

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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Thursday, July 17, 2008

Volume 16

INQUIRY PROCEEDINGS

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## INDEX OF PROCEEDINGS

DESCRIPTION	PAGE
WITNESSES:	
Rodrigo Bravo	
Direct Examination by Mr. Clifford	3959
Examination by Mr. Zazelenchuk	3991
Examination by Mr. Labossiere	4008
Examination by Mr. Jack	4010
Examination by Mr. Green	4018
Re-Examination by Mr. Clifford	4020
Robert Keith McCaskill	
Direct Examination by Mr. Paciocco	4027
Examination by Mr. Zazelenchuk	4074
Examination by Mr. McDonald	4086
Examination by Mr. Weinstein	4088
Examination by Mr. Labossiere	4092
Examination by Mr. Prober	4102
Re-Examination by Mr. Paciocco	4107
Sean Black	
Direct Examination by Mr. Paciocco	4110

## INDEX OF EXHIBITS

EXHIBIT NO.		PAGE
158	Q-1.89.b.11, Handwritten Notes of Inspector K. McCaskill 05-02-28 (2 pages)	4062
159	Handwritten Note dated 05-02-28 at 17:50 hrs (Inspector K. McCaskill)	4063
160	Q-2.89.b.35 WPS Interoffice Memo dated 05-02-25 McCaskill Re: Harvey-Zenk/2180-13	4076
161	Q-1.89.b.10, Superintendent C. Scott Notes dated 05-02-25	4080
162	Q-2.89.b.25, Statement of Sean Kevin Black File 05-974901	4124
163	F-1.33.b, Line-up for operations/Division 13, E shift, February 24, 2005, one page	4129
164	F-1.35.c, Interview of Sean Black dated March 11, 2005 by PSU	4152

1 THURSDAY, JULY 17, 2008

2 UPON COMMENCING AT 9:31 A.M.

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

5 THE COMMISSIONER: Good morning.

6 MR. PACIOCCO: Good morning,  
7 Mr. Commissioner. Just to advise that there is  
8 going to be a change in the witness presentation  
9 today from that which we had originally planned.  
10 Chief McCaskill of the Winnipeg Police Service  
11 will be testifying today. We're trying to get him  
12 here to testify immediately after Mr. Bravo. If  
13 that's not possible, then we'll put him on this  
14 afternoon.

15 THE COMMISSIONER: Thank you.

16 (RODRIGO BRAVO: Previously sworn)

17 BY MR. CLIFFORD:

18 Q Good morning, Mr. Bravo.

19 A Good morning.

20 Q Sir, I wanted to start this morning by  
21 asking you some questions, sir, about the computer  
22 system that was in place at Branigan's in February  
23 of 2005?

24 A Okay.

25 Q And we have heard evidence that the

1 system in place was a system called the Squirrel  
2 system?

3 A Yes.

4 Q And that at this point, sir, how long  
5 has it been since you have worked with the  
6 Squirrel system?

7 A How long has it been?

8 Q Yeah.

9 A I worked with that system for about  
10 seven years, eight years -- or how long has it  
11 been since I worked?

12 Q That was the question.

13 A Oh, I'm sorry. I worked, well, since  
14 I've been gone, since Branigan's, it would be  
15 going on four years.

16 Q And, sir, do you recall generally how  
17 the system worked, what types of things that it  
18 recorded, et cetera?

19 A Yes.

20 Q And am I correct, sir, in my  
21 understanding that the computer system in place at  
22 Branigan's, in 2005, did a number of things. It  
23 recorded daily totals, for instance, of  
24 transactions and it broke them into categories,  
25 food, liquor, beer, et cetera?

1 A Yes.

2 Q And it gave grand totals in each of  
3 those categories at the end of each day --

4 A Yes.

5 Q -- or business day for the restaurant.  
6 Am I right on that?

7 A Yes.

8 Q And in order to compute the grand  
9 totals in each of those categories, it kept track  
10 of all the individual transactions as well?

11 A I believe so.

12 Q And on all of the individual  
13 transactions, it would have computed the  
14 Provincial Sales Tax, the Federal Sales Tax and  
15 any other applicable taxes?

16 A Yes, sir.

17 Q So, at the end of the day, what the  
18 restaurant was recording data wise, were all of  
19 the transactions that occurred in the course of  
20 business from open to close. Agreed?

21 A Yes.

22 Q The legal requirement was that every  
23 transaction had to go through the point of sale  
24 system?

25 A Legal requirement?

1           Q     You couldn't sell -- you couldn't do  
2 cash deals on the side?

3           A     No, no.

4           Q     And I'm not suggesting that you did  
5 that, but you had to record everything on the  
6 side?

7           A     Yes, sir.

8           Q     Record everything in the system,  
9 pardon me, right?

10          A     Yes.

11          Q     You had mentioned earlier that  
12 sometimes you could give away some promotional  
13 food, like some platters and that sort of thing?

14          A     I had the leeway to promote business  
15 how I felt proper. I had the go-ahead from the  
16 owner.

17          Q     So, with your understanding that the  
18 system was designed to record individual  
19 transactions so that grand totals could be  
20 achieved, where were the details kept of all the  
21 individual transactions?

22          A     I'm pretty sure it was held with the  
23 database, hard drive I guess.

24          Q     Okay. We heard testimony yesterday  
25 from Darcey Gerardy.



1 A Yes.

2 Q And you just said the word?

3 A Yeah.

4 Q And he said the word disks?

5 A At the end of the night, you do a  
6 report and it goes onto the disks.

7 Q And your understanding was those disks  
8 were, correct me if I'm wrong, whether you  
9 understand this, but they would be maintained for  
10 audit purposes. In case anybody wanted to look at  
11 the business, they could look at the disks?

12 A Yeah, we would send those disks to  
13 head office, yeah, once they were full.

14 Q And where were those disks kept? Do I  
15 understand correctly that they were kept at the  
16 back of the restaurant in someone's office?

17 A In the office, yeah, in the major  
18 office.

19 Q So if there was a suggestion, sir,  
20 that Branigan's would be unable to provide  
21 receipts or records of transactions, I take it you  
22 wouldn't agree with that, would you? Branigan's  
23 would be able to provide a record of all the  
24 transactions?

25 A A full detailed, yes.

1 Q All right?

2 A Transaction by itself, like for each  
3 customer, unless you had the cheque number, then  
4 you could produce it.

5 Q So you had a database upon which you  
6 could do some referencing, if you had cheque  
7 numbers, et cetera?

8 A Well, yeah, we didn't do it.

9 Q I know you didn't do it.

10 A Yeah.

11 Q But I want to know what was  
12 available --

13 A Oh, it was available, yeah.

14 Q -- in the event that somebody did do  
15 it?

16 A Yeah.

17 Q So this database was available. It  
18 would have recorded every transaction that took  
19 place on February 24th and 25th?

20 A Yes.

21 Q Now, we know, sir, that you had an  
22 interview with the Winnipeg Police, and they spoke  
23 to both you and Darcey Gerardy at the same time on  
24 March 11th, 2005. I take it, sir, that you recall  
25 attending for the meeting?

1           A     Yes, sir.

2           Q     And did they have a conversation with  
3 you, Mr. Bravo, about the business records, at the  
4 end of that interview when the tape-recorder was  
5 turned off?

6           A     We -- I recall that we did talk about  
7 bills, and I told them that we couldn't provide,  
8 like if you wanted just one bill, okay. Because  
9 if somebody paid cash, I couldn't produce that  
10 bill. I could produce the credit card, debit.  
11 The cash bill it would say at the back of the  
12 house, this person paid cash, but you wouldn't  
13 know who it was because there was no signature,  
14 there was no, you know, anybody that signed to it.

15          Q     Now, in your interview with the  
16 Winnipeg Police, there is no discussion between  
17 you and them about the records. I take it this  
18 conversation occurred off record, you were no  
19 longer in the interview process?

20          A     I can't remember. It was three years  
21 ago, sir.

22          Q     Well, you let me just see if I can  
23 help you, Mr. Bravo. You recall March 11th, the  
24 day of the interview?

25          A     They came to see us, yes.

1 Q Okay. And you recall that day they  
2 asked you about the records and the transactions?

3 A They asked me about separate, can you  
4 provide the bills? I said we have reports in the  
5 back, I cannot provide you one bill, specific bill  
6 right now.

7 Q So on March 11th --

8 A Yeah.

9 Q -- they asked you that question about  
10 the separate transactions and bills?

11 A Yes.

12 Q Right?

13 A Yes.

14 Q Now, if you have had an opportunity to  
15 look at your statement from March 11th, you see,  
16 the conversation about the separate bill, it's not  
17 in there, is it?

18 A I can't see it in here.

19 Q So, you'll agree with me, Mr. Bravo,  
20 we can conclude that that conversation occurred  
21 off record? What I mean by that, is that  
22 conversation wasn't recorded?

23 A I know we talked about it -- I don't  
24 know, I don't know what we talked about, that was  
25 three years ago, sir.

1           Q     That's fine, Mr. Bravo.  What I'm  
2 interested in is your evidence that you did talk  
3 about it on that day.  You're confident about  
4 that?

5           A     I can remember we talked about  
6 something about bills, yes.

7           Q     And I can tell you, Mr. Bravo, that  
8 there is in fact what appears to be a note made by  
9 the Winnipeg Police.  It's not a note made by you.  
10 And what the note says, that was generated by the  
11 Winnipeg Police, in connection with the  
12 discussions with you and Mr. Gerardy is as  
13 follows:

14                   "Unable to provide receipts or records  
15                   of transactions, once paid,  
16                   particularly with cash, they only  
17                   compare cash taken into the stock  
18                   used."

19 I'm going to read that to you again.  All right?

20           A     Um-hum.

21           Q     "Unable to provide receipts or  
22                   records of transactions, once paid,  
23                   particularly with cash, they only  
24                   compare cash taken into the stock  
25                   used."

1 You heard that?

2 A Yeah.

3 Q Let me deal with the first part:

4 "Unable to provide receipts or records  
5 of transactions..."

6 In fact, you were able to provide a complete  
7 record of transactions, isn't that the case?

8 A We can go in the back and get them,  
9 yes. We ourselves didn't do that, head office did  
10 that.

11 Q That's what you understood to be the  
12 case?

13 A Pardon me?

14 Q Is that what you understood to be the  
15 case, that head office did it?

16 A Head office did most of the stuff in  
17 the back, yeah. If they had to look up a bill --  
18 like, for example, there was a guy stealing from  
19 us, I didn't know about it, head office phoned me  
20 and told me that this guy was voiding stuff.

21 THE COMMISSIONER: Did you keep the  
22 disk at your office?

23 THE WITNESS: We kept disks at our  
24 office, yes.

25 THE COMMISSIONER: You could have

1 produced the disk?

2 THE WITNESS: I could have gave the  
3 disk, yeah.

4 THE COMMISSIONER: Why didn't you do  
5 that?

6 THE WITNESS: I wasn't asked.

7 THE COMMISSIONER: I see. Well, when  
8 they asked you to produce records, why didn't you  
9 simply say, here is the disk, look at it.

10 THE WITNESS: It didn't pop up in my  
11 mind, sir.

12 THE COMMISSIONER: I see.

13 THE WITNESS: Sorry.

14 BY MR. CLIFFORD:

15 Q Now, I understood that the police  
16 asked you whether you could provide them with a  
17 specific receipt relating to Derek Harvey Zenk.  
18 Is that the case?

19 A I don't know.

20 Q Do you have any recollection, sir,  
21 about the conversation that the Winnipeg Police  
22 Officers had with you on March 11th about the  
23 records?

24 A I just said -- I just said we talked  
25 about the bills and stuff, yes.

1           Q     Do you recall speaking with the  
2     Winnipeg Police and telling them that if you had a  
3     cheque number maybe for Derek Harvey-Zenk, that  
4     you could try to look up a transaction?

5           A     I know that for a fact I said to them  
6     that if I had the cheque number, I just have to go  
7     on the computer and print up that cheque number,  
8     and it would print what they had to drink or eat  
9     that evening.

10          Q     Now, Mr. Commissioner asked you some  
11     questions about why you just didn't give them the  
12     disk which recorded all of the transactions, and  
13     you have indicated, it didn't occur to you to do  
14     that?

15          A     It --

16          Q     Did the Winnipeg Police ask you to  
17     give it to them?

18          A     No, I don't think they did.

19                 THE COMMISSIONER:  But you knew they  
20     were looking for receipts, didn't you know that?

21                 THE WITNESS:  Well, yeah.

22                 THE COMMISSIONER:  Yeah.  And if you  
23     wanted to, you could have said, look, I have this  
24     disk with all the receipts.

25                 THE WITNESS:  Okay.



1 THE COMMISSIONER: Why not simply do  
2 that?

3 THE WITNESS: Okay. I'll tell you a  
4 little bit about our system, okay.

5 THE COMMISSIONER: Um-hum.

6 THE WITNESS: If you don't know what  
7 was going on three years ago with Branigan's,  
8 okay, it wasn't very good things. There was not  
9 very much funding, okay. We didn't -- I mean, you  
10 can -- I mean, we can smirk, whatever, but that's  
11 what we were dealing with in our establishments.  
12 As managers we had no -- our disk -- we were going  
13 on top of disks.

14 THE COMMISSIONER: Mr. Bravo, you had  
15 a disk with a record of your sales that evening,  
16 did you not?

17 THE WITNESS: Yes, sir.

18 THE COMMISSIONER: Okay. Very simple.  
19 They said to you, can you provide receipts?

20 THE WITNESS: I can't provide  
21 receipts.

22 THE COMMISSIONER: That's right. But  
23 you could have said, here's a disk with all the  
24 information.

25 THE WITNESS: It didn't come up into

1 our conversation, sir. I mean, it was a grueling  
2 time. I mean, when you've got the police there  
3 talking to you about a serious situation, it's --  
4 I mean, sometimes you miss things.

5 THE COMMISSIONER: I see. Okay. Go  
6 ahead.

7 MR. CLIFFORD: Thank you,  
8 Mr. Commissioner.

9 BY MR. CLIFFORD:

10 Q Sir, I think we have covered the  
11 records. I want to ask you now about something  
12 you raised yesterday, and this was, you came in  
13 for an interview with Commission Counsel, and I  
14 conducted an interview with you on April 9th,  
15 2008?

16 A Yeah.

17 Q And one of the things that we  
18 discussed in your interview, sir, was the  
19 telephone call that you made to the Commission in  
20 January?

21 A Okay.

22 Q Do you recall that, sir? You were  
23 telling me about that in April, and you had  
24 indicated, sir, that you wanted -- and you alluded  
25 to this in your testimony yesterday -- you wanted

1 to get a point across that Branigan's didn't  
2 over-serve anybody. Do you recall that?

3 A I recall that, yeah.

4 Q Okay. That was the purpose behind  
5 your telephoning in January to the Taman  
6 Commission office?

7 A The purpose of the call, which I said  
8 yesterday, was that I wanted to let you know that  
9 they would frequent our establishment, okay, more  
10 than once or twice before that situation happened,  
11 that incident happened, sorry. And they would  
12 never ever get over-served. We never ever had a  
13 problem with anybody, not just the police,  
14 anybody. I had my soccer team in there every  
15 Friday, we never ever had a problem.

16 Q You wanted to make sure that the  
17 persons responsible for the Commission were aware  
18 of the fact that Branigan's didn't over-serve.  
19 You wanted to get that point across. All right?

20 A Sure.

21 Q Now, in dealing with that issue --

22 A Um-hum.

23 Q -- addressing the issue of whether  
24 there had been over-service, or whether there was  
25 a concern, I take it, about people's ability to

1 drive, you spoke to Darcey Gerardy, the manager in  
2 place that night?

3 A I phoned that evening, I phoned every  
4 evening.

5 Q After the accident, after Crystal  
6 Taman's death, you were aware that the officers  
7 were in the restaurant February 24th, 25th?

8 A I read, yeah, I read the papers.

9 Q You spoke thereafter with Darcey  
10 Gerardy to determine whether there was  
11 over-service or whether things were handled  
12 appropriately?

13 A Well, I would have asked, yes. I was  
14 the general manager, I had to ask.

15 Q And what Darcey Gerardy told you was,  
16 look, he told you that a few of them weren't  
17 driving, that they had extra drinks and there were  
18 rides arranged?

19 A No, I don't remember him telling me  
20 that they had extra drinks and they were driving.  
21 He didn't say that. He said that there was three  
22 guys -- the three people that were intoxicated,  
23 but they had rides. That's what he said to me.

24 Q There were three people that were  
25 intoxicated that had rides?

1 A Yeah, he was told that they had rides.

2 Q Okay. So you're pretty firm that he  
3 didn't tell you that they had extra drinks or  
4 anything like that?

5 A Who had extra drinks?

6 Q The guys that weren't driving?

7 A I don't recall that.

8 Q Okay. I'm going to refer you to page  
9 40 in your Commission interview, line 4. Are you  
10 there, sir?

11 A Yes.

12 Q "Q Did you ask them specifically  
13 whether they had over-served anybody,  
14 your staff?

15 A I would have -- I probably would  
16 have asked, yeah. I probably if I  
17 remember. I mean I can't remember  
18 that far back, but I probably would  
19 have said was anybody very intoxicated  
20 to the point where they couldn't stand  
21 up or anything? And they said to me,  
22 no. I said to Darcey, I go, you need  
23 to be honest about this because this  
24 is a very, you know, serious  
25 situation. He said, Rodrigo, there

1                   was a few guys who told me they  
2                   weren't driving, that they had rides,  
3                   that they had extra drinks. And but  
4                   most of the people had two, three,  
5                   four beers and that was basically it.  
6                   There was lots of joking around, lots  
7                   of food, and we provided lots of food.  
8                   I don't know how many wings they ate  
9                   that night but there was lots.

10                  Q    And these are things that Darcey  
11                  Gerardy was saying to you?

12                  A    Yes."

13                  So those are the questions I put to you and your  
14                  answers. Does that refresh your memory, sir?

15                  A    I just said yes. You said, your  
16                  question to me was, there was guys that had extra  
17                  drinks that were driving? That's what you said to  
18                  me?

19                  Q    No, I think there was a  
20                  misunderstanding, sir. I wasn't suggesting that  
21                  they had extra drinks and they were driving, I was  
22                  suggesting that Darcey Gerardy told you guys had  
23                  rides?

24                  A    It wasn't coming across that way,  
25                  sorry, it didn't come across that way. Darcey,

1 yes, he did say exactly what he said here. And I  
2 answered -- and I asked it to him.

3 Q Now, I take it, sir, that you made it  
4 very clear to Darcey that the issue of  
5 over-serving was very serious if, in fact, it did  
6 occur?

7 A Yes.

8 Q And you can say that with certainty,  
9 that you made it very clear to him that it was a  
10 serious issue if it had occurred?

11 A Oh, of course it would be. I don't  
12 want anybody's -- I'm sorry, I don't want  
13 anybody's, unfortunate what happened, I don't want  
14 anybody's death on my, on my, on my mind because  
15 of if we could have stopped it. I don't want  
16 that.

17 Q I take it, sir --

18 A The worst thing that could happen.

19 Q And did he understand the  
20 ramifications of the situation?

21 A Oh, I'm sure. He's been in the  
22 industry for a long time. We all take courses.

23 Q Was it your understanding that he  
24 understood the ramifications?

25 A Oh, I'm sure he understands, yes, sir.

1           Q     Now, in your discussions with Darcey  
2     Gerardy, you would have, I presume, learned, sir,  
3     that he wasn't the server, that he was the general  
4     manager that night on duty, and that there was a  
5     bartender and a server. So, I take it, based on  
6     what we know, he wasn't telling you how much each  
7     person had, he wouldn't have that knowledge to  
8     give to you; do you agree with that?

9           A     We assess situations as managers, on  
10    job training, we assess situations. Myself, as a  
11    general manager, I have kicked many of people and  
12    called the police on many of people in that  
13    establishment because of being intoxicated or  
14    unruly or treating my staff with disrespect, many  
15    times.

16          Q     Mr. Bravo, I'm sure you did that.

17          A     I'm just saying that Darcey wouldn't  
18    be the same manager on the floor as I was. He was  
19    basically trained by me. I taught him how to look  
20    for intoxicated people.

21          Q     Mr. Bravo, the question is, did  
22    Mr. Gerardy tell you that he was not serving  
23    alcohol that night?

24          A     I knew he wasn't serving.

25          Q     All right. So you knew that Darcey



1 Gerardy was not serving the alcohol?

2 A Yes.

3 Q I take it, if you wanted to know how  
4 much alcohol was served, who would you talk to?

5 A Who would I talk to? Whoever was  
6 serving the group.

7 Q That's right. You would talk to the  
8 server?

9 A But I couldn't -- we --

10 Q And did you talk to the server?

11 A In the restaurant business, sir, okay,  
12 in the restaurant business, okay, when you are a  
13 general manager, you don't go to the staff, if  
14 there's a problem, you don't go to the staff, you  
15 go to the manager. In any restaurant, you can  
16 bring any restaurateur in here and they will tell  
17 you. That's why we are general managers, we don't  
18 want to deal with the servers and the dishwashers,  
19 you go straight to the manager, why wasn't this  
20 looked after?

21 Q And you did that, you went to --

22 A To the manager.

23 Q -- your duty manager --

24 A Yes.

25 Q -- Darcey Gerardy?

1 A Yes.

2 Q But you knew that he wasn't  
3 responsible for serving. And I'm suggesting to  
4 you, sir, that as a result of that, you went to  
5 Chelsea O'Halloran, the server, to talk to her?

6 A No, I didn't go to her. I went to her  
7 afterwards when the internal affairs was coming to  
8 talk to us. I went to talk to her and Darcey  
9 together.

10 Q So you didn't go to talk to Chelsea  
11 O'Halloran, after you spoke with Darcey Gerardy,  
12 to find out what happened that night? Do I  
13 understand your evidence to be that you went to  
14 speak to Chelsea O'Halloran when you found out  
15 internal affairs from Winnipeg Police was coming  
16 to the restaurant?

17 A I'm pretty -- that's what I recall.  
18 If I went to talk to her, then I don't recall.

19 Q Well, you did go talk to her. You do  
20 recall that?

21 A I recall that I talked to her when  
22 internal affairs came to see us.

23 Q And why would you want to talk to  
24 Chelsea O'Halloran?

25 A I talked to both of them, Darcey and

1 Chelsea O'Halloran.

2 THE COMMISSIONER: That's not the  
3 question. Listen to the question.

4 BY MR. CLIFFORD:

5 Q Why didn't you want to talk to Chelsea  
6 O'Halloran?

7 A Because she was the server in the  
8 evening.

9 Q What did you want to ask her?

10 A I didn't want to ask her anything.

11 Q You wouldn't have wanted to ask her  
12 how much alcohol got served, sir, in the  
13 establishment that you had concerns about?

14 A I told her to be honest to the police  
15 and tell them the utmost truth. It's a very  
16 serious situation that happened. And that's all I  
17 told to Darcey and Chelsea.

18 Q Sir, I want to follow up on your  
19 suggestion that you talked to Darcey and Chelsea  
20 together. Where did this conversation take place  
21 when you spoke to them at the same time?

22 A Somewhere in the restaurant.

23 Q Could you narrow that down?

24 A Well, usually when I went to talk to  
25 somebody, it was either my office or it would have

1    been in the private room, like the we call them  
2    the solarium, the small little private room for  
3    private functions.

4           Q     Do you have a specific recollection,  
5    sir, apart from an idea where it might have  
6    occurred, do you have a specific recollection  
7    where it occurred?

8           A     No, I don't.

9           Q     You don't, hey?

10          A     No.

11          Q     Now, you talked to Darcey Gerardy and  
12    you were telling him about the ramifications to  
13    the restaurant, the seriousness of over-serving.  
14    And do I understand your evidence, sir, to be that  
15    Chelsea O'Halloran was a party to that  
16    conversation, that she was with you and Darcey?

17          A     If I recall, they were both together  
18    with me.

19          Q     Okay. So I take it what had taken  
20    place then was there was the accident. You read  
21    about it in the media, you had a conversation with  
22    Darcey Gerardy. And then you must have had a  
23    second conversation with Darcey Gerardy when  
24    Chelsea O'Halloran was present?

25          A     I don't know. I don't know. I can't

1 remember, sir.

2 Q You can't remember?

3 A No.

4 Q And when you had this second meeting,  
5 as you say, when Chelsea O'Halloran is present  
6 with Darcey Gerardy, were you again reviewing the  
7 seriousness of the issue, the seriousness of  
8 over-consumption, the ramifications to the  
9 restaurant, et cetera?

10 A Yes, I was.

11 Q Okay. Sir, I'm going to tell you it's  
12 been suggested in testimony here that you did more  
13 than that, that you advised Chelsea O'Halloran to  
14 downplay --

15 A I read the paper this morning, sir.

16 Q Play down --

17 THE COMMISSIONER: Just wait --

18 THE WITNESS: Yeah.

19 THE COMMISSIONER: -- until he  
20 finishes the question.

21 THE WITNESS: Sure.

22 THE COMMISSIONER: We know you read  
23 the paper.

24 THE WITNESS: Yeah.

25 THE COMMISSIONER: Let him ask you the

1 question.

2 THE WITNESS: Sure.

3 BY MR. CLIFFORD:

4 Q Since you read the paper, I'll put  
5 this to you.

6 "He said to try and play dumb and  
7 pretend you didn't remember much from  
8 that night."

9 A It's a lie, a bold lie.

10 Q What you say is you had a conversation  
11 and you expressed the seriousness of the  
12 situation, the ramifications of what occurred to  
13 the restaurant. You are aware of issues of civil  
14 liability to yourself personally and to the  
15 business?

16 A I wasn't there, sir.

17 Q But you deny that you said directly or  
18 indirectly anything to Chelsea O'Halloran?

19 A It's a bold lie, sir.

20 Q Let me ask you about discussions you  
21 had with liability, then, with other people. You  
22 had two friends that were there that night, close  
23 friends that were in your wedding party, Constable  
24 Black and Bauer were in the bar February 24th,  
25 25th. You were aware of that?

1 A Yes.

2 Q You knew that the bar was open till  
3 after 2:00 o'clock in the morning?

4 A Till 2:00 o'clock in the morning. We  
5 have the right to stay open till 2:30,  
6 2:00 o'clock we stop service, half an hour leeway  
7 to give patrons to leave.

8 Q Did you know that your server cashed  
9 out at 2:47?

10 A Pardon me?

11 Q Did you know that your server cashed  
12 out at 2:47?

13 A No, I did not know that.

14 Q Did you know where the officers went  
15 after they left the bar?

16 A Well, I just read the papers, yes.

17 Q Are you telling me, sir, that you got  
18 the information about where they went from the  
19 paper?

20 A No, I'm not telling you that. I read  
21 the paper I said.

22 Q Yeah. And you also, I suggest to you,  
23 sir, talked to Sean Black?

24 A We talk daily, we used to talk daily.

25 Q And you talked to Sean Black, I

1 suggest, sir, before you talked to Winnipeg Police  
2 on March 11th --

3 A No.

4 Q -- 2005?

5 A No. I'm sure I talked to him as a  
6 friend. I mean, I'm sure I talked to him because  
7 he would call, we would call each other. I called  
8 him more than he called me.

9 Q So the question was, you talked to  
10 Sean Black prior to speaking to the Winnipeg  
11 Police on March 11th? And I take it your answer  
12 is yes?

13 A Yes.

14 Q And you went on to say, sir, that you  
15 talked to him as friends?

16 A Yes.

17 Q And is it your testimony, sir, that  
18 you didn't talk to your good friend, Officer  
19 Black, about what happened in that bar that night,  
20 or what happened at his house afterwards?

21 A I'm sure I brought it up. I'm sure I  
22 brought it up and asked questions, being intuitive  
23 or -- not nosy, but just asking. And if I recall,  
24 it could be, let's don't talk about this. That's  
25 basically it.



1 Q So --

2 A Mr. Black and Mr. Bauer do not say  
3 anything to me about any of their work, and I try  
4 not to say anything -- it's our friendship outside  
5 of work, it has nothing to do with my office or  
6 their office.

7 Q Well, hold on a second, sir. I  
8 understand that you have a lot of time together at  
9 work. They come into your restaurant. We have  
10 heard all kinds of testimony about the fact that  
11 the officers come in, you try to foster the  
12 business, you give free food. So you socialize at  
13 work and you socialize outside work?

14 A How do you say I socialize at work,  
15 sir?

16 Q The officers go to your restaurant,  
17 sir?

18 A It doesn't mean I sit down with them  
19 and have drinks with them.

20 Q Let me go back to the line of  
21 questioning, sir, that I wanted to focus on, and  
22 that was your conversation with Officer Black. Do  
23 I understand your testimony that you clearly  
24 recall talking to him, or at least I understand  
25 your evidence, asking him questions about what

1 took place on February 24th and 25th at the bar  
2 and at his house afterwards?

3 A I'd say, yeah, that's --

4 Q What kind of questions were you asking  
5 Officer Black about what took place at his house?

6 A What kind of questions?

7 Q Yeah?

8 A I just basically said that's a  
9 unfortunate incident that happened and he -- we  
10 did not talk about it. We did not go into detail  
11 and talk about anything.

12 Q So you were just --

13 A I was just asking questions of, you  
14 know, just being nosy I guess, asking just what,  
15 you know, what occurred, what happened, you know  
16 and nothing was told to me.

17 Q Well, did you ask him about the  
18 condition that Harvey Zenk was in?

19 A I don't know who Harvey-Zenk is, sir.

20 Q You knew Harvey-Zenk was the officer  
21 who was charged with the death of Crystal Taman?

22 A Yeah, I don't know who he is. His  
23 name never, has ever come up in any conversation  
24 in our friendship. I don't know who the gentleman  
25 is. I've just seen him in the newspaper.

1           Q     Did you -- you had this experience in  
2     the industry, sir, you had an awareness on the  
3     issue of civil liability, at least your  
4     understanding of it. Did you express anything to  
5     Constable Black and say, look, you should be  
6     concerned about the fact that these officers were  
7     at your house and they were consuming alcohol?

8           A     No, I didn't say anything like that to  
9     him.

10          Q     This is your good friend, and you  
11     didn't say anything like that to him, give him any  
12     advice with respect to --

13          A     No, I did not.

14          Q     -- what you knew about the industry?

15          A     No, I did not, sir.

16          Q     I take it, sir, you learned that  
17     Harvey-Zenk spent the night at some point at  
18     Constable Black's house?

19          A     There were -- I was told a few  
20     officers went over there to his house. That's all  
21     I was told. I wasn't told anything else.

22          Q     I'm asking you whether you knew that  
23     Harvey-Zenk --

24          A     No, I did not know that Harvey-Zenk  
25     was at his house.

1 Q Did Constable Black ever say anything  
2 to you about his concern about civil liability?

3 A No, I can't remember, sir.

4 Q You can't remember?

5 A No, I can't remember. I'm pretty sure  
6 he didn't say anything like that.

7 Q Well, the Commission, sir, has  
8 material that suggests that he certainly did have  
9 a concern about civil ramifications of what  
10 occurred. And I want to know, sir, did you guys  
11 discuss this, did he bring it up with you?

12 A I can't remember, sir. I don't  
13 remember every conversation I had with my friends.

14 Q You spoke about intuition earlier,  
15 sir. My intuition would think that somebody in  
16 your position, with your experience and your  
17 connection to this case and friendship, that you  
18 would have brought it up with him?

19 A Sir, I left at 7:00 or 8:00 o'clock in  
20 the evening.

21 Q Didn't you talk to Officer Black about  
22 the concerns that Darcey Gerardy raised with you,  
23 what he told you?

24 A I can't remember, sir. I can't  
25 remember.

1           Q     Well, let's think about that for a  
2     moment, Mr. Bravo.  You were aware, prior to  
3     speaking to Constable Black, that your general  
4     manager said that some of the people had to get  
5     rides because they were, in your word,  
6     intoxicated?

7           A     That's what Darcey Gerardy said to me.

8           Q     You didn't even bring that up to  
9     Constable Black?

10          A     I can't remember, sir.

11          Q     You are a good friend of his?

12          A     We are friends, yes.

13          Q     As a good friend, you wouldn't have  
14     brought that up?

15          A     We're friends I said.

16                   MR. CLIFFORD:  Mr. Bravo, those are  
17     the questions I have for you.  Remain seated.  
18     Other counsel will have questions.

19     BY MR. ZAZELENCHUK:

20          Q     Mr. Bravo, in February of 2005, you  
21     were the manager of Branigan's on Leila, but you  
22     weren't the owner of that establishment?

23          A     No, sir, I wasn't.

24          Q     And I may mispronounce his name, the  
25     owner was a Mr. Tsouras?

1 A Tsouras, yeah.

2 Q Tsouras. And I believe you told  
3 learned Commission Counsel, when you were  
4 interviewed by him, that Mr. Tsouras used to come  
5 in generally about once a day to check on the  
6 operations part of the business?

7 A Yes, sir.

8 Q Yeah.

9 A He would phone too, sir.

10 Q He'd phone?

11 A He'd phone usually, yeah.

12 Q But sometimes he'd phone because maybe  
13 some days he couldn't make it, but most days he'd  
14 come in to check on the operations?

15 A Yes.

16 Q Okay. And I guess as the owner, he  
17 was interested in the bottom line?

18 A Yes.

19 Q That's usually what owners are  
20 interested in, isn't it?

21 A Exactly, sir.

22 Q And in the food and beverage business,  
23 things that are important to the bottom line is  
24 how much alcohol is sold?

25 A How much food, alcohol.

1 Q Sure.

2 A I mean, food there's a big markup in  
3 food.

4 Q And how much alcohol is sold?

5 A Sure.

6 Q Sure. Because there's a markup on  
7 alcohol too?

8 A There's, yeah.

9 Q Big one?

10 A Yeah.

11 Q Yeah?

12 A Yes, there is.

13 Q And I guess the other thing that's  
14 really important to the bottom line is how many  
15 staff hours were worked?

16 A Labour costs, yes.

17 Q Yeah, labour costs is a big thing?

18 A Yeah.

19 Q Okay. I wonder if Madam clerk could  
20 show you Exhibit 152? I'm going to go to tab 7,  
21 Mr. Commissioner. That's W.

22 Now, Mr. Bravo, your document and mine  
23 aren't exactly the same so try and follow around  
24 with me.

25 THE CLERK: It is now.

1 MR. ZAZELENCHUK: Oh, it is now? I'm  
2 told they are now the same.

3 BY MR. ZAZELENCHUK:

4 Q Could you please go to tab 7?

5 A I'm there, sir.

6 Q Okay. And that's the interval sales  
7 and labour report, we are told, correct, and  
8 that's for the night of the 24th of February,  
9 2005?

10 A I don't -- I don't know. It doesn't  
11 have a date on here, sir.

12 Q Okay. But you recognize the form of  
13 that document?

14 A Yeah, the form of it is.

15 Q That shows how many people worked and  
16 for how many hours?

17 A Yes.

18 Q That's the kind of thing Mr. Tsouras  
19 would like to look at?

20 A That's a new, this is a new -- we put  
21 it, implemented this new that months before that.

22 Q Yeah. And that's the kind of thing  
23 he'd like to look at because that tells him what  
24 the costs are?

25 A Sure.



1 Q Sure, okay. Let's go to tab 5. And  
2 what we have at tab 5 is a four-page document, and  
3 that's called "on-line detail sales report"?

4 A Yes, it is, sir.

5 Q Yeah. And that tells you the gross  
6 sales for a day, of all the food, the food, the  
7 liquor, the wine, the beer, it's all on these four  
8 pages?

9 A Yes, sir.

10 Q Yeah. And that's another kind of  
11 thing that Mr. Tsouras would like to look at  
12 because he wants to know what you grossed the day  
13 before?

14 A Oh, sorry, yes, sir.

15 Q Yes, you agree with me on that?

16 A Yes, sir.

17 Q Okay. Let's turn to page 3 of that  
18 document. We'll go to page 3 of that document.

19 A Sorry, is this from the 25th?

20 Q This is from --

21 A The 24th.

22 Q It's dated the 25th because it was  
23 done after midnight, but it deals with the 24th,  
24 okay. So could we go to page 3, please? Are you  
25 at page 3, sir?

1 A Yes, sir.

2 Q Okay. What we see at the top of page  
3 3 is the second part of the liquor sales. They  
4 begin on the previous page, you agree with me with  
5 that?

6 A Yes.

7 Q And if we go to the left-hand side,  
8 left hand, the one with your ring on it, if we go  
9 to the left-hand side of that document, fourth  
10 item down is four stars. Do you see that?

11 A Yeah.

12 Q And then there's a number for 19?

13 A Sorry, are we on W3?

14 Q No, we're on W5.

15 A I thought you said three, sorry.

16 Q Start again, I apologize.

17 A Okay.

18 Q Are we at W5?

19 A Yes, we are.

20 Q Okay. And at the top of the page it  
21 should say, in the upper left-hand corner it  
22 should say "run date 02/05/25." Is that what you  
23 have?

24 A Yes, sir. Yeah.

25 Q Okay. And you'll agree with me that

1 this is the sales report gross for the 24th of  
2 February, 2005?

3 A Yes, sir.

4 Q And that's the kind of thing the owner  
5 would like to see when he comes down to see what's  
6 happening, because that tells him what you did  
7 yesterday?

8 A I seldom showed him this, sir. We  
9 seldom showed him this.

10 Q What did you sell him -- what did you  
11 show him?

12 A Nothing. We would sit down on the  
13 table and talk, how is business, how is this?  
14 That's how we would deal with things.

15 Q Okay.

16 A These would get sent to head office.

17 Q Okay. This would get sent to head  
18 office?

19 A Yes.

20 Q Okay. So you're telling me that this  
21 document isn't something the owner would want to  
22 see?

23 A Oh, no, I'm not saying he wouldn't  
24 want to see it, sir. It's that when he came to  
25 visit, like when he came down to drop off, like

1 sit down with me, we would just sit like on a  
2 regular table and just go, what can we do, what  
3 can we make better, what do we need to do?  
4 Because the business wasn't doing well, so we  
5 would try to drum up business somehow.

6 Q But this would be sent to head office?

7 A I'm pretty sure that this went with  
8 all our weekly reports and then it would get sent  
9 to head office.

10 Q And you have already agreed with me  
11 that gross sales is something very important to  
12 the profit and loss?

13 A To the owners, yes, 100 per cent.

14 Q So now let's go to page 3 of that  
15 document?

16 A W3?

17 Q Do you have that?

18 A Yes, sir.

19 Q Okay. And on the left-hand side, four  
20 items down, we've got four stars, do you see that,  
21 just underneath Murphy's Irish?

22 A Okay. I keep changing pages. You say  
23 page 3?

24 Q Okay. Let's start again.

25 A Well --

1 Q Let's go to tab W5.

2 A Yes.

3 Q Are you there?

4 A Yes, you're calling it tab, okay, I'm  
5 calling it -- okay.

6 Q Now, just a second, look in the upper  
7 right-hand corner and it says page 1.

8 A Yes, sir.

9 Q Okay. Flip the page, and the next one  
10 says page 2.

11 A Yes.

12 Q Flip the page, and the next one says  
13 page 3. Can you see that?

14 A I got it, sir.

15 Q Okay. Now let's go to the left-hand  
16 side of the page, and let's go down to the fourth  
17 entry which is four stars. Do you see that, just  
18 under Murphy's Irish?

19 A Yes, sir.

20 Q Okay. And then we have 19 beside  
21 that. Do you see that, sir?

22 A Yes, sir.

23 Q And then we have 00?

24 A Yes.

25 Q Okay. And that means that on that

1 day, there were 19 liquor drinks given away;

2 correct?

3 A Usually it says -- we were supposed to  
4 promo, it would say promo on the --

5 Q Does that not mean that on the day in  
6 question, there were 19 liquor drinks given away?

7 A I can't recall, sir. I didn't serve  
8 the drinks, I didn't give them away.

9 Q I'm not asking if you served them.

10 A Yeah.

11 Q I'm not asking if you can recall. I'm  
12 asking if that's not what that means?

13 A It means it's 19 of something given  
14 away, yes.

15 Q Okay. And if you look just underneath  
16 that, you will notice that the total drinks  
17 consumed that day was only 61?

18 A Yes.

19 Q Okay. If I owned a bar and my manager  
20 gave away about 30 per cent of the hard liquor  
21 that was consumed in a day, if he didn't have a  
22 good explanation, he'd be fired. Do you agree  
23 with me?

24 A Sure.

25 Q Sure. Can you provide us, you were

1 the manager, can you provide us with an  
2 explanation as to those 19 drinks?

3 A No.

4 Q You'll agree with me it's about, it's  
5 just over 30 per cent of the drinks that were  
6 consumed that day?

7 A Yeah.

8 Q Yeah. Could they have been given away  
9 to the party that was going on that night?

10 A I don't know.

11 Q Would your bartender give away 19  
12 drinks without checking with you?

13 A Shouldn't.

14 Q No. And as a matter of fact, if the  
15 owner was down on you for over 30 per cent of the  
16 drinks being free, you'd be down on whoever was  
17 minding the bar, wouldn't you?

18 A Oh, 100 per cent.

19 Q Yeah. That doesn't help you at all to  
20 tell us where those 19 drinks went?

21 A This is the first time I looked at  
22 this, sir.

23 Q We can move on.

24 A Okay.

25 Q I understand you continued at

1 Branigan's until December of 2005?

2 A It would have been -- no, it was  
3 before December, just a little bit before.

4 Q November?

5 A Yeah.

6 Q Because you bought a Chicken Chef  
7 later on in December and you took possession in  
8 January; is that correct?

9 A I was gone -- I was gone four weeks  
10 for my son's heart surgery.

11 Q That was in August?

12 A What's that?

13 Q That was in August?

14 A Yeah, and then we came back and we had  
15 a --

16 Q And you were still at Branigan's when  
17 you came back?

18 A Yeah.

19 Q Did these monthly parties continue  
20 after February?

21 A I can't recall, sir.

22 Q You can't recall?

23 A I know that the police officers would  
24 come in for lunch or dinner the odd time, yes.

25 Q No, no, I'm not talking about lunch or



1 dinner, I'm talking about these parties that  
2 happened more or less once a month where the  
3 special rate on liquor -- on beer --

4 A You know what, sir, my mind -- I can't  
5 recall and my mind wasn't on the business. I was  
6 done there.

7 Q I see. So you can't recall?

8 A I was done there.

9 Q Okay. We can move on from here.  
10 Towards the end of 2005, beginning of 2006, you  
11 purchased a Chicken Chef Restaurant in Edmonton?

12 A No.

13 Q No? Where did you purchase that?

14 A What does this have to do with  
15 anything, sir, with me owning a business?

16 THE COMMISSIONER: Mr. Zazelenchuk, is  
17 there any reason why you are going into this area?  
18 And I realize you may have to alert him by  
19 alerting me as to where you are going.

20 MR. ZAZELENCHUK: I believe --

21 THE COMMISSIONER: Can you satisfy me  
22 that you're going in a direction that's relevant  
23 to this Inquiry?

24 MR. ZAZELENCHUK: I can probably  
25 satisfy you, one way or another, in about 15

1 seconds if this witness was excused from the room.

2 THE COMMISSIONER: Well, I'm not going  
3 to ask him to be excused. I'm going to allow you  
4 to go ahead, and you will ask the questions that  
5 you are --

6 MR. ZAZELENCHUK: I am obliged to the  
7 confidence expressed --

8 THE COMMISSIONER: Answer the  
9 question, please.

10 THE WITNESS: Can I ask a question?

11 THE COMMISSIONER: Yes.

12 THE WITNESS: What does this have any  
13 bearing to do with anything that I own a business,  
14 sir?

15 THE COMMISSIONER: We'll soon find  
16 out.

17 THE WITNESS: No, to me, this is my,  
18 this is my life, this is my livelihood, this is  
19 how I feed my family. He wants to bring this up.

20 THE COMMISSIONER: Let me hear the  
21 next question and then I will make a ruling on it.

22 BY MR. ZAZELENCHUK:

23 Q Mr. Bravo, when I read your interview  
24 with the Commission, and at page 26, line 2, you  
25 said:

1 "I met a fellow in Edmonton. That's  
2 the town that I am at right now."  
3 A Edmonton?  
4 THE COMMISSIONER: Look at your  
5 interview. What page again?  
6 MR. ZAZELENCHUK: It's at page 26,  
7 Your Honour, beginning at line 2.  
8 THE COMMISSIONER: This is with the --  
9 MR. ZAZELENCHUK: With the Commission,  
10 yes. It's T5C.  
11 THE COMMISSIONER: Yes.  
12 THE WITNESS: Page 26, sir?  
13 MR. ZAZELENCHUK: Yes.  
14 "I met a fellow in Edmonton. That's  
15 the town that I am at right now."  
16 THE WITNESS: I was in Edmonton for my  
17 son's heart surgery. I met this gentleman in  
18 Edmonton.  
19 BY MR. ZAZELENCHUK:  
20 Q Sir, you were interviewed on  
21 April 9th?  
22 A Um-hum.  
23 Q And as I read that sentence it says:  
24 "I met a fellow in Edmonton. That's  
25 the town that I am at right now. And

1                   he got the ball rolling where I own a  
2                   restaurant now."

3       Now, you told that -- did you not tell that to the  
4       Commission?

5           A       Well, maybe my English doesn't come  
6       out as good as it should, as somebody else, that's  
7       not my first language, but that's not what I  
8       meant. I never lived in Edmonton, I never have  
9       lived in Edmonton.

10          Q       And your evidence is you don't live in  
11       Edmonton now?

12          A       No, I don't live in Edmonton.

13                   MR. ZAZELENCHUK: Okay. That ends  
14       that line of questioning, Your Honour.

15                   THE COMMISSIONER: Thank you.

16       BY MR. ZAZELENCHUK:

17          Q       Just one last point. You contacted  
18       the Commission, I believe, by telephone initially  
19       in January of this year?

20          A       Yes, I did.

21          Q       Yeah. And you indicated that it was  
22       your information that each of the people there had  
23       approximately two or three drinks and that free  
24       wings were provided?

25          A       I did not mean that to the Commission

1 when I phoned, sir. I meant that they would  
2 frequent our establishment. That's what I said  
3 yesterday.

4 Q Okay. Could you go to page 42 of your  
5 interview?

6 A I understand what it said there, sir,  
7 but that's not how I meant to come across.

8 Q So you didn't mean to say, when you  
9 were interviewed by the Commission Counsel at page  
10 42, line 8:

11 "And the wings, I would give them free  
12 wings anyway."

13 You didn't mean to say that?

14 A No, we would give free wings.

15 Q I see.

16 A Yeah, we would give free wings. I  
17 would give free wings to Gauthier Pontiac, I would  
18 give free wings to the fire fighters.

19 Q Could we go back to tab 5 of W,  
20 Exhibit 152, and could we go to the first page,  
21 that's page 1 in the upper right-hand corner?

22 A Page?

23 Q One of tab 5.

24 A Yeah.

25 Q Okay. If you go down six items in the

1 left-hand side, you note the wings aren't free?

2 A Yes.

3 Q 323 wings cost \$113.05?

4 A Yes, sir.

5 Q Yeah. So they weren't given free  
6 wings that night?

7 A Probably not.

8 MR. ZAZELENCHUK: Okay. Thank you.

9 THE COMMISSIONER: Mr. McDonald?

10 MR. McDONALD: I have no questions of  
11 this witness, Mr. Commissioner.

12 THE COMMISSIONER: Thank you.

13 BY MR. LABOSSIERE:

14 Q Mr. Bravo, my name is Keith  
15 Labossiere, I am counsel for the Winnipeg Police  
16 Association. I just have very few questions.

17 A Sure.

18 Q I have listened to your evidence, sir,  
19 and understand that over the past dozen years or  
20 so, you have had friends who were police officers?

21 A Yes, sir.

22 Q And I take it that you are like most  
23 people, that from time to time you become curious  
24 about the kind of work they are doing, is that  
25 fair?

1           A     I wanted to be a police officer when I  
2 was younger.

3           Q     You might read the paper and see  
4 something interesting?

5           A     Yeah.

6           Q     And want to know what's happening?

7           A     Yes.

8           Q     And I take it, sir, that as I  
9 understand it, when you would speak to your police  
10 officer friends, Norbert Bauer, Sean Black, they  
11 would say words to the effect to you, look,  
12 Rodrigo, we're friends but we can't talk about  
13 that?

14          A     Hundred per cent.

15          Q     And they guarded their job and the  
16 information they learn on their job very  
17 jealously. Would you agree with that?

18          A     I think so, yes.

19          Q     And so while you were friends and you  
20 might speak to them everyday, there was a line  
21 that you didn't cross. You talked about your  
22 friendship, your lives, your families, your  
23 fishing?

24          A     Yes.

25          Q     You didn't talk about police matters?

1           A     No, I got shut down so many times I  
2     just basically stopped asking.

3           Q     And really that was no different on  
4     this incident, isn't that right? You were  
5     curious, obviously?

6           A     Obviously yes.

7           Q     And you spoke to Sean Black or Norbert  
8     Bauer and you said, look, guys, what happened that  
9     night? And they said to you, look, Rodrigo, I  
10    know we are friends but we can't talk about that?

11          A     Yes, sir.

12          Q     And because of your experience with  
13    them, you didn't press that, did you?

14          A     No.

15                MR. LABOSSIÈRE: Thanks. Those are my  
16    questions.

17                THE WITNESS: Thank you.

18                MR. WEINSTEIN: No questions.

19                THE COMMISSIONER: Mr. Jack.

20    BY MR. JACK:

21           Q     Mr. Bravo, I just have a couple of  
22    very brief areas to canvass with you. I want to  
23    go back to the interview that you provided to  
24    officers within the Professional Standards Unit of  
25    the Winnipeg Police Service?



1 A Yes, sir.

2 Q You have obviously been asked at  
3 length about that particular interview.

4 A Yes, sir.

5 Q I just wanted to get an indication of  
6 your understanding of your duties and  
7 responsibilities in that interview. I want to  
8 know whether you were aware that, if you were to  
9 lie to the police officers during the course of  
10 that interview, that that could be considered a  
11 criminal offense?

12 A Yes, sir.

13 Q And I think it goes without saying  
14 that you knew that they were investigating a very  
15 serious matter?

16 A Very serious matter.

17 Q You took that very seriously when you  
18 attended to that interview?

19 A Well, I lost a good friend.

20 Q With respect to the disk that you had  
21 been asked about -- and I'll give you a moment,  
22 Mr. Bravo.

23 THE COMMISSIONER: Just take your  
24 time.

25 THE WITNESS: Sorry.

1 BY MR. JACK:

2 Q No, don't be sorry, Mr. Bravo. And if  
3 at any point you require more time, please just  
4 take it.

5 I will move along, in terms of your  
6 interview with the PSU, as I'm going to refer to  
7 them. You have already been asked by the  
8 Commissioner and other counsel about the  
9 availability of disks that would have contained  
10 data about sales, et cetera. And you have already  
11 confirmed that at no point during your interview  
12 by the PSU officers, did you disclose that you had  
13 such a disk; correct?

14 A No, sir.

15 Q I just want to clarify, because I'm  
16 not sure if it came out, it's clear that you  
17 didn't disclose, at least on March 11th, 2005, the  
18 existence, or the potential existence of disks  
19 that would contain that data. I just want to  
20 confirm that at no point subsequent to March 11,  
21 2005, ever, did you contact the PSU to make note  
22 of the existence of those disks; correct?

23 A No, I didn't, sir.

24 Q Okay. The second area I want to cover  
25 with you briefly, Mr. Bravo, relates to the

1 evening in question, February 24, 2005. I  
2 understand from the records that have been  
3 obtained from Branigan's that you were, or at  
4 least you clocked in at 5:30 p.m. on that date.  
5 Does that accord with your recollection?

6 A I clocked in?

7 Q Oh, pardon me, I got that wrong. It's  
8 indicated, and I put it in front of you, it's W7  
9 of Exhibit 152. And I was mixing up the numbers,  
10 Mr. Bravo. In fact, it would appear to indicate  
11 along the left margin at the bottom, under the  
12 category of managers, we see the name Rodrigo?

13 A Yes.

14 Q I assume that means you, of course?

15 A That's me.

16 Q Indicating a time in of 9:00 o'clock.  
17 Does that accord with your recollection on that  
18 date?

19 A Yes, sir.

20 Q It also indicates a time out of  
21 7:00 o'clock. Does that accord with your  
22 recollection?

23 A Yes.

24 Q And you have already indicated that,  
25 as best you can recall, you left sometime between

1 7:00 and 8:00, correct?

2 A Some, yeah, I would never leave right  
3 at 7:00, I would stay around for a little bit just  
4 to make sure that they were okay through supper.

5 Q I took it from your responses that  
6 that wasn't based on a specific recollection, that  
7 was based on what you have just told me, you just  
8 don't think you would have left before then, so it  
9 was your typical practice to leave around then?

10 A Yes.

11 Q Okay. So you don't specifically  
12 recall what time you would have left that day?  
13 You don't have a specific recollection, other than  
14 your typical routine?

15 A My typical routine, yeah.

16 Q Okay. Now, whether we can get from  
17 your recollection, or even from the records in  
18 front of you, I'm just curious whether there's any  
19 way for you to tell us what business would have  
20 been like from 5:30 p.m. on that evening? And by  
21 that, we have records of the gross sales for that  
22 date --

23 A Okay.

24 Q -- that tell us how many of each  
25 category of item was purchased. I'd like you, I

1 don't need you to review the content, I just want  
2 you to look at the nature of the documents,  
3 because I'm not sure whether you've seen all eight  
4 that are contained in this W volume?

5 A What am I looking at, sir?

6 Q I'll start you again, we only need to  
7 start with the date in question, so I will start  
8 you at W4. And frankly, I just need you to look  
9 at the labels of the documents. Again, I'm not  
10 going to go through the data itself.

11 A Okay.

12 Q We see a document labelled cash-out  
13 for Chelsea?

14 A Yes.

15 Q I'm going to flip you to W5. You'll  
16 see a document entitled Branigan's Garden City  
17 on-line sales report, gross, all departments?

18 A Yes, sir.

19 Q Okay. I'd like to flip you to W6,  
20 Branigan's Garden City cash-out and revenue?

21 A Yes, sir.

22 Q And then the time sheet that we have  
23 already referred to at W7, and in fact that's all  
24 I need to refer you to.

25 From any of those documents, can you

1 tell me anything about the timing of transactions  
2 on February 24, 2005? In other words, can you  
3 tell me when any of those items were purchased,  
4 other than simply the gross calculations?

5 A Just gross calculations, no, I can't,  
6 no.

7 Q So there's nothing from these  
8 documents that would tell us --

9 A From these documents?

10 Q -- when various items were purchased?

11 A No.

12 Q And there's nothing about your  
13 recollection on that date that can tell me  
14 anything about the level of business?

15 A Well, level of business, I mean, we  
16 look at -- it would have been a Thursday, right?

17 Q That's my understanding, yes.

18 A Okay. Thursday -- I mean, Monday,  
19 Tuesday, Wednesday were very slow for us.  
20 Thursdays, Fridays, Saturdays would be our busy  
21 times. And it looks here, I mean, you've got  
22 \$2.75 pints, 68 pints, I mean, the \$2.75 pints  
23 obviously we gave to the police the special, and  
24 68 pints, 10, 15, 20 police officers, that's like  
25 six, five pints each. Like to me that's not like

1 a lot of drinking, like a lot of sales, to me.

2 Q Thank you. And just so I'm clear, I  
3 am in fact more interested at the moment on the  
4 period of time between 5:30 p.m. and 10:30 or  
5 11:00 p.m., in fact, before the officers would  
6 have come in. I just want to confirm there's  
7 nothing in these records that can tell me how much  
8 of these items was purchased during that time  
9 period; correct?

10 A From that, no.

11 Q Okay. And do you have any  
12 recollection, apart from looking at the data, and  
13 I appreciate you were reviewing that for me.

14 A Yeah.

15 Q But your actual recollection, your  
16 specific recollection, is there anything you can  
17 tell me about level of business, the timing of  
18 transactions in the lounge on that date, up until  
19 the time you left?

20 A I'm truly sorry, I can't recall,  
21 sorry.

22 Q Thank you.

23 A No, I can't.

24 MR. JACK: I have no further  
25 questions, Mr. Bravo. Thank you,

1 Mr. Commissioner.

2 MR. PROBER: No questions, thank you.

3 BY MR. GREEN:

4 Q Mr. Bravo, you were asked questions by  
5 the Winnipeg Police in March of 2005. Do you  
6 recall that?

7 A Yes, sir.

8 Q And you were, at that time, aware that  
9 the person that had been involved in this motor  
10 vehicle accident had been at Branigan's that  
11 evening?

12 A I have read in the papers, yes.

13 Q Yeah. And you were aware that he had  
14 been charged with impaired driving and a number of  
15 other offences?

16 A I just read what was on the paper.

17 Q Yeah, but you knew that that was what  
18 had occurred, that he had been charged?

19 A Sure, whatever.

20 Q Sure. And you knew that the police  
21 were investigating that accident and its  
22 aftermath, correct?

23 A When I got called by internal affairs,  
24 yes.

25 Q Sure.



1 A Yes.

2 Q And you had some discussions with  
3 those officers about records that may be in the  
4 possession of Branigan's, correct?

5 A With the two -- yeah, Gerardy, I  
6 think, or Girard, yes.

7 Q Yes. But you had those discussions  
8 with the police officers then, in March of 2005?

9 A That's what it says here, yes.

10 Q Yeah. And you understood from that  
11 that those officers were interested in finding  
12 evidence to demonstrate how much Mr. Zenk had had  
13 to drink. Is that right?

14 A Well, they were trying to find out how  
15 much they drank.

16 Q Yeah. And you knew that's what they  
17 were trying to find out, and they asked you if you  
18 had any records that would assist in that effort?

19 A We told them we have cash-outs, we  
20 have reports in the back, we do reports in the  
21 back and we can pull them out. They never asked  
22 us to produce them.

23 Q Okay. But if the officer said to you,  
24 listen, we are looking for records that will  
25 assist us in --

1           A     I can't recall what the questioning  
2     was, sir.

3           Q     No, no, I don't mean the exact words,  
4     sir.

5           A     Oh.

6           Q     But you understood what they were  
7     after, they were after records that would assist  
8     in determining how much this guy had to drink;  
9     right?

10          A     Well, they were asking on the sales  
11     and stuff and how much we sold that evening.

12          Q     Okay. But could you produce records  
13     that would show, on an individual basis, what  
14     Mr. Zenk had consumed that evening?

15          A     No.

16          Q     You didn't have records that would  
17     show that on an individual basis, but you did on a  
18     global basis?

19          A     On a global basis.

20                   MR. GREEN: Thank you.

21                   MR. McFETRIDGE: No questions.

22     BY MR. CLIFFORD:

23          Q     Just a few areas in redirect,  
24     Mr. Commissioner.

25                   First, Mr. Bravo, in your

1 cross-examination by Mr. Labossiere, you spoke of  
2 speaking to both Officers Black and Bauer about  
3 what had taken place on February 24th and 25th.  
4 And I want to follow up with you on that, sir,  
5 particularly your testimony that you also spoke to  
6 Norbert Bauer about it.

7           You have indicated that you were  
8 asking them questions about what had taken place,  
9 and you responded to Mr. Labossiere's suggestion  
10 that basically they were telling you that they  
11 couldn't share any information with you, that they  
12 were jealously guarding the information about the  
13 case and they told you they couldn't talk to you  
14 about it?

15           A     Yes, sir.

16           Q     Okay. How many times did you try to  
17 talk to Sean Black about it, where he told you,  
18 look, I'm not going to talk about it?

