12 didn't want to be the one to arrest
13 him."

14 Do you recall that?

15 A Yes.

16 Q And that's your opinion today?

17 A That was my opinion, and I still have
18 that opinion, yes.

19 Q Exactly. And you are sticking to that
20 opinion, correct?

21 A Correct.

22 Q And do you, I'm suggesting to you,
23 Jason Woychuk, that you didn't do anything
24 deliberately to try and get Derek Harvey-Zenk out
25 of charges, did you?

1 A No, I didn't.

2 Q And in fairness to you -- now I'm
3 going to go on, Mr. Commissioner, to the second
4 interview, near the bottom of the page. In
5 fairness to you -- page 5, Mr. Commissioner.

6 THE COMMISSIONER: I am sorry, five?

7 MR. WEINSTEIN: Yes, five, towards the
8 bottom of the page.

9 BY MR. WEINSTEIN:

10 Q I will let you read it so I don't have
11 to read it all into the record. Just read the
12 last paragraph.

13 In fairness to you, there you are
14 saying to the RCMP you can't be positive which
15 happened first, whether you put the cones out
16 first or whether Mr. Zenk was brought to your car
17 by Mr. Bakema; correct?

18 A That's correct.

19 Q Now, you have been asked questions
20 about times, I think you were asked whether -- do
21 you recall being asked about the time of 7:42
22 having Bakema bring the accused to your vehicle;
23 correct?

24 A I have been asked about that, yeah.

25 Q Yeah. And I think you said, and you

1 will correct me if I'm wrong, that you didn't and
2 couldn't get it from the call sheet; correct?

3 A That's correct.

4 Q And to this day, you don't know where
5 you got that time?

6 A No, I don't, sir.

7 Q And you say -- as you said at page 10,
8 sort of towards the middle, this is the second
9 interview, you were asked:

10 "Are those times the times you would
11 have gotten off the call sheet?"

12 Your answer:

13 "Not the time he would have brought
14 him to me, no. I don't, I honestly, I
15 don't know where he got that time
16 from. Where he brought him to me at
17 my vehicle."

18 And you fairly say that would not be on the call
19 sheet, correct?

20 A That's correct.

21 Q There is other times in your notes,
22 correct, there is other times?

23 A Correct.

24 Q Do you know where you got those times
25 from?

1 A No, I don't, sir.

2 Q And did you, and I'm not -- you don't
3 know where you got those times from that you put
4 down, correct? Is that your answer?

5 A That's correct, I don't recall right
6 now.

7 Q Where do you usually get times from,
8 in your experience and talking about you, not
9 someone else, where do you usually get times for,
10 that you put in the notes?

11 A As you put them in.

12 Q As you put them in?

13 A That's correct.

14 Q But in this particular case, this
15 particular case, again, not being critical, you
16 don't recall whether you did it at the time or
17 not, or where you got the times from?

18 A That's correct.

19 Q Correct? You were asked again,
20 Mr. Commissioner, bottom of page 12. So you have
21 got yourself arriving at the scene, I believe, at
22 7:22, and then Mr. Zenk is brought to your car at
23 7:42; correct?

24 A That's correct.

25 Q And we are talking about 22 minutes,

1 or 20 minutes, excuse me?

2 A 20 minutes, yes, sir.

3 Q And you were asked by Doyle, one of
4 the RCMP officers:

5 "During that twenty minutes did you
6 observe Constable Graham, Chief Bakema
7 in conversation, ah, interactions with
8 the accused at all?

9 WOYCHUK: No, I don't recall. No, I
10 don't recall seeing that at all."

11 Okay. You never saw that. That's your best
12 evidence, in that 20 minutes you never saw
13 interaction between Bakema and the accused, or
14 Graham and the accused; would that be fair?

15 A That would be fair.

16 Q And you were further asked just the
17 next line:

18 "Were you directed at any time to put
19 a particular, um, time in your notes?
20 By anyone?

21 WOYCHUK: Not that I recall, but by
22 the, I don't know where that one time
23 came from, where he brought him to
24 me."

25 Later on in the next sentence:

1 "I can't explain that one."

2 And you were clear in the next couple
3 of lines that you were not directed to put that
4 time in. Do you see that, sir?

5 A Yes, I do, sir.

6 Q Did you see members -- perhaps, you
7 were asked -- of the Taman family arriving, sir?

8 A No, I did not see them arriving.

9 Q Then your last interview, sir, was
10 with Commission Counsel; is that correct?

11 A That's correct.

12 Q Mr. Commissioner, I don't believe this
13 has been filed, so I would ask that be filed as
14 the next exhibit. I note the two transcripts
15 were, I believe, but not the transcript of the
16 interview with Commission Counsel. I am fairly
17 confident that it hasn't been filed, fairly. I
18 ask that be filed.

19 THE COMMISSIONER: Yes.

20 THE CLERK: Exhibit 107.

21 THE COMMISSIONER: Do you have that?

22 THE WITNESS: I do have that, yes.

23 (EXHIBIT 107: Mr. Woychuk's interview
24 by Commission Counsel, T.4.b)

25

1 BY MR. WEINSTEIN:

2 Q There is nothing in your notes about
3 what you say Chief Bakema said, correct?

4 A That's correct.

5 Q There is nothing in your notes about
6 that?

7 A That's correct.

8 Q And you can't give an explanation for
9 that, as you told Commission Counsel, correct?

10 A Can I ask what page you are looking
11 on, sir?

12 Q Well, say 40, I believe it is page 40.
13 You are asked -- let's go back to 34, page 34,
14 question -- and you are being examined by
15 Mr. Clifford. Do you see page 34, sir?

16 A Yes, I do.

17 Q "Do you have any explanation at
18 all that you can provide for the
19 absence of anything in your notes
20 about what Chief Bakema said at the
21 scene to you about Harvey-Zenk?"

22 And your answer:

23 "No, I don't."

24 Do you see that, sir?

25 A I'm just looking here.

1 Q Top of the page 34.

2 A Yes, I see that.

3 Q Yes. Now, Mr. Paciocco, in a very
4 thorough examination about your narratives, and
5 I'm not going to go through that, you know where
6 he showed you, by the time when this was done, and
7 the next day, the following day, and all of that.
8 Do you remember that examination --

9 A Yes.

10 Q -- by Mr. Paciocco? Now, I will have
11 you turn to page 48, again, in the Commission
12 interview? You have it with me?

13 A Yes, I do.

14 Q Top of page 48:

15 Mr. Clifford: Also noticing that when
16 he was walking into the office, he
17 appeared to be unsteady on his feet?"

18 A That's correct.

19 Q You did not include these
20 observations in your initial draft or
21 drafts of your incident narrative
22 report?

23 A That's correct.

24 Q And they are not included in your
25 duty-book notes?

1 A No. The observations of odour of
2 liquor is not, and is not unsteady of
3 his feet."

4 That makes no sense.

5 "Q Can you give an explanation for
6 how these pieces of information are in
7 the incident narrative report?"

8 And your answer:

9 "I don't have an explanation on why
10 that was added. I guess I really
11 don't have an explanation why I added
12 them, or if I were just told to add,
13 to work on my narrative. Just looking
14 at this, I don't know where the sticky
15 note came from."

16 Let me just stop you there for a second. In the
17 past, when Carter is the reader, he has told you
18 in the past that your narrative needs some work,
19 correct?

20 A Correct.

21 Q So let's go back again.

22 "I guess I really don't have an
23 explanation why I added them or if I
24 was told to add, to work on my
25 narrative. Just looking at this, I

1 don't know where the sticky note came
2 from."

3 Which is in quotes.

4 "Notes and narrative are different."

5 So if it was sent back to me from

6 whoever reviewed the file to..."

7 And then you are interrupted.

8 "Would this be a common occurrence,

9 somebody might review it, your

10 incident narrative?

11 A They review it and if there is

12 inconsistency, then we would get

13 something back and be told to correct

14 the errors, yes, that would be

15 common."

16 And it would be common being done by the reader,

17 correct?

18 A Correct.

19 Q And if Sergeant Carter was a reader on

20 this particular file, you are getting

21 instructions, and I'm not implying anything is

22 wrong, you are getting instructions from Carter.

23 And it is obvious from your answer, sir, about

24 your narratives, correct?

25 A Correct.

1 Q I'm sorry again for jumping. He is
2 at, he being Zenk, is at the scene for you thought
3 too long a time; is that correct?

4 A Correct.

5 Q No question in your mind about that.
6 You had the concerns, correct?

7 A Correct, with the direction I was
8 given.

9 Q Yeah. Wait until Carter gets to the
10 office, right?

11 A Right.

12 Q Okay. You were concerned about the
13 lengthy period of time that you thought, correct?

14 A Correct.

15 Q Quite the opposite of someone being
16 whisked away from the accident scene; correct?

17 A Correct.

18 Q I mean, he certainly was not rushed
19 away from the accident scene, he was not whisked
20 away from the accident scene, quite the opposite,
21 in your opinion he stayed at the accident scene
22 too long; correct?

23 A For under the circumstances, correct.

24 Q I'm talking the circumstances of this
25 case. Were you not concerned that he stayed at

1 the accident scene too long? Correct?

2 A Correct.

3 Q The opposite of being rushed away.

4 If I may just have a moment to review?

5 You've already said, sir, in fairness,

6 there was nothing you deliberately did -- forget

7 about what people may think, I'm asking you --

8 there is nothing that you did to deliberately give

9 Harveymordenzenk a break, was there?

10 A That's correct.

11 Q And let me say to you, when you added

12 things, changed your narratives, it appears

13 perhaps on the instructions of Carter -- and I'm

14 not alleging that, I'm suggesting -- were you

15 trying to manipulate the case one way or the

16 other?

17 A No, sir.

18 Q Okay. You were a fairly young

19 policeman on the scene?

20 A Yes, I was.

21 Q Experience wise, correct?

22 A Yes.

23 Q You weren't probably the best person

24 there, would you be, to know if a charter breach

25 had happened or not?

