

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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Wednesday, July 16, 2008

Volume 15

INQUIRY PROCEEDINGS

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1 WEDNESDAY, JULY 16, 2008

2 UPON COMMENCING AT 9:30 A.M.

3 THE CLERK: Order, all rise. This
4 Commission of Inquiry is now open.

5 THE COMMISSIONER: Good morning.

6 MR. PACIOCCO: Good morning,
7 Mr. Commissioner.

8 We have a lawyer who has joined us
9 today for the first time, Mr. Keith Labossiere is
10 here with the Winnipeg Police Association. And
11 his interest has become more focused, given that
12 we are in the process of changing themes. Up
13 until now we have dealt with the accident scene.
14 We have also dealt with the East St. Paul Police
15 Force. Today we embark upon the Winnipeg Police
16 Service investigation.

17 And we are going to be, over the
18 course of the next few days, calling today
19 witnesses from Branigan's, the location where you
20 will learn through the evidence there was a
21 collection of police officers gathered, ultimately
22 leading to a private party that will be described
23 in the evidence, at the residence of Officer Sean
24 Black.

25 We will be hearing from the police

1 officers who were present at both of those
2 locations, and then we will be hearing from the
3 Winnipeg Police Service Professional Standards
4 Unit, who were central to the investigation, in
5 particular, Sergeant Poole and Sergeant Girard.

6 We are going to begin today by calling
7 Chelsea O'Halloran to the stand. I know that
8 Ms. O'Halloran is in the body of the hearing room.

9 CHELSEA O'HALLORAN, having first been
10 duly sworn, testified as follows:

11 THE COMMISSIONER: Would you take a
12 moment to pour yourself a glass of water, then
13 take a deep breath and try to relax. Okay. It is
14 your first appearance in a hearing like this, or
15 in a courtroom?

16 THE WITNESS: Yes.

17 THE COMMISSIONER: Okay.

18 BY MR. PACIOCCO:

19 Q I get the sense, Ms. O'Halloran, that
20 the Commissioner is noting that you are a wee bit
21 nervous.

22 A Just a bit.

23 Q I know that's natural, and we want to
24 thank you for coming out and helping us. It is a
25 tremendously important inquiry that we are

1 conducting and your evidence is going to be very
2 valuable. If you can maybe pull your chair up a
3 little bit, we need you speak into the microphone
4 so that the transcription can be accurate and so
5 that people can hear what you have to say. But
6 other than that microphone, I want you to just
7 pretend that we are having a conversation.

8 A Okay.

9 Q I understand from the information that
10 we have that you are 24 years old?

11 A Yes.

12 Q And back in February of 2005, you were
13 living here in the City of Winnipeg?

14 A Yes.

15 Q And I understand that you are not
16 living in Winnipeg any longer?

17 A No.

18 Q It has been close to two years since
19 you have lived here, I think?

20 A Yes.

21 Q You were a lounge server back in
22 February of 2005, here in Winnipeg, were you not?

23 A Yeah.

24 Q And where were you working?

25 A I was working at Branigan's

1 Restaurant.

2 Q That's known as Branigan's Garden City
3 Restaurant and Bar?

4 A Yes.

5 Q And where is Branigan's located?

6 A On Leila Avenue.

7 Q Leila Avenue. How long were you
8 working at Branigan's at the point in time that we
9 are most interested in, which is the evening of
10 the 24th of February, 2005, into the 25th of
11 February, how long had you been there?

12 A About two, two and a half months.

13 Q I understand you had previously worked
14 at the Pony Corral?

15 A Yes.

16 Q And were you a server at both
17 locations?

18 A Yes.

19 Q How long had you worked at the Pony
20 Corral?

21 A Approximately a year.

22 Q So I guess it is fair to say that as a
23 server, you have been around people who are
24 consuming alcohol?

25 A Yes.

1 Q And you feel that you have the ability
2 to detect whether someone has had too much to
3 drink, based on your experience?

4 A Yes.

5 Q Is that part of your function, to make
6 those kinds of determinations?

7 A Yes.

8 Q And why would that be?

9 A To know when to stop serving somebody
10 alcohol.

11 Q When did you leave Branigan's?

12 A When did I leave?

13 Q When did you leave? How long after
14 the 25th of February were you still there?

15 A I believe it was about three months
16 after.

17 Q Okay. So you had about five to six
18 months time at Branigan's itself. Who was your
19 boss at Branigan's?

20 A His name was Rod Bravo.

21 Q And I noticed in your statement you
22 referred to him as Mr. Rodriguez from time to
23 time; is that the same guy?

24 A Yes.

25 Q I made about 50 of those mistakes

1 since we started this Commission, so no problem
2 with that. Whenever we see reference to
3 Mr. Rodriguez, we are talking about Mr. Bravo?

4 A Yes.

5 Q He was the general manager at
6 Branigan's, I understand?

7 A Correct.

8 Q And I understand you actually knew him
9 from the Pony Corral?

10 A No, I knew one of his employees, Mark
11 Beitz.

12 Q And is that how you ended up over at
13 Branigan's, through that connection?

14 A Yes.

15 Q I'm going to ask you, what time did
16 Branigan's usually close in the evenings or nights
17 after a shift was finished? What time would you
18 usually finish work?

19 A On a regular night it would be about
20 12:00, 12:30.

21 Q And I understand that a large group
22 came to Branigan's on February 24th, it would have
23 been the Thursday evening, February 24th, 2005.

24 Do you recall that?

25 A Yes.

1 Q Do you know what time members of this
2 group started to come into Branigan's?

3 A I believe approximately around
4 11:00 p.m.

5 Q Okay. And were you aware that those
6 individuals were police officers?

7 A Yes.

8 Q And what time did the Branigan's close
9 on that evening?

10 A 2:30.

11 Q I am sorry?

12 A Around 2:30.

13 Q So, essentially later than the usual
14 closing time. How did that come about?

15 A They had called earlier on in the day
16 to say that they would like to have a couple of
17 drinks at our restaurant, and they were supposed
18 to call when they were going to have a large group
19 of them coming.

20 Q Okay. And was it a surprise for you
21 that you stayed open that long?

22 A No, because I knew when we had a large
23 group of them that we would have to stay open for
24 them.

25 Q Okay. And what time, are you lawfully

1 allowed to serve liquor until?

2 A 2:00 o'clock, I believe.

3 Q Okay. And so, essentially, if I
4 understand your evidence, this is an unusual
5 closing time for you. You typically close around
6 midnight, but you remained open because this group
7 was in there; is that fair?

8 A Yes.

9 Q Are you able to tell us the
10 approximate number of officers who were there that
11 evening?

12 A From what I recall, about 20 to 25
13 people.

14 Q And do you know where they came from,
15 how they were connected to each other?

16 A I believe they all worked in the same
17 division.

18 Q Okay. And do you know whether they
19 worked on the same shift, generally?

20 A Yes, I believe so.

21 Q And you indicated that you got a call.
22 So you were aware they were coming?

23 A Yes.

24 Q Did you take that call yourself?

25 A No.

1 Q And can you recall how that came about
2 that you learned that they were going to be
3 coming?

4 A My manager had just told me that they
5 would be coming in a little later, and because I
6 was the last to get off, I would have to stay
7 until they were ready to leave.

8 Q So, basically you pulled a little bit
9 of overtime as a result of this event that was
10 happening?

11 A Yeah.

12 Q The composition of the group, were
13 they all men, or was there a mix of men and women?

14 A I believe there was two ladies, the
15 rest were men.

16 Q Okay. So that's your recollection,
17 that there were two women there?

18 A Yes.

19 Q We have information that suggests
20 there might have been three women. Is that
21 possible?

22 A There very well could have been, but I
23 do remember in my mind that there were two for
24 sure.

25 Q Okay. I'm going to come back to those

1 two later, because I know you have some
2 observations to make.

3 Prior to the arrival of this group,
4 how busy was the restaurant?

5 A Not too busy at all.

6 Q Do you know, Ms. O'Halloran, whether
7 there were other customers there at the time that
8 this group came in?

9 A I believe there was one couple.

10 Q So, essentially, when they arrive
11 shortly after 11:00, the restaurant only has one
12 other couple in it?

13 A Um-hum.

14 Q Do you know how long that other couple
15 remained?

16 A Not too much longer after they had
17 arrived.

18 Q Do you remember where that other
19 couple would have been sitting in the restaurant?
20 Do you have that kind of recall of the event?

21 A They were sitting in the low-top
22 tables on the southeast side of the lounge.

23 Q Okay. Very shortly I'm going to be
24 having our assistant put up some poster sized
25 photos of Branigan's, and I'm going to get you to

1 explain where the seating is. But basically you
2 have a recollection of two people sitting at a
3 particular location in the restaurant when the
4 police officers start to come in, and they don't
5 remain very long.

6 Is it fair to say that after those
7 people left, the only people that you dealt with
8 were the members of the Winnipeg Police Service
9 who were present that night?

10 A Yes.

11 Q Do you recall who was working that
12 evening?

13 A My manager at the time was Darcey
14 Gerardy. Earlier on in the evening, I had one
15 girl working with me, but she was off I believe
16 around 8:00, 8:30. And until 12:30 I had a
17 bartender, Mark Beitz, but he was cut at around
18 12:30.

19 Q And that's Mark, you say?

20 A Yes.

21 Q What is his last name?

22 A Beitz.

23 Q Can you spell that, please?

24 A B-E-I-T-Z.

25 Q I am going to show you some of our

1 records that we managed to acquire from
2 Branigan's. They are exhibit W7, and it is going
3 to be put in front of you now. Actually, if you
4 could put the whole exhibit W in front of the
5 witness? Is it all together, Madam Clerk?

6 THE CLERK: Yes, it is.

7 MR. PACIOCCO: Okay. If that could be
8 made a composite exhibit, and the number would be?

9 THE CLERK: 152.

10 MR. PACIOCCO: That will be exhibit
11 152.

12 (EXHIBIT 152: W.1 - W.8, Documentary
13 Evidence from Branigan's Restaurant
14 dated February 23 & 24, 2005)

15 BY MR. PACIOCCO:

16 Q Okay. Ms. O'Halloran, you have a
17 document in front of you that's just been made an
18 exhibit. These are records that were acquired by
19 the Commission from Branigan's. And I notice that
20 the pages are not numbered, because we have them
21 in a particular order in the book, we had them
22 numbered W1 through W8. I'm going to be referring
23 to those documents using those numbers. You don't
24 have them in front of you, so I'm also going to
25 try to get you to the pages by describing where to

1 go. It might take a little bit of doing. I'm
2 going to take you to W7 for the lawyers. What you
3 are going to find is it is probably the second or
4 third last page in the documents that you have,
5 and it says "Interval sales and labour report" on
6 it.

7 THE COMMISSIONER: Mr. Paciocco, can
8 you help me?

9 MR. PACIOCCO: Yes, it is in volume W,
10 sir, at tab 7.

11 THE COMMISSIONER: Thank you.

12 BY MR. PACIOCCO:

13 Q You have that document in front of
14 you, ma'am?

15 A Yes.

16 Q And you will notice that in the
17 left-hand side of the columns on W7, in the second
18 box, we see the names James, Amanda, Mark and
19 Chelsea appearing. And you will notice next to
20 your name it says "5:30 to 2:45, 9.25 hours"?

21 A Yes.

22 Q Does that accord with your recall of
23 the hours that you worked on that evening into the
24 next morning of February 25th?

25 A Yes.

1 Q And above you is Mark, and I take it
2 that's Mark Beitz?

3 A Yes.

4 Q And he is on from 5:30 until, as you
5 said, 12:30, a total of seven hours. And under
6 the heading "supervisor" in the second last box on
7 the left column, do you see that down at the
8 bottom?

9 A Yes.

10 Q That's Darcey, and that would be
11 Mr. Darcey Gerardy, we understand?

12 A Yes.

13 Q And he was the manager on duty at that
14 time?

15 A Yes.

16 Q So he wasn't your ultimate boss?

17 A No.

18 Q He wasn't your ultimate boss, he
19 wasn't the general manager, but he was the manager
20 on that shift?

21 A Correct.

22 Q And he works from 5:30 to 3:15, so he
23 is there for 9.75 hours. So he stayed on a little
24 bit longer than you have. Does that also accord
25 with your recollection?

1 A Yes.

2 Q Now, I notice that you are the only
3 one under the heading "bar," and Mark. You
4 indicated that you were a server. Was Mark also a
5 server?

6 A No, he was a bartender.

7 Q Okay. And what -- I know it may seem
8 obvious to you, but can you describe the different
9 functions that you and he would perform?

10 A The bartender just stays behind the
11 bar and pours the drinks and makes the drinks. I
12 serve the drinks, I serve food, I take orders.

13 Q All right. Now, we have had
14 information through statements provided by police
15 officers, a couple of them suggested that they
16 received drinks that night from a male. Were
17 there any other males there, apart from you and
18 Mark and Darcey?

19 A No.

20 Q Is it possible for customers to obtain
21 drinks from a bartender?

22 A It is possible, but it doesn't go
23 through me, so I wouldn't know.

24 Q Okay. And if it does happen that way,
25 how would those drinks be paid for?

1 A If it is through the manager, he could
2 just give it to them and not count it on the bar.

3 Q Okay. What if it is through Mark?

4 A He could do the same thing.

5 Q Okay. Now, this group who came in, I
6 know that there might have been some different
7 people, but had you served this basic group
8 before?

9 A I had served a few individuals from
10 the group, but not the whole group before.

11 Q I understand that this wasn't the
12 first time, though, that a large group of officers
13 had come in from --

14 A No.

15 Q And how often would officers come in
16 to Branigan's, in the kind of numbers that you saw
17 that night?

18 A Not too often, maybe once a month.
19 But, as I said, I have seen a few of them probably
20 in once a week.

21 Q Okay. I'm going to get down to that
22 in a second. So I'm going to break it down by
23 looking at the larger group and then the smaller
24 group.

25 When you talk about once a month in

1 the larger group, are you able to indicate whether
2 it is the same basic group of officers?

3 A Yes.

4 Q And I take it from that that it is the
5 same basic group?

6 A Yes.

7 Q We are given to understand they are
8 from the North End, division 13, are you aware of
9 that?

10 A Yes.

11 Q In your statement to Commission
12 Counsel you indicated that you recalled two times
13 prior to this in your tenure there, you were there
14 two, two and a half months, you recall two months
15 when you had large groups from the North End,
16 division 13 come in like that?

17 A Yes.

18 Q So that would be two additional times,
19 apart from the time we are talking about?

20 A Correct.

21 Q And would they typically come in at
22 11:00 o'clock?

23 A Yes, I believe that was around the
24 time that they all ended their shift. So they
25 would come in after that.

1 Q We have heard the use of the term
2 "shifter." Have you ever heard that term?

3 A No.

4 Q Okay. Now, what would be the practice
5 when they were about to come in? You described on
6 this one occasion, the 24th of February, getting a
7 call, was that something that happened routinely?

8 A Yes, they would have to call.

9 Q And how was that set up? Do you have
10 any information as to how that happened that they
11 would know enough to do that?

12 A I believe that they would just call
13 the general manager, Rod, and just tell him that
14 they were going to come in, and there would be a
15 few of them, so have a table reserved for them.

16 Q Okay. And they left on this one
17 occasion, the 25th of February, around 2:30. Are
18 you able to tell us what time they would leave
19 when the groups came in on the earlier occasions?

20 A Like the larger groups?

21 Q Yes?

22 A Probably about the same time. Maybe
23 not as late.

24 Q Okay. Was it the same type of get
25 together on each of those occasions?

1 A Yes, they would drink a lot.

2 Q They would drink a lot?

3 A Um-hum.

4 Q And you would have to stay on extra
5 hours to work that group?

6 A Yes.

7 Q Did you come to know any of these
8 officers?

9 A Yes.

10 Q And who did you come to know?

11 A I believe one of them was Sean Black,
12 or Blackie, Ken Azaransky, and there was one I do
13 not know his last name, but I do know his first
14 name is Dave.

15 Q All right. So Sean Black, and you
16 used the term Blackie. Is that like a nickname?

17 A I believe that's his nickname.

18 Q And Ken Azaransky --

19 A Yes.

20 Q -- and Dave. Our information is that
21 the only Dave in this group would be David
22 Harding. Does that help you out? Do you know
23 whether you ever heard his last name?

24 A No.

25 Q How did you come to know these

1 gentlemen?

2 A They would come in about once a week.

3 Q And so they were kind of regulars, you
4 would say?

5 A Yes.

6 Q Would they come in alone or would they
7 come in with other people?

8 A Oftentimes they would have a couple of
9 people come with them, but it was usually the
10 three of them for sure that would come in.

11 Q That would be like a core group of
12 them, and there might be a couple of others
13 socializing with them?

14 A Yes.

15 Q Do you know when they came in with
16 others, whether those other people were also
17 police officers?

18 A Yes, they were police officers.

19 Q And do you know about Constable Black,
20 what can you tell us about him?

21 A I know that he was very good friends
22 with the general manager.

23 Q And that would be Rodrigo Bravo?

24 A Yes.

25 Q And what do you know about the nature

1 of his friendship with the general manager?

2 A I just remember my manager telling me
3 that Sean was in his wedding party.

4 Q Okay. So Sean Black was in
5 Mr. Bravo's wedding party?

6 A Correct.

7 Q And you know him by his nickname
8 Blackie?

9 A Yes.

10 Q Would Sean Black come in during these
11 shift-end parties?

12 A Yes.

13 Q Are you able to indicate whether he
14 was always there for those parties when you were
15 present?

16 A Every single time.

17 Q And do you know what his current rank
18 is?

19 A The last I heard, I believe he was
20 getting promoted to a sergeant. And that was
21 quite some time ago.

22 Q All right. Was that while you were
23 working at Branigan's?

24 A Yes.

25 Q Had you ever socialized with any of

1 these people?

2 A I had stayed after a shift and had a
3 few drinks with them.

4 Q And who was there?

5 A There was Sean Black, Ken Azaransky,
6 and Dave.

7 Q All right. Let's return to the
8 evening of February 24th, 2005. What condition
9 were the officers in as they arrived at
10 Branigan's?

11 A They were ready to have a good time.
12 That's about all.

13 Q What makes you say that they were
14 ready to have a good time?

15 A Well, they were all eager to get their
16 drinks and have the tables put together, and --

17 Q Okay. And how did you know about
18 having the tables put together?

19 A Because they had called prior to
20 arriving to have the tables together, because
21 there was a large group of them coming in.

22 Q Was there a specific instruction to
23 put the tables together?

24 A No, but that would be the only spot to
25 put the tables to accommodate to a large party.

1 Q Okay. Was there any objective in
2 putting all of the tables together? Why not just
3 put them all over where the tables were already?

4 A Because they all would like to sit
5 together.

6 Q And when I asked about their
7 condition, I was also interested in whether you
8 were able to make any observations about whether
9 any of them appeared to have too much to drink
10 before they got to the bar, or what their
11 condition was?

12 A Not from what I saw.

13 Q And so where did they -- when you set
14 up the tables, where did you set them up?

15 A At the back of our lounge on the
16 southeast side.

17 Q I'm going to ask that a diagram be put
18 up, and I'm going to ask that you be provided with
19 a book of photographs of the facility. That book
20 is W9. If that could be made the next exhibit
21 please, it would be exhibit 153.

22 (EXHIBIT 153: W9, 18 photographs of
23 Branigan's Bar and CAD floor plan of
24 bar)

25

1 BY MR. PACIOCCO:

2 Q I'm going to ask you if you could,
3 please, put up W9.19, which would be the CAD
4 drawing. And if Ms. O'Halloran, if you could go
5 to the photo W9.19? Do you see the numbers in the
6 lower right-hand corner?

7 A Yes.

8 Q And what you have there, you will see
9 that it has also been put up in poster size for
10 the purposes of allowing everyone in the room to
11 see it. I may get you to walk over there in a
12 moment and to actually point out some locations.
13 This is an outline of the room in Branigan's, the
14 south-end lounge in Branigan's. Are you able to
15 situate that drawing according to your memory of
16 the way the restaurant was laid out?

17 A Yes.

18 Q And you will notice that it shows
19 275 feet by 168 feet on the south wall, which is
20 actually at the top of that drawing; 72 feet
21 leading to an alcove, which is six feet deep. And
22 then you have another 79 feet running along that
23 wall, leading up to a box that's on an angle that
24 I understand to be a fireplace?

25 A Yes.

1 Q Now, the photos that you have in front
2 of you, and I'm going to take you through shortly,
3 are taken with all of the furniture removed from
4 the lounge in order to get a sense as to the space
5 that's available in that lounge for setting it up.

6 Can you describe how you set up the furniture in
7 the lounge for the get together on February 24th?

8 A We pulled the tables from the back
9 southeast, or the back south, the 275 there, and
10 we put them toward the middle, took three tables
11 from around the fireplace, and then there was two
12 lower tables that we put together as well.

13 Q Okay. So if I understand you,
14 normally you had three tables along the southeast
15 wall where the 275 appears?

16 A Pardon me?

17 Q You would have had, before you set up,
18 three tables along the wall where the 275 appears?

19 A Sorry, the 168.

20 Q Okay. The 168, all right. Is that
21 where they were at the end of the night, or is
22 that where they were before you set them up, just
23 so I understand?

24 A That's where they were before I set
25 them up.

1 Q Okay. So you would have had three
2 tables at the 168. So in that little -- in the
3 alcove at the top of the drawing there?

4 A Yes.

5 Q And where else would you have had
6 tables?

7 A Towards the 72, the 46, and along that
8 79, and one in front of the fireplace.

9 Q Okay. So you had, basically, tables
10 along the two edges. And is that how they were
11 set up for the officers?

12 A I put them all together.

13 Q Okay. And so where would you have put
14 them all when you put them all together?

15 A Do you want me to show you?

16 Q Please? And you can come back to the
17 mic at some point and I will get you to recap what
18 you say.

19 I misspoke earlier, those are inches,
20 168 inches as opposed to 168 feet, and 275 inches
21 as opposed to 275 feet. This isn't a huge hall,
22 it is something more intimate than that. I do
23 apologize.

24 Okay. Chelsea you indicated that
25 there were some tables up around the 168?

1 A Right there.

2 Q Okay. So you would have had three
3 tables up there, and is that how they were set up
4 for the officers?

5 A No, I pulled them out and I had them
6 all along in here.

7 Q Okay. So they would have been more on
8 a strip along that edge?

9 A Yes.

10 Q All right. And how many tables would
11 have been in that strip?

12 A I'm taking tables over here, I had six
13 high-top tables.

14 Q All right. So you had six high-top
15 tables. If you could point, one, two, three,
16 four, five, six, to where you believe the six
17 high-top tables were set up for the officers?

18 A One, two, three, four, five, six, all
19 in there.

20 Q Okay. So in a long row, basically
21 running along the right-hand side of that diagram?

22 A Yes.

23 Q And you also mentioned something about
24 another type of seating?

25 A Yes. There was two low-top tables

1 right here.

2 Q Okay.

3 A That we had pushed together.

4 Q You had pushed them right beside each
5 other?

6 A Yes.

7 Q Okay. So the two low-top tables,
8 would they have been touching or just very close
9 to one another?

10 A No, just the couches would be
11 back-to-back.

12 Q Okay. So there would be couches with
13 these low-top tables?

14 A Yes.

15 Q And you would have a couch on each
16 side of one table?

17 A Yes.

18 Q And then you would have another couch
19 back on to one of those couches, and the same set
20 up on that side, couch, table, couch; is that how
21 it was set up?

22 A Yes.

23 Q All right. I'm going to take you
24 through some photographs, and perhaps you can
25 assist us in situating this material using the

1 photographs as well. I'm going to ask you to put
2 up W9.9. Thank you, Ms. Braun.

3 Ms. O'Halloran, I'm going to take you
4 through some photos that the gallery will not be
5 able to see, because this is not the first photo
6 that I am going to show you, but I wanted them to
7 have a visual opportunity to see basically what we
8 are looking at. You are going to see that the
9 photograph W9.1 appears to be a photograph taken
10 of the east wall in a small corner of the south
11 end; is that correct?

12 A Yes.

13 Q And it looks like those are red
14 blinds. I take it that those are windows?

15 A Yes.

16 Q And you said the bar was on Leila
17 Street. Where is Leila Street located?

18 A Off of McPhillips in the North End.

19 Q And where would Leila be if you were
20 to open one of the windows?

21 A On the south end.

22 Q Okay. So just the right-hand window
23 there, if we were to pull that blind up and look
24 out, you would be seeing Leila?

25 A Yes.

1 Q Go to W9.2, please? You will see that
2 this photograph is starting to pan towards the
3 right looking into the lounge area, and now you
4 see almost three windows on the Leila end south
5 side; is that correct?

6 A Yes.

7 Q If you could go to W9.3, please?
8 W9.3, we are panning even further, and you can see
9 the alcove that sits on the south end with three
10 windows into Leila; is that correct?

11 A Yes.

12 Q And you begin to see part of the wall
13 where it starts to form the alcove that you saw on
14 the CAD drawing.

15 W9.4, very similar angle, but we are
16 moving a bit more to the right at this time, we
17 are a bit more to the west. You can now catch
18 more of the alcove with the Double Diamond poster
19 that's on there?

20 A Yes.

21 Q The next shot, W9.5, again moving in
22 that same direction, still more of the alcove
23 being shown, but you can still see the entire east
24 wall.

25 The next shot, W9.6, panning again

1 even further into the alcove, but again still
2 showing more of the corner of the east wall down
3 towards the south end.

4 W9.7, the east wall is no longer
5 visible, as the photographer pans farther to the
6 right. And again, you see predominantly the south
7 wall, and now a fairly good part of the alcove.

8 W9.8, it reverts back to the corner
9 where the alcove comes out.

10 And then W9.9, which you see here.
11 You can see that the fireplace is in the upper
12 right-hand corner. The photographer would have
13 been standing past the fireplace, looking into the
14 room on an angle, unable to see into the alcove,
15 which I understand is tucked away behind the
16 fireplace; is that correct?

17 A Yes.

18 Q And then W9.10, Ms. Braun, if you
19 could, please, put W9.10 up? W9.10 is a
20 photograph taken from the east side, looking
21 towards the west side, with part of the south wall
22 being shown, two and a half of the three windows
23 that are situated there, as well as part of the
24 fireplace?

25 A Yes.

1 Q And I take it from your description of
2 setting up the tables, that that photograph would
3 catch most, if not all, of the tables that have
4 been set up?

5 A Yes.

6 Q So, essentially it is in an area that
7 size that the events of that evening predominantly
8 took place?

9 A Yes.

10 Q W9.11 is a shot again, only this time
11 panning a bit more to the west, showing more of
12 the fireplace.

13 W9.12 is similar. Ms. Braun, if you
14 could put W9.12 up for a moment, please? This
15 vantage point again is taken from past the
16 fireplace, looking southward, and it does not show
17 the alcove because of the angle of the photograph,
18 but does show the corner over to the east side and
19 almost all of the south-end windows; correct?

20 A Yes.

21 Q If you could put up -- all right, I
22 will get to you in a minute. We are going to look
23 at W9.13. You don't have that, Ms. Braun? W9.13
24 is one of the more dedicated alcove photographs,
25 it just seems to be a picture taken into the

1 alcove to give some sense as to the space that is
2 available in that part.

3 W9.14, similar area, this time panning
4 out a bit to the right, showing more of the
5 fireplace and giving a better sense as to the
6 actual size of the alcove.

7 W9.15, showing the entire fireplace
8 and part of the alcove.

9 And W9.16 is taken from the south
10 looking northwards. We see a bar area there. Is
11 that the way the bar was set up when you were
12 working at Branigan's?

13 A Yes.

14 Q And I'm going to take you back to this
15 photograph later, ma'am. You will see W9.17, the
16 same basic thing, only taken a bit more from the
17 west looking in the north direction.

18 Can you describe for us the tables
19 that were used at Branigan's, the high-tops first
20 that you began describing?

21 A Most of the tables in the bar were
22 high-top tables, and they sat four bar stools
23 around them, and then we had some lower-top tables
24 that sat two couches on each, or one couch on each
25 side.

1 Q Are you able to describe the general
2 height of the high-top tables? And you can stand
3 and show us, using your body, where the top of the
4 high-top tables would be?

5 A All right. So you are indicating
6 pretty well middle chest area?

7 A Yes.

8 Q And could you describe how big around
9 the tables were?

10 A They weren't that big. They were
11 about three by four feet, perhaps.

12 Q Okay. Three to four feet, perhaps.
13 Were they round or square?

14 A They were round.

15 Q Okay. And the low-top tables?

16 A They were about the same.

17 Q The same size, three to four feet?

18 A Yes.

19 Q And how high were those tables off the
20 ground, do you recall? All right. You are
21 indicating basically into the middle of your
22 thighs?

23 A Yes.

24 Q Could you take a look, please -- and
25 Ms. Braun, if you could put up the photograph

1 W9.18? If you could look at W9.18 as well,
2 Ms. O'Halloran? You can see from the fine
3 tailoring that that's part of Mr. Clifford's body.
4 And you have a table there. Do you recognize the
5 table, ma'am?

6 A Yes.

7 Q And is that one of the high-top tables
8 that you described?

9 A Yes.

10 Q And you can get a sense of the size of
11 it by the gentleman who is sitting there.

12 Could you turn back to W9.17, please?

13 W9.17 shows two tables in the lower left-hand
14 corner. One of them appears to be the same type
15 of high-top table that appears there. Would you
16 agree with that?

17 A Yes.

18 Q And another table that appears a bit
19 lower over between two couches, are you able to
20 recognize that design of table?

21 A I recognize the table, but not the
22 couches.

23 Q Okay. So let's just deal with the
24 table then. Would that be the low-top table you
25 were describing?

1 A Yes.

2 Q All right. And you can see the
3 relative heights to the extent that a camera
4 allows that type of perspective by looking at that
5 photograph, correct?

6 A Yes.

7 Q The couches, I know that these couches
8 were not the ones that were in Branigan's at the
9 time. Were the ones in Branigan's at all similar
10 to these?

11 A No, not really.

12 Q Okay. Can you describe the ones that
13 were at Branigan's?

14 A They were very old and gross.

15 Q Old and gross, that could apply to a
16 lot of things, actually. How big were they? Were
17 they couches or love seats?

18 A They could fit about two people in
19 there comfortably.

20 Q Okay. So they were basically love
21 seats?

22 A Yes.

23 Q You wouldn't see three burly police
24 officers squeezing into one, I wouldn't think?

25 A I hope not.

1 Q How close together would people be
2 when they were sitting there that evening? And,
3 Ms. Braun, perhaps you could put the CAD drawing
4 back up? What type of space was there in there?
5 What was it like for you to move around? Are you
6 able to help us out in terms of what the
7 atmosphere was like in there?

8 A I couldn't get to the other side of
9 the tables, which would be on the west side,
10 because there was people all around and I couldn't
11 squeeze in between the two men, so I just took
12 everything from my side.

13 Q Okay. So your side would have been
14 the open side?

15 A Yes.

16 Q Which would be the left side of the
17 CAD drawing. So you basically had a line that you
18 could go down and serve from one side?

19 A Yes.

20 Q How close together would the people be
21 with their tables and chairs?

22 A Right beside each other.

23 Q Okay. So it is like a big long group
24 and there is not a lot -- could you go between
25 them?

1 A No.

2 Q The tables were literally together?

3 A Right together.

4 Q Did people remain seated throughout
5 the evening?

6 A No.

7 Q Can you describe the kind of
8 activities that would have gone on?

9 A Some of them would come and go from
10 the bathroom. We had a little spot where VLTs
11 were played.

12 Q Okay. So video lottery terminals?

13 A Yes.

14 Q Where was that located?

15 A On the other side of the 72.

16 Q Okay. On the other side of the 72, so
17 it would have been past the fireplace?

18 A Yes.

19 Q Okay. So to the lower right-hand
20 corner of that drawing?

21 A Yes.

22 Q Was there a pool table there at the
23 time?

24 A Yes.

25 Q And where was that located?

1 A Right in front of the bar.

2 Q Maybe we can take a look at the photo
3 again, with the perspective being photographed
4 from the north end towards the south end, if you
5 could take a look at W9.16, please? Are you able
6 to tell us where the pool table was, using that
7 view?