19           A     I don't remember sir.

20           Q     You don't remember?

21           A     No.

22           Q     How many times did you talk to Norbert  
23 Bauer about it, where you were asking him  
24 questions?

25           A     I can't remember.

1 Q You can't say when it was the  
2 conversations occurred?

3 A No, I can't, sorry.

4 Q Were they over the phone, were they  
5 face-to-face?

6 A I, I don't remember, sir.

7 Q So what we have from you, sir, is a  
8 recollection that you talked to them, you asked  
9 them questions about what happened, and you got  
10 bumped off the trail, they told you that they  
11 couldn't talk to you?

12 A Yeah, that's where it was, I stopped  
13 asking.

14 Q And do we confine it to Officers Black  
15 and Bauer, that they were the only two that you  
16 spoke to?

17 A I can't remember, sir.

18 Q You were asked some questions about  
19 the records again, and you looked at the records  
20 and you said that \$2.75 pints we would have given  
21 to the policemen?

22 A Yes.

23 Q And I take it that that's your  
24 conclusion looking at the pints?

25 A Um-hum.

1 Q And you said, okay, that number of  
2 pints, where you calculate it out, it's not that  
3 much. But this is the first time you had seen  
4 those records, I take it, was in the witness box  
5 testifying?

6 A Yes.

7 Q You don't know what else was served to  
8 the officers, do you?

9 A No.

10 Q You don't know whether some of those  
11 Miller Genuines, or any of those 19 free drinks,  
12 or any of the hard alcohol, the ryes, you have no  
13 idea what they had, do you?

14 A Well, when they were there, when I was  
15 there, \$2.75 pints was the deal that they had, and  
16 if it was like me, they go for the deal.

17 Q Were you there that night when they  
18 were there?

19 A No, sir, I wasn't.

20 Q So you don't know what they had, do  
21 you?

22 A I'm telling you that the \$2.75 pints  
23 were offered to the police officers, as they were  
24 to Gauthier, as they were to fire fighters, just  
25 to drum up business from them.

1 Q Nobody else would have gotten the  
2 \$2.75 pints that night, sir, I understand that.

3 A That evening?

4 Q That evening.

5 A No.

6 Q But --

7 A If my soccer team was there, they  
8 would have got \$2.75 pints I'm trying to say.

9 Q Let's confine ourselves to the night  
10 in question, February 24th, 25th.

11 A Sure.

12 Q The officers got \$2.75 pints?

13 A Yes, sir.

14 Q You are firm on that?

15 A I'm -- yes.

16 Q Now, you don't know what else they  
17 consumed beyond the \$2.75 pints, do you?

18 A No.

19 Q Now, sir, you also, in response to  
20 cross-examination, told one of the counsel present  
21 that you actually told the Winnipeg Police  
22 Officers that there were reports in the back, and  
23 that they didn't ask you to pull them up?

24 A No, they didn't ask.

25 Q What I'm interested in is the fact

1 that you have testified, sir, that you actually  
2 told these officers that you did have reports, et  
3 cetera, in the back?

4 A They were on the disks, whatever got  
5 put on the disks.

6 Q Okay. Well, you had explained this  
7 through your examination-in-chief, and when  
8 Mr. Commissioner asked you questions, that you  
9 didn't tell them anything about the disks?

10 A What I remember is that Sergeant  
11 Girard and the other gentleman, I can't remember  
12 his name -- I can't remember his name -- anyways,  
13 they were asking us, okay, if we can pull up  
14 individual bills. We told them, no, we can't  
15 provide individual, unless we have a cheque number  
16 to go into the computer, we can pull up that  
17 cheque number, that specific cheque number.

18 Q Did you tell them that you have  
19 reports in the back?

20 A I -- well, it's here. Can I look at  
21 my notes? Can I look at my notes?

22 THE COMMISSIONER: Of course.

23 THE WITNESS: Thank you. If you can  
24 enlighten me and see if -- I can't find anything  
25 here that they talked about.

1 BY MR. CLIFFORD:

2 Q Well, I'm asking you this question,  
3 sir, because I heard it in response to  
4 cross-examination. You raised it, and it's the  
5 first time I had heard it, where you suggested  
6 that you told the officers you had reports in the  
7 back but they didn't ask you to go and pull them  
8 up. So I can't refer you to anywhere in your  
9 transcript.

10 A I can't remember what exactly, what  
11 words I said to them, okay, or what they asked  
12 for. I mean, it's a long time ago.

13 Q So, in fairness, to those officers --

14 A Pardon me?

15 Q In fairness to those officers, is it  
16 possible you didn't tell them that there were  
17 reports in the back?

18 A It's possible, in fairness to those  
19 officers, yes.

20 MR. CLIFFORD: Those are the questions  
21 I have for you, sir.

22 Mr. Commissioner, I note the time is  
23 10:45. I am going to suggest that this would be  
24 an appropriate time to take the morning recess. I  
25 am also going to ask you, Mr. Commissioner, to



1 remind Mr. Bravo of our exclusion of witness  
2 orders and what flows from that with respect to  
3 discussions outside this room.

4 THE COMMISSIONER: Thank you very  
5 much. Mr. Bravo, you are not to discuss your  
6 evidence with anybody, any of the witnesses who  
7 are outside waiting to be called. Okay. Thank  
8 you very much. You can leave. You are finished.

9 THE WITNESS: Okay.

10 THE CLERK: Fifteen minutes.

11 THE COMMISSIONER: Fifteen minutes.

12 THE CLERK: All rise. This Commission  
13 is in recess.

14 (Proceedings recessed at 10:46 a.m.  
15 and reconvened at 11:01 a.m.)

16 THE CLERK: All rise. This Commission  
17 of Inquiry is now reopen. Please be seated.

18 MR. PACIOCCO: Mr. Commissioner, the  
19 Commission would like to call Chief McCaskill to  
20 the stand, please. I see him sitting there. Sir,  
21 if you can please stand?

22 ROBERT KEITH McCASKILL, being first  
23 duly sworn, testified as follows:

24 BY MR. PACIOCCO:

25 Q Good morning, sir.

1 A Good morning.

2 Q My name is David Paciocco and I'm  
3 Commission Counsel. I understand that you are the  
4 Chief of Police of the Winnipeg Police Service,  
5 sir?

6 A Yes, I am.

7 Q And how long have you been the Chief  
8 of Police?

9 A Since December 10th, 2007.

10 Q And, sir, you were not originally  
11 scheduled to testify in connection with this  
12 Inquiry and you have not been interviewed by  
13 Commission Counsel before today?

14 A No, I have not.

15 Q Sir, what was your status back on  
16 February 25th, 2005, with the Winnipeg Police  
17 Service?

18 A I was an Inspector with District 3  
19 Division.

20 Q Sir, I understand that in your  
21 capacity as Division 3 Inspector, you received a  
22 phone call from Chief of Police Harry Bakema of  
23 the East St. Paul Police Service?

24 A Yes, I did.

25 Q And the phone records that we have

1 obtained in connection with that phone call show  
2 that there were a series of phone calls to the  
3 Division Commander, Division 13?

4 A I understand that, yes. I only spoke  
5 to him once, though.

6 Q Okay. And that would be a call to  
7 you, sir. The number would be 986-2854?

8 A That's correct.

9 Q And I know that the first two of those  
10 phone calls, I can advise you, were charged out at  
11 one minute, which meant that they could have been  
12 attempts, unsuccessful, to connect with you?

13 A That's possible.

14 Q The third of those calls was  
15 11:20 a.m., and that phone call, according to the  
16 records that we have obtained, lasted 4.483  
17 minutes, so just under four and a half minutes.  
18 And there has been some issue raised in these  
19 proceedings as to what that phone conversation  
20 involved, given that Mr. Bakema was still at the  
21 scene of the accident and it is the first recorded  
22 contact with the Winnipeg Police Service.

23 Sir, do you have a recollection of  
24 that phone conversation?

25 A Yes, I do. First of all, I'd like to

1     thank Mr. Commissioner for making time for me at a  
2     short notice like this. I think it's important to  
3     get this information out.

4                     I was contacted by Chief Bakema at  
5     that time, and he informed me that one of our  
6     officers from District 3, a person by the name of  
7     Derek Harvey-Zenk, had been involved in a very  
8     serious motor vehicle accident and a fatal  
9     occurred. At the time we had a conversation, I  
10    wanted to know where it occurred. He explained  
11    that it was on 59 Highway, just north of the  
12    Perimeter, and explained the location, it's at a  
13    light intersection. And I certainly was aware of  
14    that location because I drive by there almost  
15    everyday to work.

16                    He explained to me that the police  
17    officer had a uniform in the car. He indicated  
18    that the investigation was ongoing. There was  
19    three vehicles involved in the accident, the  
20    person that had passed away was in another  
21    vehicle. He indicated, again, that the  
22    investigation was ongoing.

23                    I asked how the officer was. He said  
24    he wasn't hurt. He indicated that the officer was  
25    at the station. And I asked him if he would keep

1 us informed.

2                   So I generally knew what happened. At  
3 the time I was thinking that, in my mind anyway --  
4 pardon me, I also asked him the time and he said  
5 it was around 7:00 o'clock. At the time I was  
6 thinking more that the officer was on his way to  
7 work because of the uniform and so on. He didn't  
8 comment any further, other than he would  
9 contact -- I asked him to contact us when he found  
10 more information.

11                   After the phone call, I checked and  
12 the officer, I didn't know who he was actually  
13 other than the name, I checked our Niche System to  
14 see what he looked like, and I recognized him. I  
15 checked the shift and found out that he was  
16 actually working the evening shift before and he  
17 took some time off.

18                   I then contacted Acting Deputy Chief  
19 Corrine Scott to inform her of that information.

20                   Q     And Acting Deputy Chief Corrine Scott  
21 would have been referred to as the Deputy Chief of  
22 Operations, was that a position that she was  
23 filling?

24                   A     I believe so. She was the one, when I  
25 phoned, she was the one that was available. And I

1 can't comment whether it was operations or  
2 administration. I am assuming it was operations.

3 Q The reason I say that is there is a  
4 subsequent conversation with the Deputy Chief of  
5 Operations, according to the phone records that we  
6 have received, and that conversation would have  
7 been, according to the information we have, with  
8 Corrine Scott.

9 A I am assuming that would be correct,  
10 yes.

11 Q Did you identify to Mr. Bakema that he  
12 should be contacting Corrine Scott?

13 A No, I didn't. I said, I asked him to  
14 contact as he had more information, but I didn't  
15 refer to Corrine Scott, no.

16 Q At any time did Chief Bakema suggest  
17 to you that Mr. Derek Harvey Zenk, if he was  
18 scheduled to go to work that day, should not be  
19 permitted to take the shift?

20 A You know, I don't believe he did.  
21 It's possible, but I don't recall that.

22 Q All right. Sir, and I note the  
23 Commission does not have any notes of this  
24 conversation that you had with Chief Bakema, did  
25 you make any notes of the conversation?

1           A     You know, no, I didn't, but I'll  
2 explain the reason that I do remember it well. In  
3 the specific case, this is obviously a horrendous  
4 case where somebody lost their life, my wife and I  
5 have spoken about this case quite often. The  
6 reason for it, we both attend work, obviously, and  
7 quite often go past the intersection that this  
8 happened. There is a memorial set up for the  
9 victim and, of course, it's a topic of  
10 conversation regularly. Not only that, there is,  
11 we have friends of ours that live about two houses  
12 away from the former Taman residence. And so we  
13 even remember the fact when it went up for sale.  
14 So it's been a topic of conversation ongoing since  
15 this happened. And to add to it, my daughter  
16 certainly knows two of the Taman children, so...

17           Q     Sir, we also have information that a  
18 wellness officer from the Winnipeg Police Service,  
19 Sargeant Isaak, I believe, was at the East St.  
20 Paul Station shortly after the phone call that was  
21 made to you. Do you have any recollection as to  
22 whether you either contacted anyone from the  
23 wellness office, if there is such an office, or  
24 whether you contacted your wellness officer, or  
25 suggested to Corrine Scott that she do so?

1           A     No, I don't recall that at all. You  
2 know, it's -- I did get some information, though,  
3 from Acting Deputy Chief Scott later in the day,  
4 and I was advised of some of that information.  
5 And I can expand, if you'd like?

6           Q     Sure, that would be helpful.

7           A     Basically, it was around, I believe it  
8 was around 4:00 o'clock that day I have received a  
9 call from Corrine Scott. She had indicated that  
10 Derek Harvey-Zenk had been charged with drive  
11 impaired causing death and other offences, that  
12 she had received information from Paul Isaak, who  
13 was the wellness officer, that he was concerned  
14 about the well-being of Derek Harvey-Zenk. She  
15 directed me to seize his firearm, which I did,  
16 went to his locker, seized -- and I had my Staff  
17 Sergeant with me, seized the weapon and ammunition  
18 and later turned it over to the Professional  
19 Standards Unit.

20          Q     Yes. And that would have been turned  
21 over to Sergeant Pearson, I believe?

22          A     That's correct.

23          Q     Sir, you also had a meeting with two  
24 other sergeants from the Winnipeg Police Service,  
25 Sergeant Jim Anderson and Sergeant Chris Humniski,



1 and that took place on the 28th of February, a few  
2 days after the accident. Do you recall that  
3 event, sir?

4 A Yes, I do.

5 Q I understand you met with them at a  
6 doughnut shop, Tim Hortons, at 1415 in the day,  
7 according to notes provided by you, sir?

8 A That's correct.

9 Q Sir, how did that meeting come about?

10 A I received a phone call from one of  
11 the sergeants and they said they wanted to talk  
12 about something confidentially. And I have done  
13 this quite often. The doughnut shop we are  
14 talking about is Tim Hortons, it's actually --  
15 Hartford is where the station is located, and it's  
16 just down the street on Main, I think it's Burrin,  
17 I believe, about a street or so over. And I met  
18 with them and they provided some information to  
19 me.

20 Q So they indicated to you that they did  
21 want this to be a confidential meeting at that  
22 point, sir?

23 A No, they wanted to meet and they  
24 wanted to discuss it, and discuss some  
25 information. That's why I attended. It was, you

1 know, they had some information about what had  
2 occurred.

3 Now, you keep in perspective, I know  
4 that, if memory serves me right, after the  
5 incident, the tragic incident on the Friday, I  
6 believe that there was a newspaper article that  
7 came out on the weekend indicating that now there  
8 was -- people were involved in a party, police  
9 officers, prior to that accident. And so I was  
10 aware of that information, just what was in the  
11 paper.

12 Q Okay. If I could just stop you there  
13 for a second there, sir. I asked about them  
14 wanting to see you confidentially because that was  
15 the word you used when you described the  
16 arrangement for the meeting. Can you explain why  
17 that word was used, sir?

18 A You know, I can't. I think it was  
19 they wanted to get advice from me, I believe.

20 Q Okay, I'm sorry to have interrupted  
21 you, please continue?

22 A I believe they wanted to get advice  
23 from me and that was my thought, and so that's why  
24 I went there. You know, it's quite often in the  
25 in the police station, obviously the way my office

1 was situated, you go in there and everybody knows  
2 that you're there, everybody goes by, the  
3 secretary and so on. I wanted to find out what it  
4 was all about, so I attended there and they told  
5 me some information.

6 Q Your note indicates they wanted to  
7 talk about the incident?

8 A Yes.

9 Q So their overture to you had to do  
10 with their desire to discuss the incident in  
11 question?

12 A Absolutely.

13 Q Your note also indicates that they  
14 wanted to come forth and help the investigation,  
15 according to the information they provided to you,  
16 sir?

17 A That's correct.

18 Q And what else was said?

19 A Well, first of all before I comment, I  
20 was actually quite pleased about this, and it's  
21 putting things into context. At the time, in  
22 2005, there was, rightly or wrongly, there was a  
23 feeling amongst a lot of the membership that the  
24 executive of the service wasn't supporting them.  
25 I think it's fairly well documented, you know,

1 since then, from the feeling that people would be  
2 held accountable even if they didn't do things,  
3 anything wrong. And I don't know if that's  
4 necessarily accurate but that was the general  
5 feeling. So I was really pleased with the fact  
6 these sergeants were coming forward.

7           They indicated that they were at a  
8 restaurant, and at Sean Black's house, who was a  
9 constable, later in the evening. They indicated  
10 that it was somewhat of a subdued get-together.  
11 We didn't get into it too much what that meant,  
12 but they wanted to come forth and be honest and  
13 straightforward and tell exactly what transpired,  
14 and I was really pleased about that.

15           Q     Did you ask any questions about what  
16 they meant about being a subdued get-together?

17           A     No. My understanding of that was that  
18 it wasn't a wild party or anything like that, and  
19 that's what my understanding of it was. You know,  
20 there wasn't a lot of discussion at that meeting,  
21 but I was pleased of the fact they wanted to come  
22 forth. And I felt it was important to be able to  
23 get them in somewhere and tell their story as soon  
24 as possible.

25           Q     Sir, can we assume that that meeting

1 took approximately 25 minutes, based on your note,  
2 1415 at the time in the beginning, and there's a  
3 phone call to Art Stannard at 1440 in connection  
4 with the conversation you just had, sir?

5 A No, I don't believe it took that long.  
6 Because what happened was we had, we were there at  
7 the restaurant, and I understand how it appears in  
8 the notes, but we were at the restaurant for a  
9 period of time, I went back to the District 3  
10 station and I called Art Stannard at 1440. And  
11 later the two sergeants came back and met me at  
12 the District 3 station, and we went to the Public  
13 Safety Building.

14 Q Was there any disclosure made to you,  
15 and I'll come back to Mr. Stannard in a moment --  
16 what is his position, sir, Mr. Stannard's?

17 A His was Superintendent. I'm not sure  
18 if he was Acting Deputy Chief at the time, but at  
19 the time he was my direct supervisor as a  
20 Superintendent.

21 Q Very good. Sir, coming back to the  
22 conversation that you had with Sergeant Anderson  
23 and Sergeant Humniski, did they make any reference  
24 to where members of the shift had been prior to  
25 going to Officer Black's house?

1           A     Yeah. They indicated there was a  
2 restaurant, I believe, and let me check my notes.  
3 I don't think they indicated which restaurant it  
4 was at the time, but I don't have it in the notes.  
5 I do know the restaurant now from information from  
6 the media and so on.

7           Q     Are you able to advise us as to  
8 whether or not the reference to the subdued  
9 atmosphere that you have recorded in your notes  
10 was related to describe Black's party, or only  
11 Black's party, or the restaurant and Black's  
12 party?

13          A     My belief at the time was both. They  
14 got together at this restaurant and went to  
15 Black's afterwards. There was an indication  
16 throughout the conversation that the two sergeants  
17 didn't stay that long at Black's but they did go  
18 to Black's.

19          Q     Okay. Sir, and there was also some  
20 reference in your notes to plans or precautions  
21 that had been put in place. Can you elaborate on  
22 that, please?

23          A     Yes. They indicated that there was  
24 plans in place that, you know, I'm talking about  
25 at Black's place, that people could sleep over or

1 I believe get a ride as well.

2 Q All right. Sir, and you would have --

3 A I didn't expand on that or ask what  
4 that meant, but I believe that what they were  
5 telling me is that if people wanted to stay there,  
6 they could, and there was somebody that could  
7 drive them home.

8 Q Okay. And you would have understood  
9 in the context of that conversation that there was  
10 some drinking going on and there were positions,  
11 or precautions put in place in order to prevent  
12 the kind of tragedy that occurred on this  
13 occasion?

14 A Well, absolutely, there was obviously  
15 drinking going on at the restaurant, I'm assuming,  
16 and his place. That's why the comment was made.

17 Q There's also an indication in your  
18 note that they approached you and indicated to you  
19 that they wanted the executive to know the truth?

20 A Yes. And that was an important  
21 statement to me, because as I said before, there  
22 was a real feeling in the service that they  
23 weren't being supported. And I don't know if  
24 that's necessarily justified, but I know there was  
25 a feeling that way. So I thought that was a good

1 comment from them.

2 Q Were you present during the interview  
3 that was conducted, or the meeting that was held  
4 with Superintendent Stannard after you made  
5 contact with him, sir?

6 A Yes, I was. I attended with the two  
7 officers, drove down to the station and arrived  
8 there and went into his office, Superintendent  
9 Stannard's office with the two officers, and they  
10 briefed him on some of the information that we  
11 just talked about. Superintendent Stannard then  
12 asked us to stay there. He left. And I was  
13 assuming that he was talking to other members of  
14 the executive, came back and then he indicated  
15 that the two officers could be interviewed by  
16 Professional Standards Unit, and I left.

17 Q Okay. And I notice you do indicate  
18 that during that meeting there were, there was  
19 discussion again of precautions being in place?

20 A That's what they had indicated, yes.

21 Q And so I take it you were  
22 understanding that these two sergeants were  
23 effectively making it clear, through their  
24 information to you, that they had acted  
25 responsibly in connection with this event, because



1 they were out there, they were present, and this  
2 wasn't something that was just ignored, they were  
3 going to try and ensure that anybody who needed to  
4 be taken care of, because of alcohol consumption,  
5 would be taken care of?

6 A Well, I didn't get that necessarily.  
7 I got the fact that there was precautions taken.  
8 I didn't ask them if they were the ones who were  
9 taking these precautions. They were sergeants,  
10 however. But the comment was precautions being  
11 taken, so I didn't elaborate on that. To me, it  
12 was important they were coming forth and wanting  
13 to tell the story. Professional Standards Unit  
14 would get all of the information, as far as I was  
15 concerned, and get it on record.

16 Q I understand your read of the  
17 situation, sir. You also understand that the two  
18 sergeants themselves had been in attendance at  
19 Branigan's that evening?

20 A Yes, it was my understanding they  
21 were.

22 Q It was also your understanding they  
23 were in attendance at Black's?

24 A That's correct.

25 Q And they of course are supervisors,

1 sir?

2 A Yes, they are.

3 Q And they have tremendous interest in  
4 the welfare of the platoon or the group that they  
5 are responsible for?

6 A They should.

7 Q They have an interest in the morale  
8 for that group?

9 A They should.

10 Q And they are interested in being  
11 supportive of everyone and ensuring that there  
12 would be no difficulties in terms of anyone  
13 getting into trouble with Professional Standards?

14 A Well, I believe that they should,  
15 supervisors should, obviously should support their  
16 shift, but they should also make sure that the  
17 truth on issues are coming out, and certainly they  
18 have a responsibility to supervisors.

19 Q I understand that. You certainly kept  
20 in mind the possibility, when they spoke to you,  
21 that not only do they have a responsibility for  
22 being interested in the truth, they also had an  
23 interest in presenting this information to you as  
24 a subdued affair in which everyone acted  
25 responsibly?

1           A     Absolutely.

2           Q     Sir, the Professional Standards Unit,  
3 I understand that the Professional Standards Unit  
4 is a special agency inside of the Winnipeg Police  
5 Service that reports directly to the Chief of  
6 Police?

7           A     That's correct.

8           Q     And its function, as I understand it,  
9 is to investigate any potential misconduct,  
10 whether it be criminal or service related, on the  
11 part of members?

12          A     That's correct.

13          Q     And they are designated, or  
14 established with the expectation that they will  
15 operate independently of the other chains of  
16 command within the Winnipeg Police Service in  
17 order to facilitate that function, sir?

18          A     Yes. They report directly to the  
19 Chief, that's correct.

20          Q     Sir, did you attend any briefings that  
21 were conducted in connection with the Harvey-Zenk  
22 matter, as it progressed over the next few weeks  
23 and months?

24          A     I did attend a briefing, the shift  
25 briefing the first day that the officers came

1 back, that particular shift.

2 Q Did you attend any briefings with  
3 executive members of the Winnipeg Police Service?

4 A No, I did not.

5 Q And, sir, can you tell us what  
6 happened after the conversation that took place in  
7 Superintendent Stannard's office?

8 A Yes. As I said, Superintendent  
9 Stannard left the room and I believe he was  
10 speaking to other members of the executive, I  
11 wasn't privy to that conversation. He came back  
12 in and indicated that the two officers could go to  
13 the Professional Standards Unit to provide  
14 information, and I left.

15 Q Do you have any knowledge of the  
16 status of the investigation that the Professional  
17 Standards Unit may have been engaged in at the  
18 time that these two sergeants went over there to  
19 provide statements?

20 A No, I don't.

21 Q Now, sir, I understand that when the  
22 Professional Standards Unit started to interview  
23 other officers, that they used your good offices  
24 to assist them in setting up those interviews?

25 A What happens is a matter of course,

1 and this happens fairly regularly, when there's an  
2 issue or an allegation against an officer, whether  
3 it's an internal allegation, or from time to time  
4 there is criminal allegations. When Professional  
5 Standards Unit is involved, they provide usually a  
6 private document to the divisional commander with  
7 notices for the officers they want to interview.  
8 In this particular case, it happened as well. The  
9 notices usually would be given to, in an envelope,  
10 would be given to the Sergeant to serve on the  
11 individual officer. The Sergeant usually would  
12 make a notation on the document saying what time  
13 they were served and forward that back to  
14 Professional Standards.

15 Q So this operates kind of like an  
16 informal subpoena within the Police Service to  
17 alert officers to their obligation to go and speak  
18 with Professional Standards Unit?

19 A That's correct.

20 Q And I understand that when those, I'll  
21 use the term subpoenas or notices, I understand  
22 when those subpoenas or notices are issued to  
23 officers, they are usually issued while those  
24 officers are on shift?

25 A Usually they would be, yes.

1 Q And they are also issued with  
2 sensitivity to annual leave and other forms of  
3 leave that have been provided?

4 A That's correct.

5 Q Sir, I take it that you didn't rise to  
6 your current stature without having been an  
7 investigator?

8 A That's correct.

9 Q And you would agree with me that in  
10 the course of conducting a criminal investigation  
11 of any kind, especially in serious matters, that  
12 it's important to interview witness as soon as  
13 reasonably possible?

14 A That's correct.

15 Q You want to preserve their memory, you  
16 want to preserve the record, you want to get to  
17 them before they have had an opportunity to speak  
18 to others?

19 A That's correct.

20 Q You would you agree with that, sir?

21 A That's correct.

22 Q And so the ideal would be to get  
23 everyone interviewed before they have had a chance  
24 to get together and have conversations or  
25 basically debrief one another?

1           A     That's correct.

2           Q     I understand from Detective Sergeant  
3 Girard's notes, that when he contacted you to  
4 arrange for the attendance of the officers under  
5 your command, you recommended that the shift be  
6 given 24-hours notice before they come in for  
7 interviews?

8           A     That is correct.

9           Q     And sir, can you explain why you would  
10 have done that?

11          A     Because that's the policy of the  
12 Police Service. There's a policy for Professional  
13 Standards, when they are interviewing an officer,  
14 and it's looking at -- there's two different  
15 issues here -- the issue of I guess administrative  
16 law, I'm certainly not an expert in it, but the  
17 officers will be held accountable and will be held  
18 accountable by the service, not only can impact on  
19 their jobs, they could be fined, they could be, in  
20 an extreme situation where they've done something  
21 wrong, could lose their job. The notification  
22 usually is to allow them to talk to their union to  
23 provide them with some advice. Also the officers,  
24 as a witness, they can be directed by the Service,  
25 off duty or on, to provide information. Normally

1 witnesses cannot, you can't direct them to provide  
2 information they don't want to. Police officers  
3 have to. So there is -- and I believe that's why  
4 the different procedures are in place, because it  
5 can impact on their jobs.

6 Q And sir, you understand, I take it,  
7 that it's an option as to whether you would direct  
8 officers to attend interviews. You could request,  
9 it's not something that must be demanded of them?

10 A That's correct.

11 Q And sir, I understand there are also  
12 protections in place in connection with  
13 disclosures made in that context by subject  
14 officers?

15 A I don't follow you, I am sorry?

16 Q If a subject officer was to be  
17 called --

18 A Yes?

19 Q -- and give information and there was  
20 subsequently to be a prosecution?

21 A I believe there is, yes.

22 Q So the statements that the subject  
23 officer makes, I understand, cannot be used in a  
24 subsequent proceeding?

25 A I believe that's the case. I haven't



1 read the procedure for some time, but I believe  
2 that is the case. But also the individual that is  
3 provided information can certainly be held  
4 accountable, I think, under the regulations,  
5 depending on what the information is.

6 Q Certainly. Sir, you would agree with  
7 me that frequently allegations of criminal conduct  
8 can have an impact on the profession of anyone who  
9 happens to fall in the way of that type of horrid  
10 experience?

11 A I believe that would be the case, yes.

12 Q And that typically when police  
13 officers interview witnesses, there is not a  
14 priority given on the part of police officers to  
15 concerning themselves with whether or not this  
16 will have a professional impact on the witness,  
17 the job of the police officer is to get the  
18 evidence?

19 A That's right.

20 Q And to get it in the best possible  
21 state. And you would agree with me, sir, that  
22 affording the police officers an opportunity to  
23 consult with union reps, or anyone, as well as a  
24 24-hour waiting period, is not something that is  
25 accorded to ordinary witnesses?

1           A     That is correct.

2           Q     So, essentially police officers are  
3     treated differently from other witnesses when this  
4     policy is put into place?

5           A     That is correct.

6           Q     This policy, also, by virtue of  
7     providing a 24-hour notice period, carries some  
8     risk, does it not, that officers might have an  
9     opportunity to speak to each other before they are  
10    interviewed?

11          A     You know, I guess it always is a  
12    possibility, and we expect our officers to be  
13    honest. But you're right, there is always that  
14    possibility.

15          Q     And sir, I am also given to understand  
16    that when Professional Standards Unit does get  
17    involved in criminal investigations where there  
18    are criminal charges being investigated by an  
19    outside police force, there is a general practice  
20    of basically standing off the internal  
21    administrative issues so that you don't step on  
22    the toes of the external criminal investigation?

23          A     Well, we've had situations where  
24    people have been charged under regulations, but  
25    things like that happen even on an ongoing

1 criminal investigation. But dealing with the  
2 subject officer, I agree with you. We have had  
3 situations, though, where police officers, we have  
4 had police investigation and potentially a witness  
5 officer has provided information and has been  
6 charged and dealt with prior to the criminal case  
7 being completed. If you're saying about outside  
8 agencies, I can't recall too often that  
9 Professional Standards would be involved.

10 Q Yes, our understanding is this  
11 arrangement that is ultimately made, and I don't  
12 know how much you know of it, where East St. Paul  
13 is effectively using Winnipeg Police Service  
14 Officers to conduct part of the investigation, is  
15 quite unique. And I'll explore that more with  
16 Detective Sergeant Girard and Poole.

17 A I would suggest it would be. I wasn't  
18 involved in those discussions.

19 Q And the suggestion I was making to  
20 you, sir, is that the criminal investigation has  
21 to take priority over the administrative issues  
22 that arise as a result of the conduct of an  
23 accused police officer?

24 A Absolutely.

25 Q And you could certainly deal with

1 administrative concerns about whether that officer  
2 should remain on the job by providing a temporary  
3 suspension with pay, in order to ensure that if  
4 the officer is guilty, they won't be given service  
5 obligations during the period before that's  
6 ultimately determined?

7 A Yeah, there's a number of options if a  
8 person is charged with a criminal offence.  
9 Normally there would be a suspension hearing with  
10 a number of options on how to deal with that  
11 person, pending a conviction.

12 Q And so the Professional Standards Unit  
13 makes a choice whether to enter into an  
14 investigation, and has the option of essentially  
15 holding off the investigation until the criminal  
16 investigation question is completed?

17 A They would have a choice, yes.

18 Q Sir, you began to talk about attending  
19 a briefing, and I think you were referring to a  
20 briefing with the shift itself on March 2nd?

21 A That is correct.

22 Q We have some information, sir, that  
23 you did attend a briefing, and I think, if I'm not  
24 mistaken, you would have organized the briefing  
25 and you would have had some form of presentation

1 to the officers in attendance?

2 A Yes. I didn't really organize a  
3 briefing, it's a regular shift briefing that they  
4 were there, and I wanted to attend and talk to the  
5 shift. And that's what I did.

6 Q What did you talk to him about?

7 A Well, I was concerned that, you know,  
8 based on a number of things, specifically I was  
9 indicating that the relationship, or perceived  
10 relationship with not being supported, that kind  
11 of thing, I was concerned that officers may not  
12 come forward and tell all the facts. I wanted to  
13 make sure they realized how serious this case was.  
14 I remember, you know, it was very subdued, people  
15 were obviously upset about the whole thing. And I  
16 explained to them, this is very serious, we have a  
17 person who has died, it's a tragedy, a person has  
18 died as a result of actions of a police officer.  
19 That's serious. I explained that the issue here  
20 is that, you know, Constable Harvey-Zenk is now  
21 charged with very, very serious offences, that he  
22 is likely going to be suspended. I couldn't say  
23 for sure, but likely would be. He would likely,  
24 you know, or possibly go to jail, that potentially  
25 he could be sued. This impaired driving thing,

1 and if you're convicted of impaired driving, I  
2 don't think you have any insurance. This is a  
3 very, very serious thing. But the most important  
4 thing is that somebody has died here. And I  
5 encouraged them all, I said, look, Professional  
6 Standards is going to talk to you, I want you to  
7 be honest, and think about how this, how serious  
8 this case is. There was a lot of things. I  
9 believe we had a very young shift as well, that  
10 was concerning me. I wanted them to know that  
11 it's -- be honest and be straightforward and  
12 whatever happens, it happens. Be truthful.

13 Q I take it, sir, that you took the  
14 energy and the effort to tell them that, because  
15 you appreciated that it would be a very difficult  
16 thing for a police officer to provide information  
17 that could cause such tremendous harm to another  
18 fellow officer, such as a civil liability, such as  
19 criminal liability, such as going to jail, things  
20 you described for them?

21 A No, I don't think that was the issue.  
22 I want our officers to always feel that it's  
23 important to come forth, and that was the issue.  
24 I wanted them to know that you certainly have my  
25 supports, it's got to be truthful. You give the

1 facts out. As I said, the concern I had was that  
2 huge rift. And I didn't want -- and my words  
3 only, not anybody talked to me about it -- I  
4 didn't want people to think that they weren't  
5 going to be supported for telling the truth, they  
6 would be. Of course, if there's something wrong  
7 occurred, they would obviously be held  
8 accountable. But the point is, I wanted them to  
9 make sure that this is a very serious issue, be  
10 straightforward, and that's what it was all about.

11 Q Would you agree with me or disagree  
12 with me if I was to suggest that police officers  
13 tend to develop a very strong bond of loyalty to  
14 one another?

15 A I would agree with that.

16 Q And it's very important that they do,  
17 given the nature of the work that gets undertaken?

18 A That's true.

19 Q There has to be deep trust between the  
20 officers in order to engage in the very dangerous  
21 undertakings that officers have to engage in?

22 A I would agree with that too.

23 Q And these were young officers, as you  
24 described?

25 A Many of them were.

1           Q     And just so that I understand your  
2 evidence, did it not go through your mind that  
3 there might be a reluctance on the part of some of  
4 these officers to be truthful, the way that any  
5 witness is meant to be, when talking to  
6 investigators, and that you wanted to make it  
7 clear that it was your position, as their  
8 supervisor, that their first loyalty is to the  
9 truth and not to the uniform?

10           A     I felt that there might be some  
11 reluctance to tell all the facts. And I was only  
12 doing that based on my belief that they perhaps  
13 felt they wouldn't be supported. And coupled with  
14 that, my expectation is that officers will tell  
15 the truth, and I wanted to get that across. It  
16 was so vitally important.

17           Q     Sir, that expectation that officers  
18 will tell the truth is one that becomes very  
19 apparent when the file is read through, and it's  
20 an attitude shared by many of your colleagues.  
21 And I think it's probably one that you would  
22 support?

23           A     Um-hum.

24           Q     At the same time, sir, do you not  
25 agree that frequently, when presenting witness



1 interviews, that rather than starting from the  
2 assumption that officers would tell the truth,  
3 that a healthy scepticism is required in order to  
4 get to the truth?

5 A Well, you know, it's one of those  
6 things where, you know, as a leader of the  
7 organization, I want to believe that our officers  
8 are always going to tell the truth. There have  
9 been occasions, obviously, in the past that that  
10 has not happened. I think it's rare, but it has  
11 happened. And I wanted to make sure that people  
12 really understood the expectations that are there.  
13 My belief, even though I'm saying this, they were  
14 going to tell the truth, but I wanted to make sure  
15 that they realized that it is so important to do  
16 so. And like I said, there have been occasions  
17 where it hasn't happened in the past. So I think  
18 it was so important for me to do that. I wanted  
19 them to feel comfortable with coming forth and  
20 answer the questions and lay it all out.

21 Q And I take it, sir, as Chief of  
22 Police, you would want anyone conducting  
23 investigations through the Professional Standards  
24 Unit to conduct the kind of rigorous and searching  
25 investigations that you would expect in any major

1 crime?

2 A Yes, absolutely, I would like them to  
3 make sure that the investigation is thorough.

4 Q And even when dealing with police  
5 officers and questioning police officers, I take  
6 it that you would want them to set aside their  
7 instincts or predilection to want to believe their  
8 fellow members, and take a critical and probing  
9 approach to the information they are being  
10 provided with?

11 A I believe so. It's one of those  
12 things, depending on what, even in a criminal  
13 investigation, as you are probably aware from your  
14 background, if you have a witness come forth, then  
15 you would have to make a judgment if you believe  
16 that witness or not. And sometimes you deal with  
17 witnesses different than others. You do have to,  
18 and I can't talk about this case because I don't  
19 know what happened.

20 Q Sure.

21 A But you do have to have a belief in  
22 your witnesses when they are coming forth and  
23 providing you with information. And you, as an  
24 investigator, have to take a critical look on  
25 whether that is the case or not. Sometimes in

1 investigation of a witness, you may think that the  
2 information isn't accurate. And of course then  
3 you take a different step. But you do have to  
4 treat witnesses on a criminal investigation I'm  
5 talking about, I'm not talking about this case,  
6 such that you have to believe what they are saying  
7 unless there's something specific that changes  
8 your view. And, of course, there's a different  
9 tact that you take.

10 Q But you'd want to, before making the  
11 decision that you're going to start from a  
12 presumptive belief, you're going to want to take  
13 into account any motives they might have to  
14 mislead?

15 A Absolutely. Often with criminal  
16 investigations, you take information from a  
17 witness, you get additional information from  
18 continuing investigations that may cause you to  
19 come back to that witness, that's a possibility,  
20 sure.

21 Q That's just good police work?

22 A Good police work, that's right.

23 Q Sir, I only have one other topic that  
24 I want to deal with, and it has to do with a  
25 document that we were furnished with today, a note

1 that I understand is in your hand, dated the 28th  
2 of February, 2005?

3 A That's correct.

4 Q And I'm going to make exhibits of the  
5 documents that we have already referred to already  
6 before I make an exhibit of this one, just so we  
7 have things in an orderly fashion.

8 Madam clerk, if you can please make  
9 the document found at tab Q-1.89.b.11, the next  
10 exhibit?

11 THE CLERK: That would be 158.

12 (EXHIBIT 158: Q-1.89.b.11, Handwritten  
13 Notes of Inspector K. McCaskill  
14 05-02-28 (2 pages))

15 MR. PROBER: What was the number,  
16 please?

17 MR. PACIOCCO: That was Exhibit 158.

18 MR. PROBER: Thank you.

19 MR. PACIOCCO: The next exhibit would  
20 be the one I just referred to, Madam clerk, if  
21 that can be made Exhibit 159. And it would be  
22 notes of Inspector McCaskill dated the 28th of  
23 February 2005.

24

25

1 (EXHIBIT 159: Handwritten Note dated  
2 05-02-28 at 17:50 hrs (Inspector K.  
3 McCaskill))

4 BY MR. PACIOCCO:

5 Q Sir, before I go on to this, there's  
6 just one other question I have about the topics  
7 that we have just been covering. One of your  
8 concerns as platoon commander is of course with  
9 the morale of your shift?

10 A You're talking about sergeants?

11 Q Yes?

12 A Yes, I would think so. It should be.

13 Q That would also be one of the concerns  
14 that you would have as the supervisor of the  
15 sergeants?

16 A As the inspector of the division, I  
17 would, yes.

18 Q Yes. And so when the investigations  
19 are being organized, you want to make sure that  
20 they are not conducted in a way that demoralizes  
21 the group?

22 A Well, you know, is it in an interview,  
23 perhaps, you mean?

24 Q Yes?

25 A Well, I think that they have to be

1 fair, like anybody, dealing with any other witness  
2 as well, and try to get to the truth. As I said  
3 before, it all depends on who you are  
4 interviewing. You can get, as an investigator, a  
5 feeling that people are telling the truth and away  
6 you go. If you have a different feeling, of  
7 course you deal with a different tact. You can,  
8 as your investigation proceeds, you can come back  
9 to a witness if you think that the information is  
10 inaccurate. So I think the investigators on  
11 something like this should be treated the same as  
12 far as those interviews go.

13 Q Okay. I just got the sense from your  
14 description of the briefing that you attended  
15 with --

16 A Yeah.

17 Q -- members who were no doubt  
18 emotionally affected by what had happened --

19 A Of course.

20 Q -- that you wanted to meet with them  
21 and talk to them in part because you wanted to  
22 assure them that the investigation had to be done,  
23 and you were cognizant of the impact that could  
24 have on their morale?

25 A Well, I think that's part of it. It

1 was more of, I wanted them to understand that, get  
2 in there and tell the facts, whatever that is. It  
3 was a very, very serious thing. As I said, this  
4 is a case where someone lost their lives. And I  
5 appreciate the fact that they were concerned about  
6 their fellow officer, I know that. It's a tragic  
7 event all the way around. But the fact remains  
8 that the person died as a result of that officer's  
9 action.

10 Q And there was also concern potentially  
11 on the part of some of those officers about their  
12 own role in that event? Would that not have been  
13 something --

14 A I would suggest you are probably  
15 right. You know, there was a situation where  
16 there was information in the paper about this. I  
17 can't get into their heads, but I certainly was  
18 concerned that I wanted -- that's why I did the  
19 briefing, I wanted to make sure that people came  
20 forth and told exactly what happened.

21 Q All right. So you effectively had a  
22 couple of concerns in mind, you wanted to  
23 encourage them to provide truthful information,  
24 but you also had in mind the welfare of that  
25 group?

1           A     Of course.

2           Q     I know that officers tend to be  
3 concerned about the community and they tend to be  
4 concerned about the individuals they deal with.  
5 But at the same time, sir, you don't have the same  
6 type of divided loyalties when you are dealing  
7 with ordinary witnesses, where you have to be  
8 concerned with not only information you are  
9 getting, but also how it will impact upon their  
10 ability to interact with others around them?

11          A     Well, I think as any leader in the  
12 organization, you are concerned about your staff,  
13 and you should be. But the overriding principle  
14 here is the truth has to come out.

15          Q     So you essentially depend on the  
16 individuals who are conducting investigations to  
17 have their priorities in order, knowing that there  
18 may be split objectives that might affect their  
19 thinking?

20          A     Well, I think the, you know, from, and  
21 again, I can't talk about the Professional  
22 Standards Unit investigation because I'm not aware  
23 of what the officers really said, but I was  
24 actually in charge of Professional Standards a  
25 number of years ago, and I found their



1 investigations at that stage very credible, hard  
2 working people, that did the right thing to get  
3 the information out. There were occasions, many  
4 occasions where officers were charged, not only  
5 criminally, but through internal situations, and  
6 certainly cases where witness officers were  
7 charged eventually through the regulations. So I  
8 believe that their investigation would be credible  
9 and that was my belief then.

10 Q And sir, I think you may have had, and  
11 you would have had very talented and right  
12 thinking people who were conducting the  
13 investigations when you were head of the  
14 Professional Standards Unit to give you that kind  
15 of confidence?

16 A Yes. And the confidence that exists,  
17 I guess, from seeing things occur, we have had  
18 people held accountable, but also in situations  
19 where that didn't happen, where information was  
20 learned that allegations didn't come true. So it  
21 was sort of a balance, I thought it was fairly  
22 balanced, at least in my understanding of the  
23 unit.

24 Q I guess the point I am hinting at is  
25 there are some places where, in order to ensure

1 people act effectively and properly, you depend on  
2 the integrity and priorities of the individuals  
3 assigned, and there are other places where there  
4 are institutional structures that are meant to  
5 ensure that improper motives or loyalties don't  
6 get in the way?

7 A I don't follow what you mean?

8 Q Well, I'm suggesting, sir, in this  
9 case, for example, an independent prosecutor was  
10 assigned to prosecute the case because of concern  
11 that if you assigned a line prosecutor, who worked  
12 with the Winnipeg Police Services regularly, that  
13 that could somehow impact upon the prosecutor's  
14 judgment about how to handle the case, or  
15 certainly the community perspective?

16 A I think perspective is a big thing,  
17 you are right.

18 Q So that was an institutional choice  
19 that was made. It's not a question of the person  
20 being assigned having significant commitment to  
21 the priorities that we expect, the institution  
22 itself is structured in a way to ensure that that  
23 type of independence occurs?

24 A In this particular case, yes. I  
25 understand what you're getting at, and I do -- the

1 Winnipeg Police Service is structured right now,  
2 at least this time in history, basically to have a  
3 unit that does investigate police officers within  
4 the same organization. I understand where you're  
5 getting at.

6 Q And, sir, since I have you on the  
7 stand --

8 A Sure.

9 Q -- is the model that currently exists,  
10 in which Winnipeg Police Service officers  
11 investigate other members, albeit within a  
12 separate unit, one that depends on the appropriate  
13 commitments of the individuals assigned rather  
14 than institutional barriers? Is that a model that  
15 you as Chief commend to the Commission?

16 A I believe that it works well. There  
17 are all kinds of issues, and you can appreciate  
18 it, perception, is there a perception of bias and  
19 so on? I know those are all issues. Under the  
20 current structure, I think it works well, but  
21 there are issues as far as perception and it's  
22 been documented publicly. If, in fact, the city  
23 or the province directed us to do something else,  
24 of course we would do what the law dictates. As  
25 it stands right now, that's the process that we do

1 have, though.

2 Q Thank you very much for that answer.

3 Getting back then, sir, to the note  
4 that we just received today. It's a February 28th  
5 note, in your hand, as I understand it, relating  
6 to an attendance by you at the home of Derek  
7 Harvey-Zenk?

8 A That's correct.

9 Q So you attended that home at 5:50 in  
10 the afternoon. And you, at that point, had a  
11 meeting with he and his wife?

12 A Well, actually he and his wife were  
13 there, and also his father and his mother. And I  
14 recall they were divorced and at the time, but  
15 attended there, I guess, I'm not sure where they  
16 came from but I believe one was from out of town.

17 Q They being the parents?

18 A They being the parents.

19 Q Derek Harvey-Zenk was not divorced  
20 from his wife at the time, I understand?

21 A No, not at all. The parents were.  
22 They came there, you know, spent a lot of time at  
23 the kitchen. I sat down on the couch with  
24 Constable Harvey-Zenk and his wife. At the time,  
25 the constable was obviously very despondent, very

1 upset, didn't say much. Obviously his face was  
2 red. It appeared that he had been quite upset  
3 prior to me getting there, and was upset at that  
4 point, because of the redness of his face.

5 I talked to him basically about the  
6 fact that he was being placed on administrative  
7 leave. That was the direction I received from the  
8 executive, and that was appropriate, pending a  
9 suspension hearing. I talked about the process  
10 for suspension hearing. And basically what that  
11 is, is members of the association and members of  
12 the executive will receive some information and  
13 make a determination on the person's job status.  
14 I talked, you know, Constable Harvey-Zenk really  
15 didn't say much at all, if anything. I talked  
16 more to his wife. His wife at the time, I  
17 remember her talking about the fact she was eight  
18 weeks pregnant, eight or nine weeks pregnant. And  
19 although I was there for a period of time, and the  
20 parents gave me coffee, it was -- not very much  
21 was said. It was it seemed like a long time. But  
22 I talked more about, with her about the fact that  
23 you have to concentrate on family now. There is a  
24 big issue in front of you. And we didn't talk  
25 about the specifics of that at all, it would be

1 inappropriate. And that's generally what was  
2 talked about. She talked about looking forward to  
3 the birth of her child and so on. And that,  
4 again, I was there for a period of time but there  
5 wasn't really a tonne said, it was more of  
6 concentrate on your family, what happens is going  
7 to happen.

8 Q Sir, you referred to the wife being  
9 eight to nine weeks pregnant?

10 A That's right.

11 Q My experience as a father three times  
12 over is you tend not to know whether your wife is  
13 pregnant at eight or nine weeks. Are you sure you  
14 don't mean eight or nine months?

15 A No, it was eight or nine weeks she  
16 said, because you couldn't see anything. She told  
17 me that she just recently found out she was  
18 pregnant. That's what she said so...

19 Q Sir, I understand you left at  
20 approximately 6:30, so you were there about 40  
21 minutes?

22 A That's right.

23 Q And notwithstanding that the document  
24 that you have just furnished to us may have no  
25 significance to the ultimate outcome, I take it

1 you would agree that the failure to provide this  
2 earlier was an oversight and it should have been  
3 provided?

4 THE COMMISSIONER: Yes?

5 MS. HANLIN: It was our view at the  
6 time of disclosure that this document related to  
7 administrative matters, not to the  
8 order-in-council which focused on the criminal  
9 investigation.

10 THE COMMISSIONER: That was a decision  
11 you made?

12 MS. HANLIN: Yes.

13 THE COMMISSIONER: All right.

14 THE WITNESS: With that in mind, just  
15 to clarify, I did provide the document.

16 MR. PACIOCCO: Okay. That was going  
17 to be my next question, and I can discuss with  
18 counsel any issues of disclosure. Thank you very  
19 much for your testimony, sir. There will be other  
20 lawyers who I am sure want to ask you questions.  
21 And I promise Mr. Labossiere will not be allowed  
22 to ask you about the grievance that he is dying to  
23 ask you about.

24 THE COMMISSIONER: Thank you. Just  
25 before you start, was there a note made of your

1 conversation with Chief Bakema?

2 THE WITNESS: No, actually, there was  
3 not. And remember, at the time --

4 THE COMMISSIONER: That's all I want  
5 to know.

6 THE WITNESS: Okay. Go ahead.

7 MR. ZAZELENCHUK: Thank you,  
8 Mr. Commissioner.

9 BY MR. ZAZELENCHUK:

10 Q Were the notes that were revealed  
11 today entered as an exhibit?

12 THE COMMISSIONER: 158 and 159.

13 MR. PACIOCCO: That's 159.

14 THE COMMISSIONER: There were no notes  
15 made of the call by Chief Bakema.

16 MR. ZAZELENCHUK: I'm sorry, I thought  
17 158 --

18 MR. PACIOCCO: 159.

19 MR. ZAZELENCHUK: 159 is Q.1.89.b.11,  
20 am I correct there?

21 THE CLERK: That's 158.

22 MR. ZAZELENCHUK: That's 158, okay.  
23 And 159 is?

24 THE CLERK: The single page.

25 THE COMMISSIONER: The note of the



1 interview with Harvey-Zenk.

2 MR. ZAZELENCHUK: Thank you,  
3 Mr. Commissioner.

4 BY MR. ZAZELENCHUK:

5 Q Sir, my name is Zazelenchuk, I'm the  
6 Taman family lawyer. I have a few questions for  
7 you.

8 I guess finding out on a Friday  
9 morning that one of your troops has been involved  
10 in a fatality, which you correctly described as  
11 horrendous, is a pretty good beginning to a  
12 nightmare, isn't it?

13 A It was a terrible piece of news,  
14 there's no doubt about that.

15 Q Sure. Not something that's welcome in  
16 any office?

17 A No, not at all.

18 Q Okay. And later on that day, I  
19 understand that around 4:00'ish, you had a  
20 conversation with Corrine Scott. And I don't mean  
21 to be insulting, I don't know what rank she held  
22 at the time, whether it was inspector or whatever?

23 A She was actually the superintendent  
24 and I believe she was probably Acting Deputy Chief  
25 at the time.

1 Q Okay. You had a conversation with her  
2 about seizing Harvey-Zenk's gun from his locker?

3 A That's correct.

4 Q That's correct. And that too is  
5 something very understandable, I take no issue  
6 with that. But you didn't make a note of that  
7 either, did you, sir?

8 A Yes, I did.

9 Q Oh, you did. Where is that?

10 A There is a report that's been  
11 submitted, it was a report to file. I believe  
12 it's in your information, I would hope. It's a  
13 report to file indicating what happened there. I  
14 have a copy here, but not a signed one, but I  
15 believe it was submitted.

16 Q I think the witness is referring to  
17 Q-2.89.b.35. Could you show that to the witness,  
18 please?

19 THE CLERK: Would you like it entered?

20 MR. ZAZELENCHUK: Please?

21 THE CLERK: Exhibit 160.

22 (EXHIBIT 160: Q-2.89.b.35 WPS

23 Interoffice Memo dated 05-02-25

24 McCaskill Re: Harvey-Zenk/2180-13)

25 THE COMMISSIONER: What page is that,

1 Mr. Zazelenchuk?

2 MR. ZAZELENCHUK: 3067, Your Honour.

3 BY MR. ZAZELENCHUK:

4 Q That's the document you were referring  
5 to, sir?

6 A That's correct.

7 Q Yes. And that document is dated  
8 February 25th, 2005?

9 A That's correct.

10 Q Okay. And am I correct in assuming  
11 that you either dictated or typed that at that  
12 time?

13 A I would have typed it on my computer  
14 myself.

15 Q Yes, okay. And that deals with the  
16 seizing of his, of Harvey-Zenk's gun, but there's  
17 no mention in here about any conversation with  
18 Harry Bakema earlier that day?

19 A That's correct.

20 Q Yeah. Just like there's no mention in  
21 any of your written notes about any conversation  
22 with Harry Bakema earlier that day?

23 A That's correct.

24 Q Okay. And you indicated to Commission  
25 Counsel that on March 2nd, you attended a briefing

1 with the shift, and you felt that that was a very  
2 important briefing, there were things you wanted  
3 to say and get out; correct?

4 A Well, you know, in this particular  
5 case, yes, it was. I have attended a number of  
6 briefings, but this one was specific because I  
7 wanted people to tell what they knew, that's  
8 correct.

9 Q That's correct. And by this time, the  
10 death was getting a bit of media attention?

11 A Absolutely.

12 Q Yeah. Did you make any kind of a note  
13 about attending the briefing, or what you said, or  
14 anything like that?

15 A No, I didn't. And it's interesting  
16 you say that. It's -- on a particular case like  
17 this, I didn't expect to be here, but obviously I  
18 should have. This is important information, and  
19 it's hindsight, but knowing what I know now, I  
20 should have. I do remember the specifics, though,  
21 and the reason, as I said before, that I do is  
22 because of, really, the incident that occurred,  
23 and in my family we have been talking about this  
24 incident on a regular basis ever since it  
25 happened, so it's been kept fresh in my mind. But

1 I agree with you, that note should have been made.

2 Q Certainly. And you'll agree with me  
3 that a note of your conversation with Harry Bakema  
4 should have been made?

5 A Absolutely.

6 Q Okay. You met with Anderson and  
7 Humniski on the morning of the 28th. That would  
8 be the Monday?

9 A I believe so, yes.

10 Q Yeah. And you met with them at a  
11 doughnut shop about two, three blocks from the  
12 station?

13 A Well, it's down the street from the  
14 station, it's a couple of blocks and then directly  
15 east, and then I believe it's a block or two  
16 north.

17 Q Whose idea was it to meet at the  
18 doughnut shop?

19 A You know, I can't recall, it was  
20 probably mine. They wanted to talk and I said we  
21 can come down there. That's just a guess on my  
22 part. I can't recall that, but it likely would  
23 have been mine, because I've used that occasion to  
24 speak to officers in the past quite frequently.

25 Q Now, we have records before this

1 court, it's Exhibit 147, and we can show you that  
2 if you wish, if there's any issue in it. And we  
3 have the record of the almost four and a half  
4 minute conversation between Harry Bakema and  
5 yourself. And we have dealt with that. We've  
6 talked about that. But we also have a record of a  
7 call at 4:18 to -- and in our information, it's  
8 just listed as Deputy Chief of Operations. And  
9 you have told us you believe that that might be  
10 Inspector Corrine Scott, or Superintendent, sorry?

11 A When I talked to, I contacted  
12 Superintendent Scott, and I believe she was Acting  
13 Deputy Chief at the time, I don't know if she was  
14 at that phone number, I am assuming she was.

15 Q Okay. And we also have information  
16 before this tribunal that that was a rather  
17 lengthy phone call, it was 7.7 minutes. I don't  
18 expect you to comment on that, I'm just telling  
19 you that for information purposes.

20 I wonder if the witness could be given  
21 Q-1.89.b.10? And that's volume Q, page 2990?

22 THE CLERK: 161.

23 (EXHIBIT 161: Q-1.89.b.10,

24 Superintendent C. Scott Notes dated

25 05-02-25)

1 BY MR. ZAZELENCHUK:

2 Q It's perhaps not a document you have  
3 ever seen, sir, but I'm wondering, I am informed  
4 those are Corrine Scott's notes. Would you  
5 recognize her handwriting?

6 A No, I wouldn't.

7 Q No. We had an order for disclosure in  
8 this matter, and that's a document that came from  
9 your counsel and it was identified as Corrine  
10 Scott's notes. And I note that in the first  
11 entry, and the page number at the bottom of the  
12 page is 2990, in the first entry there is a Keith  
13 that appears about a third of the way up from the  
14 bottom of the page. And it says:

15 "Advised Keith. Keith relates he is  
16 scheduled to work on Tuesday night for  
17 Wednesday."

18 No doubt that the Keith she's talking about is  
19 you?

20 A I believe it would have been, yeah.

21 Q Sure. It makes sense, it all fits  
22 together?

23 A Yes, it does.

24 Q And then if we go down to the last  
25 line, it says:

1 "Keith will get gun and meet PSU in  
2 Division 13."

3 A I would take it she's referring to me,  
4 yes.

5 Q Sure. And she's referring to that  
6 report, or the same thing about that report you  
7 wrote, that you seized Derek Harvey-Zenk's gun,  
8 and for obvious reasons?

9 A That makes sense.

10 Q Yeah, okay. Could you turn the page,  
11 please? There appears to be no mention in this  
12 disclosure of any telephone call with Harry  
13 Bakema?

14 THE COMMISSIONER: Is there a  
15 question?

16 MR. ZAZELENCHUK: I just want the  
17 witness to confirm that there appears to be no  
18 such mention, and I think he was simply taking the  
19 time, Mr. Commissioner, to peruse the document  
20 fully. He is a careful person.

21 THE WITNESS: I don't see anything on  
22 here mentioning his name, no.

23 BY MR. ZAZELENCHUK:

24 Q However, there is an entry at 6:10 --  
25 at 4:10 in the afternoon down at the bottom of the



1 first page, and we do know from the phone records  
2 that the call, to whomever it was made, was made  
3 at 4:18. We'll just leave that for a moment.  
4 There's one last thing I want to deal with.

5           Just where you left off in your direct  
6 evidence when your counsel addressed the tribunal,  
7 I just want the reason, and we can make arguments  
8 about it later, the reason that the notes which  
9 were disclosed today weren't disclosed, is that  
10 because of a decision that they were irrelevant or  
11 for some oversight?

12           A     It wasn't my decision. I provided  
13 them at the time, so I didn't make the decision,  
14 so...

15           Q     I see. So it wasn't a decision that  
16 you had made?

17           A     No, I wasn't involved in that  
18 decision.

19           Q     All right. And as I look at the  
20 photocopies of your notes, and they are not the  
21 best photocopies in the world, it seems to me that  
22 at the time in question, you were using the big  
23 notebook to keep your notes?