1 A Probably not the best.

2 Q Pardon me?

3 A Probably not the best.

4 Q Yeah. You didn't know whether a
5 charter breach had occurred or not, correct?

6 A At the time I felt that it was a
7 length of time.

8 Q Yeah. But did you know what part of
9 the charter had been breached?

10 A I guess I believed it was an unlawful
11 detention, I thought.

12 Q This is the first time I'm hearing
13 that. It is in none of your interviews.

14 A I believe that I have said that
15 before, sir.

16 Q An unlawful detention, okay. Now, did
17 someone after this day, next day, couple of days
18 later, after the file is being put together,
19 someone must have spoken to you about a possible
20 charter breach? Surely, someone must have spoken
21 to you about that; correct?

22 A I don't recall, sir.

23 Q Pardon me?

24 A I don't recall that.

25 Q Are you saying no one talked to you

1 about a possible charter breach?

2 A I don't recall if they did. There was
3 a lot of conversations.

4 Q I'm not talking about lots of
5 conversations about other things, I'm talking
6 about conversations about charter breaches. You
7 don't recall anyone talking to you about that?

8 A No.

9 Q Nothing specific? You don't recall
10 Carter speaking to you about that, Sergeant
11 Carter; correct?

12 A Correct.

13 Q You don't remember Maloney speaking to
14 you about that; correct?

15 A Correct.

16 MR. WEINSTEIN: My assistant tells me
17 I have no further questions. Thank you,
18 Mr. Commissioner.

19 THE COMMISSIONER: Thank you.

20 MR. WEINSTEIN: Thank you,
21 Mr. Woychuk -- Constable Woychuk I should say.

22 THE COMMISSIONER: Mr. Prober?

23 MR. PROBER: Would this be an
24 appropriate time to take the afternoon recess?

25 THE COMMISSIONER: Yes, it is an

1 appropriate time. I take it you can read the
2 other side, can you?

3 MR. PROBER: I do, yes, only too well.

4 THE COMMISSIONER: 15 minutes.

5 THE CLERK: All rise. This Commission
6 of inquiry is in recess.

7 (Proceedings recessed at 3:19 p.m. and
8 reconvened at 3:35 p.m.)

9 THE CLERK: All rise, please. This
10 Commission of Inquiry is now reopened. Please be
11 seated.

12 MR. CLIFFORD: Good afternoon,
13 Mr. Commissioner. Sir, prior to the next counsel
14 cross-examining, I thought this might be an
15 opportune time to raise the issue of Ken Graham's
16 exclusion with you.

17 THE COMMISSIONER: Yes.

18 MR. CLIFFORD: We have had an
19 opportunity to speak with counsel on behalf of Ken
20 Graham, and his name is Grant Stefanson, and he is
21 present. What has been determined, subject to
22 your approval and the input of other counsel is
23 the following, sir. As you know, Ken Graham was
24 called as a witness by the Commission and was,
25 therefore, subject to the original exclusion

1 order. As with all witnesses, when they complete
2 their testimony, they are still subject to that
3 exclusion order, but have some discretion to
4 remain in the hearing room. However, that
5 discretion would allow them to be asked to remain
6 outside pursuant to the order in certain
7 circumstances.

8 In light of the statement provided by
9 Mr. Maloney, or Constable Maloney, we are going to
10 suggest that Ken Graham be subject to the ongoing
11 witness exclusion order.

12 With respect to the allegation that is
13 raised by Constable Maloney, his counsel will be
14 present during Constable Maloney's testimony to
15 hear what Constable Maloney has to say, and also
16 to relay it to Ken Graham, so as to give him the
17 opportunity to respond, either through a statement
18 or perhaps even by testifying, to respond to what
19 Constable Maloney is saying.

20 I understand, from speaking with Ken
21 Graham's counsel, that he is content with this
22 proposal. And perhaps I will give him an
23 opportunity, with your permission, to address the
24 Commission.

25 THE COMMISSIONER: He is here?

1 MR. CLIFFORD: He is, yes.

2 THE COMMISSIONER: Do other counsel
3 have any objection to that procedure, which I
4 think is a proper one?

5 MR. McDONALD: None, Mr. Commissioner.

6 MR. ZAZELENCHUK: None.

7 MR. McFETRIDGE: No objection.

8 MR. JACK: No.

9 MR. STEFANSON: Good afternoon,
10 Mr. Commissioner, Stefanson, first initial G. for
11 the record. I appear on behalf of Mr. Ken Graham.
12 I did have an opportunity to consult him about the
13 matters that arose earlier today, and I am in a
14 position to act on his behalf at this inquiry.

15 I'm also in a position to relay any
16 evidence that needs to be relayed to him in terms
17 of the testimony of Constable Maloney, and I'm
18 prepared to handle it along the lines that my
19 friend has suggested.

20 So what we are proposing is just, as
21 opposed to dealing with it as a separate exclusion
22 motion or a separate exclusion order, we can just
23 have it dealt with under the overall exclusion,
24 which would allow this Commission to exclude
25 evidence -- sorry -- exclude witnesses, not

1 exclude evidence, take as much evidence into
2 account, I assume, as you wish. But in terms of
3 witnesses, the standard exclusion would apply.
4 And because of what had happened earlier today, we
5 would assume that that would continue to apply to
6 Mr. Graham, especially during the testimony of
7 Constable Maloney.

8 If it turns out that subsequent to the
9 testimony of Constable Maloney, Constable Graham
10 wishes to re-attend, we can agree that we would
11 simply provide my friend with notice of his desire
12 to re-attend at the hearing. And if he determined
13 that there was any further relief necessary at
14 that time, I suppose the issue could be dealt with
15 at that point in time.

16 THE COMMISSIONER: That's fine. Thank
17 you.

18 MR. STEFANSON: Subject to that, I
19 just then, of course, reserve the right to make
20 the appropriate submissions or engage in the
21 examinations once Constable Maloney is called to
22 the stand. In the meantime, I will be part of the
23 hearing.

24 THE COMMISSIONER: I take it you will
25 want to cross-examine Constable Maloney if this

1 evidence is raised?

2 MR. STEFANSON: Yes.

3 THE COMMISSIONER: If this evidence is
4 raised.

5 MR. STEFANSON: Absolutely, assuming
6 that is not raised, there may be no need for that,
7 or perhaps a statement by reply or perhaps
8 rebuttal evidence, I guess I reserve the right to
9 any those.

10 THE COMMISSIONER: Thank you.

11 MR. CLIFFORD: Mr. Commissioner, just
12 to advise you, it was our intention at the
13 completion of the cross-examination of Constable
14 Woychuk to commence the evidence of Constable
15 Maloney, if time permits today.

16 THE COMMISSIONER: Thank you.

17 Mr. Prober.

18 MR. PROBER: Thank you.

19 THE COMMISSIONER: I'm going to ask
20 counsel, I won't need to ask Mr. Prober because
21 his voice is loud enough, but if other counsel
22 could speak into the microphone. There have been
23 complaints that they haven't been able to hear at
24 the back of the room.

25 MR. PACIOCCO: I think the issue has

1 to do with the microphone. There is a large
2 button on the microphone. If you lay your binder
3 on it, it cuts out the microphone. And I think
4 what has been happening is some counsel have been
5 putting their material on it. So if counsel are
6 aware that that's what's occurring, I think we are
7 likely to prevent it.

8 MR. PROBER: Does the button have a
9 remote?

10 THE COMMISSIONER: Come on,
11 Mr. Prober. You can start and we will get on with
12 it. I think I would like to continue until 5:00
13 o'clock today to make up for the half an hour we
14 lost this morning, which I'm sure you, all counsel
15 were very busy in that half hour doing the things
16 that they would normally do at the end of the day.
17 Let's go.

18 MR. PROBER: Could I have Madam clerk
19 give the witness volume E-1, please?

20 THE CLERK: What tab number?

21 MR. PROBER: There is a number of tab
22 numbers. E.1.23, it looks like .e. You don't
23 have a volume with all of them in?

24 THE CLERK: I don't.

25 THE COMMISSIONER: She has them by

1 exhibits.

2 MR. PROBER: I don't even know if they
3 have been marked as an exhibit yet. You know
4 what, why don't I give -- have Madam clerk give
5 the witness my volume, and then I will, I can deal
6 with it from that point on.

7 THE COMMISSIONER: Which page is it?

8 MR. PROBER: It is 448 at the bottom
9 right.

10 Mr. Paciocco says they should go into
11 evidence, in any event, once they are referred to.
12 So that's fine. It is called "Notice of
13 Forfeiture to Alleged Offender." And the next
14 one, there is about five documents in a row there,
15 A.1.23.f is the next one, "Notice of Intention to
16 Seek Greater Punishment." You have got that?

17 THE WITNESS: Yes.

18 MR. PROBER: Sorry. The next one is
19 the E-1.23.g, which is a "Suspension
20 Disqualification." Do you have that one too?
21 Thank you.

22 And the next one is a "Notice of
23 Seizure and Impoundment of the Motor Vehicle,"
24 which would be E-1.23.h.

25 And the next one is -- well, we marked

1 the prisoner log sheet as exhibit 106.

2 And the next is the promise to appear,
3 which is found at E-1.23.j.

4 So if those could be placed in front
5 of the witness, that would be appreciated.

6 BY MR. PROBER:

7 Q Constable Woychuk, you should now have
8 before you, and you will be happy to know, as I am
9 sure everybody here will be, I do not intend to
10 take you through those documents in detail. I
11 just wanted to draw your attention to each of
12 them.

13 First of all, you have the Notice of
14 Forfeiture to Alleged Offender. Do you have that?

15 A Yes, I do.

16 Q All right. And that's dated
17 February 25th, '05, correct?

18 A Correct.

19 Q And then you have the Notice to Seek
20 Greater Punishment, which is also dated
21 February 25, '05, correct?

22 A I don't believe I have that one. I
23 have four documents here.

24 Q I think Madam clerk has it now. I
25 think that's what you have in your hand now, Madam

1 clerk? Sorry? You have it now?

2 A Yes, I do.

3 Q All right. So we follow the Notice of
4 Forfeiture to Alleged Offender, and then you have
5 got the Notice of Intention to Seek Greater
6 Punishment, dated February 25th, '05; correct?

7 A Correct.

8 Q And then you have got the Driver
9 Suspension and Temporary Licence form; correct?

10 A Correct.

11 Q Then you've got the Notice of Seizure
12 and Impoundment of Vehicle, all dated
13 February 25th, '05; correct?

14 A Correct.

15 Q Then you've got the prisoner log
16 sheet, I think they placed that in front of you,
17 but that's dated the 25th. And then finally the
18 Promise to Appear, which outlines the charges that
19 are going to be laid, impaired driving cause death
20 and so on. Do you see that?