8 A If you see that video arcade thing at
9 the back there, there is a high top table in front
10 of it.

11 Q Yes?

12 A And the high-top table was not there.

13 Q Okay. And that basically would have
14 been where the pool table was?

15 A Yes.

16 Q So there would have been a bit of an
17 alleyway or hallway between the pool table and the
18 bar to the right-hand side?

19 A Yes.

20 Q Would that be the place that people
21 would walk to leave the facility?

22 A Yes.

23 Q Could you tell us, Ms. O'Halloran, how
24 were orders taken and kept track of?

25 A On a machine that we call a Squirrel.

1 Q And how does the Squirrel system work?

2 A I put in a card, and it will come up
3 different kind of options, and whatever they
4 order, I punch in.

5 Q When you put in the card, is that to
6 identify you as the person who is making the
7 entry?

8 A Yes.

9 Q All right. And then whenever you put
10 in an order, you punch it in?

11 A Yes.

12 Q Do you designate it to any individual
13 or any table?

14 A It is designated by numbers.

15 Q Okay. And why numbers? How does the
16 number system work?

17 A It is per person.

18 Q Okay. So --

19 A So if there is four people sitting at
20 a table, and they all individually order
21 something, it is going to have four numbers.

22 Q All right. And how are those numbers
23 assigned to the individuals? Who makes that
24 decision?

25 A I do.

1 Q And is it based on tables or --

2 A No, it is based on the individual
3 person.

4 Q Okay. And I take it you have to
5 remember this?

6 A Yes.

7 Q This is just one of the skills you
8 develop as a server?

9 A I guess.

10 Q And how do you know what drinks or
11 what food to charge to each number?

12 A Because I would write it down on a
13 piece of paper, who ordered what.

14 Q Okay. So you would have to remember
15 the numbers, and you would, when someone was
16 ordering, you would write it down and put their
17 number adjacent to it?

18 A Yes.

19 Q Okay. And then you would go to the
20 machine and you would put in your personal
21 identification, and you would somehow punch in the
22 number that corresponds to that individual?

23 A Yes.

24 Q And then what would you do?

25 A And it would ring through, whether it

1 was food, it would go to the kitchen, and if it
2 was drinks, it would go to the bar.

3 Q All right. So there was a messaging
4 system as well?

5 A Yes.

6 Q So you didn't have to go and ask
7 literally at the bar, the bar would see it come
8 up?

9 A Yes.

10 Q And that would also I think ultimately
11 serve as the basis for the bill that would be
12 given to individuals at the end of the night?

13 A Yes.

14 Q Do you know whether these individual
15 police officers were each running their own tab,
16 or whether it was one big tab?

17 A No, they each ran their own.

18 Q So you basically had to keep track of
19 them all?

20 A Yes.

21 Q And you had to count them?

22 A Yes.

23 Q How would they pay for their drinks
24 and food at the end of the evening or when they
25 left?

1 A They all paid with different methods.

2 Q Where would they pay, physically how
3 would it happen? If I wanted to pay, if I was
4 sitting there having a beer and I decided I was
5 going to leave, what exactly would I do?

6 A I would give you the check, and you
7 would come up, and whether you were paying with
8 debit, cash, credit, on one of the pictures here,
9 there used to be a machine where I would run it
10 through.

11 Q What number are you looking at, W9.16?

12 A Yes.

13 Q Are you able to point out where the
14 machine would have been, ma'am?

15 A Right there.

16 Q All right. Could you describe it by
17 using one of the objects that appears in that
18 photo?

19 A It looks like there is a thing of
20 candy or something, maybe a big bowl of candy,
21 right there.

22 Q All right. So that's where the cash
23 machine would be, and the people would come up.
24 If you were the server, would you be the one who
25 took the money?

1 A Yes.

2 Q All right. What about receipts, how
3 did that work, how would a customer -- would they
4 get a receipt after they paid?

5 A No. They could keep theirs if they
6 wanted to, but I would usually take it from them.
7 They never used to want to keep them.

8 Q Okay. So the machine did generate
9 receipts, though?

10 A Yes.

11 Q How many copies would it generate?

12 A However many people there were.

13 Q I mean if you are dealing with one
14 customer, would there be a copy for the house as
15 well as a copy for the customer, or just one copy?

16 A Just a copy for the customer, and then
17 if I wanted to print one again, I could.

18 Q Was there any system in place for
19 those receipts to be kept by the restaurant, that
20 you are aware of?

21 A I would have to give receipts to the
22 closing manager at the end of the night.

23 Q Okay. So you basically had to print
24 out a set of receipts for yourself?

25 A Yes.

1 Q And that was done for inventory
2 purposes?

3 A Yes.

4 Q And so each of those receipts would
5 apply to an individual?

6 A Yes.

7 Q And if you were to look at those
8 receipts, you could tell how much each of the
9 people who were there spent?

10 A Correct.

11 Q It would not necessarily, I take it,
12 have their name on the receipt, but it would
13 indicate how much each of the 23 individuals who
14 were there consumed in both food and alcohol,
15 would it not?

16 A Yes.

17 Q Did those receipts contain the numbers
18 of the customers?

19 A Per receipt?

20 Q Yes.

21 A Yes.

22 Q So you would know that customer number
23 one had -- at the end of the night, if you picked
24 up those receipts and you remembered who customer
25 number one was, you could look at it and say,

1 well, yes, this man had chicken wings and he had
2 four beer?

3 A Yes. If there was more than one
4 person per receipt, it would say.

5 Q Okay. And you would furnish a set of
6 those receipts to your manager?

7 A Yes.

8 Q I can indicate to all counsel and to
9 you, Mr. Commissioner, that in the documents we
10 managed to secure from Branigan's, we were not
11 able to secure the individual receipts described
12 by this witness. The documents that I'm about to
13 show you show general sales and general inventory
14 being consumed, rather than individual purchases.
15 And those were not made available to us, or they
16 are not available.

17 If you could take a look, please, at
18 exhibit 152, the other book I put in front of you?
19 And I do apologize, it is going to be a little bit
20 difficult for me to negotiate you through those
21 documents. So I'm going to try to describe them
22 as best I can and, hopefully, we won't have too,
23 too much difficulty.

24 In that book you are going to find
25 documents generated by the Squirrel system, and

1 other documents produced by Branigan's such as the
2 type of shift information I gave to you, for two
3 nights. We have done that for comparison
4 purposes. The first set of documents you are
5 going to look at actually come from Wednesday, the
6 23rd of February, 2005. And then I'm going to
7 take you to the documents that actually apply to
8 the evening that we are interested in.

9 A Okay.

10 Q And we are doing that for comparison
11 purposes. If you could turn to what should be the
12 first of the documents, which says "cash out for
13 Chelsea 02/23/05." Do you have that document?

14 A Yes.

15 Q That's at tab W1 for the lawyers who
16 are working from the books. You notice 2359 up
17 there, just below your name, Chelsea?

18 A Yes.

19 Q Do you see that?

20 A Yes.

21 Q I take it that's the time that you
22 cashed out?

23 A Yes.

24 Q And you had earlier testified that you
25 generally close around midnight and that, of

1 course, would be one minute to midnight?

2 A Um-hum.

3 Q So the date is still shown as the 23rd
4 of February, 2005, because it hasn't quite turned
5 into the 24th yet?

6 A Yes.

7 Q It indicates that cash was received in
8 the amount of \$266.07, and there were tips for net
9 cash sales of \$249.15?

10 A Yes.

11 Q Interac payments of \$164.43,
12 Mastercard of \$32. I understand that the
13 restaurant would receive a copy of any credit card
14 account that had been given so that it could
15 process the payment?

16 A Yes.

17 Q And then a total sales, including
18 tips, of \$462.50, net at \$449.70. Am I reading
19 that right?

20 A Yes.

21 Q And then it breaks down the category
22 of sales that you engaged in that evening. It
23 shows food in the amount of \$162.86, liquor in the
24 amount of \$186.78. And I take it from this
25 document that liquor doesn't include wine and

1 beer?

2 A No.

3 Q All right. You didn't manage to sell
4 any wine that night because I wasn't there. Then
5 you have beer, \$100.06 worth of beer sales;
6 correct?

7 A Yes.

8 Q And so the total sales for you that
9 night was \$449.70. You see down below there is
10 total number of checks, 12. Can you describe for
11 the Commissioner what that means?

12 A That just means that I had 12 tables
13 that night, I gave out 12 checks.

14 Q So the way you were describing earlier
15 of assigning a check to each customer, or each
16 table you had 12 that you transacted during that
17 entire shift --

18 A Correct.

19 Q -- on the Wednesday. I'm going to ask
20 you to turn to the next document, if you would?

21 It is W2 for the lawyers in the room. I'm not
22 going to take you through your chocolate brownie
23 sales or anything like that, so I'm going to ask
24 you to turn directly to the third page of the
25 document. And you will notice that on what is

1 shown as page 3 of the document, is that the one
2 that you are looking at, up in the upper
3 right-hand corner?

4 A Yes.

5 Q You will notice under the category of
6 beer, which is exactly halfway down the page, you
7 have a breakdown of the kinds of beer and the
8 total amount received for each of those beers; is
9 that correct?

10 A Yes.

11 Q And then you have a total, 45. Would
12 that indicate that there were 45 beer sales
13 throughout the evening?

14 A Yes.

15 Q And that could be anything from a
16 pitcher to a bottle, it would still be a count of
17 one; correct?

18 A Yes.

19 Q So there were a total of 45 beer sales
20 that evening for a total of \$208.35; right?

21 A Yes.

22 Q And you sold \$100.06 worth of beer
23 that night, so you sold about half of the beer
24 that was sold in that establishment on the
25 Wednesday?

1 A Yes.

2 Q Let's turn to February 25th, and I'm
3 going to take you past the next document for the
4 moment, to what will be in tab W4 for the lawyers.
5 And it is another cash out for Chelsea slip. Do
6 you have that in front of you? If you just keep
7 going, I think you will find that. I'm skipping a
8 document for now.

9 A Yes.

10 Q Okay. And are you looking at the one
11 from February 25, '05?

12 A Yes.

13 Q Now, this shows a cash out of \$247,
14 correct? You see right under your name, Chelsea?

15 A Oh, yeah. Yes.

16 Q Okay. And this is the slip from the
17 shift that you worked on the 24th?

18 A Yes.

19 Q But since you didn't cash out until
20 2:47 a.m., that it actually turned to the 25th,
21 and that's why this document shows the date as the
22 25th; is that correct?

23 A Yes.

24 Q And this one shows that you had a
25 total number of checks of 39, if you look down

1 towards the bottom of the document. So as opposed
2 to the 12 the night before?

3 A Yes.

4 Q In addition, it shows, if we go back
5 up to the payment section, \$581.03 of cash, tips
6 \$50.92, for net cash sales of \$530.11; correct?

7 A Yes.

8 Q In addition, Interac payments in the
9 amount of \$195.73. Do you know whether the
10 Squirrel system records the Interac numbers for
11 those individuals?

12 A I don't believe so.

13 Q Okay. The Visa, \$161.52, and
14 Mastercard \$68.66, for total sales that evening on
15 your behalf of \$1,094; correct?

16 A Yes.

17 Q And not including tips, \$961.53. And
18 then there is a breakdown of the sales, and you
19 have food, \$462.21, liquor \$107.41, which is a
20 little bit less liquor than you sold the night
21 before, wine \$44.81, and beer, \$347.10 worth of
22 beer. And that's about three and a half times as
23 much beer as you sold on the Wednesday night.

24 A Yes.

25 Q If you could turn now to the next

1 document? It should be another Branigan's Garden
2 City online detailed sales report gross, this time
3 for the 25th of February, 2005. Is that the
4 document you have in front of you?

5 A Yes.

6 Q Okay. Turn to the third page, please?
7 At the top of the page it shows liquor sales, a
8 total of 61 liquor sales for \$186.62; correct?

9 A Yes.

10 Q And then you go down to beer, and
11 there is 130 items of beer sold, \$464.90; correct?

12 A Yes.

13 Q That is as opposed to the 45 units
14 that had been sold on the Wednesday?

15 A Yes.

16 Q Now your records show that you sold
17 \$347.10 worth of the beer that was sold in the
18 establishment that day, almost exactly 75 per cent
19 of the total beer sales for the entire
20 institution; correct?

21 A Yes.

22 Q You also sold \$107.41 worth of liquor.
23 Again, a significant portion of the \$186.62 of
24 liquor that was sold.

25 If I could take you back to page

1 number 2 of that same document, still in tab W5
2 for the lawyers. You should have at the top the
3 food items beginning with shrimp and ribs. Do you
4 see that?

5 A Yes.

6 Q Okay. I'm going to take you down to
7 the bottom, and under the liquor count it shows
8 three rye; correct?

9 A Yes.

10 Q Three Crown Royal?

11 A Yes.

12 Q And over on the right-hand corner,
13 brand rye, what is that, do you know?

14 A Branigan's dark rum.

15 Q That says R-Y-E, are you able to --

16 A Oh, that's the Branigan's rye, I am
17 sorry.

18 Q Okay. So that's a house rye?

19 A Yes.

20 Q Okay. And there were two of those
21 sold.

22 A Yes.

23 Q And Napoleon Brandy, two of those.
24 What is One-eyed Parrot?

25 A I think it is a fruity drink.

1 Q Okay. Not a big seller that night?

2 A No.

3 Q How busy was Branigan's when the
4 police officers were there?

5 A It wasn't too busy.

6 Q All right. And when they arrived, did
7 anything change?

8 A No, just the fact that I had that huge
9 party.

10 Q All right. And in terms of sales, how
11 did the sales for that night compare to the usual
12 sales for Branigan's?

13 A Oh, it was an extreme difference.

14 Q Okay. And can you describe the
15 extreme difference?

16 A As you guys saw, on an average night
17 it is not busy at all. It is a hit or miss.
18 Maybe you will have three tables, maybe you have
19 ten tables, you can never know. But the night
20 that they came in, it was an extremely busy night.

21 Q Can you describe how busy you would
22 have been during the period when the police
23 arrived until the place closed?

24 A I didn't have a break. I couldn't
25 stop moving.

1 Q Were there not any lulls that allowed
2 you to take a break?

3 A I could go for say a ten-minute break
4 if I wanted to, but they constantly needed
5 something, as I was coming back and forth, so
6 there wasn't really a point because I would fall
7 behind.

8 Q What were the police officers ordering
9 for the most part?

10 A Beer and wings.

11 Q Are you able to give us an idea as to
12 how many wings were consumed?

13 A Probably 200, 275, I'm not sure,
14 that's basically all they ate.

15 Q You can see, if you look at page 1 of
16 the document that we were just examining, it is at
17 tab W5 for the lawyers, in the upper left-hand
18 corner, you have got six pounds of wings being
19 ordered? Am I reading that right?

20 A Yes.

21 Q Okay. For \$47.94?

22 A Yes.

23 Q And if you go down a few past Cajun
24 and Demon and Santa Fe, you get to Sunday and
25 Tuesday wings?

1 A Yes.

2 Q How many of those were sold?

3 A It says 323.

4 Q For a total of \$113.05?

5 A Yes.

6 Q This is a Thursday evening. Can you
7 explain why it might say Sunday or Tuesday wings
8 there?

9 A Because it is a special of 30-cent
10 wings that we have to offer to the policemen,
11 because that's what our manager asked us to do.

12 Q Okay. And I take it that typically
13 this is a special price that applies on Sundays
14 and Tuesdays, but when the officers came, he would
15 extend this to them as a promotional thing?

16 A Yes.

17 Q Did anyone order off the menu?

18 A I believe there was a few people, but
19 for the most part it was the 30-cent wings.

20 Q Now, we noticed that there was 130
21 beer sales that evening?

22 A Um-hum.

23 Q Or during your shift?

24 A Yes.

25 Q Are you able to indicate approximately

1 how much of that beer would have been consumed by
2 the police officers, as opposed to the other
3 customers who were present that day?

4 A Probably most of them.

5 Q And what makes you say probably most
6 of them?

7 A Because we would sell them also a
8 promotion of \$2.75 pints.

9 Q Okay. And anything else about your
10 observations about what they were drinking and how
11 much was being consumed?

12 A For the majority, most of them were
13 drinking beer.

14 Q Do you recall anybody else drinking
15 anything other than beer?

16 A I believe there was a few that were
17 drinking hard alcohol.

18 Q Any particular kinds of alcohol that
19 come to mind?

20 A Rye.

21 Q So you remember somebody drinking rye?

22 A Yes.

23 Q Ms. O'Halloran, what was the
24 atmosphere like in the bar that evening, on the
25 23rd, going into the 24th?

1 A For me it was very busy. For them,
2 they were just having a good time. They were
3 there to drink and to have wings, and I was
4 assuming that they were in celebration of
5 something.

6 Q What would make you assume they were
7 celebrating something?

8 A Because there was such a large group
9 of them.

10 Q And how were they behaving?

11 A Towards the middle and the end of the
12 night, they were all getting kind of loud and
13 rowdy because they were drinking.

14 Q What was the noise level like?

15 A It was loud.

16 Q Are you able to indicate, in your
17 opinion, whether anybody in that room was
18 intoxicated?

19 A Yes.

20 Q And are you able to give us more
21 details? Tell us what you can about the group
22 generally, and whether you felt there were
23 intoxicated people in the group, and then we will
24 go through individuals.

25 A Well, you can usually tell when

1 someone is drunk. And I saw them all come in,
2 they weren't drinking, they had just, I'm sure,
3 gotten off shift. Towards the end of the night
4 they had all drank a lot, so they were getting
5 loud. There was a few people doing some silly
6 things. For the most part, they were all just
7 loud and obnoxious.

8 Q Okay. What kind of silly things were
9 they doing?

10 A There was -- one of the girls was
11 standing on a chair clapping her hands.

12 Q Anything else that comes to mind?

13 A Some of them were saying rude
14 comments.

15 Q Okay. And were they saying them to
16 anyone in particular, or just generally?

17 A They were saying rude comments towards
18 me.

19 Q Okay. I'm going to come back to that
20 in a moment. Were you able to make any
21 observations about the individuals you knew and
22 their state of sobriety?

23 A No, not really.

24 Q What about Sean Black?

25 A He is always just very quiet. But he

1 gets -- once he starts to drink a little bit more,
2 he gets talking a little bit, but he is still a
3 very quiet man.

4 Q What was he like at the end of that
5 night?

6 A He was ready to continue on wherever
7 they were going.

8 Q Are you able to be any more specific
9 about his level of sobriety?

10 A He was drunk.

11 Q What are you basing that on, Chelsea?

12 A His level and his tone of voice.

13 Q Anything else about it, just his
14 overall behaviour, appearance?

15 A No.

16 Q And you are basing that essentially on
17 your comparison?

18 A Seeing him come in and seeing him
19 leave were two completely different things.

20 Q Okay. And were you kind of familiar
21 with this gentleman?

22 A Yes, as he had been in prior to this.

23 Q And you indicated, that as a server,
24 this was something you feel that you have
25 experience identifying?

1 A Yes.

2 Q What about Ken Azaransky?

3 A He was drunk.

4 Q And what do you base that conclusion
5 on?

6 A The beginning of the night he was kind
7 of quiet, didn't have much to say, and then
8 towards the end of the night, he was being rude.

9 Q When you say he is being rude, and I
10 know this is difficult for you, and I know that
11 you are not relishing the opportunity to talk
12 about people, but can you give us some details,
13 please?

14 A I just find that he is a very arrogant
15 person, and he was just saying a lot of rude
16 things at the end of the night that I didn't
17 appreciate.

18 Q And are you able to remember what he
19 was saying?

20 A He was just talking about my body, as
21 well as another policeman.

22 Q And who was that other policeman?

23 A Dave.

24 Q And I don't want to embarrass you, but
25 I do think it is important to get the details.

1 Can you tell us what was being said about your
2 body?

3 A He was just telling the young cops to
4 look at my bum.

5 Q And when you say "he," do you remember
6 whether that was Ken Azaransky or Dave?

7 A It was both Ken and Dave.

8 Q What kind of tone did they have when
9 they were making this comment?

10 A They were just joking around, telling
11 them to check it out.

12 Q Do you know where Sean Black was at
13 the time that those comments were being made?

14 A I have no idea.

15 Q And this David gentleman who you
16 described, can you indicate his level of sobriety
17 to the Commissioner, please?

18 A He is extremely loud. Towards the end
19 of the night he was shouting, he was laughing so
20 loud. He was with the girl that was standing on
21 the chair. He didn't stand on the chair, but he
22 was sitting beside her.

23 THE COMMISSIONER: Can you identify
24 him by name?

25 THE WITNESS: Dave.

1 BY MR. PACIOCCO:

2 Q And in your opinion, based on your
3 experience as a server, was Dave intoxicated?

4 A Yes, his face was also red.

5 Q Did you get into any conversation with
6 any of these three about what was going to happen
7 later in the evening?

8 A They had mentioned that they were
9 having a bonfire somewhere, which I thought was at
10 Officer Ken Azaransky's house, and they asked me
11 to come.

12 Q What made you think it was at Ken
13 Azaransky's house?

14 A I just remember one of them, I
15 believe, saying it was there.

16 Q Okay. And do you know the location
17 where the bonfire was going to take place, what
18 part of the city or area?

19 A I believe East St. Paul, not exactly
20 sure.

21 Q And can you describe who it was who
22 talked about this bonfire?

23 A Dave.

24 Q And you were invited?

25 A Yes.

1 Q And how was that invitation extended
2 to you?

3 A He just came up and put his arm around
4 me and asked me to come with them.

5 Q And how did you react to that?

6 A I just laughed.

7 Q And why did you laugh, Chelsea?

8 A Because they were drunk and being
9 foolish.

10 Q Now, you mentioned rye earlier?

11 A Yes.

12 Q Do you recall, I know you remember
13 that drink in particular, do you recall who was
14 drinking the rye?

15 A I believe it was their sergeant at the
16 time, he was an older man with gray hair.

17 Q Are you able to indicate to the
18 Commissioner how much that gentleman would have
19 had to consume?

20 A I don't know exactly, but he was
21 keeping up with the rest of them.

22 Q Now, you recalled seeing two girls out
23 of this group that came in, out of 24 or so
24 officers, and you described one of them standing
25 on a chair?

1 A Yes.

2 Q What was she doing on the chair?

3 A She was clapping.

4 THE COMMISSIONER: She was what?

5 THE WITNESS: Clapping.

6 BY MR. PACIOCCO:

7 Q At what part of the evening did this
8 occur?

9 A Towards the end of the night.

10 Q Can you give us a context in which
11 that happened?

12 A I'm not sure what was going on, but
13 all of a sudden she started to like shout out loud
14 and make a high-pitched noise, and stood on the
15 bottom of the bar stool and was shaking her hands
16 and clapping.

17 Q When you say the bottom of the bar
18 stool, I take it that's one of the rungs that
19 holds the four legs together?

20 A Yes.

21 Q You described earlier that she was
22 with Dave?

23 A Yes.

24 Q Can you describe their interaction?

25 A At one point they were sitting on the

1 couch talking quite closely, but I didn't know
2 what they were talking about.

3 Q Can you describe the woman who stood
4 up on the rung of the bar stool?

5 A She was a heavier-set lady.

6 Q Are you able to give us any idea how
7 tall she might have been?

8 A Probably about 5'7", 5'8".

9 Q Did you have any conversation with her
10 throughout the evening?

11 A Yes. She was telling me that she was
12 engaged.

13 THE COMMISSIONER: Sorry?

14 THE WITNESS: She told me she was
15 engaged.

16 THE COMMISSIONER: She was engaged?

17 THE WITNESS: Yes.

18 BY MR. PACIOCCO:

19 Q And what was her personality like,
20 based on what you observed?

21 A She was just very loud, funny, happy
22 girl.

23 Q Did you notice her hair, in terms of
24 what it might look like?

25 A She had brown hair, I believe, with

1 blonde streaks in it.

2 Q And how long would her hair have been?

3 A About shoulder length.

4 Q Okay. And you are motioning down
5 below your shoulder, approximately even with your
6 shoulder?

7 A Yes.

8 Q You mentioned remembering another
9 woman?

10 A Yes.

11 Q Are you able to tell us anything about
12 her?

13 A She was quite a taller lady, she was
14 skinny, she had blonde hair. And I remember her
15 telling me that she had played soccer outside of
16 work. And I also remember them telling me, and I
17 don't remember if it was the night that they all
18 came in, but I remember them telling me that she
19 had got a promotion as well, I believe to a
20 detective.

21 Q So you learned that she was promoted
22 to detective, in your recollection, and it may
23 have been that evening, but that conversation,
24 that particular conversation could have occurred
25 on another occasion?

1 A Yes.

2 Q You had seen her before?

3 A Yes.

4 Q Had you seen the heavier-set woman
5 before?

6 A No.

7 Q And this taller woman who had some
8 soccer activity outside of work, do you know who
9 she was with?

10 A What do you mean?

11 Q Who she was with, was there anybody in
12 particular that she was associating with?

13 A She was sitting beside the sergeant
14 actually, from what I believe was the sergeant,
15 the older man.

16 Q The older man, the one you referred to
17 earlier with gray hair?

18 A Yes, and drinking rye.

19 Q And do you know where they were
20 sitting in the restaurant?

21 A They were sitting toward the
22 fireplace, the tables at the fireplace.

23 Q Would that be the low tables or the
24 high tables?

25 A They were sitting at a high table.

1 Q Okay. So one of the high tables that
2 had been pulled over into the alcove towards the
3 fireplace?

4 A Correct.

5 Q Are you able to indicate whether it
6 was the farthest one out, or one of the ones
7 inside?

8 A It was one of the farthest ones out.

9 Q But not necessarily the farthest one
10 out, or are you able to say?

11 A I'm not exactly sure.

12 Q Now, you referred earlier to Sergeant
13 Black as he now is. Are you able to tell us where
14 he was in the room, where he was sitting?

15 A I believe he was sitting in the middle
16 amongst all of the younger cops.

17 Q All right. How about Mr. Azaransky?

18 A He was sitting close to him as well.

19 Q And how about Dave?

20 A He was sitting by the other girl.

21 Q And where were they?

22 A They were all around. They actually
23 didn't really stay sitting.

24 Q Now, you mentioned Mr. Black sitting
25 around the younger ones. Were you able to make

1 any observations about the condition of some of
2 the younger ones?

3 A They were all, at the beginning, quite
4 quiet and didn't have much to say. But towards
5 the end of the night, judging by me serving them
6 alcohol, I could tell that they were getting drunk
7 and that they were having a good time.

8 Q Did you know any of these people?

9 A No.

10 Q Do you know Mr. Derek Harvey-Zenk?

11 A I thought that I knew which one he
12 was, but I don't believe it is the same one.

13 Q All right. And we will get to that in
14 a moment. You were asked by the Winnipeg Police
15 Service whether you -- if you knew whether he was
16 in attendance on that evening?

17 A Um-hum, yes.

18 Q And you indicated to them that you had
19 an idea, but you weren't exactly sure?

20 A Yes.

21 Q Where would you get the idea from?

22 A A couple weeks prior to the group
23 arriving, there was a Super Bowl that we had at
24 our work. And I believe him, Ken and Dave had all
25 come together with their wives and girlfriends,

1 and my boss had pointed out that Derek's wife was
2 pregnant.

3 Q Yes. And how did that cause you to
4 believe that you knew Mr. Derek Harvey-Zenk by
5 learning that his wife was pregnant?

6 A Because I believe I read in the paper
7 that she was either due towards the incident, or
8 she had just had her baby.

9 Q When these people came to the Super
10 Bowl party, who was there again?

11 A There was, I believe what I thought
12 was Derek, Ken and Dave.

13 Q Okay. And were there any females in
14 that group?

15 A Their wives or girlfriends.

16 Q Okay. So they each basically had a
17 female partner with them?

18 A Yes.

19 Q Are you able to make any observations
20 about the pregnancy, state of pregnancy of the
21 woman who was with the fellow you thought was
22 Derek Harvey-Zenk?

23 A She was quite big.

24 Q Was there any discussion about the
25 baby or having the baby that you can recall?

1 A I didn't ask.

2 Q You also indicated, when you were
3 talking to the Winnipeg Police, that the gentleman
4 had a particular type of eating habit, that he
5 liked to eat something, do you remember that? He
6 ate a lot of wings, do you remember talking about
7 this fellow, if it was the fellow you thought it
8 was, he --

9 A Oh, yes, he had a lot of wings, every
10 time I went back, he kept ordering wings.

11 Q And I think at one point you said he
12 usually ate a lot of wings. Is this somebody who
13 you saw before?

14 A At the Super Bowl, they had eaten
15 quite a bit that day as well.

16 Q Okay. This person who you were
17 thinking about, the person who you thought was at
18 the Super Bowl party, whose wife was very
19 pregnant, who ate a lot of wings, are you able to
20 indicate to the Commissioner how many beer you
21 believe that person had to drink from the 23rd
22 into the 24th of February?

23 A Approximately about eight or nine.

24 Q How do you remember that, Chelsea?

25 A Just judging by the people that I was

1 serving.

2 Q I said the 23rd or 24th, and
3 Mr. Clifford, being usual quick on the pick-up,
4 tells me it is the 24th to the 25th.

5 A Okay.

6 THE COMMISSIONER: Can you tell us
7 what kind of drinks?

8 THE WITNESS: It was beer, I don't
9 know exactly what kind of beer, but it was beer.

10 THE COMMISSIONER: Are we talking
11 about draft or bottled?

12 THE WITNESS: A pint, so it would have
13 off draft.

14 BY MR. PACIOCCO:

15 Q Do you recall where this gentleman was
16 sitting in Branigan's that evening?

17 A He was sitting in the middle.

18 Q Are you able to describe him
19 physically?

20 A I believe he had blonde hair and he
21 was kind of more fair skinned.

22 Q How about the size of him?

23 A He wasn't huge, but he was not too
24 small. He is medium size, I guess.

25 Q Age?

1 A I would be making a guess if I said
2 it.

3 MR. PACIOCCO: Actually,
4 Mr. Commissioner, this is a good time for a break,
5 I notice it is 10:45.

6 THE COMMISSIONER: Yes, thank you. We
7 will adjourn now for 15 minutes and come back.
8 Thank you.

9 THE CLERK: All rise, this Commission
10 is in recess.

11 (Proceedings recessed at 10:45 a.m.
12 and reconvened at 11:00 a.m.)

13 THE CLERK: All rise. This Commission
14 is reopened. Please, have a seat.

15 BY MR. PACIOCCO:

16 Q Chelsea, you still have in front of
17 you the photo book?

18 A Yes.

19 Q If you could turn to W9.16, please?
20 You will recall explaining where the cash register
21 and pool table were using that photo. And you
22 will recall describing the little walkway between
23 the pool table and the bar towards the door?

24 A Yes.

25 Q Do you remember people paying at the

1 end of the night --

2 A Yes.

3 Q -- on the early morning hours of the
4 25th of February, 2005?

5 A Yes, I had them all line in a line so
6 that I could get it all correctly put through on
7 my computer and I didn't miss anything.

8 Q Okay. Where would they have been
9 lined up?

10 A I guess starting right here, and
11 coming back.

12 Q So, it would have been where the cash
13 register was, according to your recollection, and
14 then lined up then off the picture?

15 A Yes.

16 Q All right. And they would have been
17 all gathered together in that space?

18 A Yes.

19 Q We have heard some, through some of
20 the statements by the police officers, that it
21 took a long time to check everybody out. Do you
22 have a recollection of that?