24           A     No, as a matter of fact, what happened  
25 in this particular case, and I want to be clear,

1 on both occasions I had a pad in my car, and  
2 that's what I had, so I wrote them down on it.  
3 And I did not want to transpose these notes onto a  
4 notebook, so I kept them exactly the way they  
5 were. So I don't want to give any false  
6 impression that this is a big notebook. This was  
7 a foolscap pad that I had in the car and I wrote  
8 them down.

9 Q Okay. But the three pages of notes  
10 which comprise exhibits 158 and 159 were all  
11 written on the same pad on the same day?

12 A I believe they probably were. You  
13 know, I can't confirm it, but it makes sense.

14 Q Okay. I have one more question. I am  
15 going to try and phrase it carefully so I don't  
16 offend any of my learned friends.

17 You have been around a long time  
18 Chief, you are a very experienced person. I tell  
19 my clients that lawyers are paranoid by  
20 profession. I think sometimes investigators don't  
21 believe anybody until they get the facts. That  
22 may or may not be right on my part. Can you  
23 understand how no notation of your conversation  
24 with Harry Bakema, which was a long conversation,  
25 and I will agree, I'll grant you that it might be

1 an oversight, can you understand how no notation  
2 of your addressing the shift, which again I'll  
3 concede to you may be an oversight, can you  
4 understand how no documentation about a 7.7 minute  
5 conversation between Harry Bakema and the Deputy  
6 Chief of Operations, how the absence of all this  
7 documentation could make some people suspicious?

8 A Absolutely. I think it's obviously  
9 better for this tribunal to have all of the  
10 information available, and I would agree with  
11 that. And I said before, yeah, a note should have  
12 been there. I do remember the specifics, though,  
13 and I know I'm going by my memory, not about the  
14 seven and a half minutes you are talking about,  
15 I'm not aware of that at all, but I do remember  
16 clearly on what happened based on the real tragic  
17 event here. And, again, the relationship I have  
18 with my wife in talking about this, the  
19 relationship that my daughter had with two of the  
20 Taman children, and the that fact she knew them, I  
21 can't comment about a strong relationship, but  
22 she's often talked about that. And so the topic  
23 has come up many, many times over the last couple  
24 of years.

25 Q Yeah. And you can understand, just to

1 close, you can understand how this missing  
2 documentation could cause some people to be  
3 suspicious?

4 A You know what, I can certainly  
5 understand that.

6 MR. ZAZELENCHUK: Thank you, sir.

7 THE WITNESS: Yes.

8 BY MR. McDONALD:

9 Q Chief McCaskill, there's just one area  
10 I would like to explore briefly with you. It was  
11 touched upon by Mr. Paciocco. And it relates to  
12 the importance of the public to have confidence in  
13 the administration of justice. That's a subject  
14 with which we are all familiar, agreed?

15 A Agreed.

16 Q Would you agree with me, sir, that the  
17 prospect of achieving that goal in this case, from  
18 the perception of the public, would have been  
19 enhanced if the conduct of the Winnipeg Police  
20 Service members involved in the incident was  
21 investigated by an agency other than the Winnipeg  
22 Police Service?

23 A You know, at the time, and although I  
24 didn't make the decision, I thought it was an  
25 appropriate decision, but I can certainly

1 understand now that perhaps the decision wasn't  
2 the right one.

3 Q You would agree with me that the  
4 public perception would be enhanced if this  
5 investigation had been conducted by a force other  
6 than the Winnipeg Police Service?

7 A I believe in many people's minds, yes.

8 Q Yes. And in this case, it was open to  
9 the Winnipeg Police Service to decline the  
10 invitation from Chief Bakema to become involved?

11 A Of course.

12 Q Yes. And they could have declined to  
13 become involved in the criminal investigation, yet  
14 continued with an internal affairs investigation  
15 independent of that?

16 A I think they could. Probably in a  
17 case like that, they wouldn't have until it was  
18 over, not wanting to interfere with the  
19 investigation, but certainly they could have  
20 later.

21 Q Yes. My point is simply this:  
22 Declining to become involved in the criminal  
23 investigation would not have prevented internal  
24 affairs from conducting any investigations  
25 internally that it deemed appropriate?

1           A     That's correct.

2           Q     Thank you. And would you agree with  
3 me, Chief, that based on your knowledge of the  
4 RCMP facilities in Manitoba back in 2005, that the  
5 RCMP would have had the expertise to undertake  
6 this criminal investigation and provide assistance  
7 to the East St. Paul Police Service?

8           A     Yes, they would have.

9           MR. McDONALD: Thank you, sir, that's  
10 all I have.

11          THE WITNESS: Thank you.

12          MR. WEINSTEIN: Thank you.

13 BY MR. WEINSTEIN:

14          Q     Chief, just on that last point about  
15 public perception, leaving aside public perception  
16 for a moment, and I'm talking about this  
17 particular case, did you, sir, have full  
18 confidence in the Professional Standards Unit  
19 investigating this matter?

20          A     Yes, I did.

21          Q     You had no qualms about officers in  
22 that particular unit, whose job it is to  
23 investigate other officers, you had full  
24 confidence that they would be their best; correct?

25          A     Yes, I did.

1 Q And did you have confidence that they  
2 would not say be biased in favour of the people  
3 they were interviewing?

4 A Yes, I did.

5 Q All right. Now, people have asked you  
6 about, you didn't record the call from Chief  
7 Bakema, or a conversation with Scott, or the shift  
8 briefing. But in fairness to you, even though you  
9 said, sure, in hindsight you should have, those  
10 particular things you did, or conversations,  
11 forget about this inquiry, okay, would you agree  
12 with me they were not relevant to the criminal  
13 investigation?

14 A Yes, that's true. And again, I'm  
15 speculating on what I likely would have done is  
16 written it on my desk, on a scratch pad, and  
17 informed Superintendent Scott. I don't have  
18 access to that now. I never thought at the time,  
19 it never crossed my mind at the time that we'd be  
20 here. But, of course, things like that, obviously  
21 documentation is very important.

22 Q I'm sorry, I don't disagree with the  
23 fact. But as an investigator, and having been an  
24 investigator over the years, and you have been,  
25 and you know about criminal trials, et cetera,

1 could you have anticipated at all you being called  
2 as a witness for the Crown just to say about your  
3 shift briefing?

4 A No, I wouldn't have.

5 Q Let me touch upon the phone call after  
6 11:00 o'clock, on February 25th, from Chief Bakema  
7 to you. The conversation, again, you didn't  
8 record it. He told you, amongst other things,  
9 that one of your officers was involved in a  
10 three-car collision, three-vehicle collision, a  
11 fatality, and the matter is under investigation;  
12 correct?

13 A That's correct.

14 Q Other parts you don't recall, correct,  
15 in fairness to you?

16 A Well, I do recall him saying there was  
17 a uniform in the car.

18 Q Right.

19 A I do recall, because I wanted to know  
20 the time and he told me it was around 7:00.

21 Q Yeah?

22 A And I do recall the location and other  
23 information based on, just generally there was a  
24 three-car collision and the person had died in  
25 another vehicle.



1 Q Right. And I'm not disputing that at  
2 all. But there is other parts that he may have  
3 said that you don't recall, in fairness, correct?

4 A I think, well, I guess there's always  
5 that possibility. In general at least, that's  
6 what was said.

7 Q No, no, I appreciate that. But there  
8 could have been a very brief conversation, he  
9 wanted to let you know, just in case he showed up  
10 for work. That's a possibility?

11 A It's always a possibility. I don't  
12 recall that, but it's always a possibility.

13 Q Yeah. And in fact, Derek Harvey-Zenk  
14 was slated to work, or was working evening shifts;  
15 is that correct?

16 A That's correct. My assumption  
17 originally was that he was probably attending  
18 work, but when I checked, he was working evening  
19 shift, he had taken some of time off that previous  
20 evening. And the Friday was the overlap day, and  
21 so unless he had taken it off, he would have been  
22 scheduled to work that evening.

23 Q Right. So the evening of the 25th, he  
24 might have been scheduled to work?

25 A That's right.

1           Q     Correct. Let me put an outrageous  
2 statement to you, and I'll ask you to respond.

3           THE COMMISSIONER: What kind of a  
4 statement is that?

5           MR. WEINSTEIN: Outrageous.

6           THE COMMISSIONER: Outrageous?

7           MR. WEINSTEIN: Yes.

8           THE COMMISSIONER: Okay.

9 BY MR. WEINSTEIN:

10          Q     Let me put this outrageous statement  
11 to you. Did Harry Bakema ever say to you, you  
12 clean up your end and I'll clean up my end?

13          A     No, not at all.

14          Q     Is that an absurd suggestion?

15          A     Yes, it is.

16          MR. WEINSTEIN: Thank you. Those are  
17 my questions.

18          THE COMMISSIONER: Yes.

19 BY MR. LABOSSIERE:

20          Q     Thank you, Mr. Commissioner.

21                 Chief McCaskill, at the time of this  
22 incident in February of 2005, you have told us  
23 that you were the divisional commander in District  
24 3, or Division 13. You were there for some time,  
25 were you not, sir?

1           A     In all told, I was there about three  
2     years.  And actually just after this incident, I  
3     believe it was in March, I was transferred to St.  
4     James.  So just after this incident, I moved.

5           Q     And as divisional commander, you knew  
6     quite well the officers that were mentioned this  
7     morning, Sergeants Anderson and Humniski?

8           A     Yes, I do.

9           Q     They were your sergeants and  
10    supervisors, if you will?

11          A     Yes, they were.

12          Q     And you knew them and still know them,  
13    do you not, sir, both to be responsible officers  
14    with lots of integrity?

15          A     Yes, I believe they do.

16          Q     And it's fair to say, is it not, that  
17    both Sergeants Anderson and Humniski are respected  
18    by, not only the junior members they supervise,  
19    but also senior officers within the Winnipeg  
20    Police Service?

21          A     Yes, I would say that's a correct  
22    statement.

23          Q     And in fact, you had respect for both  
24    their integrity and strong character; isn't that  
25    right?

1           A     I do.

2           Q     When they told you that they wanted  
3 the truth to come out about the incident that took  
4 place, that didn't surprise you knowing their  
5 character?

6           A     It didn't surprise me. I was very  
7 pleased, because as I indicated before, it was  
8 almost a concern for many members about not being  
9 supported, so I was very pleased these two  
10 particular officers -- though I do believe that  
11 they were very straightforward, well respected  
12 officers.

13          Q     And you have given some evidence, and  
14 I won't go through it again with you, that they  
15 had described with you, certainly briefly, about  
16 the night in question?

17          A     Very briefly, yes.

18          Q     And based on what they told you, I  
19 take it that you concluded, based on what they  
20 told you, that it appeared that they had acted  
21 responsibly?

22          A     Yes, certainly. And they commented  
23 that they weren't there the whole night, though.  
24 They were at the restaurant and then were there a  
25 period of time at Sean black's house, I believe,

1 and then left I believe early, so -- but I  
2 certainly can agree with that statement.

3 Q And having come to that conclusion, it  
4 certainly didn't surprise you, given your  
5 knowledge and experience working with both  
6 Sergeants Humniski and Anderson?

7 A No, it didn't surprise me.

8 Q Now, you were asked a number of  
9 questions about investigations by PSU, internal  
10 investigations, if you will. So what we're  
11 talking about is investigations of the  
12 Professional Standards Unit of other police  
13 officers?

14 A That's correct.

15 Q And you would agree with me, sir, that  
16 those investigations are unique because the  
17 service holds two roles, both as investigators and  
18 as the employer?

19 A Yes, that's right.

20 Q And that's much different than a  
21 police investigation that most of us are familiar  
22 with, of somebody in the public, of a citizen;  
23 isn't that right?

24 A There's added responsibility there,  
25 yes.

1           Q     And one of the added responsibilities  
2     is that when you're a police member, and you're  
3     being asked by Professional Standards Unit to come  
4     in for a witness interview, you are compelled to  
5     do so; isn't that fair?

6           A     That's correct.

7           Q     And that's not something, for example,  
8     I would -- that would be not be a constraint that  
9     I, as a layperson, would be under?

10          A     That's correct.

11          Q     If the police wanted to speak to me  
12     about an incident, I could, if I chose, decline to  
13     comment or participate in any way?

14          A     That's correct.

15          Q     And in fact, police officers, when  
16     asked, and it's not a request, it's a command to  
17     come in and speak with members of the PSU, if they  
18     decline to, are subject to discipline; isn't that  
19     right?

20          A     That's correct.

21          Q     And those officers, when they come and  
22     meet with PSU and give their statements, if they  
23     are not fully forthcoming and tell the truth, they  
24     are also subject to disciplinary action; isn't  
25     that right?

1 A They certainly can be, yes.

2 Q And in fact, as police officers being  
3 accused of and, worse, found of being deceitful,  
4 is something taken very seriously by the Winnipeg  
5 Police Service?

6 A It is.

7 Q In fact, often it has been the  
8 position of the Winnipeg Police Service that an  
9 officer who is deceitful ought to lose the  
10 privilege of carrying a badge. Isn't that fair?

11 A It certainly has been the case in the  
12 past, yes.

13 THE COMMISSIONER: Are they given the  
14 right to counsel when they are called in? Can  
15 they bring their counsel with them?

16 THE WITNESS: I believe they can, in  
17 certain circumstances.

18 THE COMMISSIONER: Are they subject to  
19 discipline if they bring in their counsel?

20 THE WITNESS: No.

21 MR. LABOSSIERE: It depends on the  
22 choice of counsel, sir.

23 THE COMMISSIONER: Very good answer.

24 BY MR. LABOSSIERE:

25 Q And you were asked about, in a

1 roundabout way, other options that might be  
2 available to the Winnipeg Police Service to  
3 investigate their own, if you will?

4 A That's right.

5 Q And I'm going to suggest to you, sir,  
6 that if, for example, the RCMP or another body  
7 other than the Winnipeg Police Service who happens  
8 to be the employer of these individuals were to be  
9 in charge of the investigation, it would have been  
10 open to police officers who happen to be witnesses  
11 in this case, who happen to have been off duty, to  
12 decline to participate. You would agree with  
13 that?

14 A I would say that would be the case,  
15 yes.

16 Q And so you would agree, sir, would you  
17 not, that the best way to ensure that all of the  
18 information can come out in a situation that  
19 involves police officers is to have the Winnipeg  
20 Police Service itself conduct the investigation?

21 A I believe it certainly is effective,  
22 as I said before. And I had commented earlier  
23 that that is the process we have, I think it's  
24 effective, and I do believe the Professional  
25 Standards Unit does a good job. If, for instance,



1     though, the direction is made otherwise, legally  
2     or what have you through the province, then that  
3     would be a change.

4             Q     Now, we have talked and I have heard  
5     the comment that there are, that police officers  
6     are treated differently in the context of police  
7     investigations conducted by the Winnipeg Police  
8     Service.  And isn't it fair to say that the  
9     difference is that a police officer has less  
10    rights than a member of, a citizen, in the sense  
11    that they are compelled to participate?

12            A     That's correct.

13            Q     You were also asked questions about  
14    Professional Standards Unit, their role, your  
15    confidence in them and so on.  If anything, sir, I  
16    take it you would agree that the Winnipeg Police  
17    Association certainly, any complaints they have  
18    had about the Professional Standards Unit is,  
19    their concerns that PSU is over-zealous in their  
20    investigation of other officers; isn't that right?

21            A     I would say that's correct.

22            Q     It's not that they have been turning a  
23    blind eye, or not conducting investigations  
24    thoroughly, it's that they had been going above and  
25    beyond and, in fact, beyond what the Winnipeg

1 Police Association even thinks is reasonable?

2 A I have heard those comments from the  
3 association before, yes.

4 Q Now, you were also asked some  
5 questions by learned Commission Counsel as to  
6 suspensions with pay as being an option. I take  
7 it, sir, that you would agree, though, that in a  
8 situation where a criminal allegation is made, and  
9 there happen to be a number of police officers who  
10 are clearly witnesses to that allegation, you  
11 wouldn't think it's appropriate to simply suspend  
12 all of those witness officers, whether it's with  
13 or without pay, until the investigation had run  
14 its course?

15 A No, I don't think that would be  
16 appropriate. I think the suspension issue should  
17 be based on factual information on whether or not  
18 they should be out of the workplace.

19 Q Now, sir, you were also asked a number  
20 of questions by learned Commission Counsel as to  
21 the bond that is shared between police officers.  
22 And I suggest to you, sir, that one of the bonds  
23 between police officers is shared common beliefs  
24 in certain, in certain areas, one of them being  
25 the rule of law?

1           A     I would say that's correct.

2           Q     And you would agree, sir, that police  
3 officers take very seriously the fact that they  
4 are sworn to uphold the law?

5           A     I believe that's correct.

6           Q     And I suggest to you, sir, that the  
7 only thing a cop hates more than a criminal is a  
8 cop who is a criminal.  Isn't that fair?

9           A     I would say that's very true.

10          Q     Because that makes all of them look  
11 bad and taints the badge that they wear.  Isn't  
12 that fair?

13          A     I think that's fair.

14          Q     And as a result of that, sir, you  
15 would agree that time and time again, there have  
16 been examples where police officers have come  
17 forward, given truthful, honest, forthright  
18 statements, which have resulted in other fellow  
19 officers being either charged internally with  
20 disciplinary offences, or charged criminally;  
21 isn't that right?

22          A     That's correct.

23          Q     In fact, as I said earlier, the  
24 reality is, there's a lot of incentive on a police  
25 officer to be truthful and honest in situations

1 like that, over and above doing the right thing,  
2 because they can be punished very seriously if  
3 they don't?

4 A Absolutely, if they are found to be  
5 giving false statements or false information, they  
6 could be held accountable under the regulations.  
7 That's correct.

8 Q I take it, sir, it has been your  
9 experience within the Winnipeg Police Service for  
10 as long as you have, including time as a Chief,  
11 that those are the rarest of exceptions, when  
12 police officers are deceitful?

13 A I think it is rare. I wouldn't argue  
14 with that. It's rare that an officer is charged  
15 with that offence.

16 MR. LABOSSIERE: Thank you, sir, those  
17 are my questions.

18 THE COMMISSIONER: Mr. Jack.

19 MS. HANLIN: We will reserve our right  
20 to go last.

21 THE COMMISSIONER: Yes, certainly.

22 BY MR. PROBER:

23 Q Mr. Commissioner. Chief, my questions  
24 will be few in number and will focus on your  
25 meeting at the Harvey-Zenk household on

1 February 28th. You went there primarily to advise  
2 them that he was going to be suspended pending a  
3 hearing; correct?

4 A Placed on administrative leave, it's a  
5 means where the service has utilized that. They  
6 certainly are paid, but they can't be coming back  
7 into the workplace until such time as a formal  
8 process can take place on whether or not that  
9 person should be suspended from duty.

10 Q He was a constable at District 3 under  
11 your supervision at the time?

12 A He was a constable in the division,  
13 not under my direct supervision, but certainly  
14 under the supervision of one of the sergeants, and  
15 I commanded that division.

16 Q Were you aware of any problems he had  
17 as a police officer?

18 A No, I'm not.

19 Q As far as you knew, he did good work.  
20 There were no complaints?

21 A I don't recall any complaints about  
22 him, no.

23 Q Fair enough. And there's nothing to  
24 suggest that he did other than good work as a  
25 police officer?

1           A     There's nothing to suggest that he had  
2     done anything wrong, no --

3           Q     Right?

4           A     -- prior to this incident.

5           Q     And when you went to the house that  
6     day, would it be fair to say that he appeared to  
7     have been crying?

8           A     That's probably a fair statement.  His  
9     face was really red, obviously very, very upset.

10          Q     Okay.  And he was subdued?

11          A     Yes, he was.

12          Q     Distraught?

13          A     Certainly bothered, I'm not sure if  
14     distraught is the right word, but, possibly, he  
15     was quiet, obviously --

16          Q     Upset?

17          A     -- very stressed out, very, very much  
18     so.

19          Q     Okay.  And he didn't talk very much?

20          A     Not much at all.

21          Q     No.  And would you have known his wife  
22     were pregnant if she hadn't said anything?

23          A     No.

24          Q     No.  Not noticeable?

25          A     No, it wasn't.

1           Q     And she told you she had just recently  
2 found out that she was pregnant?

3           A     That's correct.

4           MR. PROBER: Thank you, those are my  
5 questions.

6           MR. GREEN: I don't have any  
7 questions, Mr. Commissioner.

8           THE COMMISSIONER: Yes. Just one  
9 question. Someone who is placed on administrative  
10 leave is on leave with pay?

11          THE WITNESS: That's right.

12          THE COMMISSIONER: In this case, how  
13 long would he have stayed on administrative leave  
14 with pay?

15          THE WITNESS: I can't answer that  
16 because I don't know when the suspension hearing  
17 was. Typically it shouldn't be a long period of  
18 time, but it has been lengthy periods of time in  
19 other cases. I don't know when the suspension  
20 hearing occurred, though.

21          THE COMMISSIONER: They wouldn't wait,  
22 would they, until his trial on the criminal  
23 offences was over?

24          THE WITNESS: No, they shouldn't have.  
25 There's an ability to have a suspension hearing as

1 soon as is practicable. In this particular case,  
2 I believe that is the case, I can't confirm that.

3 THE COMMISSIONER: All right. They  
4 don't, in other words, they simply don't wait for  
5 a criminal prosecution, they go out on their own  
6 and they do the administrative hearing and reach a  
7 conclusion at that point?

8 THE WITNESS: In most cases they have.  
9 There have been occasions, you know, you can use  
10 the Tokarchuk hearing, for example, where people  
11 were on administrative leave for a lengthy period  
12 of time.

13 THE COMMISSIONER: In this case, the  
14 trial didn't take place until almost three years  
15 later.

16 THE WITNESS: Yeah, I believe that's  
17 correct. I would assume that the suspension  
18 hearing would have happened soon. But, again, I  
19 can't confirm that. I don't know when that  
20 happened.

21 THE COMMISSIONER: Thank you very  
22 much.

23 MR. PACIOCCO: I have been advised,  
24 Mr. Commissioner, that the suspension hearing was  
25 on the 22nd of March, 2005.



1 THE COMMISSIONER: Thank you.

2 MR. McFETRIDGE: No questions.

3 THE COMMISSIONER: Re-examination,  
4 Mr. Paciocco? Oh, I'm sorry.

5 MS. HANLIN: We have no questions,  
6 Mr. Commissioner.

7 THE COMMISSIONER: Thank you.  
8 March 22nd?

9 MR. PACIOCCO: March 22nd, 2005.

10 THE COMMISSIONER: Very expeditious.

11 BY MR. PACIOCCO:

12 Q Sir, if a member of the Winnipeg  
13 Police Service decided, or declined an invitation  
14 from the RCMP to testify in a fatality that arose  
15 out of an event where a number of police officers  
16 were together, I take it, sir, as Chief now,  
17 that's something that you would do something  
18 about?

19 A If I received that information, I  
20 probably would, yes.

21 Q And, sir, in this particular case,  
22 this will be canvassed with other witnesses, but  
23 certainly Anderson and Humniski were not at all  
24 hesitant to come forward, based on your meeting  
25 with them?

1           A     No, it was their suggestion, they  
2     wanted to.

3           Q     Sir, I understand that police officers  
4     are subject to internal discipline and potentially  
5     job loss for providing false information during a  
6     criminal investigation. You certainly understand  
7     and I think can confirm that anyone could be  
8     guilty of a crime for failing to provide truthful  
9     information to an investigator?

10          A     To an investigator specifically?  
11     Possibly, depending on what that information is,  
12     there could be obstruct or something like that,  
13     yes.

14          Q     False information provided to an  
15     investigator would amount to obstruct justice and,  
16     therefore, the employment disincentive seems to  
17     pale in comparison to the criminal disincentive,  
18     does it not?

19          A     Well, I would suggest you are probably  
20     right. It's a very serious case. If somebody  
21     provides false information and is charged  
22     criminally, absolutely. It's also, and I'm not  
23     disagreeing with you here, a situation potentially  
24     like that could lose the person their job as well.

25          Q     And through questioning, my friend

1 from the Winnipeg Police Association,  
2 Mr. Labossiere, endorsed in some respect the rigor  
3 of the Professional Standards Unit by evidencing  
4 the fact that the Association is often displeased  
5 with the way in which Professional Standards deals  
6 with it, thinking them to be too rigorous.

7 I take it, sir, you don't always  
8 accept the complaints of the Winnipeg Police  
9 Association?

10 A No, we don't.

11 MR. PACIOCCO: I have no further  
12 questions, Mr. Commissioner, and I note that it's  
13 12:31, and I think it's time to excuse the witness  
14 and to have lunch.

15 THE COMMISSIONER: Thank you very  
16 much.

17 THE WITNESS: Thank you.

18 THE COMMISSIONER: We'll rise now  
19 until 2:00 o'clock.

20 THE CLERK: All rise. This Commission  
21 is in recess.

22 (Proceedings recessed at 12:31 p.m.  
23 and reconvened at 2:00 p.m.)

24 THE CLERK: All rise. This Commission  
25 of Inquiry is now reopened. Please be seated.

1 MR. PACIOCCO: Good afternoon,  
2 Mr. Commissioner.

3 THE COMMISSIONER: Good afternoon.

4 MR. PACIOCCO: The next witness that  
5 will be called is Sergeant Sean Black of the  
6 Winnipeg Police Service. I assume that's who is  
7 sitting in the chair.

8 THE WITNESS: Correct.

9 SEAN BLACK, having first been duly  
10 sworn, testified as follows:

11 BY MR. PACIOCCO:

12 Q Good afternoon, Sergeant.

13 A Good afternoon.

14 Q I understand that some people call you  
15 Blackie?

16 A Yes.

17 Q You have been a police officer for  
18 some 17 years now?

19 A Correct.

20 Q And you would have been a police  
21 officer for approximately 14 years at the time of  
22 the death of Crystal Taman?

23 A Correct.

24 Q You held the rank of constable at that  
25 time, sir?

1           A     That's correct.

2           Q     And when were you promoted to  
3 sergeant?

4           A     It was 2005, and it was roughly about  
5 May.

6           Q     And that was something that would have  
7 been in the works and about to happen for a few  
8 months, sir?

9           A     Correct.

10          Q     You worked at the time at District 3  
11 office of Division 13?

12          A     Correct.

13          Q     Are you still working there?

14          A     No.

15          Q     How long had you been working at that  
16 division at the time of the event that you are  
17 here to testify about today, the 24th and 25th of  
18 February, 2005?

19          A     I got transferred there roughly  
20 December, in around the beginning of December,  
21 2004.

22          Q     Okay. So you would have been there  
23 approximately three full months by the time of  
24 these events?

25          A     Correct.

1 Q And I understand your family happened  
2 to be away on the weekend in question?

3 A Correct.

4 Q And you were home alone at your house,  
5 and you were obviously attending to work from  
6 there, sir?

7 A Correct.

8 Q Sir, I'm going to get some of the  
9 preliminary matters out of the way before we get  
10 into the events themselves. And I'm going to  
11 begin by making the observation that from looking  
12 at the materials, certainly I'm left with the  
13 impression that you had, at the time at least, a  
14 pretty good friendship with Ken Azaransky?

15 A He was my partner.

16 Q Would you have considered him a  
17 friend, sir?

18 A I basically started working with him  
19 in December. So when you ask my friendship with  
20 him at that time, it was brand new.

21 Q Okay. But you worked with him as your  
22 partner?

23 A Yes.

24 Q And we noticed that you went to the  
25 interview of March 11th, 2005, with the

1 Professional Standards Unit together, sir?

2 A Yes.

3 Q And I also understand, and we will get  
4 into this later, that he stayed overnight at your  
5 place the night of the collision, sir?

6 A Correct.

7 Q And, in addition, I understand further  
8 that you socialized with him from time to time at  
9 Branigan's Garden City Restaurant?

10 A Prior to the accident?

11 Q Yes, sir?

12 A Correct.

13 Q And I'm also going to ask you about  
14 your relationship with Rodrigo Bravo, who  
15 testified earlier today, sir. You knew the  
16 general manager at Branigan's, Mr. Rodrigo Bravo?

17 A Yes.

18 Q He described you as close-knit, the  
19 two of you, when he was giving his Commission  
20 evidence. Would you agree with that  
21 characterization?

22 A He is a friend who I would consider to  
23 be close, but it is -- we don't speak all that  
24 often, it is not like we speak daily, weekly.  
25 Sometimes we will go a month or two without even

1 talking so...

2 Q That may be, sir, certainly I'm not  
3 going to suggest it is not, but I know that  
4 Mr. Bravo testified today that he spoke to you on  
5 the phone almost every day. You would disagree  
6 with his testimony, sir?

7 A As of late, no, we don't speak on the  
8 phone every day.

9 Q What about back in 2005?

10 A We would -- back in 2005, he was  
11 living in Winnipeg, so our relationship was a  
12 little bit tighter, because of the distance. Now  
13 he is outside of Winnipeg, so, yeah, our  
14 relationship has changed.

15 Q You say a little bit tighter. Do you  
16 disagree with his evidence that he spoke to you on  
17 the phone just about every day?

18 A I don't recall if we spoke every day.  
19 I would say our friendship was different then than  
20 it is now.

21 Q Well, sir, you would also say that you  
22 spoke to him with some frequency?

23 A Yes, more frequency than now.

24 Q Even regularly, I think would be a  
25 fair description, based on his testimony?



1           A     I don't recall exactly how often we  
2 would speak together on the phone.

3           Q     I'm not asking you for a count, sir,  
4 but would you agree with me that you spoke to him  
5 regularly?

6           A     Yes, it would be regular, more regular  
7 certainly than now.

8           Q     All right. And you were in  
9 Mr. Bravo's wedding party?

10          A     Correct.

11          Q     What of Chelsea O'Halloran, do you  
12 know her?

13          A     Yes.

14          Q     You understand that she was the  
15 waitress on February 24th, at the time when your  
16 shift was at Branigan's?

17          A     Correct.

18          Q     And you knew her by name?

19          A     Knew her by Chelsea, yeah.

20          Q     Yes. And she was aware that -- about  
21 your sergeant's promotion, that was something that  
22 she learned by virtue of your common circles, sir,  
23 does that surprise you?

24          A     Yeah, that's -- that does surprise me.

25          Q     You shared drinks with her on one

1 occasion, did you not, sir?

2 A I don't recall if I did. I was asked  
3 that the last time, and it is possible.

4 Q So if she testified that she sat down  
5 with you and Ken Azaransky and David Harding to  
6 have drinks with you one evening after her shift  
7 ended at Branigan's, you wouldn't be in a position  
8 to dispute that, sir?

9 A No, I don't -- that's possible.

10 Q How frequently would you go to  
11 Branigan's back in 2005, in the early months, and  
12 from the time really you ended up over at Division  
13 13?

14 A Well, I do recall going once or twice  
15 before that. But more than that, I can't say for  
16 sure.

17 Q Okay. So it is basically what you  
18 testified to when you were under oath last time  
19 with Mr. Clifford, sir. Do you have a copy, I  
20 guess you don't, I don't see any documents in  
21 front of you, but a transcript of an interview  
22 that you gave to Mr. Clifford is available to the  
23 Commissioner, and we are going to be using it from  
24 time to time today. It is transcript T6C, and it  
25 is dated March 19th, 2008.

1                   You remember giving testimony under  
2   oath to Mr. Clifford on that date, sir?

3           A     Yes.

4           Q     It was at the Commission office?

5           A     Yes.

6           Q     Sir, I'm just going to draw your  
7   attention to the first paragraph on page 9.  You  
8   will notice that the pages are divided in four.  
9   There are numbers in each quarter of the page  
10   which correspond to shrunken pages so that we  
11   could be more economical in terms of the  
12   transcript.

13                   Do you see page 9 in the upper  
14   right-hand corner?

15           A     I see it in the bottom right-hand  
16   corner.

17           Q     All right.  If you take a look at the  
18   document, sir, you will notice that each page has  
19   four pages on it, and I'm referring to the little  
20   pages.

21           A     Okay.

22           Q     I'm going to ask you to look at page 9  
23   of the little pages.

24           A     Yes.

25           Q     Do you have that in front of you, sir?

1 Probably the first white sheet that you have got  
2 in front of you.

3 A I have page 9 on the bottom right-hand  
4 corner.

5 Q Perfect. I guess I mislead you when I  
6 said top right, I meant top right of that  
7 particular page rather than the entire page, there  
8 was a miscommunication there, sir.

9 All right. We are both on page 9. I  
10 want to reaffirm that what you said to  
11 Mr. Clifford was in terms of the frequency between  
12 that time and the event that took place that  
13 night.

14 "I don't recall how many times I had  
15 been there, maybe a couple, maybe one.  
16 I don't remember exactly."

17 Do you remember giving that answer, sir?

18 A Yes.

19 Q And is that still your position today?

20 A That is.

21 Q So you have no good memory then of the  
22 frequency of visits or the nature of the visits?

23 A It wasn't often.

24 Q Okay. I want to explore two kinds of  
25 visits with you, sir. I want to talk about the

1 visits that would have occurred with the entire  
2 shift, or a large number of members of your shift,  
3 and then I want to explore visits that you might  
4 have undertaken where you were with other officers  
5 and not members of your shift.

6                   How often did the shift go to  
7 Branigan's at the time that you were there prior  
8 to the February 25th incident?

9                   A     As a whole?

10                  Q     As a group of, let's say, larger than  
11 10?

12                  A     I don't recall going there with a  
13 group larger than 10 before this.

14                  Q     We heard that this was something that  
15 happened with some frequency. Rodrigo Bravo  
16 testified that just about once a month there would  
17 be a shift party of some kind, or shift  
18 get-together at Branigan's. And more  
19 specifically, Chelsea O'Halloran testified that  
20 there were at least two prior such get-togethers  
21 at Branigan's, prior to February 25th, while she  
22 was employed there. And she was employed there  
23 pretty much the same period that you were, sir.  
24 She had three months experience at Branigan's at  
25 the time that she made that observation. So the

1 get-together that lead ultimately to the charges  
2 against Derek Harvey-Zenk was the third event that  
3 Chelsea O'Halloran can remember.

4 Do you have any reason to dispute  
5 that, sir?

6 A In terms of my attendance to that?

7 Q Let's just start with the general  
8 observation that this occurred on three occasions,  
9 including the night of February 24th and 25th,  
10 since you joined that particular division?

11 A I only recall being there once or  
12 twice before that. It is possible twice. Again,  
13 I can't say for sure how many times.

14 Q Okay. Because she does remember you  
15 being in attendance on all of those occasions,  
16 sir. You don't dispute that, I take it, from the  
17 answer that you just gave?

18 A I don't recall.

19 Q So you accept that she might be right?

20 A I don't recall how many times I was  
21 there.

22 Q So you are not going to argue with her  
23 estimate, is that fair, sir?

24 A Again, if it was once, twice, I'm not  
25 sure, it is hard to say.

1           Q     It could have been the three times she  
2     is describing?

3           A     Again, it is hard to say. I don't  
4     recall how many times.

5           Q     Sir, there were other opportunities to  
6     go to Branigan's, apart from attendances with  
7     large groups. Occasionally smaller groups would  
8     go to Branigan's from time-to-time, between  
9     December when you joined and February of 2005.  
10    Would you agree with that, sir?

11          A     Well, it wasn't a regular occurrence  
12    that we would go. I mean, it seemed to be a place  
13    to go that was quiet, it was quaint, it was a  
14    place where you can go on an evening shift. So  
15    evening shifts basically was the time that we  
16    would generally partake and attend. Evening  
17    shifts only happened every so often. So, again,  
18    between December and February, it wasn't often.

19          Q     But it was something that did happen.  
20    You would go there with a handful of officers  
21    periodically?

22          A     I recall being there that night,  
23    February 24th, and then again a time before that,  
24    yes, possible. But any times before that, I just  
25    don't remember.

1           Q     Sir, Mr. Bravo said that a group of  
2 officers would come there up to two or three times  
3 a week?

4           A     That's -- I would assume in that  
5 response would be that there is a variety of  
6 officers that are working either in North End,  
7 downtown, I mean we have six districts here  
8 that -- I'm not sure if all attended to that  
9 location.

10          Q     He was referring specifically to  
11 District 3?

12          A     Okay. And I'm speaking on my behalf.  
13 Again, I don't know how many times I was there.

14          Q     There was also evidence about officers  
15 coming in the evenings with their wives. Did you  
16 ever do that, ever go there in the evening with  
17 your wife?

18          A     No.

19          Q     Chelsea O'Halloran testified and said  
20 in her statement to the Commission that there was  
21 a group of officers who socialized there  
22 regularly, sir.

23          A     Okay.

24          Q     And she indicated that that group was  
25 Ken Azaransky, David Harding and yourself, sir.



1 Do you accept her testimony, sir?

2 A That I attended there regularly as a  
3 group?

4 Q With those two officers in particular,  
5 sir?

6 A Again, did I go there with those  
7 officers before that? That's possible. I don't  
8 remember exactly the number. Again, a couple of  
9 times. I certainly wasn't there all the time.

10 Q She had testified that that group,  
11 including you, were there once a week?

12 A No.

13 Q You are shaking your head?

14 A Yes.

15 Q So you disagree with that, sir?

16 A I do.

17 Q And she testified that the three of  
18 you formed the core group, and that sometimes you  
19 would come with different individuals as well. Do  
20 you accept that you might have gone there with  
21 different combinations of officers?

22 A Again, I don't recall how many times.  
23 Again, it is -- again, it is --

24 Q That's why I didn't ask you how many  
25 times, sir, I asked if you recall going there with

1 different combinations of officers?

2 A I don't recall.

3 Q Again, you wouldn't dispute that, sir?

4 A I don't recall.

5 Q But based on your lack of memory, you  
6 wouldn't quibble with someone who purports to have  
7 a memory, sir?

8 A How can I argue when I don't remember  
9 something?

10 Q That's entirely the point, sir.

11 You gave a statement, sir, to James  
12 Dube Spraggs Adjusters. Do you remember that,  
13 sir?

14 A Correct.

15 Q And I'm going to refer to that  
16 statement, and it can be found for the lawyers in  
17 the room at tab Q-2.89.b.25.

18 And I know Constable Black, we are not  
19 playing bingo, we have tabs to help us find the  
20 documents -- Sergeant.

21 I would like to have that entered as  
22 an exhibit, please?

23 THE CLERK: 162.

24 (EXHIBIT 162: Q-2.89.b.25, Statement  
25 of Sean Kevin Black File 05-974901)

1 BY MR. PACIOCCO:

2 Q Sir, this statement can you explain  
3 how this came about?

4 A After the accident I received some  
5 advice, and basically the option of exploring  
6 this, and I thought it was something that I should  
7 do, I thought it was good advice. So I contacted  
8 my local insurance broker.

9 Q Yes, sir?

10 A And advised him, and I went down and  
11 attended to their location.

12 Q Yes, sir?

13 A And then they forwarded, or I guess  
14 they were in contact with this company, perhaps a  
15 partner of some type?

16 Q Yes, an adjustor.

17 A An adjustor. And I then met with  
18 them.

19 Q And you gave them a statement, sir?

20 A I did.

21 Q And it is a signed statement, sir?

22 A That's correct.

23 Q I notice there is a signature at the  
24 bottom of each page?

25 A Correct.

1 Q And it is dated March the 11th?

2 A Correct.

3 Q And I understand that you actually  
4 went there on March the 7th for the interview?

5 A Correct, that sounds right.

6 Q And then the statement was prepared,  
7 and when it was ready, you actually came in and  
8 read it over and signed it; correct?

9 A That's correct.

10 Q Well, sir, I'm going to just draw your  
11 attention to a passage at page 3057. And you will  
12 notice at the bottom of page 5, you represent to  
13 the insurance adjustor that since you transferred  
14 to your present shift, this was only the second  
15 occasion, referring to February 24th/25th, that a  
16 group of officers had socialized at Branigan's.  
17 Do you remember giving that information to them?

18 A Yes.

19 Q And that seems to be a pretty definite  
20 response on your part, sir?

21 A It was a response that was written  
22 down at the time, that's correct.

23 Q Okay. I know it was a response  
24 written down at the time, sir. But you agree with  
25 me that it was a pretty definite response, sir?

1 A Correct.

2 Q But it doesn't seem to accord with the  
3 testimony that Chelsea O'Halloran has given about  
4 your regular attendances, sir. Do you agree with  
5 that?

6 A Correct.

7 Q And it doesn't seem to accord to your  
8 agreement today that you went there from time to  
9 time with a group of officers, sir?

10 A Correct.

11 Q And, sir, if it is not an entirely  
12 accurate statement, why would you make it to the  
13 adjustor?

14 A That's something that I -- whether I  
15 went there, once, twice, exactly, again, I'm  
16 saying the same thing. I don't recall from this  
17 day forward how many times I was there. I just  
18 don't remember.

19 Q Sir, you would agree with me that it  
20 is probably not a good idea to put a statement in  
21 a document like this that's precise, when you are  
22 not really sure about the facts that you are  
23 recording?

24 A Again, if this was the second  
25 occasion -- again, I'm saying the same thing. It

1 is potentially, and I don't recall at this time,  
2 especially, how many times I was there.

3 Q Sir, how did you come to be at  
4 Branigan's on the evening of February 24th?

5 A I drove.

6 Q But how did the arrangement work out  
7 in terms of all of the officers pretty much  
8 having --

9 A There was some discussion about the  
10 event. And basically as we were working evening  
11 shift that night, there was discussion about going  
12 there.

13 Q Do you remember when that discussion  
14 took place?

15 A Again, I was working with Ken  
16 Azaransky, partnered with him. So, I believe we  
17 talked about it in the car during the night.

18 Q All right. And I can advise you that  
19 Officer Harding called ahead in order to notify  
20 Branigan's that this was going to take place.

21 A Okay.

22 Q And he apparently spoke to Mr. Bravo,  
23 who finished his shift at 7:00 o'clock. So this  
24 had been planned some hours before the event in  
25 question. Do you take any issue with that, sir?

1 A No.

2 Q Sir, who was there?

3 A There was a large number of people  
4 that were there.

5 Q I'm going to help you out, just so we  
6 can get through this a bit more efficiently. I'm  
7 going to show you a document that's in tab F-1, at  
8 paragraph 33.b. F-1.33.b. If that could be made  
9 exhibit 163, please?

10 THE CLERK: 163.

11 MR. PACIOCCO: 163.

12 (EXHIBIT 163: F-1.33.b, Line-up for  
13 operations/Division 13, E shift,  
14 February 24, 2005, one page)

15 BY MR. PACIOCCO:

16 Q Sir, what you will see there is  
17 Division 13 shift list. And I take it, sir,  
18 that's the platoon that you were on?

19 A Yes.

20 Q And you can go through that list of  
21 individuals, sir. And we have evidence to suggest  
22 that everybody on that list, with the exception of  
23 the individuals identified from the investigation  
24 unit, which would be near the bottom third of the  
25 page, Aristomeni Berdesis and Robert John

1 Stephanson were not there, nor were Martin Marques  
2 and Scott William McLennan. And we understand  
3 that everybody from general patrol was there with  
4 the exception of Constable Stanley Parag. Do you  
5 have any issue with that, sir?

6 A Yes, what I remember is, and I can go  
7 through the names that were there, if you like?

8 Q Do you have any issue with my  
9 suggestion to you that they were all there, sir?

10 A I don't recall a couple of names here.

11 Q All right. Let's see which ones you  
12 don't recall, sir?

13 A I don't recall Veldman being there.

14 Q All right.

15 A Mikawoz.

16 Q Yes, sir?

17 A I don't know if Brian Neumann was  
18 there.

19 THE COMMISSIONER: Who was that?

20 THE WITNESS: Brian Neumann. It is  
21 hard to say because it is a while ago. But Lloyd  
22 Swanson, I'm not sure if he was there. But the  
23 rest, minus the names that you mentioned, I would  
24 say I do recall seeing.

25



1 BY MR. PACIOCCO:

2 Q So you recall seeing them that  
3 evening, sir?

4 A Yes. Well, some of that from  
5 Branigan's or at my residence as well.

6 Q Okay. And I can advise you, sir, that  
7 statements were taken from all of the individuals  
8 you listed, and they were, indeed, according to  
9 their own position, they were there, sir. And  
10 there were also individuals from other shifts.  
11 Werner Toews was there, for example. He was with  
12 traffic.

13 A Okay.

14 Q So too was Gordon Schneider, who  
15 wasn't part of B1 group?

16 A Right.

17 Q And Kelly McLure, who I understand did  
18 attend at your place, sir?

19 A That's correct.

20 Q I notice next to your name we have the  
21 letter status "ECC" in the right-hand side. Do  
22 you know what that means?

23 A I don't.

24 Q Now, it has just been pointed out to  
25 me that there are names in the bottom in gray, and

1 I don't want to mislead anybody. Kelly McLure's  
2 name is there. I don't know whether you can see  
3 it through that --

4 A I can see it, yeah.

5 Q The other three names above it were  
6 not there. That would be Shannon Mann, Jason  
7 DeGroot, Darren Lambert?

8 A I don't recall seeing them there.

9 Q No, they weren't there. How about  
10 Tracey Fudge?

11 A Yes.

12 Q Yes. When did you arrive?

13 A I arrived, it was roughly around,  
14 between 11:30 and quarter to 12:00.

15 Q And how do you pinpoint that time,  
16 sir?

17 A I recall being off duty around 11:30.  
18 So, you know, that's give or take, and that's an  
19 approximation.

20 Q All right. Now if I understand  
21 correctly, your shift was not scheduled to end at  
22 11:30 when you reported to work that day?

23 A Yeah, I believe we were working until  
24 2:30.

25 Q And you took some type of leave from

1 the last few hours of your shift?

2 A Correct.

3 Q What is that called, sir, so I  
4 understand?

5 A There is various leaves that you can  
6 take?

7 Q And is one EDL?

8 A That's correct.

9 Q What is EDL, sir?

10 A Extra duty leave.

11 Q So, essentially, you can convert  
12 overtime into a shorter time on another day, would  
13 that be fair?

14 A That's correct.

15 Q When you arrived, who was there?

16 A When I arrived, when I first came into  
17 the restaurant and lounge, I noticed that there  
18 was a table full of people, and I saw that the  
19 table was full. And I, at this time, it is  
20 difficult for me to remember exactly, but I know  
21 in my statement initially I made to, I believe to  
22 PSU, I made mention of some names of people that  
23 were around that table.

24 Q So are you suggesting that you don't  
25 recall now?

1           A     Well, it is difficult. And one for  
2     sure is Harvey-Zenk was at that same table that  
3     I'm referring to.

4           Q     I'm going to come to that later, sir.  
5     When you talk about table, are you referring to a  
6     single unit table or a collection of tables?

7           A     To me it looked like it was one long  
8     bar table.

9           Q     Because the information we have, sir,  
10    is that the staff of Branigan's put together a  
11    number of smaller tables in order to accommodate  
12    the group, and to facilitate the request of the  
13    group that everybody be together.

14          A     Okay.

15          Q     So that's a possibility in your mind?

16          A     Yes.

17          Q     So, some people had already arrived  
18    when you came?

19          A     Some people were already there.

20          Q     And I take it that there was quite a  
21    number of them, sir?

22          A     The table was roughly, give or take,  
23    some distance here, but it looked like about this  
24    length. And you are saying that there was tables  
25    put together, but this distance --

1           Q     All right.  When you say this length,  
2     are you referring to the table that you are  
3     currently sitting at, sir?

4           A     Yes.

5           Q     You would make that approximately how  
6     long?

7           A     Well, to me it looks like it is  
8     between five and six feet.

9           Q     Okay.

10          A     Probably more six feet.

11          Q     I would think more six feet, maybe  
12     even push a little more than that.  But  
13     essentially you have got that type of memory of  
14     that being the space?

15          A     Yes.

16          Q     And I take it from your evidence that  
17     you didn't end up sitting there?

18          A     I didn't.

19          Q     Where did you end up sitting?

20          A     Because of this table, and it being  
21     full, I decided to go to a table just to the west  
22     of where they were.

23          Q     Okay.  And can you describe the type  
24     of seating you had at that table?

25          A     It was a sofa, kind of a love seat and

1 sofa chairs, a smaller table.

2 Q All right. A smaller table?

3 A Yes.

4 Q And I understand, sir, from your  
5 earlier statements that it was close to the  
6 fireplace?

7 A Correct.

8 Q And that fireplace would have been to  
9 your right or to your left when you were sitting  
10 down?

11 A It would have been, if I recall, it is  
12 kind of on my left, but maybe up a little bit.

13 Q All right. Now, I'm going to show you  
14 a CAD drawing over there. If you take a look at  
15 the small poster, sir, you will notice that's the  
16 outline and dimensions of Branigan's. I will warn  
17 you, sir, that those are inches and not feet. I  
18 had thought they were feet, but you could have  
19 parked four SUVs in the fireplace, if that was so.  
20 They are, in fact, inches. And you will notice  
21 that the south end is at the top. That would be  
22 Leila Street. And you do remember the  
23 configuration of Branigan's, essentially?

24 A The south end, that is Leila you are  
25 saying?

1 Q Yes, at the top, sir.

2 A Yes.

3 Q And so if you look over to what would  
4 be the west, it actually is going to appear on the  
5 right on this because that diagram is upside down,  
6 and you will notice the fireplace that juts out on  
7 an angle, sir?

8 A Yes.

9 Q Are you able to indicate for us by  
10 just very briefly getting up and going over there  
11 and pointing, where you were sitting, sir?

12 A Do you see where 46 is -- 46 inches, I  
13 guess is the space between there?

14 Q So that would be a wall that runs east  
15 to west?

16 A Correct. And I would be just  
17 sitting -- and I recall looking towards the  
18 fireplace.

19 Q Okay.

20 A And I was -- whether I was, I believe  
21 my back was against 46.

22 Q Okay. You think it was like tucked  
23 right in the corner there, in your memory?

24 A Somewhat, yeah, whether I was back  
25 there or leaning towards 79 a little bit, but

1 certainly in around that area.

2 Q And I understand that you chose to sit  
3 there because the other tables were full?

4 A That table I was talking about was  
5 stretched from 168 on the south wall of Leila.

6 Q Okay. Sir, our information was that  
7 it was actually in a configuration turned around  
8 towards the fireplace, that the line of tables  
9 actually stretched out and moved in that  
10 direction. Does that accord with your  
11 recollection?

12 A I recall it being the table was  
13 stretched east and west.

14 Q So there was no tables or no sitting,  
15 in your recollection, into the area that would  
16 probably move into the middle of that diagram,  
17 sir?

18 A I don't recall that.

19 Q You seem pretty confident about that?

20 A I recall, because when I came in,  
21 that's the table that I saw along the 168 and I  
22 know where I sat.

23 Q I understand from your earlier  
24 interviews that you chose not to sit there because  
25 there was no room for you?



1 A It looked full.

2 Q And if there had been room, I take it  
3 you would have sat there?

4 A Possible.

5 Q Because you went there certainly, sir,  
6 to socialize with other members of your shift?

7 A That's correct.

8 Q And you wouldn't have moved yourself  
9 off into a new location, where I understand there  
10 was nobody was sitting when you arrived, if you  
11 had had an option, in your mind, sir. So you sat  
12 in the couch?

13 A Well, I recall it being more of a --  
14 sofa chairs.

15 Q Kind of like a love seat?

16 A Yes.

17 Q A two-seater?

18 A Again, I could be wrong on that.

19 Q That accords with the information that  
20 we have, sir.

21 You told Mr. Clifford, as I've  
22 indicated, that you sat alone there. You had left  
23 work around the same time as Ken Azaransky;  
24 correct?

25 A Yes.

1 Q And I take it you left in separate  
2 vehicles?

3 A Yes.

4 Q And you are not sure, from my reading  
5 of the transcript, whether he got there first or  
6 you did, or around the same time, but you went and  
7 you sat there; correct?

8 A Yes.

9 Q You told the Winnipeg Police that Jay  
10 Nolet came and joined you. Do you remember that?

11 A Yes.

12 Q And that was within a few minutes, he  
13 came and sat with you, sir?

14 A Yeah, I recall that.

15 Q Jay Nolet, of course, was Derek  
16 Harvey-Zenk's partner at the time?

17 A Yes.

18 Q And can you describe what happens when  
19 you get at the table, sir?

20 A Sorry, when I get?

21 Q When you get at the table and these  
22 people are coming, what is it like in there?

23 A The atmosphere in the restaurant?

24 Q Yes?

25 A It was just typical of a lounge area.

1 It was just that.

2 Q Can you describe what is typical of a  
3 lounge area, sir, so that we can better  
4 understand, those of us who may not go to lounges?

5 A Okay. Well, I sat down and,  
6 basically, I was there for, like I said, a few  
7 minutes until Jay arrived. And he asked if anyone  
8 was joining me. I don't know, as I looked around,  
9 it just seemed like everyone was socializing.

10 Q Okay. So people were moving around  
11 and talking to each other?

12 A I can only assume.

13 Q So people are coming and going, and  
14 there is a lot of activity with people at the  
15 lounge, sir?

16 A I don't recall that people were  
17 getting up and down when I first arrived there,  
18 but I can only assume that's what it would be  
19 like.

20 Q It would make sense, wouldn't it, sir?

21 A Yes.

22 Q You didn't see anybody there who  
23 wasn't from the Winnipeg Police Service in that  
24 part of Branigan's, did you?

25 A I don't recall.

1           Q     It was pretty much a private  
2 get-together, wasn't it?

3           A     Do you mean if we booked it for a  
4 private event?

5           Q     No, I mean that you guys had the room.

6           A     Again, it appeared, in the corner,  
7 that I sat in the table and that it was just us.  
8 But were there other people in and around the  
9 area? It is quite large, I mean, it is not as big  
10 as this room by any means but --

11          Q     We have photos of it, sir, that might  
12 assist in giving you some type of perspective on  
13 it.

14          A     Yeah, sure.

15          Q     If you could show the witness exhibit  
16 153, which is our volume W9.

17                     And I apologize, Ms. Braun, I don't  
18 have my version with the sticky showing which  
19 photos we do have. I can see the numbers on the  
20 back so we can work from that. Perhaps you can  
21 put up W9.10, please?

22                     I know size is relative for everyone,  
23 sir. Rodrigo Bravo described it as a small area,  
24 or yesterday in his testimony. But do you  
25 recognize that photo, sir? We have taken out all

1 of the tables and chairs so we can get a sense of  
2 the space there. Do you recognize that layout,  
3 sir?

4 A The layout, yes.

5 Q Yes. You, from what I understand,  
6 were seated in what I call a love seat, a smaller  
7 couch with lower tables somewhere around that  
8 Double Diamond sign, facing the fireplace, is your  
9 recollection?

10 A Yeah, correct.

11 Q And the tables that you described  
12 would be off on that little section that would be  
13 adjacent to the south end or Leila Street, sir?

14 A And where the red blinds are?

15 Q Yes, sir?

16 A Yeah. That's the table that you are  
17 referring to?

18 Q Yes, sir?

19 A Yes.

20 Q Could you please put up W9.12 for a  
21 moment?

22 Sir, there you will see the south wall  
23 has three windows. And you will note that to the  
24 east you have four windows shown in that diagram,  
25 and you have the fireplace, sir?

1           A     The fireplace on the west.

2           Q     Yeah. And is it still your sense that  
3 that's a big room, sir?

4           A     Well, when I refer to the room too,  
5 I'm also referring to the lounge in itself, that's  
6 what I thought you were talking about. Because it  
7 wraps around, you have the pool table, I guess.

8           Q     We have got photos of that. You might  
9 help yourself out if you look at W9.16?

10          A     Yeah. Like when I looked through it,  
11 that's what I also -- because it wraps around and  
12 there is the bar. And so I was referring to the  
13 whole establishment, the whole lounge.

14          Q     Sure. And our information is that  
15 this area that's shown in the photos is where you  
16 people were settled for the purposes of that  
17 evening?

18          A     Correct.

19          Q     You would agree it is not really a big  
20 area. It is pretty easy to see around the entire  
21 area?

22          A     Other than some obstacles like the  
23 fireplace here, but, yes.

24          Q     Yes. And once you are inside that  
25 alcove, there is really nothing to obstruct your

1 view?

2 A In terms of what?

3 Q In terms of what other people are  
4 doing, or the layout, or who is there, or things  
5 of that nature, sir?

6 A It is very easy to have an open area  
7 and say that now, yes. But if you have a lot of  
8 people and tables and stuff, it would be  
9 difficult.

10 Q If you are being asked about people  
11 and tables, the fact that there are people and  
12 tables there are not going to be that much an  
13 obstruction to you; wouldn't you agree with me,  
14 sir?

15 A It would all depend on where you were  
16 sitting and what vantage point you would have.

17 Q Okay. We will get to the vantage  
18 point very soon, sir. Now you were sitting at  
19 that lower table with Mr. Azaransky and Nolet?

20 A Correct.

21 Q Anyone else?

22 A I recall Norbert Bauer arrived.

23 Q Yes, sir.

24 A And Chris Humniski and Jim Anderson.

25 Q Now, you say they arrived, sir. Are

1 you able to tell us where they sat?

2 A We were all somewhat surrounding the  
3 table -- and as our table stretched towards the  
4 fireplace.

5 Q Okay. How many individual tables were  
6 there that you were sitting at, sir?

7 A No idea.

8 Q No idea. How many of those couch type  
9 seats were there, sir?

10 A Don't recall.

11 Q Because our information, sir, was that  
12 the couches were set up by Chelsea O'Halloran, and  
13 that she had two sets, so that there would be a  
14 love seat, a small table, and then a love seat.  
15 And then back against the love seat, from that set  
16 would be another love seat, so that it would be  
17 sequential, like two separate sittings, sir. Is  
18 that possible?

19 A I recall us being able to -- and I  
20 actually, if you -- I apologize, but if you can  
21 just elaborate, because I don't understand the  
22 format?

23 Q Well, imagine that you had two booths  
24 in a restaurant, how they would be lined up  
25 against the same wall back to back.



1 A Okay.

2 Q That's the description or the vision  
3 that one would get from the description that  
4 Chelsea O'Halloran provided of the four love seats  
5 that were set out, and the two lower tables.

6 A Okay.

7 Q Do you understand that?

8 A Yeah. But if you are -- and I don't  
9 know if things change as people started arriving,  
10 but I do recall having more of an open table and  
11 being able to -- and whether it was tables put  
12 together, but I do recall having conversation with  
13 people at my table.

14 Q Okay. So you recall having  
15 conversation with them, sir?

16 A Well, not -- I don't recall the  
17 conversation per se, but I do recall socializing.

18 Q Yes, sir. And if you can take a look,  
19 please, if we can put up, let's see, we may not  
20 have -- W9.17, do we have that? Maybe you can put  
21 up W9.18 just for the sake of comparison.

22 Sir, you see that there is a gentleman  
23 sitting at that table, and that's one of the high  
24 tables, one of the larger tables that was in use  
25 at Branigan's on that evening, sir. Does that

1 look familiar to you in terms of its basic size?

2 A Well, again, that table, I have no  
3 idea what -- again, my recollection is that I  
4 thought the tables -- it was a longer one, but I  
5 wasn't sure. You say they put shorter ones  
6 together. To me, that table doesn't mean anything  
7 to me.

8 Q Sir, I'm going to show you a  
9 photograph, that I am afraid I don't have to show  
10 the audience, but I will put that up there because  
11 we are going to find the size is comparable, which  
12 is W9.17. You have the exhibit in front of, sir,  
13 the photos? If you can please turn to page W9.17?