21 A Yes, I do.

22 Q All right. Those are all given to
23 Derek Harvey-Zenk the day of the accident,
24 February 25th, '05; correct?

25 A Correct.

1 Q Is there any doubt in your mind that
2 he was going to be charged with those offences
3 listed in the Promise to Appear?

4 A At which time?

5 Q Well, the charges come later, but is
6 there any doubt in your mind that those charges
7 were going to be eventually laid?

8 A During which time, during the
9 occurrence, I'm referring to at --

10 Q What is that?

11 A At which time are you speaking about,
12 during the day or --

13 Q No, no, no. At some point, not
14 necessarily that day, but are you satisfied, when
15 you see all of these documents, including the
16 notice, the Promise to Appear, notice to a person
17 not yet charged outlining the charges, are you
18 satisfied that at some point, either later in the
19 day or in the next few days, he is going to be
20 charged with those offences?

21 A Yes.

22 Q Yes. Now, perhaps it would be easy
23 for Madam clerk at this point to mark those
24 documents as an exhibit. Now, do you want them
25 marked separately, I take it, Mr. Paciocco? Fair

1 enough. So the Notice of Forfeiture to Alleged
2 Offenders would be the next exhibit.

3 THE CLERK: Which is 108.

4 (EXHIBIT 108: E-1.23.e Notice of
5 Forfeiture to Alleged Offenders)

6 MR. PROBER: The Notice of Intention
7 to Seek Greater Punishment would be the next
8 exhibit, please.

9 THE CLERK: 109.

10 (EXHIBIT 109: E-1.23.f, Notice of
11 Intention to Seek Greater Punishment)

12 MR. PROBER: The Suspension or
13 Disqualification document, and it contains the
14 other, temporary licence and so on, next exhibit,
15 please?

16 THE WITNESS: Number 110.

17 (EXHIBIT 110: E-1.23.g, Suspension or
18 Disqualification for 24 hours)

19 MR. PROBER: Thank you. The Notice of
20 Seizure and Impoundment of Vehicle, the next
21 exhibit, please?

22 THE CLERK: Exhibit 111.

23 (EXHIBIT 111: E-1.23.h, Notice of
24 Seizure and Impoundment of Vehicle)

25 MR. PROBER: Thank you. And finally

1 the Promise to Appear.

2 THE CLERK: That's already been
3 marked.

4 MR. PROBER: That was marked earlier
5 on?

6 THE CLERK: I believe that was Exhibit
7 number 5.

8 MR. PROBER: Fair enough. Thank you.

9 BY MR. PROBER:

10 Q It is after February 25th that the
11 changes are made to the incident report, and if
12 there were changes to your notes, to bolster the
13 impaired case, correct? The changes are made
14 after February 25th?

15 A That's correct.

16 Q Right. And without the odour of
17 alcohol, albeit slight, without the unsteadiness
18 on his feet, in the absence of breathalyzer
19 readings, what kind of impaired case do you have?
20 Not a very good one, right?

21 A No.

22 Q No. Combined with a potential charter
23 violation, you have really got a weak case; right?

24 A Yes.

25 Q Right. Now, when you were making the

1 changes to the narrative, subsequent to
2 February 25th, whether you were making them on
3 your own initiative or whether you were making
4 them at the suggestion of Sergeant Carter, I don't
5 care for the purpose of the question. Were you
6 focusing on what I would call this professorial
7 approach, with all due respect to my friend, that
8 you were trying to include signs of impairment to
9 bolster the case, but at the same time not make
10 them too strong so as not to prejudice any charter
11 issue? Was that in the forefront of your mind?

12 A No, I don't recall feeling that way.

13 Q No. Was that something that Sergeant
14 Carter expressed to you, that you were going to
15 take the sophisticated approach, put in some signs
16 of impairment, but not such that they would impair
17 any charter issue?

18 A No, sir, I don't recall that being
19 said to me.

20 Q No. As you sit here today, today,
21 right now, do you have an independent recollection
22 of any signs of impairment exhibited by Derek
23 Harvey-Zenk?

24 A I recall getting an odour, but I don't
25 recall at what point.

1 Q All right. So that would be the only
2 independent, only recollection you have, an
3 independent recollection, sitting here today, you
4 recall a slight odour of alcohol, is that it?

5 A That's correct.

6 Q Okay. Fair enough. I would suggest
7 to you, though, and this arises from
8 Mr. Weinstein's questions, which seem to leave the
9 impression that at some point you did form the
10 opinion that Derek Harvey-Zenk was impaired. But
11 let me suggest to you that you do not have any
12 independent recollection, as you sit here today,
13 of forming such an opinion. Correct?

14 A Correct.

15 Q And you could not disagree with my
16 suggestion then that you never came to such an
17 opinion, or at least you don't recall coming to
18 such an opinion; right?

19 A I don't recall.

20 Q No. Now, you seem to readily agree,
21 and I'm not so sure that you understood what was
22 being put to you, you seemed this morning to
23 readily agree to a suggestion by Commission
24 Counsel that originally there was no reference to
25 a slight odour of alcohol in your notes. And that

1 you -- and that somehow that came into your notes
2 after. Did you agree to that suggestion?

3 A I don't recall when that went in, I
4 don't --

5 Q So you are not admitting, are you, or
6 maybe you are, that you added that to your notes
7 after, at some point later when the notes had
8 already been done, because there was that space
9 there?

10 A I don't --

11 Q Are you admitting that?

12 A No, I'm not.

13 Q No. Because if you really wanted to
14 make a good job on your notes, there is a lot of
15 spaces in your notes; right?

16 A Yeah.

17 Q That was pointed out by Commission
18 Count, correct?

19 A Correct.

20 Q You could have, you had lots of room
21 to add that he was unsteady, but that's not in
22 your notes, is it?

23 A No, it is not.

24 Q There was lots of room to add slurred
25 speech, but that's not in your notes, is it?

1 A No, it is not.

2 Q And also you could have put in
3 bloodshot eyes as well, but that's not in your
4 notes, is it?

5 A No, it is not.

6 Q Was that left out on purpose, all of
7 those things?

8 A No, sir.

9 Q No. They weren't there, were they?

10 A Not that I recall, no.

11 Q No. But you could have, if you really
12 wanted to do a good job on your notes, you could
13 have added that, there was lots of room, but you
14 didn't; right?

15 A Yes.

16 Q Now, a minor point; you were
17 questioned on whether you had, or considered
18 administering a roadside breath test, if you had
19 an ASD device with you. Do you remember that?

20 A Yes.

21 Q Yeah. But you know -- and then there
22 was a suggestion by I think Commission Counsel,
23 well, did you think about going to get one? Do
24 you remember that suggestion?

25 A Yes.

1 Q Right. And you were going to say
2 something, and let me suggest to you what you were
3 going to say, that is that you know that the ASD
4 device has to be administered forthwith; right?

5 A That's the proper, yes.

6 Q Right. And if there is a time lapse,
7 even of 15 minutes, you are going to have a
8 problem; right?

9 A I believe so with case law, yes.

10 Q Let me give you a example of one of
11 the signs of impairment that makes its way into
12 the material at some later point in time, and that
13 is the issue of his -- Derek Harvey-Zenk being
14 unsteady on his feet. You know that's in the
15 narrative. I don't need to take you there, do I?

16 A No, you don't.

17 Q It seems to me we have four choices,
18 if we are looking at the issue of his gait or his
19 walk. One is there is nothing unusual about his
20 walk because there is nothing in your notes;
21 right?

22 A That's correct.

23 Q A second one is, as we see in the
24 narrative, that he is unsteady; correct?

25 A Correct.

1 Q And the third one is, in your
2 statement to the RCMP which is found at page 635,
3 that he was stumbling a bit?

4 A Yes.

5 Q Right. And then finally, at page 26
6 of the Commission interview, you use the words
7 "staggering," the fourth choice. So we have got
8 nothing unusual, then we have got unsteady, then
9 we have got stumbling a bit, and then we have
10 staggering. How do we know which one to choose?
11 I take it we don't, do we?

12 A No.

13 Q You don't have an independent
14 recollection of which one is applicable; correct?

15 A No, I don't.

16 Q And whichever one we choose, though,
17 say it is unsteady, say it is stumbling, and I
18 think Mr. Weinstein made this point, but I'm not
19 sure, you would agree that this could be
20 attributed to any injury he sustained as a result
21 of the accident, if he is unsteady on his feet,
22 right?

23 A Yes.

24 Q In fact, did you know at the time that
25 he had complained to one of the ambulance, or one

1 of the paramedics, of an injury to his, I think
2 left leg?

3 A No, I did not know that.

4 Q And then twice, I believe at least
5 twice, both during the Commission interview at
6 page 16, and during the RCMP statement at pages
7 616 and 618, I don't know that you need to go
8 there, but you referred to what you perceived as
9 Derek Harvey-Zenk being in shock; correct?

10 A Correct.

11 MR. PROBER: Thank you. Those are my
12 questions.

13 BY MS. DIXON:

14 Q Thank you. Constable, Chief Carter's
15 notes and his incident narrative both record that
16 a blood demand was made of Mr. Zenk on the morning
17 of February 25th. Are you aware of that?

18 A Yes, I am.

19 THE COMMISSIONER: I'm having
20 difficulty hearing you, so I'm sure that everybody
21 in the back of the room is as well. Did you press
22 the button?

23 MS. DIXON: I may have committed a
24 button violation, but I don't think so.

25

1 BY MS. DIXON:

2 Q My question was, Chief Carter's notes
3 and his incident narrative both record that a
4 blood demand was made of Mr. Zenk on the morning
5 of February 25th. And I believe the witness told
6 me that he was aware of that. Correct?

7 A Yes.

8 Q When did you become aware of that?

9 A It wasn't long ago.

10 Q Was it something that was discussed
11 with Chief Carter?

12 A It was something I heard in the
13 office. I don't know, just talk I guess.

14 Q Are you saying you don't recall
15 whether you discussed it with Chief Carter?

16 A I didn't discuss it with Chief Carter.

17 Q Do you know who you discussed it with?

18 A I don't know, I think it was just
19 comments that were made.

20 Q So it was something that was discussed
21 before you gave your testimony yesterday?

22 A Yes.

23 Q And you can't say who you discussed it
24 with?

25 A I don't know. I might have heard it

1 from Norm, but it wasn't a discussion about it,
2 but I know that that was one of things that had
3 come up.