23 A Well, yes, there is 24 of them. I
24 can't do it all at one time.

25 Q Okay. Would they all have left at the

1 same time, or is it possible that some might have
2 sporadically left earlier in the evening?

3 A Some may have left, but for the
4 general part, they all hung around to wait to see
5 what was going on.

6 Q Okay. And you will notice if you flip
7 over to W9.17, there is a similar picture with a
8 slightly different angle. This one has a cash
9 register, and I know this was taken a couple of
10 years after the event, this one has a cash
11 register over on the right-hand side of that end
12 of the bar. Can you indicate if the cash register
13 that you used was in that location or was it, in
14 fact, where the candy dish is?

15 A It was, in fact, where the candy dish
16 is.

17 Q Thank you. You had an interview with
18 the Winnipeg Police, Chelsea, on March 11th, 2005,
19 at the Professional Standards Unit office. Do you
20 remember that?

21 A Yes.

22 Q And you were with Sergeant Girard and
23 Sergeant Pearson?

24 A Yes.

25 Q I'm going to be putting a document in

1 front of you, which is a transcript of your
2 interview. It will be found in book F-3, at tab
3 83.b?

4 THE CLERK: 38.b.

5 MR. PACIOCCO: 38.b. That will be
6 exhibit 154, please?

7 (EXHIBIT 154: F-3.38.b, Interview of
8 C. O'Halloran dated March 11, 2005 by
9 PSU)

10 BY MR. PACIOCCO:

11 Q Now, I know you that have had access
12 to this interview to assist in preparing your
13 testimony today?

14 A Yes.

15 Q I'm going to take you first, if I can,
16 to what would be page 1330 of the interview. And
17 at line 8, at page 1330, Chelsea, you will see
18 Sergeant Girard of the Winnipeg Police Service
19 asking you:

20 "Was anything said to you by anyone
21 that would influence what you might
22 say in this statement?"

23 And your answer was "no." Was that true, Chelsea?

24 A No.

25 Q What you told Sergeant Girard wasn't

1 the truth?

2 A No.

3 Q Could you tell the Commissioner who it
4 was who may have said something that might
5 influence the statement that you gave to the
6 Winnipeg Police Service?

7 A It was my general manager, Rodrigo
8 Bravo.

9 Q I want you to try and tell us, to the
10 best of your recollection, what Rodrigo Bravo said
11 to you?

12 A He just asked me not to say anything
13 more than I needed to, to keep my answers very
14 short and brief, to maybe no, yes, maybe, I don't
15 know, because he didn't want to be held liable for
16 anything, and he was also friends with a few of
17 them and he was in protection of them as well.

18 THE COMMISSIONER: What was that last
19 part?

20 THE WITNESS: He was in protection of
21 them as well.

22 THE COMMISSIONER: In protection of
23 them?

24 THE WITNESS: Yes, for their jobs.

25 THE COMMISSIONER: The words were, he

1 was in protection?

2 THE WITNESS: He was trying to protect
3 them.

4 THE COMMISSIONER: He was trying to
5 protect them?

6 THE WITNESS: Yes.

7 THE COMMISSIONER: I see. Thank you.

8 BY MR. PACIOCCO:

9 Q What are you basing this on, Chelsea,
10 your conclusion that he was trying to protect
11 them?

12 A That's in more different words that
13 what Rod told me.

14 Q And did he comment on what you should
15 remember --

16 A He said --

17 Q -- when you were being questioned?

18 A He said to try not to, just kind of
19 play dumb and pretend that like you didn't
20 remember too much from that night.

21 Q You talked about the concern about
22 liability as well. Did you talk about that in any
23 detail with Mr. Bravo?

24 A He didn't go any further on that.

25 Q Did he use the word "liability"?

1 A Yes.

2 Q And with respect to who? Who was he
3 talking about the concern about liability for?

4 A The restaurant and me.

5 Q And you?

6 A He didn't want me to be held liable
7 for serving alcohol to somebody who had caused an
8 accident.

9 Q Did that cause you to have any fear
10 about telling the Winnipeg Police everything that
11 had actually happened?

12 A Yes.

13 Q Why is that, Chelsea?

14 A I just didn't want to get in trouble.

15 Q So you had some concern about your own
16 personal liability for having served alcohol to
17 these people when you knew that they were
18 impaired?

19 A Yes.

20 Q I noticed, Chelsea, that you missed a
21 couple of appointments that were made with the
22 Winnipeg Police. You are going to have to say yes
23 or no?

24 A Yes.

25 Q And the first one was March 7, 2005,

1 you were supposed to meet with them at

2 1:00 o'clock and you didn't show up?

3 A Yes.

4 Q And the second time was March the

5 10th, when you were supposed to go and see a photo

6 lineup. Do you remember that?

7 A Yes.

8 Q Are you able to tell the Commissioner

9 why it was that you didn't make those

10 appointments?

11 A I had gotten in an accident.

12 THE COMMISSIONER: What was that?

13 THE WITNESS: I got in an accident.

14 BY MR. PACIOCCO:

15 Q And when did you get in the accident?

16 A I don't remember the exact date.

17 Q You missed two appointments?

18 A Yes.

19 Q Is that the same explanation for both?

20 A Yes.

21 Q And these were scheduled appointments

22 that you knew you were supposed to attend?

23 A Yes.

24 Q Did you have any feelings about going

25 and talking to them?

1 A I was very scared, I was very nervous.
2 I didn't want to say anything more than I had to
3 because I was just scared at the time.

4 Q I'm going to ask you directly whether
5 that had anything to do with you missing those two
6 appointments?

7 A No.

8 Q Now, it is pretty apparent to anyone
9 who reads the Winnipeg transcript that the answers
10 you gave to the police on a number of matters are
11 very different than the answers that you are
12 giving to the Commissioner today?

13 A Correct.

14 Q I'm going to take you through some of
15 those answers that you furnished to the Winnipeg
16 Police. If you could turn to page 1334, Sergeant
17 Girard asks you at the bottom of page 1334, line
18 22:

19 "Now, do you recall if any one person
20 or people there had an excessive
21 amount to drink?

22 Probably about -- I wouldn't say
23 excessive, but a couple of them had
24 more than the others had."

25 Do you remember giving that answer?

1 A Yes.

2 Q Over on page 1336, at line 11,

3 Ms. O'Halloran says:

4 "Yeah. Nobody drank like crazy
5 amounts."

6 You see over on page 1337, line 15:

7 "Ms. O'Halloran: Oh, they all
8 appeared fine."

9 And then down at line 22:

10 "They all stood in the line at the bar
11 when they were paying. I mean, they
12 were loud and having fun, but that's
13 okay. And none of them seemed
14 intoxicated to me. Everybody seemed
15 okay."

16 Do you remember giving those answers to the
17 Winnipeg Police?

18 A Yes.

19 Q Were those answers true?

20 A No.

21 Q So you were basically giving false
22 information during a police investigation,
23 Ms. O'Halloran?

24 A Yes.

25 Q What prompted you to make the

1 disclosure that you did when you met with
2 Mr. Clifford?

3 A Because I was reading throughout the
4 investigation, at the time of the accident, and I
5 don't feel personally that it was completely
6 looked at. And I felt that if I gave my complete
7 and honest truth that it would help a little bit
8 to further go on.

9 Q And who were you thinking of when you
10 made that decision?

11 A Her family.

12 Q What were your thoughts with respect
13 to her family?

14 A I just felt that they needed more
15 answers than they had gotten.

16 Q How do you feel, Ms. O'Halloran, about
17 the fact that you provided false information to
18 the police during the investigation?

19 A I don't feel good about doing it, but
20 again, I did it because my manager had asked me to
21 keep my answers very short, and play dumb, and act
22 like I don't remember too much of what happened.

23 Q And, Chelsea, you had indicated to the
24 Winnipeg Police that you thought you knew the
25 person who was ultimately responsible for the

1 accident. And I understand that they ultimately
2 came to you with a number of photos to see whether
3 you could identify the person that you had in
4 mind?

5 A Yes.

6 Q Now, this was one of the meetings that
7 you missed. You agreed to meet with Sergeant
8 Girard to go over the photos and were expected to
9 be there on March the 17th?

10 A Yes.

11 Q And you didn't show up, and he left a
12 voice mail message for you?

13 A Yes.

14 Q And the next day you left him a voice
15 mail, apologizing for missing the appointment.
16 And then he calls you on March 22nd. Do you
17 remember him calling you again?

18 A Yes.

19 Q And he left his cell number and he
20 said he needed you to view the photos and he asked
21 you to call him, even if you decide not to look at
22 them?

23 A Yes.

24 Q And then you ultimately do meet with
25 him. Do you remember that?

1 A Yes.

2 Q What happened when you met with him?

3 A They just came to my house and showed
4 me a number of different pictures.

5 Q Do you remember approximately how many
6 pictures you saw?

7 A There was about three rows of four
8 pictures on each side, on each row, and then they
9 had a few individual just pieces of paper with
10 pictures on them.

11 Q So your recollection is there was a
12 sheet with photos and then there were a couple of
13 individual photos?

14 A I believe so.

15 Q Were -- to your recollection, did they
16 ever take out photos one at a time, all 15 or 12?

17 A Yes.

18 Q And put them down like that?

19 A Yes.

20 Q What is the sheet that you are talking
21 about?

22 A They showed me individual pictures at
23 first, and then they showed me like a piece of
24 paper with pictures on them.

25 Q Were they the same gentlemen who were

1 in the individual photos?

2 A No.

3 Q How confident are you that they were
4 different people that were shown on the sheet?

5 A Pretty confident.

6 Q And what was the end result of you
7 going through those photos?

8 A I could not recognize anyone.

9 Q You could not recognize anyone?

10 A No.

11 MR. PACIOCCO: Madam clerk, I'm going
12 to ask you to put another document in as an
13 exhibit. This is further disclosure document,
14 disclosed on July 7th, 2008, and it contains a
15 variety of documents in the disclosure package
16 that counsel will have received. I'm going to ask
17 you to extract the email from Ms. Shannon Hanlin,
18 dated July 2nd, 2008, and it should contain within
19 it a couple of attachments. And could you confirm
20 for me, please, that the attachments to that email
21 are a Winnipeg Police Service photo lineup form,
22 and there is a Police Service operations evening
23 shift schedule document with a number of blackouts
24 on the page. Those are the two pages that I will
25 be putting in. And that's a two-page document

1 with the blackouts; right?

2 THE CLERK: Correct.

3 MR. PACIOCCO: Okay.

4 (EXHIBIT 155: Email from Ms. Hanlin,
5 July 2, 2008 with photo lineup form
6 and WPS line up for operations/Div 13
7 February 25, 2005)

8 MR. PACIOCCO: This will be the Hanlin
9 disclosure of July 2nd.

10 THE COMMISSIONER: Thank you.

11 BY MR. PACIOCCO:

12 Q Now, Chelsea, I would like you to look
13 through those documents, and you are going to find
14 one that says Winnipeg Police Service photo lineup
15 form. Do you see that there?

16 A Yes.

17 Q Can you take a look through it, just
18 take your time and read through it a little bit?

19 A Okay.

20 Q Have you ever seen a form like that
21 before?

22 A Not that I remember, no.

23 Q Do you remember filling out a form
24 when the police were with you?

25 A No.

1 Q Do you remember signing anything?

2 A No.

3 Q Do you remember whether there were any
4 comments made by the officers to you about whether
5 the person's, who they thought was responsible for
6 the accident, photo would have been in the photos
7 that you were shown?

8 A Not that I remember, no.

9 Q And then when you first were
10 interviewed by Mr. Clifford on March 12th, 2008,
11 the records that you were shown today and that
12 form exhibit 152 were not available. So you
13 testified without the benefit of those records?

14 A Yes.

15 Q Do you remember testifying about
16 pitchers of beer being served?

17 A Yes.

18 Q And you told Mr. Clifford that during
19 the later part of the night some people switched
20 to pitchers of beer?

21 A Yes.

22 Q And you also described remembering the
23 jollier woman, the one who you said was drunk,
24 drinking out of pitchers of beer at the end of the
25 evening?

1 A Yes.

2 Q Looking at the records,
3 Ms. O'Halloran, if you can turn please to the
4 records for the 25th of February? And I'm going
5 to ask you to turn to what would be W5 for the
6 lawyers, and it is in the last half of your
7 bundle, and that's the online detailed sales
8 report that we were looking at before. The first
9 entry in the left corner of it is one pound of
10 wings. Do you see that document?

11 THE COMMISSIONER: Page?

12 MR. PACIOCCO: There is no page
13 numbers, Mr. Commissioner, it is at tab W5.

14 THE WITNESS: I'm not sure what page
15 I'm supposed to be looking at.

16 BY MR. PACIOCCO:

17 Q The page you have in front of you,
18 what is it?

19 A It says Branigan's Garden City, there
20 is a vodka paralyzer at the top?

21 Q Sorry, what is at the top?

22 A Page 3, vodka paralyzer.

23 Q Okay. That's actually the page I
24 wanted to draw your attention to. That would be
25 the third page for those of us who are working out

1 of the tab. And you will go down to the category
2 beer, halfway down the page?

3 A Yes.

4 Q And correct me if I'm wrong, but it
5 doesn't look like there is any record of any
6 pitchers of beer having been served on the 24th
7 and 25th of February?

8 A No, it doesn't say so.

9 Q All right. So if these records are
10 accurate, it is fair to say that your recollection
11 about pitchers of beer is not correct?

12 A I do remember serving pitchers of beer
13 towards the end of the night.

14 Q Are you able to give us any
15 explanation as to how that might be possible,
16 given these records?

17 A I'm not 100 per cent sure why they
18 wouldn't be on here, because I can't remember if I
19 had rang them through, or if Darcey just had
20 poured some for me to give to them.

21 Q You also, in the course of your
22 testimony with Mr. Clifford, indicated that you
23 thought there might be about 15 or so people who
24 were impaired at that event?

25 A Yes.

1 Q And you described how you thought they
2 might have had eight or nine bottles of beer each.
3 Am I properly interpreting your testimony to
4 Mr. Clifford?

5 A They weren't bottles, they were pints.

6 Q Okay. And on my count, if we had 15
7 people drinking eight beer each, that would be 120
8 beer in total?

9 A Yes.

10 Q And there were only shown 130 beer
11 being consumed throughout the course of that
12 entire day. Do you have any comments to make on
13 whether --

14 A It was a guess that I made. I wasn't
15 exactly sure, and it was just a guess that I made.
16 And it might not have been 15 people, there could
17 have been less people.

18 Q All right. Does any of that shake any
19 your confidence in your general assessment that
20 there were a number of intoxicated police officers
21 at that event?

22 A Absolutely not.

23 Q Does any of that shake any of your
24 confidence in your testimony that Sean Black was
25 drunk?

1 A No.

2 Q Does any of that shake your confidence
3 in your testimony that Constable Azaransky was
4 drunk?

5 A No.

6 Q Does any of that shake your testimony
7 that David was drunk?

8 A No.

9 Q Does it shake your confidence in your
10 testimony about the lady on the stool being drunk?

11 A No.

12 Q Does it shake your confidence that the
13 Super Bowl wing eater was drunk?

14 A No.

15 Q Does it shake your confidence that the
16 Super Bowl wing eater would have had eight beer or
17 so?

18 A No. He possibly could have. I made a
19 guess, but I know when someone is drunk.

20 Q Ms. O'Halloran, were you ever
21 interviewed by someone assigned to prosecute this
22 case, a lawyer?

23 A No.

24 Q The only lawyer that you were
25 interviewed by before today was Mr. Clifford, and

1 to a lesser extent, myself?

2 A Yes.

3 Q And were you ever interviewed by RCMP
4 officers, in 2006, who may have been doing a
5 follow-up investigation about a year later?

6 A No.

7 Q Did you have any idea that was going
8 on?

9 A No.

10 Q If you can just wait a moment, I have
11 to confer with Mr. Clifford.

12 Ms. O'Halloran, those are all of the
13 questions I'm going to have with you now. The way
14 this is going to work is, you see a lot of tables
15 here full of people in suits. They are going to
16 be invited to come up one at time, if they wish,
17 and to ask you questions. So if you will just
18 remain there, please? I am going to take a minute
19 to clear myself off the table.

20 THE COMMISSIONER: I need a bit of
21 assistance. I didn't get all of your testimony
22 down. Can you explain again why you believe that
23 the pitchers of beer are not on the sheet that
24 you've been looking at?

25 THE WITNESS: They possibly could have

1 not been on there because they weren't rang
2 through, therefore, that means I didn't ring them
3 through, but Darcey could have just poured them
4 and not put them -- not rang them through on his
5 tab either. Therefore, it would just be free
6 flowing beer, it wouldn't be marked, it wouldn't
7 be counted for.

8 THE COMMISSIONER: It wouldn't be.
9 All right. Thank you, thank you very much. But
10 you are satisfied that there were pitchers of
11 beer?

12 THE WITNESS: I'm pretty sure, yes.

13 THE COMMISSIONER: Do you know how
14 many?

15 THE WITNESS: No, I don't have an
16 idea.

17 THE COMMISSIONER: Would you have
18 served them, would you have brought the pitchers
19 out to the table?

20 THE WITNESS: Yes.

21 THE COMMISSIONER: Yes.

22 MR. ZAZELENCHUK: Thank you,
23 Mr. Commissioner.

24 BY MR. ZAZELENCHUK:

25 Q Ms. O'Halloran, my name is Gene

1 Zazelenchuk, I'm the Taman family's lawyer. My
2 clients instructed me that the first thing I have
3 to do is convey their thanks to you for the very
4 courageous way in which you came forward.

5 A You are welcome.

6 Q And I feel that I should tell you
7 something else. We received a copy of your
8 interview with Mr. Clifford.

9 A Yes.

10 Q And Tara Taman is about the same --
11 sorry, Kristin Taman is about the same age as you
12 are. And when she was sitting in my office
13 reading your interview, she started to cry. And I
14 asked her why. And she said because she is doing
15 such a wonderful thing.

16 A Thank you.

17 Q That may make you feel a little
18 better.

19 A Thank you.

20 Q I just have very few questions for
21 you. If you go to the page that has vodka
22 paralyzer at the top, and that's the third page of
23 W5, which is exhibit 152. Do you have that page?

24 A Yes.

25 Q Okay. Now, let's just go to the page

1 before that? And am I right, if we go to the
2 bottom of the page where it says "liquor," that
3 what we have there is sort of an itemization of
4 the hard liquor that was sold that night?

5 A Yes.

6 Q So, for example, you would have rye,
7 that's the first item at the bottom of the page we
8 are on, count three, total \$12.75?

9 A Yes.

10 Q So am I right in assuming that that
11 means there were three ryes sold, and the total
12 price of the rye was \$12.75?

13 A Yes.

14 Q So each of the rye would have been
15 \$4.25, or one-third of that?

16 A About that, yes.

17 Q Okay. And let's turn the page, and we
18 are on the page that has vodka paralyzer at the
19 top; correct?

20 A Yes.

21 Q And then if we go down three lines, we
22 have got brand, Caesar, Murphy's Irish, and then
23 we have four dots. Do you see that?

24 A Yes.

25 Q 19, correct?

1 A Yes.

2 Q And zero?

3 A Yes.

4 Q And then underneath that we have
5 liquor, total 61 items for \$186.62; correct?

6 A Yes.

7 Q And that's -- I added up all of the
8 numbers, the four, the one, the 19, and they came
9 to 61. And I added up all of the prices, and it
10 came to \$186.62. And I did it three or four times
11 on a calculator, and then I had my secretary do it
12 because I'm notorious for getting things wrong, so
13 I'm going to ask you to take my word for it.

14 A Okay.

15 Q Does that mean that there is an entry
16 here that 19 drinks were given away?

17 A I am not actually sure what those four
18 dots mean, but it very well could mean that.

19 Q And you told us, I believe in your
20 direct evidence earlier this morning, that the
21 bartender can give away a drink if he wants?

22 A Absolutely.

23 Q Sure. And that's sometimes done for
24 public relations reasons or something else?

25 A Yes.

1 Q Sure. Okay. I wonder if you could
2 pick up your statement that you gave to the
3 Winnipeg Police, and that's exhibit 154, found at
4 F-3.38.b. And there is numbers at the bottom of
5 the page and in the bottom right-hand corner, and
6 I wonder if you could go to page 1340 -- 1340.
7 And actually, lawyers do this all of the time,
8 could you go back a page to 1339? And starting at
9 the bottom of 1339, there is an exchange.

10 Sergeant Girard says:

11 "All right. Okay. What was the
12 ballpark figure of the total then of
13 the bill?"

14 And then you answer:

15 "Of each item -- I don't know the
16 total of the full bill, but
17 individually I could say probably,
18 approximately. We give them \$2.75
19 pints and 35-cent wings."

20 And then Sergeant Girard says:

21 "\$2.75 a pint?"

22 And you say:

23 "Yes. And 35-cent wings. So roughly
24 I would say about \$25 or \$30 each
25 bill. I don't know how much the full

1 bill was because I billed them
2 individually, so approximately \$25,
3 \$30 each."

4 You were telling the truth when you gave that
5 information to the City of Winnipeg Police,
6 weren't you?

7 A Yes.

8 Q Yes. And is that still your memory
9 today, that the average bill would be about \$25 or
10 \$30?

11 A Average, yes.

12 Q Yeah. Once again, I would like to
13 thank you on behalf my clients and myself.

14 A Thank you.

15 THE COMMISSIONER: Mr. McDonald?

16 MR. McDONALD: I have no questions,
17 Mr. Commissioner.

18 THE COMMISSIONER: Thank you.

19 MR. LABOSSIÈRE: Mr. Commissioner, I
20 have spoken with counsel for the Winnipeg Police
21 Service. We have compared notes and it appears I
22 would be duplicating the questions that would be
23 asked by counsel, so I'm going to leave that to
24 Mr. Jack.

25 THE COMMISSIONER: Thank you.

1 BY MR. JACK:

2 Q Good morning. As Mr. Labossiere just
3 indicated, my name is Michael Jack. I am here on
4 behalf of the Winnipeg Police Service, also with
5 Shannon Hanlin who is seated behind me.

6 Ms. O'Halloran, I want to start off
7 with some general questions about your experience
8 as a server.

9 A Yes.

10 Q And your understanding of your role
11 and your responsibilities and duties, that sort of
12 area. If I recall correctly from both your
13 interview with Commission Counsel, as well as your
14 statement provided to officers of the Winnipeg
15 Police Service, you had been working at Branigan's
16 approximately two and a half months around the
17 date of this incident?

18 A Yes.

19 Q And I'm also correct in noting that
20 you had been employed by the Pony Corral downtown
21 for a period of approximately one year prior to
22 that?

23 A Approximately, yes.

24 Q Had you been employed as a server
25 anywhere else, other than those two locations that

1 you referred to?

2 A No.

3 Q Now, can you give me some general
4 indication of what sort of training you would have
5 received? I'm interested, firstly, in the
6 training you would have received prior to
7 commencing employment, or at the commencement of
8 your employment at the Pony Corral downtown? And
9 training, I'm specifically referring to training
10 about the service of alcohol and issues
11 surrounding overservice of alcohol. Can you give
12 me some indication?

13 A They don't really train you on
14 overservice. It is kind of to your discretion
15 what you think, but for I believe about a week,
16 week and a half, you follow a senior server
17 around, watching what they do.

18 Q So you sort of shadow a senior server?

19 A Yes.

20 Q And you indicate it is at your
21 discretion with respect to overservice. Is there
22 no assistance provided to you in terms of signs of
23 impairment, signs of when someone has been
24 over-served? Were you given any indication, any
25 list, any brief instruction in that regard?

1 A If they are loud, if they are
2 belligerent, if they are doing inappropriate
3 things, that's a good indication that they have
4 drank too much.

5 Q And that sounds quite reasonable.
6 That's your understanding of it. Is that
7 something that was imparted to you as instruction?

8 A No.

9 Q So that's just what your experience
10 has taught you?

11 A Yes.

12 Q So being loud, belligerence,
13 inappropriate behaviour, anything else that you
14 can think of in terms of indicia of impairment or
15 being over-served?

16 A No.

17 Q And prior to the commencement of your
18 employment at Branigan's, did you receive any
19 additional training, any different training with
20 respect to the service of alcohol and the
21 overservice of alcohol?

22 A Again, just shadowing, watching
23 somebody, but they don't really provide you with
24 the information on overservice of alcohol.

25 Q And can you give me a little more

1 elaboration in terms of shadowing somebody? I
2 take it you wouldn't go from table to table with a
3 senior server?

4 A Yes.

5 Q So you would spend the entire shift
6 while you were doing that sort of training --

7 A Yes.

8 Q -- literally on their hip, as it were?

9 A Yes.

10 Q Do you recall who at Branigan's was
11 the senior server that you accompanied when you
12 were in your learning phase?

13 A I believe her name was Leanna.

14 Q So, apart from shadowing of a senior
15 server at Branigan's, were you given any other
16 instruction by anyone, whether they be in a
17 management position or otherwise, concerning how
18 to spot when somebody has been over-served and how
19 to deal with those patrons?

20 A No.

21 Q Now, it is my understanding around
22 that time, and since that time, that the Manitoba
23 Liquor Control Commission had a program in place.
24 It is my understanding it is referred to as "It's
25 Good Business, Responsible Service and Safety for

1 Licensed Establishments." Does that sound
2 familiar to you?

3 A Yes.

4 Q Is that something that you had any
5 involvement with, either at Pony Corral or at
6 Branigan's?

7 A I had a card.

8 Q You had a card. So I think I have an
9 idea what that means. Can you just explain for
10 the rest of us what that means?

11 A It basically just means that you are
12 able and you have the awareness of serving
13 alcohol.

14 Q And what is required for you to get
15 the card that you referred to?

16 A I did a test.

17 THE COMMISSIONER: Sorry?

18 THE WITNESS: I did a test.

19 THE COMMISSIONER: Did a test?

20 THE WITNESS: Online.

21 BY MR. JACK:

22 Q You did it online?

23 A Yes.

24 Q Was there any material that you were
25 to study prior to doing the test, or could you

1 just go online, do the test, and then receive the
2 card?

3 A You just go online and do the test.

4 Q Questions about the service of
5 alcohol, I take it?

6 A Yes.

7 Q Do you recall whether they had any
8 questions there about over-serving alcohol?

9 A Yes.

10 Q Do you recall any of those questions?

11 A I don't know exactly word for word,
12 but I believe it was along the lines of, how do
13 you know when to cut someone off.

14 Q And that may or may not be a different
15 question than the one I asked you, so let's
16 explore that one. If it was posed to you, how do
17 you know when to cut someone off --

18 A Okay.

19 Q -- what would your response be?

20 A If they are loud, if they are doing
21 inappropriate behaviour, if they are rude, saying
22 rude things.

23 Q So similar to the --

24 A Stumbling, sorry.

25 Q Pardon, what was that?

1 A Stumbling.

2 Q Stumbling. And so you obtained your
3 card?

4 A Yes.

5 Q And, in fact, would it have been a
6 requirement of your employment at Branigan's that
7 you actually have a card?

8 A They say that you should have one, but
9 I wasn't asked whether I have one or not.

10 Q And apart from anything having to do
11 with the card, or this program that's put on by
12 the Manitoba Liquor Control Commission, are you
13 aware of some other duties that are imposed, both
14 on you as a server and upon licensees, that being
15 people or corporations who have obtained licences
16 to serve alcohol, are you aware that there are
17 legal duties imposed upon that group of people or
18 businesses?

19 A No.

20 Q Have you ever heard of a piece of
21 legislation in Manitoba called the Liquor Control
22 Act?

23 A Yes.

24 Q And you are aware that it has
25 something to do with the service of alcohol;

1 correct?

2 A Yes.

3 Q I take it -- it wouldn't make sense
4 that you had spent much time reading the statute;
5 correct?

6 A To be honest, no.

7 Q It would be fair to say that you
8 likely have never looked at the statute?

9 A Yes.

10 Q And I don't need to go through the
11 statute in any detail, but would you agree, or
12 would it at least sound reasonable to you when I
13 indicate that there are specific duties contained
14 in that Act, duties that are imposed upon servers
15 such as you were at the time, with respect to the
16 overservice of alcohol?

17 A Yes.

18 Q That seems reasonable that there would
19 be duties in there?

20 A Yes.

21 THE COMMISSIONER: How would she know
22 this if she has never read the Act? Most lawyers
23 I know haven't read it either.

24 MR. JACK: I completely agree,
25 Mr. Commissioner. Whether she has read it or not,

1 I'm assuming that on some level she might be aware
2 of duties that are imposed.

3 THE COMMISSIONER: Go ahead.

4 MR. JACK: Thank you.

5 BY MR. JACK:

6 Q And I will just refer to one of
7 several that may apply, and the details about what
8 section it is and that sort of thing obviously
9 wouldn't seem important for you. It is section
10 122 of the Act. And I will quote it, and it
11 indicates:

12 "No person shall give, sell or
13 otherwise supply liquor to any person
14 apparently under the influence of
15 liquor."

16 Does that accord to your understanding of what you
17 thought the law would have been at that time?

18 A Yes, but I don't recall anybody coming
19 in under the influence.

20 Q You say coming in under the influence?

21 A Yes, like coming into our restaurant,
22 upon arrival, under the influence.

23 Q Right. And I will just repeat the
24 section, just so we know what we are dealing with.
25 Once again:

1 "No person shall give, sell, or supply
2 liquor to any person under the
3 influence of liquor."

4 A Yes.

5 Q So selling liquor could apply to each
6 time you sell a drink, for instance?

7 A Right.

8 Q So even in general, you were aware
9 that there was some duties upon you not to
10 over-serve; correct?

11 A Correct. But everybody can tolerate
12 their alcohol differently.

13 Q And I would agree with that. And on
14 some level it is up to you to make a determination
15 whether or not patrons are tolerating their
16 alcohol?

17 A Yes.

18 Q And you were aware that there was a
19 duty upon you to pay attention to that?

20 A Yes.

21 Q You were aware that there was a duty
22 upon you not to continue serving someone if you
23 believed they were impaired?

24 A Yes.

25 Q Is that a duty that you took

1 seriously?

2 A No.

3 Q Did you ever take it seriously as a
4 waitress, as a server rather?

5 A It never really crossed my mind.

6 Q So, even though you were recognizing
7 that you were operating under a legal duty to
8 observe certain things, it never really crossed
9 your mind?

10 A No. And I was under the instructions
11 from my general manager to take care of them and
12 serve them as long as they stayed there.

13 Q Thank you. And again, I'm still just
14 talking in general terms.

15 A Okay.

16 Q So, even leaving aside Mr. Bravo for a
17 moment, even referring back to your time at the
18 Pony Corral downtown, would the duties upon you
19 have been any concern to you at that time?

20 A No. Again, it never really crossed my
21 mind.

22 Q Yet you did things like participate in
23 this MLCC program where you had to obtain a card,
24 you had to answer questions?

25 A Yes.

1 Q So it crossed your mind, it was in
2 your mind at some point?

3 A Yes, I guess at one point or another.

4 Q You chose to disregard that, is that
5 what you are telling us?

6 A It is not that I chose to disregard
7 it, I just didn't think about it at the time.

8 Q Okay. At any time that you were a
9 server?

10 A Yes.

11 Q Now, it has already been canvassed
12 with you, the fact that you were interviewed by a
13 couple of officers from the Winnipeg Police
14 Service within a couple of weeks of February 24,
15 February 25, 2005?

16 A Yes.

17 Q And I will be referring to the term
18 PSU, and when I do that I'm referring to the
19 Professional Standards Unit of the Winnipeg Police
20 Service. Okay.