14 A Okay.

15 Q That depicts one of the low tables  
16 adjacent to one of the high tables, sir.

17 A Is that the one that you are referring  
18 to?

19 Q That's the high table, and you will  
20 notice a little bit -- yes, the one that you now  
21 have your finger on, sir.

22 A That's the lower one?

23 Q That's the lower table, sir.

24 A Okay.

25 Q Now you indicated that you were

1 sitting with Azaransky and Jay Nolet, I think  
2 Anderson was there as well. You had Bauer there  
3 as well, sir?

4 A Yes.

5 Q Did you mention one other person?

6 A Humniski.

7 Q And Humniski?

8 A Yes.

9 Q I assume you all had food and drink?

10 A I did.

11 Q Are you saying that the others did  
12 not, sir?

13 A It appeared that everyone, in my area,  
14 were eating and drinking, yes.

15 Q Why did you say it appeared that they  
16 were, sir? It is something that you could be  
17 pretty definite about if you were watching, isn't  
18 it?

19 A Well, there was definitely food, and I  
20 was consuming liquor, so there was definitely a  
21 drink on the table.

22 Q All right, sir, you are basing that on  
23 what you were consuming yourself?

24 A Yes.

25 Q What about the others, sir, that were

1 sitting at your table?

2 A I can only assume they were drinking.

3 Q Why can you only assume they were  
4 drinking, sir?

5 A Because we were there to socialize and  
6 go for a drink.

7 Q Yes, sir. And are you telling us that  
8 you don't remember seeing other alcoholic  
9 beverages on that little table with those other  
10 gentlemen?

11 A I'm pretty sure there was. We went  
12 there for wings, so there was food as well.

13 Q It would be pretty unusual for all of  
14 those officers to be gathered around that little  
15 table and you the only one drinking alcohol, sir?

16 A Well, again, I'm not sure if we had  
17 just one table, or whether there was some tables  
18 put together as well. So with more tables, it  
19 obviously stretches out where we are positioned.

20 Q Our information is there were only two  
21 of those small tables, sir, so even if you put  
22 them together, I think you would agree with me  
23 that you have got some distance that's probably  
24 not as great as the table you are sitting at?  
25 Would you agree with that?

1 A Correct.

2 Q Sir, surely, you would notice alcohol  
3 on those tables if you were sitting --

4 A I can only assume.

5 Q You are telling us that you don't have  
6 any ability to recall what the people sitting next  
7 to you were drinking when they were sharing your  
8 table, sir?

9 A No, I don't recall. I know I was  
10 drinking.

11 Q All right. We are going to get to  
12 what you were drinking shortly, sir. And you say  
13 you can assume they were drinking, but that's the  
14 best you are going to be able to do?

15 A Yes.

16 Q Sir, when you were asked by the  
17 Winnipeg Police Professional Standards Unit about  
18 the arrival of other individuals, you told them  
19 you don't remember exactly who was sitting where,  
20 sir. Is that still your position?

21 A We are talking about the same table?

22 Q We won't work on the same table, sir,  
23 you have already testified today that you do  
24 remember those people being at your table or group  
25 of tables.

1 A In around the area, yes.

2 Q What about the others, sir?

3 A I'm not sure who you are referring to?

4 Q Well, we went through a list of other  
5 people who were there, sir.

6 A The names that you are talking about  
7 here?

8 Q Yes, and I'm asking you generally now,  
9 we will go through the names later, but you  
10 indicated, from what I understood, sir, and I can  
11 take you to the passage if you want, that you  
12 don't remember exactly where everyone was sitting,  
13 sir?

14 A Do you mind if I see that?

15 Q Yes, sir. I'm going to take you  
16 please to tab F-1.35.c -- no, you don't want  
17 35.c -- yes, you do, F-1.35.c, if we can make that  
18 the next exhibit, please?

19 THE CLERK: 164.

20 (EXHIBIT 164: F-1.35.c, Interview of  
21 Sean Black dated March 11, 2005 by  
22 PSU)

23 BY MR. PACIOCCO:

24 Q And, sir, this is a statement that you  
25 gave on March 11, 2005, an interview with the

1 Professional Standards Unit of your police force.

2 Do you recall that, sir?

3 A Yes.

4 Q I'm going to take your attention,  
5 please, to page 899 of the document, which would  
6 be page 10 of the statement. Okay. You might  
7 want to start on page 9, right at the bottom of  
8 page 9, it might be easier. You are talking about  
9 the arrival of Jay Nolet, who sat down with you.

10 "I remember him saying something to  
11 the effect that I was going to be  
12 sitting alone or whatever, so he sat  
13 down beside me."

14 Are you with me, sir?

15 A No, I went -- sorry, I have got it  
16 now, sorry.

17 Q Okay. At the bottom of page 9?

18 A Yes.

19 Q "And then when I sat down, Jay Nolet.  
20 actually sat down with me. I remember  
21 him saying something to the effect  
22 that I was going to be sitting alone  
23 or whatever, so he sat down beside me.  
24 Then Jim Anderson, Norbert Bauer  
25 arrived, Chris Humniski. I don't

1                   remember exactly who was sitting  
2                   around there. I think that was pretty  
3                   much it. I might be missing a couple  
4                   of names there."

5 I was referring to the comment that you make there  
6 that you don't remember who was sitting around  
7 there. What did you mean by that, sir?

8                   A     Positioning.

9                   Q     So you remember the individuals now  
10 but you don't remember where they were, sir?

11                  A     Yes.

12                  Q     And you are referring to those very  
13 people, I think, who just came in?

14                  A     Yes.

15                  Q     And so you know, even with the people  
16 at your table, your position is you don't remember  
17 who was sitting where?

18                  A     Right.

19                  Q     You don't remember who was to your  
20 right?

21                  A     I believe Jay Nolet was to my right.  
22 Everybody else, I think -- I would say it is  
23 difficult to remember this long ago, but when I  
24 look back at the names, I am just trying to put a  
25 face to where they are positioned, but I'm pretty



1 sure Jay Nolet is to my right.

2 Q Okay. And when you describe Jay Nolet  
3 and Azaransky and yourself, you did refer in that  
4 statement to them as being the nucleus of your  
5 table. Is that a phrase you would have used, sir?

6 A Yes.

7 Q Why would you have used that phrase?

8 A That was our table.

9 Q Okay. So other people, I take it,  
10 were basically coming and going?

11 A From where?

12 Q From other places within Branigan's to  
13 your table, visiting your table?

14 A Yeah. As more people started to come,  
15 there was a lot more interaction.

16 Q Sure.

17 A It was obvious. And there was people  
18 walking around and, yeah, there was definitely  
19 more interaction.

20 Q Okay. So people definitely came to  
21 your table, sir?

22 A Again, it is -- I can only assume so,  
23 but I don't recall exactly who, but I can only  
24 assume that there was more interaction. But I was  
25 focused basically with our table and what we were

1 doing.

2 Q So you were focused on that, sir?

3 A Yes.

4 Q Yet you missed whether there was any  
5 alcohol on the table other than your own drink?

6 A Conversation.

7 Q Okay. And you have already indicated  
8 that you can't really recall the conversation that  
9 took place at that table, sir?

10 A That's right.

11 Q Did anyone -- did any other  
12 individuals come to your table, sir?

13 A It is -- that would be difficult to  
14 answer. I don't recall that.

15 Q Okay. Would you say it didn't happen,  
16 sir?

17 A I can't say that.

18 Q No. And it would stand to reason that  
19 this is a social atmosphere, you testified that  
20 you went there to socialize. You wouldn't just  
21 sit there as though you were in a church pew for  
22 the entire time, and then go home without ever  
23 interacting with anybody other than your nucleus,  
24 sir?

25 A Well, I sat there, and whether anybody

1 else came, I don't recall.

2 Q Sir, where was Tracey Fudge sitting?

3 A I have no idea.

4 Q How about Kelly McLure?

5 A No idea.

6 Q Shaun Veldman?

7 A I wasn't even sure if he was there. I  
8 have no idea.

9 Q Daniel Mikawoz?

10 A No idea.

11 Q Jacek Kapka?

12 A I can't say.

13 Q Brian Neumann?

14 A No idea.

15 Q Chris Guyot? How about Lloyd Swanson?

16 A Again, I don't recall where they were  
17 sitting.

18 Q Where was Harvey-Zenk sitting?

19 A Harvey-Zenk was already in the picture  
20 here.

21 Q All right. We can put the one up.

22 Which one would you like, sir? Which view would  
23 you like? Would you like the CAD drawing or would  
24 you like the photo of the alcove?

25 A That one is fine.

1 Q Okay. Perfect. The number on the  
2 back of that, Ms. Braun? That's W9.10.

3 All right, sir. Where was Derek  
4 Harvey-Zenk?

5 A If he was -- I guess when you are  
6 looking at the blinds, he is in that corner, or I  
7 guess on the right-hand side of that.

8 Q Okay. So on the far right, looking at  
9 the photo, sir?

10 A Yeah, but see where the red blinds  
11 are?

12 Q Yes, sir?

13 A He is in that area.

14 Q First, second blind?

15 A Between even, in that area roughly.

16 Q Sir, do you recall the description  
17 that you gave to the Winnipeg Police of where he  
18 was sitting?

19 A Somewhat facing south, and just  
20 basically adjacent to where I was.

21 Q Okay. You said that he was at one of  
22 the taller tables?

23 A Correct.

24 Q And by talking about one of the taller  
25 tables in your interview, sir, I think you

1 probably had a better memory back then that there  
2 was more than one table, because you had used the  
3 expression in your discussion with them, "on one  
4 of the taller tables."

5 A Okay. Whether that's semantics or  
6 what, I'm not sure. Again, it was a large table  
7 in my mind.

8 Q Okay. Sir, if you can turn to page  
9 899 of the interview you gave with the Winnipeg  
10 Police?

11 A Yes.

12 Q That's at tab F-1.35.c for the  
13 lawyers. Line 15:

14 "When I first arrived he would have  
15 been, he would have been actually on  
16 the west side of that table somewhere.  
17 I think he was looking towards the  
18 south."

19 Correct, sir?

20 A Yes.

21 Q And so you remember him sitting there  
22 and you remember him looking away from you, sir?

23 A Yeah, yeah. Where I'm positioned and  
24 where he is, it is almost like we are looking in  
25 opposite directions.

1           Q     Now, sir, I notice that you didn't  
2     know where anybody else was sitting. I'm curious  
3     as to why you would remember Harvey-Zenk and put  
4     him in a position facing away from you?

5           A     Because that's where he was.

6           Q     And that's your memory, sir?

7           A     Yes.

8           Q     You can't remember anybody else, but  
9     you can remember that he was sitting there, facing  
10    away from you?

11          A     Correct.

12          Q     I take it, sir, that the contacts with  
13    other people were a bit of a blur for you, sir?

14          A     Pardon me? Contacts in terms of --

15          Q     People who you interacted with that  
16    evening?

17          A     Yes.

18          Q     Lots of people, lots of activity?

19          A     Yes.

20          Q     And I can take you to the passage, if  
21    you have any doubt about any of the things that  
22    I'm going to say to you, sir, but you told  
23    Mr. Clifford that you could not recall if you had  
24    any conversation with Kelly McLure?

25          A     Correct.

1           Q     You did not recall whether anyone came  
2     to your table to talk or if you went by anybody  
3     else's table?

4           A     Correct.

5           Q     When interviewed by the Winnipeg  
6     Police Service, you didn't recall whether you gave  
7     invitations to individuals, or generally to come  
8     to your place when the evening was over?

9           A     Correct.

10          Q     You could not recall who you spoke to  
11     and who you did not?

12          A     Correct.

13          Q     Did you have any contact with Derek  
14     Harvey-Zenk at Branigan's?

15          A     I don't recall if I did.

16          Q     And so your evidence today is that you  
17     might have?

18          A     I don't recall if I did.

19          Q     Well, sir, for the others you were  
20     able to tell us yes or no for many of the  
21     questions, and now you are saying you don't  
22     recall. I'm suggesting to you that if you don't  
23     recall, that's different than a no. All right?

24          A     I don't recall if I had conversation  
25     with him.

1 Q So you are not excluding the  
2 possibility, you are not saying no to the answer,  
3 you are saying you don't recall? Agreed?

4 A Yeah.

5 Q And you agree that's different than a  
6 no?

7 A I just don't remember.

8 Q Sir, it is different than I didn't  
9 have any contact with him?

10 A I don't remember.

11 Q To tell someone you don't recall, in  
12 answer to that question, is different from saying,  
13 "I did not have any contact with him." Do you  
14 agree with that, sir?

15 A I agree, but I don't recall if I had a  
16 conversation with him.

17 Q I'm going to take you to the statement  
18 you gave to your adjustor, please? Now, this is a  
19 statement, sir, that you are giving, and we will  
20 get to this in some detail later, because of  
21 concern about possible liability arising from the  
22 motor vehicle collision that occurred after Derek  
23 Harvey-Zenk left your residence; correct?

24 A I had questions about the incident.

25 Q I know that and we will talk in



1 detail, I promise you, about that later. Just for  
2 now I want to take you to the bottom of this  
3 voluntary statement of Sean Kevin Black, as it is  
4 described at the top, and look at the last  
5 sentence on that page, sir? So you are really  
6 going to be looking at the first page of that  
7 statement. Speaking of Derek Harvey-Zenk in that  
8 passage, your statement, your signed statement  
9 says:

10 "I did not have any contact with him  
11 at the restaurant but we were on the  
12 same shift that night."

13 Correct, sir?

14 A Correct.

15 Q And that's different from saying that  
16 you don't recall whether you had any contact with  
17 him, correct?

18 A Correct.

19 Q Now, you say that this statement was  
20 signed by you on March 11th?

21 A Correct.

22 Q It is the same date that you gave a  
23 statement to the Professional Standards Unit,  
24 correct?

25 A Correct.

1           Q     Do you remember whether you signed  
2     this before or after the Professional Standards  
3     Unit?

4           A     I believe I signed this statement  
5     first, beforehand.

6           Q     Okay. So it was fresh in your mind  
7     when you went off to the Professional Standards,  
8     correct? It was fresh in your mind?

9           A     It was the same day, yes.

10          Q     Sure. You just signed it. It is a  
11     serious document, is it not, sir?

12          A     Yes.

13          Q     It is a declaration in connection with  
14     a potential lawsuit down the road?

15          A     Correct.

16          Q     And you would have been careful about  
17     the answers that you put in there and you would  
18     have been thoughtful about what you included?

19          A     Well, the questions were done a few  
20     days beforehand and then signed on this day.

21          Q     Sure. But you read it over before you  
22     signed it?

23          A     Glanced it over, read it over, yes.

24          Q     You read it over?

25          A     Yes.

1 Q It is purporting to be a legal  
2 document?

3 A Yes.

4 Q So you didn't glance over it, you read  
5 it over?

6 A Right, read over it, yeah.

7 Q If you could turn to the interview you  
8 gave to the Professional Standards Unit, F-1.35.c  
9 at the bottom of page 901, I'm going to suggest  
10 that you gave a different answer to the same  
11 question on the same day to the Professional  
12 Standards Unit that you gave to the insurance  
13 adjustor. The bottom of page 901, line 22:

14 "Did you talk to Derek when you left  
15 the bar?

16 Did I talk to him personally?

17 Yes?

18 I don't recall."

19 A Correct.

20 Q Right. And that's different from  
21 saying, "I didn't have any contact with him,"  
22 correct?

23 A Back when I gave this statement, I  
24 didn't remember talking to him.

25 Q Sorry?

1           A     It is the same -- back when I gave  
2     this statement here, I didn't recall talking to  
3     him. It is the same as today, I don't recall  
4     talking to him.

5           Q     The thing that's interesting, sir, is  
6     you specifically said you didn't talk to him in  
7     the other statement that you gave the same day.  
8     Did your memory fade as you drove to the  
9     Winnipeg Police Station, sir?

10           MR. LABOSSIERE: I have an objection.

11           THE COMMISSIONER: Give me the page  
12     again?

13           MR. PACIOCCO: Page 901 on to 902.

14           MR. LABOSSIERE: Mr. Commissioner, in  
15     fairness to the witness, although I confess I  
16     don't have the statement before me that he  
17     provided to the adjustor, as my note has it,  
18     Commission Counsel suggested that the question  
19     being asked of Sergeant Black was, did you have  
20     any contact with Harvey-Zenk at the bar in the  
21     restaurant. The passage he is now putting to him,  
22     purporting to be a contradiction, says "when you  
23     left the bar." In fairness to Sergeant Black, if  
24     it is going to be suggested to him that it is a  
25     contradiction, it ought to be the same question.

1 BY MR. PACIOCCO:

2 Q Sergeant Black, you would agree with  
3 me from looking at the passage from the Winnipeg  
4 Police Service that that is a question about you  
5 and Mr. Harvey-Zenk at the bar as you are leaving?

6 A I did not understand that, I'm sorry.

7 Q I'm saying that the question that you  
8 provided to the Winnipeg Police Service --

9 A Yes.

10 Q -- was --

11 A What page is that, again?

12 Q Page 901, sir.

13 A Okay.

14 Q You are just describing a convoy and  
15 how you get to your place of residence in that  
16 statement, sir?

17 A Yes.

18 Q And there is a question:

19 "Do you know how Derek got there?"

20 And you say:

21 "No idea."

22 Sergeant Girard says:

23 "Okay. So then did you talk to Derek  
24 when you left the bar?"

25 Correct, sir?

1           A     Yes.

2           Q     So you were still at the bar with  
3     respect to this question, you weren't at your  
4     house and you weren't in the cars?

5           A     No.

6           Q     Where were you, sir?

7           A     Well, when I was asked this question,  
8     do you know -- I'm looking at the context of it,  
9     and it is about the end of the evening I'm  
10    assuming here.

11                     "Did you talk to Derek when you left  
12                     the bar?"

13     Did I talk to him personally? I don't recall if I  
14     did.

15           Q     I agree, it is at the end of the  
16     evening at Branigan's; correct?

17           A     Yes.

18           Q     The answer you gave to the adjustor,  
19     which is found at page 3053 of your adjustor  
20     statement is:

21                     "I didn't have any contact with him at  
22                     the restaurant. We were on the same  
23                     shift that night."

24     Correct, sir?

25           A     Correct.

1 Q Would you not agree that's  
2 inconsistent with the other statement?

3 A I don't recall if I had any contact  
4 with him.

5 Q That wasn't my question, sir. The  
6 question was, do you not agree that that's  
7 inconsistent with your other statement?

8 A Again, I'm going to answer by saying I  
9 don't recall having any contact with him. I was  
10 focused on my table and conversation.

11 Q You were aware that Harvey-Zenk was  
12 something of a famous wing eater, chicken wing  
13 eater?

14 A Yeah, there was conversation, yeah, I  
15 believe there was something to that effect.

16 Q There was kind of an informal wing  
17 competition that went on at Branigan's during  
18 these events?

19 A Well, I just heard through the  
20 grapevine that he was able to eat wings and enjoy  
21 them.

22 Q People -- we learned through other  
23 interviews that people actually bragged about how  
24 many wings he could eat, it was quite a remarkable  
25 thing apparently, sir. We heard upwards of 60

1 wings being consumed by this gentleman. You were  
2 aware of that, sir?

3 A I was aware that he was able to eat a  
4 lot of wings.

5 Q Sir, you were asked about  
6 Harvey-Zenk's alcohol consumption by the Winnipeg  
7 Police, and about his consumption. Do you  
8 remember what your response was, sir?

9 A I have no idea what his consumption  
10 was.

11 Q Do you remember what your response was  
12 to that question, sir?

13 A I don't.

14 Q If you could turn to page 900, please?  
15 And I will pose the same question to you, sir. At  
16 any point did you notice what he was drinking or  
17 eating -- at the top of page 1. I take it, sir,  
18 if you didn't observe what he was drinking, you  
19 wouldn't have also observed what he was eating?

20 A I have no idea what they were doing.

21 Q Your answer at line 3 of page 11 is to  
22 that question:

23 "At any point did you notice what he  
24 was drinking or eating?

25 No. No, I was -- most of us go there



1                   for wings, so I would assume he had  
2                   probably been eating chicken wings."

3    Right?

4           A     Yes.

5           Q     So based on the fact that he had a  
6    reputation for eating wings and that you were  
7    there for wings, you were prepared to assume,  
8    without seeing what it was he had to eat; correct?

9           A     Yes.

10          Q     "But drinking, no, no idea."

11          A     Yes.

12          Q     That was your answer, sir?

13          A     Yes.

14          Q     You were also there for the \$2.75  
15   beer, sir, the troop or the platoon, that was one  
16   of the draws to get people there?

17          A     We -- the draw for that location is,  
18   for me is it is private, it is a nice setting, it  
19   is a restaurant that's close to our district  
20   station at the time, and the wings were offered.  
21   And so, yeah, there was a variety of things why we  
22   went there. It was a nice quiet, quaint place.

23          Q     You were aware that you were offered  
24   the \$2.75 special on pints when the police force  
25   went there en masse like that, sir?

1           A     That wasn't a concern.  And I don't  
2     recall what the price of the drinks were, but  
3     that's not a concern for me.  I go for location,  
4     and it was a nice place to go to.

5           Q     Sir, please listen to the question,  
6     because I'm not asking you why you went.

7           A     Okay.

8           Q     I'm asking you whether you were aware  
9     that the shift went there and were provided with  
10    the discount price on beer?

11          A     No.  I was under the impression that  
12    we go there because of the wings and we are  
13    provided wing specials and stuff.

14          Q     Sir, you know that people there were  
15    generally drinking beer, that was the drink of  
16    choice that evening, sir?

17          A     I don't know.

18          Q     Sir, your evidence is that you are not  
19    even able to tell us that that was generally what  
20    people were drinking?

21          A     That's correct.

22          Q     Now, sir, why were you unable to  
23    observe what Derek Harvey-Zenk was eating and  
24    drinking?

25          A     Like I said to you, the way I was

1 positioned in my chair and table, I was -- and it  
2 was -- I guess the group had their -- you know,  
3 were focused in together and kind of corralled  
4 around that table, unable to see.

5 Q So it was that their bodies were  
6 blocking your view, is that your evidence, sir?

7 A That's correct. But I was focused on  
8 my own table.

9 Q Sir, twice when you were interviewed,  
10 once when you gave your insurance statement and  
11 once when were giving your statement to  
12 Mr. Clifford, what you referred to was the  
13 relative levels of the tables. Can you describe  
14 that, sir?

15 A Yes. Our table, the one that I was  
16 sitting at was a lower -- lower table, kind of, I  
17 guess you have a picture right there. And again,  
18 I can't say for sure if that's a taller table. I  
19 don't know.

20 Q That would be a taller table, sir.  
21 You can take it, that's a taller table.

22 A Okay. Just by looking at it, it is  
23 hard for me to determine height.

24 Q Okay. Fair enough. But can you  
25 explain about the lower table, higher table?

1           A     Yeah. Our table was lower, and they  
2 definitely were at a higher table where it looked  
3 like bar stools, where you would sit at with bar  
4 stools.

5           Q     Yes, it would have been, sir. And the  
6 significance of that was?

7           A     Significance of what, sir?

8           Q     Of the relative heights of the tables?

9           A     I don't understand the question?

10          Q     Well, sir, I'm going to put it to you  
11 that both in your insurance statement and in your  
12 statement to Mr. Clifford, you use the relative  
13 height of tables to explain why you couldn't see  
14 what Mr. Harvey-Zenk was drinking or eating.

15          A     Yes. That was an area that also -- my  
16 view was definitely obstructed.

17          Q     All right. And I'm not talking about  
18 bodies, I'm talking about angles.

19          A     Yes.

20          Q     Okay. I can take you to both  
21 passages, but for the sake of economy, I'm going  
22 to take you to one, and if you insist, I can take  
23 you to the other. But if you can take the  
24 transcript of the interview that you gave to  
25 Mr. Clifford, please, and turn to page 21, line

1 10. You say "I don't recall," when asked whether  
2 or not you were able to see what food or drinks  
3 were being shared at that table?

4 A Correct.

5 Q "It was, if we can put ourselves, and  
6 I know it is tough for the record, but  
7 if we can put ourselves here sitting  
8 at this level and putting the table up  
9 probably another two to three feet, I  
10 wouldn't have that angle."

11 That was your evidence, sir?

12 A Yes.

13 Q So you were essentially trying to use  
14 the angle of the table to explain why you couldn't  
15 see what was on Mr. Harvey-Zenk's table; correct?

16 A Plus the bodies that are sitting  
17 around it as well.

18 Q Well, you didn't mention the bodies  
19 there, sir, but just I'm going to focus on the  
20 angle explanation.

21 A Sure.

22 Q All right. You were using the angle  
23 as an explanation for why you couldn't see what  
24 was on Harvey-Zenk's table?

25 A Correct.

1 Q Take at look at photo W9.16?

2 A Yes.

3 Q And you will see in W9.16 a high table  
4 and adjacent to it a lower table. Do you see  
5 them?

6 A Yes.

7 Q And the high table, according to the  
8 testimony provided by Chelsea O'Halloran, who is  
9 not a tall woman, but not a short one either, is  
10 approximately up at her chest level, and the low  
11 table was at her thigh level. A distance between  
12 them of a foot to 18 inches perhaps. Would that  
13 accord with your recollection, sir?

14 A So the difference between the table  
15 is --

16 Q Maybe --

17 A My recollection was it was two to  
18 three feet difference. That's what I recalled.

19 Q So if her evidence was that those were  
20 the tables that were in Branigan's at the time,  
21 your recollection would be wrong, sir?

22 A My recollection was it was two to  
23 three feet difference. I'm not sure if these are  
24 the same tables or not, but I am just saying that  
25 that's what my recollection was.

1           Q     I'm going to ask you the question one  
2 more time. If her evidence is correct that these  
3 are the same tables, sir, it wouldn't be two or  
4 three feet between the two tables, would it?

5           A     You are saying it is 18 inches?

6           Q     I'm saying it is approximately 18  
7 inches?

8           A     Well, six inches less than 24 inches.

9           Q     Can we knock out the three feet, sir?

10          A     I recall it being two to three feet.

11          Q     Sir, you were sitting in a love seat?

12          A     Yes.

13          Q     And certainly that table would have  
14 been at waist level when you were seated, sir,  
15 maybe even a bit little higher?

16          A     I don't recall that.

17          Q     Sure. You wouldn't be going into a  
18 restaurant and sitting down and reaching up for  
19 your drinks, I take it, sir?

20          A     That's correct.

21          Q     You would be reaching down for your  
22 drink?

23          A     Or at the same level.

24          Q     Or at the same level, but it would  
25 have to be at elbow level or lower, or otherwise

1 you have got a bit of a problem getting your  
2 drinks, right?

3 A I would assume so.

4 Q Nobody is going to set up a table like  
5 that, sir. So your body is sitting up above the  
6 height of the table, by the distance probably  
7 between your folded elbow and the top of your head  
8 at least?

9 A I don't recall where I was sitting  
10 in --

11 Q Sir, you do recall where you were  
12 sitting.

13 A In terms of the height, you are asking  
14 me to say where my elbows were, and I don't recall  
15 that.

16 Q What I'm suggesting to you, sir, is  
17 you only have to look at this picture for a nano  
18 second to realize that your head would have been  
19 higher than the top of the top table?

20 A Again, because of the angles of where  
21 people are sitting and where their bodies are,  
22 again, it is difficult for me to see.

23 Q I understand about the bodies, sir,  
24 but this was evidence under oath and you are  
25 explaining why you can't see, and the explanation



1 you give is the vantage point, the angle. Do you  
2 agree with me that that's a nonsensical  
3 explanation?

4 A No, it is not. I'm also in a love  
5 seat that also has -- you are going to sit back  
6 into it and kind of fold into it a little bit as  
7 well. So, no, when I testified the table was two  
8 to three feet higher, I believed it to be that.

9 Q That angle --

10 MS. HANLIN: Mr. Commissioner.

11 THE COMMISSIONER: Yes.

12 MS. HANLIN: I think if we are going  
13 to hear argument about --

14 THE COMMISSIONER: I am sorry?

15 MS. HANLIN: I think if we are going  
16 to hear about the difference between  
17 Ms. O'Halloran's thigh level and perhaps her chest  
18 level, I don't know exactly her height, but I  
19 could -- well, I could say that the difference  
20 between my thigh level and chest level is  
21 approximately two feet.

22 THE COMMISSIONER: That's not what he  
23 was putting. He is putting to Sergeant Black that  
24 when you sit in the lower table, in a love seat,  
25 your head is going to be above the lower table,

1 and you could then see the higher table, or what  
2 was on the higher table. That's what -- am I  
3 incorrect? No? Go ahead, please.

4 MS. HANLIN: Thank you.

5 BY MR. PACIOCCO:

6 Q Sir, that angle, let's get back to the  
7 angle, it wouldn't obstruct you seeing somebody  
8 put a glass to their face?

9 A Depending on where they are sitting.

10 Q The angle, sir, let's talk about the  
11 angle that you featured in two statements, and it  
12 is because you featured it that I want to focus on  
13 it, sir.

14 A Well, the other thing is I'm sitting  
15 down at a table where it's low. I am in a love  
16 seat, and I also have a table that's elongated, it  
17 is long, whether it is tables put together, but  
18 also it is an angle where I'm not going to be able  
19 to see as well what is on that table because of  
20 the angle that I'm at, and that's what I was  
21 getting at.

22 Q Do you understand why I'm asking you  
23 these questions, sir?

24 A I can assume so. You are asking me if  
25 I saw food or drink on that table.

1           Q     Yes, sir.  And when someone gives an  
2     explanation as to why they couldn't see something,  
3     and at the end of the day it is going to be a  
4     matter of submissions, but if that explanation  
5     appears not to be a credible one, then it creates  
6     the appearance, at least, that someone is trying  
7     to set up an excuse rather than providing accurate  
8     information.

9           A     No.

10          Q     Sir, you agree with me that you could  
11     see someone hefting a glass at the next table  
12     notwithstanding that you are at a lower table?

13          A     Again, various things are taken into  
14     account, and like I said, where people are  
15     sitting.

16          Q     But it wouldn't be the angle that was  
17     the problem, would it?

18          A     To me, it was a difference of two to  
19     three feet, and that's what I recall being the  
20     difference in the table lengths, and where I'm  
21     sitting, I'm down below in a love seat, that type  
22     of thing.

23          Q     This will be the last time I deal with  
24     this, sir.  So your basic testimony is that,  
25     sitting down in a lower table, even if it is two

1 to three feet, you couldn't see somebody in the  
2 adjacent table putting a glass to their mouth  
3 because of the angle?

4 A That's right, especially when I'm  
5 focused on the conversation and socializing with  
6 my own table, that's correct.

7 Q Sir, let's turn to the payment. Do  
8 you recall having a bill that evening and paying  
9 it yourself?

10 A I would assume there was a bill. I  
11 don't recall specifically seeing it.

12 Q Well, sir, when you gave your  
13 evidence -- and I take it you tried to prepare  
14 yourself for your testimony today?

15 A Yes.

16 Q When you gave your evidence to the  
17 Winnipeg Police, you not only knew you had a bill,  
18 but you knew what was on it?

19 A Well, I recall it being around \$30 to  
20 \$33.

21 Q Yes, sir, so you do recall the bill, I  
22 take it, if you recall the amount?

23 A I do recall the amounts, yes.

24 Q So you do recall getting a bill?

25 A I don't today. I recall it being a

1     \$33 tab.

2           Q     When it came time to pay for that, you  
3 lined up and you had to wait to pay, sir?

4           A     Yes.

5           Q     Was anyone drinking when you were  
6 lined up to pay, sir?

7           A     I don't recall that.

8           Q     And so it is entirely possible, again,  
9 that somebody might have been drinking in that  
10 line-up, sir?

11          A     Yes.

12          Q     And you were all kind of gathered  
13 together in the pool table area?

14          A     Yeah. When I look at this picture,  
15 W9.16 --

16          Q     Yes, sir.

17          A     -- I do recall the table being in --  
18 somewhat in the middle of that.

19          Q     That's the pool table that is in that  
20 alcove that you are looking at as you look towards  
21 the north end of Branigan's from the vantage point  
22 of where this photo was taken, right?

23          A     I don't think that's the north end.  
24 Is that what you are referring to?

25          Q     I'm referring to the doorway, sir?

1           A     I would say the doorway is on the left  
2 side of the restaurant.

3           Q     Okay. Fair enough. But at that end,  
4 sir, that's basically where the pool table is?

5           A     Yes.

6           Q     And we have been given information  
7 that the cash register is approximately where that  
8 bowl of candy is. Do you see the bowl of candy in  
9 the right-hand side of the photo?

10          A     Yes.

11          Q     Would you agree that's basically where  
12 the cash register was?

13          A     I think there is one there, and I  
14 believe there is one on the other side.

15          Q     Okay. So there was two?

16          A     I thought there was. I thought that's  
17 where we ended up having to pay on the other side.

18          Q     Okay. And you are all lined up there,  
19 sir?

20          A     Yeah.

21          Q     Okay. And that's the whole gang at  
22 that point who is just about -- it is now what, it  
23 is 2:00 o'clock and they have stopped serving?

24          A     Yes.

25          Q     And you are all lined up to pay, sir.

1 Sir, you are sure you never interacted with Derek  
2 Harvey-Zenk during that time when you were lined  
3 up?

4 A I don't recall if I did.

5 Q You would have had a chance to observe  
6 him at that point, sir?

7 A I don't recall.

8 Q So you may have had an opportunity to  
9 observe him?

10 A I don't recall if I did.

11 Q All right, sir. If you could turn  
12 again, please, to your insurance adjustor's  
13 statement? This is Q-2.89.b.25. I'm going to be  
14 turning to page 3054.

15 Now, you just testified, sir, that you  
16 don't recall whether you had any contact with  
17 Derek Harvey-Zenk when you were leaving?

18 A Yes.

19 Q You gave an answer to your insurance  
20 adjustor, three paragraphs in, at the bottom:

21 "Before we left, I had no opportunity  
22 to observe Derek's behaviour at  
23 Branigan's."

24 Correct?

25 A I'm sorry, page 3?

1           Q     Page 2 of your statement I was  
2 referring to -- not that statement, sir, the one  
3 you gave to your insurance adjustor. I apologize,  
4 I forgot that you don't get the book. It is page  
5 2 of the statement, the second last paragraph?

6           A     Yes.

7           Q     The second last line:

8                     "Before we left, I had no opportunity  
9                     to observe Derek's behaviour at  
10                    Branigan's."

11          A     Correct.

12          Q     So there you are not saying that you  
13 don't recall, you are making an absolute  
14 declaration to your insurance adjustor that you  
15 didn't have a chance to observe Derek  
16 Harvey-Zenk's behaviour; correct, sir?

17          A     At the -- during the whole evening, or  
18 what are you referring to?

19          Q     It is your statement, sir.

20          A     I didn't -- I'm not sure of the  
21 question again?

22          Q     You know what the statement is, sir,  
23 it says:

24                     "Before we left..."

25          A     Right.



1 Q "...I had no opportunity to observe  
2 Derek's behaviour at Branigan's."

3 Right?

4 A Yes.

5 Q You also already put in your  
6 statement, "I did not have any contact with him at  
7 the restaurant," right?

8 A Yes. That I recall.

9 Q Well, you didn't say that in your  
10 statement, sir, you said "I had no contact with  
11 him." And that's my point. You said as it was an  
12 absolute fact, right?

13 A Again, I don't recall having any  
14 contact. I don't believe I did and I don't recall  
15 it.

16 Q I thought we agreed earlier that there  
17 is a difference between saying I don't recall and  
18 saying no?

19 A Well, it is difficult for me to say  
20 here three years later.

21 Q Sir, you said that your account was  
22 how much, your receipt?

23 A \$30 or \$33.

24 Q What did it include, sir?

25 A Wings, 25 wings and about four drinks.

1 Q 25 wings and four drinks?

2 A Yes.

3 Q You remember that, sir?

4 A Yes. Well, drinks, again that's an  
5 approximation, I believe it was.

6 Q What kind of drinks?

7 A Beer.

8 Q All beer?

9 A Yes.

10 Q Pints or bottles?

11 A I believe I was drinking pints, but I  
12 don't recall. Again, it is, I'm pretty sure it  
13 was pints.

14 Q Sir, you had four pints of beer at  
15 Branigan's between 11:30 and 2:00, when they  
16 stopped serving?

17 A Correct.

18 Q Do you consider that drinking at a  
19 heavy rate, sir?

20 A Well, again, whether I consumed all of  
21 those beers or not -- I may have given someone a  
22 drink, or bought some drinks, I'm not sure, or  
23 given someone a drink, I'm not sure. But for me,  
24 you know, I'm 6'5", 240 pounds.

25 Q So I take it you are telling me that

1 four beers is not a heavy rate?

2 A No. For me, I can go out and have a  
3 few beers and I don't consider that to be a heavy  
4 rate.

5 Q So four is a few, sir?

6 A No, you know, depending, if I have --  
7 if I go out and have a couple, or two or three,  
8 yeah, that's a few in my opinion.

9 Q So you remember the four beer?

10 A It is roughly that.

11 Q Sir, I'm going to take you again to  
12 the insurance adjustor's statement. And, sir, you  
13 made this statement for the purpose of insuring  
14 that you were protected against any potential  
15 liability that might arise from the accident that  
16 occurred?

17 A I contacted my insurance company and  
18 had questions about it, and they directed me to go  
19 to this company in regards to this.

20 Q And you understood that there was a  
21 risk of civil liability and that's why you went,  
22 sir?

23 A I had questions.

24 Q Sure. But you had questions about  
25 civil liability?

1           A     I had questions about a lot of things  
2     and one of the -- again, I wanted to get some  
3     questions and look at the best interest for my  
4     family at that point.

5           Q     Yes, because of potential financial  
6     loss to you as a result of what happened; correct?

7           A     I had no idea what the implications or  
8     ramifications would be, no idea.

9           Q     That's what you were protecting  
10    against?

11          A     I had no idea what could happen. I  
12    was never involved in a situation such as this.

13          Q     Sir, is it that difficult? You were  
14    protecting against the possibility of civil  
15    liability when you went to see your insurance  
16    adjustor?

17          A     I had questions when I went to see my  
18    broker and they directed me to this company.

19          Q     All right, sir. When you gave your  
20    statement to the broker --

21          A     Yes.

22          Q     -- at page 3054 --

23          A     Yes.

24          Q     -- you say:

25                 "My bill was around \$33."

1 And you are very specific. "Which included 25  
2 wings?"

3 A Yes.

4 Q "And about four drinks, all beer."  
5 Now, if you do the math, that comes out, that  
6 actually works out pretty well, given the cost of  
7 the beer in question, right? Four beer works out,  
8 not three. Sir, I believe that they were Keith's  
9 or MGD is what you put there, right?

10 A Correct.

11 Q And MGD would be Miller Genuine Draft,  
12 wouldn't it, sir?

13 A Correct.

14 Q So you have a range of possible beers  
15 there. When you gave your evidence to the  
16 Commission, sir, you were a bit clearer about what  
17 you had. On page 23 of the transcript, line 16:

18 "It was Genuine Draft, it was beer."

19 So that ambiguity was corrected for you, it was  
20 cleared up; right?

21 A Well, no. I think at that point, when  
22 I gave this statement whether it was draft, or  
23 MGD, or Keith's, it was either/or. Again, it was  
24 three years after the fact that I gave this  
25 statement. It was beer, I know that.

1           Q     So what are you saying about your  
2 evidence under oath of a definitive response in  
3 which you indicate it was Genuine Draft? Are you  
4 saying that that was your recall on that day and  
5 it is no longer your recall or --

6           A     No, it is just a matter of meeting  
7 with Mr. Clifford and responding to a question,  
8 and whether or not -- again, I know it was beer,  
9 and whether or not it was MGD or Keith's, I'm not  
10 entirely sure, but it was either/or.

11          Q     So if I understand your evidence, you  
12 weren't entirely sure when you spoke to  
13 Mr. Clifford, but because it didn't matter, you  
14 just said Genuine Draft?

15          A     Again, it was three years after the  
16 fact that I gave this statement, and whether it  
17 was Genuine Draft or MGD or Keith's, again,  
18 initially I said it was either/or, but, again, I  
19 am not sure what it is.

20          Q     I agree with you that it doesn't  
21 matter what brand of beer it is in terms of what  
22 the number of drinks is, sir. But what I'm  
23 pointing to is that when you responded under oath,  
24 you gave a clear and definitive answer to  
25 something you are now telling us you don't have a

1 clear and definitive answer to. Do you understand  
2 the problem, sir?

3 A Again, I validated it by saying it was  
4 beer. And the issue -- I wasn't trying to, you  
5 know, certainly not trying to -- it is just based  
6 on memory. It is three years after the fact,  
7 that's all it came down to.

8 Q Don't you think that you should have  
9 told Mr. Clifford that you weren't sure instead of  
10 putting out a fact as though it was a fact?

11 A And I said it was beer.

12 Q Sir, the officers that were there, we  
13 know there were 24 of them that evening. Do you  
14 accept that, sir?

15 A In Branigan's?

16 Q Yes?

17 A Yeah, that's -- and again, I never  
18 counted everybody by any means.

19 Q Sure. And they didn't leave all at  
20 the same time. There was some people that left  
21 earlier before the closing time, sir. That would  
22 make sense to you?

23 A I would assume.

24 Q Yes. And, sir, we have records from  
25 Branigan's, and those records show that there were

1 19 complimentary drinks of liquor issued on that  
2 date, sir. I'm going to suggest to you that you  
3 were given something in addition to the beer that  
4 you described, you were also offered and took a  
5 complimentary drink of liquor?

6 A I don't recall if I had one or not.

7 Q So you are not saying no, sir?

8 A I don't recall.

9 Q What was the atmosphere like?

10 A Again, I was very focused on the  
11 conversation that I was participating in at my own  
12 table, and it was just a typical evening where you  
13 go out and socialize.

14 Q What was it like by the end of the  
15 evening?

16 A By the end of the evening?

17 Q Um-hum?

18 A What do you mean by that?

19 Q By 2:00 o'clock, you are just about to  
20 leave, it is late hours, moving on to  
21 2:00 o'clock, what was the atmosphere like in that  
22 little alcove room?

23 A In this particular room?

24 Q Yes?

25 A I don't recall if it was the same or



1 not but --

2 Q So, if Ms. O'Halloran was to say it  
3 was very, very loud by that point, you don't have  
4 an issue with that?

5 A I don't recall if it was very loud.

6 Q And if she was to describe an officer  
7 standing up on the rungs of a chair, clapping her  
8 hands, you wouldn't take an issue with that  
9 either, sir?

10 A I don't recall that.

11 Q Do you remember that it didn't happen,  
12 or it is something that you just don't recall?

13 A I don't recall.

14 MR. PACIOCCO: Mr. Commissioner, it is  
15 3:26. It would be a good time for the break.

16 THE COMMISSIONER: Yes.

17 THE CLERK: All rise. This Commission  
18 is in recess.

19 (Proceedings recessed at 3:26 p.m. and  
20 reconvened at 3:40 p.m.)

21 THE CLERK: All rise. This Commission  
22 is now reopened. Please be seated.

23 BY MR. PACIOCCO:

24 Q Sergeant Black, it is evident from the  
25 questioning and the answers given that a number of

1 people went to your house after Branigan's closed?

2 A Yes.

3 Q And you described in your earlier  
4 testimony with Mr. Clifford, that there was a  
5 convoy of four or five vehicles that basically  
6 followed you home, sir?

7 A It looked that way, yes.

8 Q And you told the insurance adjustor  
9 that it is a 15 minute ride from Branigan's to  
10 your place at that time of night?

11 A Yes, roughly it would take 15 to 20  
12 minutes.

13 Q And, sir, when you gave your statement  
14 to the insurance adjustor, again you were trying  
15 to be truthful with them and you were content with  
16 the 15 minute estimate, correct?

17 A That's an estimate.

18 Q You were content with that when you  
19 gave that statement, sir?

20 A Yes.

21 Q You stopped at the 7-Eleven on the way  
22 back?

23 A To my residence, yes.

24 Q What did you stop for?

25 A Food.

1 Q Did you stop for soda and ice?

2 A I picked up some soda I believe, and  
3 I'm not sure about ice. I definitely picked up  
4 some taco chips and salsa and stuff like that.

5 Q Sergeant Humniski remembers you  
6 stopping for soda and ice. You have no issue with  
7 that?

8 A No.

9 Q And that would be mix for drinks, sir?

10 A Yes.

11 Q Any reason why you only responded food  
12 when I was asking you about what you picked up at  
13 7-Eleven?

14 A Why -- basically, even with Mr.  
15 Clifford, I responded by saying soft drinks as  
16 well, so it is a variety of things I guess I ended  
17 up picking up.

18 Q Sir, I understand there were about ten  
19 people who went back to your residence plus  
20 yourself?

21 A Correct.

22 Q Just so we don't go the long way, I'm  
23 going to give you a list of people and if I get  
24 any of them wrong, you tell me.

25 A Correct.

1 Q David Harding was there?

2 A Yes.

3 Q Your partner Ken Azaransky was there.

4 A Yes.

5 Q Norbert Bauer, who I understand is a

6 long time friend of yours, was there as well?

7 A Correct.

8 Q Jay Nolet, Harvey-Zenk's partner was

9 there.

10 A Yes.

11 Q Chris Humniski?

12 A Yes.

13 Q He is the sergeant in charge of the

14 platoon at the time.

15 A That's correct.

16 Q Tracey Fudge?

17 A Correct.

18 Q Kelly McLure?

19 A Correct.

20 Q TJ, who you referred to in your

21 statement as the new guy, who you now know to be

22 TJ Spruyt?

23 A Correct.

24 Q Sergeant Anderson?

25 A Correct.

1 Q The platoon sergeant?

2 A Correct.

3 Q And Derek Harvey-Zenk?

4 A Correct.

5 Q What is Kelly McLure's physical  
6 appearance? What does she look like? I know that  
7 you may not understand why we are asking that but  
8 we do have our reasons. What does she look like?

9 A She just -- she just had a baby, so  
10 before that?

11 Q Yes, before that.

12 A Do you want me to respond to that?

13 Q Yes.

14 A Very thin, athletic, blonde hair.

15 Q Played soccer?

16 A Yes.

17 Q And Tracey Fudge?

18 A Tracey has brown hair. I believe she  
19 would be a little taller than Kelly, and would  
20 have -- maybe Kelly would be a little bit thinner  
21 than Tracey.

22 Q That's one way to do it, sir. So she  
23 is a little heavier than Kelly?

24 A No, she is thin, she is not heavy by  
25 any means, but just in terms of stature, if I

1 could describe it as being bigger boned perhaps.

2 Q Sir, your house, can you describe the  
3 layout just in general terms?

4 A I can.

5 Q Thank you.

6 A In terms of the upstairs?

7 Q No, just the downstairs, just where  
8 you come in, the place where you would have  
9 entertained your guests.

10 A No problem. When you come through the  
11 front door there is an entrance, on the left is a  
12 formal eating area.

13 Q Like a dining room?

14 A Dining room. You look ahead and that  
15 would be the great room.

16 Q Okay.

17 A If you turn to your left and walked  
18 somewhat in this open area, you proceed to the  
19 kitchen which would be on the right hand side.

20 Q Okay.

21 A And on your immediate left hand side,  
22 once you pass a particular wall, there would be a  
23 mud room.

24 Q Okay.

25 A If you kept going down that same hall,

1 there is one bedroom. Turn a corner, there is a  
2 bathroom.

3 Q Okay.

4 A And when you go straight ahead there  
5 is another bedroom.

6 Q Where did your guests tend to gather?

7 A Just so you know, I'm sorry to  
8 interrupt you, there is another bedroom on the  
9 right hand side when you come in to the house.

10 Q So basically three bedrooms on that  
11 floor?

12 A When you come inside, you can actually  
13 go down the stairs which would be on the right  
14 hand side. Sorry, about that.

15 Q Fine. Is it a one storey house, sir?

16 A Yes, it is.

17 Q And where did your guests gather when  
18 they were there?

19 A Most were in the kitchen area.

20 Q And what did they do there, sir?

21 A Continued to talk, they continued to  
22 talk. And are you talking about throughout the  
23 evening or --

24 Q Yes, I'm talking about the evening.  
25 What did they talk about?

1           A     It was general conversation. I recall  
2     some of it being about policing and that type of  
3     thing, but general conversation.

4           Q     Because when you gave your responses  
5     you repeatedly talked about talking about work,  
6     right?

7           A     Correct.

8           Q     And what else, sir?

9           A     What else --

10          Q     What were they doing?

11          A     I -- when I first did get home I was  
12     getting some food and stuff ready for the party,  
13     so that's -- I was kind of trying to be a host and  
14     getting things out, putting food, and I put some  
15     liquor out.

16          Q     Okay.

17          A     Some people were interested along the  
18     way to go for a tour of the house or whatever,  
19     because it was pretty much newly built.

20          Q     Did you give them a guided tour?

21          A     I don't recall exactly who, but I do  
22     recall walking around and people would look at the  
23     house and comment and stuff like that. But any  
24     one in particular, or specific, no.

25          Q     You are not sure. I know that



1 Sergeant Humniski, for example, talked about going  
2 on a self-guided tour.

3 A Okay.

4 Q So people had the run of the place to  
5 look around, and you didn't have to go and give  
6 them a tour of it.

7 A Sure.

8 Q Sir, most of the socializing was done  
9 in the kitchen area, sir?

10 A Yes.

11 Q And what were people doing throughout  
12 the evening, sir, apart from talking about work?

13 A Just gathered in the kitchen and it  
14 was just sort of a social atmosphere. It was just  
15 people -- when I would come back in and out or go  
16 and converse with somebody, it was basically  
17 everyone sat or congregated there, and that's  
18 pretty much what it was.

19 Q So they congregated in a pretty  
20 confined space, sir, for the most part?

21 A What it is -- and do you want me to  
22 describe my kitchen?

23 Q I am going to get you to diagram it.  
24 I was thinking of giving it to your homework, sir,  
25 but you can go ahead and describe it.

1           A     When you go into the kitchen basically  
2     there is -- first immediately on the right -- I  
3     will try and do the best that I can. On the right  
4     there is a counter, a stove, and a wrapped around  
5     counter which consists of a sink and upper  
6     cabinets and lowers. As it continues around, and  
7     I'm looking at straight --

8           Q     So, you have just come in the door to  
9     the kitchen area, and you are looking to your  
10    right, what do you see?

11          A     Cabinets and stove and everything  
12    along the right hand side.

13          Q     And there is no seating area over  
14    there on the right hand side?

15          A     No. Because basically that wall would  
16    turn into the divide between the great room and my  
17    kitchen area.

18          Q     So the kitchen area is open to the  
19    great room?

20          A     Part of it is. At one point the  
21    uppers and lowers end, the wall ends, and then the  
22    countertop continues where it opens up to a  
23    seating area, where you can look into a seating  
24    area, and then on the counter is a raised bar.

25          Q     So people were gathered in the seated

1 area of your kitchen?

2 A Basically standing kind of between the  
3 seated area in the kitchen and standing at the  
4 countertop, yes.

5 Q Okay. Sir, so everybody had a pretty  
6 easy vantage point of the kitchen area from where  
7 they would have been?

8 A Yeah.

9 Q Would it be fair to say, sir, that it  
10 was a party that was happening at your house?

11 A I would consider it to be a gathering.

12 Q Sir, there was a lot of joking around  
13 I guess?

14 A Yes.

15 Q And I understand there was even a bit  
16 of an arm wrestling competition?

17 A I do recall a couple of guys, yeah,  
18 trying that on the kitchen table at one point.

19 Q And you talked about food for your  
20 guests. You didn't cook anything for them, sir?

21 A I tried -- I tried putting some  
22 popcorn out, not cooking but --

23 Q So you weren't getting out the apron,  
24 sir? It was fast food. The tortilla chips you  
25 brought, you just put them in a bowl, sir?

1 A Yes.

2 Q And opened up the salsa and dropped it  
3 in a bowl of some kind and put it out?

4 A Yeah.

5 Q And you also ended up bringing out  
6 some liquor, sir.

7 A Yes.

8 Q You put out the liquor that you had in  
9 the house?

10 A I had more liquor, but I didn't -- I  
11 had other liquor that I didn't put out.

12 Q Okay. I'm going to take you to your  
13 statement to the insurance adjustor, and I'm going  
14 to ask you to comment on a passage. This is at  
15 page 3054. At the bottom of page 3054 of the  
16 document at tab Q2.89.b.25, you say, "when we  
17 arrived back at my house no one brought any  
18 alcohol." You would affirm that today, that  
19 nobody brought any alcohol with them, sir?

20 A I'm pretty sure no one had any  
21 alcohol, there certainly wasn't any when I got up  
22 that didn't belong to me, that's for sure.

23 Q When you said pretty sure, you are  
24 concluding that that's the likelihood, but you are  
25 not recalling?

1           A     That's correct.  And the only --  
2     likely a scenario would be is if someone took it  
3     home with them or something to that regard, but I  
4     never saw anything like that.

5           Q     Okay.  Again the idea was to continue  
6     socializing and talk about work, right?

7           A     Yes.

8           Q     So again you have emphasized that the  
9     talk is about work, sir?

10          A     Yes.

11          Q     "I had beer and alcohol at the house.  
12     When we came inside I took the liquor out of the  
13     cabinet and put it on the countertop."  Correct?

14          A     Yes.

15          Q     And see it is the passage there where  
16     it says "when we came inside I took the liquor out  
17     of the cabinet" that made me think that you took  
18     the liquor out that you had in the house.

19          A     Yes.

20          Q     So your evidence is that you had other  
21     liquor that you didn't put out?

22          A     That's correct.

23          Q     You also made a point in your  
24     statement to the adjustor at the top of 3055.

25                     "I did not serve anyone alcohol.

1                   Everyone served themselves from what I  
2                   put on the counter."

3                   Is that correct, sir?

4           A        Again looking back at it now, I don't  
5       recall that today, but it says that in the  
6       statement.

7           Q        What can we say about the statement,  
8       sir? You think's that's a true piece of  
9       information?

10          A        I can only -- again, I'm not sure, I  
11       don't recall today serving anyone any alcohol.

12          Q        When you gave the statement to the  
13       insurance adjustor, sir, you were trying to be  
14       truthful, I take it?

15          A        Yes, I was.

16          Q        You realized it was an important  
17       document?

18          A        Yes.

19          Q        And you were careful in terms of what  
20       you put down there?

21          A        Yes.

22          Q        Based on that, sir, would it not be  
23       fair to say that you are confident that that was  
24       the position that you were putting forward at that  
25       time, that you didn't serve anyone alcohol?

1           A     Yes.

2           Q     Where did you put it?

3           A     On the countertop.

4           Q     Where on the countertop, sir?

5           A     And I will get back to my diagram,

6     basically where the -- where that wall ended, I

7     will start there, and the countertop continued and

8     there was a raised bar, I put it on that part. I

9     put it on the -- I believe it was either on the

10    top or on the bottom.

11          Q     Okay. So it is a raised bar. What is

12    it, just a granite countertop type thing?

13          A     Um-hum.

14          Q     So it is in plain view of everyone?

15          A     The liquor?

16          Q     Yes?

17          A     Yes.

18          Q     And it is clear, the way you put it

19    out and the way you acted, that they are welcome

20    to it?

21          A     Yes.

22          Q     And you can see it from the kitchen

23    table, sir?

24          A     If -- unless the raised part

25    obstructs, if you are sitting down or whatever.

1 But my kitchen table is beyond that raised part,  
2 so, again, you may not see it if you are sitting  
3 down at the kitchen table.

4 Q And you indicated you may have put it  
5 on the upper part of the counter?

6 A I can't remember if it was upper or  
7 right on the part --

8 Q But there is no mystery to your guests  
9 that there is liquor out, sir?

10 A That's right.

11 Q And it is pretty evident that they  
12 will all have an opportunity to see what you put  
13 out?

14 A Yes.

15 Q Did you see people helping themselves  
16 to drinks when you put the liquor out?

17 A I focused at that point -- that's when  
18 I started working on the popcorn, getting the  
19 popcorn out and ready. For whatever reason, my  
20 popcorn maker just died, and it took a while for  
21 me to get -- to figure this thing even out so...

22 Q What did you have to do to the popcorn  
23 maker to resuscitate it?

24 A Well, I think what I did was I put too  
25 much in it, and it just died, like it just, after



1 20 seconds it just stopped. So I kind of plugged  
2 it back in and see what was happening -- I have no  
3 idea.

4 Q So you weren't in there with tools,  
5 opening the thing up and connecting wires and  
6 doing all of those magical things that some people  
7 can do? You were fiddling with it?

8 A That's right.

9 Q So it wasn't some kind of intense  
10 repair job that required tremendous focus, sir?  
11 You weren't performing heart surgery?

12 A No.

13 Q The reason I bring this up again is I  
14 noted in your statement that your explanation for  
15 not seeing whether anybody poured themselves  
16 drinks was this popcorn maker. Is that your  
17 evidence today, sir?

18 A Well, my focus was on the popcorn  
19 maker, it sure was. I wanted to make sure that,  
20 you know, there was some food out.

21 Q And you had guests in your house who  
22 were socializing, sir. I take it you were  
23 communicating with them?

24 A At this point I was focused on the  
25 popcorn maker.

1 Q How far away from you were they, sir?

2 A At that point, you know, I can't say  
3 for sure who is standing, or where everybody is.

4 Q No, I'm not asking who is standing.  
5 Where -- how far were you away from the people?

6 A Ten, 15 feet maybe, depending --  
7 again, if someone is right beside me, I'm not  
8 sure. Again, it is across the counter as well, so  
9 taking into account our counter.

10 Q So it is across the counter, you have  
11 got ten people approximately congregating pretty  
12 much in that area?

13 A Yes.

14 Q They are going to pretty much fill  
15 that kitchen area, aren't they, sir?

16 A No, it is a quite a large area.

17 Q I think that ten people is a fair  
18 number of people to have in a kitchen.

19 A It goes beyond that though too,  
20 because there is -- between where the counter  
21 is -- and I'm sorry, it probably would be best if  
22 there is a diagram.

23 Q I'm going to get you to do one for  
24 your homework. Will you do that for us?

25 A I sure can.

1 Q Okay. Just keep describing it,  
2 though?

3 A And so beyond the countertop there is  
4 a seating area where there is table and chairs,  
5 and that wraps around. So, in essence it is, you  
6 know, a large area.

7 Q But you have got pretty much ten  
8 people in there, and you don't know exactly where  
9 they are, but some of them could be not too far  
10 away from you, I take it?

11 A Yes, some of them could be --

12 Q Six, eight feet?

13 A -- going on this guided tour that you  
14 talked about too, so I'm not noticing who exactly  
15 is here.

16 Q Sir, I just have to say, and it is  
17 going to be the Commissioner's decision and not  
18 mine, it seems like fixing a popcorn maker in a  
19 kitchen is not much of an explanation for not  
20 being able to see whether people are pouring  
21 drinks in the same kitchen at the same time?

22 A Where the drinks are, and again the  
23 diagram will help, but the countertop wraps, and  
24 where I put the popcorn maker and tried to get it  
25 working is actually -- I would have somewhat my

1 back view, or they would be behind me.

2 Q And you wouldn't turn and say, how are  
3 you guys doing, or catch a bit of conversation and  
4 join in, or none of that stuff?