4 Q Okay. And when it came up, did you
5 settle on the fact that that was an error?

6 A I believe that I indicated it is an
7 error.

8 Q As a result of that discussion? As a
9 result of the recent discussion?

10 A Yes.

11 Q Now, you will agree with me that
12 ordinarily only one demand is made; correct?

13 A That's correct.

14 Q And in this case there were two.

15 A There was a breath demand and a
16 refusal.

17 Q There was an initial demand, and then
18 at some later point a subsequent demand, a second
19 demand?

20 A Yes.

21 Q Correct?

22 A Correct.

23 Q If I were to suggest to you that
24 that's because it was realized that the first
25 demand had been for a blood sample, would you

1 agree with me?

2 A No, I don't recall that being the
3 case.

4 Q But it is certainly possible?

5 A I recall him doing the breath demand
6 and the refusal for breath.

7 MS. DIXON: Those are my questions.
8 Thank you.

9 THE COMMISSIONER: Thank you.

10 BY MR. McFETRIDGE:

11 Q If I could take you, Constable
12 Woychuk, to exhibit 88? Mr. Commissioner, this is
13 involving E.2.25.a, it is his notes. And just at
14 the first page of your notes, at page 604. I'm
15 not sure if anybody asked you this question, but
16 there has been reference, there appears to have
17 been stickies attached to the front page of your
18 notes?

19 A Yes, I believe that was a note that
20 was attached to the file.

21 Q Is that just one sticky, or was it
22 several stickies? I just have a photocopy so it
23 is not clear to me.

24 A I believe it was just one. I'm not
25 certain on that, sir.

1 Q And I take it the sticky that was
2 attached has the wording "no mention of," sorry,
3 "of alcohol" was the writing on there; is that
4 correct?

5 A That's correct.

6 Q And then "notes and narrative are
7 different," that was all on one sticky?

8 A I believe so.

9 Q And is it your evidence that the
10 writing on those stickies is not your writing?

11 A That's correct.

12 Q Is that the writing of Sergeant
13 Carter, do you know?

14 A I'm not sure whose writing. It could
15 be.

16 Q Would it be -- would that be a normal
17 way that Sergeant Carter, as the reader, would be
18 alerting you of possible deficiencies in your
19 notes in the past?

20 A Yes, it would.

21 Q Had he used that method before?

22 A The sticky notes?

23 Q Yes?

24 A Yes.

25 Q Now, in respect to your training at

1 Brandon, with the Brandon Police Service, I take
2 it part of your training would be how you are to
3 deal with a person who is arrested or detained,
4 and that person's rights under the charter; is
5 that correct?

6 A Yes.

7 Q And you have made some mention in your
8 evidence that you felt there may have been a
9 charter violation because of the time that
10 Mr. Harvey-Zenk was retained, or detained in your
11 vehicle. Is that correct?

12 A That's correct.

13 Q And is the section in the charter that
14 you are referencing or thinking about, is that
15 section 10? Is that the section that you are
16 dealing with or thinking about?

17 A That's correct, yes.

18 Q It deals with arrest and detention.

19 A Yes.

20 Q And under clause A of that section,
21 everyone has the right on an arrest or a detention
22 to be informed of the reason for that person's
23 detention by a police officer; is that correct?

24 A That's correct.

25 Q And you were aware of that?

1 A Yes.

2 Q When -- in your mind, when
3 Mr. Harvey-Zenk was in your police vehicle, was he
4 being detained?

5 A No, sir.

6 Q He was not being detained?

7 A I don't -- the direction I had was to
8 keep him there until Sergeant Carter got there, so
9 I guess it would be a detention.

10 Q Do you know when -- and you indicated
11 that he was brought up to the vehicle by Chief
12 Bakema, and it was Chief Bakema who placed him
13 into the vehicle; is that correct?

14 A Yes.

15 Q And you were standing beside Chief
16 Bakema when he placed him into the vehicle?

17 A Yes.

18 Q Did Chief Bakema say anything to
19 Mr. Harvey-Zenk as to why he was being placed in
20 the vehicle, in your presence?

21 A Not that I -- not that I recall.

22 Q And at any time while he was in the
23 vehicle, did you indicate to Mr. Harvey-Zenk as to
24 why he was in the vehicle?

25 A I believe I had told him at one time

1 that ambulances were coming and that he would get
2 medical attention, but other than that, no.

3 Q And after he had received medical
4 attention from the paramedic, Mr. Rosser, did you
5 advise Mr. Harvey-Zenk that he was free to go?

6 A No, I didn't.

7 Q In your opinion, was he free to go and
8 leave the vehicle if he wanted?

9 A No, because I was told to take him to
10 the station after that.

11 Q So, clearly, it was your understanding
12 that as part of the investigation of this accident
13 that it was necessary to take -- first of all, I
14 think you were told, that you were told to keep
15 him in the vehicle to wait because Sergeant Carter
16 may be coming to the scene; is that correct?

17 A Yes.

18 Q So, in your belief, you were told to
19 keep -- one of the reasons to keep him in the
20 vehicle, one was because he may need medical
21 attention, but the second reason was that you had
22 been told by Chief Bakema that Sergeant Carter was
23 going to attend; is that correct?

24 A That's correct.

25 Q And were you told to keep

1 Mr. Harvey-Zenk in the vehicle; is that correct?

2 A Correct.

3 Q Did you advise Mr. Harvey-Zenk of
4 that, that you were told to keep him in the
5 vehicle because you were waiting to have Sergeant
6 Carter arrive?

7 A No, I didn't.

8 Q Now, you were eventually told by Chief
9 Bakema that Sergeant Carter was not going to be
10 coming, but you were to take Mr. Harvey-Zenk to
11 the police station?

12 A Yes.

13 Q When did he tell you that? Was that
14 outside the vehicle, or were you standing outside
15 the vehicle, or did he telephone you, or how did
16 that take place?

17 A I don't recall how that took place, to
18 be honest. It was either at the vehicle or over
19 the radio or a telephone.

20 Q Do you have any recollection of Chief
21 Bakema telling Mr. Harvey-Zenk that he was going
22 to be taken to the police station, and the reason
23 why he was going to be taken to the police
24 station?

25 A No, I don't.

1 Q Did you ever tell Mr. Harvey-Zenk,
2 when you started to take him to the police
3 station, why he was being taken to the police
4 station?

5 A I don't believe I did.

6 Q In your mind, was that a violation of
7 your obligations under section 10(a) of the
8 charter?

9 A Looking back on it now, yeah.

10 Q And at any time, did you tell
11 Mr. Harvey-Zenk that he was entitled to retain and
12 instruct counsel?

13 A No, I didn't.

14 MR. McFETRIDGE: Those are all of the
15 questions I have.

16 THE COMMISSIONER: Do you have any
17 doubt in your mind that, had he try to leave, you
18 would not let him go?

19 THE WITNESS: Pardon me, sir?

20 THE COMMISSIONER: If he had tried to
21 leave?

22 THE WITNESS: I think that at that
23 point I would have spoken to Chief Bakema, because
24 of what I was given for direction.

25 THE COMMISSIONER: You would have

1 detained him. You wouldn't have let him go, would
2 you?

3 THE WITNESS: Probably not.

4 THE COMMISSIONER: So he was under
5 detention?

6 THE WITNESS: Right. Yes.

7 THE COMMISSIONER: All right.

8 MR. McDONALD: I think I'm the last
9 one, am I not, Mr. Commissioner?

10 THE COMMISSIONER: You are.

11 MR. McDONALD: Thank you. Thanks to
12 Mr. Prober and to Mr. Weinstein, hopefully I will
13 be reasonably brief. I just have a few minor
14 things I would like to clear up first.

15 BY MR. McDONALD:

16 Q You will recall, Constable Woychuk,
17 Commission Counsel asking you this morning about
18 your duties when you are investigating an impaired
19 driving charge. You will recall that?

20 A Yes.

21 Q And he directed you to one of the
22 documents that is part of the disclosure in this
23 case, which is the policies and procedures manual
24 of the East St. Paul Police Service?

25 A Yes.

1 Q And he directed you, in particular, to
2 page 2577. Do you recall that?

3 A I do.

4 Q And there he listed what he described
5 as to be several duties imposed upon a police
6 officer who is conducting an impaired driving
7 investigation. Do you recall that?

8 A Yes.

9 Q Would you tell Mr. Commissioner
10 whether, as far as you were concerned, you were
11 conducting an impaired driving investigation at
12 the time?

13 A No, I was not, sir.

14 Q So would you agree with me then, sir,
15 if you were not conducting an impaired driving
16 investigation and were not contemplating such an
17 investigation, those duties do not exist?

18 A That's correct.

19 Q Thank you. Now, Mr. Weinstein asked
20 you some questions along the following line, and
21 I'm just going to ask you one question, and it is
22 about what your intentions were when you made
23 revisions to your MPICS narrative. Do you recall
24 that?

25 A I recall just to be thorough with it.

1 Q All right. I will just take you back.
2 You made your original MPICS report on
3 February 25, the night, when you returned to night
4 shift following the accident?

5 A Yes.

6 Q You made some revisions on the 26th
7 and you made some revisions on the 27th. Do you
8 recall that evidence?

9 A Yes, I do, sir.

10 Q And I want to ask you this: Did you
11 understate, in the revision to the report made on
12 February 27th, your observations about alcohol and
13 Mr. Harveyordenzenk?

14 A Did I understate?

15 Q Did you understate your observations
16 about alcohol, or did you put in there what you
17 recall and what you felt to be complete?

18 A I put in what I recalled.

19 Q And what you felt to be complete?

20 A Yes, sir.

21 Q Thank you. Mr. Paciocco also asked
22 you this morning what you felt were your duties as
23 a police officer who was involved in the
24 investigation of a fatal accident. Do you recall
25 questions along those lines?

1 A Yes, I do.

2 Q Would you tell the Commissioner
3 whether at the time you felt your role was as
4 investigator of a fatal accident, and if not, what
5 did you feel your role to be?

