

INQUIRY INTO THE INVESTIGATION AND
PROSECUTION OF DEREK HARVEY-ZENK

The Honourable Roger Salhany, Q.C., Commissioner

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

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Tuesday, July 22, 2008

Volume 18

INQUIRY PROCEEDINGS

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1 TUESDAY, JULY 22, 2008

2 UPON COMMENCING AT 9:00 A.M.

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

5 THE COMMISSIONER: Good morning.

6 MR. PACIOCCO: Good morning,
7 Mr. Commissioner. There are a couple of matters
8 of housekeeping that have to be attended to before
9 we commence with Constable David Harding with the
10 Winnipeg Police Service.

11 THE COMMISSIONER: Yes.

12 MR. PACIOCCO: The first is that, as
13 you are aware, Mr. Commissioner, and as the public
14 is not, yesterday at 3:00 o'clock we adjourned
15 early. And the purpose of that adjournment was to
16 conduct further investigation in the nature of an
17 interview, with all counsel present, of a Winnipeg
18 Police Officer, Constable Tracey Fudge, for the
19 purpose of securing her testimony for these
20 proceedings.

21 We took the extraordinary measure of
22 interviewing her at the Commission office because
23 the nature of her work requires that her image not
24 be broadcast. And for that reason, we have done
25 it that way. And I have the consent of all

1 parties to file the transcript of the testimony
2 given by Tracey Fudge yesterday. This was, of
3 course, done for the purposes of the record,
4 Mr. Commissioner, in your absence. I would like
5 to file now, if I could, the statement of Tracey
6 Fudge given to the Professional Standards Unit of
7 the Winnipeg Police as Exhibit 167. That is the
8 document found at tab F-1.35.e. F-1.35.e, if that
9 could please be made Exhibit 167.

10 THE CLERK: Exhibit 167.

11 (EXHIBIT 167: F-1.35.e, Transcript
12 Interview of Cst Tracey Fudge, March
13 25, 2005)

14 MR. PACIOCCO: In addition, we have
15 secured the transcript of the testimony of
16 Constable Fudge. We would ask that that
17 transcript which has been furnished to the clerk
18 and to each of the parties present today be made
19 Exhibit 168.

20 THE CLERK: Exhibit 168.

21 (EXHIBIT 168: Transcript of
22 Proceedings July 21, 2008 - Evidence
23 of Tracey Fudge)

24 MR. PACIOCCO: The second matter of
25 housekeeping, Mr. Commissioner, has to do with the

1 question, unfortunately, of disclosure. When
2 Chief McCaskill of the Winnipeg Police Service
3 came to testify last Thursday, he brought with him
4 a note of a meeting that had taken place between
5 himself and Mr. Derek Harvey-Zenk. It was
6 ultimately made Exhibit 159 in these proceedings.
7 It was furnished to us by Winnipeg Police Service
8 that morning, and it was referred to in the
9 testimony of Chief McCaskill at some length by
10 many counsel.

11 It was a document that, in my
12 respectful submission, should have been disclosed
13 earlier. I did not raise the issue directly at
14 that point, other than to comment on the late
15 disclosure, because I wanted an opportunity to
16 talk to the Winnipeg Police Service counsel. As a
17 result of the discussion, my understanding, and
18 certainly Ms. Hanlin can make her own
19 representations as to whether I'm correctly
20 paraphrasing her discussion with me, was that a
21 distinction has been drawn for the purposes of
22 disclosure between administrative documents and
23 investigative documents. And the position taken
24 by the Winnipeg Police Service is that any
25 document that has to do with administrative

1 matters is not appropriate to be disclosed in
2 these proceedings. And that is why the
3 explanation was given that the document, which is
4 now exhibit 159, was not handed over. It was
5 deigned to be an administrative document rather
6 than an investigative document.

7 You are going to hear evidence today
8 that both the administrative and criminal
9 investigations conducted by the Winnipeg Police
10 Service occurred simultaneously, and that the
11 witness interviews that were conducted by the
12 Professional Standards Unit were conducted for
13 both purposes. There is an intricate overlap
14 between the criminal investigation and the
15 administrative proceedings.