5 A I remember being very fixated on  
6 trying to get the popcorn maker going.

7 Q You sure were. Sir, if you could tell  
8 us how much liquor you put out?

9 A I put out a -- there was a 26-ounce  
10 bottle of Crown Royal.

11 Q And what else did you put out?

12 A A Bailey's bottle, 26-ounce, I believe  
13 it was.

14 THE COMMISSIONER: Sorry, I missed  
15 that?

16 THE WITNESS: Bailey's, which is I  
17 guess a liqueur.

18 BY MR. PACIOCCO:

19 Q So it was 26-ounces, no mickeys  
20 involved?

21 A No.

22 Q This is the same thing you told the  
23 Winnipeg Police, that you put out a 26'er of rye,  
24 you didn't identify it as Crown Royal at that  
25 time, but that's neither here nor there, and you

1 put out a bottle of Bailey's; right?

2 A Yes.

3 Q How much were people consuming?

4 A I know at the end of the evening the  
5 rye bottle was gone, it was empty.

6 Q All right. And you know that when you  
7 were first asked the same question I asked you,  
8 how much were people consuming, by the Winnipeg  
9 Police, you said I couldn't tell you. And then  
10 they prompted you and you told them that the rye  
11 bottle was empty. Do you remember that exchange,  
12 sir?

13 A With Mr. Clifford?

14 Q No, with the Winnipeg Police, sir?

15 A Well, I think -- were you referring to  
16 the time in Branigan's?

17 Q No, no, we are talking about the time  
18 at your house, sir. I will take you to the  
19 passage just to show you how it developed. Take a  
20 look at page 906, from 905?

21 A I'm mistaken, when I was with PSU or  
22 when you were questioning me?

23 Q No, with the PSU, sir?

24 A Okay. I thought you said by you,  
25 sorry.

1 Q We are going to start at line 22, sir.

2 "There was a 26 of rye and basically a  
3 Bailey's bottle."

4 That was your answer.

5 "Okay. Now, how much, if you can tell  
6 me, how much were people consuming?"

7 And your answer was:

8 "I couldn't tell you."

9 Are you with me, sir?

10 A No, I'm not.

11 Q I apologize. You should be looking at  
12 page 16 of the statement. Are you looking at the  
13 top pages?

14 A Okay.

15 Q At the bottom, line 22:

16 "Sergeant Girard: Okay. Now, how  
17 much, if you can tell me, how much  
18 were people were consuming?

19 Constable Black: I couldn't tell  
20 you."

21 A Yes.

22 Q We will remember that answer for  
23 later, sir.

24 Sergeant Girard provokes you to a  
25 further discussion:

1 "What about as far as what kind of,  
2 the amounts that were in the bottle  
3 when you put it out as opposed to when  
4 you put it away?

5 Constable Black: Well, the bottle I  
6 never did put away --

7 Sergeant Girard: Okay.

8 Constable Black: -- because it was  
9 consumed, I noticed the next day."

10 Right?

11 A Yeah.

12 Q Is that accurate, sir?

13 A Yes.

14 Q The first problem with that, sir, is  
15 your reference to having noticed the bottle being  
16 empty the next day. Do you recall telling Mr.  
17 Clifford something different, sir?

18 A Well, when I meant the next day, I  
19 meant the morning, when I started cleaning up the  
20 mess that was in the kitchen, that's what I refer  
21 to as the next day. Just because of the time and  
22 the evening shift and everything else, I referred  
23 it to as the same morning.

24 Q I will pursue that in a second with  
25 you, but I don't have to go to the interview with

1 Mr. Clifford for you to agree that you told him  
2 you checked that morning and the bottle was empty?

3 A That's right.

4 Q Okay. So your explanation is when you  
5 said next day here, you meant the same day?

6 A The same day, and just a few hours,  
7 you know, after the fact it was gone, yes.

8 Q Again, the reason that struck me as  
9 peculiar was, you didn't get to your place until  
10 what time, sir?

11 A It is a guess, an approximation,  
12 between 2:45, 3:00 o'clock, I'm assuming.

13 Q All right. You are already deep into  
14 the morning hours, sir. I just found it a little  
15 strange that you would consider the passage of  
16 three hours or so to be the next day.

17 A No, I entirely meant that morning.

18 Q All right. There is another problem,  
19 sir, with the description of the alcohol that you  
20 put out. Can you take a look at your statement to  
21 Mr. Clifford at page 36?

22 A Yes.

23 Q After talking to Mr. Clifford down at  
24 page 35, about the 26'er and the Bailey's.

25 A Yes.



1           Q     You identified the 26'er as Crown  
2     Royal.  On to page 36, you make some comment about  
3     not being sure how much of the Bailey's was  
4     consumed, which we will get back to later.  Then  
5     at line 4:

6                     "Okay, but there was almost -- an a  
7                     full bottle of Crown Royal and that  
8                     bottle was completely consumed when  
9                     you were cleaning up?

10           A     Um-hum, yes.  I had another bottle  
11                     which I also took out."

12           A     Yes.

13           Q     "But it was a heel, and I poured a  
14                     drink out of the bottle.

15                     What was the other bottle?

16                     It was rye."

17     Right?

18           A     Yes.

19           Q     When I asked you what you put out, why  
20     did you tell the Commissioner that you put out one  
21     bottle of rye and Bailey's, and not bother to  
22     mention the heel?

23           A     Well, I said I had another bottle  
24     which I also took out, but it was a heel and I  
25     poured a drink out of that bottle and that was for

1 myself.

2 Q I know that's what you said, sir. But  
3 the point is, when you were giving your evidence,  
4 after I asked you what liquor came out, you didn't  
5 mention that. You mentioned a bottle of rye and  
6 you mentioned Bailey's, right?

7 A I thought you meant put out and took  
8 out are two different things, because I took it  
9 out and poured it out for my own personal  
10 consumption.

11 Q Put out and took out are two different  
12 things? Sir, you understand the reason why I'm  
13 asking questions about alcohol?

14 A Yes.

15 Q Because we are trying to quantify the  
16 amount of liquor that was consumed at your  
17 residence.

18 A Yes.

19 Q And you understand the importance of  
20 providing accurate information about that?

21 A Correct.

22 Q And you would agree with me that if I  
23 hadn't pursued the questioning, the Commissioner's  
24 impression at the end of this would possibly be  
25 that you put out one bottle of Crown Royal and

1 some Bailey's?

2 A Right.

3 Q When in fact you are now saying that  
4 you also put out a bottle that had a heel of rye  
5 in it?

6 A Right.

7 Q So he would not have full information,  
8 correct, sir?

9 A That, as I said to you, that was for  
10 personal consumption and the other bottle was for  
11 the group.

12 Q So that's just how it happened, sir?

13 A Yeah.

14 Q I take it you didn't say, this is  
15 mine, you guys get your own? It was just your  
16 evidence --

17 A It was the end of the bottle, so I  
18 decided just to pour myself a drink.

19 Q Because you never mentioned it to the  
20 Winnipeg Police either when you gave your  
21 interview to them?

22 A I didn't think it was important. I  
23 thought it was basically -- because it was for my  
24 own personal consumption.

25 Q Sir, they were asking you about how

1 much alcohol you consumed, sir?

2 A Yes.

3 Q They were also asking you how much  
4 alcohol was available during that get-together?

5 A Without -- yeah, you are correct,  
6 because I did mention that to the --

7 Q You didn't mention it to them, sir.  
8 You understood that it was important for them to  
9 find out what alcohol was available at your  
10 residence and you didn't mention it, sir.

11 A Yes.

12 Q I don't mean to make a big deal out of  
13 the heel, but you understand why I'm trying to  
14 look for precision here, sir?

15 A Yes.

16 Q So it wasn't a bottle, it was a heel?

17 A Yes.

18 Q You wouldn't call it a bottle of rye?

19 A Well, to me, it is a bottle, it is  
20 still considered a bottle.

21 Q So you put out -- how much is in a  
22 heel, sir?

23 A It was very small, it was just an  
24 ounce or two at the bottom, that's what I  
25 remember.

1           Q     You put your fingers about one inch  
2     apart.  You consider that a bottle.  If you drank  
3     that heel and your partner came home and said,  
4     were you drinking, you wouldn't say I had a bottle  
5     of rye, would you?

6           A     No.  But it was certainly something in  
7     my mind that this was still a bottle, because I  
8     wanted to just make sure that I gave accurate  
9     information.  That's all.

10          Q     To Mr. Clifford?

11          A     Yes.

12          Q     Because you didn't give that to the  
13     Winnipeg Police Service, did you, sir?

14          A     Well, at that point I didn't think it  
15     was the biggest deal, because I thought it was  
16     for -- it was personal consumption.

17          Q     So is it your evidence that when you  
18     being interviewed by the Winnipeg Police Service  
19     that you knew that this was something that you  
20     drank, you just didn't tell them because you  
21     didn't think it was important?

22          A     That's correct.

23          Q     Sir, take a look at your statement to  
24     the insurance adjustor.  I'm going to ask you to  
25     look at document Q-2.89.b.25 for the lawyers at

1 page 3055.

2 Now you were asked earlier by the  
3 Winnipeg Police how much was consumed, and you  
4 indicated that you had no idea. Here in this  
5 statement that you give the very same day, sir,  
6 take a look, please, on page 3 in the second  
7 paragraph, beginning four lines in?

8 A Can I just interrupt you there for one  
9 second, please?

10 Q Yes, sir.

11 A Because when you asked me how much was  
12 consumed --

13 Q Yes?

14 A -- do you have reference to that line  
15 again in the Public Safety -- or the Professional  
16 Standards Unit? Sorry to interrupt you.

17 Q You can take a look at page 906, page  
18 905 into 906:

19 "Okay. Now, how much, if you could  
20 tell me how much were people  
21 consuming?

22 I couldn't tell you."

23 Right? And that's the first answer that you gave?

24 A That's what I wanted to touch upon,  
25 because how much were people consuming, and I

1 thought individually when you mentioned that, or  
2 when I was asked that.

3 Q Okay. This time, sir, if you can go  
4 back to the document that I was interested in at  
5 page 3055?

6 A Yes.

7 Q The third, fourth line:

8 "It is hard to say how much liquor  
9 might have been consumed, but I would  
10 estimate that it may have been perhaps  
11 two bottles of rye and a part of a  
12 Bailey's."

13 A Right.

14 Q So you told the adjustor that your  
15 estimate was that the consumption was two bottles  
16 of rye?

17 A Again, taking into -- that heel into  
18 account, that's what it was about.

19 Q So, it is your evidence under oath,  
20 sir, that when you were giving your statement to  
21 the adjustor, when you estimated two bottles of  
22 rye --

23 A Yes.

24 Q -- you were trying to communicate one  
25 bottle of rye, plus a heel of another bottle?

1           A     Yes.

2           Q     Sir, you gave this statement to your  
3     adjustor because you received advice it was a  
4     prudent thing to do?

5           A     Correct.

6           Q     It was a prudent thing to do because  
7     there was some question that you had to protect  
8     your family?

9           A     Correct.

10          Q     And you might have had to protect your  
11     family against civil liability, right?  Is that  
12     correct?

13          A     Protect my family -- again, I did not  
14     know what the ramifications would be.  I had no  
15     idea.

16          Q     What were the other options, sir?

17          A     I have no idea.  I have never been  
18     involved in this before -- was never involved in  
19     this.

20          Q     You realized that the statement was  
21     important?

22          A     Yes.

23          Q     You realized that it was important to  
24     be accurate?

25          A     And certainly if someone asked me at a



1 later time I could certainly clarify that, because  
2 a lot of this statement is, you know, it was  
3 something that was taken down, it was in notes,  
4 and then he put it together in his own wording as  
5 well. So, it is not something that, again that I,  
6 you know -- I could answer at a later time and  
7 clarify it.

8 Q So you signed this statement knowing  
9 that two bottles might be misleading, thinking  
10 that you could answer later if anybody  
11 misunderstood that?

12 A Correct.

13 Q Why didn't you fix it?

14 A Because I felt that I can clarify it  
15 later and that's exactly what it was.

16 Q Sir, you know that this statement is  
17 going to be used potentially in litigation, if  
18 that were to happen, and it is going to be used  
19 potentially against you, sir?

20 A Well, it was something that I felt I  
21 can clarify. It wasn't an issue for me.

22 Q What about the Bailey's?

23 A I'm not sure how much of the Bailey's  
24 was consumed, just by the colour of the bottle, it  
25 is difficult to say.

1 Q Sir, you picked the bottle up?

2 A Yes.

3 Q And you picked it up at the end of the  
4 night?

5 A Yes.

6 Q And surely you noticed how heavy the  
7 bottle was?

8 A At this point, I don't recall.

9 Q I know you don't recall at this point,  
10 sir, but you know what, Derek Harvey-Zenk, one of  
11 your shift mates, went out on to the highway after  
12 leaving your house and killed a woman.

13 A Yes.

14 Q You are aware of that?

15 A Oh, yes.

16 Q He was charged with impaired driving  
17 causing death, and you are aware of that?

18 A Yes.

19 Q And he refused a breathalyzer; you are  
20 aware of that as well?

21 A Yes.

22 Q Are you telling us that you didn't pay  
23 any attention to how much alcohol had been  
24 consumed after that event occurred?

25 A I knew there was a 26 of rye that was

1 consumed at my residence, and part of the  
2 Bailey's. And the totality of the Bailey's, I'm  
3 not sure.

4 Q You didn't reflect back and try and  
5 figure out how much alcohol had been consumed at  
6 your place, sir?

7 A I just said that it was the rye and  
8 the Bailey's.

9 Q You didn't try to figure out how much  
10 of that Bailey's had been consumed --

11 A No, I didn't.

12 Q -- learning about this terrible  
13 tragedy?

14 A No, I did not.

15 Q What about beer, sir?

16 A There was no beer.

17 Q You said you had beer in your house?

18 A Beer in the house.

19 Q You made a point of saying that in  
20 your insurance adjustor statement, sir?

21 A Yes, I did. Yes, again, there was  
22 other liquor and, again, that is something --  
23 there was beer in the residence, but that was it.  
24 It wasn't put out by me.

25 Q Was it put out at all?

1 A No. By anybody?

2 Q Yes, sir?

3 A I never saw anyone consuming beer.

4 Q Do you recall the explanation you gave  
5 in your insurance adjustor's statement as to why  
6 you knew there had been no beer consumed?

7 A No, I don't. I would think -- I just  
8 know from was no beer consumed because I know  
9 there was nobody drinking beer.

10 Q Sir, that's not what you said in your  
11 statement.

12 A Okay. I don't recall what I put in --

13 Q I will show you in a second. You  
14 didn't say, I know nobody was drinking beer, or I  
15 didn't see anybody drinking beer.

16 A Um-hum.

17 Q What you put in your statement was "I  
18 didn't see any bottles around."

19 A Right.

20 Q Right?

21 A Right.

22 Q Which is a slightly different  
23 explanation, right? Because not seeing any  
24 bottles around, you have to infer, well, I guess  
25 nobody drank any beer, right? Which is different

1 from, I know there was no beer, I didn't see any  
2 beer; right?

3 Sir, do you not find it a bit curious  
4 that you came back from Branigan's where, based on  
5 our evidence, everybody but two people who were  
6 consuming alcohol were drinking beer, and you have  
7 got beer in your house?

8 A Yes.

9 Q And what you put out is rye?

10 A Yes.

11 Q And no beer?

12 A Right.

13 Q Do you have an explanation for that,  
14 sir?

15 A No. That was the first choice I had,  
16 was -- I ended up just taking the bottle down and  
17 out. There is no explanation for it.

18 Q Your selection was basically to move  
19 from beer to hard liquor?

20 A Whether it was just there at the time,  
21 my liquor cabinet is there, it was a decision that  
22 I made.

23 Q What did your friend and partner, Ken  
24 Azaransky, have to drink at your place?

25 A I don't know. I can only assume that

1 he was drinking some of the rye.

2 Q So you don't even -- you can't even  
3 tell the Commissioner that he was drinking rye?

4 A To this day I can't.

5 Q Could you ever?

6 A Would I ever have been able to?

7 Q Yes?

8 A I don't know.

9 Q What did Norbert Bauer have to drink?

10 A I have no idea.

11 Q You can't put any rye in his hands,  
12 sir?

13 A No.

14 Q What did Jay Nolet have to drink?

15 A I can't put a drink in his hands  
16 either.

17 Q What did Sergeant Chris Humniski have  
18 to drink?

19 A No idea.

20 Q Tracey Fudge?

21 A No idea.

22 Q You don't even know whether they were  
23 drinking?

24 A I can only assume that everyone was  
25 drinking. The liquor bottle was empty by the

1 morning.

2 Q They weren't sneaking into the other  
3 room and taking a swig when you weren't looking,  
4 sir?

5 A I have no idea.

6 Q What did Kelly McLure have to drink?

7 A No idea.

8 Q What did T.J. Spruyt have to drink?

9 A Don't know.

10 Q What did Dave Harding have to drink?

11 A Don't know.

12 Q When you left Branigan's, did you make  
13 any observations of anyone who appeared to have  
14 had too much to drink?

15 A I did.

16 Q How many people, sir?

17 A One, one that I took notice of.

18 Q And who was that?

19 A Dave Harding.

20 Q You said in your statement he was  
21 showing signs?

22 A That's correct.

23 Q What kind of signs was he showing?

24 A Just erratic behaviour, obscure,  
25 something that wasn't him, wasn't routine.

1 Q So it was a change in his behaviour  
2 that signaled it to you?

3 A Yes, it was.

4 Q Anybody else?

5 A No, just the one -- well, the  
6 behaviour that caught my attention was Dave  
7 Harding's.

8 Q Were there any officers there who  
9 should not have been driving, other than Dave  
10 Harding?

11 A No, not that I saw.

12 Q And when I refer to that, sir, I'm not  
13 just referring to people who are falling down  
14 drunk?

15 A Yes.

16 Q You are a peace officer.

17 A Yes, I absolutely realize that. No, I  
18 didn't.

19 Q You understand that the alcohol limit  
20 is .08 in the Criminal Code?

21 A Absolutely.

22 Q And it is .05 in Manitoba?

23 A Correct.

24 Q Your evidence is you didn't have any  
25 concern for anybody driving from Branigan's based



1 on those criteria?

2 A Correct.

3 Q You have more than 20 police officers  
4 there at a beer and wings night?

5 A Yes.

6 Q And you feel nobody else had any issue  
7 with respect to driving, sir?

8 A I didn't see -- the only behaviour  
9 that I saw that wasn't routine, and I know Dave  
10 Harding, was his.

11 Q Sir, you know Darcey Gerardy?

12 A Yeah, he is assistant manager, I  
13 believe.

14 Q You said he is a good friend of  
15 Rodrigo, right?

16 A Yes.

17 Q Well, I can tell that you Darcey  
18 Gerardy had enough concern about a few officers,  
19 and when he was testifying he gave the number two  
20 to three. He told Mr. Bravo at the time it was  
21 three.

22 A Okay.

23 Q He had enough concern about them that  
24 they should have been cut-off, and he made it a  
25 point to ensure that there were precautions in

1 place so that these people would be attended to  
2 when they went to drive away.

3 A Correct.

4 Q I take it you have no issue with that  
5 evidence by him?

6 A My only observation, sir, was Dave  
7 Harding's.

8 Q He said there were five to six cars  
9 there the next day, Mr. Rodrigo Bravo did, that  
10 had been left behind. I take it that is not what  
11 you saw, sir?

12 A No. In terms of vehicles left behind?

13 Q Yes? You didn't see enough people to  
14 account for five or six people saying, you know  
15 what, I'm just leaving my car.

16 A One person I saw.

17 Q What about Ken Azaransky?

18 A In terms of sobriety?

19 Q Yes?

20 A Sober.

21 Q You were with him most of the evening?

22 A He was at my table, yes.

23 Q Go ahead?

24 A And then he returned back to my  
25 residence.

1 Q Chelsea O'Halloran says he was drunk  
2 at Branigan's.

3 A No.

4 Q You disagree with that?

5 A I do.

6 Q You are also going to disagree with  
7 the next suggestion. She says you were drunk too.

8 A No.

9 Q She said she has seen you sober  
10 before, and she has watched you progress into a  
11 state of intoxication, and she knows when you are  
12 intoxicated. And she says you were intoxicated  
13 that night.

14 A No.

15 Q You drove home, of course?

16 A Yes.

17 Q What did Dave Harding have to drink at  
18 your place?

19 A I don't recall what he had to drink at  
20 my place.

21 Q I know --

22 A If he had a drink at all.

23 Q You don't recall whether he had a  
24 drink at all?

25 A That's correct.

1           Q     You know that Constable Nolet says in  
2 his statement to the Commission that he took a  
3 drink away from Dave Harding at your place?

4           A     No, I did not know that.

5           Q     So that would have happened without  
6 your notice, sir?

7           A     Yes.

8           Q     No comment by Dave Harding -- I just  
9 took a drink away from this guy?

10          A     I didn't notice.

11          Q     You knew he was intoxicated when he  
12 got to your house?

13          A     Yes.

14          Q     You didn't watch to see how much of  
15 your liquor he was drinking, sir?

16          A     I was focused on getting the food and  
17 everything else, and socializing with the group.  
18 I did take notice of his behaviour.

19          Q     Yes, sir, but you didn't do anything  
20 about monitoring how much drink he would take at  
21 your house?

22          A     Again, I don't know if he even had a  
23 drink.

24          Q     You took him downstairs because he was  
25 "really showing signs" at one point?

1 A He sure did.

2 Q And you say you put him on a couch?

3 A I did.

4 Q You agree that he was drinking  
5 heavily?

6 A He was showing signs.

7 Q Sir, do you not agree, as an  
8 experienced person, an adult, that the way you get  
9 to show signs is to drink heavily?

10 A Yes, absolutely.

11 Q So the answer to the question of he  
12 was drinking heavily, is yes? Right?

13 A Yeah, yeah.

14 Q What did Derek Harvey-Zenk have to  
15 drink?

16 A I have no idea.

17 Q Did he have a drink in his hand when  
18 you took him on a tour of the basement near the  
19 end of the night?

20 A I don't recall that.

21 Q Sir, it would have been just the two  
22 of you down there?

23 A It was.

24 Q You would have been talking about  
25 renovating your basement into a recreation room?

1 A Exactly.

2 Q And it would have been some discussion  
3 about him being a handy guy?

4 A Yes.

5 Q You are with him down there not too  
6 long I understand, just several minutes?

7 A Several minutes, that's correct.

8 Q He could have been standing there with  
9 a drink in his hand and you wouldn't have noticed?

10 A I don't recall at this point.

11 Q Sir, you learned the next day he was  
12 charged, right?

13 A He was charged, that's correct.

14 Q You learned that the next day?

15 A That's correct.

16 Q You learned it from Sergeant Humniski  
17 at a reception?

18 A Yes.

19 Q He took you out into the parking lot  
20 and told you about this?

21 A Yes.

22 Q Kind of a private discussion, sir?

23 A Yeah.

24 Q And was that a private discussion,  
25 sir, because he didn't want statements being made,

1 or because he didn't want to have that  
2 conversation in front of everybody else because of  
3 the conversation itself, sir, or was it just that  
4 you wanted to be away?

5 A I have no idea.

6 Q Did he tell you, let's go somewhere  
7 else and have this conversation?

8 A I don't remember how I went.

9 Q You said you were shocked when you  
10 learned this?

11 A Absolutely.

12 Q You said he didn't show any signs and  
13 that's why you were shocked, right?

14 A I was shocked because he was involved  
15 in an accident.

16 Q Okay. And you hadn't seen any signs  
17 that he had had too much to drink, is that right?

18 A Correct.

19 Q So you must have felt this was  
20 something of a mystery as to why he might not  
21 furnish a sample, or how this could have happened?

22 A I didn't know about the impaired, I  
23 knew that there was an accident.

24 Q Sir, you learned from Sergeant  
25 Humniski that he was charged.

1 A Charged.

2 Q Yes, sir?

3 A Yes. At that point I recall not  
4 knowing what the charges were. He was in custody,  
5 I remember him being in custody, so being in  
6 custody and charged I thought were two of the  
7 same.

8 Q So your evidence here today is that  
9 you didn't know that it had alcohol involved in  
10 it?

11 A For the offences?

12 Q Yes?

13 A No.

14 Q So, Sergeant Humniski, who had been at  
15 your house that evening --

16 A Yes.

17 Q -- where alcohol was served --

18 A Yes.

19 Q -- is telling you that one of the  
20 other guests who had been at your house that  
21 evening where alcohol was served --

22 A Yes.

23 Q -- had been involved in a fatal  
24 accident and had been arrested?

25 A He was in custody.



1           Q     And he didn't share with you that this  
2 man was charged with alcohol-related offences, or  
3 was released ultimately on a promise to appear on  
4 alcohol-related offences?

5           A     No.

6           Q     You told the insurance adjustor in  
7 your statement at page 3054 that no one was  
8 consuming liquor at a heavy rate; right?

9           A     Yes.

10          Q     What about Dave Harding?

11          A     Can you just direct me where I have  
12 said that? I'm sorry, I'm trying to find it.

13          Q     I don't blame you, I don't know that  
14 it is on that page, sir. If you go over to page  
15 3055, top of the first paragraph.

16                    "No one was consuming liquor at a  
17 heavy rate."

18 Right? You have the statement to your insurance  
19 adjustor? Are you looking at page 3 of that  
20 statement, sir?

21          A     Yes.

22          Q     You see the first paragraph, go down  
23 to the second paragraph.

24          A     Okay.

25          Q     "We continued socializing for some

1                   time. No one was consuming liquor at  
2                   a heavy rate."

3     Right?

4                   A     Yes.

5                   Q     Harding had been consuming liquor at a  
6     heavy rate, did he not, sir?

7                   A     He must have been because he was  
8     showing signs.

9                   Q     Why did you tell the insurance  
10    adjustor that no one was?

11                  A     Oh, at my place you mean? Is that  
12    what you are saying?

13                  Q     Yes?

14                  A     I thought you meant in terms of  
15    throughout the evening at Branigan's and bringing  
16    it all together. He must have been consuming  
17    liquor at Branigan's.

18                  Q     All right. Sir, I'm just going to put  
19    this to you. You've been taken through a list of  
20    everybody there and you couldn't say whether they  
21    were drinking?

22                  A     At this point I can't. I can only  
23    assume that they were. That if all were, I can't  
24    say.

25                  Q     And, sir, you took the same basic

1 position when you gave your earlier statements  
2 too, didn't you?

3 A I didn't recall what people had to  
4 drink, or what they were consuming, or at what  
5 rate, that type of thing, exactly.

6 Q Then how do you say in a statement  
7 that no one was drinking at a heavy rate, if you  
8 don't even know what they were drinking?

9 A Because I was trying to generalize  
10 what that evening was about. When I say heavy  
11 rate, something that I would take notice of, if  
12 someone has a drink and is downing drinks or  
13 shooters or something like that, you would take  
14 notice of that behaviour.

15 Q Sir, you indicated earlier that it  
16 wasn't a heavy rate for you to drink four pints in  
17 two and a half hours?

18 A To me, three or four drinks, I'm fine  
19 with that.

20 Q Sir, it was four pints, not three.

21 A I possibly may have given someone a  
22 drink. I don't recall exactly how many I drank  
23 that evening.

24 Q The point I was focusing on was you  
25 told me that wasn't a heavy rate?

1           A     For me it is not.

2           Q     So when you say no one was consuming  
3 alcohol at a heavy rate, it could allow for  
4 anything up to four pints of beer?

5           A     For me, I'm fine with consuming that  
6 much.

7                   MR. PACIOCCO: Mr. Commissioner, it is  
8 4:28.

9                   THE COMMISSIONER: Yes.

10           MR. PACIOCCO: I think we should break  
11 at this time. And I am going to ask you, sir, if  
12 you are prepared to, to prepare a diagram of your  
13 kitchen. And if you are home with a measure tape,  
14 that will help even more.

15                   THE WITNESS: I sure will.

16                   THE COMMISSIONER: Give me a few  
17 minutes. Monday morning, 9:30.

18                   THE CLERK: All rise. This Commission  
19 is adjourned until Monday at 9:30.

20                           (Proceedings adjourned at 4:29 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.

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Cecelia Reid

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Debra Kot

<b>A</b>				
<b>ability</b> 3973:25 4066:10 4105:25 4151:6	4051:4 4057:8 4067:18 4102:6	4165:13 4166:17 4168:18,19	4218:23 4220:4 4228:11,24	<b>alerting</b> 4003:19
<b>able</b> 3963:23 3968:6 4038:22 4040:7 4137:9 4146:1,19 4147:11 4151:14 4161:20 4169:20 4170:3 4172:19 4175:2 4180:18 4213:20 4232:6	<b>accurate</b> 4038:4 4061:2 4127:12 4181:7 4217:12 4220:20 4223:8 4226:24	4185:20 4186:3 4186:14 4190:16 4196:8,14 4206:13 4207:24 4208:13 4223:24 4225:14,21 4226:3 4229:20 4243:6,19 4244:10	<b>aftermath</b> 4018:22 <b>afternoon</b> 3959:14 4070:10 4082:25 4110:1,3,12,13 <b>afterwards</b> 3980:7 3986:20 3988:2 4040:15 <b>against</b> 4047:2 4120:2 4137:21 4146:15,25 4189:14 4190:10 4190:14 4226:11 4227:19	<b>allegation</b> 4047:2,3 4100:8,10 <b>allegations</b> 4047:4 4051:7 4067:20 <b>allow</b> 4004:3 4049:22 4246:3 <b>allowed</b> 4073:21 <b>alluded</b> 3972:24 <b>almost</b> 4030:14 4080:3 4094:8 4106:14 4114:5 4159:24 4219:6
<b>above</b> 4099:24 4102:1 4132:5 4178:5 4179:25	<b>accused</b> 4053:23 4097:3 <b>achieved</b> 3962:20 <b>achieving</b> 4086:17 <b>across</b> 3973:1,19 3976:24,25 4007:7 4058:15 4212:8,10	<b>adjustor's</b> 4185:12 4189:12 4230:5 <b>administration</b> 4032:2 4086:13 <b>administrative</b> 3956:4,5,6 4049:15 4052:21 4053:21 4054:1 4071:6 4073:7 4103:4 4105:9,13 4106:6,11	<b>agencies</b> 4053:8 <b>agency</b> 4045:4 4086:21 <b>ago</b> 3965:21 3966:25 3971:7 4026:12 4066:25 4130:21 4154:23 <b>agreed</b> 3961:20 3998:10 4086:14 4086:15 4162:3 4187:16 <b>agreement</b> 4127:8 <b>ahead</b> 3972:6 4004:4 4074:6 4128:19 4180:3 4200:14 4201:4 4203:25 4236:23	<b>alone</b> 4112:4 4139:22 4153:12 4153:22 <b>along</b> 4012:5 4013:11 4138:21 4202:17 4204:12 <b>already</b> 3998:10 4012:7,10 4013:24 4015:23 4062:5,5 4134:17 4134:19 4151:23 4156:7 4157:19 4187:5 4218:13
<b>absence</b> 4085:6 <b>absolute</b> 4186:13 4187:12 <b>absolutely</b> 4037:12 4041:14 4045:1 4053:24 4060:2 4061:15 4078:11 4079:5 4085:8 4102:4 4108:22 4234:17,21 4239:10 4241:11	<b>act</b> 4068:1 <b>acted</b> 4042:24 4044:24 4094:20 4209:19 <b>Acting</b> 4031:18,20 4034:3 4039:18 4075:24 4080:12 <b>action</b> 4065:9 4096:24 <b>actions</b> 4055:18 <b>activity</b> 4141:14 4160:18 <b>actual</b> 4017:15 <b>actually</b> 4024:21 4025:1 4031:12 4031:16 4035:14 4037:20 4066:24 4070:12 4074:2 4075:23 4093:2 4126:3,7 4137:4 4138:7,9 4146:20 4153:20 4159:15 4169:23 4191:6 4201:12 4213:25	<b>adult</b> 4239:8 <b>advice</b> 3989:12 4036:19,22 4049:23 4125:5,7 4226:3 <b>advise</b> 3959:7 4029:10 4040:7 4103:1 4128:18 4131:6 <b>advised</b> 3983:13 4034:4 4081:15 4106:23 4125:10 <b>affair</b> 4044:24 <b>affairs</b> 3980:7,15,22 4018:23 4087:14 4087:24 <b>affect</b> 4066:18 <b>affected</b> 4064:18 <b>affirm</b> 4206:18 <b>affording</b> 4051:22 <b>afraid</b> 4148:9 <b>after</b> 3959:12 3974:5,5 3979:20 3980:11 3985:3 3985:15 3995:23 4002:20 4020:7,7 4031:11 4033:20 4035:2 4036:4 4042:4 4046:6 4090:5 4093:2,4 4116:6 4125:4 4162:22 4164:2 4191:24 4192:15 4193:6 4196:1 4210:25 4218:7	<b>albeit</b> 4069:11 <b>alcohol</b> 3978:23 3979:1,4 3981:12 3989:7 3992:24 3992:25 3993:4,7 4023:12 4043:4 4150:15 4151:2 4156:5 4170:6 4206:18,19,21 4207:11,25 4208:11,25 4218:19 4220:13 4222:1,4,9 4228:23 4229:5 4231:6 4234:19 4242:9,17,21 4246:3 <b>alcoholic</b> 4150:8 <b>alcohol-related</b> 4243:2,4 <b>alcove</b> 4144:25 4157:24 4183:20 4194:22 <b>alert</b> 4003:18 4047:17	<b>although</b> 4071:19 4086:23 4166:15 <b>always</b> 4052:11,13 4056:22 4059:8 4091:4,11,12 4109:7 <b>ambiguity</b> 4191:19 <b>ammunition</b> 4034:17 <b>amongst</b> 4037:23 4090:8 <b>amount</b> 4108:15 4182:22 4220:16 <b>amounts</b> 4182:23 4217:2 <b>Anderson</b> 4034:25 4039:22 4079:6 4093:7,17 4095:6 4107:23 4145:24 4149:2 4153:24 4198:24 <b>angle</b> 4137:7 4175:10,14,20,22 4179:1,9 4180:6,7 4180:10,11,18,20 4181:16 4182:3 <b>angles</b> 4174:18 4178:20 <b>annual</b> 4048:2 <b>another</b> 3995:10 4003:25 4030:20
<b>absurd</b> 4092:14 <b>accept</b> 4109:8 4120:19 4123:1 4123:20 4193:14 <b>access</b> 4089:18 <b>accident</b> 3974:5 3982:20 4018:10 4018:21 4029:21 4030:8,19 4035:2 4036:9 4113:10 4125:4 4189:15 4241:15,23 4242:24 <b>accommodate</b> 4134:11 <b>accord</b> 4013:5,17 4013:21 4127:2,7 4138:10 4176:13 <b>accorded</b> 4051:25 <b>according</b> 4029:15 4032:5,7 4035:7 4037:15 4131:8 4176:7 <b>accords</b> 4139:19 <b>account</b> 4061:13 4181:14 4187:21 4212:9 4225:18 4236:14 <b>accountable</b> 4038:2 4049:17,18	<b>add</b> 4033:15 <b>added</b> 4095:24 4096:1 <b>addition</b> 4113:7 4194:3 <b>additional</b> 4061:17 <b>addressed</b> 4083:6 <b>addressing</b> 3973:23 4085:2 <b>adjacent</b> 4143:13 4148:16 4158:20 4176:4 4182:2 <b>adjourned</b> 4246:19 4246:20 <b>Adjusters</b> 4124:12 <b>adjustor</b> 4125:16 4125:17 4126:13 4127:13 4162:18	<b>adjustor</b> 4185:12 4189:12 4230:5 <b>administration</b> 4032:2 4086:13 <b>administrative</b> 3956:4,5,6 4049:15 4052:21 4053:21 4054:1 4071:6 4073:7 4103:4 4105:9,13 4106:6,11 <b>adult</b> 4239:8 <b>advice</b> 3989:12 4036:19,22 4049:23 4125:5,7 4226:3 <b>advise</b> 3959:7 4029:10 4040:7 4103:1 4128:18 4131:6 <b>advised</b> 3983:13 4034:4 4081:15 4106:23 4125:10 <b>affair</b> 4044:24 <b>affairs</b> 3980:7,15,22 4018:23 4087:14 4087:24 <b>affect</b> 4066:18 <b>affected</b> 4064:18 <b>affirm</b> 4206:18 <b>affording</b> 4051:22 <b>afraid</b> 4148:9 <b>after</b> 3959:12 3974:5,5 3979:20 3980:11 3985:3 3985:15 3995:23 4002:20 4020:7,7 4031:11 4033:20 4035:2 4036:4 4042:4 4046:6 4090:5 4093:2,4 4116:6 4125:4 4162:22 4164:2 4191:24 4192:15 4193:6 4196:1 4210:25 4218:7	4218:23 4220:4 4228:11,24 <b>aftermath</b> 4018:22 <b>afternoon</b> 3959:14 4070:10 4082:25 4110:1,3,12,13 <b>afterwards</b> 3980:7 3986:20 3988:2 4040:15 <b>against</b> 4047:2 4120:2 4137:21 4146:15,25 4189:14 4190:10 4190:14 4226:11 4227:19 <b>agencies</b> 4053:8 <b>agency</b> 4045:4 4086:21 <b>ago</b> 3965:21 3966:25 3971:7 4026:12 4066:25 4130:21 4154:23 <b>agreed</b> 3961:20 3998:10 4086:14 4086:15 4162:3 4187:16 <b>agreement</b> 4127:8 <b>ahead</b> 3972:6 4004:4 4074:6 4128:19 4180:3 4200:14 4201:4 4203:25 4236:23 <b>albeit</b> 4069:11 <b>alcohol</b> 3978:23 3979:1,4 3981:12 3989:7 3992:24 3992:25 3993:4,7 4023:12 4043:4 4150:15 4151:2 4156:5 4170:6 4206:18,19,21 4207:11,25 4208:11,25 4218:19 4220:13 4222:1,4,9 4228:23 4229:5 4231:6 4234:19 4242:9,17,21 4246:3 <b>alcoholic</b> 4150:8 <b>alcohol-related</b> 4243:2,4 <b>alcove</b> 4144:25 4157:24 4183:20 4194:22 <b>alert</b> 4003:18 4047:17	<b>allegation</b> 4047:2,3 4100:8,10 <b>allegations</b> 4047:4 4051:7 4067:20 <b>allow</b> 4004:3 4049:22 4246:3 <b>allowed</b> 4073:21 <b>alluded</b> 3972:24 <b>almost</b> 4030:14 4080:3 4094:8 4106:14 4114:5 4159:24 4219:6 <b>alone</b> 4112:4 4139:22 4153:12 4153:22 <b>along</b> 4012:5 4013:11 4138:21 4202:17 4204:12 <b>already</b> 3998:10 4012:7,10 4013:24 4015:23 4062:5,5 4134:17 4134:19 4151:23 4156:7 4157:19 4187:5 4218:13 <b>although</b> 4071:19 4086:23 4166:15 <b>always</b> 4052:11,13 4056:22 4059:8 4091:4,11,12 4109:7 <b>ambiguity</b> 4191:19 <b>ammunition</b> 4034:17 <b>amongst</b> 4037:23 4090:8 <b>amount</b> 4108:15 4182:22 4220:16 <b>amounts</b> 4182:23 4217:2 <b>Anderson</b> 4034:25 4039:22 4079:6 4093:7,17 4095:6 4107:23 4145:24 4149:2 4153:24 4198:24 <b>angle</b> 4137:7 4175:10,14,20,22 4179:1,9 4180:6,7 4180:10,11,18,20 4181:16 4182:3 <b>angles</b> 4174:18 4178:20 <b>annual</b> 4048:2 <b>another</b> 3995:10 4003:25 4030:20

4048:25 4056:17 4057:14 4090:25 4098:6 4133:12 4146:16 4175:9 4201:5,8 4218:18 4219:10,23 4225:25 <b>answer</b> 3986:11 4004:8 4059:20 4070:2 4097:23 4105:15 4118:17 4120:17 4156:14 4162:2,12 4165:10 4168:18 4169:8 4170:21 4171:12 4185:19 4192:24 4193:1 4216:4,7,22 4224:23 4227:6 4227:10 4239:11 <b>answered</b> 3977:2 <b>answers</b> 3976:14 4164:17 4195:25 <b>anticipated</b> 4090:1 <b>anybody</b> 3963:10 3965:14 3973:2 3973:13,14 3975:13,19 4027:6 4043:3 4057:3 4064:1 4084:21 4132:1 4141:22 4156:23 4156:25 4160:2,8 4161:2 4211:15 4227:10 4230:1 4230:15 4234:4 4234:25 <b>anybody's</b> 3977:12 3977:13,14 <b>anyone</b> 4033:22 4044:12 4051:8 4051:23 4059:22 4108:7 4141:7 4145:21 4156:11 4161:1 4183:5 4207:25 4208:11 4208:25 4230:3 4233:13 <b>anything</b> 3975:4,21 3981:10 3984:18 3987:3,4 3988:11 3989:4,8,11,21 3990:1,6 4003:15 4004:13 4016:1 4016:14 4017:16 4025:9,24 4038:3 4038:18 4071:15	4072:16 4078:14 4082:21 4099:15 4104:2,22 4148:6 4205:20 4207:4 4238:19 4246:4 <b>anyway</b> 4007:12 4031:3 <b>anyways</b> 4025:12 <b>anywhere</b> 4026:8 <b>apart</b> 3982:5 4017:12 4121:6 4203:12 4223:2 <b>apologize</b> 3996:16 4142:17 4146:20 4186:3 4216:11 <b>apparent</b> 4058:19 <b>apparently</b> 4128:22 4169:25 <b>appear</b> 4013:10 4137:4 4243:3 <b>appearance</b> 4181:6 4199:6 <b>APPEARANCES</b> 3956:9 <b>appeared</b> 4071:2 4094:20 4104:6 4142:6 4149:13 4149:15 4233:13 <b>appears</b> 3967:8 4039:7 4081:13 4082:11,17 4181:5 <b>applicable</b> 3961:15 <b>appreciate</b> 4017:13 4065:5 4069:17 4091:7 <b>appreciated</b> 4056:15 <b>approach</b> 4060:9 <b>approached</b> 4041:18 <b>appropriate</b> 4026:24 4069:12 4071:8 4086:25 4087:25 4100:11 4100:16 <b>appropriately</b> 3974:12 <b>approximately</b> 4006:23 4039:1 4072:20 4110:21 4111:23 4135:5 4176:10 4177:6 4179:21 4184:7 4212:11 <b>approximation</b> 4132:19 4188:5	4218:11 <b>April</b> 3972:14,23 4005:21 <b>apron</b> 4205:23 <b>area</b> 4003:17 4012:24 4086:9 4138:1,15 4140:25 4141:3 4142:9,23 4144:15,20,21 4145:6 4149:13 4152:1 4158:13 4158:15 4174:15 4183:13 4200:12 4200:18 4201:19 4203:9 4204:9,13 4204:17,18,23,24 4205:1,3,6 4212:12,15,16 4213:4,6 <b>areas</b> 4010:22 4020:23 4100:24 <b>argue</b> 4102:13 4120:22 4124:8 <b>argument</b> 4179:13 <b>arguments</b> 4083:7 <b>arise</b> 4053:22 4189:15 <b>arising</b> 4162:21 <b>Aristomeni</b> 4129:25 <b>arm</b> 4205:16 <b>arose</b> 4107:14 <b>around</b> 3976:6 3993:23 4014:3,9 4031:5 4034:7,8 4065:7 4066:10 4075:19 4084:17 4090:20 4111:20 4132:13,17 4133:23 4138:1,7 4139:23 4140:6 4141:8,10 4142:8 4143:7 4144:7,11 4144:20 4150:14 4152:1 4154:2,6 4155:18 4173:4 4175:17 4182:19 4190:25 4202:22 4203:5 4204:4,6 4205:12 4213:5 4230:18,24 <b>arrange</b> 4049:4 <b>arranged</b> 3974:18 <b>arrangement</b> 4036:16 4053:11 4128:6 <b>arrested</b> 4242:24	<b>arrival</b> 4151:18 4153:9 <b>arrive</b> 4132:12 <b>arrived</b> 4042:7 4132:13 4133:15 4133:16 4134:17 4139:10 4141:7 4141:17 4145:22 4145:25 4153:25 4159:14 4206:17 <b>arriving</b> 4147:9 <b>Art</b> 4039:3,10 <b>article</b> 4036:6 <b>aside</b> 4060:6 4088:15 <b>asking</b> 3959:21 3986:23 3987:25 3988:4,13,14 3989:22 4000:9 4000:11,12 4010:2 4020:10 4021:8,23 4022:13 4025:13 4026:2 4115:3 4152:8 4172:6,8 4178:13 4180:22 4180:24 4197:12 4199:7 4212:4 4220:13 4221:25 4222:3 <b>assess</b> 3978:9,10 <b>assigned</b> 4068:3,10 4068:11,20 4069:13 <b>assist</b> 4019:18,25 4020:7 4046:24 4142:12 <b>assistance</b> 4088:6 <b>assistant</b> 3956:6 4235:12 <b>Assoc</b> 3956:17 <b>Associate</b> 3956:3 <b>association</b> 4008:16 4071:11 4099:17 4100:1,3 4109:1,4 4109:9 <b>assume</b> 4013:14 4038:25 4106:17 4110:6 4122:4 4141:12,18 4149:9 4150:2,3 4151:4,13 4155:22,24 4171:1,7 4178:3 4180:24 4182:10 4193:23 4231:25 4232:24 4244:23	<b>assuming</b> 4032:2,9 4041:15 4042:13 4077:10 4080:14 4168:10 4218:12 <b>assumption</b> 4059:2 4091:16 <b>assure</b> 4064:22 <b>ate</b> 3976:8 <b>athletic</b> 4199:14 <b>atmosphere</b> 4040:9 4140:23 4156:19 4194:9,21 4203:14 <b>attempts</b> 4029:12 <b>attend</b> 4033:6 4045:20,24 4046:2 4050:8 4054:23 4055:4 4121:16 4131:18 <b>attendance</b> 4043:18 4043:23 4049:4 4055:1 4070:6 4120:6,15 <b>attendances</b> 4121:6 4127:4 <b>attended</b> 4011:18 4035:25 4037:4 4042:6 4064:14 4070:9,15 4077:25 4078:5 4122:8 4123:2 4125:11 4236:1 <b>attending</b> 3964:25 4054:18 4078:13 4091:17 4112:5 <b>attention</b> 4078:10 4117:7 4126:11 4153:4 4228:23 4234:6 <b>attitude</b> 4058:20 <b>audience</b> 4148:10 <b>audit</b> 3963:10 <b>August</b> 4002:11,13 <b>availability</b> 4012:9 <b>available</b> 3964:12 3964:13,17 4031:25 4085:10 4098:2 4116:22 4222:4,9 <b>aware</b> 3973:17 3974:6 3984:13 3984:25 3991:2 4011:8 4018:8,13 4030:13 4036:10 4060:13 4066:22 4085:15 4103:16 4115:20 4169:11
--	---	--	--	--

4170:2,3 4171:23 4172:8 4228:14 4228:17,20 <b>awareness</b> 3989:2 <b>away</b> 3962:12 4000:1,6,8,14,20 4001:8,11 4030:20 4033:12 4064:5 4112:2 4159:22 4160:4 4160:10 4212:1,5 4213:10 4217:4,6 4236:2 4238:3,9 4241:4 <b>Azaransky</b> 4112:14 4116:5 4122:25 4128:16 4139:23 4145:19 4149:1 4155:3 4198:3 4231:24 4236:17 <b>a.m</b> 3959:2 4027:14 4027:15 4029:15	4166:20,23 4167:5,24 4168:2 4168:12 4174:3,3 4204:24 4209:8 4209:11 <b>barriers</b> 4069:14 <b>bartender</b> 3978:5 4001:11 <b>based</b> 3978:5 4014:6,7 4039:1 4055:8 4058:12 4085:16 4088:3 4090:23 4094:18 4094:19 4100:17 4107:24 4114:25 4124:5 4171:5 4193:5 4208:22 4231:4 4234:25 <b>basement</b> 4239:18 4239:25 <b>basic</b> 4148:1 4181:24 4244:25 <b>basically</b> 3976:5 3978:19 3986:25 3988:8 4010:2 4021:10 4034:7 4048:25 4052:20 4069:2 4071:5,10 4112:18 4116:17 4121:15 4125:5 4128:10 4141:6 4155:10,25 4158:20 4184:4 4184:11 4196:5 4197:14 4201:10 4203:16 4204:1 4204:15 4205:2 4209:6 4216:2 4221:23 4231:18 <b>basing</b> 4149:22 <b>basis</b> 4020:13,17,18 4020:19 4078:24 <b>bathroom</b> 4201:2 <b>Bauer</b> 3984:24 3987:2 4009:10 4010:8 4021:2,6 4021:23 4022:15 4145:22 4149:2 4153:24 4198:5 4232:9 <b>bearing</b> 4004:13 <b>become</b> 4008:23 4087:10,13,22 <b>becomes</b> 4058:18 <b>bedroom</b> 4201:1,5,8 <b>bedrooms</b> 4201:10 <b>beer</b> 3960:25	3995:7 4003:3 4171:15 4172:10 4172:15 4188:7,8 4188:14 4189:9 4191:4,7,7,18,25 4192:8,21 4193:4 4193:11 4194:3 4207:11 4229:15 4229:16,17,18,23 4230:3,6,8,9,14 4230:15,25 4231:1,2,6,7,11 4231:19 4235:4 4246:4 <b>beers</b> 3976:5 4188:21 4189:1,3 4191:14 <b>before</b> 3955:13 3973:10 3986:1 3994:21 3995:13 4002:3,3 4014:8 4017:5 4028:13 4031:16 4037:19 4041:21 4048:17 4048:23 4049:6 4052:9 4054:5 4061:10 4062:6 4063:5 4064:3 4073:25 4078:21 4079:25 4080:16 4085:11 4094:7 4098:22 4100:3 4112:9 4116:15 4119:13 4120:12 4121:23,24 4123:7 4128:24 4164:2,21 4166:16 4185:21 4186:8,24 4193:21 4199:10 4199:11 4226:18 4237:10 <b>beforehand</b> 4164:5 4164:20 <b>began</b> 4054:18 <b>begin</b> 3996:4 4112:11 <b>beginning</b> 4003:10 4005:7 4039:2 4075:11 4111:20 4224:7 <b>behalf</b> 4122:12 <b>behaviour</b> 4185:22 4186:9,16 4187:2 4233:24 4234:1,6 4235:8 4238:18 4245:14	<b>behind</b> 3973:4 4214:1 4236:10 4236:12 <b>belief</b> 4040:13 4058:12 4059:13 4060:21 4061:12 4067:9 <b>beliefs</b> 4100:23 <b>believed</b> 4179:8 <b>belong</b> 4206:22 <b>below</b> 4181:21 <b>Berdesis</b> 4129:25 <b>Bergmann</b> 3956:6 <b>beside</b> 3999:20 4153:13,23 4212:7 <b>best</b> 4013:25 4051:20 4083:21 4088:24 4098:17 4151:14 4190:3 4204:3 4212:21 <b>better</b> 3998:3 4085:9 4141:3 4159:1 <b>between</b> 3965:16 4013:25 4017:4 4057:19 4080:4 4085:5 4100:21 4100:23 4118:11 4121:8,18 4132:14 4135:8 4137:13 4158:15 4176:11,14 4177:4 4178:7 4179:16,20 4187:17 4188:15 4204:16 4205:2 4212:20 4218:12 <b>beverage</b> 3992:22 <b>beverages</b> 4150:9 <b>beyond</b> 4024:17 4099:25,25 4210:1 4212:19 4213:3 <b>bias</b> 4069:18 <b>biased</b> 4089:2 <b>big</b> 3993:2,9,17 4068:16 4071:24 4083:22 4084:6 4142:9 4144:3,19 4222:12 <b>bigger</b> 4200:1 <b>biggest</b> 4223:15 <b>bill</b> 3965:8,10,11 3966:5,5,16 3968:17 4182:8 4182:10,17,21,24	4190:25 <b>bills</b> 3965:7 3966:4 3966:10 3967:6 3969:25 4025:14 <b>bingo</b> 4124:19 <b>birth</b> 4072:3 <b>bit</b> 3971:4 4002:3 4014:3 4078:10 4114:12,15 4129:6 4136:12 4137:25 4148:20 4160:13 4177:15 4178:1 4179:6 4191:16 4199:20 4205:15 4214:3 4231:3 <b>Black</b> 3957:21 3958:12,16 3984:24 3985:23 3985:25 3986:10 3986:19 3987:2 3987:22 3988:5 3989:5 3990:1,21 3991:3,9 4009:10 4010:7 4021:2,17 4022:14 4110:5,9 4124:18,25 4152:21 4163:3 4166:19,23 4167:2 4179:23 4195:24 4216:19 4217:5,8 <b>Blackie</b> 4110:15 <b>black's</b> 3989:18 4038:8 4039:25 4040:10,11,11,15 4040:17,18,25 4043:23 4094:25 <b>blame</b> 4243:13 <b>blind</b> 4099:23 4158:14 <b>blinds</b> 4143:14 4158:6,10 <b>block</b> 4079:15 <b>blocking</b> 4173:6 <b>blocks</b> 4079:11,14 <b>blonde</b> 4199:14 <b>blur</b> 4160:13 <b>bodies</b> 4173:5 4174:18 4175:16 4175:18 4178:21 4178:23 <b>body</b> 4098:6 4178:5 <b>bold</b> 3984:9,19 <b>bond</b> 4057:13 4100:21 <b>bonds</b> 4100:22
---	---	--	--	--



<b>boned</b> 4200:1	3966:19 3967:1,7	3979:12 3984:15	4193:7 4207:12	<b>Cecelia</b> 3956:20
<b>book</b> 4186:4	3971:14 3978:16	3987:12 3992:6	4207:16 4220:4	4247:5,14
<b>booked</b> 4142:3	3978:21 3991:2	3992:22 3997:13	4223:3 4231:4	<b>cent</b> 3998:13
<b>booths</b> 4146:23	3991:16,20	3998:4,5 4003:5	<b>candy</b> 4184:8,8	4000:20 4001:5
<b>both</b> 3964:23	3993:22 4004:23	4003:15 4004:13	<b>canvass</b> 4010:22	4001:15,18
3980:25 3982:17	4008:14 4010:21	4014:19 4016:14	<b>canvassed</b> 4107:22	4009:14
4021:2 4033:6	4011:22 4012:2	4016:15 4017:17	<b>capacity</b> 4028:21	<b>Centre</b> 3955:13
4040:13 4084:1	4012:25 4013:10	4023:25	<b>car</b> 4030:17 4084:1	<b>certain</b> 4097:17
4093:13,17,23	4017:25 4018:4	<b>busy</b> 4016:20	4084:7 4090:17	4100:24,24
4095:5,17 4118:9	4020:25 4027:1,5	<b>B1</b> 4131:15	4128:17 4236:15	<b>certainly</b> 3990:8
4174:11,20	4113:14,16		<b>card</b> 3965:10	4030:13 4033:16
<b>bother</b> 4219:21	4114:4 4119:15	<b>C</b>	<b>care</b> 4043:4,5	4044:17,19
<b>bothered</b> 4104:13	4122:1 4128:22	<b>C</b> 3958:10 4080:24	<b>careful</b> 4082:20	4049:16 4051:3,6
<b>bottle</b> 4214:10,12	4142:23 4235:20	<b>cabinet</b> 4207:13,17	4164:16 4208:19	4053:25 4056:24
4215:1,5,11	4236:9	4231:21	<b>carefully</b> 4084:15	4065:17 4067:6
4216:3 4217:2,5	<b>Bravo's</b> 4115:9	<b>cabinets</b> 4204:6,11	<b>carries</b> 4052:7	4068:15 4079:2
4217:15 4218:2	<b>break</b> 4195:15	<b>CAD</b> 4136:14	<b>carrying</b> 4097:10	4086:4,25
4219:7,8,10,14,15	4246:10	4157:23	<b>cars</b> 4168:4 4236:8	4087:19 4094:15
4219:21,23,25	<b>breathalyzer</b>	<b>calculate</b> 4023:2	<b>case</b> 3963:10 3968:7	4094:22 4095:2,4
4220:5,25 4221:4	4228:19	<b>calculations</b> 4016:4	3968:12,15	4097:1,11
4221:10,17	<b>Brian</b> 4130:17,20	4016:5	3969:18 3990:17	4098:21 4099:17
4222:16,18,19,20	4157:13	<b>call</b> 3972:19 3973:7	4021:13 4033:3,4	4102:21 4103:6
4223:2,4,7	<b>brief</b> 4010:22	3982:1 3986:7,7	4033:5 4047:8	4103:13 4104:13
4225:25,25	4091:8	4027:19 4028:22	4050:25 4051:2	4107:23 4108:6
4227:24 4228:1,7	<b>briefed</b> 4042:10	4029:1,6,15	4051:11 4053:6	4112:12 4114:2
4231:16 4232:25	<b>briefing</b> 4045:24,25	4031:11 4033:20	4055:13 4056:8	4115:7 4123:9
<b>bottles</b> 4188:10	4054:19,20,23,24	4034:9 4035:10	4060:18,25	4138:1 4139:5
4225:11,15,21	4055:3,3 4064:14	4039:3 4074:15	4061:5 4065:4	4177:13 4193:5
4227:9 4230:18	4065:19 4077:25	4080:7,17	4068:9,10,14,24	4206:21 4223:6
4230:24	4078:2,13 4089:8	4082:12 4083:2	4078:5,16	4226:25 4227:1
<b>bottom</b> 3992:17,23	4090:3	4089:6 4090:5	4083:25 4086:17	<b>certainty</b> 3977:8
3993:14 4013:11	<b>briefings</b> 4045:20	4110:14 4143:6	4087:8,17	<b>CERTIFICATE</b>
4081:11,14	4046:2 4078:6	4222:18	4088:17 4091:9	4247:1
4082:25 4117:15	<b>briefly</b> 4012:25	<b>called</b> 3960:1	4097:11 4098:11	<b>certify</b> 4247:6
4118:3 4125:24	4086:10 4094:15	3978:12 3986:7,8	4098:14 4105:12	<b>cetera</b> 3960:18,25
4126:12 4129:24	4094:17 4137:10	3995:3 4018:23	4106:1,2,13	3964:7 3983:9
4131:25 4153:7	<b>bring</b> 3979:16	4027:7 4039:10	4107:21 4108:20	4012:10 4025:3
4153:17 4163:2	3990:11 3991:8	4050:17 4090:1	<b>cases</b> 4067:6	4089:25
4165:9,13	4004:19 4097:15	4097:14 4110:5	4105:19 4106:8	<b>chains</b> 4045:15
4185:20 4206:15	4097:19 4211:13	4128:19 4133:3	<b>cash</b> 3962:2 3965:9	<b>chair</b> 4110:7 4173:1
4209:10 4216:15	<b>bringing</b> 4206:5	<b>calling</b> 3999:4,5	3965:11,12	4195:7
4222:24	4244:15	<b>calls</b> 4029:2,10,14	3967:16,17,23,24	<b>chairs</b> 4136:1
<b>bought</b> 4002:6	<b>broke</b> 3960:24	<b>came</b> 3965:25	4184:7,12	4139:14 4143:1
4188:22	<b>broker</b> 4125:8	3972:12 3980:22	<b>cashed</b> 3985:8,11	4213:4
<b>bowl</b> 4184:8,8	4190:18,20	3997:24,25	<b>cash-out</b> 4015:12	<b>chance</b> 4048:23
4205:25 4206:3	<b>brought</b> 3986:21,22	4002:14,17	4015:20	4185:5 4186:15
<b>Bowley</b> 3956:13	3990:18 3991:14	4012:16 4036:7	<b>cash-outs</b> 4019:19	<b>change</b> 3959:8
<b>box</b> 4023:4	4205:25 4206:17	4039:11 4042:14	<b>catch</b> 4214:3	4099:3 4147:9
<b>Boyd</b> 3956:18	4206:19	4045:25 4046:11	<b>categories</b> 3960:24	4234:1
<b>bragged</b> 4169:23	<b>brown</b> 4199:18	4065:19 4070:16	3961:3,9	<b>changed</b> 4114:14
<b>brand</b> 4112:20	<b>Building</b> 4039:13	4070:22 4081:8	<b>category</b> 4013:12	<b>changes</b> 4061:7
4192:21	<b>built</b> 4202:19	4125:3 4126:7	4014:25	<b>changing</b> 3998:22
<b>Braun</b> 3956:5	<b>bumped</b> 4022:10	4133:16 4134:18	<b>caught</b> 4234:6	<b>character</b> 4093:24
4142:17 4158:2	<b>Burrin</b> 4035:16	4138:20 4140:10	<b>cause</b> 4056:17	4094:5
<b>Bravo</b> 3957:4	<b>business</b> 3961:5,20	4140:13 4154:13	4061:18 4086:2	<b>characterization</b>
3959:12,16,18	3962:14 3963:11	4155:20 4157:1	<b>causing</b> 4034:11	4113:21
3965:3,23	3965:3 3979:11	4161:1 4183:2	4228:17	<b>charge</b> 4066:24