6 A No, I did not feel that my role was to
7 be the investigator.

8 Q What was your role, from your
9 perspective?

10 A To do traffic, monitor traffic, and to
11 wait for Sergeant Carter.

12 Q Thank you. Now, you were also asked
13 questions, and I didn't make a note of who it was,
14 not that it matters much, but one of the lawyers
15 who has already questioned you has asked you about
16 whether you received direction from Sergeant
17 Carter, on February 26th or 27th, to make changes
18 to your MPICS report. Do you recall that, your
19 MPICS narrative?

20 A Yes, sir, I recall that question.

21 Q Do you have any independent
22 recollection of getting any instructions from
23 Sergeant Carter, on either February 26th or
24 February 27th, to change your narrative?

25 A No, sir.

1 Q Thank you. Now, you have been asked
2 numerous questions as well, Constable, about your
3 notes. You will recall that?

4 A Yes.

5 Q And in particular, there is a
6 reference in volume E-2 at page 604 at 7:42 a.m.
7 which relates to the entry with Mr. Mordenzenk's
8 full name. Do you recall that?

9 A Yes.

10 Q And if I understand it correctly,
11 sir -- just tell me, when did you make your notes?

12 A When I came back in for my next shift.

13 Q So that would be how many hours after
14 you were at the scene?

15 A Roughly 14.

16 Q So you made no notes prior to the
17 commencement of your next shift following the
18 accident, which would be the evening of the 25th
19 of February?

20 A That's correct.

21 Q And what time did you come on shift in
22 the evening?

23 A I was scheduled for a 9:00 p.m. shift.

24 Q So even though your note reads
25 7:42 a.m. and contains the complete name of

1 Mr. Mordenzenk, that note was not made until some
2 14 hours later; correct?

3 A Yes.

4 Q Did you find out by that time who the
5 Winnipeg Police Officer was that was involved in
6 the accident?

7 A I knew the name, yes.

8 Q Thank you. Now, Mr. Zazelenchuk asked
9 you some questions and, frankly, expressed some
10 incredulity about the fact that you could not
11 recall why you were in and out of your vehicle so
12 many times at the accident scene. Do you recall
13 that?

14 A Yes, I do.

15 Q Do you remember what the weather
16 conditions were, sir?

17 A I believe it was cold.

18 Q Do you have any recollection of what
19 the temperature was?

20 A Not -- not -- I remember it was cold,
21 I don't recall the exact temperature.

22 Q Well, one of the documents in evidence
23 is an environment report, which appears at page
24 109 of the disclosure, and it suggests that the
25 temperature was roughly minus 20 degrees

1 centigrade. Can you live with that?

2 A Not for long.

3 Q But you can accept that?

4 A Yes.

5 Q I don't think any of us can live it
6 for long if we are outside all the time, but does
7 that in any way, sir, give you any reason for
8 being in and out of your vehicle? Does that
9 assist you in addressing that issue?

10 A Yes, that would be a good reason why I
11 was in and out.

12 Q Thank you. Now, Commission Counsel
13 has pointed out that some people may think that
14 your conduct, be it actions or inaction, in this
15 case, may expose you to censure or criticism. You
16 are aware of that?

17 A Yes.

18 Q I want to outline to you certain areas
19 that have been covered in detail by counsel to
20 afford you the opportunity to make any comments
21 you may wish to make to this Commission in respect
22 to the various areas of criticism. Do you
23 understand what I'm going to do now?

24 A Yes, sir.

25 Q All right. And I'm going to take you

1 through them point by point.

2 It has been suggested that you may be
3 vulnerable to criticism because you received
4 information that Mr. Harvey-Zenk had consumed
5 alcohol, but did not relay it to your superior
6 officer, Chief Bakema, who was on the site.

7 Firstly, do you remember whether you
8 told Chief Bakema about the information that you
9 received from Mr. Rosser?

10 A No, I don't.

11 Q All right. If you didn't, is there
12 any reason why you wouldn't have, that you can
13 think of?

14 A Either that I hadn't spoken to him, or
15 because he had already relayed some more
16 information to me.

17 Q That being Chief Bakema had already
18 relayed information of impairment to you?

19 A That's correct.

20 Q So, Bakema already knew about the fact
21 that Mr. Zenk may be impaired or was impaired?

22 A Yes, sir.

23 Q All right. It has been suggested that
24 you may be subject to criticism in that you
25 received information that Mr. Harvey-Zenk had

1 consumed alcohol or was impaired, but then failed
2 to make either a demand for a roadside screening
3 test or a breathalyzer test.

4 Now, we have already talked about the
5 roadside screening test, the approved testing
6 device; right?

7 A That's correct.

8 Q And your reason for not using that or
9 following that route, sir, again, please?

10 A That I don't think that I can use an
11 ASD for a collision. They need to be, you need to
12 find them operating or in care and control of a
13 vehicle.

14 Q Before you can administer a roadside
15 screening test, the code requirements are such
16 that you must find the person either driving an
17 automobile, or in care and control of an
18 automobile. Is that your understanding?

19 A Yes, it is.

20 Q And it must be made forthwith, as you
21 have already said?

22 A That's correct.

23 Q And did those conditions exist upon
24 your arrival at the scene, sir?

25 A No, they didn't.

1 Q What about a breathalyzer test, why do
2 you feel you ought not to be subject to criticism
3 for not asking for a breathalyzer test at the
4 scene?

5 A I didn't form an opinion of
6 impairment.

7 Q As I understand the law again, sir,
8 the code, and forgive me, I'm not a criminal
9 lawyer, if I misspeak I will be corrected by many
10 people in the room who are indeed experts on the
11 subject. As I understand it, you cannot make a
12 demand, you have no lawful right to make a demand
13 for a breathalyzer test unless you have reasonable
14 and probable grounds to believe that the subject
15 in question has committed the offence of impaired
16 driving. Is that correct?

17 A That's correct, sir.

18 Q Did you have that basis or
19 justification, sir, at the scene, to make such a
20 demand?

21 A No, I did not.

22 Q Thank you. There has been some
23 suggestion that you may be open to criticism in
24 that you held Mr. Harvey-Zenk in the back of the
25 police vehicle without providing him with any

1 right to counsel warnings. Can you give this
2 Commission an explanation as to why you did what
3 you did?

4 A I was directed to do that by the Chief
5 of Police at the time, who I believed would give
6 me proper direction.

7 Q And were you following orders?

8 A I was following orders.

9 Q Even though you believed it not
10 necessarily to be appropriate?

11 A That's correct.

12 Q It has been suggested, sir, that you
13 may be subject to some criticism in that either at
14 the scene or en route, you detected a smell of
15 alcohol on Mr. Harvey-Zenk without making a demand
16 for a roadside screening test or attempting to
17 administer sobriety tests, or alternatively that
18 you had reasonable grounds to believe that
19 Mr. Zenk was impaired by alcohol, but failed to
20 make a breathalyzer demand. Now, we have covered
21 those, the failure to make the breathalyzer demand
22 at the scene. Did you have any reasonable and
23 probable grounds to make a demand en route?

24 A No, sir.

25 Q Had you formed an opinion that

1 Mr. Zenk had committed the offence of impaired
2 driving?

3 A No, I had not.

4 Q And similarly, a roadside screening
5 device demand would have been entirely
6 inappropriate at that stage, isn't that correct?

7 A Yes, sir.

8 Q And what about not attempting to
9 administer sobriety tests, sir? What is that all
10 about from the perspective of a police officer?

11 A It would be something that you
12 required special training for, to do that.

13 Q And what, if any, training did you
14 have that would enable you to perform sobriety
15 tests, sir?

16 A I didn't have any.

17 Q And it has been suggested that you may
18 be open to criticism or censure in that you left
19 Mr. Harvey-Zenk alone in a police cruiser when you
20 arrived at the police station, while notifying
21 Sergeant Carter that you had a Winnipeg Police
22 Service officer in your vehicle. What, if any,
23 explanation do you have for that, sir?

24 A That -- I believe I went up to see if
25 Sergeant Carter was in the hallway waiting. I had

1 the doors locked on the vehicle.

2 Q Were you concerned at all about
3 leaving Mr. Zenk unattended in the back of your
4 cruiser car, your police SUV, with the doors
5 locked, in the sense that he could not get out,
6 while you went to get Sergeant Carter?

7 A No, sir, I was not concerned.

8 Q All right. Had you seen or observed
9 any conduct, while you had been in the presence of
10 Mr. Zenk, that should have or could have caused
11 you to have concern about leaving him alone?

12 A No, sir.

13 Q Now, it has also been suggested that
14 you may be subject to censure and criticism in
15 that you omitted information from your notes at
16 the direction or advice of Chief Bakema, and/or
17 included inaccurate information in your notes at
18 the direction or advice of Chief Bakema. We have
19 covered that.

20 A Yes.

21 Q And you, sir, acknowledge that, as a
22 police officer, that was inappropriate and wrong
23 conduct on your part?

24 A Yes, I do.

25 Q You acknowledge, sir, openly and

1 freely that you ought not to have done what you
2 did?

3 A Yes.

4 Q Do you feel, sir, any remorse as a
5 result of what you did?

6 A Yes, I do.

7 Q Please describe your feelings, if you
8 can, for the Commission on that note?

9 A I feel that what I did was wrong, by
10 not putting stuff in my notes, and omitting stuff
11 from my notes. And at the time I had minimal
12 service, and I believed Chief Bakema was someone
13 who I could -- who was a leader and would not give
14 me bad direction. And I guess I could apologize
15 for my actions now, but I do feel remorse for it.

16 Q And if faced with a similar situation
17 today, even coming from a superior or indeed a
18 Chief of Police, sir, would you act differently or
19 the same?

20 A I would act differently, sir.

21 Q Thank you. It has also been suggested
22 that you may be open to criticism or censure in
23 that you unreasonably delayed reporting to Chief
24 Carter that your notes were incomplete or
25 inaccurate, and that Chief Bakema had exerted

1 influence over what would be contained in your
2 notes. What, if anything, do you have to say
3 about that today, sir?

4 A There was a delay.

5 Q And why didn't you report it sooner?

6 A I guess at the time it was just
7 something that weighed on my mind, and I felt like
8 I needed to bring stuff forward to --

9 Q But is it fair to say that you waited
10 as long as you did because it was a difficult
11 issue for you to address, and there was no
12 emergency to address it until such time as the
13 preliminary was coming up?