21 A Okay.

22 Q So when I refer to PSU, you will
23 understand what I'm talking about?

24 A Yes.

25 Q And I understand it was Sergeants

1 Girard and Pearson that conducted your interview
2 on March 11, 2005?

3 A Yes.

4 Q Prior to that date, had you ever been
5 interviewed by police officers?

6 A No, not that I remember, no.

7 Q And it is my understanding from
8 reading some of the introductory comments from
9 those interviews, and we can get that volume in
10 front of us. I'm referring, in terms of the
11 interview itself, referring to what has been
12 marked as exhibit 154. For counsel, it is marked
13 as volume F-3.38.b. Do you have that in front of
14 you, Ms. O'Halloran?

15 A I do.

16 Q I want to get you to elaborate a
17 little bit on some discussion that takes place on
18 page 1328. This is Sergeant Girard just taking
19 you through some introductory matters. And I will
20 start with the question Sergeant Girard poses to
21 you at line 12 of that page, do you that there?

22 A I do.

23 Q And I will quote:

24 "Sergeant Girard: You arrived here a
25 short time ago -- well, actually a

1 little bit longer ago, we were
2 finishing up another interview so you
3 and your uncle waited outside in the
4 hallway?

5 Ms. O'Halloran: Yes.

6 Sergeant Girard: Initially your uncle
7 said that you wanted him to sit in on
8 the interview?

9 Ms. O'Halloran: Yes.

10 Sergeant Girard: And then you decided
11 you didn't want to?

12 Ms. O'Halloran: Yes.

13 Sergeant Girard: Can you explain to
14 us why you changed your mind?

15 Ms. O'Halloran: I just feel more
16 comfortable talking on my own."

17 And then Sergeant Girard goes on to ask you
18 whether it is anything they had said or done, and
19 you indicated:

20 "No, not at all, I just feel more
21 comfortable without my uncle."

22 Q So your uncle had attended that day
23 with you to the interview?

24 A Yes, he came with me.

25 Q Was there any purpose in your uncle

1 coming with you?

2 A He drove me.

3 Q So for transportation?

4 A Yes.

5 Q He wasn't there for the intention of
6 sitting in the interview with you?

7 A Originally, I had asked him to come in
8 with me, but then once I got there, I felt
9 comfortable enough to talk on my own.

10 Q So you felt comfortable answering the
11 officer's questions?

12 A Yes.

13 Q And it has been canvassed with you, in
14 terms of providing truthful responses to the
15 officers, but you were aware on March 11, 2005,
16 what the PSU was investigating; correct?

17 A Yes.

18 Q You were clearly aware of the
19 seriousness of the investigation; correct?

20 A Yes.

21 Q And you knew this was a very serious
22 investigation following a very tragic collision;
23 you were aware of that?

24 A Yes.

25 Q I have to assume that you knew it

1 would be important, if not crucial, to the
2 investigation that you be truthful; correct?

3 A Yes.

4 Q You were aware of the ramifications
5 and the significance of you providing truthful
6 answers; correct?

7 A Yes.

8 Q And this interview was occurring
9 approximately two weeks after the evening in
10 question; correct?

11 A Yes.

12 Q Would you say that the events of the
13 evening in question -- and just to be clear, I can
14 tell you understand what I'm saying, but just so
15 I'm being clear with you, if I use the phrase
16 evening in question, I'm going to be referring to
17 the evening of February 24, 2005, and the early
18 morning hours of February 25, 2005, all right?
19 And you will understand what I mean?

20 A Yes.

21 Q Thank you. So I take it on March 11,
22 2005, the events that you could recall from the
23 evening in question were still fresh in your
24 memory?

25 A Yes.

1 Q Two weeks isn't a lot of time?

2 A No.

3 Q And prior to your interview on
4 March 11, 2005, I understand you had also learned
5 about what this investigation concerned, through
6 other means, right?

7 A Yes.

8 Q I believe you made the comment that
9 you first learned about it in the newspaper; is
10 that correct?

11 A Yes.

12 Q Do you recall when that would have
13 been?

14 A I don't remember the exact date.

15 Q Would it have been within a few days
16 of the evening in question?

17 A Yes.

18 Q So with respect to the answers that
19 Sergeant Girard and Pearson were looking for, just
20 in terms of the interview they were conducting,
21 not only did you understand the importance and
22 significance of telling the truth, were you also
23 aware at that time that intentionally providing
24 false responses to police officers in the course
25 of an investigation could, in fact, constitute a

1 criminal offence?

2 A Yes.

3 Q I take it you had no intention of
4 committing a criminal offence on March 11, 2005?

5 A No.

6 Q I take it you are someone who
7 typically would never have any intention of
8 committing a criminal offence?

9 A No.

10 Q In fact, are you aware that our
11 Commissioner, in fact, has the authority in the
12 course of this Commission to make findings, or at
13 the very least to determine whether or not further
14 investigation would need to occur with respect to
15 any potential obstruction of justice that may have
16 occurred?

17 A Yes.

18 Q And I take it you take that seriously
19 as well.

20 A Yes.

21 Q Now, Mr. Paciocco has gone through in
22 detail with you the evidence surrounding
23 consumption of alcohol on the premises on the
24 evening in question, including the documents that
25 were obtained from Branigan's. I would like to go

1 through some of those as well with you, if we
2 could. So if you can get volume W in front of you
3 once again, although I'm not sure if it's marked
4 that way for you.

5 THE CLERK: Exhibit 152.

6 MR. JACK: Thank you, that is exhibit
7 152, volume W.

8 BY MR. JACK:

9 Q So I'm going to be referring to what
10 we have tabbed as W7.

11 A Okay.

12 Q You have got it marked that way as
13 well?

14 A No.

15 Q Okay. At the top of the document, it
16 is labeled "Interval sales and labour report."

17 A I got it.

18 Q You have that in front of you?

19 A I do.

20 Q And it has already been discussed with
21 you what this refers to. And in general, I take
22 it we are referring to hours that were worked by
23 the various employees of the restaurant; correct?

24 A Yes.

25 Q And we see about midway through the

1 page, you are noted under the bar category;

2 correct?

3 A Yes.

4 Q And it has your hours, and I believe
5 you confirmed these were accurate. We have the
6 column labeled "in" and what appears to be a time
7 of 5:30; is that correct?

8 A Yes.

9 Q And we have the column labeled "out"
10 and a time that appears to be 2:45; is that
11 correct?

12 A Yes.

13 Q For total hours worked of 9.25 hours,
14 that's correct?

15 A Yes.

16 Q So you agree it is correct that you
17 began work that day at Branigan's at 5:30 p.m.?

18 A Yes.

19 Q Can you give me some indication of
20 what your day was like at work between 5:30 p.m.
21 and the time when you first noted police officers
22 arriving, that I believe you have indicated was
23 around 10:30 or 11:00 p.m.?

24 A I don't believe it was too busy. I
25 believe there was a couple of tables coming in and

1 out, but nothing overwhelming and no more than
2 about two, three tables at a time, if that.

3 Q So two or three tables at a time. Do
4 you have some general estimate of how long a table
5 stays for, or how long they stayed for on the
6 evening in question?

7 A Half an hour, 45 minutes.

8 Q So in the six or six and a half hours
9 that you were working, prior to any officers
10 arriving, and again I'm simply going to have to
11 work with your estimates, so pardon me, and please
12 feel free to correct me or provide any comment you
13 want to. With two or three tables at a time, I
14 will use two simply because we have to pick one of
15 the numbers you mentioned, even if they are
16 turning over every three-quarters of an hour,
17 every 45 minutes, then conceivably you have got --
18 I'm going to suggest there is an opportunity for
19 turning over about four times, if a table stays
20 approximately 45 minutes -- pardon me, eight times
21 in a six hour period. Does that make sense, that
22 math? In other words, if a table stays for 45
23 minutes and then leaves?

24 A Another table could come in. I'm not
25 saying that there is always two tables at a time.

1 I mean, I was giving a general approximation of
2 how many tables I had generally before the police
3 officers arrived.

4 Q Right. And I understand that these
5 are estimates.

6 A Okay.

7 Q I understand that you didn't take any
8 specific notes about any of this.

9 A No.

10 Q I don't have anything before me that
11 speaks to these other customers as well, so I'm
12 simply relying on what your general recollection
13 is going to be.

14 A All right.

15 Q Please feel free to qualify any
16 statement that you make. But there were typically
17 two or three tables there at a time. That's your
18 general sense of how your evening was going?

19 A Yeah.

20 Q And the figure I was trying to arrive
21 at, I was simply talking about turnover. You were
22 just giving me an indication how long they would
23 stay.

24 A Right, and not necessarily would
25 another table come in if one table left.

1 Q Of course.

2 A There could be a period of time in
3 between where I had nothing.

4 Q And I understand these are just
5 estimates. It is also possible, given that you
6 are just giving us rough estimates, that there
7 could have been periods of time when there were
8 four tables there?

9 A Correct.

10 Q There could have been a period of time
11 where there were five tables. So the two or
12 three, again, being an estimate?

13 THE COMMISSIONER: Mr. Jack, could you
14 move it a bit?

15 MR. JACK: Thank you,
16 Mr. Commissioner.

17 THE COMMISSIONER: Please?

18 MR. JACK: Yes, I will.

19 THE COMMISSIONER: I want to get this
20 through before lunch.

21 MR. JACK: Certainly, I will do my
22 best.

23 BY MR. JACK:

24 Q So, Ms. O'Halloran, it is safe to say
25 there were at least a number of tables that you

1 dealt with prior to any police officers arriving?

2 A Yes.

3 Q This was in the lounge area?

4 A Yes.

5 Q They also would have been ordering
6 food and drinks?

7 A Not necessarily alcohol, but they
8 could have a Coke, a Seven-Up, whatever it is they
9 ordered, and it is -- you do have to order a
10 certain amount, I think it was \$3.00, in order to
11 be able to sit in the lounge. So they could have
12 a drink and a side of fries, whatever it is that
13 they ordered.

14 Q Certainly. Do you have any specific
15 recollection of what they were ordering?

16 A No idea.

17 Q Okay. So you have indicated for me
18 they didn't necessarily order alcohol, but they
19 certainly could have ordered alcohol?

20 A Yes.

21 Q They could have ordered beer?

22 A Yes.

23 Q They could have ordered wine?

24 A Yes.

25 Q They could have ordered rye?

1 A Yes.

2 Q Now, I believe you also confirmed that
3 you were not handing out any free drinks on the
4 evening in question to anybody; correct?

5 A I couldn't.

6 Q So every drink order that you took,
7 you accounted for in the Squirrel system; correct?

8 A That's the only way that the drinks
9 would be made.

10 Q So as far as you are aware, when we
11 look at some of the cash-out figures, specifically
12 relating to you, those would be accurate, to the
13 best of your knowledge?

14 A Yes.

15 Q Again, I'm going to refer to volume W,
16 exhibit 152, Ms. O'Halloran, and I'm going to be
17 referring to tab W4, the document entitled "cash
18 out for Chelsea, 02/25/05." Have you got that in
19 front of you?

20 A I do.

21 Q Now, Mr. Paciocco went through with
22 you discussing the issue of checks, what those
23 were, and you were explaining that for him?

24 A Yes.

25 Q And on any individual check, you could

1 conceivably have one person, one person's orders;
2 correct?

3 A Yes.

4 Q And I believe you also indicated that
5 if it was requested, or if there was some other
6 reason to do so, you could conceivably have more
7 than one person on one check; correct?

8 A I could put a whole table on one check
9 if that's what they asked, or I could print them
10 individually per person, whatever they asked for.

11 Q Thank you. So the system accommodates
12 more than one person per check, if that's
13 requested?

14 A Yes.

15 Q So looking at the document that I
16 asked you to put in front of you, and this is your
17 cash-out, we have already established that. I am
18 looking near the bottom of the page, and we see a
19 figure for total number of checks. You see that
20 figure?

21 A I do.

22 Q And it indicates a number of 39, you
23 will agree with me?

24 A Yes.

25 Q So that's the total number of

1 individual checks you dealt with, issued; correct?

2 A Yes.

3 Q So, it would be fair to suggest that
4 at a bare minimum that represents the orders that
5 you took with respect to 39 people?

6 A Yes.

7 Q And you would also agree that if any
8 of those checks contained more than one person,
9 the orders of more than one person, which is
10 possible in the Squirrel system, then conceivably
11 that figure represents service of more than 39
12 people?

13 A Can you ask that again?

14 Q Certainly, and I hope I'm not being
15 confusing. I'm suggesting that at a bare minimum,
16 39 checks represents the orders of 39 people?

17 A Yes.

18 Q But if some of those checks included
19 the orders of more than one person, maybe even
20 included the orders of an entire table, as you
21 indicated is possible, then looking at a figure of
22 39 checks could conceivably mean -- or represent
23 the orders of more than 39 people?

24 A Correct.

25 Q Okay. And dealing with your estimate

1 of how many officers had attended, or at the very
2 least the people that were in the police officer
3 group, I believe you started today by indicating
4 your recollection was that it was 20 to 25 people?

5 A Yeah.

6 Q Is that correct?

7 A Approximately, yeah.

8 Q And you recall being asked that both
9 by PSU officers and by Commission Counsel,
10 correct?

11 A Yes.

12 Q We can refer to it if we need to, but
13 I will ask if you agree with me. Would you agree
14 that during your PSU interview, the range that you
15 provided, not much different than what you have
16 said today, but you indicated a range of 25 to 30
17 officers?

18 A I did.

19 Q You agree that you said that. Would
20 you also agree that at one point during your
21 interview with Commission Counsel you provided a
22 range of 25 to 35?

23 A Yes.

24 Q So you recall saying that as well?

25 A Yes.

1 Q Is there any explanation for the
2 slightly revised range that you provided today,
3 when you indicated 20 to 25?

4 A It was just a general approximation of
5 the people. I did not count at the time, nor did
6 I count in my head afterwards, how many people
7 attended that night. It was just a general
8 approximation of how many people were at the
9 restaurant in that group. I don't really know why
10 I switched it, but it was in that category of 25
11 to 30 people that, generally, probably were there.
12 No more, no less.

13 Q So you feel quite confident today that
14 it was no more than 25 and no less than 20?

15 A Quite confident, yes.

16 Q Okay. And you were also asked whether
17 these were all police officers, and you answered
18 in the affirmative?

19 A Yes.

20 Q Can you describe how you knew they
21 were all police officers? You mentioned the ones
22 that you know, and you knew them by name, or at
23 least you referred to them by name?

24 A Because it was the end of their shift
25 and they were all coming together after their

1 shift. So I know that -- and they had said this
2 is a group of new policemen, and then I had
3 recognized some other ones from before, so
4 generally, yes, I knew that they were all
5 policemen.

6 Q Now, going back to some of Branigan's'
7 documents, Ms. O'Halloran, something that you have
8 already discussed with other counsel, if I can
9 refer you back to tab W5? And for your benefit,
10 Ms. O'Halloran, this is the online detailed sales
11 report, gross, all departments. And the run date
12 is 02/25/05, with a time of 2:46. I believe it is
13 a four-page document.

14 A The gross server cash-out report?

15 Q The title I have listed is, at the
16 very top it is "Branigan's Garden City," and then
17 it indicates, "online detailed sales report" and
18 in parenthesis "gross, all departments."

19 A I have two of them. The first or the
20 second one?

21 THE COMMISSIONER: What page?

22 MR. JACK: It is found at tab W5.

23 THE COMMISSIONER: Yes, but which
24 page, there are four pages?

25 MR. JACK: Yes, thank you. I'm not

1 sure I have the correct document in front of
2 Ms. O'Halloran at the moment, Mr. Commissioner.
3 In the upper left-hand corner of the page,
4 Ms. O'Halloran, it has a run date; do you see
5 that?

6 THE WITNESS: Yes.

7 BY MR. JACK:

8 Q And the one that I'm referring to has
9 run date 02/25/05.

10 A Okay. And what page did you want?

11 Q I'm referring to page 3 to begin with.

12 A Okay.

13 Q So you have got that in front of you
14 as well?

15 A Yes.

16 Q And counsel has already gone through
17 with you, explaining how these items are broken
18 down, how they are catalogued. This is all
19 generated, I take it, from the Squirrel system as
20 well?

21 A I believe so, yes. I don't have any
22 of this information, I never had access to it, so
23 I'm making a guess, yeah.

24 Q Okay. You have also confirmed, both
25 for the PSU and for Commission Counsel, that when

1 these officers come in, they get a special deal of
2 sorts with respect to wings and pints of beer?

3 A Yes.

4 Q And you indicated that the price for a
5 pint of beer is \$2.75?

6 A Yes.

7 Q And it is your understanding that that
8 was definitely a popular choice with the officers
9 that came in on those evenings?

10 A Yes.

11 Q In fact, the general tenure of your
12 comments is that, really, what they order is wings
13 and beer, that's what they come for?

14 A That's pretty much the reason why they
15 would come.

16 Q And they are given the special price
17 of \$2.75, whether or not that happens to be a
18 night upon which the public can get \$2.75 pints;
19 correct?

20 A Yes.

21 Q So looking at page 3, to which I have
22 already drawn your attention, I'm looking about
23 two-thirds down the page where all of the various
24 beer items are broken down under the beer
25 category. I'm looking along the right-hand side

1 of the page where we see item, it is the third
2 column, we see "Miller Genuine Draft," which I
3 assume is Miller Genuine Draft. "Pint HNY Hound,
4 pint Keith," and \$2.75 pints; do you see that?

5 A Yes.

6 Q I also see a count of 68, you would
7 agree with me?

8 A Yes.

9 Q And this is, in fact, the total for
10 the entire restaurant; correct?

11 A Yes.

12 Q However, would it be your
13 understanding that the people ordering the \$2.75
14 pints on this date would have been police
15 officers?

16 A Only police officers.

17 Q And so those would have been officers
18 all being served by you, essentially?

19 A Yes.

20 Q And you note the count there of 68;
21 correct?

22 A Yes.

23 Q So that would be your understanding
24 that that is how many pints of beer you served to
25 the group of officers?

1 A Yes, \$2.75 pints.

2 Q Thank you. Just in dealing with some
3 of your comments about the interaction with
4 Rodrigo Bravo. The reason that the statement that
5 you provided to the PSU, approximately two weeks
6 after the evening in question, the difference
7 between that and the answers you provided to
8 Commission Counsel approximately three years after
9 the evening in question, the reason for that was
10 influence from Rodrigo Bravo; correct?

11 A Yes.

12 Q You would confirm for me that at any
13 point on the evening in question, when police
14 officers were present, Mr. Bravo was not there?

15 A No.

16 Q Mr. Bravo didn't witness the amount of
17 drinking, who was drinking, any of that while the
18 police officers were there; correct?

19 A Correct.

20 Q You also talked about the direction
21 that Mr. Bravo was providing to you?

22 A Yes.

23 Q You advised that he said to just play
24 dumb?

25 A Yes.

1 Q Don't say more than you needed to in
2 response to the officer's questions, keep it
3 short?

4 A Yes.

5 Q Pretend like you didn't remember very
6 much?

7 A Yes.

8 Q I didn't hear anywhere in there where
9 you indicate that Mr. Bravo told you to lie?

10 A Correct.

11 Q And would you agree with me that if
12 one is pretending like they don't know very much,
13 then you would expect them to say, I don't know,
14 or I can't recall, answers like that, if you are
15 pretending that you don't remember very much?

16 A Yes.

17 Q And please feel free to review it if
18 you need to, but I'm going to suggest in the
19 transcript of the PSU interview, you never
20 provided a response like that, that you didn't
21 remember, that you couldn't recall?

22 A No.

23 Q Now, I want to talk about some of your
24 other recollections from that evening, again
25 recognizing how long this was, so do your best.

1 You can, certainly, if you feel that referring to
2 either the transcript from your interview with the
3 PSU, or the transcript from your interview by
4 Commission Counsel, please feel free to refer to
5 that if you need to. Okay?

6 A Okay.

7 Q Now, I want to go through the
8 transcript of your interview by Commission
9 Counsel. It is noted as volume T5.a, this is the
10 transcript from the interview of Wednesday, March
11 12, 2008.

12 A Yes.

13 Q Do you have that in front of you?

14 A I don't.

15 MR. JACK: If I could ask that be
16 placed in front of Ms. O'Halloran? I will ask
17 that be entered as an exhibit at this time.

18 (EXHIBIT 156: T.5.a, Chelsea
19 O'Halloran Commission Interview, March
20 12, 2008)

21 BY MR. JACK:

22 Q Now, Ms. O'Halloran, I would like you
23 to turn to page 13, if you could, please? And I
24 will just give you some advance notice, these are
25 paginated a little differently than most

1 documents. You will note that on any given piece
2 of paper you see four quadrants?

3 A Yes.

4 Q And in the upper right-hand corner of
5 each of those quadrants is a page number?

6 A Yes.

7 Q Okay. Those are the page numbers I'm
8 going to refer to when I am referring to this
9 document. All right?

10 A Okay.

11 Q If you could please turn to page 13?
12 And this is where -- I'm going to start at line
13 24, right near the bottom of this page, and I just
14 want to read your response. You are continuing on
15 about a number of things that happened that
16 evening. And you stated as follows:

17 "One of them, or a couple of them were
18 talking about a bonfire that was
19 happening at one of the other police
20 officer's house, and they asked me if
21 I wanted to come, and I said no."

22 That's your recollection?

23 A Yes.

24 Q You recall giving that answer as well?

25 A Yes.

1 Q Do you recall what the weather was
2 like on the evening in question?

3 A Judging by February, it was probably
4 snow on the ground, but I don't remember too much
5 of the night, such as the weather.

6 Q It is my understanding that, at least
7 by approximately 7:00 in the morning or so, the
8 temperature was approximately minus 20 Celsius.
9 Would that accord with your recollection?

10 A I have no idea.

11 Q Now, do you recall how many times,
12 working at Branigan's, you had been offered to, or
13 requested, invited to come to a bonfire at one of
14 the officers' homes?

15 A Just that one time.

16 Q And if I were to suggest to you that
17 the idea of a bonfire, in fact, could have been
18 suggested by one of the officers present, but that
19 it definitely wasn't suggested on the evening in
20 question, that it would have been suggested on a
21 different night; is there any chance that that's
22 possible?

23 A No.

24 Q And why do you say that?

25 A Because I remember them asking me to

1 come to a bonfire.

2 Q Yes, I recognize that. But you had a
3 number of interactions on different evenings with
4 these officers; correct?

5 A Correct.

6 Q And so what I'm suggesting to you is
7 that none of the officers there were suggesting a
8 bonfire on the evening in question, but that it
9 seems reasonable or possible that had you ever
10 been invited to one, that might be sticking in
11 your mind? It is at least possible you were asked
12 on a different evening, correct?

13 A I'm positive that it was the night
14 that they all came in as a big group.

15 Q But they have come in as groups before
16 as well; correct?

17 A Correct. Not this big.

18 Q Okay. I also want to refer you to
19 some more commentary you have concerning Officer
20 Azaransky in particular. I'm in the same
21 document, I would like to turn your attention to
22 page 15? Pardon me, Ms. O'Halloran, I'm not
23 getting the reference correct. I will get back to
24 that in one moment. And I'm going to apologize in
25 advance, Ms. O'Halloran, I'm going to be jumping

1 around a fair bit. I'm doing my best to be as
2 quick with you as possible.

3 THE COMMISSIONER: Mr. Jack, if we
4 broke now for lunch, do you think you could get
5 better organized? Because we have spent the last
6 half hour and we haven't gone very far. And you
7 don't seem to be well organized. And that may be,
8 of course, that you weren't prepared for this
9 testimony. Do you think it would help? It is
10 12:19. If we broke for lunch, do think we could
11 move it a little faster after lunch?

12 MR. JACK: I think we could,
13 Mr. Commissioner, and I think I would be under
14 some constraints --

15 THE COMMISSIONER: Sorry to have to
16 put you through your lunch hour this way, but we
17 are wasting a lot of time. We will break and come
18 back at quarter to 2:00. Is that okay?

19 THE WITNESS: Yes, that's fine.

20 THE CLERK: All rise. This Commission
21 is in recess.

22 (Proceedings recessed at 12:20 p.m.
23 and reconvened at 1:45 p.m.)

24 THE CLERK: All rise. This Commission
25 of Inquiry is now reopen. Please be seated.

1 MR. PACIOCCO: Mr. Commissioner, a
2 brief order of business before Mr. Jack resumes
3 his questioning. The Commission Counsel has
4 received information that there are individuals
5 who are in the body of the room who have been
6 taking notes and passing those notes to various
7 lawyers. There, of course, is nothing wrong with
8 individuals taking notes and passing them to
9 lawyers. But we wanted to reaffirm that there is
10 a witness exclusion order. I know Ms. Hanlin has
11 indicated that all of the Winnipeg Police Officers
12 have been advised of the order, that they are not
13 to communicate with each other about their
14 testimony or the testimony of others. And it
15 should be reaffirmed that it would also be a
16 breach of that order for any individuals to
17 communicate to those officers, either directly or
18 indirectly, information about what has transpired
19 in this hearing room today, or in the future when
20 those witnesses are not on the stand.

21 THE COMMISSIONER: Does anyone not
22 understand that order? All right. If notes are
23 being taken of these proceedings, they are not to
24 be given to any witness who has not been called.
25 Thank you.

1 Mr. Jack.

2 MR. JACK: Thank you,

3 Mr. Commissioner.

4 BY MR. JACK:

5 Q Ms. O'Halloran, as you can likely
6 gather from the questions that I was asking you
7 prior to the break, I am going to put it to you
8 that what we expect to hear from Winnipeg Police
9 Service Officers, who were in attendance at
10 Branigan's on the evening in question, will be
11 testifying that they were not intoxicated at
12 Branigan's. And what I'm also suggesting to you
13 is that the documentary evidence obtained from
14 Branigan's with respect to the amounts of alcohol
15 that were sold do simply not accord with your
16 version of events, as related to Commission
17 Counsel in your interview, given approximately
18 three years later. How would you respond?

19 A Like I said --

20 THE COMMISSIONER: Is there a specific
21 question there?

22 BY MR. JACK:

23 Q What I'm suggesting, Ms. O'Halloran,
24 is that you are significantly incorrect in your
25 recollection of the volumes of consumption of

1 alcohol on that evening, incorrect in the way you
2 have testified today, and in your recollection
3 provided to Commission Counsel. I simply wanted
4 to put it to you that the version, the officers
5 will be testifying that, in fact, not only are
6 your volumes off, but in fact they were not
7 intoxicated. I'm simply making that suggestion to
8 you, and asking if you have any response?

9 A No, I don't have anything to respond
10 to that.

11 Q In fact, you have already canvassed
12 this morning, we discussed about your
13 understanding of over-service of alcohol, when to
14 cut someone off, et cetera. You provided us with
15 your indicia of intoxication. You mentioned
16 things like volume being loud, correct?

17 A Yes.

18 Q You mentioned behaviours such as being
19 belligerent, correct?

20 A Yes.

21 Q What I am going to suggest to you is
22 that you have already confirmed that this was a
23 larger than normal group; correct?

24 A Yes.

25 Q Larger than any group of officers you

1 had previously served; correct?

2 A Yes.

3 Q Therefore, I'm going to suggest it
4 just seems reasonable that, even if they were
5 behaving as they typically did, they would simply
6 be louder because they are a larger group. That
7 makes sense, doesn't it?

8 A It does.

9 Q Now, you can also confirm, as you've
10 done to some degree, that in your interview with
11 PSU officers, you did not give any evidence of
12 excessive drinking or impairment, correct? You
13 would agree with that?

14 A Yes.

15 Q And you have already explained your
16 answers for having omitted those details. You
17 would also agree that in your interview with
18 Commission Counsel, you made numerous references
19 to excessive drinking and people who you believed
20 were drunk?

21 A Yes.

22 Q Correct?

23 A Yes.

24 Q So what I'm suggesting is that your
25 definition of drunk, or intoxicated, or impaired,

1 is not correct. And your interpretation is that
2 being loud or being belligerent is equivalent with
3 being intoxicated, correct? You remember saying
4 that?

5 A Yes.

6 Q I'm going to suggest to you that it's
7 quite possible to be loud or belligerent and not
8 at all be impaired by alcohol. You would agree
9 with that?

10 A Yes.

11 Q What I'm going to suggest to you is
12 that the gathering that took place at Branigan's
13 on the evening in question was a group of officers
14 on who, over the course of three hours, likely got
15 louder and some may have gotten more belligerent,
16 as you put it, but my suggestion to you is they
17 were not impaired or intoxicated. How would you
18 respond?

19 A Well, I know for a fact that they
20 were, because I saw them coming in and I saw them
21 leaving and it was two completely different
22 things. And over the course of the period, I know
23 who was drinking and I know who had more than the
24 others. And the people that had more than the
25 others were the ones that were being loud. And

1 which to my understanding would mean they are
2 drunk.

3 Q Thank you. With respect to the
4 officers that will be testifying, and again I've
5 already indicated to you that they will be
6 testifying that they were not impaired or
7 intoxicated, it's clear from a review of your
8 interview by the PSU officers, as well as
9 interview with Commission Counsel, you made no
10 mention in there at all of any of the officers
11 having bloodshot eyes, for instance?

12 A I never said that they didn't.

13 THE COMMISSIONER: She was never
14 asked.

15 MR. JACK: Thank you.

16 BY MR. JACK:

17 Q And I'm simply indicating --

18 THE COMMISSIONER: Well, she was never
19 asked whether they had any symptoms of impairment,
20 and she's answered the question as best she can.

21 MR. JACK: Thank you,
22 Mr. Commissioner.

23 BY MR. JACK:

24 Q I simply want to focus your attention
25 on two comments you made to Commission Counsel in

1 your interview dated March 12, 2008. If I can ask
2 you to put that in front of you once again, a
3 document entitled T5A?

4 A I have it.

5 Q You have that. Thank you. If I can
6 draw your attention to page 20, and I'm going to
7 begin at line eight of that page. You were asked
8 a question as follows:

9 "Do you know whether they were
10 celebrating anything in particular?

11 A No. And they very well could
12 have been, because there was such a
13 large group of them, but they never
14 told me that they were celebrating
15 anything. I do remember that Sean
16 Blackie had been promoted to Sergeant,
17 but I don't know if that's what they
18 were celebrating because I can't
19 remember if it was before or after,
20 but I do remember after the incident
21 they didn't really come in anymore."

22 So I just want you to elaborate a bit, if you
23 could, on your statement that you don't know if
24 that's what they were celebrating because you
25 can't remember if it was before or after. I take

1 it what you mean by that is you do recall some
2 celebration for Sergeant Black?

3 A Yes.

4 Q But you can't recall whether or not
5 that celebration was taking place on the evening
6 in question?

7 A No, because throughout the evening, I
8 would overhear them talking, and they would tell
9 me different things, that there was young guys
10 that had just been in the division, whether they
11 were celebrating that or not. And I remember that
12 Sergeant Black had been promoted as well. So I
13 don't remember if they were celebrating then. But
14 I do believe that they were celebrating something,
15 but I cannot say for sure.

16 Q Okay. You do recall some celebration,
17 as you have just indicated, for Sergeant Black?

18 A Yes.

19 Q You just can't remember whether that
20 occurred on the evening in question?

21 A Yes.

22 Q Okay. I want to turn your attention
23 to another comment regarding celebration?

24 A Sure.

25 Q And you just alluded to it. If I can

1 draw your attention to page 22 of the interview,
2 Ms. O'Halloran? You have got it there?

3 A Yes.

4 Q And I will be beginning at line 15 of
5 page 22?

6 A Okay.

7 Q "Q When you say there were a few
8 young guys that just got into the
9 division, or their division, can you
10 explain that a little bit further,
11 what you understood was happening with
12 these young officers?

13 A They had just said that these were
14 the newest members to their team, and
15 so I guess they were just trying to
16 get them drunk, celebration.

17 Q Is that a speculation of yours or
18 was that just a comment that was made?

19 A Just a speculation of mine."

20 So, just so I can be clear on that comment, you
21 are speculating without any other comments being
22 made about the purpose of the celebration,
23 correct?