<p>4098:9 4198:13  <b>charged</b> 3988:21  4018:14,18  4029:10 4034:10  4052:24 4053:6  4054:8 4055:21  4067:4,7 4101:19  4101:20 4102:14  4108:21 4228:16  4240:12,13  4241:25 4242:1,6  4243:2  <b>charges</b> 4052:18  4120:1 4242:4  <b>check</b> 3992:5,14  4040:2  <b>checked</b> 4031:11,13  4031:15 4091:18  4218:2  <b>checking</b> 4001:12  <b>Chef</b> 4002:6  4003:11  <b>Chelsea</b> 3980:5,10  3980:14,24  3981:1,5,17,19  3982:15,24  3983:5,13  3984:18 4015:13  4115:11,19  4119:19 4120:3  4122:19 4127:3  4146:12 4147:4  4176:8 4237:1  <b>cheque</b> 3964:3,6  3970:3,6,7  4025:15,17,17  <b>chest</b> 4176:10  4179:17,20  <b>chicken</b> 4002:6  4003:11 4169:12  4171:2  <b>Chief</b> 3956:4  3959:10 4027:19  4028:4,7,22  4030:4 4031:18  4031:20,21  4032:4,16,24  4034:3 4039:18  4045:5,19  4059:21 4069:15  4074:1,15  4075:24 4080:8  4080:13 4084:18  4085:6 4086:9  4087:10 4088:3  4088:14 4089:6  4090:6 4092:21</p>	<p>4102:10,23  4107:16  <b>child</b> 4072:3  <b>children</b> 4033:16  4085:20  <b>chips</b> 4197:4  4205:24  <b>choice</b> 4054:13,17  4068:18 4097:22  4172:16 4231:15  <b>chose</b> 4096:12  4138:2,24  <b>Chris</b> 4034:25  4145:24 4153:25  4157:15 4198:11  4232:17  <b>church</b> 4156:21  <b>circles</b> 4115:22  <b>circumstances</b>  4097:17  <b>citizen</b> 4095:22  4099:10  <b>city</b> 4015:16,20  4069:22 4113:9  <b>civil</b> 3984:13 3989:3  3990:2,9 4056:18  4189:21,25  4190:14 4226:11  <b>clapping</b> 4195:7  <b>clarify</b> 4012:15  4073:15 4227:1,7  4227:14,21  <b>clean</b> 4092:12,12  <b>cleaning</b> 4217:19  4219:9  <b>clear</b> 3977:4,9  4012:16 4017:2  4042:23 4058:7  4083:25 4192:24  4193:1 4209:18  <b>cleared</b> 4191:20  <b>clearer</b> 4191:16  <b>clearly</b> 3987:23  4085:16 4100:10  <b>Clearwater</b>  3956:16  <b>clerk</b> 3956:7 3959:3  3993:19,25  4027:10,12,16  4062:8,11,20  4074:21,24  4076:19,21  4080:22 4109:20  4109:24 4124:23  4129:10 4152:19  4195:17,21  4246:18</p>	<p><b>clients</b> 4084:19  <b>Clifford</b> 3956:3  3957:5,10  3959:17 3969:14  3972:7,9 3981:4  3984:3 3991:16  4020:22 4026:1  4026:20 4116:19  4116:22 4117:2  4118:11 4139:21  4160:23 4173:12  4174:12,25  4192:7,13 4193:9  4196:4 4197:15  4215:13 4217:17  4218:1,21,23  4223:10  <b>clocked</b> 4013:4,6  <b>close</b> 3961:20  3984:22 4086:1  4113:23 4136:5  4171:19  <b>closed</b> 4196:1  <b>close-knit</b> 4113:18  <b>closing</b> 4193:21  <b>Code</b> 4234:20  <b>coffee</b> 4071:20  <b>cognizant</b> 4064:23  <b>colleagues</b> 4058:20  <b>collection</b> 4134:6  <b>collision</b> 4090:10,10  4090:24 4113:5  4162:22  <b>colour</b> 4227:24  <b>combinations</b>  4123:21 4124:1  <b>come</b> 3971:25  3976:25 3987:9  3987:11 3988:23  3992:4,14  4002:24 4006:5  4007:7 4017:6  4035:9 4037:14  4038:12,21  4039:15 4049:6  4055:12 4056:23  4060:14 4061:19  4064:8 4066:14  4067:20 4079:21  4085:23 4094:3  4095:3 4096:3,17  4096:21 4098:18  4101:16 4107:24  4122:2 4123:19  4128:3 4134:4  4155:14 4156:12  4161:7 4200:8,10</p>	<p>4201:9,12  4203:15 4204:8  <b>comes</b> 3997:5  4191:5  <b>comfortable</b>  4059:19  <b>coming</b> 3976:24  3980:7,15 4038:6  4039:21 4043:12  4044:17 4059:19  4060:22 4103:6  4122:15 4140:22  4141:13 4155:10  <b>command</b> 4045:16  4049:5 4096:16  <b>commanded</b>  4103:15  <b>commander</b> 4029:3  4047:6 4063:8  4092:23 4093:5  <b>COMMENCING</b>  3959:2  <b>commend</b> 4069:15  <b>comment</b> 4031:8  4032:1 4037:19  4041:16 4042:1  4043:10 4080:18  4085:21 4096:13  4099:5 4154:5  4202:23 4206:14  4219:2 4238:8  <b>commented</b>  4094:22 4098:22  <b>comments</b> 4100:2  <b>Commission</b>  3955:13 3956:1,2  3956:3,7 3959:3  3972:13,19  3973:6,17 3975:9  3990:7 3992:3  4004:24 4005:9  4006:4,18,25  4007:9 4027:12  4027:16,19  4028:3,13  4032:23 4069:15  4077:24 4100:5  4100:20 4109:20  4109:24 4113:19  4117:4 4122:20  4166:18 4191:16  4195:17,21  4238:2 4246:18  <b>Commissioner's</b>  4213:17 4220:23  <b>commitment</b>  4068:20</p>	<p><b>commitments</b>  4069:13  <b>common</b> 4100:23  4115:22  <b>communicate</b>  4225:24  <b>communicating</b>  4211:23  <b>community</b> 4066:3  4068:15  <b>company</b> 4125:14  4189:17,19  4190:18  <b>comparable</b>  4148:11  <b>compare</b> 3967:17  3967:24  <b>comparison</b>  4108:17 4147:21  <b>compelled</b> 4096:4  4099:11  <b>competition</b>  4169:17 4205:16  <b>complaints</b> 4099:17  4103:20,21  4109:8  <b>complete</b> 3968:6  <b>completed</b> 4053:7  4054:16  <b>completely</b> 4219:8  <b>complimentary</b>  4194:1,5  <b>comprise</b> 4084:10  <b>compute</b> 3961:8  <b>computed</b> 3961:13  <b>computer</b> 3959:21  3960:21 3970:7  4025:16 4077:13  <b>concede</b> 4085:3  <b>concentrate</b>  4071:23 4072:6  <b>concern</b> 3973:25  3990:2,9 4057:1  4065:10 4068:10  4094:8 4162:21  4172:1,3 4234:25  4235:18,23  <b>concerned</b> 3989:6  4034:13 4043:15  4055:7,11 4065:5  4065:18 4066:3,4  4066:8,12  <b>concerning</b> 4051:15  4056:10  <b>concerns</b> 3981:13  3990:22 4054:1  4063:8,13</p>
---	--	--	--	---

4065:22 4099:19 <b>conclude</b> 3966:20 <b>concluded</b> 4094:19 <b>concluding</b> 4206:24 <b>conclusion</b> 4022:24 4095:3 4106:7 <b>condition</b> 3988:18 <b>conduct</b> 4051:7 4053:14,22 4059:24 4086:19 4098:20 <b>conducted</b> 3972:14 4042:3 4045:21 4063:20 4087:5 4099:7 <b>conducting</b> 4048:10 4059:22 4066:16 4067:12 4087:24 4099:23 <b>confess</b> 4166:15 <b>confidence</b> 4004:7 4067:15,16 4086:12 4088:18 4088:24 4089:1 4099:15 <b>confident</b> 3967:3 4138:19 4208:23 <b>confidential</b> 4035:21 <b>confidentially</b> 4035:12 4036:14 <b>configuration</b> 4136:23 4138:7 <b>confine</b> 4022:14 4024:9 <b>confined</b> 4203:20 <b>confirm</b> 4012:20 4017:6 4082:17 4084:13 4106:2 4106:19 4108:7 <b>confirmed</b> 4012:11 <b>congregated</b> 4203:17,19 <b>congregating</b> 4212:11 <b>connect</b> 4029:12 <b>connecting</b> 4211:5 <b>connection</b> 3967:11 3990:17 4028:11 4029:1 4039:3 4042:25 4045:21 4050:12 4164:13 <b>consider</b> 4113:22 4188:18 4189:3 4205:11 4218:15 4223:2 <b>considered</b> 4011:10	4112:16 4222:20 <b>consists</b> 4204:5 <b>constable</b> 3984:23 3989:5,18 3990:1 3991:3,9 4038:9 4055:20 4070:24 4070:25 4071:14 4103:10,12 4110:24 4124:18 4130:4 4216:19 4217:5,8 4238:1 <b>constraint</b> 4096:8 <b>consult</b> 4051:23 <b>consumed</b> 4000:17 4000:21 4001:6 4020:14 4024:17 4170:1 4188:20 4217:9 4219:4,8 4220:16 4222:1 4224:3,12 4225:9 4227:24 4228:24 4229:1,5,10 4230:6,8 <b>consuming</b> 3989:7 4149:20,23 4215:3,8 4216:6 4216:18 4224:21 4224:25 4230:3 4231:6 4243:8,16 4244:1,5,16 4245:4 4246:2,5 <b>consumption</b> 4043:4 4170:6,7,9 4220:10 4221:10 4221:24 4223:16 4225:15 <b>contact</b> 4012:21 4029:22 4031:9,9 4032:14 4042:5 4125:14 4161:13 4162:9,13 4163:10,16 4165:21 4166:20 4168:21 4169:3,9 4185:16 4187:6 4187:10,14 <b>contacted</b> 4006:17 4030:4 4031:18 4033:22,24 4049:3 4080:11 4125:7 4189:17 <b>contacting</b> 4032:12 <b>contacts</b> 4160:12,14 <b>contain</b> 4012:19 <b>contained</b> 4012:9 4015:4 <b>content</b> 4015:1	4196:15,18 <b>context</b> 4037:21 4041:9 4050:13 4099:6 4168:8 <b>continue</b> 4002:19 4036:21 4207:5 <b>continued</b> 4001:25 4087:14 4201:21 4201:21 4209:7 4243:25 <b>continues</b> 4204:6,22 <b>continuing</b> 4061:18 <b>contradiction</b> 4166:22,25 <b>Convention</b> 3955:13 <b>conversations</b> 4022:2 4048:24 4089:10 <b>converse</b> 4203:16 <b>convert</b> 4133:11 <b>convicted</b> 4056:1 <b>conviction</b> 4054:11 <b>convoy</b> 4167:14 4196:5 <b>cook</b> 4205:20 <b>cooking</b> 4205:22 <b>cop</b> 4101:7,8 <b>copy</b> 4076:14 4116:19 <b>core</b> 4123:18 <b>corner</b> 3996:21 3999:7 4007:21 4117:14,16 4118:4 4137:23 4142:6 4158:6 4201:1 <b>corralled</b> 4173:3 <b>corrected</b> 4191:19 <b>correctly</b> 3963:15 4075:10 4132:21 <b>correspond</b> 4117:10 <b>Corrine</b> 4031:19,20 4032:8,12,15 4033:25 4034:9 4075:20 4080:10 4081:4,9 <b>cost</b> 4008:3 4191:6 <b>costs</b> 3993:16,17 3994:24 <b>couch</b> 4070:23 4139:12 4143:7 4146:8 4239:2 <b>couches</b> 4146:12 <b>counsel</b> 3956:2,3 3972:13 3991:18 3992:3 4007:9	4008:15 4012:8 4024:20 4028:3 4028:13 4073:18 4077:25 4081:9 4083:6 4097:14 4097:15,19,22 4100:5,20 4166:18 <b>count</b> 4115:3 <b>counted</b> 4193:18 <b>counter</b> 4204:4,5,24 4208:2 4210:5 4212:8,9,10,20 <b>countertop</b> 4204:22 4205:4 4207:13 4209:3,4,7,12 4213:3,23 <b>couple</b> 4010:21 4065:22 4079:14 4085:23 4118:15 4123:8 4130:10 4154:3 4189:7 4205:17 <b>coupled</b> 4058:13 <b>course</b> 3961:19 3977:11 4011:9 4013:14 4025:22 4033:9 4043:25 4046:25 4048:10 4057:6 4061:2,8 4063:8 4064:7,19 4066:1 4069:24 4087:11 4089:20 4100:14 4140:15 4237:15 <b>courses</b> 3977:22 <b>court</b> 3956:19 4080:1 4247:1,5 <b>cover</b> 4012:24 <b>covered</b> 3972:10 <b>covering</b> 4063:7 <b>creates</b> 4181:5 <b>credible</b> 4067:1,8 4181:5 <b>credit</b> 3965:10 <b>crime</b> 4060:1 4108:8 <b>criminal</b> 4011:11 4045:10 4047:4 4048:10 4051:7 4052:17,18,22 4053:1,6,20 4054:8,15 4056:19 4060:12 4061:4,15 4073:8 4087:13,22 4088:6 4089:12	4089:25 4100:8 4101:7,8 4105:22 4106:5 4108:6,17 4234:20 <b>criminally</b> 4067:5 4101:20 4108:22 <b>criteria</b> 4235:1 <b>critical</b> 4060:8,24 <b>cross</b> 4009:21 <b>crossed</b> 4089:19 <b>cross-examination</b> 4021:1 4024:20 4026:4 <b>Crown</b> 4090:2 4214:10,24 4219:1,7 4220:25 <b>crying</b> 4104:7 <b>Crystal</b> 3974:5 3988:21 4110:22 <b>curious</b> 4008:23 4010:5 4014:18 4160:2 4231:3 <b>current</b> 4048:6 4069:20 <b>currently</b> 4069:9 4135:3 <b>custody</b> 4242:4,5,6 4242:25 <b>customer</b> 3964:3 <b>cut-off</b> 4235:24
<b>D</b>				
<b>daily</b> 3960:23 3985:24,24 4113:24 <b>dangerous</b> 4057:20 <b>Daniel</b> 4157:9 <b>Darcey</b> 3962:25 3964:23 3974:1,9 3974:15 3975:22 3976:10,22,25 3977:4 3978:1,17 3978:25 3979:25 3980:8,11,25 3981:17,19 3982:11,16,22,23 3983:6 3990:22 3991:7 4235:11 4235:17 <b>Darren</b> 4132:7 <b>data</b> 3961:18 4012:10,19 4015:10 4017:12 <b>database</b> 3962:23 3964:5,17 <b>date</b> 3994:11 3996:22 4013:4				

4013:18 4014:22 4015:7 4016:13 4017:18 4117:2 4163:22 4194:2 <b>dated</b> 3958:5,8,10 3958:17 3995:22 4062:1,22 4063:1 4076:23 4077:7 4080:24 4116:25 4126:1 4152:21 <b>daughter</b> 4033:15 4085:19 <b>Dave</b> 4233:10,19 4234:6,9 4235:9 4236:6 4237:17 4238:3,8 4243:10 <b>David</b> 3956:2 4028:2 4116:5 4122:25 4198:1 <b>days</b> 3992:13,13 4035:2 4164:20 <b>deal</b> 3968:3 3979:18 3997:14 4023:15 4023:16 4053:25 4054:10 4060:16 4061:24 4064:7 4066:4 4083:4 4181:23 4222:12 4223:15 <b>dealing</b> 3971:11 3973:21 4053:1 4060:4 4064:1 4066:6 <b>deals</b> 3962:2 3995:23 4077:15 4109:5 <b>dealt</b> 4053:6 4080:5 <b>death</b> 3974:6 3977:14 3988:21 4034:11 4078:10 4110:22 4228:17 <b>debit</b> 3965:10 <b>Debra</b> 3956:20 4247:5,18 <b>debrief</b> 4048:25 <b>deceitful</b> 4097:3,9 4102:12 <b>December</b> 4002:1,3 4002:7 4028:9 4111:20,20 4112:19 4121:9 4121:18 <b>decided</b> 4107:13 4135:21 4221:18 <b>decision</b> 4061:11 4073:10 4083:10 4083:12,13,15,18	4086:24,25 4087:1 4213:17 4231:21 <b>declaration</b> 4164:13 4186:14 <b>decline</b> 4087:9 4096:12,18 4098:12 <b>declined</b> 4087:12 4107:13 <b>Declining</b> 4087:22 <b>deemed</b> 4087:25 <b>deep</b> 4057:19 4218:13 <b>definite</b> 4126:19,25 4149:17 <b>definitely</b> 4149:19 4149:20 4155:18 4155:20 4174:2 4174:16 4197:3 <b>definitive</b> 4192:2,24 4193:1 <b>DeGroot</b> 4132:7 <b>demanded</b> 4050:9 <b>demonstrate</b> 4019:12 <b>demoralizes</b> 4063:20 <b>deny</b> 3984:17 <b>departments</b> 4015:17 <b>depend</b> 4066:15 4068:1 4145:15 <b>depending</b> 4051:5 4060:12 4108:11 4180:9 4189:6 4212:6 <b>depends</b> 4064:3 4069:12 4097:21 <b>depicts</b> 4148:15 <b>Deputy</b> 4031:18,20 4031:21 4032:4 4034:3 4039:18 4075:24 4080:8 4080:13 4085:5 <b>Derek</b> 3955:1 3956:12 3969:17 3970:3 4030:7 4032:17 4034:10 4034:14 4070:6 4070:19 4082:7 4091:13 4120:2 4140:15 4158:3 4161:13 4162:22 4163:7 4165:14 4167:19,23 4168:11 4172:23	4185:1,17 4186:15 4199:3 4228:10 4239:14 <b>Derek's</b> 4185:22 4186:9 4187:2 <b>describe</b> 4040:10 4135:23 4140:18 4141:2 4155:2 4173:13 4195:6 4200:1,2 4203:22 4203:25 <b>described</b> 4036:15 4056:20 4057:24 4075:10 4094:15 4113:18 4142:23 4143:11 4163:4 4194:4 4196:3 <b>describing</b> 4121:2 4167:14 4213:1 <b>description</b> 3957:2 4064:14 4114:25 4147:2,3 4158:16 4218:19 <b>designated</b> 4045:13 <b>designed</b> 3962:18 <b>desire</b> 4037:10 <b>desk</b> 4089:16 <b>despondent</b> 4070:25 <b>detail</b> 3988:10 3995:3 4162:20 4163:1 <b>detailed</b> 3963:25 <b>details</b> 3962:20 <b>Detective</b> 4049:2 4053:16 <b>determination</b> 4071:13 <b>determine</b> 3974:10 4173:23 <b>determined</b> 4054:6 <b>determining</b> 4020:8 <b>develop</b> 4057:13 <b>developed</b> 4215:19 <b>diagram</b> 4137:5 4138:16 4143:24 4203:23 4209:5 4212:22 4213:23 4246:12 <b>Diamond</b> 4143:8 <b>dictated</b> 4077:11 <b>dictates</b> 4069:24 <b>died</b> 4055:17,18 4056:4 4065:8 4090:24 4210:20 4210:25 <b>difference</b> 4099:9	4176:14,18,23 4179:16,19 4181:18,20 4187:17 <b>different</b> 4010:3 4049:14 4050:4 4060:17 4061:3,8 4064:6,7 4095:20 4114:19 4123:19 4123:21 4124:1 4161:23 4162:5,8 4162:12 4163:15 4165:10,20 4217:17 4220:8 4220:11 4230:22 4230:25 <b>differently</b> 4052:3 4099:6 <b>difficult</b> 4056:15 4133:20 4134:1 4145:9 4154:23 4156:13 4178:22 4187:19 4190:13 4227:25 <b>difficulties</b> 4044:12 <b>dimensions</b> 4136:16 <b>dining</b> 4200:13,14 <b>dinner</b> 4002:24 4003:1 <b>direct</b> 3957:5,13,22 4039:19 4050:1,7 4083:5 4103:13 4243:11 <b>directed</b> 4034:15 4049:24 4069:23 4189:18 4190:18 <b>direction</b> 4003:22 4071:7 4099:1 4138:10 <b>directions</b> 4159:25 <b>directly</b> 3984:17 4045:5,18 4079:14 <b>disagree</b> 4057:11 4089:22 4114:5 4114:16 4123:15 4237:4,6 <b>disagreeing</b> 4108:23 <b>disciplinary</b> 4096:24 4101:20 <b>discipline</b> 4096:18 4097:19 4108:4 <b>disclose</b> 4012:12,17 <b>disclosed</b> 4083:9,9 <b>disclosure</b> 4039:14 4073:6,18 4081:7	4082:12 <b>disclosures</b> 4050:13 <b>discount</b> 4172:10 <b>discuss</b> 3990:11 4027:5 4035:24 4035:24 4037:10 4073:17 <b>discussed</b> 3972:18 <b>discussion</b> 3965:16 4038:20 4042:19 4128:9,11,13 4159:3 4216:25 4240:2,22,24 <b>discussions</b> 3967:12 3978:1 3984:20 4019:2,7 4027:3 4053:18 <b>dishwashers</b> 3979:18 <b>disincentive</b> 4108:16,17 <b>disk</b> 3968:22 3969:1 3969:3,9 3970:12 3970:24 3971:12 3971:15,23 4011:20 4012:13 <b>disks</b> 3963:4,6,7,11 3963:12,14 3968:23 3971:13 4012:9,18,22 4025:4,5,9 <b>displeased</b> 4109:4 <b>dispute</b> 4116:8 4120:4,16 4124:3 <b>disputing</b> 4091:1 <b>disrespect</b> 3978:14 <b>distance</b> 4114:12 4134:23,25 4150:23 4176:11 4178:6 <b>distraught</b> 4104:12 4104:14 <b>district</b> 4028:18 4030:6 4039:9,12 4092:23 4103:10 4111:10 4122:11 4171:19 <b>districts</b> 4122:7 <b>divide</b> 4204:16 <b>divided</b> 4066:6 4117:8 <b>division</b> 4028:19,21 4029:3,3 4063:16 4082:2 4092:24 4103:12,15 4111:11,16 4116:12 4120:10
---	--	---	--	--

4129:17 <b>divisional</b> 4047:6 4092:23 4093:5 <b>divorced</b> 4070:14 4070:19 <b>Dixon</b> 3956:11 <b>document</b> 3993:22 3994:13 3995:2 3995:18,18 3996:9 3997:21 3998:15 4015:12 4015:16 4047:6 4047:12 4061:25 4062:9 4072:23 4073:6,15 4077:4 4077:7 4081:2,8 4082:19 4117:18 4127:21 4129:7 4153:5 4164:11 4165:2 4206:16 4208:17 4223:25 4225:4 <b>documentation</b> 4085:4,7 4086:2 4089:21 <b>documented</b> 4037:25 4069:22 <b>documents</b> 4015:2,9 4015:25 4016:8,9 4062:5 4116:20 4124:20 <b>doing</b> 3998:4 4008:24 4058:12 4102:1 4145:4 4156:1 4170:20 4202:10 4203:11 4211:6 4214:3 <b>done</b> 3995:23 4003:6,8 4035:12 4049:10,20 4064:22 4089:15 4104:2 4164:19 4203:8 <b>door</b> 4200:11 4204:8 <b>doorway</b> 4183:25 4184:1 <b>Double</b> 4143:8 <b>doubt</b> 4064:17 4075:14 4081:18 4160:21 <b>doughnut</b> 4035:6 4035:13 4079:11 4079:18 <b>downing</b> 4245:12 <b>downplay</b> 3983:14 <b>downstairs</b> 4200:7	4238:24 <b>downtown</b> 4122:7 <b>dozen</b> 4008:19 <b>draft</b> 4191:11,18,22 4192:3,14,17 <b>drank</b> 4019:15 4223:2,20 4230:25 4245:22 <b>draw</b> 4117:6 4126:10 4171:17 <b>drawing</b> 4136:14 4157:23 <b>draws</b> 4171:16 <b>drink</b> 3970:8 4019:13 4020:8 4149:9,21 4150:6 4156:5 4172:15 4177:22 4180:25 4188:22,23 4194:5 4219:14 4219:25 4221:18 4231:24 4232:9 4232:14,15,18 4233:6,8,10,14 4237:17,19,22,24 4238:3,9,20,23 4239:9,15,17 4240:9 4241:17 4245:4,12,16,22 <b>drinking</b> 4017:1 4041:10,15 4149:14 4150:2,4 4150:15 4151:7 4151:10,12,13 4170:16,18,24 4171:10 4172:15 4172:20,24 4174:14 4183:5,9 4188:11,18 4223:4 4230:9,14 4230:15 4231:6 4232:1,3,23,25 4238:15 4239:4 4239:12 4244:21 4245:7,8 <b>drinks</b> 3974:17,20 3975:3,5 3976:3 3976:17,21 3987:19 4000:1,6 4000:8,16 4001:2 4001:5,12,16,20 4006:23 4023:11 4115:25 4116:6 4172:2 4175:2 4177:19 4178:2 4187:25 4188:1,4 4188:6,22 4191:4	4192:22 4194:1 4197:9,15 4210:16 4211:16 4213:21,22 4245:12,18 <b>drive</b> 3962:23 3974:1 4030:14 4034:10 4041:7 4236:2 <b>driving</b> 3974:17,20 3975:6 3976:2,17 3976:21 4018:14 4055:25 4056:1 4228:16 4234:9 4234:25 4235:7 <b>drop</b> 3997:25 <b>dropped</b> 4206:2 <b>drove</b> 4042:7 4128:5 4166:8 4237:15 <b>drum</b> 3998:5 4023:25 <b>drunk</b> 4234:14 4237:1,7 <b>Dube</b> 4124:12 <b>duly</b> 4027:23 4110:9 <b>dumb</b> 3984:6 <b>during</b> 4011:9 4012:11 4017:8 4042:2,18 4054:5 4108:5 4128:17 4169:17 4185:2 4186:17 4222:4 <b>duties</b> 4011:6 <b>duty</b> 3978:4 3979:23 4049:25 4098:11 4103:9 4132:17 4133:10 <b>dying</b> 4073:22	<b>early</b> 4095:1 4116:11 <b>easier</b> 4153:8 <b>east</b> 3956:13 4028:23 4033:19 4053:12 4079:15 4088:7 4137:14 4138:13 4143:24 <b>easy</b> 4144:20 4145:6 4205:6 <b>eat</b> 3970:8 4169:20 4169:24 4170:3 4171:8 <b>eater</b> 4169:12,13 <b>eating</b> 4149:14 4170:17,19,24 4171:2,6 4172:23 4174:14 4200:12 <b>ECC</b> 4131:21 <b>economical</b> 4117:11 <b>economy</b> 4174:21 <b>EDL</b> 4133:7,9 <b>Edmonton</b> 4003:11 4005:1,3,14,16,18 4005:24 4006:8,9 4006:11,12 <b>effect</b> 4009:11 4153:11,21 4169:15 <b>effective</b> 4098:21,24 <b>effectively</b> 4042:23 4053:13 4065:21 4068:1 <b>efficiently</b> 4129:6 <b>effort</b> 4019:18 4056:14 <b>eight</b> 3960:10 4015:3 4071:17 4071:18 4072:9 4072:13,14,15 4213:12 <b>either</b> 3981:25 4033:22 4076:7 4077:11 4101:19 4122:6 4176:9 4195:9 4209:9 4221:20 4232:16 <b>either/or</b> 4191:23 4192:10,18 <b>elaborate</b> 4040:21 4043:11 4146:21 <b>elbow</b> 4177:25 4178:7 <b>elbows</b> 4178:14 <b>elongated</b> 4180:16 <b>else's</b> 4161:3 <b>emotionally</b>	4064:18 <b>emphasized</b> 4207:8 <b>employed</b> 4119:22 4119:22 <b>employer</b> 4095:18 4098:8 <b>employment</b> 4108:16 <b>empty</b> 4215:5,11 4217:16 4218:2 4232:25 <b>en</b> 4171:25 <b>encouraged</b> 4065:23 <b>encouraged</b> 4056:5 <b>end</b> 3961:3,17 3963:5 3965:4 4003:10 4092:12 4092:12 4122:6 4132:21 4135:17 4135:19 4136:21 4136:24 4143:13 4168:9,15 4181:3 4183:21,23 4184:3 4194:14 4194:16 4204:21 4215:4 4220:24 4221:17 4228:3 4239:19 <b>ended</b> 4116:7,12 4184:17 4197:16 4206:5 4209:6 4231:16 <b>endorsed</b> 4109:2 <b>ends</b> 4006:13 4204:21 <b>energy</b> 4056:14 <b>engage</b> 4057:20,21 <b>engaged</b> 4046:17 <b>English</b> 4006:5 <b>enhanced</b> 4086:19 4087:4 <b>enjoy</b> 4169:20 <b>enlighten</b> 4025:24 <b>enough</b> 4103:23 4173:24 4184:3 4235:18,23 4236:13 <b>ensure</b> 4043:3 4054:3 4067:25 4068:5,22 4098:17 4235:25 <b>ensuring</b> 4044:11 <b>enter</b> 4054:13 <b>entered</b> 4074:11 4076:19 4124:21 <b>entertained</b> 4200:9 <b>entire</b> 4118:7
--	--	--	---	---

4119:1 4144:20 4156:22 <b>entirely</b> 4124:10 4127:11 4183:8 4192:10,12 4218:17 <b>entitled</b> 4015:16 <b>entrance</b> 4200:11 <b>entry</b> 3999:17 4081:11,12 4082:24 <b>envelope</b> 4047:9 <b>erratic</b> 4233:24 <b>especially</b> 4048:11 4128:2 4182:4 <b>essence</b> 4213:5 <b>essentially</b> 4052:2 4054:14 4066:15 4133:11 4135:13 4136:23 4175:13 <b>established</b> 4045:14 <b>establishment</b> 3973:9 3978:13 3981:13 3991:22 4007:2 4144:13 <b>establishments</b> 3971:11 <b>estimate</b> 4120:23 4196:16,17 4225:10,15 <b>estimated</b> 4225:21 <b>et</b> 3960:18,25 3964:7 3983:9 4012:10 4025:2 4089:25 <b>even</b> 3991:8 4014:17 4033:13 4038:2 4052:25 4059:13 4060:4 4060:12 4089:8 4100:1 4113:25 4114:24 4135:12 4150:21 4154:15 4157:7 4158:15 4172:19 4177:15 4181:25 4197:14 4205:15 4210:21 4232:2,2,22 4238:22 4245:8 4246:14 <b>evenings</b> 4122:15 <b>event</b> 3964:14 4035:3 4042:25 4065:7,12 4085:17 4107:15 4111:16 4118:12 4120:2 4128:10	4128:24 4142:4 4228:24 <b>events</b> 4111:24 4112:10 4169:18 <b>eventually</b> 4067:7 <b>ever</b> 3973:12,12,15 3988:23 3990:1 4012:21 4078:24 4081:3 4092:11 4122:16,16 4156:22 4232:5,6 <b>every</b> 3961:22 3964:18 3973:14 3974:3 3990:13 4114:5,8,17,18 4121:17 <b>everybody</b> 4037:1,2 4129:22 4130:3 4134:13 4154:22 4193:18 4205:5 4212:3 4231:5 4241:2 4244:20 <b>everyday</b> 4009:20 4030:15 <b>everyone</b> 4044:11 4044:24 4048:23 4141:9 4142:22 4149:13 4152:12 4203:17 4208:1 4209:14 4232:24 <b>everything</b> 3962:5,8 4204:11 4217:22 4238:17 <b>evidence</b> 3959:25 3967:2 3980:13 3982:14 3987:25 4006:10 4008:18 4019:12 4027:6 4051:18 4058:2 4083:6 4094:13 4113:20 4114:16 4122:14 4129:21 4135:16 4161:16 4172:18 4173:6 4175:11 4176:19 4177:2 4178:24 4182:13,16 4191:15 4192:2 4192:11 4207:20 4211:17 4220:3 4221:16 4223:17 4225:19 4231:5 4234:24 4236:5 4242:8 <b>evidencing</b> 4109:3 <b>evident</b> 4195:24 4210:11	<b>exact</b> 4020:3 <b>exactly</b> 3977:1 3992:21 3993:23 4026:10 4038:13 4065:20 4084:4 4115:1 4118:16 4123:8 4127:15 4133:20 4151:19 4152:12 4154:1 4155:23 4179:18 4202:21 4213:8 4213:14 4227:15 4240:1 4245:5,22 <b>Examination</b> 3957:5,6,7,8,9,13 3957:14,15,16,17 3957:18,22 <b>examination-in-c...</b> 4025:7 <b>example</b> 3968:18 4068:9 4096:7 4098:6 4106:10 4131:11 4203:1 <b>examples</b> 4101:16 <b>exception</b> 4129:22 4130:4 <b>exceptions</b> 4102:11 <b>exchange</b> 4215:11 <b>excluding</b> 4162:1 <b>exclusion</b> 4027:1 <b>excuse</b> 4109:13 4181:7 <b>excused</b> 4004:1,3 <b>executive</b> 4037:24 4041:19 4042:14 4046:3,10 4071:8 4071:12 <b>exhibit</b> 3958:2 3993:20 4007:20 4013:9 4062:6,10 4062:12,17,19,21 4063:1 4074:11 4076:21,22 4080:1,2,3 4124:22,24 4129:9,12 4142:15 4148:12 4152:18,20 <b>exhibits</b> 3958:1 4062:4 4084:10 <b>existence</b> 4012:18 4012:18,22 <b>exists</b> 4067:16 4069:9 <b>expand</b> 4034:5 4041:3 <b>expect</b> 4052:12	4059:25 4068:21 4078:17 4080:18 <b>expectation</b> 4045:14 4058:14 4058:17 <b>expectations</b> 4059:12 <b>expeditious</b> 4107:10 <b>experience</b> 3989:1 3990:16 4010:12 4051:10 4072:11 4095:5 4102:9 4119:24 <b>experienced</b> 4084:18 4239:8 <b>expert</b> 4049:16 <b>expertise</b> 4088:5 <b>explain</b> 4033:2 4036:16 4049:9 4125:2 4173:25 4174:13 4175:14 <b>explained</b> 4025:6 4030:10,12,16 4055:16,19 <b>explaining</b> 4178:25 <b>explanation</b> 4000:22 4001:2 4175:20,23 4178:25 4179:3 4181:2,4 4211:14 4213:19 4218:4 4230:4,23 4231:13,17 <b>explore</b> 4053:15 4086:10 4118:24 4119:3 <b>exploring</b> 4125:5 <b>express</b> 3989:4 <b>expressed</b> 3984:11 4004:7 <b>expression</b> 4159:3 <b>external</b> 4052:22 <b>extra</b> 3974:17,20 3975:3,5 3976:3 3976:16,21 4133:10 <b>extreme</b> 4049:20 <b>eye</b> 4099:23	<b>facing</b> 4143:8 4158:19 4160:4,9 <b>fact</b> 3967:8 3968:6 3970:5 3973:18 3977:5 3987:10 3989:6 4001:14 4013:10 4015:23 4017:3,5 4024:25 4033:13 4038:5 4038:21 4043:7 4065:5,7 4069:22 4071:6,17,22 4083:24 4085:20 4089:23 4091:13 4093:23 4096:15 4097:2,7 4099:25 4101:3,23 4109:4 4136:20 4145:11 4171:5 4187:12 4191:24 4192:16 4193:6,10,10 4218:7 4221:3 <b>facts</b> 4055:12 4057:1 4058:11 4065:2 4084:21 4127:22 <b>factual</b> 4100:17 <b>fade</b> 4166:8 <b>failing</b> 4108:8 <b>failure</b> 4073:1 <b>fair</b> 4008:25 4064:1 4093:16 4096:5 4097:10 4099:8 4101:8,12,13 4103:23 4104:6,8 4114:25 4120:23 4133:13 4173:24 4184:3 4205:9 4208:23 4212:17 <b>fairly</b> 4037:25 4047:1 4067:21 <b>fairness</b> 4026:13,15 4026:18 4089:8 4090:15 4091:3 4166:15,23 <b>fall</b> 4051:9 <b>falling</b> 4234:13 <b>false</b> 4084:5 4102:5 4102:5 4108:5,14 4108:21 <b>familiar</b> 4086:14 4095:21 4148:1 <b>families</b> 4009:22 <b>family</b> 3956:10 4004:19 4071:23 4072:6 4075:6 4078:23 4112:1
---	--	--	---	--

<p>4190:4 4226:8,11 4226:13 <b>famous</b> 4169:12 <b>far</b> 3975:18 4043:14 4064:12 4069:21 4103:19 4158:8 4212:1,5 4213:9 4217:1 <b>fashion</b> 4062:7 <b>fast</b> 4205:24 <b>fatal</b> 4030:8 4242:23 <b>fatality</b> 4075:10 4090:11 4107:14 <b>father</b> 4070:13 4072:11 <b>favour</b> 4089:2 <b>featured</b> 4180:11 4180:12 <b>February</b> 3958:15 3959:22 3964:19 3974:7 3984:24 3988:1 3991:20 3994:8 3997:2 4002:20 4013:1 4016:2 4021:3 4024:10 4028:16 4035:1 4062:2,23 4070:4 4077:8 4090:6 4092:22 4103:1 4111:18 4115:15 4119:8 4119:21 4120:9 4121:9,18,23 4126:15 4128:4 4129:14 <b>Federal</b> 3961:14 <b>feed</b> 4004:19 <b>feel</b> 4056:22 4059:19 4235:6 <b>feeling</b> 4037:23 4038:1,5 4041:22 4041:25 4064:5,6 <b>feet</b> 4135:8,10,11 4136:17,18 4175:9 4176:18 4176:23 4177:4,9 4177:10 4179:8 4179:21 4181:19 4182:1 4212:6 4213:12 <b>fellow</b> 4005:1,14,24 4056:18 4060:8 4065:6 4101:18 <b>felt</b> 3962:15 4038:22 4058:10 4058:13 4078:1</p>	<p>4227:14,20 4241:19 <b>few</b> 3974:16 3976:1 3989:19 4008:16 4020:23 4035:1 4045:22 4075:6 4102:24 4111:7 4133:1 4140:12 4141:6 4164:19 4189:3,5,8 4218:6 4235:18 4246:16 <b>fiddling</b> 4211:7 <b>Fifteen</b> 4027:10,11 <b>fighters</b> 4007:18 4023:24 <b>figure</b> 4210:21 4229:5,9 <b>file</b> 3958:12 4058:19 4076:11 4076:13 4124:25 <b>fill</b> 4212:14 <b>filling</b> 4031:23 <b>financial</b> 4190:5 <b>find</b> 3980:12 4004:15 4019:14 4019:17 4025:24 4037:3 4124:19 4148:11 4222:9 4231:3 4243:12 <b>finding</b> 4019:11 4075:8 <b>fine</b> 3967:1 4157:25 4201:15 4245:18 4246:5 <b>fined</b> 4049:19 <b>finger</b> 4148:21 <b>fingers</b> 4223:1 <b>finished</b> 4027:8 4128:23 <b>finishes</b> 3983:20 <b>fire</b> 4007:18 4023:24 <b>firearm</b> 4034:15 <b>fired</b> 4000:22 <b>fireplace</b> 4136:6,8 4136:19 4137:6 4137:18 4138:8 4143:8,25 4144:1 4144:23 4146:4 <b>firm</b> 3975:2 4024:14 <b>first</b> 3968:3 4001:21 4006:7 4007:20 4020:25 4023:3 4026:5 4027:22 4029:9,21,25 4037:19 4045:25</p>	<p>4058:8 4081:10 4081:12 4083:1 4110:9 4117:7 4118:1 4133:16 4140:5 4141:17 4158:14 4159:14 4163:6 4164:5 4202:11 4204:2 4215:7 4217:14 4224:23 4231:15 4243:15,22 <b>fishing</b> 4009:23 <b>fits</b> 4081:21 <b>five</b> 4016:25 4135:8 4196:5 4236:8,14 <b>fix</b> 4227:13 <b>fixated</b> 4214:5 <b>fixing</b> 4213:18 <b>flip</b> 3999:9,12 4015:15,19 <b>floor</b> 3978:18 4201:11 <b>flows</b> 4027:2 <b>focus</b> 3987:21 4102:24 4175:19 4180:12 4211:10 4211:18 <b>focused</b> 4073:8 4155:25 4156:2 4169:10 4173:3,7 4182:5 4194:10 4210:17 4211:24 4238:16 <b>focusing</b> 4245:24 <b>fold</b> 4179:6 <b>folded</b> 4178:7 <b>follow</b> 3981:18 3993:23 4021:4 4050:15 4068:7 <b>followed</b> 4196:6 <b>follows</b> 3967:13 4027:23 4110:10 <b>food</b> 3960:25 3962:13 3976:7,7 3987:12 3992:22 3992:25 3993:2,3 3995:6,6 4149:9 4149:19 4150:12 4175:2 4180:25 4196:25 4197:11 4202:12,14 4205:19,24 4211:20 4238:16 <b>foolscap</b> 4084:7 <b>foot</b> 4176:12 <b>force</b> 4052:19 4087:5 4153:1</p>	<p>4171:24 <b>foregoing</b> 4247:7 <b>forget</b> 4089:11 <b>forgot</b> 4186:4 <b>form</b> 3994:12,14 4054:25 <b>formal</b> 4103:7 4200:12 <b>format</b> 4146:22 <b>formed</b> 4123:18 <b>former</b> 4033:12 <b>forms</b> 4048:2 <b>forth</b> 4037:14 4038:12,22 4043:12 4056:23 4059:19 4060:14 4060:22 4065:20 <b>forthcoming</b> 4096:23 <b>forthright</b> 4101:17 <b>forward</b> 4038:6 4047:13 4055:12 4072:2 4101:17 4107:24 4127:17 4208:24 <b>forwarded</b> 4125:13 <b>foster</b> 3987:11 <b>found</b> 3980:14 4031:9,15 4062:9 4066:25 4072:17 4097:3 4102:4 4105:2 4124:16 4168:19 4218:14 <b>four</b> 3960:15 3976:5 3995:7 3996:10 3998:19 3998:20 3999:17 4002:9 4029:17 4080:3 4117:8,19 4136:19 4143:24 4147:4 4187:25 4188:1,14 4189:1 4189:5,9 4191:4,7 4196:5 4224:7 4245:16,18,20 4246:4 <b>fourth</b> 3996:9 3999:16 4225:7 <b>four-page</b> 3995:2 <b>frankly</b> 4015:8 <b>free</b> 3987:12 4001:16 4006:23 4007:11,14,16,17 4007:18 4008:1,5 4023:11 <b>frequency</b> 4114:22 4114:23 4118:11</p>	<p>4118:22 4119:15 <b>frequent</b> 3973:9 4007:2 <b>frequently</b> 4051:7 4058:25 4079:24 4116:10 <b>fresh</b> 4078:25 4164:6,8 <b>Friday</b> 3973:15 4036:5 4075:8 4091:20 <b>Fridays</b> 4016:20 <b>friend</b> 3986:6,18 3989:10 3991:11 3991:13 4011:19 4108:25 4112:17 4113:22 4198:6 4231:23 4235:14 <b>friends</b> 3984:22,23 3986:15 3990:13 3991:12,15 4008:20 4009:10 4009:12,19 4010:10 4033:11 4084:16 <b>friendship</b> 3987:4 3988:24 3990:17 4009:22 4112:14 4112:19 4114:19 <b>front</b> 4013:8 4014:18 4071:24 4116:21 4117:25 4118:2 4148:12 4200:11 4241:2 <b>Fudge</b> 4132:10 4157:2 4198:16 4199:17 4232:20 <b>full</b> 3963:13,25 4088:17,23 4111:23 4133:18 4133:19 4135:21 4138:3 4139:1 4219:7 4221:7 <b>fully</b> 4082:20 4096:23 <b>function</b> 4045:8,17 <b>functions</b> 3982:3 <b>funding</b> 3971:9 <b>furnish</b> 4241:21 <b>furnished</b> 4061:25 4072:24 <b>further</b> 4017:24 4031:8 4109:11 4113:7 4216:25 <b>F-1</b> 4129:7 <b>F-1.33.b</b> 3958:14 4129:8,12</p>
---	---	--	---	--

<b>F-1.35.c</b> 3958:16 4152:16,17,20 4159:12 4165:8	<b>gentlemen</b> 4150:10 <b>Genuine</b> 4191:11 4191:18 4192:3 4192:14,17 <b>Genuines</b> 4023:11 <b>Gerardy</b> 3962:25 3964:23 3967:12 3974:1,10,15 3976:11,22 3978:2,22 3979:1 3979:25 3980:11 3982:11,22,23 3983:6 3990:22 3991:7 4019:5 4235:11,18 <b>gets</b> 4057:17 <b>getting</b> 4044:13 4066:9 4068:25 4069:5 4070:3 4071:3 4078:10 4137:10 4141:17 4178:1 4180:21 4182:24 4202:12 4202:14 4205:23 4210:18 4238:16 <b>get-together</b> 4038:10,16 4119:18 4120:1 4142:2 4222:4 <b>get-togethers</b> 4119:20 <b>Giasson</b> 3956:4 <b>Girard</b> 4019:6 4025:11 4053:16 4167:22 4216:16 4216:24 4217:7 <b>Girard's</b> 4049:3 <b>give</b> 3962:12 3970:11,17 3978:8 3985:7 3987:12 3989:11 4000:8 4001:11 4007:11,14,16,17 4007:18 4011:21 4050:19 4056:25 4067:14 4084:5 4096:22 4132:18 4134:22 4166:11 4179:1 4197:23 4202:20 4203:5 4223:12 4224:5 4246:16 <b>given</b> 4000:1,6,13 4001:8 4008:5 4022:20 4029:20 4047:9,10 4049:6 4051:14 4052:15	4054:4 4057:17 4080:20 4094:13 4095:4 4097:13 4101:17 4127:3 4184:6 4188:21 4188:23 4191:6 4194:3 4195:25 4245:21 <b>gives</b> 4181:1 <b>giving</b> 4102:5 4113:19 4117:1 4118:17 4126:17 4142:12 4162:19 4173:11 4203:24 4220:3 4225:20 <b>glance</b> 4165:4 <b>Glanced</b> 4164:23 <b>glass</b> 4180:8 4181:11 4182:2 <b>global</b> 4020:18,19 <b>goal</b> 4086:17 <b>goes</b> 3963:6 4011:13 4037:2 4212:19 <b>gone</b> 3960:14 4002:9,9 4123:20 4215:5 4218:7 <b>good</b> 3959:5,6,18,19 3971:8 3986:18 3989:10 3991:11 3991:13 4000:22 4006:6 4011:19 4027:25 4028:1 4039:21 4041:25 4046:23 4061:21 4061:22 4075:11 4097:23 4098:25 4103:19,24 4110:1,3,12,13 4112:14 4118:21 4125:7 4127:20 4195:15 4235:14 <b>Gordon</b> 4131:14 <b>gotten</b> 4024:1 <b>go-ahead</b> 3962:15 <b>grand</b> 3961:2,8 3962:19 <b>granite</b> 4209:12 <b>grant</b> 4084:25 <b>grapevine</b> 4169:20 <b>gray</b> 4131:25 <b>great</b> 4150:24 4200:15 4204:16 4204:19 <b>Green</b> 3956:11 3957:9 4018:3 4020:20 4105:6	<b>grievance</b> 4073:22 <b>gross</b> 3995:5 3997:1 3998:11 4014:21 4015:17 4016:4,5 <b>grossed</b> 3995:12 <b>group</b> 3979:6 4044:4,8 4063:21 4065:25 4119:10 4119:13 4122:1 4122:21,24 4123:3,10,18 4126:16 4127:9 4131:15 4134:12 4134:13 4151:24 4173:2 4221:11 4238:17 <b>groups</b> 4121:7,7 <b>grueling</b> 3972:1 <b>guarded</b> 4009:15 <b>guarding</b> 4021:12 <b>guess</b> 3962:23 3988:14 3992:16 3993:13 4049:15 4052:11 4067:17 4067:24 4070:15 4075:8 4079:21 4091:4 4116:20 4118:5 4125:13 4137:13 4144:7 4158:5,7 4173:2 4173:17 4197:16 4205:13 4214:17 4218:11 4230:24 <b>guests</b> 4200:9 4201:6,17 4205:20 4210:8 4211:21 4242:20 <b>guided</b> 4202:20 4213:13 <b>guilty</b> 4054:4 4108:8 <b>gun</b> 4076:2 4077:16 4082:1,7 <b>guy</b> 3968:18,20 4020:8 4198:21 4238:9 4240:3 <b>Guyot</b> 4157:15 <b>guys</b> 3974:22 3975:6 3976:1,16 3976:22 3990:10 4010:8 4142:5 4205:17 4214:3 4221:15	<b>half</b> 3985:6 4029:17 4080:3 4085:14 4245:17 <b>hall</b> 4200:25 <b>hand</b> 3996:8 4062:1 4070:5 4200:19 4200:21 4201:9 4201:14 4204:12 4204:14 4239:17 4240:9 <b>handful</b> 4121:20 <b>handle</b> 4068:14 <b>handled</b> 3974:11 <b>hands</b> 4195:8 4232:11,15 <b>handwriting</b> 4081:5 <b>Handwritten</b> 3958:3,5 4062:12 4063:1 <b>handy</b> 4240:3 <b>Hanlin</b> 3956:15 4073:5,12 4102:19 4107:5 4179:10,12,15 4180:4 <b>happen</b> 3977:18 4052:25 4067:19 4072:7 4098:10 4098:11 4100:9 4111:7 4121:19 4156:15 4190:11 4195:11 4227:18 <b>happened</b> 3973:10 3973:11 3977:13 3980:12 3981:16 3986:19,20 3988:9,15 4003:2 4010:8 4022:9 4031:2 4033:8,15 4039:6 4046:6 4047:8 4059:10 4059:11,17 4060:19 4064:18 4065:20 4076:13 4078:25 4083:24 4085:16 4106:18 4106:20 4112:1 4119:15 4121:17 4190:6 4221:12 4238:5 4241:21 <b>happening</b> 3997:6 4009:6 4205:10 4211:2 <b>happens</b> 4046:25 4047:1 4051:9 4056:12,12 4072:6 4098:7
			<hr/> <b>H</b> <hr/> <b>H</b> 3956:14 <b>hair</b> 4199:14,18	



4140:18 <b>hard</b> 3962:23 4000:20 4023:12 4067:1 4120:25 4121:3 4130:21 4173:23 4225:8 4231:19 <b>Harding</b> 4116:5 4122:25 4128:19 4198:1 4233:10 4233:19 4234:10 4235:10 4237:17 4238:3,8 4243:10 4244:5 <b>Harding's</b> 4234:7 4236:7 <b>harm</b> 4056:17 <b>Harry</b> 3956:14 4028:22 4077:18 4077:22 4079:3 4080:4 4082:12 4084:24 4085:5 4092:11 <b>Hartford</b> 4035:15 <b>Harvey</b> 3969:17 3988:18 4032:17 <b>Harvey-Zenk</b> 3955:1 3956:12 3970:3 3988:19 3988:20 3989:17 3989:23,24 4030:7 4034:10 4034:14 4045:21 4055:20 4070:7 4070:19,24 4071:14 4075:1 4091:13 4102:25 4120:2 4134:2 4157:18,19 4158:4 4160:3 4161:14 4162:23 4163:7 4166:20 4167:5 4169:11 4172:23 4174:14 4185:2,17 4199:3 4228:10 4239:14 <b>Harvey-Zenk's</b> 4076:2 4077:16 4082:7 4140:16 4170:6 4175:15 4175:24 4186:16 4198:8 <b>Harvey-Zenk/218...</b> 3958:8 4076:24 <b>hates</b> 4101:7 <b>having</b> 4048:6 4068:20 4089:23	4095:3 4110:9 4128:8 4147:10 4147:12,14 4169:9 4182:8 4184:17 4187:13 4217:15 <b>head</b> 3963:13 3968:9,15,16,19 3997:16,17 3998:6,9 4067:13 4123:13 4178:7 4178:18 4179:25 <b>heads</b> 4065:17 <b>healthy</b> 4059:3 <b>hear</b> 4004:20 4179:13,16 <b>heard</b> 3959:25 3962:24 3968:1 3987:10 4026:3,5 4099:4 4100:2 4119:14 4169:19 4169:25 <b>hearing</b> 4054:9 4071:9,10 4103:3 4105:16,20,25 4106:6,10,18,24 <b>heart</b> 4002:10 4005:17 4211:11 <b>heavier</b> 4199:23 <b>heavily</b> 4239:5,9,12 <b>heavy</b> 4188:19 4189:1,3 4199:24 4228:6 4243:8,17 4244:2,6 4245:7 4245:10,16,25 4246:3 <b>heel</b> 4219:13,22,24 4221:4 4222:13 4222:16,22 4223:3 4225:17 4225:25 <b>hefting</b> 4181:11 <b>height</b> 4173:23 4174:13 4178:6 4178:13 4179:18 <b>heights</b> 4174:8 <b>held</b> 3962:22 4038:2 4042:3 4049:17,17 4051:3 4057:7 4067:18 4075:21 4102:6 4110:24 <b>help</b> 3965:23 4001:19 4037:14 4124:19 4129:5 4144:9 4213:23 4246:14	<b>helpful</b> 4034:6 <b>helping</b> 4210:15 <b>her</b> 3980:5,6,6,8,18 3980:19,21 3981:9,10,11,14 4031:19 4071:17 4071:22 4072:3 4076:1 4081:5 4115:12,18,19,25 4116:6 4120:22 4122:20 4123:1 4176:10,11,19 4177:2 4179:17 4179:18 4195:7 <b>hereinbefore</b> 4247:9 <b>hesitant</b> 4107:24 <b>hey</b> 3982:9 <b>high</b> 4147:23 4148:16,19 4176:3,7 <b>higher</b> 4173:25 4174:2 4177:15 4178:19 4179:8 4180:1,2 <b>highway</b> 4030:11 4228:11 <b>hindsight</b> 4078:19 4089:9 <b>hinting</b> 4067:24 <b>history</b> 4069:2 <b>Hoepfner</b> 3956:16 <b>hold</b> 3987:7 <b>holding</b> 4054:15 <b>holds</b> 4095:17 <b>home</b> 4041:7 4070:6,9 4112:4 4156:22 4196:6 4202:11 4207:3 4223:3 4237:15 4246:13 <b>homework</b> 4203:24 4212:24 <b>honest</b> 3975:23 3981:14 4038:12 4052:13 4056:7 4056:11 4101:17 4101:25 <b>Honour</b> 4005:7 4006:14 4077:2 <b>Honourable</b> 3955:2 <b>hope</b> 4076:12 <b>horrendous</b> 4033:3 4075:11 <b>horrid</b> 4051:9 <b>Hortons</b> 4035:6,14 <b>host</b> 4202:13	<b>hour</b> 3985:6 <b>hours</b> 3993:15 3994:16 4128:24 4133:1 4194:20 4218:6,14,16 4245:17 <b>house</b> 3965:12 3986:20 3988:2,5 3989:7,18,20,25 4038:8 4039:25 4094:25 4104:5 4112:4 4168:4 4196:1 4200:2 4201:9,15 4202:18,23 4205:10 4206:9 4206:17 4207:11 4207:18 4211:21 4215:18 4228:12 4229:17,18 4231:7 4238:12 4238:21 4242:15 4242:20 <b>household</b> 4102:25 <b>houses</b> 4033:11 <b>hrs</b> 3958:6 4063:2 <b>huge</b> 4057:2 <b>Humniski</b> 4034:25 4039:23 4079:7 4093:7,17 4095:6 4107:23 4145:24 4149:6,7 4153:25 4197:5 4198:11 4203:1 4232:17 4240:16 4241:25 4242:14 <b>Hundred</b> 4009:14 <b>hurt</b> 4030:24	<b>identify</b> 4032:11 4214:24 <b>ignored</b> 4043:2 <b>imagine</b> 4146:23 <b>immediate</b> 4200:21 <b>immediately</b> 3959:12 4204:2 <b>impact</b> 4049:18 4050:5 4051:8,16 4064:23 4066:9 4068:13 <b>impaired</b> 4018:14 4034:11 4055:25 4056:1 4228:16 4241:22 <b>implemented</b> 3994:21 <b>implications</b> 4190:7 <b>importance</b> 4086:12 4220:19 <b>important</b> 3992:23 3993:14 3998:11 4030:2 4038:22 4041:20 4043:12 4048:12 4056:3 4056:23 4057:16 4058:16 4059:15 4059:18 4078:2 4078:18 4089:21 4208:16 4221:22 4222:8 4223:21 4226:21,23 <b>impression</b> 4084:6 4112:13 4172:11 4220:24 <b>improper</b> 4068:5 <b>inaccurate</b> 4064:10 <b>inappropriate</b> 4072:1 <b>incentive</b> 4101:24 <b>inch</b> 4223:1 <b>inches</b> 4136:17,20 4137:12 4176:12 4177:5,7,8,8 <b>incident</b> 3973:11 3988:9 4010:4 4036:5,5 4037:7 4037:10 4078:22 4078:24 4086:20 4092:22 4093:2,4 4094:3 4096:12 4104:4 4119:8 4162:24 <b>include</b> 4187:24 <b>included</b> 4164:18 4191:1 <b>including</b> 4102:10
---	--	--	---	---