16 The question, in my respectful
17 submission, is not whether a document is
18 administrative or investigative. The question,
19 under the terms of reference, the rules, and under
20 the guides of disclosure, and I have arranged to
21 have the clerk put the document on your desk, has
22 to do with the relevance of the information.
23 There is comments on reciprocal disclosure that
24 you will find in the initial guide to disclosure
25 that set out the rules that are provided and were

1 given to all parties, and agreed to by all
2 parties. Unfortunately, that guide is not
3 paginated all the way through. Each individual
4 document within it is paginated.

5 You will find under the heading "The
6 Taman Inquiry Disclosure Agreement," which should
7 be immediately after the preliminary table of
8 contents, a guide with some pagination. And you
9 will find at page 4 of that document the
10 reciprocal disclosure rules. At the top of the
11 relevant page, it says "Note reciprocal
12 disclosure" and it reproduces the rules. Rule 11
13 requires that the parties produce to the
14 Commission true copies of all documents in their
15 possession or control having any bearing on the
16 subject matter of the inquiry.

17 The note by Commission Counsel
18 requesting the facilitation of that order
19 specifies in paragraph one below that all internal
20 memos and e-mails and other documents that are not
21 clearly irrelevant to the investigation or
22 prosecution of Mr. Harvey-Zenk be produced.

23 What I'm going to ask of you,
24 Mr. Commissioner, is I am going to ask you to
25 direct Winnipeg Police Service counsel to review

1 again the documents that have been withheld from
2 disclosure, and that the criteria during review is
3 not whether they are administrative or
4 investigative, the criteria is whether any of
5 those documents contain any of the kinds of
6 information that has been presented in evidence in
7 these proceedings, or is the subject of other
8 documents that are clearly going to be made use of
9 in these proceedings. There may be documents
10 considered administrative which contain
11 information as to whether Mr. Derek Harvey-Zenk
12 had a memory of the events. There may be
13 admissions made or concessions with respect to the
14 administrative leave and ultimate suspension
15 hearing. Whether the documents have any bearing
16 on the subject matter of the inquiry is the
17 criteria, and not simply whether they fall into an
18 administrative or investigative basket. And I'm
19 going to certainly take my seat and allow
20 Ms. Hanlin to respond.

21 THE COMMISSIONER: Thank you.

22 MS. HANLIN: Good morning,
23 Mr. Commissioner.

24 THE COMMISSIONER: Good morning.

25 MS. HANLIN: The rules, rule 11

1 states:

2 "Any documents in possession or
3 control having any bearing on the
4 subject matter at the inquiry."

5 The order-in-council 1(a), states:

6 "To inquire into the conduct of the
7 police investigation surrounding the
8 death of Crystal Taman on February 25,
9 2005, including but not limited to the
10 correctness and adequacy of the
11 procedures and practices that were
12 followed and the good faith
13 objectiveness and professional
14 standards with which procedures and
15 practices were applied and decisions
16 made."

17 Mr. Commissioner, with all due respect, it does
18 not apply to internal administrative matters of
19 the Winnipeg Police Service how Mr. Harvey-Zenk's
20 employment was dealt with.

21 THE COMMISSIONER: Why do you say
22 that? If it's relevant to the issue in the
23 order-in-council, why is it -- why can it be, not
24 become relevant, or the rule does not apply simply
25 because it has been designated as an

1 administrative memo?

2 MS. HANLIN: It's not so much whether
3 or not it's designated as an administrative memo,
4 but indeed whether it is relevant. And it's our
5 position that those documents --

6 THE COMMISSIONER: Well, isn't that
7 for me to determine whether it's relevant?

8 MS. HANLIN: That's correct,
9 ultimately.

10 THE COMMISSIONER: Yes. Well, how can
11 I determine whether it is relevant without it
12 being shown to me and I can make that decision?

13 MS. HANLIN: It would be our position
14 that that would not necessarily be fair to the
15 Winnipeg Police Service, given the rules of
16 disclosure and the terms of the order-in-council.