14 A Yes, sir.

15 Q And again, will you acknowledge openly
16 and honestly to this Commission that you now
17 acknowledge that you waited too long and, with
18 hindsight, you should have reported it sooner?

19 A Yes.

20 Q Now, one further question,
21 Mr. Woychuk. In respect to the additions that you
22 made to your narrative, and this was covered by
23 some degree to Mr. Prober, and if I'm redundant, I
24 apologize, but I want to be sure that this is
25 clear on the record.

1 Were the additions to the narrative
2 that you made intended to deceive anyone or
3 manipulate the outcome of this case?

4 A No.

5 Q Did you do anything or omit to do
6 anything, after the accident in question, with the
7 intent of attempting either to repair, hide or
8 conceal what you perceived to be a charter breach?

9 A No, sir.

10 Q Did you do anything or omit to do
11 anything, after the accident, with the intent of
12 attempting to perfect what you perceived to be in
13 any way a flawed case for the prosecution?

14 A No, sir.

15 Q Did you do anything, or fail to do
16 anything, in an attempt in any way to protect
17 Mr. Mordenzenk from prosecution?

18 A No, sir.

19 MR. McDONALD: Thank you, Mr. Woychuk.
20 Thank you, Mr. Commissioner.

21 RE-DIRECT EXAMINATION BY MR. PACIOCCO:

22 Q Sir, I'm going to take you, please, to
23 a document that has been made an exhibit, document
24 E-1.23.i, which has been made exhibit 106 in this
25 case.

1 MR. McDONALD: Sorry, sir, the volume
2 number?

3 MR. PACIOCCO: Volume E-1, tab 23.i,
4 page number is 453.

5 BY MR. PACIOCCO:

6 Q E-1.23.i, page 453. Sir, this is the
7 prisoner's log sheet which was made an exhibit
8 when Mr. Zazelenchuk was questioning you?

9 A Yes, sir.

10 Q And sir, you noted and he brought to
11 your attention that in the lower right-hand corner
12 there is a check beside "yes" under the heading
13 "intoxicated," sir?

14 A Yes.

15 Q He also established through his
16 questioning that you had signed this form, sir?

17 A Yes.

18 Q You could not recall who put that X
19 there, sir?

20 A I don't know for certain. I don't
21 recall filling the form out myself.

22 Q Is that your handwriting on the form,
23 sir?

24 A Yes, it is.

25 Q And would you sign a document that

1 made a declaration that an individual was
2 intoxicated without seeing it and without agreeing
3 to that, sir?

4 A No.

5 Q Sir, did Harvey-Zenk have a cell phone
6 that you are aware of?

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

8 Q You were asked by Mr. Weinstein
9 whether you saw Harvey-Zenk being taken to the
10 Graham vehicle and standing outside of his
11 vehicle. He had asked you, "did you see that?"
12 And you said, no, I did not.

13 Sir, did I understand your
14 evidence-in-chief correctly, that the first time
15 you saw Mr. Harvey-Zenk was five to ten feet from
16 your vehicle through the side view mirror?

17 A That's correct.

18 Q And had you seen Chief Bakema prior to
19 that at the scene, to your recollection?

20 A I don't recall if I did, I don't
21 believe I did.

22 Q Did you see Mr. Graham at the scene
23 prior to that, according to your recollection?

24 A No.

25 Q You were asked by Mr. McDonald, and

1 you were also asked earlier by other counsel
2 whether, when you added and changed the narrative,
3 this was being done to manipulate the case at all,
4 sir?

5 A Yes.

6 Q And your answer was that it was not?

7 A Yes.

8 Q And the same question was put to you
9 with respect to the omissions from the case, sir?

10 A Yes.

11 Q And if I understood you, your answer
12 was that it was not to manipulate the case, sir?

13 A Yes.

14 Q You would agree with me that the
15 initial omissions were made for the purpose of
16 avoiding any problem with the delay, correct, sir?

17 A Correct.

18 Q And also creating the inaccurate
19 impression that this was a traffic accident report
20 delivery that occurred, sir?

21 A That's correct, I was following the
22 direction.

23 Q Do you not agree with me, sir, that
24 creating a false impression about why you bring
25 someone in the station would manipulate the case,

1 sir?

2 A Yes.

3 Q Failing to record the observations of
4 the ambulance attendant, sir, would also
5 manipulate the case?

6 A Yes.

7 Q You were also asked questions by
8 Mr. McDonald about whether you had a role as the
9 investigator in this case. Do you recall those
10 questions, sir?

11 A Yes.

12 Q And you said that you did not feel it
13 was your role to be investigator, but rather to do
14 traffic, sir?

15 A Yes.

16 Q You had a subject in your motor
17 vehicle, who according to your testimony had been
18 brought there, and you were told that he was
19 either impaired or possibly impaired?

20 A Yes.

21 Q Did you not feel that, as a police
22 officer, it was your duty to make observations of
23 that individual and take whatever steps you could
24 to determine whether he was indeed impaired?

25 A I was told by the Chief to wait for

1 Sergeant Carter.

2 Q All right. Let's put aside the
3 direction that you were given by the Chief for the
4 moment. You had an individual in your car who was
5 impaired by, or who you were told was impaired or
6 possibly impaired. And I think when I asked you
7 the question earlier, your response was that had
8 you not been given the direction by the Chief, you
9 would have tried to determine whether he was
10 impaired, sir?

11 A Yes.

12 Q And you would have done that, sir,
13 because as a police officer that's one of the
14 duties you have at an accident scene?

15 A Yes.

16 Q When Mr. McDonald was reading to you
17 the specifics of what people might say about you
18 and what might be considered to be a discreditable
19 or embarrassing conduct on your behalf, he
20 indicated to you -- he asked you why you did not
21 relay the information about the ambulance
22 attendants to Chief Bakema. And I believe your
23 response was that you felt he already had
24 information about Mr. Harvey-Zenk's alcohol
25 consumption, because of the statements he made to

1 you. Did I understand your evidence, sir?

2 A Yes, I said yes.

3 Q Sir, if he told you that this man was
4 possibly impaired, would that not make it
5 important for you to communicate, confirming
6 information about signs of impairment?

7 A Yes.

8 Q And do you not think it would be
9 important to communicate additional information,
10 even if the person in charge of the scene himself
11 had information relating to the sobriety or
12 potential sobriety of a suspect?

13 A Yes.

14 Q And you would agree with me that the
15 observations of the ambulance attendant was
16 additional information?

17 A Yes.

18 Q You should have relayed that, sir, do
19 you agree?

20 A I should have.

21 Q Sir, I'm not going to get into the
22 finer points of breathalyzers and roadside -- not
23 breathalyzers, with you, sir. But as an officer,
24 do you have any opinion on whether Mr. Harvey-Zenk
25 had care and control of his motor vehicle when he

1 was standing beside the truck at the accident
2 scene?

3 A I never saw him standing beside his
4 truck, sir.

5 Q And, sir, did you have any information
6 about that, sir, that he was the driver?

7 A I had information that he was the
8 driver.

9 Q With respect to leaving him alone at
10 the station, in the police car, you had testified
11 earlier that you thought he might be in shock. Do
12 you remember saying that, sir?

13 A Yes.

14 Q You saw some blood on his nose?

15 A Yes.

16 Q When you brought him to the station
17 and you left him locked in the police car, did you
18 not have any concerns about his health, sir?

19 A He had already been attended to by an
20 ambulance.

21 Q Okay. And what about his
22 psychological health, sir, his own personal
23 safety? Would it not have been something
24 appropriate and, in fact, required of a police
25 officer having custody of someone to ensure his

1 personal safety?

2 A Yes.

3 Q Do you really think, with the benefit
4 of hindsight, that you should have left him alone
5 in that police vehicle?

6 A Probably not.

7 MR. PACIOCCO: Those are the questions
8 that I have for you, sir.

9 THE COMMISSIONER: Thank you very
10 much.

11 MR. CLIFFORD: Mr. Commissioner, the
12 next witness is Constable Bryan Maloney.

13 Mr. Commissioner, for the benefit of
14 the clerk and counsel, the one exhibit that I
15 anticipate entering through this witness is tab
16 E-2, tab 30, page 785, that's his statement to the
17 RCMP dated June 1st, 2006. E-2, tab 30.

18 BRYAN PETER MALONEY, being first duly
19 sworn, testified as follows:

20

21 BY MR. CLIFFORD:

22 Q Good afternoon, sir. I understand
23 that you are employed with the East St. Paul
24 Police Service?

25 A Yes, I am.

1 Q I have been referring to you as
2 constable all day. Is that your rank?

3 A Correct.

4 Q And if you could take some brief time
5 and explain to the Commission your history in
6 policing, when you started, and tell us a bit
7 about your career path?

8 A I was trained by Brandon City Police
9 in 1994. I came to East St. Paul in 1995, and I
10 have been there since.

11 Q What can you tell us about your
12 training?

13 A I was trained by Brandon City Police,
14 which is an accredited police training service.

15 Q Now, with respect to the Taman case
16 and the charges that followed, I understand that
17 you, sir, were not involved in the investigation
18 of what occurred on February 25th, 2005?

19 A Correct.

20 Q In fact, you weren't even at work on
21 that day?

22 A No.

23 Q Commission has heard evidence you were
24 on a fishing trip?

25 A Correct.

1 Q And when you got back to work, not
2 surprisingly, this case was a topic of
3 conversation in and amongst the officers at East
4 St. Paul.

5 A And in the media.

6 Q Indeed, it was. And what can you tell
7 me, sir, about the conversations that you
8 participated in or you heard?

9 A When I returned to work, I read the
10 file through the computer system we have.

11 Q And before you go any further, can you
12 tell the Commission when it was that you returned
13 to work?

14 A I believe a day or two after the
15 accident, I can't say 100 per cent sure without
16 looking at the schedule.

17 Q And could we put your evidence, your
18 best evidence, that your return date would have
19 been the 26th or 27th?

20 A Correct.

21 Q And you are confident that it was
22 either one of those two days?

23 A Yeah, it wasn't more than a couple of
24 days after.

25 Q Carry on.

1 A I returned to work, I read the file
2 electronically. And I went through it and I saw
3 there was some issues with the file. After the
4 fact of reading through it, I had spoken to people
5 about the file, people who attended the scene.