4120:9 4123:11 <b>inconsistent</b> 4169:2 4169:7 <b>incorrect</b> 4180:3 <b>indeed</b> 4131:8 <b>independence</b> 4068:23 <b>independent</b> 4068:9 4087:15 <b>independently</b> 4045:15 <b>INDEX</b> 3957:1 3958:1 <b>indicate</b> 4013:10 4042:17 4137:9 4192:3 <b>indicated</b> 3970:13 3972:24 4006:21 4013:8,24 4021:7 4030:17,21,24 4034:9 4035:20 4038:7,9 4040:1,3 4040:23 4041:18 4042:14,20 4046:12 4077:24 4094:7 4122:24 4139:22 4148:25 4152:10 4156:7 4210:4 4224:4 4245:15 <b>indicates</b> 4013:20 4037:6,13 <b>indicating</b> 4013:16 4036:7 4055:9 4076:13 <b>indication</b> 4011:5 4040:15 4041:17 <b>indirectly</b> 3984:18 <b>individual</b> 3961:10 3961:12 3962:18 3962:21 4020:13 4020:17 4025:14 4025:15 4047:11 4051:2 4146:5 <b>individually</b> 4225:1 <b>individuals</b> 4066:4 4066:16 4068:2 4069:13 4098:8 4123:19 4129:21 4129:23 4131:7 4131:10 4151:18 4154:9 4156:12 4161:7 <b>industry</b> 3977:22 3989:2,14 <b>infer</b> 4230:24 <b>inform</b> 4031:19	<b>informal</b> 4047:16 4169:16 <b>informed</b> 4030:5 4031:1 4081:3 4089:17 <b>initially</b> 4006:18 4133:21 4192:18 <b>inquiry</b> 3955:1,19 3959:4 4003:23 4027:17 4028:12 4089:11 4109:25 <b>inside</b> 4045:4 4144:24 4201:12 4207:12,16 <b>insist</b> 4174:22 <b>inspector</b> 3958:3,6 4028:18,21 4062:13,22 4063:2,16 4075:22 4080:10 <b>instance</b> 3960:23 4098:25 <b>instead</b> 4193:9 <b>instincts</b> 4060:7 <b>institution</b> 4068:21 <b>institutional</b> 4068:4 4068:18 4069:14 <b>insulting</b> 4075:21 <b>insurance</b> 4056:2 4125:8 4126:13 4165:12 4173:10 4174:11 4185:12 4185:19 4186:3 4186:14 4189:12 4189:17 4190:15 4196:8,14 4206:13 4208:13 4223:24 4229:20 4230:5 4243:6,18 4244:9 <b>insuring</b> 4189:13 <b>integrity</b> 4068:2 4093:14,24 <b>intense</b> 4211:9 <b>interact</b> 4066:10 <b>interacted</b> 4160:15 4185:1 <b>interacting</b> 4156:23 <b>interaction</b> 4155:15 4155:19,24 <b>interest</b> 4044:3,7,23 4190:3 <b>interested</b> 3967:2 3992:17,20 4017:3 4019:11 4024:25 4044:10 4044:22 4202:17	4225:4 <b>interesting</b> 4009:4 4078:15 4166:5 <b>interfere</b> 4087:18 <b>internal</b> 3980:7,15 3980:22 4018:23 4047:3 4052:20 4067:5 4087:14 4087:23 4095:9 4108:4 <b>internally</b> 4087:25 4101:19 <b>Interoffice</b> 3958:7 4076:23 <b>interrupt</b> 4201:8 4224:8,16 <b>interrupted</b> 4036:20 <b>intersection</b> 4030:13 4033:7 <b>interval</b> 3994:6 <b>interview</b> 3958:16 3964:22 3965:4 3965:15,19,24 3972:13,14,18 3975:9 4004:23 4005:5 4007:5 4010:23 4011:3,7 4011:10,18 4012:6,11 4042:2 4046:22 4047:7 4048:12 4051:13 4063:22 4075:1 4096:4 4112:25 4116:21 4126:4 4152:20,25 4158:25 4159:9 4165:7 4174:24 4217:25 4221:21 <b>interviewed</b> 3992:4 4005:20 4007:9 4028:12 4042:15 4048:23 4052:10 4161:5 4173:9 4223:18 <b>interviewing</b> 4049:13 4064:4 4089:3 <b>interviews</b> 4046:24 4049:7 4050:8 4059:1 4064:12 4138:24 4169:23 <b>intoxicated</b> 3974:22 3974:25 3975:19 3978:13,20 3991:6 4237:12 4237:12 4238:11	<b>intoxication</b> 4237:11 <b>intuition</b> 3990:14 3990:15 <b>intuitive</b> 3986:22 <b>investigate</b> 4045:9 4069:3,11 4088:23 4098:3 <b>investigated</b> 4052:18 4086:21 <b>investigating</b> 4011:14 4018:21 4088:19 <b>investigation</b> 3955:1 4030:18 4030:22 4037:14 4046:16 4048:10 4052:22 4053:1,4 4053:14,20 4054:14,15,16 4060:3,13 4061:1 4061:4 4064:8,22 4066:22 4067:8 4073:9 4087:5,13 4087:14,19,23 4088:6 4089:13 4090:11 4095:21 4098:9,20 4099:20 4100:13 4108:6 4129:23 <b>investigations</b> 4052:17 4059:23 4059:25 4061:16 4061:18 4063:18 4066:16 4067:1 4067:13 4087:24 4095:9,10,11,16 4099:7,23 <b>investigator</b> 4048:7 4060:24 4064:4 4089:23,24 4108:9,10,15 <b>investigators</b> 4058:6 4064:10 4084:20 4095:17 <b>invitation</b> 4087:10 4107:13 <b>invitations</b> 4161:7 <b>involved</b> 4018:9 4029:20 4030:7 4030:19 4036:8 4047:5 4052:17 4053:9,18 4075:9 4083:17 4086:20 4087:10,13,22 4090:9 4190:12 4214:20 4226:18	4226:18 4241:14 4242:9,23 <b>involves</b> 4098:19 <b>Irish</b> 3998:21 3999:18 <b>irrelevant</b> 4083:10 <b>Isaak</b> 4033:19 4034:12 <b>issue</b> 3973:21,23 3977:4,10 3983:7 3989:3 4029:18 4047:2 4049:15 4055:19 4056:21 4056:23 4057:9 4071:24 4076:5 4080:2 4100:16 4128:25 4130:5,8 4193:4 4195:4,8 4197:6 4227:21 4235:6 4236:4 <b>issued</b> 4047:22,23 4048:1 4194:1 <b>issues</b> 3984:13 4044:17 4049:15 4052:21 4053:21 4069:17,19,21 4073:18 <b>item</b> 3996:10 4014:25 <b>items</b> 3998:20 4007:25 4016:3 4016:10 4017:8
<b>J</b>				
<b>J</b> 3956:12 <b>Jacek</b> 4157:11 <b>Jack</b> 3956:15 3957:8 4010:19 4010:20 4012:1 4017:24 4102:18 <b>jail</b> 4055:24 4056:19 <b>James</b> 4093:4 4124:11 <b>January</b> 3972:20 3973:5 4002:8 4006:19 <b>Jason</b> 4132:6 <b>Jay</b> 4140:9,15 4141:7 4149:1 4153:9,19 4154:21 4155:1,2 4198:8 4232:14 <b>jealously</b> 4009:17 4021:12 <b>Jim</b> 4034:25 4145:24 4153:24				

<b>job</b> 3978:10 4009:15,16 4049:21 4051:17 4054:2 4071:13 4088:22 4098:25 4108:5,24 4211:10 <b>jobs</b> 4049:19 4050:5 <b>John</b> 4129:25 <b>join</b> 4214:4 <b>joined</b> 4120:10 4121:9 4140:10 <b>joining</b> 4141:8 <b>joking</b> 3976:6 4205:12 <b>judgment</b> 4060:15 4068:14 <b>July</b> 3955:16 3959:1 <b>junior</b> 4093:18 <b>justice</b> 4086:13 4108:15 <b>justified</b> 4041:24 <b>juts</b> 4137:6	<b>killed</b> 4228:12 <b>kind</b> 3988:4,6 3994:18,22 3995:10 3997:4 4008:24 4041:12 4047:15 4048:11 4055:10 4059:24 4067:14 4078:12 4092:3 4119:17 4135:25 4136:12 4139:15 4169:16 4173:3,16 4179:6 4183:12 4188:6 4202:13 4205:2 4206:3 4211:1,9 4217:1 4233:23 4240:22 <b>kinds</b> 3987:10 4069:17 4118:24 <b>King</b> 3956:12 <b>kitchen</b> 4070:23 4200:19 4201:19 4203:9,13,22 4204:1,9,17,18 4205:1,3,6,18 4209:22 4210:1,3 4212:15,18 4213:19,21 4217:20 4246:13 <b>knew</b> 3970:19 3978:24,25 3980:2 3985:2 3988:20 3989:14 3989:22 4011:14 4018:17,20 4019:16 4031:2 4078:7 4085:20 4093:5,12 4103:19 4113:15 4115:18,19 4182:17,18 4223:19 4228:25 4230:6 4238:11 4241:23 <b>knock</b> 4177:9 <b>knowing</b> 4066:17 4078:19 4094:4 4227:8 4242:4 <b>knowledge</b> 3978:7 4046:15 4088:3 4095:5 <b>known</b> 4104:21 <b>knows</b> 4033:16 4037:1 4237:11 <b>Kot</b> 3956:20 4247:5 4247:18	<b>L</b>	<b>lead</b> 4120:1 <b>leader</b> 4059:6 4066:11 <b>leaning</b> 4137:25 <b>learn</b> 4009:16 <b>learned</b> 3978:2 3989:16 3992:3 4067:20 4084:16 4100:5,20 4115:22 4169:22 4240:11,14,16 4241:10,24 <b>learning</b> 4229:12 <b>least</b> 3987:24 3989:3 4012:17 4013:4 4067:22 4069:2 4091:5 4112:13 4119:20 4178:8 4181:6 <b>leave</b> 3985:7 4014:2 4014:9 4027:8 4048:2,3 4071:7 4083:3 4103:4 4105:10,10,13 4106:11 4132:25 4133:10 4193:19 4194:20 <b>leaves</b> 4133:5 <b>leaving</b> 4088:15 4167:5 4185:17 4228:12 4236:15 <b>leeway</b> 3962:14 3985:6 <b>left</b> 3985:15 3990:19 3996:8 4013:11,25 4014:8,12 4017:19 4042:12 4042:16 4046:9 4046:14 4072:19 4083:5 4095:1 4112:12 4136:9 4136:12 4139:22 4140:1 4162:23 4165:14 4166:23 4167:24 4168:11 4184:1 4185:21 4186:8,24 4193:20 4200:11 4200:17,21 4233:12 4236:10 4236:12 <b>left-hand</b> 3996:7,9 3996:21 3998:19 3999:15 4008:1 <b>legal</b> 3961:22,25 4165:1	<b>legally</b> 4099:1 <b>Leila</b> 3991:21 4136:22,24 4138:5 4143:13 <b>length</b> 4011:3 4134:24 4135:1 <b>lengths</b> 4181:20 <b>lengthy</b> 4080:17 4105:18 4106:11 <b>less</b> 4003:2 4099:9 4177:8 <b>let</b> 3965:22 3968:3 3973:8 3983:25 3984:20 3987:20 4004:20 4040:2 4090:5 4091:9 4092:1,10 <b>letter</b> 4131:21 <b>let's</b> 3986:24 3991:1 3995:1,17 3998:14,24 3999:1,15,16 4024:9 4119:10 4120:7 4130:11 4147:19 4180:6 4180:10 4182:7 4241:6 <b>level</b> 4016:14,15 4017:17 4175:8 4176:10,11 4177:14,23,24,25 4179:17,18,20,20 <b>levels</b> 4173:13 <b>liability</b> 3984:14,21 3989:3 3990:2 4056:18,19 4162:21 4189:15 4189:21,25 4190:15 4226:11 <b>lie</b> 3984:9,9,19 4011:9 <b>life</b> 4004:18 4033:4 <b>light</b> 4030:13 <b>likelihood</b> 4206:24 <b>likely</b> 4055:22,23,23 4079:22 4089:15 4207:2 <b>limit</b> 4234:19 <b>line</b> 3975:9 3987:20 3992:17,23 3993:14 4004:24 4005:7 4006:14 4007:10 4009:20 4068:11 4081:25 4138:8 4159:13 4165:13 4170:21 4174:25 4186:7
<b>K</b>				
<b>K</b> 3956:11,16,16 3958:3,6 4062:13 4063:2 <b>Kapka</b> 4157:11 <b>keep</b> 3968:21 3998:22 4030:25 4036:3 4083:23 4213:1 <b>Keith</b> 3957:12 4008:14 4027:22 4081:12,15,15,18 4082:1 <b>Keith's</b> 4191:8,23 4192:9,17 <b>Kelly</b> 4131:17 4132:1 4157:4 4160:24 4198:18 4199:5,19,20,23 4233:6 <b>Ken</b> 4112:14 4116:5 4122:25 4128:15 4139:23 4198:3 4231:23 4236:17 <b>kept</b> 3961:9 3962:20 3963:14 3963:15 3968:23 4044:19 4078:25 4084:4 4200:25 <b>Kevin</b> 3958:12 4124:25 4163:3 <b>kicked</b> 3978:11				

4191:17 4216:1 4216:15 4219:5 4224:14 4225:7 <b>lined</b> 4146:24 4183:3,6 4184:18 4184:25 4185:2 <b>lines</b> 4224:7 <b>line-up</b> 3958:14 4129:12 4183:10 <b>liqueur</b> 4214:17 <b>liquor</b> 3960:25 3995:7 3996:3 4000:1,6,20 4003:3 4149:20 4194:1,5 4202:15 4206:6,8,10,11 4207:12,16,18,21 4209:15 4210:9 4210:16 4214:8 4220:4,16 4225:8 4229:22 4231:19 4231:21 4232:25 4238:15 4243:8 4243:16 4244:1,5 4244:17 <b>list</b> 4129:17,20,22 4152:4 4197:23 4244:19 <b>listed</b> 4080:8 4131:8 <b>listen</b> 3981:3 4019:24 4172:5 <b>listened</b> 4008:18 <b>litigation</b> 4227:17 <b>little</b> 3971:4 3982:2 4002:3 4014:3 4114:12,15 4117:19,23 4135:12 4136:12 4137:25 4143:12 4148:20 4150:9 4150:14 4177:15 4179:6 4194:22 4199:19,20,23 4218:14 <b>live</b> 4006:10,12 4033:11 <b>lived</b> 4006:8,9 <b>livelihood</b> 4004:18 <b>lives</b> 4009:22 4065:4 <b>living</b> 4114:11 <b>Lloyd</b> 4130:21 4157:15 <b>local</b> 4125:8 <b>located</b> 4035:15 <b>location</b> 4030:12,14 4090:22 4122:9	4125:11 4139:9 4171:17 4172:3 <b>locker</b> 4034:16 4076:2 <b>long</b> 3960:4,7,10 3977:22 4026:12 4028:7 4039:5 4040:17 4071:21 4084:17,24 4102:10 4105:13 4105:17 4111:15 4134:7 4135:6 4154:23 4180:17 4197:22 4198:6 4240:6 <b>longer</b> 3965:19 4148:4 4192:5 <b>looked</b> 3979:20 4001:21 4022:19 4031:14 4134:7 4134:23 4139:1 4141:8 4144:10 4174:2 4196:7 <b>looking</b> 3970:20 4015:5 4017:12 4019:24 4022:24 4049:14 4072:2 4112:11 4137:17 4158:6,8 4159:17 4159:22,24 4163:6 4167:3 4168:8 4173:22 4183:20 4204:7,9 4208:4 4216:11 4216:12 4233:3 4243:19 <b>looks</b> 4016:21 4135:7 <b>lose</b> 4049:21 4097:9 4108:24 <b>loss</b> 3998:12 4108:5 4190:6 <b>lost</b> 4011:19 4033:4 4065:4 <b>lot</b> 3987:8 4017:1,1 4037:23 4038:20 4056:8 4070:22 4101:24 4141:14 4145:7 4155:15 4170:4 4190:1 4205:12 4227:2 4240:19 <b>lots</b> 3976:6,6,7,9 4093:14 4160:18 4160:18 <b>loud</b> 4195:3,5 <b>lounge</b> 4017:18	4133:17 4140:25 4141:3,15 4144:5 4144:13 <b>lounges</b> 4141:4 <b>love</b> 4135:25 4139:15 4143:6 4146:14,14,15,16 4147:4 4177:11 4179:4,24 4180:15 4181:21 <b>low</b> 4148:15 4176:10 4180:15 <b>lower</b> 4143:7 4145:19 4147:5 4148:22,23 4173:16,16,25 4174:1 4176:4 4177:25 4179:24 4179:25 4181:12 4181:25 <b>lowers</b> 4204:6,21 <b>loyalties</b> 4066:6 4068:5 <b>loyalty</b> 4057:13 4058:8 <b>lunch</b> 4002:24,25 4109:14	4039:23 4044:16 4047:12 4055:13 4057:9 4058:6 4059:11,14 4060:3,15 4062:4 4062:6,8 4063:19 4065:19 4071:13 4076:6 4078:12 4083:7,13 4085:7 4086:24 4127:12 4135:5 4141:20 4152:17 4154:5 4193:22 4211:19 4219:2 4222:12 4223:8 4233:12 <b>maker</b> 4210:20,23 4211:16,19,25 4213:18,24 4214:6 <b>makes</b> 4050:23 4054:13 4081:21 4082:9 4084:13 4101:10 <b>making</b> 4030:1 4042:23 4053:19 4061:10 4112:11 4186:13 <b>man</b> 4243:2 <b>manager</b> 3974:1,14 3978:4,11,18 3979:13,15,19,22 3979:23 3991:4 3991:21 4000:19 4001:1 4113:16 4235:12 <b>managers</b> 3971:12 3978:9 3979:17 4013:12 <b>Manitoba</b> 3955:14 3956:18 4088:4 4234:22 4247:6 <b>Mann</b> 4132:6 <b>many</b> 3976:8 3978:11,12,14 3993:14 3994:15 3994:16 4010:1 4014:24 4021:16 4021:22 4057:25 4058:20 4067:3 4085:23,23 4087:7 4094:8 4118:14 4120:13 4120:20 4121:4 4122:13 4123:22 4123:24 4127:17 4128:2 4146:5,8 4161:20 4169:24	4233:16 4245:22 <b>March</b> 3958:17 3964:24 3965:23 3966:7,15 3969:22 3986:2 3986:11 4012:17 4012:20 4018:5 4019:8 4054:20 4077:25 4093:3 4106:25 4107:8,9 4112:25 4116:25 4126:1,4 4152:21 4152:25 4163:20 <b>margin</b> 4013:11 <b>markup</b> 3993:2,6 <b>Marques</b> 4130:1 <b>Martin</b> 4130:1 <b>Marty</b> 3956:11 <b>masse</b> 4171:25 <b>material</b> 3990:8 <b>materials</b> 4112:12 <b>mates</b> 4228:11 <b>math</b> 4191:5 <b>matter</b> 4001:14 4011:15,16 4045:22 4046:25 4081:8 4083:24 4088:19 4090:11 4181:4 4192:6,13 4192:21 <b>matters</b> 4009:25 4048:11 4073:7 4112:9 <b>may</b> 3991:24 4003:18 4019:3 4046:17 4055:11 4061:1,18 4066:18 4067:10 4072:24 4084:22 4084:22 4085:3 4091:2 4111:5 4114:2 4141:4 4147:19 4185:8 4188:21 4199:7 4210:2,4 4225:10 4245:21 <b>maybe</b> 3970:3 3992:12 4006:5 4118:15,15 4135:11 4136:12 4147:20 4176:16 4177:15 4199:20 4212:6 <b>McCaskill</b> 3957:12 3958:3,6,8 3959:10 4027:19 4027:22 4062:13
<b>M</b>				
<b>M</b> 3956:2,11,15 <b>Madam</b> 3993:19 4062:8,20 <b>made</b> 3967:8,9 3972:19 3977:3,9 4033:21 4039:14 4041:16 4042:4 4050:13 4053:11 4062:21 4068:19 4073:11,25 4074:15 4079:1,4 4083:2,2,16 4099:1 4100:8 4119:25 4129:8 4133:21,22 4189:13 4207:17 4207:23 4229:19 4231:22 4235:24 4240:25 <b>magical</b> 4211:6 <b>Main</b> 4035:16 <b>maintained</b> 3963:9 <b>major</b> 3963:17 4059:25 <b>make</b> 3973:16 3992:13 3998:3 4004:21 4012:21 4014:4 4032:25				

4062:22 4063:3 4076:24 4086:9 4092:21 <b>McDonald</b> 3956:13 3957:15 4008:9 4008:10 4086:8 4088:9 <b>McFetridge</b> 3956:17 4020:21 4107:2 <b>McLennan</b> 4130:2 <b>McLure</b> 4131:17 4157:4 4160:24 4198:18 4233:6 <b>McLure's</b> 4132:1 4199:5 <b>mean</b> 3966:21 3971:9,10 3972:1 3972:2,4 3975:17 3986:6 3987:18 3993:2 4000:5 4006:25 4007:8 4007:13 4016:15 4016:18,21,22 4020:3 4026:12 4063:23 4068:7 4072:14 4075:20 4121:12 4122:7 4142:3,5,9 4148:6 4154:7 4194:18 4222:12 4244:11 <b>means</b> 3999:25 4000:12,13 4013:14 4103:5 4131:22 4142:10 4193:18 4199:25 <b>meant</b> 4006:8 4007:1,7 4029:11 4038:11,16 4041:4 4058:5 4068:4 4118:6 4217:18,19 4218:5,17 4220:7 4244:14 <b>measure</b> 4246:13 <b>media</b> 3982:21 4040:6 4078:10 <b>meet</b> 4035:23 4064:20 4079:17 4082:1 4096:22 <b>meeting</b> 3964:25 3983:4 4034:23 4035:9,21 4036:16 4038:20 4038:25 4042:3 4042:18 4070:11 4102:25 4107:24	4192:6 <b>Melissa</b> 3956:5 <b>member</b> 4096:2 4099:10 4107:12 <b>members</b> 4039:24 4042:13 4045:11 4046:3,10 4060:8 4064:17 4069:11 4071:11,11 4086:20 4093:18 4094:8 4096:17 4119:2,5 4139:6 <b>membership</b> 4037:23 <b>Memo</b> 3958:7 4076:23 <b>memorial</b> 4033:8 <b>memory</b> 3976:14 4036:4 4048:15 4085:13 4118:21 4124:5,7 4135:13 4137:23 4159:1 4160:6 4166:8 4193:6 <b>mention</b> 4077:17,20 4082:11,18 4133:22 4149:5 4175:18 4219:22 4220:5 4222:6,7 4222:10 <b>mentioned</b> 3962:11 4093:6 4130:23 4220:5,6 4221:19 4225:1 <b>mentioning</b> 4082:22 <b>mess</b> 4217:20 <b>Messner</b> 3956:16 <b>met</b> 4005:1,14,17 4005:24 4035:5 4035:17 4039:11 4079:6,10 4125:17 <b>MGD</b> 4191:9,11,23 4192:9,17 <b>mickeys</b> 4214:19 <b>middle</b> 4138:16 4183:18 <b>midnight</b> 3995:23 <b>might</b> 3982:5 4009:3,20 4052:8 4058:3,10 4061:13 4066:18 4080:9 4084:25 4091:24 4098:1 4119:3 4120:19 4123:20 4142:11 4144:8 4153:6,8	4154:3 4161:17 4183:9 4189:15 4225:9 4226:10 4227:9 4241:20 <b>Mikawoz</b> 4130:15 4157:9 <b>Miller</b> 4023:11 4191:11 <b>mind</b> 3969:11 3977:14 4003:4,5 4031:3 4044:20 4058:2 4065:22 4065:24 4073:14 4078:25 4089:19 4134:15 4139:11 4152:14 4159:7 4164:6,8 4223:7 <b>mindings</b> 4001:17 <b>minds</b> 4087:7 <b>mine</b> 3993:22 4079:20,23 4213:18 4221:15 <b>Minuk</b> 3956:11 <b>minus</b> 4130:23 <b>minute</b> 4029:11 4080:4 4085:4 4196:9,16 <b>minutes</b> 4027:10,11 4029:17,17 4039:1 4072:21 4080:17 4085:14 4140:12 4141:7 4196:12 4240:6,7 4246:17 <b>miscommunication</b> 4118:8 <b>misconduct</b> 4045:9 <b>mislead</b> 4061:14 4118:5 4132:1 <b>misleading</b> 4227:9 <b>mispronounce</b> 3991:24 <b>miss</b> 3972:4 <b>missed</b> 4156:4 4214:14 <b>missing</b> 4086:1 4154:3 <b>mistaken</b> 4054:24 4215:21 <b>misunderstanding</b> 3976:20 <b>misunderstood</b> 4227:11 <b>mix</b> 4197:9 <b>mixing</b> 4013:9 <b>model</b> 4069:9,14 <b>moment</b> 3991:2	4011:21 4017:3 4039:15 4083:3 4088:16 4143:21 <b>Monday</b> 4016:18 4079:8 4246:17 4246:19 <b>monitoring</b> 4238:20 <b>month</b> 4003:2 4113:25 4119:16 <b>monthly</b> 4002:19 <b>months</b> 3994:21 4045:23 4072:14 4111:8,23 4116:11 4119:24 <b>morale</b> 4044:7 4063:9 4064:24 <b>more</b> 3973:9 3983:12 3986:8 4003:2 4012:3 4017:3 4031:6,10 4032:14 4053:15 4065:1 4071:16 4071:22 4072:5 4084:14 4101:7 4114:23 4115:6 4116:15 4117:11 4119:18 4129:6 4135:10,11,12 4139:13 4147:10 4150:18 4155:14 4155:15,19,24 4159:2 4177:2 4206:10 4235:3 4246:14 <b>morning</b> 3959:5,6 3959:18,19,20 3983:15 3985:3,4 4026:24 4027:25 4028:1 4075:9 4079:7 4093:7 4217:19,23 4218:2,14,17 4233:1 4246:17 <b>most</b> 3968:16 3976:4 3992:13 4008:22 4056:3 4095:21 4106:8 4170:25 4201:19 4203:8,20 4236:21 <b>mother</b> 4070:13 <b>motives</b> 4061:13 4068:5 <b>motor</b> 4018:9 4030:8 4162:22 <b>mouth</b> 4182:2 <b>move</b> 4001:23	4003:9 4012:5 4138:16 4231:18 <b>moved</b> 4093:4 4138:9 4139:8 <b>moving</b> 4141:10 4194:20 <b>mud</b> 4200:23 <b>Murphy's</b> 3998:21 3999:18 <b>must</b> 3982:22 4050:9 4241:19 4244:7,16 <b>myself</b> 3978:10 4077:14 4220:1 4221:18 <b>mystery</b> 4210:8 4241:20 <hr/> <b>N</b> <hr/> <b>name</b> 3988:23 3991:24 4008:14 4013:12 4025:12 4025:12 4028:2 4030:6 4031:13 4075:5 4082:22 4115:18 4131:20 4132:2 <b>names</b> 4130:7,10,23 4131:25 4132:5 4133:22 4152:6,9 4154:4,24 <b>nano</b> 4178:17 <b>narrow</b> 3981:23 <b>nature</b> 4015:2 4057:17 4118:22 4145:5 <b>near</b> 4129:24 4239:18 <b>necessarily</b> 4038:4 4041:24 4043:6 <b>need</b> 3975:22 3998:3 4015:1,6,8 4015:24 <b>needed</b> 4043:3 <b>neither</b> 4214:25 <b>Neumann</b> 4130:17 4130:20 4157:13 <b>never</b> 3973:12,12 3973:15 3988:23 4006:8,8 4014:2 4019:21 4089:18 4089:19 4185:1 4190:12 4193:17 4207:4 4217:6 4221:19 4226:17 4226:18 4230:3 <b>new</b> 3994:20,20,21
--	--	---	--	--

4112:20 4139:9 4198:21 <b>newly</b> 4202:19 <b>news</b> 4075:13 <b>newspaper</b> 3988:25 4036:6 <b>next</b> 3999:9,12 4004:21 4045:22 4062:9,19 4073:17 4110:4 4131:20 4151:6 4152:18 4181:11 4217:9,16,18,21 4218:5,16 4236:9 4237:7 4240:11 4240:14 <b>nice</b> 4171:18,22 4172:4 <b>Niche</b> 4031:13 <b>night</b> 3963:5 3974:2 3976:9 3978:4,23 3980:12 3984:8 3984:22 3986:19 3989:17 3994:8 4001:9 4008:6 4010:9 4023:17 4024:2,9 4081:16 4094:16,23 4113:5 4118:13 4120:9 4121:22 4128:11,17 4163:12 4168:23 4196:10 4228:4 4235:4 4237:13 4239:19 <b>nightmare</b> 4075:12 <b>nine</b> 4071:18 4072:9,13,14,15 <b>nobody</b> 4024:1 4139:10 4178:4 4206:19 4230:9 4230:14,25 4235:6 <b>Nolet</b> 4140:10,15 4145:19 4149:1 4153:9,19 4154:21 4155:1,2 4198:8 4232:14 4238:1 <b>none</b> 4214:4 <b>nonsensical</b> 4179:2 <b>Norbert</b> 4009:10 4010:7 4021:6,22 4145:22 4153:24 4198:5 4232:9 <b>Normally</b> 4049:25 4054:9	<b>north</b> 4030:11 4079:16 4122:6 4183:21,23 <b>nosy</b> 3986:23 3988:14 <b>notation</b> 4047:12 4084:23 4085:1 <b>note</b> 3958:5 3967:8 3967:9,10 4008:1 4012:21 4026:22 4032:22 4037:6 4037:13 4039:1 4041:18 4061:25 4063:1 4070:3,5 4073:25 4074:25 4076:6 4078:12 4079:1,3 4081:10 4085:11 4109:12 4143:23 4166:17 <b>notebook</b> 4083:23 4084:4,6 <b>noted</b> 4211:14 <b>notes</b> 3958:3,10 4025:21,21 4032:23,25 4035:7 4039:8 4040:2,4,9,20 4049:3 4062:13 4062:22 4074:10 4074:14 4077:21 4080:24 4081:4 4081:10 4083:8 4083:20,23 4084:3,9 4227:3 4247:8 <b>nothing</b> 3987:5 3988:16 3997:12 4016:7,12 4017:7 4103:23 4104:1 4144:25 <b>notice</b> 4000:16 4030:2 4042:17 4049:6 4052:7 4117:8,18 4125:23 4126:12 4131:20 4136:15 4136:20 4137:6 4148:20 4151:2 4160:1 4170:16 4170:23 4233:17 4238:6,10,18 4245:11,14 <b>noticeable</b> 4104:24 <b>noticed</b> 4112:24 4133:17 4217:9 4217:15 4228:6 4240:9	<b>notices</b> 4047:7,9,21 4047:22 <b>noticing</b> 4213:14 <b>notification</b> 4049:21 <b>notify</b> 4128:19 <b>notwithstanding</b> 4072:23 4181:12 <b>November</b> 4002:4 <b>nucleus</b> 4155:4 4156:23 <b>number</b> 3960:22 3964:3 3970:3,6,7 3996:12 4018:14 4023:1 4025:15 4025:17,17 4029:7 4054:7,10 4055:8 4062:15 4066:25 4078:5 4080:14 4081:11 4095:8 4100:9,19 4102:24 4107:15 4119:2 4123:8 4129:3 4134:11 4134:21 4158:1 4192:22 4195:25 4212:18 4235:19 <b>numbers</b> 3964:7 4013:9 4117:9 4142:19 <hr/> <b>O</b> <hr/> <b>oath</b> 4116:18 4117:2 4178:24 4192:2,23 4225:19 <b>objection</b> 4166:10 <b>objectives</b> 4066:18 <b>obligation</b> 4047:17 <b>obligations</b> 4054:5 <b>obliged</b> 4004:6 <b>obscure</b> 4233:24 <b>observation</b> 4112:11 4119:25 4120:8 4236:6 <b>observations</b> 4233:13 <b>observe</b> 4170:18 4172:23 4185:5,9 4185:22 4186:9 4186:15 4187:1 <b>observed</b> 4170:19 <b>obstacles</b> 4144:22 <b>obstruct</b> 4108:12,15 4144:25 4180:7 <b>obstructed</b> 4174:16 <b>obstruction</b>	4145:13 <b>obstructs</b> 4209:25 <b>obtained</b> 4013:3 4029:1,16 <b>obvious</b> 4082:8 4155:17 <b>obviously</b> 4010:5,6 4011:2 4016:23 4033:3,6 4036:25 4041:14 4044:15 4055:15 4057:7 4059:9 4070:25 4071:1 4078:17 4085:8 4089:20 4104:9,15 4112:5 4150:19 <b>occasion</b> 4041:13 4079:23 4116:1 4126:15 4127:25 <b>Occasionally</b> 4121:7 <b>occasions</b> 4059:9,16 4067:3,4 4084:1 4106:9 4120:8,15 <b>occur</b> 3970:13 3977:6 4067:17 <b>occurred</b> 3961:19 3965:18 3966:20 3977:10 3982:6,7 3984:12 3988:15 3990:10 4018:18 4022:2 4030:9,10 4036:2 4041:12 4057:7 4078:22 4105:20 4119:1 4120:8 4162:22 4189:16 4228:24 <b>occurrence</b> 4121:11 <b>occurs</b> 4068:23 <b>odd</b> 4002:24 <b>off</b> 3965:5,18 3966:21 3997:25 4022:10 4031:17 4049:25 4052:20 4054:15 4083:5 4091:19,21 4098:11 4132:17 4139:9 4143:12 4164:7 <b>offence</b> 4054:8 4102:15 <b>offences</b> 4018:15 4034:11 4055:21 4101:20 4105:23 4242:11 4243:2,4 <b>offend</b> 4084:16 <b>offense</b> 4011:11	<b>offered</b> 4023:23 4171:20,23 4194:4 <b>office</b> 3963:13,16 3963:17,18 3968:9,15,16,19 3968:22,24 3973:6 3981:25 3987:5,6 3997:16 3997:18 3998:6,9 4033:23,23 4036:25 4042:8,9 4046:7 4075:16 4111:11 4117:4 <b>officer</b> 3956:4 3986:18 3987:22 3988:5,20 3990:21 4009:1 4009:10 4019:23 4030:17,23,24 4031:6,12 4033:18,24 4034:13 4039:25 4047:2,11 4049:13 4050:16 4050:23 4051:17 4053:2,5,23 4054:1,4 4055:18 4056:16,18 4065:6 4097:9 4099:9 4101:25 4102:14 4103:17 4103:25 4110:17 4110:21 4128:19 4195:6 4234:16 <b>officer's</b> 4065:8 <b>offices</b> 4046:23 <b>often</b> 4033:5,7 4035:13 4036:24 4053:8 4061:15 4085:22 4097:7 4109:4 4113:24 4115:1 4118:23 4119:6 4121:17 4121:18 <b>Oh</b> 3960:13 3964:13 3977:11 3977:21,25 3994:1 3995:14 3997:23 4001:18 4013:7 4020:5 4076:9 4107:4 4228:15 4244:11 <b>once</b> 3963:13 3967:15,22 3973:10 3992:5 4003:2 4029:5
--	--	---	--	--



<p><b>pay</b> 4054:3 4100:6 4100:13 4105:10 4105:14 4183:2,3 4183:6 4184:17 4184:25 4228:22 <b>paying</b> 4182:8 <b>payment</b> 4182:7 <b>peace</b> 4234:16 <b>Pearson</b> 4034:21 <b>peculiar</b> 4218:9 <b>pending</b> 4054:11 4071:8 4103:2 <b>people's</b> 3973:25 4087:7 <b>per</b> 3998:13 4000:20 4001:5 4001:15,18 4009:14 4147:17 <b>perceived</b> 4055:9 <b>perception</b> 4069:18 4069:18,21 4086:18 4087:4 4088:15,15 <b>Perfect</b> 4118:5 4158:1 <b>performing</b> 4211:11 <b>perhaps</b> 4058:12 4063:23 4081:2 4087:1 4125:14 4142:20 4176:12 4179:17 4200:1 4225:10 <b>Perimeter</b> 4030:12 <b>period</b> 4017:4,9 4039:9 4051:24 4052:7 4054:5 4071:19 4072:4 4094:25 4105:17 4106:11 4119:23 <b>periodically</b> 4121:21 <b>periods</b> 4105:18 <b>permitted</b> 4032:19 <b>person</b> 3965:12 3978:7 4018:9 4030:6,20 4054:8 4054:11 4055:17 4055:17 4065:8 4068:19 4082:20 4084:18 4090:24 4103:9 4108:24 4149:5 4236:16 4239:8 <b>personal</b> 4220:9 4221:10,24 4223:16</p>	<p><b>personally</b> 3984:14 4165:16 4168:13 <b>persons</b> 3973:17 <b>person's</b> 4071:13 <b>perspective</b> 4036:3 4068:15,16 4142:12 <b>peruse</b> 4082:19 <b>pew</b> 4156:21 <b>phone</b> 3992:9,10,11 3992:12 4022:4 4028:22,25 4029:1,2,10,15,19 4029:24 4031:11 4032:5 4033:20 4035:10 4039:3 4080:14,17 4083:1 4090:5 4114:5,8,17 4115:2 <b>phoned</b> 3968:19 3974:3,3 4007:1 4031:25 <b>photo</b> 4142:25 4157:24 4158:9 4176:1 4183:22 4184:9 <b>photocopies</b> 4083:20,21 <b>photograph</b> 4148:9 <b>photos</b> 4142:11,19 4144:8,15 4148:13 <b>phrase</b> 4084:15 4155:5,7 <b>physical</b> 4199:5 <b>picked</b> 4197:2,3,12 4228:1,3 <b>picking</b> 4197:17 <b>picture</b> 4157:19 4173:17 4178:17 4183:14 <b>piece</b> 4075:13 4208:8 <b>pinpoint</b> 4132:15 <b>pints</b> 4016:22,22,22 4016:24,25 4022:20,24 4023:2,15,22 4024:2,8,12,17 4171:24 4188:10 4188:11,13,14 4245:16,20 4246:4 <b>place</b> 3959:22 3960:1,21 3964:19 3974:2</p>	<p>3981:20 3982:20 3988:1,5 4021:3,8 4035:1 4040:21 4040:24,25 4041:11,16 4042:19 4046:6 4050:4,12 4052:4 4094:4 4103:8 4106:14 4113:5 4118:12 4121:12 4121:14 4128:14 4128:20 4131:18 4156:9 4161:8 4167:15 4171:22 4172:4 4196:10 4200:8 4203:4 4218:9 4229:6 4231:24 4236:1 4237:18,20 4238:3 4244:11 4247:9 <b>placed</b> 4071:6 4103:4 4105:9 <b>places</b> 4067:25 4068:3 4155:12 <b>plain</b> 4209:14 <b>planned</b> 3959:9 4128:24 <b>plans</b> 4040:20,24 <b>platoon</b> 4044:4 4063:8 4129:18 4171:15 4198:14 4199:1 <b>platters</b> 3962:13 <b>play</b> 3983:16 3984:6 <b>Played</b> 4199:15 <b>playing</b> 4124:19 <b>please</b> 3959:4 3994:4 3995:24 4004:9 4012:3 4027:17,20,21 4036:21 4040:22 4062:8,16 4076:18,20 4082:11 4109:25 4124:22 4129:9 4142:21 4143:20 4147:19 4148:13 4152:16,18 4153:5 4162:18 4170:14 4172:5 4174:25 4180:3 4185:12 4195:22 4224:6,9 <b>pleased</b> 4037:20 4038:5,14,21</p>	<p>4094:7,9 <b>plugged</b> 4211:1 <b>plus</b> 4175:16 4197:19 4225:25 <b>point</b> 3960:4 3961:23 3973:1 3973:19 3975:20 3989:17 4006:17 4012:3,11,20 4035:22 4057:8 4067:24 4070:10 4071:4 4087:21 4088:14 4106:7 4124:10 4145:16 4145:18 4170:16 4170:23 4179:1 4183:21 4184:22 4185:6 4187:11 4190:4 4191:21 4195:3 4204:20 4205:6,18 4207:23 4210:17 4211:24 4212:2 4220:3 4223:14 4228:8,9 4229:19 4235:25 4238:25 4240:10 4242:3 4244:22 4245:24 <b>pointed</b> 4131:24 <b>pointing</b> 4137:11 4192:23 <b>policemen</b> 4022:21 <b>policing</b> 4202:2 <b>policy</b> 4049:11,12 4052:4,6 <b>Pontiac</b> 4007:17 <b>pool</b> 4144:7 4183:13,19 4184:4 <b>Poole</b> 4053:16 <b>pop</b> 3969:10 <b>popcorn</b> 4205:22 4210:18,19,20,22 4211:16,18,25 4213:18,24 4214:6 <b>pose</b> 4170:15 <b>position</b> 3990:16 4031:22 4039:16 4058:7 4097:8 4116:7 4118:19 4131:9 4151:20 4154:16 4160:4 4208:24 4245:1 <b>positioned</b> 4150:19 4154:25 4159:23 4173:1</p>	<p><b>Positioning</b> 4154:8 <b>positions</b> 4041:10 <b>possession</b> 4002:7 4019:4 <b>possibility</b> 4044:20 4052:12,14 4061:19 4091:5 4091:10,11,12 4134:15 4162:2 4190:14 <b>possible</b> 3959:13 4026:16,18 4029:13 4032:21 4038:24 4048:13 4051:20 4116:3,9 4120:12 4121:24 4123:7 4139:4 4146:18 4162:21 4183:8 4191:14 <b>possibly</b> 4055:24 4104:14 4108:11 4220:24 4245:21 <b>poster</b> 4136:15 <b>potential</b> 4012:18 4045:9 4164:14 4189:14 4190:5 <b>potentially</b> 4053:4 4055:24 4065:10 4108:4,23 4128:1 4227:17,19 <b>pounds</b> 4188:24 <b>pour</b> 4221:18 <b>poured</b> 4211:15 4219:13,25 4220:9 <b>pouring</b> 4213:20 <b>practicable</b> 4106:1 <b>practice</b> 4014:9 4052:19 <b>precautions</b> 4040:20 4041:11 4042:19 4043:7,9 4043:10 4235:25 <b>precise</b> 4127:21 <b>precision</b> 4222:14 <b>predilection</b> 4060:7 <b>pregnant</b> 4071:18 4071:18 4072:9 4072:13,18 4104:22 4105:2 <b>preliminary</b> 4112:9 <b>prepare</b> 4182:13 4246:12 <b>prepared</b> 4126:6 4171:7 4246:12 <b>present</b> 3982:24 3983:5 4024:20</p>
---	---	---	--	--



4042:2 4043:1 4126:14 <b>presentation</b> 3959:8 4054:25 <b>presenting</b> 4044:23 4058:25 <b>preserve</b> 4048:15 4048:16 <b>press</b> 4010:13 <b>presume</b> 3978:2 <b>presumptive</b> 4061:12 <b>pretend</b> 3984:7 <b>pretty</b> 3962:22 3975:2 3980:17 3990:5 3998:7 4075:11 4112:14 4119:23 4126:19 4126:25 4128:7 4138:19 4142:1 4144:20 4149:17 4150:11,13 4154:2,25 4188:12 4191:6 4202:19 4203:18 4203:19 4205:5 4206:20,23 4210:11 4212:11 4212:14 4213:7 <b>prevent</b> 4041:11 <b>prevented</b> 4087:23 <b>previous</b> 3996:4 4091:19 <b>Previously</b> 3959:16 <b>price</b> 4172:2,10 <b>primarily</b> 4103:1 <b>principle</b> 4066:13 <b>print</b> 3970:7,8 <b>prior</b> 3986:10 3991:2 4036:9 4039:24 4053:6 4071:3 4104:4 4113:10 4119:7 4119:20,21 <b>priorities</b> 4066:17 4068:2,21 <b>priority</b> 4051:14 4053:21 <b>private</b> 3982:1,2,3 4047:6 4142:1,4 4171:18 4240:22 4240:24 <b>privilege</b> 4097:10 <b>privy</b> 4046:11 <b>probably</b> 3975:15 3975:16,18 4003:24 4008:7	4058:21 4060:13 4065:14 4075:24 4079:20 4084:12 4087:16 4091:17 4104:8 4107:20 4108:19 4118:1 4127:20 4135:10 4138:16 4150:23 4159:1 4171:2 4175:9 4178:6 4212:21 <b>Prober</b> 3956:12 3957:18 4018:2 4062:15,18 4102:22 4105:4 <b>probing</b> 4060:8 <b>problem</b> 3973:13,15 3979:14 4178:1 4181:17 4193:2 4200:10 4217:14 4218:18 <b>problems</b> 4103:16 <b>procedure</b> 4051:1 <b>procedures</b> 4050:4 <b>proceed</b> 4200:18 <b>proceeding</b> 4050:24 <b>proceedings</b> 3955:12,19 3957:1 4027:14 4029:19 4109:22 4195:19 4246:20 <b>proceeds</b> 4064:8 <b>process</b> 3965:19 4069:25 4071:9 4098:23 4103:8 <b>produce</b> 3964:4 3965:9,10 3969:8 4019:22 4020:12 <b>produced</b> 3969:1 <b>profession</b> 4051:8 4084:20 <b>professional</b> 4010:24 4034:18 4042:16 4043:13 4044:13 4045:2,3 4046:13,16,22 4047:4,14,18 4049:12 4051:16 4052:16 4053:9 4054:12 4056:5 4059:23 4066:21 4066:24 4067:14 4088:18 4095:12 4096:3 4098:24 4099:14,18 4109:3,5 4113:1 4151:17 4153:1	4163:23 4164:2,7 4165:8,11 4224:15 <b>profit</b> 3998:12 <b>progress</b> 4237:10 <b>progressed</b> 4045:22 <b>promise</b> 4073:21 4163:1 4243:3 <b>promo</b> 4000:4,4 <b>promote</b> 3962:14 <b>promoted</b> 4111:2 <b>promotion</b> 4115:21 <b>promotional</b> 3962:12 <b>prompted</b> 4215:10 <b>proper</b> 3962:15 <b>properly</b> 4068:1 <b>prosecute</b> 4068:10 <b>prosecution</b> 3955:1 4050:20 4106:5 <b>prosecutor</b> 4068:9 4068:11 <b>prosecutor's</b> 4068:13 <b>prospect</b> 4086:17 <b>protect</b> 4226:7,10 4226:13 <b>protected</b> 4189:14 <b>protecting</b> 4190:9 4190:14 <b>protections</b> 4050:12 <b>provide</b> 3963:20,23 3965:7 3966:4,5 3967:14,21 3968:4,6 3969:16 3971:19,20 4000:25 4001:1 4025:15 4046:13 4046:19 4047:5 4049:23,25 4050:1 4056:16 4065:23 4073:1 4073:15 4088:6 4108:8 <b>provided</b> 3976:7 4006:24 4010:23 4035:7,18 4037:15 4048:3 4051:3 4053:5 4060:10 4073:3 4083:12 4108:14 4147:4 4166:17 4167:8 4172:9,13 4176:8 <b>provides</b> 4108:21 <b>providing</b> 4052:7 4054:2 4060:23	4108:5 4181:7 4220:20 <b>province</b> 3956:18 4069:23 4099:2 4247:6 <b>Provincial</b> 3961:14 <b>provokes</b> 4216:24 <b>prudent</b> 4226:4,6 <b>PSU</b> 3958:17 4012:6,12,21 4082:1 4095:9 4096:17,22 4099:19 4133:22 4152:22 4215:21 4215:23 <b>public</b> 4039:12 4086:12,18 4087:4 4088:15 4088:15 4095:22 4224:15 <b>publicly</b> 4069:22 <b>pull</b> 4019:21 4024:23 4025:13 4025:16 4026:7 <b>punished</b> 4102:2 <b>purchase</b> 4003:13 <b>purchased</b> 4003:11 4014:25 4016:3 4016:10 4017:8 <b>purporting</b> 4165:1 4166:22 <b>purports</b> 4124:6 <b>purpose</b> 3973:4,7 4189:13 <b>purposes</b> 3963:10 4080:19 4144:16 <b>pursue</b> 4217:24 <b>pursued</b> 4220:23 <b>push</b> 4135:12 <b>putting</b> 4037:21 4166:21 4175:8 4179:23,23 4182:2 4193:10 4202:14 4205:21 4208:24 <b>p.m</b> 4013:4 4014:20 4017:4,5 4109:22 4109:23 4195:19 4195:20 4246:20	<b>questioning</b> 3987:21 4006:14 4020:1 4060:5 4108:25 4195:25 4215:22 4220:23 <b>quibble</b> 4124:6 <b>quiet</b> 4104:15 4121:13 4171:22 <b>quite</b> 4033:5,7 4035:13 4036:24 4037:20 4053:15 4071:2 4079:24 4093:6 4134:20 4142:9 4169:24 4212:16 <b>Q-1.89.b.10</b> 3958:10 4080:21 4080:23 <b>Q-1.89.b.11</b> 3958:3 4062:9,12 <b>Q-2.89.b.25</b> 3958:12 4124:17 4124:24 4185:13 4223:25 <b>Q-2.89.b.35</b> 3958:7 4076:17,22 <b>Q.C</b> 3955:2 <b>Q.1.89.b.11</b> 4074:19 <b>Q2.89.b.25</b> 4206:16
<b>R</b>				
<b>R</b> 3956:13 <b>raised</b> 3972:12 3990:22 4026:4 4029:18 4204:24 4209:8,11,24 4210:1 <b>ramifications</b> 3977:20,24 3982:12 3983:8 3984:12 3990:9 4190:8 4226:14 <b>range</b> 4191:14 <b>rank</b> 4075:21 4110:24 <b>rare</b> 4059:10 4102:13,14 <b>rarest</b> 4102:11 <b>rate</b> 4003:3 4188:19 4189:1,4 4243:8 4243:17 4244:2,6 4245:5,7,11,16,25 4246:3 <b>rather</b> 4059:1 4069:13 4080:16 4118:7 4181:7				
<b>Q</b>				
<b>quaint</b> 4121:13 4171:22 <b>qualms</b> 4088:21 <b>quantify</b> 4220:15 <b>quarter</b> 4117:9 4132:14				

<b>RCMP</b> 4088:4,5 4098:6 4107:14 <b>Re</b> 3958:8 4076:24 <b>reach</b> 4106:6 <b>reaching</b> 4177:18 4177:21 <b>read</b> 3967:19 3974:8,8 3982:20 3983:15,22 3984:4 3985:16 3985:20 4004:23 4005:23 4009:3 4018:12,16 4043:16 4051:1 4058:19 4126:8 4164:21,23,24 4165:4,6 <b>reading</b> 4140:4 <b>ready</b> 4126:7 4202:12 4210:19 <b>reaffirm</b> 4118:10 <b>real</b> 4041:22 4085:16 <b>reality</b> 4101:24 <b>realize</b> 4003:18 4178:18 4234:17 <b>realized</b> 4055:13 4059:15 4208:16 4226:20,23 <b>really</b> 3993:14 4010:3 4038:5,14 4055:2 4059:12 4066:23 4071:14 4072:5 4078:22 4104:9 4116:12 4127:22 4144:19 4144:25 4156:8 4163:5 4238:25 <b>reason</b> 4003:17 4032:3 4033:2,6 4078:21 4083:7,8 4120:4 4156:18 4197:11 4210:19 4211:13 4218:8 4220:12 <b>reasonable</b> 4100:1 <b>reasonably</b> 4048:13 <b>reasons</b> 4082:8 4199:8 <b>recalled</b> 4176:18 <b>recalling</b> 4206:25 <b>receipt</b> 3969:17 4187:22 <b>receipts</b> 3963:21 3967:14,21 3968:4 3970:20 3970:24 3971:19	3971:21 <b>receive</b> 4071:12 <b>received</b> 4028:21 4032:6 4034:8,12 4035:10 4070:4 4071:7 4107:19 4125:4 4226:3 <b>recently</b> 4072:17 4105:1 <b>reception</b> 4240:17 <b>recess</b> 4026:24 4027:13 4109:21 4195:18 <b>recessed</b> 4027:14 4109:22 4195:19 <b>recognize</b> 3994:12 4081:5 4142:25 4143:2 <b>recognized</b> 4031:14 <b>recollection</b> 3969:20 3982:4,6 4013:5,17,22 4014:6,13,17 4016:13 4017:12 4017:15,16 4022:8 4029:23 4033:21 4138:11 4138:15 4143:9 4148:3 4176:13 4176:17,21,22,25 <b>recommended</b> 4049:5 <b>reconvened</b> 4027:15 4109:23 4195:20 <b>record</b> 3962:5,8,18 3963:23 3965:18 3966:21 3968:7 3971:15 4043:15 4048:16 4080:3,6 4089:6 4090:8 4175:6 <b>recorded</b> 3960:18 3960:23 3964:18 3966:22 3970:12 4029:21 4040:9 <b>recording</b> 3961:18 4127:23 <b>records</b> 3963:21 3965:3,17 3966:2 3967:14,22 3968:4 3969:8,23 3972:11 4013:2 4014:17,21 4017:7 4019:3,18 4019:24 4020:7 4020:12,16	4022:19,19 4023:4 4028:25 4029:16 4032:5 4079:25 4083:1 4193:24,25 <b>recreation</b> 4239:25 <b>red</b> 4071:2 4104:9 4143:14 4158:10 <b>redirect</b> 4020:23 <b>redness</b> 4071:4 <b>refer</b> 3975:8 4012:6 4015:24 4026:8 4032:15 4124:15 4144:4 4155:3 4217:20 4234:12 <b>reference</b> 4039:23 4040:8,20 4217:15 4224:14 <b>referencing</b> 3964:6 <b>referred</b> 4015:23 4031:21 4062:5 4062:20 4072:8 4173:12 4198:20 4217:22 <b>referring</b> 4054:19 4076:16 4077:4 4082:3,5 4117:19 4122:10 4126:15 4134:3,5 4135:2 4143:17 4144:5 4144:12 4148:17 4152:3 4154:5,12 4183:24,25 4186:2,18 4215:15 4234:13 <b>reflect</b> 4229:4 <b>refresh</b> 3976:14 <b>refused</b> 4228:19 <b>regard</b> 4207:3 <b>regards</b> 4189:19 <b>register</b> 4184:7,12 <b>regular</b> 3998:2 4055:3 4078:24 4115:6,6 4121:11 4127:4 <b>regularly</b> 4033:10 4047:1 4068:12 4114:24 4115:5 4122:22 4123:2 <b>regulations</b> 4051:4 4052:24 4067:7 4102:6 <b>Reid</b> 3956:7,20 4247:5,14 <b>related</b> 4040:10 4045:10 4073:6 <b>relates</b> 4012:25	4081:15 4086:11 <b>relating</b> 3969:17 4070:5 <b>relationship</b> 4055:9 4055:10 4085:17 4085:19,21 4113:14 4114:11 4114:14 <b>relative</b> 4142:22 4173:13 4174:8 4174:12 <b>released</b> 4243:3 <b>relevant</b> 4003:22 4089:12 <b>reluctance</b> 4058:3 4058:11 <b>remain</b> 3991:17 4054:2 <b>remains</b> 4065:7 <b>remarkable</b> 4169:24 <b>remembers</b> 4197:5 <b>remind</b> 4027:1 <b>renovating</b> 4239:25 <b>reopen</b> 4027:17 <b>reopened</b> 4109:25 4195:22 <b>repair</b> 4211:10 <b>repeatedly</b> 4202:5 <b>report</b> 3963:6 3994:7 3995:3 3997:1 4015:17 4045:18 4076:10 4076:11,13 4082:6,6 <b>reported</b> 4132:22 <b>reporters</b> 3956:19 4247:1,5 <b>reports</b> 3966:4 3998:8 4019:20 4019:20 4024:22 4025:2,19 4026:6 4026:17 4045:5 <b>represent</b> 4126:12 <b>reps</b> 4051:23 <b>reputation</b> 4171:6 <b>request</b> 4050:8 4096:16 4134:12 <b>require</b> 4012:3 <b>required</b> 4059:3 4211:10 <b>requirement</b> 3961:22,25 <b>reserve</b> 4102:19 <b>residence</b> 4033:12 4131:5 4162:23 4167:15 4196:23	4197:19 4220:17 4222:10 4229:1 4229:23 4236:25 <b>respect</b> 3989:12 4011:20 4027:2 4093:23 4109:2 4168:3 4235:7 <b>respected</b> 4093:17 4094:11 <b>respond</b> 4092:2 4199:12 <b>responded</b> 4021:9 4192:23 4197:11 4197:15 <b>responding</b> 4192:7 <b>response</b> 4024:19 4026:3 4122:5 4126:20,21,23,25 4170:8,11 4192:2 <b>responses</b> 4014:5 4202:4 <b>responsibilities</b> 4011:7 4096:1 <b>responsibility</b> 4044:18,21 4095:24 <b>responsible</b> 3973:17 3980:3 4044:5 4093:13 <b>responsibly</b> 4042:25 4044:25 4094:21 <b>rest</b> 4130:23 <b>Restall</b> 3956:10 <b>restaurant</b> 3961:5 3961:18 3963:16 3974:7 3979:11 3979:12,15 3980:16 3981:22 3982:13 3983:9 3984:13 3987:9 3987:16 4003:11 4006:2 4038:8 4039:7,8 4040:2,3 4040:5,11,14 4041:15 4094:24 4113:9 4133:17 4140:23 4146:24 4163:11 4166:21 4168:22 4171:19 4177:18 4184:2 4187:7 <b>restaurateur</b> 3979:16 <b>result</b> 3980:4 4053:22 4055:18 4065:8 4101:14
--	--	--	---	---