17 THE COMMISSIONER: Well, if it is
18 relevant, then it falls within the terms of the
19 order-in-council. Its relevancy can only be
20 determined by my examining the document and
21 determining whether it is relevant.

22 Now, therefore, I need to see the
23 document. Counsel needs to see the document.
24 Mr. Paciocco, you have seen the document?

25 MS. HANLIN: There are a few documents

1 that do relate to internal administrative matters.
2 What I would propose is showing them to you,
3 Mr. Commissioner.

4 THE COMMISSIONER: I'm sorry?

5 MS. HANLIN: What I would propose is
6 having -- showing them to you confidentially, and
7 having you make a determination as to whether or
8 not they are relevant.

9 THE COMMISSIONER: Well, maybe
10 Mr. Paciocco will look at it and say it isn't
11 relevant and will not present it. But his role,
12 as Commission Counsel, is to present all evidence
13 that he considers to be relevant in these
14 proceedings. And if you take the position that it
15 is not relevant, then I will hear the point, I
16 will hear both of you. So now, produce the
17 document -- document or documents, and let's get
18 on with this hearing. All right.

19 MS. HANLIN: Thank you.

20 THE COMMISSIONER: Show them to
21 Mr. Paciocco and he will make a determination
22 whether he intends to produce them for my
23 consideration.

24 MR. CLIFFORD: Good morning,
25 Mr. Commissioner.

1 THE COMMISSIONER: Good morning.

2 MR. CLIFFORD: The first witness for
3 today is Constable David Harding.

4 DAVID HARDING, being first duly sworn,
5 testified as follows:

6 THE COMMISSIONER: Good morning.

7 THE WITNESS: Good morning, sir.

8 BY MR. CLIFFORD:

9 Q Good morning, Constable Harding.

10 A Good morning.

11 Q Sir, I wanted to start by asking you
12 about your level of experience in policing as of
13 February 2005?

14 A I had been a member of the Police
15 Service for just under two years at that point.

16 Q And where did you gain your
17 experience, sir?

18 A In the beginning, obviously at the
19 Police Academy, and then I was assigned to
20 District 3, uniform.

21 THE COMMISSIONER: Can you tell me
22 where --

23 THE WITNESS: District 3, that's the
24 North End.

25 THE COMMISSIONER: Can you tell me

1 where the Police Academy is? I am not familiar
2 with it.

3 THE WITNESS: Sure. It's actually an
4 old elementary school out in St. James on Allard
5 Street.

6 THE COMMISSIONER: Are all police
7 officers required to go through this Academy
8 before they qualify as a police officer?

9 THE WITNESS: That's correct, yeah.

10 THE COMMISSIONER: Thank you.

11 BY MR. CLIFFORD:

12 Q So as of February 25th, '05, you were
13 a relatively new member of District 3?

14 A Yes.

15 Q A young constable. And is that where
16 you met Derek Harvey-Zenk?

17 A Yes.

18 Q I want to ask you now, sir, about your
19 interaction or communications with Branigan's
20 Restaurant. We have heard evidence, sir, with
21 respect to officers going there on a certain
22 basis. And I understand, sir, that you were quite
23 frequently involved in calling Branigan's to make
24 arrangements for officers to attend there?

25 A Yes.

1 Q And you indicated, sir, at one point
2 to the Commission that, in your recollection, the
3 officers gathered there about once per month?

4 A Yeah, I would say that.

5 Q And that would be consistent through
6 your just under two years experience at District
7 3, as of February 2005?

8 A Yes, but not throughout those two
9 years. It would have been in the few months
10 leading up to that, but definitely not over those
11 two years where it was a once a month thing.

12 Q When you say in the few months leading
13 up to February 25th, are you referring to the
14 previous two, three, four months?

15 A Yes.

16 Q And which of that would it be? Was it
17 the previous two, three, or four, or were there
18 other months where you went?