24 A Other than the fact that they said
25 these were the newest members of our team.

1 Q And your comment that they were just
2 trying to get them drunk, though, that was pure
3 speculation; correct?

4 A Yes.

5 Q Based upon what you assumed they were
6 attempting to do that evening?

7 A Based upon what I saw.

8 Q Yes. But, again, you have confirmed
9 it was just an assumption?

10 A Yes.

11 Q And no comments had been made to you
12 that they were trying to get anybody drunk,
13 correct?

14 A No.

15 Q Thank you. And lastly, I just want to
16 discuss an item that was raised with respect to
17 your interaction with the PSU. We just heard it
18 for the first time today, so I just want to get
19 you to elaborate, if you could?

20 A Okay.

21 Q And there may be nothing further,
22 depending on your answer. You had simply
23 mentioned that, on two occasions, you had missed
24 appointments with the PSU to do that initial
25 interview that you did a couple of weeks after the

1 evening in question; correct?

2 A Yes.

3 Q And you had mentioned that that was
4 due to an accident?

5 A Yes.

6 Q I take it that wasn't an accident that
7 happened on a day that just prevented you from
8 being there, because you missed two appointments,
9 correct?

10 A Correct.

11 Q Can you just please elaborate what the
12 accident was?

13 A I don't have anything more to say
14 about it.

15 MR. JACK: Well, I recognize,
16 Mr. Commissioner, it may be of little and may be,
17 in fact, of no relevance, and obviously I will
18 take direction from the Commission. I would like
19 a response to the question.

20 THE COMMISSIONER: She said there was
21 an accident. She doesn't want to speak about it.
22 Is there any -- do you have any instructions with
23 respect to the circumstances of the accident that
24 may raise matters of importance to this
25 Commission? Do you know anything about it?

1 MR. JACK: Absolutely nothing,
2 Mr. Commissioner.

3 THE COMMISSIONER: Then are you not
4 sort of fishing?

5 MR. JACK: It was simply a completely
6 new piece of evidence that was raised in her
7 examination.

8 THE COMMISSIONER: Well, she doesn't
9 wish to speak about it. I have no reason to
10 instruct her to --

11 MR. JACK: Very well,
12 Mr. Commissioner.

13 THE COMMISSIONER: -- continue and
14 explain the accident.

15 MR. JACK: Thank you,
16 Mr. Commissioner. Just one moment, if I may.
17 Thank you, Mr. Commissioner. Thank you, Ms.
18 O'Halloran. I have nothing further.

19 THE WITNESS: Thank you.

20 THE COMMISSIONER: Just a couple more
21 people.

22 THE WITNESS: Okay.

23 THE COMMISSIONER: Mr. Weinstein, do
24 you have any questions?

25 MR. WEINSTEIN: No, I don't.

1 THE COMMISSIONER: Thank you.

2 Mr. Prober, do you have any questions?

3 MR. PROBER: I do, yes.

4 BY MR. PROBER:

5 Q Good afternoon, Ms. O'Halloran. My
6 name is Jay Prober and I'm Derek Harvey-Zenk's
7 lawyer.

8 What was it about the accident you
9 were in that caused you to miss the appointment,
10 two appointments? Why did it cause you to miss
11 the appointment?

12 A It was just my appearance at the time.
13 I preferred not to go out.

14 Q Okay. Fair enough.

15 A Okay.

16 Q Thank you. You were asked about the
17 cash-out documents that had been shown to you.
18 And one was shown to you, dated February 23, '05.
19 Do you recall that?

20 A Yes.

21 Q That's at W1. And it showed the total
22 number of cheques. If you need to go there, you
23 may not, but if you need to go there, that's fine.
24 It showed the total number of cheques as 12?

25 A Okay, yes.

1 Q Right?

2 A Yes.

3 Q Would that mean there were at least 12
4 customers, at least 12?

5 A Yes.

6 Q Could have been more, but at least 12?

7 A Could have been.

8 Q All right. When you cashed out on the
9 next, actually not the next day, the 24th, but the
10 morning of the 25th, for this group of police
11 officers, the total number of cheques is 39, as I
12 recall?

13 A Yes.

14 Q Now, was anybody else checking out at
15 that time, or was it just the group of police
16 officers?

17 A Just the group of police officers.

18 Q So that would mean that there would be
19 at least 39 police officers in that group?

20 A Why?

21 Q Because you said each cheque
22 represents a customer?

23 A Correct. But there was customers
24 previously.

25 Q Oh, this isn't at 2:47, this is for

1 the total night, this isn't just for that time?

2 A That's my whole night.

3 Q Okay. And you told us there were only
4 two others before them?

5 THE COMMISSIONER: I don't think she
6 said that.

7 BY MR. PROBER:

8 Q Two others when they came in?

9 A Yes.

10 Q Maybe that's it, when they came in?

11 A Yes.

12 Q Oh, fair enough. So that isn't
13 representative of exactly -- that's your customers
14 for the night?

15 A Yes.

16 Q Okay. Fair enough. I wasn't sure of
17 that.

18 Now, what lead me to those questions
19 was something that Commission Counsel said to you
20 about giving the receipts to the closing manager
21 at the end of the night?

22 A Yes.

23 Q Right? And he asked you about having
24 the customer number, or the number of customers on
25 the receipts. And I wasn't clear, because at one

1 point, remember, when you were giving your
2 evidence, you said that when you were taking
3 orders, you would assign a number to each
4 customer?

5 A Yes.

6 Q That number that you assign on your
7 piece of paper to the customer was not on the
8 receipt, was it?

9 A No.

10 Q No?

11 A When I went into my Squirrel --

12 Q Right?

13 A -- the first person would represent my
14 number 1, the second person would represent my
15 number 2.

16 Q Right. But so when you give the
17 receipts, it doesn't have those numbers on it?

18 A No.

19 Q No. Fair enough, thank you. Now, you
20 said that, at least my notes indicate you said
21 today that some of the people there were
22 intoxicated?

23 A Yes.

24 Q You said that there could be as many
25 as 35 of them there in that group --

1 A Yes.

2 Q -- at one point. You have estimated
3 between 20 and 35?

4 A Yes. I don't know exactly.

5 THE COMMISSIONER: She said 20 and 30.

6 BY MR. PROBER:

7 Q 20 and 30. And then at some point you
8 said 35, but that's neither here nor there. How
9 many would you say were intoxicated, can you say,
10 or would it be a guess?

11 A It would be a guess.

12 Q So you really don't know how many were
13 intoxicated?

14 A No.

15 Q No. And your measuring stick, or yard
16 stick, for someone being intoxicated was if they
17 were loud and belligerent; correct?

18 A Yes.

19 Q Let me direct you, please, to page 13
20 of your interview?

21 THE COMMISSIONER: Which one?

22 THE WITNESS: Yeah.

23 MR. PROBER: Oh, the first one, I'm
24 sorry, March 12th, '08.

25

1 BY MR. PROBER:

2 Q About line 13 -- do you see page 13,
3 it's on the bottom right. Have you got that?

4 A Yes, yes.

5 Q Line 13, part of your answer, the
6 relevant part about the issue of who was
7 intoxicated and who wasn't.

8 "And just towards the end of the
9 night, they were all pretty loud and
10 rowdy because they had been drinking a
11 fair amount."

12 Have you got me so far? Are you with me?

13 A I am.

14 Q "Nobody looked out of hand."
15 Right?

16 A Right.

17 Q You said that under oath, you are
18 sticking by that?

19 "Nobody looked out of hand."

20 A By out of hand, I meant stumbling,
21 falling over.

22 Q So nobody was stumbling, nobody was
23 falling over?

24 A No.

25 Q Okay.

1 "A few of them did look drunk and were
2 loud."

3 Right?

4 A Yes.

5 Q How do you look drunk?

6 A I guess it was just by the tone of
7 their voice and by what they were doing.

8 Q Well, that's how they might have
9 sounded. How do you look drunk? Is there
10 something on somebody's face that you noticed?

11 A No.

12 Q Or in somebody's eyes?

13 A No.

14 Q Somebody's expression?

15 A Possibly.

16 Q Possibly. But you can't say?

17 A I can't say for sure, no.

18 Q Okay. You were asked about Sean
19 Black, and you said he was drunk because he was
20 loud and belligerent?

21 A I never said Sean Black was loud and
22 belligerent. I said that he was louder than
23 usual. I never said he was belligerent.

24 Q Good. What's belligerent mean to you?

25 A Swearing, talking loud, saying

1 obnoxious things.

2 Q Okay. Sean Black was not belligerent?

3 A No.

4 Q Was not saying obnoxious things?

5 A He was just louder than he usually is,
6 because I have seen him time and time before,
7 coming in sober and leaving drunk. And he is a
8 very quiet person when he comes in. He doesn't
9 have much to say. Towards the end of the night,
10 when he started to drink, and drinking more, he
11 gets louder and starts talking, and he is more
12 sociable.

13 Q So your assessment of, and your
14 conclusion that he was drunk, is based on the fact
15 he was loud? That's it?

16 A Yes.

17 Q Not stumbling?

18 A No.

19 Q Not staggering?

20 A No.

21 Q No particular look in his face?

22 A No.

23 Q I can suggest to you perhaps somebody
24 could be loud and having a good time without being
25 intoxicated. Would you agree with that?

1 A I would agree, but I would also say
2 that I was their server, serving them the alcohol,
3 so I know the amounts that I gave to them.

4 Q I understand that. How much did you
5 give to Sean Black?

6 A I know that he had a fair amount,
7 probably seven or eight for sure, I know, a pint
8 of beer.

9 Q Can you be certain about that?

10 A Yes, I can.

11 Q Well, you told us when, earlier today
12 that when somebody calculated, you know, 15 people
13 were intoxicated, six, eight, that was a guess on
14 your part?

15 A A guess of the amount of people that
16 were drunk.

17 Q Okay. So you don't know how many
18 people were drunk?

19 A No.

20 Q Were you counting the number of beers
21 that Sean Black had?

22 A No, but I have a guess of how many a
23 few of them had, because I know that when they
24 come in beforehand, before, a couple other times,
25 that's how much they would drink, and so I

1 prepared myself for this.

2 Q Okay. Whether you prepared yourself,
3 you just said, it's a guess. You can't tell us
4 exactly the number of drinks he had?

5 A No, I can't.

6 Q No. And if you say eight or nine,
7 that is a guess, is it not?

8 A It is, but it's a pretty accurate
9 guess.

10 Q Okay. Fair enough. You said at one
11 point in your evidence that the younger ones were
12 getting drunk and having a good time. Do you
13 remember saying that?

14 A Yes.

15 Q Well, how many younger ones were
16 there?

17 A I don't remember for sure.

18 Q No. You can't even give us a guess at
19 that, can you?

20 A I could be a guess, but I could be
21 wrong.

22 Q Okay. Fair enough. And you can't say
23 how many of them, however many there were, were
24 getting drunk, can you?

25 A No.

1 Q No. You gave an interview to the
2 Winnipeg Police?

3 A Yes.

4 Q I'm not going to dwell on that, but it
5 was after that that they came to show you a photo
6 pack?

7 A Yes.

8 Q Is that right?

9 A Yes.

10 Q You thought you knew who the person
11 was that was involved in the accident; right?

12 A Yes.

13 Q And that's what you said to them in
14 your interview?

15 A Yes.

16 Q You weren't lying to them then, were
17 you?

18 A No.

19 Q No. And as a result of that -- well,
20 maybe not as a result of that, but for whatever
21 reason, they came to show you a photo pack?

22 A Yes.

23 Q They came to your house?

24 A Yes.

25 Q Did they ask you to come to the police

1 station to do that, or to their office?

2 A I can't remember whether they asked me
3 or not, I just remember that they came to my
4 house.

5 Q How long were they there?

6 A Ten, 15 minutes I guess.

7 Q This was after your interview?

8 A Yes, I believe so.

9 Q Yes. Okay. Our information is that
10 it was March 22nd, and your interview was before
11 that?

12 A Okay.

13 Q But when they left, you knew that you
14 were mistaken about who you thought it was;
15 correct?

16 A Yes.

17 Q And just so as we have it clear, they
18 showed you the photo pack, not once, but twice;
19 correct?

20 A Just the one day they showed me.

21 Q Oh, no, that's right. Okay. The one
22 day, but they did it twice for you?

23 A Okay, yes.

24 Q Is that fair enough?

25 A I'm not sure, but if you're telling.

1 Q Well, let me help you out in that
2 regard.

3 A They showed me a piece of paper and
4 then they showed me individual pictures. Whether
5 I remember it was the same people on the
6 individual as it was on the piece of paper, I
7 can't recall. But they did show me two different
8 sets of pictures.

9 Q Right. What I'm referring to is at
10 page 52 of your first interview with the
11 Commission, page 52, the interview, March 12th,
12 about the second or third last page?

13 A Okay.

14 Q Have you got it?

15 A Yes, I do.

16 Q Starting at line 3:

17 "Were you shown the photographs one
18 picture at a time or.."

19 And then you answer:

20 "The first little squares, I think
21 they said, do you recognize? And I
22 said no. And they did it again, do
23 you recognize? And I said no."

24 So my understanding is that they did it twice.

25 Once, individual photos, correct?

1 A Yes.

2 Q And once on a group of photos on one
3 sheet?

4 A Yes.

5 Q And they were the same pictures?

6 A I just told you I wasn't sure if they
7 were the same pictures or not.

8 Q Oh, okay. But you couldn't pick out
9 the person you thought it was, right?

10 A I didn't recognize, no.

11 Q No. And you know that that person you
12 thought it was, was in those pictures; right?

13 A Pardon me?

14 Q The picture -- the pictures included
15 the person you thought it was, Derek Harvey-Zenk.
16 Do you know that?

17 A I didn't know that, no.

18 Q Well, I've got to get this clear,
19 because if you go to page 47 of your interview,
20 and I know you said to I think Commission Counsel
21 this morning, that you weren't told that this
22 individual was in there. Do you remember telling
23 him that?

24 A I was never told whether he was in
25 amongst the pictures.

1 Q Well, then I don't understand this.

2 Page 47:

3 "And I believe after I had given this
4 they brought pictures over to my
5 house..."

6 That's after you had given the interview.

7 "...because I couldn't go to see them
8 so they came to my house. And it is
9 not the person who I thought it was,
10 'cause they said he is in amongst
11 these pictures. If you knew who it
12 was, could you pick him out? And I
13 didn't know anybody in the pictures."

14 Do you see that?

15 A Yeah.

16 THE COMMISSIONER: Mr. Prober, if you
17 could just lower your voice?

18 MR. PROBER: Sure. I have a loud
19 voice.

20 THE COMMISSIONER: I know with
21 Mr. Weinstein, he's so tall. You're a little loud
22 and I'm sure they can hear you outside this room,
23 sir.

24 MR. PROBER: It's not the first time
25 I've been told that, and I'll try and keep it

1 down.

2 THE COMMISSIONER: Thank you, sir.

3 BY MR. PROBER:

4 Q Do you follow me when I read you that?

5 A I am following you, yes.

6 Q And to me, that means that the picture
7 of the person you thought it was, was in there.
8 Would you agree with that?

9 A I believe so, yes.

10 Q Yeah. And you gave that evidence
11 under oath, right?

12 A Yes.

13 Q You see, it makes sense that the
14 person you thought it was would be in there,
15 because otherwise how could you come to the
16 conclusion that it wasn't the person you thought
17 it was; right?

18 A Yeah.

19 Q Yeah. So it's only logical?

20 A Yes.

21 Q Okay. Let me go quietly to the
22 individual who was at the Super Bowl --

23 A Yes.

24 Q -- party --

25 A Yes.

1 Q -- if I can call it that? What colour
2 was that individual's hair?

3 A I believe at the time it was blonde
4 hair, and I remember his wife was pregnant.

5 Q Okay. Now we're talking about the
6 Super Bowl party, right?

7 A Yeah.

8 Q We'll call it that?

9 A Yes.

10 Q How tall was he?

11 A I am very bad at guessing height.

12 Q Okay.

13 A But if you want me to take a guess, I
14 will, about 5'7", 5'8".

15 Q 5'7" or 5'8", blonde. How much would
16 he weigh would you say?

17 A I am bad at guessing that as well. I
18 don't want to even take a guess at that.

19 Q Okay. Fair enough. The night of the
20 Super Bowl party, he wasn't loud or belligerent,
21 was he?

22 A No.

23 Q No. He wasn't rude to you?

24 A No.

25 Q No. Now, let's go to the night of

1 February 24th into the morning of the 25th. You
2 described a person sitting in the middle as having
3 blonde hair?

4 A Yes.

5 Q Was this the person you thought that
6 might have been at the Super Bowl party?

7 A Yes.

8 Q You're not certain about that?

9 A I'm pretty sure.

10 Q Okay. So again blonde?

11 A Yes.

12 Q Would have been the same height,
13 right, 5-foot seven or eight?

14 A Yes.

15 Q And you're sure about the blonde hair,
16 right?

17 A Yes.

18 Q And again, you don't want to guess at
19 his weight?

20 A I would be really off if I did.

21 Q Okay. And what about his age, any
22 idea?

23 A I'm going to say mid 20's to late
24 20's.

25 Q Mid 20's to late 20's?

1 A Maybe 26, 27.

2 Q Fair enough. And you are now 24?

3 A Yes.

4 Q And at the time you would have been

5 21?

6 A Yes.

7 Q Okay. So not far from your age group?

8 A No. Again, I told you I'm not good at

9 guessing age, so I could be completely off.

10 Q Okay. What can you tell us, if

11 anything, about the colour of his eyes?

12 A Oh, I have no idea.

13 Q What can you tell us about the length

14 of his hair?

15 A Short.

16 Q Short. Is that a guess or --

17 A It's a guess, it's an approximate

18 guess.

19 Q An approximate guess, all right. What

20 about what he was wearing that night, the night of

21 February 24th into the 25th, any idea? I know

22 that's not an easy question.

23 A It's not, because it happened quite a

24 while ago.

25 Q Right?

1 A It's not something that I would
2 remember what he's wearing, so I'm sorry, I have
3 no idea.

4 Q You have no idea, fair enough. Now
5 again, an estimate of what that person had to
6 drink would be a guess; right?

7 A It would be.

8 Q Yes. But let's confirm that that
9 person was not loud like me, not loud; right?

10 A No.

11 Q Not belligerent?

12 A No.

13 Q Not rude?

14 A No.

15 Q Not staggering?

16 A No.

17 Q Not stumbling?

18 A No. I'm basing my opinion on
19 remembrance and what I remember.

20 Q Fair enough. Going back to the photo
21 pack that you were shown at your house, do you
22 remember if the photos had names under them?

23 A I don't remember, I'm sorry.

24 Q Do you know if the photos were black
25 and white or in colour?

1 A I don't remember.

2 Q I just want to clear up one thing, and
3 I don't think it's going to be one question too
4 many, but you never know.

5 At the end of your evidence,
6 Commission Counsel, Mr. Paciocco, said that
7 whatever it was didn't shake your confidence in
8 Sean Black being intoxicated or drunk, or
9 Azaransky being intoxicated or drunk; right, do
10 you remember that?

11 A Yeah.

12 Q But then he also said that the Super
13 Bowl wing eater, didn't shake your confidence in
14 the Super Bowl wing eater being drunk. But you
15 never said in your testimony prior to that that
16 the Super Bowl wing eater was drunk, did you? Not
17 once before that?

18 A I didn't refer to him as that, no.

19 MR. PROBER: No, of course not. And I
20 think it was an accidental inadvertent
21 misstatement by Mr. Paciocco.

22 If I might just have a moment, please,
23 Mr. Commissioner?

24 THE COMMISSIONER: Yes.

25 MR. PROBER: I think I'm done, but I'm

1 just checking my notes, Ms. O'Halloran.

2 THE WITNESS: Okay.

3 MR. PROBER: Thank you. Those are my
4 questions.

5 THE WITNESS: Thank you.

6 BY MR. GREEN:

7 Q I just have a couple of questions.
8 May I call you Chelsea?

9 A Yes.

10 Q It's easier for me.

11 A Yes.

12 Q You gave your interview to the
13 Winnipeg Police on March 11, 2005?

14 A Yes.

15 Q My understanding from the transcript
16 is that they had to wait some time before you
17 actually were interviewed by the two policemen.
18 Does that accord with your recollection?

19 A Yes.

20 Q You told the Commissioner that you had
21 been out for drinks with Constable Black and a
22 couple other of the officers two weeks before?

23 A I'm not sure exactly if it was two
24 weeks, but it was before.

25 Q Shortly before the --

1 A Yes.

2 Q -- night of, the night in question,
3 right?

4 A Yes.

5 Q And who were the other two
6 individuals? Was that Azaransky and Dave?

7 A Yes.

8 Q And my understanding from the evidence
9 that you had given is that you thought that
10 Officer Black or Blackie, as you called him, was
11 an okay guy. Is that fair?

12 A Yes.

13 Q But you didn't like Ken?

14 A Pardon me?

15 Q You didn't like Ken Azaransky?

16 A I wasn't a big fan, no.

17 Q No. You didn't like him?

18 A No.

19 Q He was kind of rude and, in your
20 opinion, and crude and all that sort of stuff?

21 A Yes.

22 Q And you didn't like Dave very much, I
23 take it?

24 A He -- there wasn't anything really
25 wrong with him, but I didn't hate him, no.

1 Q No, okay. But you did like Constable
2 Black?

3 A Yeah, he was a nice person.

4 Q All right. The information that I
5 have is that Constable Black was actually
6 interviewed by the same officers on the day that
7 you were. Were you aware of that?

8 A Yes.

9 Q Did you see Officer Black down at the
10 interview site that day?

11 A I saw him leave.

12 Q You saw him leave?

13 A Yeah, walk out of the room.

14 Q So he had been interviewed right
15 before you?

16 A Yes.

17 Q And when you told your untruths to the
18 two police officers, was part of the reason to
19 protect Constable Black as well?

20 A Maybe.

21 Q That's a possibility?

22 A It is.

23 Q So it was your own sort of friendship
24 with Constable Black as well as the conversation
25 that you had had with your manager, that was an

1 influence; is that what you're telling to the
2 Commission?

3 A I wouldn't really call it a
4 friendship. He was very good friends with my
5 manager. And like I had previously said that my
6 manager asked me to keep my, everything to a
7 minimal, keep it brief, keep it short, and in
8 protection perhaps of Sean Black because he was
9 very good friends with him.

10 Q But you don't discount the possibility
11 that the reason that, one of the reasons that you
12 were untruthful was to protect Black?

13 A Perhaps, yes.

14 Q And so you knew that the officers were
15 in the process of interviewing policemen who had
16 been at Branigan's that night?

17 A Yes. I didn't know it was the same
18 day as me, though.

19 Q No, but you knew that the officers
20 were in the process of doing that at the time that
21 you gave your interview?

22 A Yes.

23 Q Okay. And did you know whether there
24 were additional officers to be interviewed by them
25 after you?

1 A Oh, I'm not sure.

2 Q You weren't sure on that?

3 A No.

4 Q But you did know that Black had been
5 interviewed immediately, right before you?

6 A Yes, because I saw him leave.

7 Q Okay. Now, March 22nd, some officers
8 came to your house and showed you a bunch of
9 photographs?

10 A Yes.

11 Q And if I'm understanding your
12 evidence, there was a sheet with a number of
13 photographs on it, and then those same individuals
14 depicted in that sheet were shown you pictures on
15 an individual basis; is that correct?

16 A Yes.

17 Q And do I understand that you weren't
18 able to identify anybody in those photos?

19 A No, I did not recognize anyone.

20 Q Okay. And so you didn't recognize any
21 of those photos as being a picture of someone that
22 you served that night at Branigan's?

23 A No.

24 MR. GREEN: Thank you very much.

25 MR. McFETRIDGE: No questions.

1 BY MR. PACIOCCO:

2 Q I just have a few clean-up questions
3 for you.

4 A Sure.

5 Q Exhibit 152 is the book of documentary
6 evidence of the records from Branigan's, and I'm
7 going to ask you once again to find a document in
8 there. And I do apologize, it's actually the
9 online detailed sales report for February 25th,
10 2005. Do you remember that document that lists
11 all of the gross sales for the day?

12 A Which page?

13 Q I'm asking you to go to page 3, where
14 it lists the alcohol that's being served and
15 itemizes the kind of beer?

16 A Okay.

17 Q Do you have that in front of you?

18 A I do.

19 Q This is at tab W5 for the lawyers who
20 are following. You will remember some questions
21 that were asked by Mr. Jack, who represents the
22 Winnipeg Police Service, about the \$2.75 pints, 68
23 shown at the bottom?

24 A Yes.

25 Q And he indicated to you that this

1 would include all of the pints sold, and your
2 answer was all of the \$2.75 pints sold?

3 A Yes.

4 Q I just want to be clear.

5 A Okay.

6 Q Did you serve any other kind of beer
7 to any of the officers apart from the \$2.75 pints?

8 A They could have very well ordered the
9 other ones that I have on here, but most of them
10 knew about the \$2.75 pints. But if they -- if we
11 didn't have what they wanted on draft, they could
12 order it in a bottle, because we didn't have every
13 single one of these other kinds on draft.

14 Q Okay. So, for example, if we were to
15 learn that Constable Black was drinking Miller
16 Genuine Draft, that wouldn't surprise you?

17 A That would surprise me.

18 Q And why would that be?

19 A Because they would come in every week
20 and specifically come for the \$2.75 pints and
21 30-cent wings, because Rodrigo Bravo offered that
22 to them.

23 Q Now, my friend Mr. Prober asked you
24 some questions, Mr. Harvey-Zenk's lawyer, and he
25 indicated to you in a question, he says your

1 yardstick then for intoxication is if they are
2 loud and belligerent. Do you remember him asking
3 you that question?

4 A Yes.

5 Q And you had testified earlier that
6 there was something else you took into account.
7 Do you recall what that was, how you judged the --

8 A Like them stumbling, is that what
9 you're talking about?

10 Q No. What else did you take into
11 account, in addition to their loud and belligerent
12 behaviour?

13 A I don't remember.

14 Q All right. Do you remember talking
15 about the condition when they walked into the
16 establishment?

17 A Oh, yes.

18 Q And could you explain what that was,
19 how that factored into your assessment?

20 MR. PROBER: Well, before the witness
21 answers, I am going to put my objection forward.
22 That is -- that it's not a proper, I know the
23 rules are a little more relaxed, Mr. Commissioner,
24 but I expect that we do have some rules regarding
25 the evidence that's allowed. And this

1 re-examination is not, in my respectful
2 submission, either proper, because it doesn't
3 relate to a new matter raised on
4 cross-examination, nor is it, I submit, useful to
5 try and get the witness to simply repeat what she
6 had said in examination-in-chief. Thank you.

7 MR. PACIOCCO: The purposes of
8 re-examination are twofold. One is to deal with
9 new matters that arise, the other is to clarify
10 things that had been left obscure as a result of
11 the questioning of a questioner. Now, Mr. Prober
12 put to this witness in a direct way, there were
13 two things that the evidence of intoxication were
14 based on, loud and belligerent behaviour, when her
15 evidence-in-chief was more extensive than that.
16 And rather than simply leave that answer that was
17 put to her in cross-examination unexplored,
18 relative to her evidence-in-chief, I was seeking
19 to find out whether this witness had changed her
20 position or whether she was, in fact, not
21 understanding that it was open to her to describe
22 the other things that lead her to the conclusion
23 she did.

24 THE COMMISSIONER: I'm satisfied your
25 question is proper. Go ahead.

1 BY MR. PACIOCCO:

2 Q You commented on the condition of the
3 individuals when they came in?

4 A Yes.

5 Q And how did that factor into your
6 assessment as to whether they were intoxicated?

7 A Because they all came in, and they
8 were -- they weren't as loud as they were when
9 they were leaving. They all just came in and sat
10 down, wanted to order what they wanted to order.
11 And they didn't come in the way they were leaving.

12 Q Okay.

13 THE COMMISSIONER: I think that's what
14 she said in chief.

15 MR. PACIOCCO: Yes, it is.

16 THE COMMISSIONER: Merely repeated
17 what she said in chief. Yes.

18 BY MR. PACIOCCO:

19 Q Now, my friend was asking you,
20 Mr. Prober was asking you questions about the
21 estimate of alcohol consumption that you gave with
22 respect to the wing eater with the pregnant wife?

23 A Yes.

24 Q And he suggested to you that that
25 would just be a guess, and you said yes?

1 A Yes.

2 Q Now, there are wild guesses and there
3 are educated guesses. Are you able to help the
4 Commissioner out in terms of whether, or where
5 this figure might fit on that continuum in your
6 estimation?

7 A It would be an educated guess.

8 THE COMMISSIONER: I'm sorry?

9 THE WITNESS: It would be an educated
10 guess.

11 THE COMMISSIONER: Why do you say it's
12 an educated guess?

13 THE WITNESS: Because I have in mind
14 the ones who drank more than the others. I mean,
15 there was a huge party of 24, 25 people there.
16 But I do have a mind, like in my mind, a group of
17 people who had the most part.

18 MR. PACIOCCO: Thank you,
19 Ms. O'Halloran, those are the questions I have,
20 and I do want to thank you for your testimony
21 today. It's been very useful to the Commissioner.

22 THE WITNESS: Thank you.

23 THE COMMISSIONER: Thank you very
24 much.

25 MR. CLIFFORD: Mr. Commissioner, the

1 next witness this afternoon will be Darcey
2 Gerardy.

3 DARCEY GERARDY, being first duly
4 sworn, testified as follows:

5 BY MR. CLIFFORD:

6 Q For the benefit of counsel, following
7 the examination-in-chief, relevant documents will
8 be volume F-3.38.a in the Taman disclosure, and
9 also the Commission Counsel transcript interview
10 of April 10th, 2008.

11 Mr. Gerardy, good afternoon, sir.

12 A Good afternoon.

13 Q Sir, I'd like to start your
14 examination-in-chief by reviewing with you your
15 experience level as of February 2005 in the
16 service industry. We have heard through
17 testimony, sir, and we've seen in Commission
18 disclosure, that you were working as a duty
19 manager or a night manager at Branigan's as of
20 February 25th, 2005?

21 A Yeah.

22 Q And I understand, sir, from your
23 interview with me in April, that you had by that
24 point gathered significant experience in the
25 industry?

1 A Yes.

2 Q And when did you start in the food and
3 beverage industry, sir?

4 A When I was 18.

5 Q And did you remain in the industry
6 from the age of 18 up to where you found yourself
7 employed as of February 2005?

8 A For the most part, yes.

9 Q And not an attempt to date you, sir,
10 but I understand that your age as of February '05,
11 you would have had about what, 16 -- 15, 16 years
12 experience in the industry, in '05?

13 A Probably, 12 to be exact.

14 THE COMMISSIONER: I'll ask you. How
15 old are you, sir?

16 THE WITNESS: Thirty-two.

17 THE COMMISSIONER: Now, if you were a
18 woman, I wouldn't ask you.

19 BY MR. CLIFFORD:

20 Q So a dozen years experience, or so, as
21 of February '05?

22 A Correct.

23 Q Now, sir, I'll ask you to provide some
24 evidence with respect to your employment at
25 Branigan's. And I want to deal with your

1 experience working at Branigan's prior to February
2 of 2005. But I want to be specific with respect
3 to your previous experiences with having the
4 police officers attending at Branigan's?

5 A Um-hum.

6 Q And I understand, sir, that that was
7 the case, that you did in fact have prior
8 occasions when you were working where the police
9 officers had come in as a group before?

10 A Correct.

11 Q And take some time, please, and tell
12 Commissioner Salhany about that?

13 A Just about previous experiences with
14 them coming in?

15 Q Yes.

16 A Okay. For the most part, they would
17 only come in maybe, you know, once or twice a
18 month, if that. But it was never, it wasn't
19 always the same amount of people, it was always
20 different. But like I said, they'd come in,
21 they'd usually just have maybe a few beers.
22 Sometimes they didn't even drink, they'd just come
23 in for wings. But for the most part, they were
24 pretty good.