6 Q When you say you read the electronic
7 version of the file and you thought there were
8 some issues with it, what do you mean by that?

9 A Well, there was a charter issue for
10 sure.

11 Q And were you able to come to that
12 conclusion on your own?

13 A Yes.

14 Q Had you discussed the case with
15 anybody?

16 A No.

17 Q So just on your own view of the
18 electronic narratives that had been created up to
19 that point, you came to that conclusion?

20 A Yes.

21 Q What did you think the problem was?

22 A Well, the gentleman -- there was about
23 a 40 minute gap from the time of the incident to
24 the time he was transported to the office, where
25 he was then later arrested by, at that time,

1 Sergeant Norm Carter. And he was technically
2 being detained once he was placed in the back of
3 that car and he wasn't read his rights.

4 Q And once you came to that conclusion,
5 did you raise it with anyone?

6 A I spoke to people about it.

7 Q Okay. And who did you speak to about
8 it?

9 A Well, I spoke to Norm Carter about it.
10 I had a conversation with Jason Woychuk about it.

11 Q What can you tell me about your
12 conversation with Norm Carter?

13 A Just that I said -- and he looked at
14 it too and thought there was some issues with the
15 charter there.

16 Q And can you elaborate on that
17 conversation? Was it the same day that you came
18 back?

19 A I can't really say what the date was.

20 Q Was it at some point in the immediate
21 days following your review of the file?

22 A Yeah, it would have been within a few
23 days after.

24 Q And given that evidence, sir, what was
25 it that was discussed between you and Norm Carter?

1 A Just that I thought there was some
2 issues with the charter there.

3 Q What was his response?

4 A Since he did execute an arrest once
5 the gentleman was taken to the office.

6 Q Okay. What was his response to your
7 suggestion to him that you felt there was a
8 charter problem?

9 A He didn't disagree with me.

10 THE COMMISSIONER: He didn't?

11 THE WITNESS: He didn't disagree with
12 me.

13 BY MR. CLIFFORD:

14 Q Did he concur with your opinion?

15 A He felt there was some issues with the
16 length of time before the person was placed under
17 arrest.

18 Q Did you have further discussion with
19 him on other issues related to the case on that
20 occasion?

21 A You know what? I might have. I can't
22 really recall.

23 Q What about the conversation that you
24 indicated you had with Jason Woychuk, can you tell
25 us about that, please?

1 A He just stated that -- I believe he
2 stated the call came in at seven something in the
3 morning, and he had been working the previous
4 night, and that he responded to the accident along
5 with the Chief of Police at that time, Harry
6 Bakema. Ken Graham also attended that accident
7 scene. And the fact that Jason said that Harry
8 Bakema brought a gentleman to him, which later
9 turned out to be the gentleman who was arrested by
10 Norm Carter, and placed him in the back of Jason's
11 vehicle and said that the guy might be impaired.

12 Q Okay. So what you are relaying is a
13 conversation that you are having with Jason
14 Woychuk, and he is repeating things to you that he
15 says Harry Bakema said to him?

16 A Correct.

17 Q Okay. And did this conversation occur
18 once you got back to work?

19 A Shortly thereafter I returned to work.

20 Q Within a day or two of you getting
21 back?

22 A Yeah, not long after. I can't specify
23 because I have no handwritten notes or anything
24 about it.

25 Q And were you discussing with Jason

1 Woychuk the difficulties in the case that you
2 spotted?

3 A Well, I told him there was going to be
4 issues with the charter.

5 Q And you've indicated that he
6 attributed a comment to Harry Bakema, and what was
7 that again?

8 A He stated that Harry brought the
9 gentleman to his vehicle and told Jason that this
10 gentleman may be impaired, and then after the fact
11 told him to transport the gentleman, or the body
12 to the office where at that time Sergeant Carter
13 would deal with him.

14 Q And on March 25th, 2008, when you were
15 interviewed by Commission Counsel, you were asked
16 about that conversation?

17 A Correct.

18 Q And you had indicated in your evidence
19 at that time more or less the same thing, that
20 that is what Jason Woychuk indicated to you that
21 Harry Bakema said, and he repeated it to you?

22 A Correct.

23 Q Now, you also -- and you also had an
24 opportunity to speak to the RCMP, because they
25 were interested in what Jason Woychuk told you?

1 A Correct.

2 Q And do you recall being interviewed by
3 the RCMP on June 1st, 2006?

4 A Correct.

5 Q And I want to ask you about that, sir,
6 because you've indicated in your testimony thus
7 far that Jason Woychuk said Harry Bakema mentioned
8 to him that an individual may be impaired. And
9 when you spoke with Commission Counsel during your
10 interview, you indeed indicated the same thing,
11 and the reference would be at pages 10 and 12 of
12 your interview. But I want to determine, sir,
13 whether I can refresh your memory on whether the
14 indication was that the individual may be impaired
15 or was likely impaired.

16 Now, when you gave your interview with
17 the RCMP, this was June 1st, 2006, were you
18 attempting to be as accurate as you could with the
19 officer investigating the matter?

20 A Yes, I was.

21 Q At page 2, sir, in the interview, if
22 you look just beyond halfway down the page, you
23 will see there is some questions and answers. You
24 see Kennett, Maloney, Kennett, Maloney?

25 A Yes.

1 Q Okay. Now, just going up to the top
2 of the page, I'm going to direct your attention to
3 a passage here, and determine if it assists you in
4 refreshing your memory on this point. You see
5 just about four lines down from the top you stated
6 to the RCMP, and I will read:

7 "And Jason I guess said to me that he,
8 Harry told him to put the gentleman in
9 the car. The, um, I believe
10 Mordenzenk is his name, put him in the
11 car. And Harry stated to Jason that
12 he was most likely impaired."

13 Do you recall giving that response to the RCMP at
14 one of the first questions they asked you?

15 A Yes, I do.

16 Q And further, if you go down the page,
17 you will see there is a question:

18 "KENNETT: Okay. Is there more?

19 MALONEY: Like, just that's what I
20 pretty much know about it, like Jason
21 said Harry told him that most likely
22 the guy was impaired, to put him in
23 his car and to drive him back to the
24 office and give him to Norm."

25 A Correct.

1 Q All right. Now, I ask you to move
2 further into the RCMP interview that you gave to
3 page 14, please? At this point Constable Doyle
4 from the RCMP is asking you questions.

5 "DOYLE: Um, was, was he the type of
6 guy to give somebody else maybe the
7 more important things to do at a given
8 scene or investigation?"

9 Your response, and I will take you down to almost
10 eight lines into your response, you say:

11 "There is, they, there was, he even
12 told Jason that he thought the guy was
13 drunk. It is not like he didn't."

14 And it carries on. Do you see that, sir?

15 A Yes.

16 Q Do you recall giving that response to
17 the RCMP?

18 A Yes, I do.

19 Q And further at page 16, at page 16,
20 sir, at the bottom, Officer Doyle asked you
21 another question.

22 "No. Did he tell you how much contact
23 he had with Zenk at the scene?"

24 Maloney -- you give a response to the question and
25 then you go on three lines from the bottom:

1 "And, um, so Jason knew him, and like
2 all he said was that he had him in the
3 car and that Harry told him to put him
4 in the car, and that Harry said he was
5 probably drunk. And, ah, then Harry
6 told him to drive to the office and
7 give him to Norm."

8 Do you recall giving that response?

9 A Yes, I do.

10 Q Now, you have given evidence to this
11 Commission that Jason Woychuk repeated that Harry
12 Bakema said he may be impaired. You've given that
13 evidence to Commission Counsel in your interview.
14 But having the opportunity to refresh your memory
15 with what you said to the RCMP, and telling them
16 that the comments were that Derek Harvey-Zenk was
17 most likely impaired, and further, most likely the
18 guy was impaired, Harry Bakema thought he was
19 impaired, he even told Jason that he thought the
20 guy was drunk, et cetera. Does that refresh your
21 memory on whether it was "he may be impaired" or
22 "he actually thought he was impaired?"

23 A He thought he was impaired.

24 Q Now, before we move away from it, the
25 last response that I put to you to refresh your

1 memory on that point, part of the response was
2 that Jason Woychuk told you that he knew
3 Harvey-Zenk?

4 A Correct.

5 Q Can you elaborate on that?

6 A They grew up in the same town,
7 Brandon, Manitoba. I don't know what kind of
8 relationship they had or anything like that. It
9 is just they knew each other, I believe they went
10 to the same school. But Brandon is only a small
11 city of about 35,000, so anyone within about a
12 five year age gap probably knows of each other.

13 Q Did he mention anything else about his
14 relationship with him?

15 A No.

16 Q Now, you are using the words he knew
17 him. Do you recall what Jason Woychuk's words
18 were to you?

19 A No.

20 Q But there was no mistake whatsoever,
21 no misapprehension in your mind that he was
22 talking about a fellow that he knew?

23 A Knew of, or knew.

24 Q All right. Sir, I want to ask you
25 about another comment you made to the RCMP in

1 order to determine what it was that you meant, or
2 you understood it to mean. This is at page 4,
3 page 788 in our Commission pagination. The last
4 question on that page is:

5 "KENNETT: That very first
6 conversation, um, did Jason bring up
7 any concerns that he personally had
8 with what had taken place?"

9 Your response is:

10 "I guess from what he was saying, like
11 just the way he would, like Harry was
12 telling him to do things and he would,
13 ah, I guess the more concern I felt
14 from him was that he didn't know how,
15 what Harry was there, and supposedly
16 he was leading the scene and he was
17 telling Jason to put the guy in the
18 car and not really giving him
19 directions on what everyone was
20 supposed to do there."

21 Sir, I want to ask you, what you mean when you
22 were saying Harry was telling him to do things?
23 Did he elaborate on that further?

24 A No. Just like he told Jason to put
25 the guy in the car, and then he gave Jason the

1 instruction to take him back to the office for
2 Sergeant Carter.

3 Q When Jason told you that Harry was
4 telling him to do things, did he tell you anything
5 else?

6 A No.

7 Q Did you give Jason Woychuk any advice
8 on how to manage this situation or on how to deal
9 with it?

10 A I just told him to tell the truth.

11 Q And this would have been within how
12 many days of the accident taking place, or the car
13 crash?

14 A Somewhere after. I can't really give
15 a specific date.

16 Q Well, again, harkening back to our
17 opening answers and questions, was this within a
18 number of days?

19 A Yes, somewhere shortly thereafter.

20 Q Certainly within a week?

21 A Most likely, yeah.

22 Q Did he take that advice and follow up
23 with anybody else in the East St. Paul Police?

24 A I'm not sure. Hopefully, he did.

25 Q Did he tell you that he was going to

1 talk to anybody about it?