4190:6 <b>resulted</b> 4101:18 <b>resuscitate</b> 4210:23 <b>returned</b> 4236:24 <b>revealed</b> 4074:10 <b>revenue</b> 4015:20 <b>review</b> 4015:1 <b>reviewing</b> 3983:6 4017:13 <b>Re-Examination</b> 3957:10,19 4107:3 <b>ride</b> 4041:1 4196:9 <b>rides</b> 3974:18,23,25 3975:1 3976:2,23 3991:5 <b>rift</b> 4057:2 <b>rightly</b> 4037:22 <b>rights</b> 4099:10 <b>right-hand</b> 3999:7 4007:21 4117:14 4117:15 4118:3 4131:21 4158:7 4184:9 <b>rigor</b> 4109:2 <b>rigorous</b> 4059:24 4109:6 <b>ring</b> 3996:8 <b>rise</b> 3959:3 4027:12 4027:16 4048:5 4109:18,20,24 4195:17,21 4246:18 <b>risk</b> 4052:8 4189:21 <b>road</b> 4164:14 <b>Robert</b> 3956:10 3957:12 4027:22 4129:25 <b>Rodrigo</b> 3957:4 3959:16 3975:25 4009:12 4010:9 4013:12 4113:14 4113:16 4119:15 4142:23 4235:15 4236:9 <b>Roger</b> 3955:2 <b>role</b> 4065:12 4099:14 <b>roles</b> 4095:17 <b>rolling</b> 4006:1 <b>room</b> 3982:1,2 4004:1 4027:3 4046:9 4124:17 4138:25 4139:2 4142:5,10 4144:3 4144:4 4194:22 4194:23 4200:13	4200:14,15,23 4204:16,19 4233:3 4239:25 <b>roughly</b> 4111:4,19 4132:13 4134:22 4158:15 4189:10 4196:11 <b>roundabout</b> 4098:1 <b>routine</b> 4014:14,15 4233:25 4235:9 <b>Royal</b> 4214:10,24 4219:2,7 4220:25 <b>rule</b> 4100:25 <b>ruling</b> 4004:21 <b>run</b> 3996:22 4100:13 4203:4 <b>rungs</b> 4195:7 <b>runs</b> 4137:14 <b>rye</b> 4214:23 4215:5 4215:10 4216:2 4219:16,21 4220:5 4221:4 4222:18 4223:5 4225:11,16,22,25 4228:25 4229:7 4231:9 4232:1,3 4232:11 <b>ryes</b> 4023:12 <b>R.L</b> 3956:4 <b>R.M</b> 3956:13 <hr/> <b>S</b> <b>S</b> 3956:15,16,16,18 <b>Safety</b> 4039:13 4224:15 <b>sake</b> 4147:21 4174:21 <b>sale</b> 3961:23 4033:13 <b>sales</b> 3961:14,14 3971:15 3994:6 3995:3,6 3996:3 3997:1 3998:11 4012:10 4014:21 4015:17 4017:1 4020:10 <b>Salhany</b> 3955:2 <b>salsa</b> 4197:4 4206:2 <b>same</b> 3964:23 3978:18 3981:21 3993:23 3994:2 4058:24 4064:11 4066:5,5 4069:4 4082:6 4084:11 4084:11 4119:23 4127:16,25 4134:2 4139:23	4140:6 4146:25 4151:21,22 4163:12,22 4164:9 4165:10 4165:11 4166:1,3 4166:7,25 4168:22 4170:15 4176:24 4177:3 4177:23,24 4193:20 4194:25 4200:25 4213:21 4213:21 4214:22 4215:7 4217:23 4218:5,6 4224:5 4242:7 4244:25 <b>sample</b> 4241:21 <b>Sargeant</b> 4033:19 <b>sat</b> 4070:23 4116:4 4138:22 4139:3 4139:11,22 4140:7,13 4141:5 4142:7 4146:1 4153:9,12,19,20 4153:23 4156:25 4203:17 <b>satisfy</b> 4003:21,25 <b>Saturdays</b> 4016:20 <b>saw</b> 4133:18 4138:21 4180:25 4207:4 4230:3 4234:11 4235:9 4236:11,16 <b>saying</b> 3976:11 3978:17 3997:23 4011:13 4047:12 4053:7 4059:13 4061:6 4090:16 4127:16,25 4134:24 4136:25 4149:11 4153:10 4153:21 4161:21 4162:2,3,12 4163:15 4165:21 4167:7 4169:8 4176:24 4177:5,6 4186:12 4187:17 4187:18 4192:1,4 4193:3 4194:7 4197:15 4221:3 4229:19 4236:14 4244:12 <b>says</b> 3967:10 3999:7 3999:10,12 4000:3 4005:23 4019:9 4081:14 4081:25 4163:9 4166:22 4167:22	4186:23 4207:16 4208:5 4237:1,7 4237:12 4238:1 <b>scenario</b> 4207:2 <b>scene</b> 4029:21 <b>scepticism</b> 4059:3 <b>scheduled</b> 4028:11 4032:18 4081:16 4091:22,24 4132:21 <b>Schneider</b> 4131:14 <b>Scott</b> 3958:10 4031:19,20 4032:8,12,15 4033:25 4034:3,9 4075:20 4080:10 4080:12,24 4089:7,17 4130:2 <b>Scott's</b> 4081:4,10 <b>scratch</b> 4089:16 <b>se</b> 4147:17 <b>Sean</b> 3957:21 3958:12,16 3985:23,25 3986:10 4009:10 4010:7 4021:17 4038:8 4094:25 4110:5,9 4124:25 4152:21 4163:3 <b>searching</b> 4059:24 <b>seat</b> 4135:25 4139:15 4143:6 4146:14,14,15,16 4177:11 4179:5 4179:24 4180:16 4181:21 <b>seated</b> 3959:4 3991:17 4027:17 4109:25 4143:6 4177:14 4195:22 4204:25 4205:3 <b>seating</b> 4135:24 4204:13,23,23 4213:4 <b>seats</b> 4146:9 4147:4 <b>second</b> 3982:23 3983:4 3987:7 3996:3 3999:6 4012:24 4036:13 4126:14 4127:24 4158:14 4178:18 4186:5,7 4217:24 4224:6,9 4230:13 4243:23 <b>seconds</b> 4004:1 4211:1 <b>secretary</b> 3956:5	4037:3 <b>section</b> 4143:12 <b>seeing</b> 4067:17 4130:24 4131:2 4132:8 4150:8 4171:8 4180:7 4182:11 4211:15 4230:23 <b>seem</b> 4127:2,7 4138:19 <b>seemed</b> 4071:21 4121:12 4141:9 <b>seems</b> 4083:21 4108:16 4126:19 4213:18 <b>seen</b> 3988:25 4015:3 4023:3 4081:3 4237:9 4241:16 <b>seize</b> 4034:15 <b>seized</b> 4034:16,17 4082:7 <b>seizing</b> 4076:2 4077:16 <b>seldom</b> 3997:8,9 <b>selection</b> 4231:18 <b>self-guided</b> 4203:2 <b>sell</b> 3962:1 3997:10 <b>semantics</b> 4159:5 <b>send</b> 3963:12 <b>senior</b> 4093:19 <b>sense</b> 4064:13 4081:21 4082:9 4084:13 4099:10 4141:20 4143:1 4144:2 4193:22 <b>sensitivity</b> 4048:2 <b>sent</b> 3997:16,17 3998:6,8 <b>sentence</b> 4005:23 4163:5 <b>separate</b> 3966:3,10 3966:16 4069:12 4140:1 4146:17 <b>sequential</b> 4146:17 <b>sergeant</b> 4025:10 4034:17,21,25,25 4039:22,23 4047:10,11 4049:2 4053:16 4110:5,12 4111:3 4124:20 4166:19 4166:23 4167:2 4167:22 4179:23 4195:24 4197:5 4198:13,24 4199:1 4203:1
--	---	--	---	---

4216:16,24 4217:7 4232:17 4240:16 4241:24 4242:14 <b>sergeants</b> 4034:24 4035:11 4038:6 4039:11 4040:16 4042:22 4043:9 4043:18 4046:18 4063:10,15 4093:7,9,17 4095:6 4103:14 <b>sergeant's</b> 4115:21 <b>series</b> 4029:2 <b>serious</b> 3972:3 3975:24 3977:5 3977:10 3981:16 4011:15,16 4030:8 4048:11 4055:13,16,19,21 4056:3,7 4057:9 4065:3 4108:20 4164:11 <b>seriously</b> 4011:17 4097:4 4101:3 4102:2 <b>seriousness</b> 3982:13 3983:7,7 3984:11 <b>serve</b> 4000:7 4047:10 4207:25 4208:25 <b>served</b> 3979:4 3981:12 4000:9 4023:7 4047:13 4208:1 4242:17 4242:21 <b>server</b> 3978:3,5 3979:8,10 3980:5 3981:7 3985:8,11 <b>servers</b> 3979:18 <b>serves</b> 4036:4 <b>service</b> 3956:15 3959:10 3985:6 4010:25 4028:4 4028:17,23 4029:22 4033:18 4034:24 4037:24 4041:22 4045:5 4045:10,16 4046:3 4047:16 4049:12,18,24 4053:13 4054:4 4069:1,10 4086:20,22 4087:6,9 4088:7 4093:20 4095:17 4097:5,8 4098:2,7	4098:20 4099:8 4102:9 4103:5 4107:13 4110:6 4141:23 4161:6 4167:4,8 4223:13 4223:18 <b>Services</b> 4068:12 <b>servng</b> 3978:22,24 3979:1,6 3980:3 4184:23 4188:16 4208:11 <b>set</b> 4033:8 4060:6 4146:12,15 4147:5 4178:4 4181:7 <b>sets</b> 4146:13 <b>setting</b> 4046:24 4171:18 <b>settled</b> 4144:16 <b>seven</b> 3960:10 4085:14 <b>several</b> 4240:6,7 <b>shaking</b> 4123:13 <b>Shannon</b> 4132:6 <b>share</b> 4021:11 4243:1 <b>shared</b> 4058:20 4100:21,23 4115:25 4175:3 <b>sharing</b> 4151:7 <b>Sharleen</b> 3956:7 <b>Shaun</b> 4157:6 <b>sheet</b> 4015:22 4118:1 <b>shift</b> 3958:14 4031:15,16 4032:19 4039:24 4044:16 4045:24 4046:1 4047:24 4049:5 4054:20 4055:3,5 4056:9 4063:9 4078:1 4085:2 4089:7 4090:3 4091:19 4115:16 4116:6 4119:2,2,5,6,17 4119:17 4121:14 4126:14 4128:11 4128:23 4129:13 4129:17 4132:21 4133:1 4139:6 4163:12 4168:23 4172:9 4217:22 4228:11 <b>shifts</b> 4091:14 4121:15,17 4131:10	<b>shocked</b> 4241:9,13 4241:14 <b>shooters</b> 4245:13 <b>shop</b> 4035:6,13 4079:11,18 <b>short</b> 4030:2 4176:9 <b>shorter</b> 4133:12 4148:5 <b>shortly</b> 4033:20 4151:12 <b>show</b> 3993:20 3997:11 4020:13 4020:17 4029:1 4076:17 4080:1 4129:7 4136:13 4142:15 4148:8,9 4193:25 4215:19 4230:13 4239:9 4241:12 <b>showed</b> 3997:8,9 4091:9 <b>showing</b> 4142:18 4233:21,23 4238:25 4239:6 4244:8 <b>shown</b> 4143:24 4144:15 <b>shows</b> 3994:15 <b>shrunkn</b> 4117:10 <b>shut</b> 4010:1 <b>side</b> 3962:2,6 3996:7,9 3998:19 3999:16 4008:1 4131:21 4158:7 4159:16 4184:2,9 4184:14,17 4200:19,21 4201:9,14 4204:12,14 <b>sign</b> 4143:8 <b>signaled</b> 4234:2 <b>signature</b> 3965:13 4125:23 <b>signed</b> 3965:14 4076:14 4125:21 4126:8 4163:8,20 4164:1,4,10,20,22 4227:8 <b>significance</b> 4072:25 4174:6,7 <b>significant</b> 4068:20 <b>signs</b> 4233:21,23 4238:25 4239:6,9 4241:12,16 4244:8 <b>simple</b> 3971:18 <b>simply</b> 3969:9	3971:1 4016:4 4082:18 4087:21 4100:11 4106:4 <b>since</b> 3960:5,11,13 3960:14 3984:4 4028:9 4033:14 4038:1 4069:6 4078:24 4120:10 4126:13 <b>single</b> 4074:24 4134:6 <b>sink</b> 4204:5 <b>sit</b> 3987:18 3997:12 3998:1,1 4138:2 4138:24 4156:21 4174:3 4179:5,24 <b>sitting</b> 3955:13 4027:20 4110:7 4135:3,17,19 4136:9 4137:11 4137:17 4138:14 4139:10 4145:16 4145:18 4146:6 4147:23 4149:1 4150:1,24 4151:3 4151:6,19 4152:12 4153:12 4153:22 4154:1,6 4154:17 4157:2 4157:17,18 4158:18 4159:21 4160:2,9 4173:16 4175:7,16 4177:11,18 4178:5,9,12,21 4180:9,14 4181:15,21,25 4209:25 4210:2 <b>sittings</b> 4146:17 <b>situated</b> 4037:1 <b>situation</b> 3972:3 3973:10 3975:25 3977:20 3981:16 3984:12 4043:17 4049:20 4065:15 4098:18 4100:8 4108:23 4190:12 <b>situations</b> 3978:9 3978:10 4052:23 4053:3 4067:5,18 4101:25 <b>six</b> 4007:25 4016:25 4122:7 4135:8,10 4135:11 4177:8 4213:12 4236:8 4236:14 <b>size</b> 4142:22 4148:1	4148:11 <b>slated</b> 4091:14 <b>sleep</b> 4040:25 <b>slightly</b> 4230:22 <b>slow</b> 4016:19 <b>small</b> 3982:2 4136:15 4142:23 4146:14 4150:21 4222:23 <b>smaller</b> 4121:7 4134:11 4136:1,2 4143:6 <b>smirk</b> 3971:10 <b>sneaking</b> 4233:2 <b>sober</b> 4236:20 4237:9 <b>sobriety</b> 4236:18 <b>soccer</b> 3973:14 4024:7 4199:15 <b>social</b> 4156:19 4203:14 <b>socialize</b> 3987:12,13 3987:14 4139:6 4150:5 4156:20 4194:13 <b>socialized</b> 4113:8 4122:21 4126:16 <b>socializing</b> 4141:9 4147:17 4182:5 4203:8 4207:6 4211:22 4238:17 4243:25 <b>soda</b> 4197:1,2,6 <b>sofa</b> 4135:25 4136:1 4139:14 <b>soft</b> 4197:15 <b>solarium</b> 3982:2 <b>sold</b> 3992:24 3993:4 4020:11 <b>somebody</b> 3964:14 3965:9 3981:25 3990:15 4006:6 4033:4 4041:6 4056:4 4095:22 4108:20 4180:7 4182:1 4183:9 4203:16 <b>somehow</b> 3998:5 4068:13 <b>someone</b> 4065:4 4105:9 4124:6 4162:11 4181:1,6 4181:11 4188:21 4188:23 4207:2 4212:7 4226:25 4245:12,21 <b>someone's</b> 3963:16
--	--	---	---	--

<p><b>sometime</b> 4013:25  <b>sometimes</b> 3962:12  3972:4 3992:12  4060:16,25  4084:20 4113:25  4123:18  <b>somewhat</b> 4038:10  4137:24 4146:2  4158:19 4183:18  4200:18 4213:25  <b>somewhere</b> 3981:22  4038:23 4143:7  4159:16 4241:6  <b>son's</b> 4002:10  4005:17  <b>soon</b> 4004:15  4038:23 4048:12  4106:1,18  4145:18  <b>sorry</b> 3960:13  3969:13 3973:11  3976:25 3977:12  3995:14,19  3996:13,15  4011:25 4012:2  4017:20,21  4022:3 4036:20  4050:15 4074:16  4080:10 4089:22  4107:4 4140:20  4153:15,16  4165:25 4167:6  4179:14 4185:25  4201:7,14  4212:21 4214:14  4215:25 4224:16  4243:12  <b>sort</b> 3962:13  4067:21 4203:14  <b>sounds</b> 4126:5  <b>south</b> 4136:21,24  4138:5 4143:13  4143:22 4158:19  4159:18  <b>space</b> 4135:14  4137:13 4143:2  4203:20  <b>speak</b> 3980:14  4009:9,20  4047:17 4048:17  4052:9 4079:24  4096:11,17  4113:23,24  4114:7 4115:2  <b>speaking</b> 3970:1  3986:10 3991:3  4021:2 4046:10</p>	<p>4122:12 4163:7  <b>special</b> 4003:3  4016:23 4045:4  4171:24  <b>specials</b> 4172:13  <b>specific</b> 3966:5  3969:17 3982:4,6  4014:6,13  4017:16 4025:17  4033:3 4061:7  4078:6 4191:1  4202:24  <b>specifically</b> 3975:12  4014:11 4055:8  4108:10 4119:19  4122:10 4166:6  4182:11  <b>specifics</b> 4071:25  4078:20 4085:12  <b>speculating</b> 4089:15  <b>spent</b> 3989:17  4070:22  <b>split</b> 4066:18  <b>spoke</b> 3964:22  3974:1,9 3980:11  3981:21 3990:14  4010:7 4021:1,5  4022:16 4029:4  4044:20 4114:4  4114:16,18,22  4115:4 4128:22  4161:10 4192:12  <b>spoken</b> 4033:5  <b>Spraggs</b> 4124:12  <b>Spruyt</b> 4198:22  4233:8  <b>Squirrel</b> 3960:1,6  <b>St</b> 3956:13 4028:23  4033:19 4053:12  4088:7 4093:3  <b>staff</b> 3956:1  3975:14 3978:14  3979:13,14  3993:15 4034:16  4066:12 4134:10  <b>stage</b> 4067:1  <b>stairs</b> 4201:13  <b>stand</b> 3975:20  4027:20,21  4069:7 4156:18  <b>Standards</b> 4010:24  4034:19 4042:16  4043:13 4044:13  4045:2,3 4046:13  4046:17,22  4047:5,14,18  4049:13 4052:16</p>	<p>4053:9 4054:12  4056:6 4059:23  4066:22,24  4067:14 4088:18  4095:12 4096:3  4098:25 4099:14  4099:18 4109:3,5  4113:1 4151:17  4153:1 4163:23  4164:2,7 4165:8  4165:12 4224:16  <b>standing</b> 4052:20  4195:7 4205:2,3  4212:3,4 4240:8  <b>stands</b> 4069:25  <b>Stanley</b> 4130:4  <b>Stannard</b> 4039:3,10  4039:15 4042:4  4042:11 4046:9  <b>Stannard's</b> 4039:16  4042:9 4046:7  <b>stars</b> 3996:10  3998:20 3999:17  <b>start</b> 3959:20  3996:16 3998:24  4015:6,7,7  4061:11 4073:25  4120:7 4153:7  4209:7 4216:1  <b>started</b> 4046:22  4112:18 4147:9  4155:14 4210:18  4217:19  <b>starting</b> 4059:1  <b>state</b> 4051:21  4237:11  <b>stated</b> 4247:9  <b>statements</b> 4046:19  4050:22 4096:22  4101:18 4102:5  4131:7 4136:5  4180:11 4240:25  4245:1  <b>station</b> 4030:25  4033:20 4035:15  4036:25 4039:10  4039:12 4042:7  4079:12,14  4166:9 4171:20  <b>stature</b> 4048:6  4199:25  <b>status</b> 4028:15  4046:16 4071:13  4131:21  <b>stay</b> 3985:5 4014:3  4040:17 4041:5  4042:12</p>	<p><b>stayed</b> 4105:13  4113:4  <b>stealing</b> 3968:18  <b>Stenotype</b> 4247:8  <b>step</b> 4052:21 4061:3  <b>Stephanson</b> 4130:1  <b>sticky</b> 4142:18  <b>still</b> 4002:16  4029:20 4093:12  4111:13 4118:19  4144:2 4151:20  4168:2 4222:20  4223:7  <b>stock</b> 3967:17,24  <b>stools</b> 4174:3,4  <b>stop</b> 3985:6 4036:12  4196:24 4197:1  <b>stopped</b> 3977:15  4010:2 4022:12  4184:23 4188:16  4196:21 4211:1  <b>stopping</b> 4197:6  <b>storey</b> 4201:15  <b>story</b> 4038:23  4043:13  <b>stove</b> 4204:4,11  <b>straight</b> 3979:19  4201:4 4204:7  <b>straightforward</b>  4038:13 4056:11  4057:10 4094:11  <b>strange</b> 4218:15  <b>street</b> 4035:16,17  4079:13 4136:22  4143:13  <b>stressed</b> 4104:17  <b>stretched</b> 4138:5,9  4138:13 4146:3  <b>stretches</b> 4150:19  <b>strong</b> 4057:13  4085:21 4093:24  <b>struck</b> 4218:8  <b>structure</b> 4069:20  <b>structured</b> 4068:22  4069:1  <b>structures</b> 4068:4  <b>stuff</b> 3968:16,20  3969:25 4020:11  4145:8 4172:13  4197:4 4202:12  4202:23 4214:4  <b>subdued</b> 4038:10  4038:16 4040:8  4044:24 4055:14  4104:10  <b>subject</b> 4050:13,16  4050:22 4053:2</p>	<p>4086:13 4096:18  4096:24 4097:18  4108:4  <b>submissions</b> 4181:4  <b>submitted</b> 4076:11  4076:15  <b>subpoena</b> 4047:16  <b>subpoenas</b> 4047:21  4047:22  <b>subsequent</b> 4012:20  4032:4 4050:24  <b>subsequently</b>  4050:20  <b>sued</b> 4055:25  <b>suggest</b> 3985:22  3986:1 4026:23  4032:16 4053:17  4057:12 4065:14  4098:5 4100:22  4101:6 4103:24  4104:1 4108:19  4114:3 4129:21  4165:9 4194:2  <b>suggested</b> 3983:12  4026:5 4033:25  4166:18,24  <b>suggesting</b> 3962:4  3976:20,22  3980:3 4068:8  4133:24 4161:22  4178:16  <b>suggestion</b> 3963:19  3981:19 4021:9  4053:19 4092:14  4108:1 4130:9  4237:7  <b>suggests</b> 3990:8  <b>superintendent</b>  3958:10 4039:17  4039:20 4042:4,8  4042:11 4046:7,8  4075:23 4080:10  4080:12,24  4089:17  <b>supervise</b> 4093:18  <b>supervision</b>  4103:11,13,14  <b>supervisor</b> 4039:19  4058:8 4063:14  <b>supervisors</b>  4043:25 4044:15  4044:18 4093:10  <b>supper</b> 4014:4  <b>support</b> 4044:15  4058:22  <b>supported</b> 4041:23  4055:10 4057:5</p>
--	---	--	---	---

4058:13 4094:9 <b>supporting</b> 4037:24 <b>supportive</b> 4044:11 <b>supports</b> 4056:25 <b>supposed</b> 4000:3 <b>surely</b> 4151:2 4228:6 <b>surgery</b> 4002:10 4005:17 4211:11 <b>surprise</b> 4094:4,6 4095:4,7 4115:23 4115:24 <b>surrounding</b> 4146:2 <b>suspend</b> 4100:11 <b>suspended</b> 4055:22 4103:2,9 <b>suspension</b> 4054:3,9 4071:9,10 4100:16 4105:16 4105:19,25 4106:17,24 <b>suspensions</b> 4100:6 <b>suspicious</b> 4085:7 4086:3 <b>SUVs</b> 4136:19 <b>Swanson</b> 4130:22 4157:15 <b>swig</b> 4233:3 <b>sworn</b> 3959:16 4027:23 4101:4 4110:10 <b>system</b> 3959:22 3960:1,1,2,6,9,17 3960:21 3961:24 3962:8,18 3971:4 4031:13	4176:20,24 4177:3,4 4180:17 <b>tabs</b> 4124:19 <b>taco</b> 4197:4 <b>tact</b> 4061:9 4064:7 <b>taints</b> 4101:11 <b>taken</b> 3967:17,24 3982:19 4021:3,8 4043:4,5,7,11 4091:19,21 4097:4 4131:7 4142:25 4181:13 4183:22 4227:3 4244:19 4247:8 <b>taking</b> 4043:9 4082:18 4212:9 4225:17 4231:16 4233:3 <b>talented</b> 4067:11 <b>talked</b> 3966:23,24 3967:5 3969:24 3980:21,25 3981:19 3982:11 3985:23,25 3986:1,5,6,9,15 4009:21 4022:8 4025:25 4042:11 4057:3 4071:5,9 4071:14,15,22 4072:2,2 4080:6 4080:11 4085:22 4099:4 4128:17 4202:5 4203:1 4205:19 4213:14 <b>talking</b> 3972:3 3987:24 4002:25 4003:1 4035:14 4040:24 4042:13 4058:5 4061:5,5 4063:10 4071:17 4078:23 4081:18 4085:14,18 4088:16 4095:11 4114:1 4138:4 4141:11 4144:6 4151:21 4152:6 4153:8 4158:24 4165:24 4166:2,4 4174:17,18 4201:22,24 4202:5 4203:12 4215:17 4218:23 4239:24 <b>tall</b> 4176:9 <b>taller</b> 4158:22,24 4159:4 4173:18 4173:20,21	4199:19 <b>Taman</b> 3956:10 3973:5 3988:21 4033:12,16 4075:6 4085:20 4110:22 <b>Taman's</b> 3974:6 <b>tape</b> 4246:13 <b>tape-recorder</b> 3965:4 <b>taught</b> 3978:19 <b>Tax</b> 3961:14,14 <b>taxes</b> 3961:15 <b>team</b> 3973:14 4024:7 <b>telephone</b> 3972:19 4006:18 4082:12 <b>telephoning</b> 3973:5 <b>telling</b> 3970:2 3972:23 3974:19 3978:6 3982:12 3985:17,20 3997:20 4021:10 4023:22 4041:5 4057:5 4064:5 4080:18 4150:7 4151:5 4188:25 4192:25 4217:16 4228:22 4242:19 <b>tells</b> 3994:23 3995:5 3997:6 <b>temporary</b> 4054:2 <b>ten</b> 4197:18 4212:6 4212:11,17 4213:7 <b>tend</b> 4057:13 4066:2,3 4072:12 4201:6 <b>term</b> 4047:21 <b>terms</b> 4012:5 4044:12 4117:11 4118:11 4120:6 4128:7 4145:2,3 4148:1 4160:14 4178:13 4192:21 4199:25 4200:3,6 4208:19 4236:12 4236:18 4244:14 <b>terrible</b> 4075:13 4229:12 <b>testified</b> 4025:1 4027:23 4110:10 4113:15 4114:4 4116:4,18 4119:16,19 4122:19 4123:10 4123:17 4151:23	4156:19 4179:7 4185:15 <b>testify</b> 3959:12 4028:11 4107:14 4111:17 <b>testifying</b> 3959:11 4023:5 4235:19 <b>testimony</b> 3962:24 3972:25 3983:12 3986:17 3987:10 3987:23 4021:5 4073:19 4114:6 4114:25 4117:1 4123:1 4127:3 4142:24 4176:8 4181:24 4182:14 4196:4 <b>thank</b> 3959:15 3972:7 4006:15 4008:8,12 4010:17 4017:2 4017:22,25 4018:2 4020:20 4025:23 4027:4,7 4030:1 4062:18 4070:2 4073:18 4073:24 4074:7 4075:2 4086:6 4088:2,9,11,12 4092:16,20 4102:16 4105:4 4106:21 4107:1,7 4109:15,17 4180:4 4200:5 <b>Thanks</b> 4010:15 <b>themselves</b> 4043:18 4051:15 4112:10 4208:1 4210:15 4211:15 <b>thigh</b> 4176:11 4179:17,20 <b>thin</b> 4199:14,24 <b>thing</b> 3962:13 3977:18 3993:13 3993:17 3994:18 3994:22 3995:11 3997:4 4055:11 4055:15,25 4056:3,4,16 4065:3 4067:2 4068:16 4082:6 4083:4 4101:7 4102:1 4127:16 4127:25 4166:5 4169:25 4180:14 4181:22 4202:3 4209:12 4210:21	4211:5 4214:22 4226:4,6 4245:5 <b>things</b> 3960:17,22 3971:8 3972:4,17 3974:11 3976:10 3992:23 3997:14 4037:21 4038:2 4052:25 4055:8 4056:8,19 4059:6 4060:12 4062:7 4067:17 4078:2 4089:10,20 4090:8 4145:4 4147:9 4160:21 4171:21 4181:13 4190:1 4197:16 4202:14 4211:6 4220:8,12 <b>thinking</b> 4031:3,6 4066:19 4067:12 4109:6 4203:24 4227:9 <b>thinks</b> 4100:1 <b>think's</b> 4208:8 <b>thinner</b> 4199:20 <b>third</b> 4029:14 4081:13 4120:2 4129:24 4225:7 <b>thorough</b> 4060:3 <b>though</b> 4029:5 4034:2 4053:3 4059:13 4070:1 4078:20 4085:12 4089:8 4094:10 4094:23 4099:1 4100:7 4105:20 4156:21 4193:10 4212:19 4213:2 <b>thought</b> 3996:15 4036:23 4041:25 4067:21 4074:16 4086:24 4089:18 4125:6,7 4136:18 4144:6 4148:4 4184:16,16 4187:16 4215:24 4220:7 4221:23 4223:15 4225:1 4242:6 4244:14 <b>thoughtful</b> 4164:18 <b>three</b> 3965:20 3966:25 3971:7 3974:21,22,24 3976:4 3996:15 4006:23 4030:19 4072:11 4079:11 4084:9 4093:1
<b>T</b>				
<b>tab</b> 3993:20 3994:4 3995:1,2 3999:1,4 4007:19,23 4062:9 4124:17 4129:7 4152:16 4159:12 4183:1 4206:16 <b>tables</b> 4134:6,11,24 4138:3,8,14 4143:1,7,11 4145:8,11,12 4146:5 4147:5,11 4147:24,24 4148:4,15,16 4150:17,18,21 4151:3,25 4158:22,25 4159:4 4173:13 4174:8,13				

4106:14 4111:23 4119:24 4120:8 4121:1 4122:2 4123:17 4132:5 4143:23 4175:9 4176:18,23 4177:4,9,10 4179:8 4181:19 4182:1 4185:20 4187:20 4189:7 4191:8,24 4192:15 4193:6 4201:10 4218:16 4235:20,21 4245:18,20 <b>three-car</b> 4090:10 4090:24 <b>three-vehicle</b> 4090:10 <b>through</b> 3961:23 4014:4 4015:10 4025:7 4042:23 4058:2,19 4059:23 4067:5,7 4094:14 4099:2 4108:25 4129:6 4129:20 4130:7 4132:3 4144:10 4152:4,9 4169:19 4169:22 4200:10 4244:19 <b>thoroughly</b> 4099:24 <b>throughout</b> 4040:16 4201:22 4203:11 4244:15 <b>Thursday</b> 3955:16 3959:1 4016:16 4016:18 <b>Thursdays</b> 4016:20 <b>tighter</b> 4114:12,15 <b>till</b> 3985:2,4,5 <b>Tim</b> 4035:6,14 <b>times</b> 3978:15 4010:1 4016:21 4021:16,22 4072:11 4085:23 4118:14 4120:13 4120:20 4121:1,4 4121:24 4122:2 4122:13 4123:9 4123:22,25 4127:17 4128:2 <b>time-to-time</b> 4121:8 <b>timing</b> 4016:1 4017:17 <b>TJ</b> 4198:20,22 <b>today</b> 3959:9,11	4028:13 4061:25 4070:4 4074:11 4083:9 4111:17 4113:15 4114:4 4116:24 4118:19 4127:8 4151:23 4161:16 4166:3 4182:14,25 4206:18 4208:5 4208:11 4211:17 4242:8 <b>toes</b> 4052:22 <b>Toews</b> 4131:11 <b>together</b> 3980:9 3981:20 3982:17 3987:8 4040:14 4048:24 4081:22 4107:16 4113:1 4115:2 4134:10 4134:13,25 4147:12 4148:6 4150:18,22 4173:3 4180:17 4183:13 4227:4 4244:16 <b>Tokarchuk</b> 4106:10 <b>tonne</b> 4072:5 <b>tools</b> 4211:4 <b>top</b> 3971:13 3996:2 3996:20 4118:6,6 4136:21 4137:1 4163:4 4170:17 4178:7,19,19 4207:24 4209:10 4216:13 4243:15 <b>topic</b> 4033:9,14 4061:23 4085:22 <b>topics</b> 4063:6 <b>tortilla</b> 4205:24 <b>total</b> 4000:16 <b>totality</b> 4229:2 <b>totals</b> 3960:23 3961:2,9 3962:19 <b>touch</b> 4090:5 4224:24 <b>touched</b> 4086:11 <b>tough</b> 4175:6 <b>tour</b> 4202:18,20 4203:2,6 4213:13 4239:18 <b>towards</b> 4003:10 4137:17,25 4138:8 4146:3 4159:17 4183:20 <b>town</b> 4005:2,15,25 4070:16 <b>Tracey</b> 4132:10	4157:2 4198:16 4199:17,18,21 4232:20 <b>track</b> 3961:9 <b>traffic</b> 4131:12 <b>tragedy</b> 4041:12 4055:17 4229:13 <b>tragic</b> 4036:5 4065:6 4085:16 <b>trail</b> 4022:10 <b>trained</b> 3978:19 <b>training</b> 3978:10 <b>transaction</b> 3961:23 3964:2,18 3970:4 <b>transactions</b> 3960:24 3961:10 3961:13,19 3962:19,21 3963:21,24 3966:2,10 3967:15,22 3968:5,7 3970:12 4016:1 4017:18 <b>transcript</b> 3955:12 4026:9 4116:21 4116:24 4117:12 4140:5 4174:24 4191:17 4247:7 <b>transferred</b> 4093:3 4111:19 4126:13 <b>transpired</b> 4038:13 <b>transpose</b> 4084:3 <b>treat</b> 4061:4 <b>treated</b> 4052:3 4064:11 4099:6 <b>treating</b> 3978:14 <b>tremendous</b> 4044:3 4056:17 4211:10 <b>trial</b> 4105:22 4106:14 <b>trials</b> 4089:25 <b>tribunal</b> 4080:16 4083:6 4085:9 <b>tried</b> 4182:13 4205:21,21 4213:24 <b>troop</b> 4171:15 <b>troops</b> 4075:9 <b>trouble</b> 4044:13 <b>true</b> 4057:18 4067:20 4089:14 4101:9 4208:8 4247:7 <b>truly</b> 4017:20 <b>trust</b> 4057:19 <b>truth</b> 3981:15 4041:19 4044:17	4044:22 4057:5 4058:9,15,18 4059:2,4,8,14 4064:2,5 4066:14 4094:3 4096:23 <b>truthful</b> 4056:12,25 4058:4 4065:23 4101:17,25 4108:8 4196:15 4208:14 <b>try</b> 3970:4 3984:6 3987:3,11 3993:23 3998:5 4021:16 4043:3 4064:2 4084:15 4204:3 4229:4,9 <b>trying</b> 3959:11 4019:14,17 4024:8 4154:24 4175:13 4181:6 4193:4,5 4196:14 4202:13 4205:18 4208:13 4214:6 4220:15 4222:13 4225:24 4243:12 4245:9 <b>Tsouras</b> 3991:25 3992:1,2,4 3994:18 3995:11 <b>tucked</b> 4137:22 <b>Tuesday</b> 4016:19 4081:16 <b>turn</b> 3995:17 4082:10 4148:13 4159:8 4165:7 4170:14 4174:25 4182:7 4185:11 4200:17 4201:1 4204:16 4214:2 <b>turned</b> 3965:5 4034:18,20 4138:7 <b>turning</b> 4099:22 4185:14 <b>twice</b> 3973:10 4116:14 4120:12 4120:12,24 4127:15 4173:9 <b>two-seater</b> 4139:17 <b>type</b> 4051:9 4066:6 4068:23 4125:15 4132:25 4135:13 4135:23 4142:12 4146:8 4181:21 4202:2 4209:12 4245:5 <b>typed</b> 4077:11,13	<b>types</b> 3960:17 <b>typical</b> 4014:9,14 4014:15 4140:25 4141:2 4194:12 <b>typically</b> 4051:12 4105:17 <b>T.J</b> 4233:8 <b>T5C</b> 4005:10 <b>T6C</b> 4116:24 <hr/> <b>U</b> <hr/> <b>ultimate</b> 4072:25 <b>ultimately</b> 4053:11 4054:6 4120:1 4243:3 <b>Um-hum</b> 3967:20 3971:5 3973:22 4005:22 4022:25 4058:23 4194:17 4209:13 4219:10 4230:16 <b>unable</b> 3963:20 3967:14,21 3968:4 4172:22 4173:4 <b>under</b> 3999:18 4013:11 4029:17 4049:4 4051:4 4052:24 4069:19 4090:11 4096:9 4102:6 4103:10 4103:13,14 4116:18 4117:1 4172:11 4178:24 4192:2,23 4225:19 <b>underneath</b> 3998:21 4000:15 <b>understandable</b> 4076:5 <b>understanding</b> 3960:21 3962:17 3963:7 3977:23 3989:4 4011:6 4016:17 4038:17 4038:19 4042:22 4043:20,22 4053:10 4067:22 <b>understands</b> 3977:25 <b>understood</b> 3968:11 3968:14 3969:15 3977:24 4019:10 4020:6 4041:8 4059:12 4152:10 4189:20 4222:8 <b>undertake</b> 4088:5
--	---	---	---	--

<b>undertaken</b> 4057:17 4119:4	<b>upwards</b> 4169:25	4142:16	4072:13,15	4052:23 4080:5
<b>undertakings</b> 4057:21	<b>use</b> 4047:21 4106:9 4147:24 4174:12 4175:13	<b>voluntary</b> 4163:3	<b>Weinstein</b> 3956:14 3957:16 4010:18 4088:12,13 4092:5,7,9,16	<b>while</b> 4009:19 4047:23 4119:21 4130:21 4210:20
<b>unfortunate</b> 3977:13 3988:9	<b>used</b> 3967:18,25 3985:24 3992:4 4036:15,17 4046:23 4050:23 4079:23 4155:5,7 4159:2 4227:17 4227:18	<b>W</b> <b>W</b> 3993:21 4007:19 4015:4	<b>welcome</b> 4075:15 4209:19	<b>white</b> 4118:1
<b>uniform</b> 4030:17 4031:7 4058:9 4090:17	<b>using</b> 4053:13 4083:22 4116:23 4175:22	<b>waist</b> 4177:14	<b>welfare</b> 4044:4 4065:24	<b>whole</b> 4055:15 4094:23 4119:9 4144:13,13 4184:21 4186:17
<b>union</b> 4049:22 4051:23	<b>usually</b> 3981:24 3992:11,19 4000:3 4047:5,9 4047:11,23,25 4049:22	<b>wait</b> 3983:17 4105:21 4106:4 4183:3	<b>wellness</b> 4033:18,23 4033:24 4034:13	<b>wife</b> 4033:4 4070:11 4070:12,20,24 4071:16,16 4072:8,12 4085:18 4104:21 4122:17
<b>unique</b> 4053:15 4095:16	<b>utilized</b> 4103:5	<b>waiting</b> 4027:7 4051:24	<b>well-being</b> 4034:14	<b>wild</b> 4038:18
<b>unit</b> 4010:24 4034:19 4042:16 4043:13 4045:2,3 4046:13,17,22 4047:5,18 4052:16 4054:12 4059:24 4066:22 4067:14,23 4069:3,12 4088:18,22 4095:12 4096:3 4098:25 4099:14 4099:18 4109:3 4113:1 4129:24 4134:6 4151:17 4153:1 4163:23 4164:3 4165:8,12 4224:16	<b>utmost</b> 3981:15	<b>waitress</b> 4115:15	<b>Wendy</b> 3956:6	<b>William</b> 4130:2
<b>unless</b> 3964:3 4025:15 4061:7 4091:21 4209:24	<b>validated</b> 4193:3	<b>walked</b> 4200:17	<b>went</b> 3979:21 3980:4,6,8,13,18 3981:24 3985:14 3985:18 3986:14 3989:20 3998:7 4001:20 4033:13 4034:16 4036:24 4039:9,12 4040:14 4042:8 4046:18 4103:1 4104:5 4112:24 4125:10 4126:4 4127:8,15 4139:5 4140:6 4150:11 4152:4 4153:15 4156:20 4161:2 4164:7 4169:17 4171:22,25 4172:6,9 4189:21 4190:15,17 4196:1 4197:19 4228:11 4236:2 4241:8	<b>wine</b> 3995:7
<b>unruly</b> 3978:14	<b>vantage</b> 4145:16,17 4179:1 4183:21 4205:6	<b>walking</b> 4155:18 4202:22	<b>were</b> 3974:16 3975:6 3976:2 3991:22 4008:5 4041:23 4057:4 4083:9 4094:23 4132:9 4168:3,4 4192:12 4193:9 4205:23 4211:4 4211:11 4233:2,3	<b>wing</b> 4169:12,12,16 4172:13
<b>unsuccessful</b> 4029:12	<b>variety</b> 4122:5 4171:21 4197:16	<b>wall</b> 4137:14 4138:5 4143:22 4146:25 4200:22 4204:15 4204:21 4209:6	<b>were</b> 3974:16 3975:6 3976:2 3991:22 4008:5 4041:23 4057:4 4083:9 4094:23 4132:9 4168:3,4 4192:12 4193:9 4205:23 4211:4 4211:11 4233:2,3	<b>wings</b> 3976:8 4006:24 4007:11 4007:12,14,16,17 4007:18 4008:1,3 4008:6 4150:12 4169:20,24 4170:1,4 4171:1,2 4171:6,7,20 4172:12 4187:25 4187:25 4188:1 4191:2 4235:4
<b>until</b> 3983:19 4002:1 4017:18 4054:15 4084:21 4087:17 4100:13 4103:7 4105:22 4106:14 4109:19 4132:23 4141:7 4218:9 4246:19	<b>various</b> 4016:10 4133:5 4181:13	<b>wanting</b> 4036:14 4043:12 4087:18	<b>were</b> 3974:16 3975:6 3976:2 3991:22 4008:5 4041:23 4057:4 4083:9 4094:23 4132:9 4168:3,4 4192:12 4193:9 4205:23 4211:4 4211:11 4233:2,3	<b>wires</b> 4211:5
<b>unusual</b> 4150:13	<b>vehicle</b> 4018:10 4030:8,21 4090:25 4162:22	<b>wants</b> 3995:12 4004:19	<b>were</b> 3974:16 3975:6 3976:2 3991:22 4008:5 4041:23 4057:4 4083:9 4094:23 4132:9 4168:3,4 4192:12 4193:9 4205:23 4211:4 4211:11 4233:2,3	<b>wish</b> 4080:2
<b>uphold</b> 4101:4	<b>vehicles</b> 4030:19 4140:2 4196:5 4236:12	<b>warn</b> 4136:16	<b>were</b> 3974:16 3975:6 3976:2 3991:22 4008:5 4041:23 4057:4 4083:9 4094:23 4132:9 4168:3,4 4192:12 4193:9 4205:23 4211:4 4211:11 4233:2,3	<b>witnesses</b> 3957:3 4027:6 4050:1 4051:13,25 4052:3 4060:17 4060:22 4061:4 4066:7 4098:10 4100:10 4107:22
<b>upper</b> 3996:21 3999:6 4007:21 4117:13 4204:5 4210:5,6	<b>Veldman</b> 4130:13 4157:6	<b>watch</b> 4238:14	<b>were</b> 3974:16 3975:6 3976:2 3991:22 4008:5 4041:23 4057:4 4083:9 4094:23 4132:9 4168:3,4 4192:12 4193:9 4205:23 4211:4 4211:11 4233:2,3	<b>woman</b> 4176:9 4228:12
<b>uppers</b> 4204:21	<b>version</b> 4142:18	<b>watched</b> 4237:10	<b>were</b> 3974:16 3975:6 3976:2 3991:22 4008:5 4041:23 4057:4 4083:9 4094:23 4132:9 4168:3,4 4192:12 4193:9 4205:23 4211:4 4211:11 4233:2,3	<b>wonder</b> 3993:19 4080:20
<b>upset</b> 4055:15 4071:1,2,3 4104:9 4104:16	<b>victim</b> 4033:9	<b>watching</b> 4149:17	<b>were</b> 3974:16 3975:6 3976:2 3991:22 4008:5 4041:23 4057:4 4083:9 4094:23 4132:9 4168:3,4 4192:12 4193:9 4205:23 4211:4 4211:11 4233:2,3	<b>wondering</b> 4081:3
<b>upside</b> 4137:5	<b>view</b> 4061:8 4073:5 4145:1 4157:22 4173:6 4174:16 4209:14 4214:1	<b>way</b> 3976:24,25 4003:25 4014:19 4031:6 4036:25 4041:25 4051:9 4058:4 4063:20 4065:7 4068:6,22 4081:13 4084:4 4096:13 4098:1 4098:17 4109:5 4112:9 4172:25 4196:7,21 4197:22 4199:22 4202:18 4209:18 4209:19 4239:8	<b>were</b> 3974:16 3975:6 3976:2 3991:22 4008:5 4041:23 4057:4 4083:9 4094:23 4132:9 4168:3,4 4192:12 4193:9 4205:23 4211:4 4211:11 4233:2,3	<b>word</b> 3963:2,4 3991:5 4036:15 4036:17 4104:14
<b>upstairs</b> 4200:6	<b>Vincent</b> 3956:3	<b>weapon</b> 4034:17	<b>were</b> 3974:16 3975:6 3976:2 3991:22 4008:5 4041:23 4057:4 4083:9 4094:23 4132:9 4168:3,4 4192:12 4193:9 4205:23 4211:4 4211:11 4233:2,3	<b>wording</b> 4227:4
	<b>virtue</b> 4052:6 4115:22	<b>wear</b> 4101:11	<b>were</b> 3974:16 3975:6 3976:2 3991:22 4008:5 4041:23 4057:4 4083:9 4094:23 4132:9 4168:3,4 4192:12 4193:9 4205:23 4211:4 4211:11 4233:2,3	<b>words</b> 4009:11 4016:2 4020:3 4026:11 4057:2 4106:4
	<b>vision</b> 4147:2	<b>wedding</b> 3984:23 4115:9	<b>were</b> 3974:16 3975:6 3976:2 3991:22 4008:5 4041:23 4057:4 4083:9 4094:23 4132:9 4168:3,4 4192:12 4193:9 4205:23 4211:4 4211:11 4233:2,3	
	<b>visit</b> 3997:25	<b>Wednesday</b> 4016:19 4081:17	<b>were</b> 3974:16 3975:6 3976:2 3991:22 4008:5 4041:23 4057:4 4083:9 4094:23 4132:9 4168:3,4 4192:12 4193:9 4205:23 4211:4 4211:11 4233:2,3	
	<b>visiting</b> 4155:13	<b>week</b> 4122:3 4123:11	<b>were</b> 3974:16 3975:6 3976:2 3991:22 4008:5 4041:23 4057:4 4083:9 4094:23 4132:9 4168:3,4 4192:12 4193:9 4205:23 4211:4 4211:11 4233:2,3	
	<b>visits</b> 4118:22,22,25 4119:1,3	<b>weekend</b> 4036:7 4112:2	<b>were</b> 3974:16 3975:6 3976:2 3991:22 4008:5 4041:23 4057:4 4083:9 4094:23 4132:9 4168:3,4 4192:12 4193:9 4205:23 4211:4 4211:11 4233:2,3	
	<b>vitality</b> 4058:16	<b>weekly</b> 3998:8 4113:24	<b>were</b> 3974:16 3975:6 3976:2 3991:22 4008:5 4041:23 4057:4 4083:9 4094:23 4132:9 4168:3,4 4192:12 4193:9 4205:23 4211:4 4211:11 4233:2,3	
	<b>voiding</b> 3968:20	<b>weeks</b> 4002:9 4045:22 4071:18 4071:18 4072:9	<b>were</b> 3974:16 3975:6 3976:2 3991:22 4008:5 4041:23 4057:4 4083:9 4094:23 4132:9 4168:3,4 4192:12 4193:9 4205:23 4211:4 4211:11 4233:2,3	
	<b>volume</b> 3955:17 4015:4 4080:21		<b>were</b> 3974:16 3975:6 3976:2 3991:22 4008:5 4041:23 4057:4 4083:9 4094:23 4132:9 4168:3,4 4192:12 4193:9 4205:23 4211:4 4211:11 4233:2,3	



<p><b>work</b> 3987:3,5,9,13 3987:13,14 4008:24 4030:15 4031:7 4032:18 4033:6 4057:17 4061:21,22 4081:16 4091:10 4091:14,18,22,24 4103:19,24 4112:5 4128:6 4132:22 4139:23 4142:20 4151:22 4202:5 4203:12 4207:6,9</p> <p><b>worked</b> 3960:5,9,11 3960:13,17 3993:15 3994:15 4068:11 4111:10 4112:21</p> <p><b>working</b> 4031:16 4067:2 4091:14 4091:18 4095:5 4111:13,15 4112:18 4122:6 4128:10,15 4132:23 4210:18 4213:25</p> <p><b>workplace</b> 4100:18 4103:7</p> <p><b>works</b> 4069:16,20 4111:7 4191:6,7</p> <p><b>world</b> 4083:21</p> <p><b>worse</b> 4097:3</p> <p><b>worst</b> 3977:18</p> <p><b>wouldn't</b> 3963:22 3965:12 3978:7 3978:17 3981:11 3991:13 3997:23 4001:17 4058:13 4081:6 4087:17 4090:4 4100:11 4102:13 4105:21 4116:7 4124:3,6 4139:8 4141:20 4145:13 4156:20 4170:19 4175:10 4177:3,17 4180:7 4181:16 4191:12 4195:8 4214:2 4222:18 4223:4 4240:9</p> <p><b>WPS</b> 3958:7 4076:22</p> <p><b>wrapped</b> 4204:4</p> <p><b>wraps</b> 4144:7,11 4213:5,23</p> <p><b>wrestling</b> 4205:16</p>	<p><b>written</b> 4077:21 4084:11 4089:16 4126:21,24</p> <p><b>wrong</b> 3963:8 4013:7 4038:3 4049:21 4057:6 4104:2 4139:18 4176:21 4197:24</p> <p><b>wrongly</b> 4037:22</p> <p><b>wrote</b> 4082:7 4084:2,7</p> <p><b>W3</b> 3996:13 3998:16</p> <p><b>W4</b> 4015:8</p> <p><b>W5</b> 3996:14,18 3999:1 4015:15</p> <p><b>W6</b> 4015:19</p> <p><b>W7</b> 4013:8 4015:23</p> <p><b>W9</b> 4142:16</p> <p><b>W9.10</b> 4142:21 4158:2</p> <p><b>W9.12</b> 4143:20</p> <p><b>W9.16</b> 4144:9 4176:1,3 4183:15</p> <p><b>W9.17</b> 4147:20 4148:12,13</p> <p><b>W9.18</b> 4147:21</p> <hr/> <p style="text-align: center;"><b>Y</b></p> <p><b>year</b> 4006:19</p> <p><b>years</b> 3960:10,10,15 3965:20 3966:25 3971:7 4008:19 4066:25 4085:24 4089:24 4093:2 4106:14 4110:18 4110:21 4187:20 4191:24 4192:15 4193:6</p> <p><b>yesterday</b> 3962:24 3972:12,25 3973:8 3997:7 4007:3 4142:24</p> <p><b>young</b> 4056:9 4057:23</p> <p><b>younger</b> 4009:2</p> <hr/> <p style="text-align: center;"><b>Z</b></p> <p><b>Zazelenchuk</b> 3956:10 3957:6 3957:14 3991:19 3994:1,3 4003:16 4003:20,24 4004:6,22 4005:6 4005:9,13,19 4006:13,16 4008:8 4074:7,9</p>	<p>4074:16,19,22 4075:2,4,5 4076:20 4077:1,2 4077:3 4081:1 4082:16,23 4086:6</p> <p><b>Zenk</b> 3969:17 3988:18 4019:12 4020:14 4032:17</p> <hr/> <p style="text-align: center;"><b>\$</b></p> <p><b>\$113.05</b> 4008:3 <b>\$2.75</b> 4016:22,22 4022:20 4023:15 4023:22 4024:2,8 4024:12,17 4171:14,24</p> <p><b>\$30</b> 4182:19 4187:23</p> <p><b>\$33</b> 4182:20 4183:1 4187:23 4190:25</p> <hr/> <p style="text-align: center;"><b>0</b></p> <p><b>00</b> 3999:23</p> <p><b>02/05/25</b> 3996:22</p> <p><b>05</b> 4234:22</p> <p><b>05-02-25</b> 3958:8,10 4076:23 4080:25</p> <p><b>05-02-28</b> 3958:3,5 4062:14 4063:2</p> <p><b>05-974901</b> 3958:12 4124:25</p> <p><b>08</b> 4234:20</p> <hr/> <p style="text-align: center;"><b>1</b></p> <p><b>1</b> 3999:7 4007:21 4170:17</p> <p><b>10</b> 4016:24 4119:11 4119:13 4153:6 4175:1</p> <p><b>10th</b> 4028:9</p> <p><b>10:30</b> 4017:4</p> <p><b>10:45</b> 4026:23</p> <p><b>10:46</b> 4027:14</p> <p><b>100</b> 3998:13 4001:18</p> <p><b>11</b> 3958:17 4012:20 4152:21,25 4170:21</p> <p><b>11th</b> 3964:24 3965:23 3966:7 3966:15 3969:22 3986:2,11 4012:17 4112:25 4126:1 4163:20</p> <p><b>11:00</b> 4017:5 4090:6</p>	<p><b>11:01</b> 4027:15</p> <p><b>11:20</b> 4029:15</p> <p><b>11:30</b> 4132:14,17 4132:22 4188:15</p> <p><b>12:00</b> 4132:14</p> <p><b>12:31</b> 4109:13,22</p> <p><b>13</b> 3958:14 4029:3 4082:2 4092:24 4111:11 4116:13 4129:13,17</p> <p><b>14</b> 4110:21</p> <p><b>1415</b> 4035:6 4039:2</p> <p><b>1440</b> 4039:3,10</p> <p><b>147</b> 4080:1</p> <p><b>15</b> 4003:25 4016:24 4159:13 4196:9 4196:11,16 4212:6</p> <p><b>152</b> 3993:20 4007:20 4013:9</p> <p><b>153</b> 4142:16</p> <p><b>158</b> 3958:3 4062:11 4062:12,17 4074:12,17,21,22 4084:10</p> <p><b>159</b> 3958:5 4062:21 4063:1 4074:12 4074:13,18,19,23 4084:10</p> <p><b>16</b> 3955:17 4191:17 4216:12</p> <p><b>160</b> 3958:7 4076:21 4076:22</p> <p><b>161</b> 3958:10 4080:22,23</p> <p><b>162</b> 3958:12 4124:23,24</p> <p><b>163</b> 3958:14 4129:9 4129:10,11,12</p> <p><b>164</b> 3958:16 4152:19,20</p> <p><b>168</b> 4138:5,21</p> <p><b>17</b> 3955:16 3959:1 4110:18</p> <p><b>17:50</b> 3958:6 4063:2</p> <p><b>18</b> 4176:12 4177:5,6</p> <p><b>19</b> 3996:12 3999:20 4000:1,6,13 4001:2,11,20 4023:11 4194:1</p> <p><b>19th</b> 4116:25</p> <hr/> <p style="text-align: center;"><b>2</b></p> <p><b>2</b> 3958:3 3999:10 4004:24 4005:7 4062:14 4186:1,5</p>	<p><b>2nd</b> 4054:20 4077:25</p> <p><b>2:00</b> 3985:3,4,6 4109:19,23 4184:23 4188:15 4194:19,21</p> <p><b>2:30</b> 3985:5 4132:24</p> <p><b>2:45</b> 4218:12</p> <p><b>2:47</b> 3985:9,12</p> <p><b>20</b> 4016:24 4196:11 4211:1 4235:3</p> <p><b>2004</b> 4111:21</p> <p><b>2005</b> 3958:15,17 3959:23 3960:22 3964:24 3986:4 3991:20 3994:9 3997:2 4002:1 4003:10 4012:17 4012:21 4013:1 4016:2 4018:5 4019:8 4028:16 4037:22 4062:2 4062:23 4077:8 4088:4 4092:22 4106:25 4107:9 4111:4,18 4112:25 4114:9 4114:10 4116:11 4121:9 4129:14 4152:21,25</p> <p><b>2006</b> 4003:10</p> <p><b>2007</b> 4028:9</p> <p><b>2008</b> 3955:16 3959:1 3972:15 4116:25</p> <p><b>21</b> 4174:25</p> <p><b>22</b> 4165:13 4216:1 4216:15</p> <p><b>22nd</b> 4106:25 4107:8,9</p> <p><b>23</b> 4191:17</p> <p><b>24</b> 3958:15 4013:1 4016:2 4129:14 4177:8 4193:13</p> <p><b>24th</b> 3964:19 3974:7 3984:24 3988:1 3994:8 3995:21,23 3997:1 4021:3 4024:10 4111:17 4115:15 4120:9 4121:23 4128:4</p> <p><b>24th/25th</b> 4126:15</p> <p><b>24-hour</b> 4051:24 4052:7</p> <p><b>24-hours</b> 4049:6</p>
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<p><b>240</b> 4188:24  <b>25</b> 4039:1 4187:25              4188:1 4191:1  <b>25th</b> 3964:19              3974:7 3984:25              3988:1 3995:19              3995:22 4021:3              4024:10 4028:16              4077:8 4090:6              4091:23 4111:17              4119:8,21 4120:9  <b>26</b> 4004:24 4005:6              4005:12 4216:2              4228:25  <b>26'er</b> 4214:23              4218:24 4219:1  <b>26-ounce</b> 4214:9,12  <b>26-ounces</b> 4214:19  <b>28th</b> 4035:1 4062:1              4062:22 4070:4              4079:7 4103:1  <b>2990</b> 4080:21              4081:12</p> <hr/> <p style="text-align: center;"><b>3</b></p> <hr/> <p><b>3</b> 3995:17,18,24,25              3996:3 3998:14              3998:23 3999:13              4028:18,21              4030:6 4039:9,12              4092:24 4103:10              4111:10 4122:11              4170:21 4185:25              4224:6 4243:19  <b>3:00</b> 4218:12  <b>3:26</b> 4195:15,19  <b>3:40</b> 4195:20  <b>30</b> 4000:20 4001:5              4001:15  <b>3053</b> 4168:19  <b>3054</b> 4185:14              4190:22 4206:15              4206:15 4243:7  <b>3055</b> 4207:24              4224:1 4225:5              4243:15  <b>3057</b> 4126:11  <b>3067</b> 4077:2  <b>323</b> 4008:3  <b>33.b</b> 4129:8  <b>35</b> 4218:24  <b>35.c</b> 4152:17  <b>36</b> 4218:21 4219:2  <b>3959</b> 3957:5  <b>3991</b> 3957:6</p> <hr/> <p style="text-align: center;"><b>4</b></p>	<p><b>4</b> 3975:9 4219:5  <b>4.483</b> 4029:16  <b>4:00</b> 4034:8  <b>4:00'ish</b> 4075:19  <b>4:10</b> 4082:25  <b>4:18</b> 4080:7 4083:3  <b>4:28</b> 4246:8  <b>4:29</b> 4246:20  <b>40</b> 3975:9 4072:20  <b>4008</b> 3957:7  <b>4010</b> 3957:8  <b>4018</b> 3957:9  <b>4020</b> 3957:10  <b>4027</b> 3957:13  <b>4062</b> 3958:3  <b>4063</b> 3958:5  <b>4074</b> 3957:14  <b>4076</b> 3958:7  <b>4080</b> 3958:10  <b>4086</b> 3957:15  <b>4088</b> 3957:16  <b>4092</b> 3957:17  <b>4102</b> 3957:18  <b>4107</b> 3957:19  <b>4110</b> 3957:22  <b>4124</b> 3958:12  <b>4129</b> 3958:14  <b>4152</b> 3958:16  <b>42</b> 4007:4,10  <b>46</b> 4137:12,12,21</p> <hr/> <p style="text-align: center;"><b>5</b></p> <hr/> <p><b>5</b> 3995:1,2 4007:19              4007:23 4126:12  <b>5:30</b> 4013:4              4014:20 4017:4  <b>5:50</b> 4070:9  <b>59</b> 4030:11</p> <hr/> <p style="text-align: center;"><b>6</b></p> <hr/> <p><b>6'5</b> 4188:24  <b>6:10</b> 4082:24  <b>6:30</b> 4072:20  <b>60</b> 4169:25  <b>61</b> 4000:17  <b>68</b> 4016:22,24</p> <hr/> <p style="text-align: center;"><b>7</b></p> <hr/> <p><b>7</b> 3993:20 3994:4  <b>7th</b> 4126:4  <b>7-Eleven</b> 4196:21              4197:13  <b>7.7</b> 4080:17 4085:4  <b>7:00</b> 3990:19              4013:21 4014:1,3              4031:5 4090:20              4128:23</p>	<p><b>79</b> 4137:25</p> <hr/> <p style="text-align: center;"><b>8</b></p> <hr/> <p><b>8</b> 4007:10  <b>8:00</b> 3990:19              4014:1  <b>899</b> 4153:5 4159:9</p> <hr/> <p style="text-align: center;"><b>9</b></p> <hr/> <p><b>9</b> 4117:7,13,22              4118:3,9 4153:7,8              4153:17  <b>9th</b> 3972:14              4005:21  <b>9:00</b> 4013:16  <b>9:30</b> 4246:17,19  <b>9:31</b> 3959:2  <b>900</b> 4170:14  <b>901</b> 4165:9,13              4166:13 4167:12  <b>902</b> 4166:13  <b>905</b> 4215:20              4224:18  <b>906</b> 4215:20              4224:17,18  <b>986-2854</b> 4029:7</p>		
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