25 THE COMMISSIONER: The same division?

1 THE WITNESS: Yeah, yeah.

2 THE COMMISSIONER: Division?

3 THE WITNESS: Division 3, I believe.

4 BY MR. CLIFFORD:

5 Q Now, you had indicated that they would
6 come in once, twice a month?

7 A Yeah, depends, I mean, depends on
8 their shifts. The only time I would talk to them
9 is when they would call, or if they would just
10 come in, if there were only two or three of them,
11 or maybe four.

12 Q Would they typically call ahead in
13 order to let the restaurant know they were coming?

14 A If it was a bigger group, they would.
15 But, generally, if there was only maybe three or
16 four of them coming in, they wouldn't call because
17 there was just a few that we could accommodate.
18 But if it was a bigger group, because it would
19 help us accommodate them, they would give us the
20 generosity and give us a call ahead of time.

21 Q And as of February 2005, how long had
22 you been employed there?

23 A I think since 2003 or 2004, one of the
24 two. But it was almost two years experience.

25 Q So you were close to, you recall,

1 having two years experience there?

2 A Yeah.

3 Q And when you indicated that you recall
4 them coming in once or twice a month, I take it,
5 your experience there would be sometimes they
6 wouldn't come in at all for a month?

7 A Yeah, correct.

8 Q It wasn't something that went like
9 clock work?

10 A No, not at all.

11 Q But you do have a recollection of them
12 coming in on somewhat of a regular basis?

13 A Some odd occasions, yeah.

14 Q And unless it was a large group, they
15 could simply just come in and you could
16 accommodate them?

17 A Right.

18 Q But do I understand correctly that if
19 it was a large group, arrangements would be made?

20 A Yeah.

21 Q Now, you were interviewed by the
22 Winnipeg Professional Standards Unit. A police
23 officer made arrangements to conduct an interview
24 with you, and I understand that you were
25 interviewed at the same time as Rodrigo Bravo?

1 A Correct.

2 Q And we have heard that Rodrigo Bravo
3 was the general manager of Branigan's as of
4 February 2005?

5 A Correct.

6 Q So when you are being interviewed by
7 the Winnipeg Professional Standards Unit, it's
8 both you and your supervisor --

9 A Correct.

10 Q -- who are present for, I take it, the
11 conversation before the interview, the interview
12 itself, and the conversation after the interview?

13 A Correct.

14 Q Now, during the course of that
15 interview, Rodrigo Bravo indicated to the Winnipeg
16 Professional Standards Unit that the officers were
17 great patrons of his restaurant. And do you
18 recall him expressing that to --

19 A I mean, he's mentioned it when I first
20 started there, because they would come and they
21 would spend money. And I guess they, the previous
22 managers, I guess you could say before he got
23 there, didn't treat them that well so they never
24 came back. So he just brought their patronage
25 back.

1 Q I take it that Rodrigo Bravo
2 considered them to be a valued customer?

3 A Sure.

4 Q It was a large group, and they would
5 be a good source of business for the restaurant.
6 And I'm not asking you to testify about his
7 thoughts and views, we'll hear from him. But
8 based on what you observed, did you come to that
9 conclusion yourself?

10 A Yeah.

11 Q That is the way he thought about them?

12 A Yeah. They were always usually a good
13 bunch of guys and just having fun. And it was
14 never anything crazy going on, but, no, I enjoyed
15 them coming down.

16 Q And Rodrigo Bravo, I understand, when
17 he was in the role of general manager, and you
18 would be the night manager?

19 A Correct.

20 Q In other words, that when you got to
21 his position, you didn't have to put in the night
22 shift unless you wanted to, necessarily?

23 A Like when he left, do you mean?

24 Q No.

25 A Just when he wasn't there?

1 Q What I meant is, when you were the
2 general manager, you could go home at the end of
3 the day?

4 A Yeah.

5 Q Have dinner at home and stay home for
6 the evening?

7 A Yeah.

8 Q And you didn't have to do what you
9 were doing, which was showing up at work at 5:00
10 o'clock and staying there till 2:30 or 3:00;
11 right?

12 A Correct.

13 Q It was one of the benefits that he had
14 as the general manager?

15 A Correct.

16 Q That's one of the things you had to do
17 as someone who was working their way up?

18 A Correct.

19 Q So when he would go home at night, I
20 take it he would leave you with instructions if
21 the police officers were coming that, look,
22 Darcey, they are good customers of ours, I want
23 you to take really good care of them?

24 A Um-hum, correct.

25 Q And in fact, on nights when they would

1 be present and Rodrigo Bravo would be at home, I
2 understand that the police officers were there, he
3 would check in on you to make sure that they were
4 getting good service?

5 A He didn't really check on me nightly
6 for that aspect. He called every night just to
7 see how business was going. You know, he would
8 ask, you know, how are the guys doing? I'd tell
9 him fine. But he would call every night more
10 based on how is the restaurant doing, not just
11 solely how are the boys doing basically.

12 Q Okay. But if he called every night
13 that you were in the restaurant working --

14 A Yes.

15 Q -- from home to make sure that
16 everything was fine in the restaurant?

17 A Yeah.

18 Q On the nights that the officers were
19 there, I take it he would make the specific
20 inquiry, how are the officers?

21 A He just would ask how they were doing.

22 Q Would the officers get "comp'ed" every
23 now and then. That's an industry term that --

24 A No. They got, I mean, they got our
25 cheap wings already, so that was pretty much it.

1 Maybe we'd give them like a 25 per cent discount,
2 but other than that we wouldn't necessarily buy
3 them free drinks all the time.

4 Q Had you been involved in any occasions
5 where Rodrigo Bravo would give them free platters
6 of food? Officers would come in and they would
7 get so much food that they couldn't eat at all?

8 A Not that I know of, not if I was
9 there, no.

10 Q Okay. "Comp'ing" somebody in the
11 industry is something that does occur, right?

12 A Right.

13 Q You might have a customer come in and
14 they could be there, a good customer all night,
15 and then they might get something for free at the
16 end of the night? It's not unheard of, right?

17 A No, not at all.

18 Q I take it you do it from time to time
19 in your career?

20 A You do. I mean, you do it with a lot
21 of your regulars too. And I did do it with a lot
22 of my regulars because they, you know, they would
23 come in everyday, so I'd buy them a beer.

24 Q Now, the officers we have heard, when
25 they would appear, they will get the Sunday,

1 Thursday -- Sunday, Tuesday, I'm not sure --
2 they'd get the cheap wings?

3 A Yeah.

4 Q No matter what night they'd come in?

5 A Yeah.

6 Q And they also got the \$2.75 pints?

7 A Yeah.

8 Q Now, in your previous experience with
9 them, okay, comparing the size of the group on
10 24th, 25th of February, to your earlier times with
11 them, how did the sizes compare, the numbers of
12 officers?

13 A It could go from two guys to 15 guys.
14 Like I said, it would vary every month or every
15 time I'd see them. Like I said, sometimes they'd
16 come in for wings and then they'd leave. So it
17 was never consistent.

18 Q But in terms of serving a large group,
19 we're not talking about the times that you were
20 serving one or two or three of them, but when you
21 had large groups in --

22 A Okay.

23 Q -- how often was that taking place,
24 that you'd have a large group of officers in?

25 A Not very often at all.

1 Q How many times had that occurred?

2 A I would have to take a guess, maybe
3 four or five times.

4 THE COMMISSIONER: You said four --

5 THE WITNESS: Four or five times,
6 maybe like within the two years that I had been
7 there, because it was never usually a large group,
8 it was usually pretty tame.

9 BY MR. CLIFFORD:

10 Q And when you looked at those number of
11 times that they had been in previously, the four
12 or five times, as a large group, was it a smaller
13 group than was in on February 24th, 25th?

14 A I would say so, yeah. It was a little
15 bit smaller, but not too much.

16 Q Sir, I have conducted an interview
17 with you on April 10th, 2008. I take it you
18 recall attending at the Commission office and
19 being questioned and giving answers under oath at
20 that time?

21 A Yes.

22 Q And, sir, what I'll do is refer to the
23 transcript just for the purpose of perhaps
24 assisting your memory on this. I asked you at
25 page 8:

1 "Q If you knew how many there were,
2 your recollection and response at that
3 time was you would say probably 18 to
4 25, somewhere in there?

5 A Yeah.

6 Q Had you served that group
7 previously? Had you had them in as
8 customers in that same fashion?

9 A Not as big -- not as a big group,
10 no.

11 Q Did you have smaller groups coming
12 in?

13 A Oh, yeah. I mean, a few of them
14 would come in and they would just have
15 a beer. They would come for some
16 wings and then go home."

17 Now having heard that, sir, does that refresh your
18 memory with respect to whether the 24th or 25th
19 would have been the larger group?

20 A To be honest, I don't know. It's --
21 every night there is the same night for me. So
22 it's really hard to recollect if that was the
23 night in question, if it was a big group. I'm
24 assuming it was. But like I said, every night was
25 the same for me.

1 Q Now, I understand, sir, that you are
2 not employed there any longer and it's been some
3 time since you have been employed at Branigan's?

4 A Correct.

5 Q When did you stop working there, sir?

6 A I'd say two and a half years ago
7 maybe, two years ago.

8 THE COMMISSIONER: You left two years
9 ago?

10 THE WITNESS: Yeah, I left about two
11 years ago.

12 BY MR. CLIFFORD:

13 Q Now, did you know any of the officers
14 that did attend at Branigan's?

15 A The one I mostly knew was Dave
16 Harding. He was the one who contacted me if there
17 was a big group coming in.

18 Q Okay. And you said the one that you
19 mostly knew was Dave Harding?

20 A Yeah, 'cause he was the one, I was
21 introduced to him by Rodrigo.

22 Q You were introduced to Dave Harding by
23 Rodrigo Bravo --

24 A Yeah.

25 Q -- your manager?

1 A Yeah.

2 Q And what type of relationship was
3 created between you and Dave Harding?

4 A Just, I mean, he wasn't a friend, he
5 was just someone who contacted me and let me know
6 that they were coming in.

7 Q How often would you hear from him?

8 A Not very often. Like I said, whenever
9 it was a big group, he would call. But for the
10 most part, if it was small, they would just come
11 on in.

12 Q What about other officers? Did you
13 know the other officers that would come in?

14 A Not offhand, no. Like I'd maybe know
15 them by face, but names, like I didn't make it my
16 personal thing to go find out exactly who they
17 are. It's not what you do in our industry. They
18 are just a bunch of guys having fun, so be it.

19 Q Did you know whether Rodrigo Bravo had
20 any friends that were in the police force?

21 A Yeah, I think he has some friends in
22 the police force.

23 Q What can you tell the Commission about
24 that? What's the extent of the information you
25 have?

1 A I don't even know, to be honest. I
2 just know that he knows, he has some friends on
3 there. That's all I know.

4 Q Did you know whether he had a
5 friendship with any of the police officers that
6 were attending as part of the large groups when
7 you were involved?

8 A I don't know if they were his friends
9 or not. I have no idea.

10 Q I'd like to move now, Mr. Gerardy, and
11 ask you some general questions about policies in
12 the industry that you work in, specifically
13 alcohol consumption and driving. You had
14 mentioned, when you were interviewed by the
15 Winnipeg Police, that that's certainly something
16 that people in the service industry, particularly
17 in your position as managers, would be aware of?

18 A Yes.

19 Q And can you tell us, sir, what your
20 concern was with respect to that issue?

21 A It's just something that you learn. I
22 mean, if you see something, you notice it, then
23 you notice someone has had too much to drink. You
24 do what you can, in your power, to enable them to
25 find their way home, whether it be call a cab. In

1 my past experience I have driven people home that
2 were too drunk to drive. So it's just a very big
3 thing that I take very, very seriously.

4 Q I noted, sir, when you gave your
5 interview to the Winnipeg Police Officers, you
6 indicated at page 1320 in your interview, at line
7 25:

8 "It's a big concern in our industry.
9 Like I can't let anyone leave here
10 hammered, because then it's my fault
11 and my responsibility."

12 Now, when you said that to the Winnipeg Police
13 Service, sir, you are indicating that your
14 position is that if something happened, in other
15 words, somebody got hammered and went out and had
16 an accident, that it's your personal fault, your
17 personal responsibility?

18 A From what I understand, yes.

19 Q So from your understanding, the
20 liability would be --

21 A Solely on me.

22 Q -- on you. What about on the
23 establishment and anyone else that's connected?

24 A Well, I think it would come down to,
25 you know, who served them, who bartended. I mean,

1 it all falls into place. It's going to affect the
2 server, the manager on duty, and the store itself.

3 Q So it would be everybody could be held
4 accountable?

5 A Absolutely.

6 Q But when you said this to the Winnipeg
7 Police Service, obviously, what you are expressing
8 to them is, look, you were aware of the fact that
9 you personally were also on the line here when it
10 comes to this policy?

11 A For sure.

12 Q Now, I take it, sir, that part of
13 managing this issue in your industry is you don't
14 act as a consumption officer in your restaurant.
15 People are going to come in there and they are
16 going to celebrate from time to time, they are
17 going to have some drinks, they are going to get
18 rowdy, they are going to do their thing. As long
19 as they are not falling over drunk, or breaking
20 things, they will continue to get served; right?

21 A Well, I mean, to a reasonable doubt.
22 I mean, that's where you have to use your
23 judgment. I mean, if they are having -- there's a
24 difference between having fun and getting rowdy to
25 being absolutely hammered and can't walk.

1 Q Indeed. And being absolutely hammered
2 and can't walk falls under the category where
3 someone is going to take steps, at least you would
4 have a reasonable expectation they would take
5 steps and address it?

6 A Correct.

7 Q Somebody drinking throughout the
8 evening and having a good time, their behaviour
9 changes as a result of drinking alcohol; right?

10 A Yeah.

11 Q You're not going to go out and cut
12 them off as soon as you see them changing their
13 behaviour, are you?

14 A No. I mean, I give them the benefit
15 of the doubt. I mean, if they are fine all night,
16 you know, every person is different, it's hard to
17 describe, because some people can drink 20 drinks,
18 have the next one, and just be absolutely
19 different. But some people can gradually be the
20 same all night and not change. So, I mean, if
21 you're going to be nice all night and then
22 belligerent for the next couple of drinks, well,
23 for sure, I'm going to cut you off. I mean, it's
24 not just about alcohol consumption, it's about
25 keeping your other guests happy as well. I mean,

1 you can't have that in your establishment.

2 Q That's right. So there are a number
3 of factors that you draw upon. I take it one of
4 them is your experience?

5 A Correct.

6 Q You were in the business in '05 as of
7 12 years?

8 A Yes.

9 Q I take it you would rely on your
10 experience in order to make decisions about
11 people?

12 A Correct.

13 Q About what is appropriate for them to
14 do or not to do?

15 A Yes.

16 Q For instance, you could come to the
17 conclusion that, look, it's not appropriate for
18 this person, based on my observations, to leave
19 this establishment now and drive a motor vehicle?

20 A Absolutely.

21 Q And I take it that's something that
22 you are in tune with and you are aware of?

23 A Yes.

24 Q And what do you rely on when making
25 that decision whether it's appropriate for someone

1 to drive their motor vehicle or not?

2 A It's just a lot of body movements,
3 just a lot of things you just learn that you kind
4 of pick apart on a person, that you can see, okay,
5 they've had too much to drink. Maybe they took an
6 extra step. It's just, you notice it, maybe other
7 people don't, but it's something you learn to
8 notice because it's something, like I said, I take
9 very seriously.

10 Q And, sir, when you do make that
11 observation, I take it there is appropriate
12 inquiries or advice that you would give to the
13 individual, if you think there's a concern about
14 them driving?

15 A Oh, you know, I'd ask them if they
16 wanted me to call them a cab, or if they have a
17 friend that could drive them or pick them up.
18 Like I said, past experience, I could drive them
19 home because it was a different atmosphere. But
20 in that particular scenario, I mean, I couldn't
21 drive them home. I could do whatever I could do
22 in my power. But like I said before, I mean, if
23 they are going to -- you know, you could take
24 their keys, they could leave, they could have a
25 spare set and they leave. I mean, people have

1 done that.

2 Q And I take it as a result of your
3 experience, if somebody tells you in response to a
4 concern you raise, are you driving, if they tell
5 you, no, someone else is going to drive us, will
6 you actually take the next step and make sure that
7 they are not just giving you a line?

8 A For sure I do.

9 Q And I take it that would occasionally
10 have you looking out the front door to make sure
11 that the person --

12 A I would watch.

13 Q -- is not saying to you, look, don't
14 worry, I'm not going to drive. And they walk into
15 the parking lot, jump into their car and drive
16 away?

17 A Exactly.

18 Q Now, you have been testifying, sir,
19 about the policy and your practice in the
20 industry. Take your mind now to February 25th,
21 2005. We have heard testimony, sir, that you were
22 on duty that night and you are the night manager?

23 A Correct.

24 Q And you had a bartender working?

25 A I believe so. I should have had a

1 bartender, yes.

2 Q And you had a server who was working?

3 A Correct.

4 Q Chelsea O'Halloran testified that she
5 was the server, that there was somebody working
6 with her, but that other server was let go a
7 little bit earlier, and she had carriage of the
8 restaurant from the point the second server was
9 let go until closing?

10 A Correct.

11 Q Does that accord with your
12 recollection?

13 A Probably, more than likely. There is
14 usually -- I mean, that's how I cut my staff. If
15 it's slowing down, I'd go down to one server, but
16 I'd generally start with two to three servers in
17 the evening.

18 Q Now, you recall the evening in
19 question when the officers were present?

20 A Yes.

21 Q Now, Chelsea O'Halloran's duty was to
22 serve them?

23 A Correct.

24 Q Bartender's duty was to pour out the
25 drinks?

1 A Correct.

2 Q And what sort of things were you
3 doing?

4 A Watching everything.

5 Q Now, do you recall, sir, getting back
6 to the policy about drinking and driving, and your
7 procedure or response to the concern about it, do
8 you recall at the end of the night when the police
9 officers were lining up to leave?

10 A Yes.

11 Q And based on your observations of the
12 police officers lining up to leave, did you
13 address a concern that you formed about a person's
14 ability to drive their motor vehicle?

15 A Yes.

16 Q Okay. And what was it, in your
17 observations of these individuals, that raised
18 your concern about their ability to operate a
19 motor vehicle?

20 A Like I said before, it's not -- I
21 don't remember exactly what it was that triggered
22 it, but there was obviously something that I saw
23 that gave -- that, you know, gave me the idea, the
24 notion that they were too drunk and they shouldn't
25 be driving, they should probably have been cut off

1 at that point.

2 Q You said too drunk to be driving, or
3 probably should have been cut off at that point?

4 A Correct.

5 Q Based on your experience?

6 A (Witness nodding)

7 Q Now, obviously, if you make this
8 observation, based on what your testimony is, it's
9 incumbent upon you to make inquiries about, I've
10 got a concern about some of you operating a motor
11 vehicle?

12 A Correct.

13 Q Did you do that?

14 A Yeah.

15 Q And how did you raise that, sir?

16 A I just brought it to their attention
17 that, I asked how these, how they were getting
18 home. And I was just told that, you know, don't
19 worry, they are coming with us, they have a ride.
20 I said, if you guys have a ride, I'm watching you
21 guys leave. Because like I said, I don't -- I had
22 been down that road too many times where people,
23 you believe them and then they jump in their car
24 and they drive home.

25 Q Okay. I want to back up and go

1 through that sequence with you slowly.

2 A Okay.

3 Q You say that you made a comment where
4 you raised your concern?

5 A Yes.

6 Q In what manner did you raise it? Were
7 you serious and firm about it?

8 A For sure I was.

9 Q And who, or how many people responded
10 to your concern?

11 A I think it might have been maybe two
12 or three of them said, you know, don't worry, they
13 are coming with us, they are not driving.

14 THE COMMISSIONER: Where did you make
15 this? Were you taking the cash that night?

16 THE WITNESS: I don't think I was
17 taking cash, but they usually line up by the PUS
18 Squirrel system, and I was usually in front before
19 they pay, before they leave, so I have an idea
20 what's going on. So I just kind of, I mean, it's
21 quiet and there is no music, so I just say, hey,
22 how are these guys getting home? I need to know
23 what's going on? And then a couple just said,
24 don't worry, they are coming with us, they are not
25 driving.

1 THE COMMISSIONER: Did you address it
2 to any particular individual, or just to them
3 generally?

4 THE WITNESS: Well, I can't remember
5 who it was, like trying to remember who was drunk,
6 but I know there was a few that had too many and I
7 just said, hey, how are these guys getting home?

8 THE COMMISSIONER: I see. Okay.

9 BY MR. CLIFFORD:

10 Q So this is at the end of the night as
11 they are lining up to pay their bills?

12 A Correct.

13 Q And I asked you about whether you were
14 serious in the manner in which you posed the
15 concern, and you told me, was it a couple of them
16 responded?

17 A Yeah, it was maybe two or three of
18 them that, you know, when I said, hey, whose got
19 these guys? It was pretty much the people beside
20 them said, don't worry, they are coming with us.

21 Q In what manner did they respond to
22 you? Were they serious with you?

23 A Yes.

24 Q Were you satisfied?

25 A Yeah. Because, I mean, just past

1 experience with them, even if it was a small
2 group, they would always have a designated driver.
3 So it's usually the same person. So I totally
4 believed them. I mean, I do watch who is drinking
5 pop because then I know at least someone is
6 driving that night.

7 THE COMMISSIONER: Was this said by
8 more than one person, one officer?

9 THE WITNESS: I believe so, yes.
10 There was maybe two or three of them that just
11 said, hey, don't worry, they are coming with us.

12 THE COMMISSIONER: Two or three said,
13 don't worry, they are coming home with us?

14 THE WITNESS: Yes.

15 BY MR. CLIFFORD:

16 Q Did you know the officers that said
17 that, that you ought not to worry?

18 A Not by name, no.

19 Q Sir, I want to ask you, you have used
20 the word "couple" about the officers that you felt
21 ought not to drive a motor vehicle?

22 A Correct.

23 Q You have used the words "a few" as
24 well in your Commission interview about the number
25 of officers you felt ought not to drive a motor

1 vehicle?

2 A Correct.

3 Q You have used the word "couple" with
4 officers that you felt should have been cut off.
5 And what I'd like to know, sir, is what do you
6 mean by the term "a few"? Can you put a number to
7 it?

8 A That's the thing, I can't remember.
9 That's why -- I know it's not more than three
10 people, and it's not less than one person. So
11 it's, from what I can remember, I'm only saying a
12 few or a couple because that's all I can
13 physically remember.

14 Q All right. Let's take it to the next
15 step. You get this reassurance from, I understand
16 you're saying, again, a few of the officers tell
17 you, you don't need to worry about this, we're on
18 it, we got it addressed?

19 A Correct.

20 Q In order to ensure that that is in
21 fact the case, do you take any steps?

22 A I watched them leave.

23 Q And describe that for us.

24 A They pay, they leave, they get into a
25 couple of vehicles. There's a bunch left behind,

1 and I do see the DD's that are driving, are
2 driving.

3 Q All right. So this concern you have
4 with respect to alcohol consumption is, you're
5 taking it seriously enough that you pose the
6 question, you get the response, but you also
7 check?

8 A I double-check, yes.

9 Q Now, you watch them in the parking
10 lot, and I take it that you see that vehicles are
11 left behind?

12 A Yes.

13 Q Now, sir, when you saw the vehicles in
14 the parking lot, how many vehicles were left
15 behind?

16 A Maybe five or six.

17 Q Just, I'd like to perhaps assist your
18 memory, sir, on that. I'm going to refer to you
19 page 17 of your April 10th, 2008 transcript, and
20 I'm going to bring you to line 19.

21 A Oh, there you go.

22 Q And at line 19, I asked you, sir:

23 "Q So when you check the parking
24 lot, how many cars were left behind?

25 A Three or four maybe."

1 Does that refresh your memory, sir, on that
2 question?

3 A It does. But like I said, it was
4 anywhere, just going by memory wise, I mean, it
5 could have been three, it could have been four, it
6 could have been five, it could have been six. But
7 I'm just trying to give you a general idea of how
8 many cars would have been left behind.

9 Q Now, sir, extrapolating back, you see
10 the four to six cars, was that consistent with the
11 number of people that you felt shouldn't be
12 driving?

13 A I guess, yeah.

14 Q Sir, you mentioned just a number of
15 minutes ago about past experiences where there
16 would be a discussion with these police officers
17 about designated drivers. I want to ask you about
18 your previous experiences with the officers and
19 alcohol. In the past, had you dealt with a
20 situation similar to this, where you were making
21 inquiries about them having a designated driver?

22 A Not so much, but, I mean, they usually
23 always, when they did come, they always had a
24 designated driver. But it never got to the point
25 where someone was so drunk they couldn't drive.

1 They just always made sure someone wasn't drinking
2 if they were driving that night.

3 Q This night would have been a little
4 bit different then, February 24th, 25th?

5 A Correct.

6 Q Were there times when you have
7 suggested that you would call them a cab?

8 A Beforehand you mean?

9 Q No, on previous occasions?

10 A No, I never had to ask them to call a
11 cab.

12 Q And how did they respond on previous
13 occasions when you would raise these issues with
14 them?

15 A It's not that I raised the issue, if
16 they need a cab, because like I said, they always
17 had a designated driver. From the very first
18 beginning, I said, if you guys ever need a cab,
19 just let me know and I'll call you a cab. But for
20 the most part, they always had a DD to drive them
21 home.

22 Q Did they, when you dealt with them in
23 previous experiences, did you make it clear to
24 them that that was something that you wouldn't
25 permit them to do?

1 A Yeah, and they knew that. I mean,
2 that's why they always came with a DD, because
3 they didn't have to worry about taking a cab.
4 They'd have someone that was just drinking pop all
5 night.

6 Q And while one person was drinking pop,
7 would the others be able to consume alcohol?

8 A Yeah.

9 Q Now, you have expressed your concern
10 about your own personal civil liability. Rodrigo
11 Bravo was your boss. Did you have conversations
12 with him about the issue of what exposure
13 Branigan's had to this incident, or what exposure
14 he might have, or you might have?

15 A No.

16 Q Well, I take it that Rodrigo Bravo
17 would have asked you questions, or addressed
18 concerns with you about, look, how much alcohol
19 did these individuals consume?

20 A For sure, yeah.

21 Q Right. I mean, it was in the media, I
22 take it you learned shortly after the incident in
23 the media what had taken place?

24 A Correct.

25 Q You were there that night working?

1 A Yeah.

2 Q I take it, you have expressed that you
3 had your own personal concern about liability?

4 A Well, it's not -- I wasn't concerned
5 more about my personal liability, I was personally
6 responsible. I mean, I felt horrible for the
7 family who was just -- I just couldn't believe it.
8 But, no, I didn't.

9 Q Let me rephrase that, sir. You felt
10 as though you had done what was appropriate to
11 address the issue of your liability?

12 A Yes.

13 Q Your conduct with the officers?

14 A Yes. I felt I did what I could to
15 prevent the inevitable happening.

16 Q To prevent somebody from driving while
17 they were intoxicated --

18 A Exactly.

19 Q -- at 2:30 in the morning on
20 February 25th, you did what you thought was
21 appropriate?

22 A I felt I could, in all the power I had
23 that I could do.

24 Q I take it Rodrigo Bravo would have
25 been interested, as your boss, about whether you

1 did what was appropriate?

2 A For sure.

3 Q Did you tell him the same things that
4 you told the Commission?

5 A Yes.

6 Q And was he asking you, look, did you
7 cover off the issue of whether someone was going
8 to be driving them, or whether they wouldn't be
9 driving their own cars?

10 A No.

11 Q Let me put the question to you again.
12 Was he asking you the same sort of questions that
13 I am asking you, did you take appropriate steps --

14 A Oh.

15 Q -- to make sure they wouldn't be
16 driving?

17 A Yes, yeah.

18 Q And did you explain to him that you
19 understood that they would not be driving?

20 A Yes.

21 Q Did you mention to him by any chance,
22 sir, that somebody would be coming to pick up the
23 people that you thought were intoxicated?

24 A No, not that I know of.

25 Q Did you tell Mr. Bravo that you had

1 actually witnessed them leaving cars behind in the
2 parking lot?

3 A Pretty sure I told him.

4 Q Did Rodrigo Bravo ask you questions
5 about how much alcohol they consumed?

6 A He did. But I didn't have any answers
7 because I don't just watch them drink, so I
8 couldn't tell him how much they had.

9 Q Were you involved in serving them
10 any --

11 A No.

12 Q -- alcohol?

13 A No.

14 Q Do you recall whether you might have
15 brought any complimentary drinks?

16 A I might have, yeah, but I don't -- I
17 wouldn't have been serving them all night though.

18 Q But if complimentary drinks were
19 served, that would be your role, right, as the
20 general manager?

21 A Yes.

22 Q It wouldn't be something -- if a
23 waitress was to take a round of drinks out and
24 give them away?

25 A She shouldn't be doing it without

1 my -- without my saying it's okay.

2 Q And she'd have to pay for them, I
3 guess, if she did give them away?

4 A She would have to pay for them, yes.

5 Q I wanted to show you some evidence
6 that the Commission has, and deal with that issue
7 about the possibility of you comp'ing a round,
8 Exhibit 152, Madam clerk?

9 THE COMMISSIONER: When you give
10 complimentary drinks, do you mark it on your cash
11 and revenue sheets?

12 THE WITNESS: No.

13 THE COMMISSIONER: The reports here
14 indicate the alcohol that you sold and the food
15 that you sold that evening?

16 THE WITNESS: Um-hum.

17 THE COMMISSIONER: So if you gave out
18 any complimentary drinks, would that show at all?

19 THE WITNESS: Well, it depends,
20 because sometimes we did, I mean, we did punch it
21 in, then we'd just promo it off, so it should show
22 up in our reports.

23 THE COMMISSIONER: You punch it in and
24 punch it out?

25 THE WITNESS: No, you'd punch it in,

1 but you'd have to promo it off to get to a zero
2 balance, but it shows up in your reports that you
3 promo'd those items.

4 THE COMMISSIONER: Thank you.

5 THE WITNESS: You're welcome.

6 MR. CLIFFORD: Mr. Commissioner, the
7 witness has been provided with Exhibit 152. And
8 what I did is I turned to a page that counsel are
9 familiar with from the previous witness, and
10 that's the "on-line detail sales report, gross,
11 all departments," and I'm at the third, page 3.

12 MR. PROBER: W what?

13 MR. CLIFFORD: I'm sorry, Mr. Prober,
14 it is volume W.

15 MR. PROBER: Right, but which tab
16 number?

17 MR. CLIFFORD: W5.

18 BY MR. CLIFFORD:

19 Q Do you see on the bottom of the page
20 that I've got folded open for you there, sir,
21 category liquor?

22 A Yeah.

23 Q Category liquor. Do you see item Rye,
24 Crown Royal, brand Dark Rum down at the bottom of
25 the page?

1 A Yeah.

2 Q You flip the page over, still going on
3 that category, Vodka Paralyzer?

4 A Yeah.

5 Q Caesar, Murphy's Irish. Now, what we
6 see in this list, the ryes, three ryes will cost
7 you \$12.75?

8 A Right.

9 Q Three Crown Royals will cost you
10 \$14.85. You're into Vodka Paralyzers, if you
11 drink four of them, it's \$18.20; right?

12 A Yeah.

13 Q Nineteen is something went out, but it
14 was for free, it appears so. Now, is that how a
15 complimentary line of drinks might look?

16 A No, it shouldn't. Pretty sure there
17 should be a, somewhere it should say it was
18 promo'd.

19 Q So under Murphy's Irish, should there
20 be, instead of stars there, a promo?

21 A I am thinking so. Because usually,
22 because if I punch it in and I promo it off, it
23 shows up on our reports. Because if one of my
24 supervisors promo something off, at least in the
25 morning I can see what's going on.