2 A Well, I know he provided statements
3 and that, and hopefully told the truth. I can't
4 really say whether he did or not.

5 Q Did you raise it with anybody?

6 A I don't think so, not that I can
7 remember anyway. I just more gave him the advice.

8 Q Were you confident that he would raise
9 it with someone?

10 A I believe he would do the right thing.

11 Q What could you tell us, sir, about the
12 practice of preparing police duty-book notes?

13 A They should be your own notes, written
14 in your own hand, from your own observations of
15 the scene.

16 Q And is that your practice?

17 A Yes, it is.

18 Q And do you understand that to be the
19 accepted method?

20 A That's how I was trained to take
21 notes, they are your own notes, and when you are
22 in a court of law they are going to ask you
23 whether you made them yourself.

24 Q I take it you have been asked on a
25 number of occasions about your notes in court?

1 A Yes, I have.

2 Q And you have been asked whether they
3 were made by yourself?

4 A In your own hand, yes.

5 Q At the time or as soon thereafter as
6 you could?

7 A Correct.

8 Q Any additions, deletions, amendments?

9 A Correct.

10 Q And you want to be able to respond in
11 the affirmative to all of those questions?

12 A Correct.

13 Q I take it you have some concern about
14 the wrath that will come upon you if you said,
15 well, these are my notes but I made them with
16 another officer and we collaborated on them?

17 A Well, I was trained not to do it that
18 way, and some people are going to see things
19 differently than other people at an accident
20 scene, or at any type of call people will
21 interpret things differently.

22 Q Did other officers at East St. Paul
23 Police follow that method?

24 A No.

25 Q And what can you tell us about that?

1 A I seen other officers making notes
2 together, contriving them together.

3 Q Who did you see making notes together?

4 A I seen Harry Bakema and Ken Graham
5 making notes together.

6 Q Did you see any such conduct in
7 connection with this case?

8 A No.

9 Q When did you see it happening?

10 A Just with previous incidents.

11 Q How many previous incidents, can you
12 say?

13 A I'm guessing probably half a dozen.

14 Q Did you know Derek Harvey-Zenk
15 yourself?

16 A No.

17 Q Do you know whether Harry Bakema knew
18 Derek Harvey-Zenk?

19 A I believe he did know him.

20 Q And what do you base that belief upon?

21 A Because Harry Bakema was a Sergeant in
22 the North End of Winnipeg on Hartford, district 3,
23 and I believe Derek Harvey-Zenk worked out of the
24 North End also, on the same side, B side. I don't
25 believe they were on the same shift, but I believe

1 they were on the same side, so their shifts would
2 overlap on occasion.

3 Q If that were the case, that they were
4 on the same side, different shifts, and there
5 would be an occasional overlap, given what you
6 know about the police scheduling, is it your
7 understanding that they would know one another?

8 A They would, yes.

9 Q Sir, are you able to comment on the
10 appropriateness of having a junior officer like
11 Jason Woychuk involved in a serious motor vehicle
12 accident investigation?

13 A All my comment is that if I was the
14 person at the scene, I wouldn't be handing the
15 body off to the most junior guy at the scene and
16 having him transport him.

17 Q Did you have any discussion with Jason
18 Woychuk about things that you read in the file?

19 A Just more about the charter issue and
20 stuff like that that I read.

21 Q Did you read in the file about the
22 paramedics detecting an odour of alcohol?

23 A Yeah, I read that.

24 Q Did you talk to him about that?

25 A You know what, I can't recall if I did

1 or not. But I did discuss knowing the fact that
2 there was a police uniform in the truck, so there
3 was no secret that the gentleman who was involved
4 in the accident was a Winnipeg City Policeman,
5 because there was a uniform, there was a uniform
6 removed out of the vehicle.

7 Q Sir, I want to conclude your
8 examination by asking you, how long have you known
9 Ken Graham?

10 A You know what, I can't even give a
11 specific date. I don't know when he was hired.

12 Q You knew him professionally, I take
13 it, through his employment tenure at the East St.
14 Paul Police?

15 A Correct.

16 Q And, sir, I understand that you had
17 occasion to have an encounter with him today?

18 A Yes, I did.

19 Q And you created a statement in
20 connection with what occurred?

21 A Yes, I did.

22 Q Do you have a copy of your statement
23 with you?

24 A No, I don't.

25 Q Could you indicate to the Commission,

1 please, what took place between you and Ken Graham
2 earlier today?

3 A At approximately 10:30 this morning,
4 on July 8th, 2008, I was sitting on the bench
5 outside of this courtroom. And Ken Graham came
6 walking down the hall from the south toward the
7 courtroom. Upon coming up to me, I said,
8 "Mr. Graham." And he said "Maloney, Maloney, you
9 guys are nothing but a bunch of fucking traitors."
10 And I said, "Ken, I wasn't even there." And he
11 said, "I know you weren't there," and he walked
12 back into the courtroom. Mr. Graham was slightly
13 agitated when he said this. There was a female
14 photographer to the north of the doors on the
15 other bench. I continued to sit. And then I was
16 taken to a sitting room to read a previous
17 statement. And I asked Bob Giasson why Ken was
18 upset, and he asked me why, and I informed him of
19 what Graham had said. And then Mr. Clifford
20 attended the sitting room and asked what was said.
21 And I told him what Graham had said, and he
22 requested that I write out a statement of what
23 occurred.

24 MR. CLIFFORD: Mr. Commissioner, I'm
25 going to ask that that statement be made an

1 exhibit in these hearings. I know it has been
2 marked as an exhibit on the motion to exclude Ken
3 Graham from the hearing room. That issue I think
4 has been dealt with. So I would ask that it be
5 made an exhibit to these proceedings.

6 THE COMMISSIONER: Yes. What number
7 is that?

8 THE CLERK: Exhibit 112.

9 MR. PROBER: Did his RCMP statement
10 get a number?

11 MR. CLIFFORD: Thank you, Mr. Prober,
12 it didn't, and I will take care of that right now.
13 Could we also, while we are entering exhibits,
14 have the statement of the RCMP entered as the next
15 one?

16 (EXHIBIT 112: Bryan Maloney's
17 handwritten statement of incident,
18 July 8, 2008)

19 (EXHIBIT 113: E-2.30, Constable
20 Maloney's statement to RCMP, June 1,
21 2006)

22 BY MR. CLIFFORD:

23 Q Now, Constable Maloney, I want to ask
24 you about the written statement that's now been
25 tendered as an exhibit. When you were sitting

1 outside in the courtroom, this is just, correct me
2 if I'm wrong, but there are some benches located
3 just outside the door?

4 A Correct.

5 Q And you saw Mr. Graham, you indicated
6 in the statement, coming up to you, and you said
7 Mr. Graham?

8 A Correct.

9 Q Did you initiate the communication?

10 A Well, he was staring at me when he was
11 walking up to me. He was coming from the south,
12 down the hallway corridor, and he was staring at
13 me. And he came right towards me, and I
14 acknowledged him.

15 Q And you indicated in your statement
16 that you said "Mr. Graham?"

17 A Um-hum.

18 Q And --

19 A That's what I said, yes.

20 Q All right. Did you say anything else
21 to him?

22 A No.

23 Q Those two words, "Mr. Graham?"

24 A And then he said "Maloney, Maloney."

25 Q In your statement it says, "Maloney,

1 Maloney, you guys are nothing but a bunch of
2 fucking traitors."

3 Now, that's what is in your statement.
4 What were his precise or exact words to you?

5 A Pretty much exactly what is in the
6 statement, "you guys are a bunch of fucking
7 traitors." And I said, "Ken, I wasn't even
8 there." And he says, "yeah, I know you weren't
9 there."

10 Q Sir, have you left any part of the
11 exchange between you and Ken Graham out of the
12 statement?

13 A No. Like I said, there was a
14 photographer -- the conversation wasn't very long.
15 There was a photographer sitting down on the other
16 side of the doors.

17 Q When you indicated that he was
18 slightly agitated when he said this, what did you
19 mean by that?

20 A He just didn't seem happy when he
21 said, "you guys are a bunch of fucking traitors,"
22 it was like he was upset in a way.

23 Q Can you describe his tone of voice?

24 A Firm.

25 Q How close was he when he said it?

1 A Well, I was sitting down and he was
2 standing looking down at me.

3 Q And how close was he when he was
4 standing?

5 A Probably a couple of feet.

6 Q What was your tone and demeanor when
7 you responded to him?

8 A More just, you know what, I wasn't
9 even there, like, if you want to say something,
10 don't say it to me.

11 Q Now, with respect to what he meant,
12 I'm not going to ask you about that, that's
13 perhaps something that you can't comment on. But
14 is there any possibility that he didn't say the
15 word "traitor"?

16 A No.

17 Q If it was suggested to you that he
18 said that you were a "liar"?

19 A No.

20 Q Would you agree with that suggestion?

21 A No.

22 Q In your career with Ken Graham when he
23 was an officer at East St. Paul Police, did you
24 have any animosity? Were there any issues between
25 you and he?

1 A At the end there was, before he left.

2 Q Had you ever had exchanges such as
3 this previously?

4 A Not like this, no. He worked the
5 other side of the shift schedule from me.

6 MR. CLIFFORD: Sir, those are the
7 questions that I have for you. Other counsel will
8 have questions.

9 THE COMMISSIONER: It is 5:08, I said
10 we would finish at 5:00 o'clock. I take it that
11 counsel would like to do their cross-examination
12 in the morning?

13 MR. ZAZELENCHUK: That would be
14 convenient.

15 THE COMMISSIONER: We will now adjourn
16 for the day. Thank you. We will see you in the
17 morning at 9:30.

18 THE CLERK: All rise. This Commission
19 of Inquiry is adjourned until tomorrow at 9:30.

20 (Proceedings adjourned at 5:08 p.m.)

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COURT REPORTERS CERTIFICATE

Debra Kot and Cecelia Reid, court reporters 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

Debra Kot

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