1 Q Would you agree, sir, this record is
2 consistent with 19 liquor drinks going out at
3 zero?

4 A That's throughout the day, though,
5 too.

6 THE COMMISSIONER: I'm sorry?

7 THE WITNESS: That's throughout the
8 day. So, I mean, if I bought two of my regs two
9 beers, that can be included in the 19.

10 THE COMMISSIONER: Sorry, I don't
11 understand that.

12 THE WITNESS: Because it's a daily,
13 it's throughout the whole entire day.

14 THE COMMISSIONER: Yes.

15 THE WITNESS: So it's not just saying
16 19 people had 19 free drinks at one time. It
17 could be, maybe Rodrigo bought two people in the
18 afternoon a drink, maybe I bought my two regulars
19 a drink, so that's four. It's a sum total. It's
20 not a lump saying, yeah, they had 19 drinks at one
21 time.

22 THE COMMISSIONER: Nobody has
23 suggested that it's all at one time.

24 THE WITNESS: Yeah, I was just saying.

25 THE COMMISSIONER: It is 19 drinks --

1 THE WITNESS: Promo'd.

2 THE COMMISSIONER: -- Promo'd.

3 THE WITNESS: Yeah.

4 THE COMMISSIONER: There are no words
5 promo that you said should be there?

6 THE WITNESS: I'm pretty sure there
7 should be something.

8 THE COMMISSIONER: But there's no
9 doubt in your mind that it is promo'd?

10 THE WITNESS: Yes.

11 THE COMMISSIONER: Because otherwise
12 there would be no reference to 19 drinks?

13 THE WITNESS: Yes.

14 THE COMMISSIONER: Okay. Let's move
15 on.

16 BY MR. CLIFFORD:

17 Q All right. Now, Mr. Bravo, you have
18 commented on that record. Now, I also understand
19 that as part of your role as general manager, if
20 you wanted to take out or arrange for a free
21 pitcher or something like that, you could also --

22 A Yes.

23 Q -- take that step?

24 A Yes.

25 Q And is it possible that anything like

1 that could have occurred on the 24th, 25th?

2 A That I bought them a pitcher?

3 Q Yeah?

4 A Probably.

5 Q And given the fact that there would be
6 20, 25 people there, one pitcher wouldn't go very
7 far, I take it? If you're going to make the
8 gesture, you'd put out a few pitchers?

9 A Yes.

10 Q Now, sir, I want to ask you some
11 general questions about these records. They have
12 been gone over by Chelsea O'Halloran. I'm not
13 going to go over them with you in detail. You
14 didn't serve. But you understood the Squirrel
15 system, at least to the extent that you used it at
16 Branigan's?

17 A Yes.

18 Q And I understood that you had some
19 prior experience with the Squirrel system even in
20 Alberta?

21 A Yes.

22 Q And it's a system that's well known in
23 the industry?

24 A Yes.

25 Q And what this system does, it's a

1 point of sale system. And you have to conduct
2 your business, pursuant to the tax requirements,
3 you have to record sales?

4 A Yes.

5 Q And apply the appropriate Provincial
6 and Federal taxes, and you have to record
7 transactions, calculate tax and keep daily
8 tallies, and create the gross totals at the end of
9 the days, et cetera. And that's what you
10 understood, I take it, the Squirrel system to do?

11 A Yes.

12 Q Now, if an individual paid with a
13 credit card, there would be a record of their
14 name?

15 A Yes.

16 Q Because you'd have the credit card
17 transaction, which is basically your equivalent of
18 your currency?

19 A Yes.

20 Q And if they used their Interac or
21 cash, there wouldn't be a record of their name?

22 A No.

23 Q However, if they use their Interac or
24 cash, there, at the end of the day, would be a
25 grand total?

1 A Yes.

2 Q But the grand total is comprised or
3 made up of all the individual transactions?

4 A Yes.

5 Q And those are kept, are they not?

6 A The individual transactions?

7 Q Yeah, a record of individual
8 transactions is kept?

9 A The actual bill itself, do you mean?

10 Q I'll come to that. A record of the
11 individual transactions is kept, so you can
12 confirm whether the grand total is off or on?

13 A I don't think so, to be honest with
14 you.

15 Q How could you confirm if the grand
16 total was correct if you didn't keep a record of
17 the transactions?

18 A I honestly don't know, I don't
19 remember, because I haven't done this in I don't
20 know how many years, so I don't even know how to
21 read it.

22 Q So in terms of your recollection
23 today, as you are testifying on the Squirrel
24 system, is that it's been a while and you're not
25 familiar any longer?

1 A Like I said, it's been a while since I
2 have dealt with this, this system.

3 Q Sir, what I will ask you to do is take
4 a moment, and do you have a copy of your
5 Commission interview with you, dated April 10th,
6 2008?

7 A Yeah.

8 Q And if I refer you to page 23, and if
9 you read over what -- the questions and answers I
10 put to you to, page 30, that might have the
11 benefit, sir, of refreshing your memory on what
12 you knew, at least as of April 2008 on this
13 system.

14 And if I, Mr. Commissioner, if I
15 could, maybe suggest that while he reads those
16 pages, and I'm not going to read them to him
17 because there's a number of pages, this might be
18 an appropriate time for the afternoon break?

19 THE COMMISSIONER: Yes. What pages
20 are you reading to him?

21 MR. CLIFFORD: I'm asking him to
22 review page 23 up to the end of his interview with
23 Commission Counsel.

24 THE COMMISSIONER: Yes. All right.
25 15 minutes.

1 THE CLERK: Order, all rise. This
2 Commission is in recess.

3 (Proceedings recessed at 3:22 and
4 reconvened at 3:37 p.m.)

5 THE CLERK: All rise. This Commission
6 of Inquiry is now reopen. Please be seated.

7 BY MR. CLIFFORD:

8 Q Mr. Gerardy, over the break, I take it
9 you had an opportunity to look at the interview?

10 A (Witness nodding)

11 Q And, sir, I just want to go back and
12 cover that with you. Did reviewing that material
13 refresh your memory, sir, on some of the general
14 aspects of the Squirrel system?

15 A Yes.

16 Q Now, at the end of the day, and I
17 don't mean that in an ominous humanitarian sense,
18 but at the end of a business day, the computer
19 system will run off a general tally?

20 A Yes.

21 Q And that tally is comprised of many
22 individual transactions?

23 A Yes.

24 Q And all of those individual
25 transactions are taken into account because the

1 GST and the PST is calculated on each individual
2 transaction?

3 A Yes.

4 Q So in order to determine whether the
5 GST and PST calculations are accurate, you agree
6 with me that you have to have a record of the
7 individual transactions that create the grand
8 total?

9 A Yes.

10 Q And generally speaking, that was your
11 understanding of how the system worked?

12 A Yes.

13 Q Now, if there were cash transactions
14 or Interac transactions, I understand you may not
15 be able to attribute an identity to the
16 transaction, but at least there is a record of all
17 the transactions in the restaurant that day?

18 A Yes.

19 Q Now, I understood, sir, that when the
20 Winnipeg Police Service interviewed both you and
21 Rodrigo Bravo, that there was some discussion
22 about obtaining records from Branigan's and what
23 they might reveal, or whether they might exist.
24 Do you recall that discussion?

25 A No.

1 Q If I was to suggest to you, sir, that
2 Branigan's was unable to provide receipts or
3 records of transactions, would you agree with that
4 suggestion?

5 A Yeah.

6 Q Why would they be unable to provide
7 receipts or records of transactions?

8 A Because everything is saved on a disk,
9 and after that disk is used, it's -- I don't know
10 if they erase it or what they do with the disks,
11 but -- I don't know to be honest. It wasn't a
12 very -- I don't know what the word is.

13 Q There's a computer system in place --

14 A Yeah.

15 Q -- that records?

16 A Yeah.

17 Q And your understanding was that data
18 would go to a disk?

19 A No, you are supposed to save it to a
20 disk.

21 Q Save it to a disk?

22 A Your daily operations are supposed to
23 be saved to a disk, as well as your monthly
24 operations, and then come the next day, next
25 month, you use a different disk.

1 Q Okay. So you keep the disks?

2 A Yes.

3 Q So there would be --

4 A There should be record of --

5 Q Transactions?

6 A -- transactions, yeah.

7 Q So when I said to you that, the
8 proposition I put to you is that Branigan's would
9 be unable to provide records, your understanding
10 is they would be able to provide the disks?

11 A Should, unless the disks aren't there,
12 but they should have something.

13 Q In the absence of somebody getting rid
14 of data that they are required to keep, Branigan's
15 should be able to furnish records?

16 A Yes.

17 Q Now, when you -- were you involved in
18 comparing cash sales or transactions with the
19 amount of inventory?

20 A What do you mean? I don't understand
21 what you mean?

22 Q Like say you did a hundred dollars
23 business in a night, would you check to make sure
24 your inventory went down by a hundred dollars the
25 next day?

1 A I never did a daily inventory.

2 Q Or a comparison of the general tallies
3 with the stock that's used, were you responsible
4 for doing that?

5 A I did the monthly inventory, but there
6 was nothing ever done that I've done that was done
7 daily.

8 MR. CLIFFORD: Sir, those are the
9 questions I have for you. Remain seated. Other
10 counsel will have questions.

11 THE COMMISSIONER: Yes,
12 Mr. Zazelenchuk.

13 BY MR. ZAZELENCHUK:

14 Q It's not going to be very long, sir.
15 The \$2.75 pints that you were talking about --

16 A Yes.

17 Q -- am I right in assuming that they
18 are available to everybody on Sundays and
19 Tuesdays?

20 A I believe so, yes.

21 Q Yes. But when the police came in as a
22 group, you made them available to them?

23 A Yes.

24 Q Now, is that a particular kind of beer
25 or is it --

1 A It's just a special that we had going.

2 Q So it could be, pick a Sunday, any
3 Sunday in January of 2005, it could have been
4 Molsons Canadian draft one Sunday?

5 A I don't think so. I think we stayed
6 to the same brand of beer, I believe.

7 Q I see. So for an extended period of
8 time, it would be the same brand that would be
9 your special on Sundays, Tuesdays, and if the
10 police came in?

11 A Yes.

12 Q Okay. Now, you had that night, I
13 believe you had a bartender, Mark, working until
14 about 12:30?

15 A Yes.

16 Q And then you sent him home?

17 A Yes.

18 Q And you worked bar for the rest of the
19 night?

20 A Probably. If that was the case then,
21 yeah.

22 Q Did you do anything else for the rest
23 of the night?

24 A If there wasn't much to do, I'd do
25 some paperwork, if I had that to do.

1 Q Yeah?

2 A But for the most part, I mean, the
3 restaurant is closed, there's nothing really.

4 Q And that's what I was getting to. You
5 didn't do any work in the restaurant that night?

6 A Like serve you mean?

7 Q No, like prepare?

8 A No, no.

9 Q No. And you said the restaurant is
10 closed?

11 A The restaurant is probably closed by
12 that time.

13 Q Yeah. The restaurant would have
14 closed about 12:30?

15 A Yeah.

16 Q So there would have been no food
17 coming after 12:30?

18 A The only food that would come out
19 would be wings.

20 Q I see. How would that come out?

21 A What do you mean? I would bring it
22 out, or the servers would bring it out, but that's
23 all I would get my kitchen to make.

24 Q So they have to be warmed up or
25 anything?

1 A Well, they deep fry them.

2 Q Okay. They are deep fried?

3 A Um-hum.

4 Q And if they are deep fried at 12:15,
5 what do they taste like at 1:00 o'clock or 1:30?

6 A Probably not that good.

7 Q The reason I am asking is because
8 Commission Counsel have been able to secure for us
9 employment records. They are at Exhibit 152, Your
10 Honour. And I can show them to you, if you wish,
11 sir. I don't know that it's necessary. But at
12 tab W7, I notice that the two cooks were both
13 called Jason, one went home at 12:00 o'clock that
14 day, and one went home at 12:15. So the last of
15 the food would have been prepared at about 12:05,
16 12:10?

17 A For the most part, but there are times
18 they'd leave the deep fryers on, and if anything,
19 I'd go and make the wings myself.

20 Q Okay. But certainly nothing other
21 than wings?

22 A No. No, I'm not a cook.

23 Q Okay. And dealing with that same
24 exhibit, do you have it in front of you?

25 A Yeah.

1 Q If you could start -- what's your
2 first page? Let me get to the same page. Maybe
3 just show it to me. What does the first page look
4 like? Okay. So let's go to the fourth page, and
5 that's W2, Your Honour. Okay. Now that's on-line
6 detail sales report, and it's for the -- it says
7 the run date is 02/24/05, up in the upper
8 left-hand corner. Do you see that?

9 A Yeah.

10 Q And the time is 022?

11 A Yes.

12 Q So that really would have been the
13 night of the 23rd, but it's already after midnight
14 so the computer is telling you it's the 24th?

15 A Yes.

16 Q Okay. And that was the day before
17 we've been talking about?

18 A Yeah.

19 Q Okay. And if we turn to the next
20 page, down at the bottom, again, we've got
21 category liquor?

22 A Yeah.

23 Q And that's very similar to the one you
24 were discussing with my learned friend for the
25 next night?

1 A Yes.

2 Q Okay. And then if we turn to page 3
3 and we look on the right-hand side, we've got the
4 four stars at the bottom again?

5 A Yes.

6 Q And we've got the number 2?

7 A Yes.

8 Q And then we've got a 00? Yes?

9 A Yeah.

10 Q So that means that there were two
11 complimentary drinks that day?

12 A I believe so, yeah.

13 Q And the total that day for the total
14 liquor sales was 111 items?

15 A For liquor items.

16 Q Yes?

17 A Yeah.

18 Q So, on Wednesday the 23rd, out of 111
19 liquor items, two were complimentary?

20 A Yes.

21 Q And on Thursday the 24th, out of 61
22 liquor items, 19 were complimentary?

23 A Yes.

24 MR. ZAZELENCHUK: Okay. Thank you,
25 sir.

1 THE WITNESS: Thank you.

2 BY MR. McDONALD:

3 Q Question, sir, for my edification and
4 hopefully for the Commission as well, the evidence
5 before us is that the normal closing time for the
6 restaurant was 12:00 o'clock midnight?

7 A For the most part, yeah.

8 Q Yeah. And as I understand it, closing
9 time could be extended if there was a good reason?

10 A Sure.

11 Q One reason was when a group of
12 officers from the North End would arrive for beer
13 and drinks?

14 A Depends on how many.

15 Q Depends on how many. Answer this
16 question for me, please? If patrons other than
17 members of the police force arrived at the
18 restaurant after midnight and tried to enter while
19 they were there, was the restaurant open to them?

20 A The restaurant is not open, no.

21 Q Was the lounge open to them?

22 A It should be.

23 Q So others could enter besides the
24 group of police officers after normal closing
25 time?

1 A Yeah, if we are still open, then,
2 yeah, we're still open to the public.

3 Q Do you know if that happened that
4 night?

5 A I couldn't tell you, to be honest with
6 you.

7 MR. McDONALD: Thank you.

8 BY MR. LABOSSIERE:

9 Q Mr. Gerardy, my name is Keith
10 Labossiere, I'm counsel for the Winnipeg Police
11 Association. I do have a few questions for you.

12 The outset of your evidence before
13 Mr. Clifford, you went through some of your
14 background in the service industry. And I take it
15 you've got an extensive background in working in
16 restaurants and lounges?

17 A Correct.

18 Q And I take it, sir, through that time,
19 including at Branigan's, routinely, larger groups
20 of co-workers would come into your place of
21 business and have drinks and snacks?

22 A Correct.

23 Q Sometimes maybe baseball teams or
24 hockey teams --

25 A Yeah.

1 Q -- or other co-workers. That's not
2 unusual?

3 A No.

4 Q And really that was what was happening
5 that night, police officers who were co-workers
6 were coming in after work?

7 A Yeah.

8 Q The difference maybe being, unlike me
9 who gets to go home around dinner time, a police
10 officer's shift ends later at night?

11 A Yeah.

12 Q There's nothing out of the ordinary,
13 this time or the others that you dealt with this
14 particular group of police officers, they were a
15 group of co-workers who came in your place of
16 business, had some drinks, had some snacks, and
17 acted responsibly; is that fair?

18 A Yeah.

19 Q My learned friend, Mr. Clifford, also
20 spoke to you a little bit about your obligations
21 with respect to the service of alcohol. And in
22 particular, it seems to me, and I've noted it,
23 that you say that you take that very seriously?

24 A Yes.

25 Q And in fact, not only are you thinking

1 about the establishment, but you're thinking about
2 yourself personally?

3 A Yes.

4 Q Whether you were legally liable
5 personally or not, you felt personally liable?

6 A No, it's just personal, personal, you
7 know what I -- it's personal.

8 Q That's exactly what I'm saying. You
9 weren't talking about legally, you're talking
10 about personally --

11 A Yeah.

12 Q -- you feel an obligation?

13 A Yeah. I just don't agree with it.

14 Q And as a result of that, for example,
15 you wouldn't stick your neck out and skirt the
16 rules --

17 A No.

18 Q -- and over-serve somebody because
19 they were good customers?

20 A No.

21 Q Because not only was that wrong, you'd
22 feel terrible about that?

23 A I just wouldn't do it. That's just
24 not, like I said, it's a personal reason why I
25 don't want someone driving home drunk, because of

1 things that can happen. And I'm just a very firm
2 believer on that.

3 Q And that's the same whether it's the
4 baseball team that I talked about that came in, or
5 a group of police officers?

6 A Yeah, and it could be you, either way,
7 I just wouldn't do it.

8 Q And in fact, you did that that night?

9 A Yes.

10 Q Now, that night, and you've given some
11 evidence about your role as a supervisor and I
12 made a couple of notes, you essentially say that
13 you kind of watch everything?

14 A Yes.

15 Q I notice from your interview with
16 Commission Counsel prior to these proceedings
17 commencing, you use the phrase that you do rounds?

18 A Yes.

19 Q And I take it that what you do, as a
20 supervisor, is you go to hot spots. If it's busy
21 in a certain area, you might spend more time than
22 where there's nobody?

23 A Correct.

24 Q And we heard earlier this morning,
25 Mr. Gerardy, from Ms. O'Halloran that essentially

1 the reason this restaurant and lounge was busy,
2 certainly after 11:00 o'clock, was because of the
3 police officers?

4 A Yes.

5 Q Other than them, there weren't many
6 other people there, she said?

7 A I couldn't tell you, to be honest with
8 you.

9 Q And if that was in fact the case,
10 you'd agree with me that your role as a
11 supervisor, and what you would be doing would be
12 making sure that that group, whatever group it is,
13 is well taken care of?

14 A Yeah, from where I am at. But she
15 should also, she's the front line, she should be
16 watching to make sure that they are not
17 over-served.

18 Q And if -- in your position of
19 supervisor, you would expect to be made aware, I
20 take it, if there was an issue of a problem?

21 A Absolutely.

22 Q If someone was out of control, or if a
23 server was having problem with them, you'd be told
24 about that?

25 A Yes, I should be, yes.

1 Q Nothing like that happened the evening
2 in question?

3 A Not that I know of, no.

4 Q Although you weren't serving the
5 individuals, I think you've said already that you
6 did have occasion to see how they were doing and
7 how that group was acting?

8 A Yeah.

9 Q And certainly from your observations,
10 sir, you were able to tell that some of the
11 officers were drinking, in your view, to excess?

12 A Not at that point, if I am doing my
13 rounds. But if I stick around long enough and I
14 can see something, then I will. But like I said,
15 for the most part, it was busier earlier on. But
16 no, if I saw something, I definitely would have --

17 Q Right?

18 A -- I would have went to them and
19 slowed them down or cut them off.

20 Q And that didn't happen?

21 A No.

22 Q And at the end of the night, you said
23 that you were concerned about a few?

24 A Yes.

25 Q And I think you said that was between

1 one and maybe three people that you thought had
2 been drinking to the extent they shouldn't be
3 driving home?

4 A Yes.

5 Q And I think --

6 MR. CLIFFORD: I'm going to raise an
7 objection, whether this witness ever said one. He
8 used the word few, couple, and I put the
9 clarification to him, and his response was not
10 one.

11 THE COMMISSIONER: Yes.

12 MR. CLIFFORD: Clearly.

13 THE COMMISSIONER: He said a couple,
14 and he said a couple, he meant more than one. So
15 go ahead.

16 MR. LABOSSIERE: My notes
17 specifically, Mr. Commissioner, was that he said
18 he knew it was more than one and less than three.
19 And that's all I was trying to suggest.

20 THE COMMISSIONER: Well, he said a
21 couple, and he meant more than one, but three or
22 less. Go ahead.

23 MR. LABOSSIERE: Thank you.

24 BY MR. LABOSSIERE:

25 Q And as I understand it, your evidence

1 was, from your recollection, there were about 18
2 to 24 officers who were there that night?

3 A Correct.

4 Q And so certainly it wasn't the
5 majority of them, for example, that were drunk?

6 A No, no.

7 Q And if someone was to say, look, 15 of
8 the 18 to 24 were drunk, you would say they are
9 mistaken?

10 A Yes.

11 Q You also gave some evidence, sir, with
12 respect to the way in which the police officers
13 conducted themselves at the end of the evening, not
14 just this time, but on previous occasion. And in
15 particular what I'm talking about is they are
16 ensuring that there is designated drivers. Do you
17 recall that?

18 A Yes.

19 Q In this case, specifically, as I
20 recall, sir, you said that you specifically
21 watched and ensured that the police officers who
22 were driving were the designated drivers, and
23 those who you were concerned with were not
24 driving?

25 A Yes.

1 Q And you would agree with me, sir,
2 that's a responsible way to conduct yourself?

3 A I believe that's probably the only
4 responsibility, or responsible way I could deal
5 with it. I mean, once they get into that car, I
6 can't see if they change down the way. I mean, I
7 can only do as much as I can from my position.

8 Q Sure. And what I'm talking about,
9 sir, is that I'm guessing from time to time you
10 have had the unpleasant circumstance of having
11 patrons who don't act responsibly?

12 A Absolutely.

13 Q And certainly this group of police
14 officers, not just on this occasion, but on all
15 occasions that you have dealt with them, have
16 acted responsibly --

17 A Yeah.

18 Q -- and ensured that there are
19 designated drivers, and those who were intoxicated
20 weren't driving home. Is that right?

21 A Yes.

22 Q Now, there was also some evidence
23 about pitchers, and you were asked specifically
24 whether it was possible you bought or comp'ed or
25 promo'd pitchers for this group. Do you recall

1 that?

2 A Yeah.

3 Q My note of your evidence is that it's
4 possible that you did?

5 A Yeah.

6 Q Now, if that did occur, would that
7 show up? Would it be noted in your system if it
8 happened?

9 A It should be under pitchers, but I
10 didn't see pitchers on here either.

11 Q So if you look at, and for the lawyers
12 it's W5, it's that on-line detail sales report,
13 the one dated 02/25/05. Do you have that in front
14 of you, Mr. Gerardy?

15 A Yeah.

16 Q If you look on page 3 of that report,
17 and we have talked about the four dots and the
18 entry of number 19?

19 A Yeah.

20 Q If you look below, under the category
21 of beer, there don't appear to be any pitchers
22 entered, whether bought or comp'ed?

23 A Yeah.

24 Q And having seen that now, sir, is it
25 safe to say that you probably did not, on that

1 occasion, provide them with free pitchers?

2 A Probably, because it would show
3 pitcher of beer.

4 Q In fact, you would want to show that
5 for inventory control, for nothing more?

6 A Absolutely.

7 Q Now, I also notice, sir, that in your
8 interview with Commission Counsel, prior to the
9 proceedings, you were asked whether you could give
10 any evidence as to the amount of alcohol
11 individual officers were drinking on that night.
12 And you said words to the effect, look I wasn't
13 serving them, I was watching, so I couldn't say
14 specifically?

15 A Yeah.

16 Q And I take it, sir, that just like we
17 talked about baseball teams and other co-workers,
18 you have probably gone out for drinks with
19 friends, sometimes in a larger group?

20 A Yeah.

21 Q And in a situation like that, I take
22 it, although you might be able to say, my friend
23 Bill was drinking that night, you wouldn't be able
24 to say he had six drinks or two drinks or three
25 drinks?

1 A No.

2 Q In fact, you would agree it would be
3 unreasonable to expect somebody who is out having
4 a drink with somebody else to keep track of what
5 others are doing?

6 A Yeah, unless you are the server
7 actually watching. Like if you're serving
8 someone, you can see they are drinking really
9 fast. A server should know to watch that,
10 because, like I said, some people drink a lot
11 faster than others and it affects them
12 differently. But if someone is drinking
13 excessively and fast, then you have got to watch
14 that. Then you can kind of keep in mind how many
15 drinks you gave them, and how many more you should
16 maybe serve them. So that might be a case that
17 way, but I don't personally know.

18 Q And I'm trying to take you out of your
19 role as a server. But as a role of a patron,
20 which you have said you are from time to time, in
21 a setting like that, you would agree with me that
22 it would be unreasonable to expect that all the
23 people around the table would be keeping tabs on
24 what everybody is drinking and how many they are
25 drinking?

1 A Yeah.

2 Q Thank you, sir.

3 A You are welcome.

4 MR. LABOSSIERE: Those are my
5 questions. Thank you.

6 MR. JACK: I just have a couple of
7 questions for you, Mr. Gerardy.

8 THE WITNESS: Okay.

9 BY MR. JACK:

10 Q We have heard previously, and it's
11 clear from the Branigan's documents, that
12 Ms. O'Halloran, the server that we understand was
13 working that evening, began working at 5:30 p.m.
14 and was working until the end of the evening?

15 A Yes.

16 Q I note from the records, it appears
17 that you began at 5:30 as well?

18 A Yes.

19 Q Now, I recognize that questions thus
20 far that had been posed to you have focused upon
21 the time upon which officers arrived and
22 thereafter. Do you have any specific recollection
23 of anything occurring at Branigan's between 5:30
24 p.m. and 10:30 or 11:00 p.m. on the evening in
25 question?

1 A No.

2 Q You would have been the manager on
3 duty at that time?

4 A Yeah, yeah.

5 Q As far as you can recall, you were
6 there --

7 A Yeah.

8 Q -- acting as manager on duty?

9 A Yeah.

10 Q But you have no specific recollection
11 of that?

12 A No, like I know I was managing between
13 5:30 and --

14 Q And pardon me, I don't mean to be
15 confusing, but you don't have any recollection of
16 any events that might have transpired between 5:30
17 p.m. and 10:30 or 11:00 p.m.?

18 A No.

19 Q So, therefore, if I were to ask you
20 what the business was like in the lounge, simply
21 from your recollection between 5:30 p.m. and 10:30
22 or 11:00 p.m., you wouldn't be able to assist?

23 A I couldn't even tell you.

24 Q Okay. Thank you. Just one further
25 thing, and I think it was certainly implied by

1 your answers, but I don't know whether I heard it
2 explicitly, so I am just going to put it to you.
3 You made reference to how seriously you take your
4 duties and responsibilities with respect to
5 over-service, and particularly how it's related to
6 driving and patrons driving, particularly
7 intoxicated patrons?

8 A (Witness nodding)

9 Q You also mentioned, and there was some
10 discussion about the exact number, but you
11 mentioned some number of officers at the end of
12 the night with which you had some concern, with
13 which you were concerned that they would get home
14 all right?

15 A Yes.

16 Q You expressed that concern?

17 A Yes.

18 Q And you also have indicated that you
19 go further than just expressing concern, on some
20 occasions you will drive people home yourself?

21 A Absolutely.

22 Q But at the very least, you don't take
23 anyone's word for it responsibly?

24 A No.

25 Q And you will, in fact, watch them go

1 to the parking lot?

2 A I will try. I mean, if I'm not busy,
3 I will do my best, but I just don't believe --
4 I've seen too many times where people say, yeah,
5 yeah, don't worry, and they get in their car and
6 they leave.

7 Q And on the evening in question, did
8 you have that opportunity to be watching the
9 officers as they went out to the parking lot?

10 A Yes.

11 Q And the officers with which you had
12 some concern, did you see them enter vehicles?

13 A Yes.

14 Q Did you see them enter vehicles in any
15 door that would indicate they were entering as
16 passengers?

17 A They didn't get in the driver's side,
18 unless they were getting in the back, but I did
19 see people that I didn't remember that were
20 driving be the last one to close the driver's
21 door.

22 Q Thank you. So not only did you note
23 the officers with which you had some concern
24 entering a different part of the car other than
25 the driver's seat --

1 A Yeah.

2 Q -- you also noted someone different
3 actually entering the driver's seat of each of
4 those vehicles?

5 A Yeah.

6 MR. JACK: Thank you, Mr. Gerardy. I
7 have nothing further.

8 THE WITNESS: Thank you.

9 MR. WEINSTEIN: No.

10 MR. PROBER: You'll be happy to know
11 that your ears will be spared. No questions.

12 THE COMMISSIONER: Great relief.
13 Mr. Green?

14 MR. GREEN: No.

15 MR. McFETRIDGE: No questions.

16 THE COMMISSIONER: Thank you.

17 BY MR. CLIFFORD:

18 Q Mr. Gerardy, one brief area. Counsel
19 for the association put a question to you, and the
20 question he suggested to you, that your evidence
21 with respect to the pitchers was that you possibly
22 served them. So your testimony was that you
23 probably served them. You were then shown the
24 record with a view to whether that did anything on
25 your confidence level of whether you had probably

1 served pitchers of beer or not.

2 Sir, if beer was given out on a
3 complimentary basis, technically, there would be a
4 record of it going out under the beer category as
5 a promo?

6 A Yes.

7 Q But I take it you could instruct your
8 bartender, for instance, to pour off a number of
9 pitchers of beer and to bring them out into the --
10 to give them to the server to bring out?

11 A You could maybe do one, but you can't
12 get away with more than one, because, I mean,
13 that's -- you can write off so much, but I would
14 never say give them six free pitchers.

15 Q No. I'm not indicating, sir, that you
16 would indicate to somebody six free pitchers, but
17 the instruction could be given to either the
18 server or the bartender to bring out pitchers of
19 beer?

20 A Yeah.

21 Q And as to whether it got into the
22 system or not, you wouldn't be responsible for
23 doing it?

24 A I would be.

25 Q You would be?

1 A Because I do the inventory. So if it
2 gets punched in or not, there has to be some kind
3 of accountability for it.

4 Q And how often did you do the
5 inventory?

6 A Once a month.

7 THE COMMISSIONER: Do I understand
8 that if you did give out a complimentary pitcher
9 of beer, you said you wouldn't do six, but if you
10 did one or two, would you record it?

11 THE WITNESS: I would either punch it
12 in, or we would use it as a spillage sheet, but it
13 would get recorded either way. Because when I do
14 my inventory, I see how many drinks are spilled.
15 That accounts for liquor that is not punched in,
16 so that's what I find out.

17 THE COMMISSIONER: Do you mark down on
18 this sheet, spillage sheet?

19 THE WITNESS: There is a spillage
20 sheet that we use that we would mark down one
21 pitcher of Labatt's.

22 THE COMMISSIONER: You have a separate
23 and distinct spillage sheet?

24 THE WITNESS: There should be one,
25 yeah.

1 THE COMMISSIONER: Do you mark it down
2 on this sheet that you have been looking at?

3 THE WITNESS: No. No, it's a separate
4 entity.

5 THE COMMISSIONER: Okay. And then if
6 you give out too much, it would show up on the
7 inventory --

8 THE WITNESS: Yes.

9 THE COMMISSIONER: -- at the end of
10 the month.

11 THE WITNESS: Yeah.

12 THE COMMISSIONER: Okay. Thank you.

13 BY MR. CLIFFORD:

14 Q Follow-up to that. The fact then that
15 it may not be listed on the document you were
16 shown doesn't mean that it didn't occur?

17 A Yeah.

18 Q You agree with that?

19 A Yeah.

20 MR. CLIFFORD: That's the only area in
21 redirect, Your Honour. Thank you.

22 THE COMMISSIONER: Thank you. Thank
23 you, sir.

24 THE WITNESS: Thank you.

25 MR. CLIFFORD: The next witness,

1 Mr. Commissioner, is Rodrigo Bravo.

2 RODRIGO BRAVO, being first duly sworn,
3 testified as follows:

4 BY MR. CLIFFORD:

5 Q Good afternoon, sir.

6 A Good afternoon.

7 Q Sir, we have heard in evidence that
8 you were the general manager of Branigan's
9 Restaurant as of February 2005?

10 A That's right.

11 Q And, sir, how long had you been
12 working in the service industry at that point?

13 A Give or take, 22 years.

14 Q And how long had you been working at
15 Branigan's at that point?

16 A It would have been going on four
17 years, I believe.

18 Q And we understand, sir, that you are
19 not working at Branigan's any longer?

20 A No, I don't.

21 Q You have your own establishment now?

22 A Yes, I do.

23 Q Can I ask you how old you are, sir?

24 A I'm 41.

25 Q Now, when you started at Branigan's,

1 sir, I understand that you actually didn't start
2 off as the general manager. Did you work on the
3 floor for a little while?

4 A Yeah, I started off as a basically
5 floor manager in St. Vital Mall.

6 Q And you would have been responsible
7 for the duties in the restaurant, the efficient
8 running of the restaurant?

9 A Yes.

10 Q You had to make sure it was run in
11 accordance with accepted procedures established by
12 your boss?

13 A Yes.

14 Q And I take it that you were also aware
15 of legal requirements with respect to business
16 hours and keeping track of transactions?

17 A Of course. Of course. Keeping track
18 of the transactions? What do you mean about that?

19 Q That you record sales, you have a
20 point of sale system?

21 A Point of sale system, yeah. I don't
22 record it personally on the sales and stuff.

23 Q No, but the establishment --

24 A The establishment, yes.

25 Q -- would record sales, there's what's

1 called a point of sale --

2 A Yeah.

3 Q -- system?

4 A Yeah.

5 Q In basically every restaurant you have
6 ever worked in, right?

7 A Yeah, cash register, to the more
8 significant kind of computer system.

9 Q And there's also a requirement, when a
10 place has a licence to serve alcoholic beverages,
11 there's certain things that have to be complied
12 with when you have that type of licence?

13 A Of course, yeah.

14 Q So you were aware of all these things
15 through your experience, and that allowed you to
16 progress in your career up to the point where you
17 became the general manager at Branigan's?

18 A Yes.

19 Q Now, on the issue of responsible
20 serving of alcohol, we have heard some testimony
21 on this issue, but I understand, sir, from your
22 interview with the Commission that you were aware,
23 sir, that you knew the laws and you knew that
24 there were some concerns that you or the owner of
25 establishments could be liable if there was

1 over-service and then something happened?

2 A Understandable.

3 Q And I'm not putting words into your
4 mouth, those are the things that you have
5 indicated to Commission Counsel in your previous
6 interview?

7 A Um-hum. Um-hum.

8 Q Now, we have heard that you were not
9 actually working on the night of February 25th,
10 2005?

11 A I just worked the day shift.

12 Q You, as the general manager, you got
13 to work the day shift?

14 A Yeah.

15 Q And then head home. When you were at
16 home, there would be a night manager?

17 A Um-hum.

18 Q Or a duty manager covering you, and we
19 have heard from Darcey Gerardy, and he filled that
20 role for you?

21 A Yes, he did.

22 Q Did you hire him?

23 A Did I hire him? Yes, I did.

24 Q Okay. And I take it you had some
25 faith in his ability to perform as the night

1 manager?

2 A He came across in a good manner in the
3 interview so I, obviously I hired him.

4 Q You were confident in his ongoing
5 abilities to act responsibly when you were --

6 A Yeah.

7 Q -- at home and he was covering the
8 restaurant for you at night?

9 A Yeah. I had no reason not to.

10 Q Now, we understand, sir, that you left
11 the restaurant close to your dinner time?

12 A Yes.

13 Q What time did you go home?

14 A Usually I would leave home before,
15 between 7:00 and 8:00. Sometimes I would leave,
16 you know, 5:00 if it wasn't very busy, like on
17 Monday or so, Tuesdays.

18 Q And that day, do you know when you
19 went home?

20 A Three years ago, I can't recollect,
21 I'd say it's between 7:00 and 8:00.

22 Q Fair enough. It was prior to the
23 arrival of any of the police officers that were --

24 A Yes, sir.

25 Q -- scheduled to come? I take it you

1 knew they were coming?

2 A Yes, sir.

3 Q And how was it that you knew they were
4 going to be arriving at Branigan's?

5 A They would call us and let us know
6 there was a few police officers coming, and we
7 would do our best to look after them.

8 Q You have referred to it, they would
9 call us. I take it this was something that had
10 happened more than once in the past?

11 A Yeah. Yeah, I went out and tried to
12 get them as our regular patrons, yes.

13 Q And how many times, or with what
14 frequency were they coming into Branigan's as a
15 large group?

16 A As a large group?

17 Q Large groups?

18 A Maybe once a month as a large group.

19 Q And it was in that scenario where
20 someone will call, right, if it was a large
21 group --

22 A Yeah.

23 Q -- you'd expect to call?

24 A Yeah, they would call just to set up
25 some tables, so we could set up tables for them.

1 Because the lounge would get, it was a smaller
2 space, so the tables would be gone. So we would
3 put tables together for them.

4 Q And your recollection is it was once a
5 month or so that they would come in as a large
6 group?

7 A As a large group, yeah. They would
8 come often like just two or three for lunch, or
9 for dinner, or for brunch with their wives and
10 stuff on Sundays and stuff. So it would vary.

11 Q I take it you would see them on a
12 weekly basis, coming in, in groups of two or
13 three, or with their wives, et cetera?

14 A Give or take, give or take, yeah.

15 Q And once a month or so with the larger
16 group?

17 A Yeah, depending what time, what month
18 it was. I mean, they didn't come every single
19 month.

20 Q No, and I wasn't going to -- I was
21 actually going to put that to you.

22 A Yeah.

23 Q That it wasn't something that occurred
24 every month?

25 A No.

1 Q Generally speaking, that's your
2 recollection of the frequency?

3 A That's my -- yeah.

4 Q Now, when there was a large group,
5 somebody would phone to allow you to make
6 arrangements. Who was it that you dealt with?

7 A I dealt with Dave Harding. Who else
8 would phone? Scott Kehler would phone once in a
9 while. Other than that, it was mostly, I talked
10 to mostly Dave Harding, if anything.

11 Q And how did you get to know Dave
12 Harding?

13 A Just through other police officers.

14 Q And can you indicate who they are?

15 A Well, like I said in my notes before,
16 I said I couldn't remember if he field trained
17 with Sean Black, and that's how I would have got
18 to know him, if he field trained with him.

19 Q Now, when they would make the
20 arrangement to come in as a large group to
21 Branigan's, what time did they typically come in?
22 Did you know?

23 A You know, sometimes it would be -- how
24 do I say it -- it was different all the time,
25 because sometimes it was, you know, they would say

1 eight, nine guys were coming and only three would
2 show up and it would get called off. So it would
3 always, you know, sometimes 9:00 o'clock at night,
4 10:00 o'clock at night sometimes, sometimes 11:00,
5 you know. It just depend on the day and what was
6 happening in their day.

7 Q So your understanding was that they
8 were coming to your restaurant from work?

9 A After work.

10 Q After work, yeah?

11 A Yeah.

12 Q They would come from their place at
13 work and go over to --

14 A Yes.

15 Q -- your restaurant. You gave them
16 special prices --

17 A No.

18 Q -- for wings?

19 A For wings?

20 Q Yeah.

21 A We would just give them the Tuesday
22 wing priced. It would be like, I think at the
23 time, 25 or 30 -- 25 or 35-cent a wing.

24 Q Price aside, there was one night a
25 week where there was cheap wings and they would

1 get that price regardless of the night they came
2 in; right?

3 A Yeah.

4 Q And what about pints of beer?

5 A No, we never would give them any
6 specials on beer. That's how we make our money.
7 If we are giving away wings, that's how we'd make
8 our revenue.

9 Q Did you have nights during the week
10 where you had a special on pints?

11 A I can't remember, I'm sorry, I can't
12 remember.

13 Q What was the price of a pint of beer
14 at Branigan's?

15 A Three -- \$3.75, \$4.25, somewhere
16 around there.

17 Q \$3.75 to \$4.25 you recall is the price
18 of beer?

19 A Honestly, I don't recall. You know,
20 it's been a while since I worked there. It's been
21 a while since I have dealt with alcohol.

22 Q The Commission has heard evidence,
23 sir, there were pints given out at the price of
24 \$2.75?

25 A Okay.

1 Q Do you recall that?

2 A Yeah, it could have been. Tuesdays, I
3 believe we would have, pints were \$2.75.

4 Q And they got the Tuesday night wing
5 price, and I'm just suggesting to you, sir, that
6 when they come in, they got the \$2.75 pint price
7 as well?

8 A If somebody testified to that, I --

9 Q You don't dispute it?

10 A Me saying yes or no, it's not, you
11 know, it's not going to -- I don't remember.

12 Q Let me ask you, sir, about your
13 friendship with Dave Harding. You say you recall
14 meeting him through Sean Black, that he might have
15 trained with Sean Black at one point?

16 A Yes.

17 Q What is your relationship with Sean
18 Black?

19 A We are friends.

20 Q Did you have other friends at District
21 3 as well?

22 A I have District 3, district 1,
23 district 5.

24 Q Let's deal with District 3?

25 A Yeah.

1 Q Who were your friends there?

2 A Scott Kehler, well, Sean, Dave
3 Harding, Asser (ph), Kevin Asser I believe. You
4 know what, there's some guys, like when I say
5 friends, I'm more trying to say that we are
6 acquaintances. I'm a friend of Sean's. I'm
7 acquaintances to all the other police officers.

8 Q So you would be acquaintances with
9 Dave Harding, Scott Kehler?

10 A Yeah.

11 Q And others?

12 A Well, Scott Kehler, I fish with him
13 and stuff like that, but other than that, the
14 other guys, you know, it's more of kind of a buddy
15 system I guess.

16 Q And I understand, sir, that your
17 relationship with Sean Black is that you two were
18 actually close personal friends?

19 A Sure.

20 Q Is that a fact, sir, that you --

21 A I just said sure, yeah.

22 Q And for how long have you been close
23 personal friends?

24 A Ten, 15 years, we have known each
25 other.

1 Q I suggest, sir, you two have been
2 friends for 15 or 16 years.

3 A Okay.

4 Q Do you agree?

5 A Sure.

6 Q You and he and your family spend time
7 together?

8 A We have done things together, yeah, as
9 a family.

10 Q And, sir, I want to ask you about --

11 A Can I just ask you a question, sorry?
12 I just want to know how this has any bearing on
13 this, me spending time as a friend?

14 THE COMMISSIONER: If the question is
15 improper, I will indicate that.

16 THE WITNESS: Okay. Sorry.

17 THE COMMISSIONER: You answer the
18 questions until I tell him to stop, or any other
19 lawyer to stop. Okay.

20 THE WITNESS: Thank you.

21 BY MR. CLIFFORD:

22 Q Dealing with your friendship, the
23 Commission has received information, sir, that
24 Sean Black was in your wedding party?

25 A Yes, he was.

1 Q And was he your best man?

2 A No.

3 Q Was he one of your groomsmen?

4 A Yes, he was.

5 Q And how many years ago was that?

6 A It would be going on five years.

7 Q I also understand you were also close
8 personal friends with Officer Norman Bauer?

9 A Yeah.

10 Q And who do you have a closer
11 friendship with, sir, Sean Black or Norbert Bauer?

12 A I'd say Norbert Bauer.

13 THE COMMISSIONER: Is that Norman
14 or --

15 THE WITNESS: Norbert.

16 BY MR. CLIFFORD:

17 Q I apologize, Mr. Commissioner, I
18 misspoke. I called him Norman, it's Norbert, yes.
19 How long have you known Norbert?

20 A About the same time I have known Sean.

21 Q And --

22 A Actually, he introduced me to Sean.

23 Q Did you have similar incidents with
24 Officer Bauer, were you in wedding parties or
25 anything of that nature?

1 A He was in my wedding party, yeah.

2 Q Any other police officers in your
3 wedding party?

4 A No.

5 Q I understand that you would describe
6 Norbert Bauer and Sean as friends that had been
7 there through good times and bad times, through
8 your good times and bad times?

9 A Um-hum.

10 Q I want to go back to the issue of
11 Darcey Gerardy. You testified, sir, that you
12 hired him, described his job. You have indicated
13 that he was capable. You, in fact, sir, were
14 present with Darcey Gerardy when he was
15 interviewed by the Winnipeg Police Officers?

16 A Yes.

17 Q And your interview took place on
18 March 11th of 2005. And so you had an
19 opportunity, I take it, to review the transcript
20 of your interview from that day?

21 A I have, yes.

22 MR. CLIFFORD: And I'm going to ask
23 that a copy of that interview at this point be
24 filed as an exhibit.

25 THE CLERK: Exhibit 157.

1 (EXHIBIT 157: F-3.38.a, Interview of
2 Darcey Gerardy & Rodrigo Bravo dated
3 March 11, 2005 by PSU)

4 BY MR. CLIFFORD:

5 Q Now, sir, what I'm concerned about was
6 a comment that Mr. Gerardy made during the course
7 of the interview. You were present, sir, when he
8 was being interviewed. You are in the same room.
9 And he described, sir, the concern over the
10 officers driving, and expressed that he was
11 advised that they were going to be given a ride or
12 taken care of. And I'm referring to page 1321,
13 line eight. Actually, what's being discussed at
14 that point in the interview, if you look at page
15 1320, sir, at line 19, at 1320, you are present
16 when Officer Girard asked the question:

17 "Was there anyone there that caused
18 you any concern as far as having --"

19 Mr. Gerardy responds:

20 "There were a few, but like there were
21 a few, but they were already, like
22 somebody had already said they were
23 not driving and whatnot. So they were
24 taken care of. It's a big concern in
25 our industry. Like I can't let anyone

1 leave here hammered because it's my
2 fault and my responsibility."

3 Sergeant Girard says:

4 "I'm not suggesting that somebody, I'm
5 just asking for your observation."

6 And Mr. Gerardy said:

7 "My observation, yeah. But I was told
8 they were taken care of, and there
9 were vehicles left behind because they
10 did get a ride with someone else.
11 They are usually really responsible,
12 they will take care of one another."

13 So, sir, you were present and you heard your night
14 manager tell the police that he was told that
15 those persons he had a concern with were taken
16 care of. And you trusted him, I take it, to be
17 able to address that type of concern --

18 A Yes.

19 Q -- on your behalf when he was working?

20 A Not on my behalf, on his behalf.

21 Q And on behalf of the establishment?

22 A Establishment, yes.

23 Q Did you have a concern, sir, on behalf
24 of the establishment? You have heard him say to
25 the police, and you have expressed to the

1 Commission earlier in your interview that it is a
2 responsibility, that a person working at an
3 establishment can't let somebody leave if they
4 think it's not appropriate for them to drive their
5 motor vehicle, that they have to take some steps?

6 A Um-hum.

7 Q You understood that to be the case as
8 well, did you not?

9 A I understand the laws, yes.

10 Q And in fact, I take it, sir, that you
11 would have addressed this issue with Mr. Gerardy
12 yourself, even prior to the police officers
13 getting involved, you would have gone to him and
14 asked him, look, Darcey, or questions to the
15 effect, Darcey, you know, how much did they have,
16 did you notice if any of them shouldn't be
17 driving, did you ask them whether they were going
18 to drive?

19 A I can't remember what we talked about,
20 sir.

21 Q You can't remember, sir, whether
22 you --

23 A Well, I had trust in my manager, I had
24 trust in my manager that he would do the proper
25 procedures. And whether I like it or not, I have

1 to back up my manager all the time, so -- and I
2 think when he's telling me that they were looked
3 after, I take his word for it and say, yeah, they
4 were looked after.

5 Q Okay. That's the point I'm getting
6 at, sir, you would have made the inquiry of him?
7 You would have asked him, look, did you address --

8 A I don't know what I asked him, sir.
9 Like I said, I can't remember.

10 Q Sir, I'm going to ask you to turn to
11 page 21 of your interview with me on April 9,
12 2008?

13 A Sorry, page?

14 Q Page 21?

15 THE COMMISSIONER: There are four
16 pages on a page.

17 THE WITNESS: Oh, okay.

18 THE COMMISSIONER: Four pages of
19 transcript, so look up in the right-hand corner
20 and you'll get the appropriate page, or the
21 left-hand corner, depending on what page you're
22 looking at. Do you see that?

23 THE WITNESS: I'm at 21, yeah.

24 THE COMMISSIONER: Yes.

25

1 BY MR. CLIFFORD:

2 Q Okay. Sir, I'm going to try to
3 refresh your memory on this point, what
4 conversation you would have had with Darcey
5 Gerardy about what took place that night, and
6 whether he addressed what he was supposed to
7 address. So page 21, line 19, sir, can you follow
8 along with me?

9 A Yes.

10 Q "Q Okay? Who did you talk to about
11 the incident prior to the police
12 coming?

13 A Nobody. Well, I talked to my
14 staff members but that's about it.

15 Q So you would have talked to your
16 staff members about what happened?

17 A Yeah.

18 Q You are the general manager?

19 A Yes.

20 Q So you would have wanted to talk
21 to them about their observations?

22 A Oh, 100 per cent.

23 Q And their conduct that night?

24 A Hundred per cent.

25 Q Why did you want to talk to them

1 about that?

2 A Well, because I'm the general
3 manager of an establishment which, I
4 mean if I know the laws a little bit,
5 I mean, I don't know them very well
6 but I could be held liable because I'm
7 the general manager of that
8 establishment, or the owner could be
9 held liable for whatever, over-service
10 or whatever, if there was anything
11 like that that happened.

12 Q Okay. So you spoke to the staff
13 about that evening as a result of that
14 concern?

15 A Uh-huh."

16 Now, having gone through that series of questions
17 and answers, I take it you recall giving me those
18 answers --

19 A Yes.

20 Q -- on April, and you were being --

21 A Yes.

22 Q -- as honest as you could on that day?

23 A Yeah.

24 Q And does that refresh your memory,
25 sir?

1 A Yes, it does.

2 Q All right. So having your memory
3 refreshed, I take it you agree with me, sir, that
4 you did in fact embark on a conversation with your
5 staff members to address the issue of what
6 happened, to determine issues of liability?

7 A Yes.

8 Q Now, I take it, sir, that that is a
9 concern that existed at that time and it remains
10 still, you want to be sure that there was no civil
11 liability, or liability that could be apportioned
12 or suggested on behalf of Branigan's or anybody
13 associated with it?

14 A Yeah. Yeah, I would definitely be
15 concerned about what happened and stuff.

16 Q And in fact, sir, once the Inquiry was
17 called, once the Taman Commission Inquiry was
18 called and announcements were placed in the local
19 media for people with information, you in fact
20 called very early, did you not, to respond to --

21 A Yeah.

22 Q You called the Taman Commission
23 office, our records suggest that you called in
24 early January?

25 A Um-hum.

1 Q And you wanted to let the Commission
2 know and, in fact, you did speak with an
3 administrative staff member of the Taman
4 Commission?

5 A Um-hum.

6 Q Do you recall that, sir?

7 A Yes I do.

8 Q And you said, look, each person there
9 had two to three drinks?

10 A That's what I was told from my staff.

11 Q And you also told the person at the
12 Taman Inquiry office that free wings were
13 provided?

14 A Pardon me?

15 Q That free wings were provided?

16 A We would give the odd time free wings
17 to the police officers, yes. More what I was
18 trying to say to them, to who I phoned that day,
19 was trying to say that they frequent our
20 establishment often and we never ever had any
21 problems.

22 Q Okay. What you had indicated to them
23 was that fact that they had been there previously
24 and you hadn't had problems with them?

25 A That's what I was trying to tell them,

1 to get across to them.

2 Q But on that, when you described what
3 you understood occurred that night, you had
4 indicated that you understood that each person had
5 approximately two or three drinks?

6 A No, that's not what I talked about.

7 MS. HANLIN: I'm just wondering --

8 THE COMMISSIONER: What is it you're
9 objecting to?

10 MS. HANLIN: I'm just wondering if my
11 friend could point out what he's referring to?

12 MR. CLIFFORD: I'm referring to a
13 telephone call that the individual made to the
14 Commission office, and he was questioned about it
15 in his interview with Commission Counsel.

16 THE WITNESS: I wasn't questioned, I
17 offered --

18 THE COMMISSIONER: Just a second.

19 MR. CLIFFORD: At page 39, Mr. Bravo
20 was questioned by me, the exact same questions I'm
21 putting to him essentially at this point, and I
22 was just attempting to cover that. What I'm
23 referring to is an e-mail that was sent about the
24 fact that he made this call to the Commission
25 office.

1 THE COMMISSIONER: Do you have the
2 transcript?

3 MS. HANLIN: We have the transcript.
4 We don't have --

5 THE COMMISSIONER: I'm sorry?

6 MS. HANLIN: We have the transcript.

7 THE WITNESS: Is he saying that I sent
8 the e-mail?

9 THE COMMISSIONER: Just a second,
10 please.

11 MS. HANLIN: But not an e-mail or any
12 kind of record of a phone call.

13 MR. CLIFFORD: This witness didn't
14 e-mail the Commission, this witness called, spoke
15 to staff member, who in turn e-mailed me about the
16 fact that he called. And he was questioned
17 comprehensively about the telephone call when he
18 met with me on April 9th, and the examination on
19 that subject is at page 39 and 40.

20 THE COMMISSIONER: Got that now?

21 MS. HANLIN: Thank you.

22 THE WITNESS: Can I say something
23 about this?

24 THE COMMISSIONER: Just a second.

25 MR. CLIFFORD: And if anybody needs a

1 copy of the e-mail, if it's --

2 THE COMMISSIONER: What does the
3 e-mail say?

4 MR. CLIFFORD: It says:

5 "Good afternoon, Vince. The general
6 manager of Branigan's, Garden City
7 location called this morning to give a
8 statement. His name is Rodrigo Bravo.
9 He can be reached at this number
10 should you require further
11 information. Mr. Bravo said each
12 person had two to three drinks and
13 free wings were provided. He also
14 mentioned two of the guys called
15 girlfriends for rides. At the end of
16 the shift, he was asked to provide the
17 police that came to investigate the
18 food bills. Thank you."

19 The staff member's name.

20 THE COMMISSIONER: Okay. Do you have
21 the e-mail?

22 MR. CLIFFORD: Oh, yeah, I have the
23 e-mail.

24 THE COMMISSIONER: All right. Now you
25 wanted to say something, sir? What did you want

1 to say?

2 THE WITNESS: Now, I wanted to say
3 that when I came to this first inquiry, this right
4 here, you guys had no idea that I phoned in. You
5 guys had no idea that I phoned in, because I even
6 told the gentleman, Bob, that I phoned in and he
7 said they had no idea that I phoned.

8 THE COMMISSIONER: Well, you were
9 asked certain questions.

10 THE WITNESS: No, no. I understand
11 that.

12 THE COMMISSIONER: You were asked
13 certain questions, and he will put those questions
14 to you.

15 THE WITNESS: Okay.

16 THE COMMISSIONER: Go ahead.

17 MS. HANLIN: We would like a copy of
18 the e-mail though, Mr. Commissioner.

19 MR. CLIFFORD: The copy of the e-mail
20 from Ms. Braun to myself?

21 THE COMMISSIONER: Yes.

22 MS. HANLIN: Yes.

23 MR. CLIFFORD: I don't think there's a
24 problem with creating that, none whatsoever.

25 MS. HANLIN: Thank you.

1 THE COMMISSIONER: Go ahead.

2 BY MR. CLIFFORD:

3 Q All right. So on the issue of
4 liability, you in fact called the Taman Inquiry
5 office in January when the Commission was
6 announced?

7 A Yes.

8 Q And I understood, sir, from your
9 interview with me in April, that you wanted to
10 relay to the Commission that you understood that
11 each person had two to three drinks?

12 A No, no, that's not what I wanted to
13 get across.

14 Q Did you indicate to the Commission in
15 January that each person had two to three drinks?

16 A When I phoned?

17 Q Yes?

18 A No. I said that when they would
19 frequent our establishment, they would usually
20 have two to three drinks, when they frequent our
21 establishment. I didn't say that evening.

22 THE COMMISSIONER: You don't know how
23 many they had that evening?

24 THE WITNESS: No, I was off at 7:00 or
25 8:00 o'clock. I didn't know what they had.

1 THE COMMISSIONER: Okay. Let's go on.

2 BY MR. CLIFFORD:

3 Q Sir, at page 39 -- I think this will
4 deal with the issue for you -- at page 39 of the
5 transcript of your interview, there's a question
6 put to you, sir, at line 17:

7 "And as a result of that publication,
8 what did you do?"

9 The publication I am referring to is a notice in
10 the newspaper. You answered:

11 "I basically phoned here or the
12 publication number and I just wanted
13 to, being that I was the general
14 manager at the time, stress out to
15 whoever is doing this extra findings
16 or whatever, that we at Branigan's
17 didn't over-serve anybody. I wanted
18 to try to get that point across. I
19 believe in my staff and I believed in
20 the structure, in the training that we
21 did in our establishment, that I
22 didn't -- you know, we don't
23 over-serve people.

24 Q Did you ask them specifically
25 whether they overserved anybody, your

1 staff?

2 A I would have -- I probably would

3 have asked, yeah, I probably if I

4 remember, I mean I can't remember that

5 far back but I probably would have

6 said, was anybody very intoxicated to

7 the point that they couldn't stand or

8 anything? And they said to me no. I

9 said to Darcey, I go, you need to be

10 honest about this because this is a

11 very, you know, serious situation. He

12 said, Rodrigo, there was a few guys

13 who told me that they weren't driving,

14 that they had rides, and they had

15 extra drinks, but most of the people

16 had two, three, four beers, and that

17 was basically it. There was lots of

18 joking around, lots of food, and we

19 provided lots of food. I don't know

20 how many wings they ate that night but

21 there was lots."

22 Now those are your words, sir, that's your

23 testimony in response to why you made the

24 telephone call and what you would have said in the

25 call?

1 A Yes, but you were trying to say that I
2 referred to that evening, and that's not what I
3 referred to.

4 Q Sir, what you are referring to is that
5 Darcey Gerardy told you there was a few guys who
6 told you that they weren't driving and they had
7 rides?

8 A Yes.

9 Q You are referring to that evening,
10 right?

11 A For that, yes.

12 Q Indeed. So you did talk to Darcey
13 Gerardy about it, the concern you had, and he told
14 you, look, Rodrigo, there were a few guys who told
15 me they weren't driving, that they had rides, that
16 they had extra drinks?

17 A Sure.

18 Q Shall we agree?

19 A Let's agree.

20 Q And when you called the Commission,
21 you wanted to relay that fact to the Commission,
22 in January, that you were aware of that fact.
23 These are your words, you wanted to convey that to
24 the Commission in January?

25 A Yeah, okay.

1 Q The part where it says:
2 "There was lots of joking around, lots
3 of food, and we provided lots of
4 food."

5 Now you weren't there to witness that. I take it
6 somebody told you about that?

7 A I'm sure Darcey told me about that.

8 Q In your interview, sir, with the
9 Winnipeg Police members, you also mentioned that
10 on February 25th in the morning, when you were
11 going back to work, you noticed that there were
12 cars left in the parking lot?

13 A Yes.

14 Q So this is a personal observation that
15 you make on February 25th, at what time in the
16 morning?

17 A I would get there by 8:00 o'clock,
18 sometimes a little earlier, depending on what I
19 had to do.

20 Q And, sir, you had an opportunity to
21 review what you said to the Winnipeg Police about
22 your observations in the morning?

23 A I've gone through it. I am a -- I
24 know this is a very important matter, but I
25 haven't had a chance to go through everything. I

1 have had a lot of things happen in my life as of
2 late and I've been, you know, busy with my own
3 personal life. Obviously, if it's here, I said
4 it.

5 Q I just ask you to turn then to page
6 1323 in your interview with the Winnipeg Police
7 Service -- just go on to 1324.

8 Now, having had the opportunity to
9 review that, Mr. Bravo, does it refresh your
10 memory on the observations you made when you went
11 into work on the morning of February 25th, 2005?

12 A Yes.

13 Q And can you tell Mr. Commissioner what
14 it was?

15 A There would be, not just that day,
16 there would be different days I would go to get
17 into work and there would be cars. Once we found
18 a van started still.

19 THE COMMISSIONER: The van is what?

20 THE WITNESS: Was still running.

21 THE COMMISSIONER: Oh.

22 THE WITNESS: And with the window
23 punched out and the ignition punched out. There
24 was always vehicles being left there, so I was
25 concerned that, you know, there was like more than

1 usual. And I went to look and none of them were,
2 their windows were punched out.

3 THE COMMISSIONER: Well, what about
4 the next day, what did you see the next day?

5 THE WITNESS: That's what I --

6 THE COMMISSIONER: How many did you
7 see?

8 THE WITNESS: I'd say between five
9 cars, like all scattered in our parking lot. So
10 it wasn't like all in one row, it was like in
11 different spots.

12 BY MR. CLIFFORD:

13 Q And when you saw those cars, I take
14 it, sir, your evidence is that none of them had
15 any evidence of being stolen vehicles?

16 A I went to look at them, no.

17 Q They were all intact?

18 A They were all intact. I would have
19 called the police if they were stolen.

20 MR. CLIFFORD: Mr. Commissioner, I am
21 about to get into another area, I would be a
22 little bit longer with this witness. I think it
23 might be an appropriate time to break. I wouldn't
24 finish him, even if we sat until 5:00.

25 THE COMMISSIONER: You wouldn't

1 finish?

2 Would you like to finish today, sir?

3 THE WITNESS: Well, to me, it
4 doesn't -- it doesn't -- I made arrangements
5 already with work with my businesses, so if I had
6 to stay today, it wouldn't be a problem.

7 THE COMMISSIONER: It's been suggested
8 that maybe you might want to come back tomorrow?

9 THE WITNESS: Well, I had been sitting
10 out there for over nine hours, and my head is a
11 little cloudy and I'm a little tired. I slept on
12 the couch last night at my friend's.

13 THE COMMISSIONER: I'm sure all the
14 lawyers in here would like to accommodate you,
15 having stayed outside for nine hours. And so --
16 and I am prepared to accommodate you. So let us
17 stay here and let's finish your evidence today, if
18 we can.

19 MR. PROBER: I thought he said he was
20 a little groggy and tired and would prefer to go
21 tomorrow? That was my understanding.

22 THE WITNESS: That's what I said, sir.

23 THE COMMISSIONER: Oh, you would
24 prefer to come tomorrow?

25 THE WITNESS: Oh, yeah, I'm a little

1 tired.

2 THE COMMISSIONER: Oh, well, I didn't
3 realize it. I thought you wanted to get it over.
4 If you want to come tomorrow, we will accommodate
5 you.

6 MR. CLIFFORD: That's what I
7 understood his comment to be.

8 THE COMMISSIONER: All right. We will
9 adjourn for the day. We start at 9:30 sharp in
10 the morning.

11 THE WITNESS: No problem.

12 THE COMMISSIONER: So you be here well
13 before that, okay?

14 THE WITNESS: No problem.

15 THE COMMISSIONER: Thank you. We will
16 now rise.

17 THE CLERK: This Commission is
18 adjourned until 9:30 tomorrow.

19 (Proceedings adjourned at 4:47 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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