19 A I'm not sure exactly how many months.
20 Definitely more than two or three.

21 Q More than two or three?

22 A Yes.

23 Q And I take it that you can provide
24 that evidence with some degree of certainty. And
25 I understand that you can't give a number, but you

1 would have been responsible for making the
2 arrangements to go over there; is that right?

3 A At times, not every time.

4 Q Say for the previous two trips to
5 Branigan's as a group of officers, would it have
6 been you that made the arrangements for everybody
7 to go?

8 A I can't tell you that for sure, no.

9 Q And it was certainly you that made the
10 arrangements in February of 2005?

11 A Yes, I called that day.

12 Q And we have also, I also understand,
13 sir, that this would happen when you got to the
14 end of a rotation where you were working evening
15 shifts, where the shift would stop or plan to stop
16 working at 2:30, that the officers could take
17 extra time off that they had accumulated in
18 overtime and apply it and get out a little bit
19 early?

20 A Sometimes, yes, if was permitted.

21 Q And that's, in fact, what had occurred
22 on February 25th, right?

23 A Yes, sir.

24 Q And when did you put the word out,
25 sir, so to speak, within the police force that

1 this event was going to be taking place?

2 A Well, I wouldn't say it was within the
3 police force, it was just a night out after work.
4 I didn't essentially put the word out, it was just
5 spoken amongst the shift.

6 Q When I indicated to you, sir, put the
7 word out amongst the police force, I wasn't
8 referring to the entire Winnipeg --

9 A Okay.

10 Q -- Police establishment. We have a
11 very clear idea here at the Commission who was
12 involved and who went to Branigan's, and who also
13 went to Officer Black's. So let me put the
14 question to you again, sir. Was it you that was
15 responsible for letting your shift mates know that
16 there was going to be a gathering at Branigan's?

17 A My whole shift, no. Did I tell a few
18 people? Certainly.

19 Q How many people did you tell?

20 A I'm not sure.

21 Q When did you tell them?

22 A Perhaps that evening.

23 Q Do you know, sir, when you were
24 discussing the event with your shift mates?

25 A It may have come up at shift briefing.

1 Q And shift briefing, I take it, occurs
2 at the beginning of the shift?

3 A That's correct.

4 Q So what time did you start work that
5 day?

6 A At 1630 hours.

7 Q Had there been any discussion prior to
8 that, perhaps the day before?

9 A I'm not sure. Possibly, but I don't
10 remember that, if there was.

11 Q Can we take your evidence, sir, to be
12 more accurately that you don't recall when you
13 started to tell your shift mates about the
14 possibility of getting together at Branigan's?

15 A Yeah, that would be safe to say. I
16 mean, like I had said earlier, we had attended
17 there a few times. So some of those times when we
18 were discussing if we were going out after work
19 kind of blend together in my memory, just because
20 of the duration of time that has gone on since the
21 incident?

22 Q The times that you went to Branigan's
23 together as police officers, they have blended
24 together in your memory?

25 A I would say so a little bit, yes.

1 Q Notwithstanding the fact that
2 February 25th ended in the tragic death of a woman
3 at the hands of one of your fellow officers?

4 A I take nothing away from that date in
5 that sense. But, yes, there were a few times we
6 had been there.

7 Q What were they referred to as? What
8 were these gatherings referred to as?

9 A Which gatherings, going to Branigan's?

10 Q Yeah, going out at the end of the
11 shift on that rotation, when you come to the end
12 of the evening cycle, once a month or so?

13 A They weren't referred to anything.

14 Q What about a shifter?

15 A I have never used that term.

16 Q What did you understand it to mean?

17 A Perhaps in the earliest times when I
18 got onto the service, it seemed like it was an
19 organized event where you perhaps bring food. But
20 I've never used the term and I am not comfortable
21 defining it, because I've never used it.

22 Q Didn't you define it in your interview
23 with Commission Counsel meaning that a group of
24 officers would get together to go to a house
25 party?

1 A Similar to what I just said, yes, sir.

2 Q That's what happened that night, a
3 group of officers got together, went to a bar,
4 stayed till closing and went to someone's house?

5 A Yes, but it wasn't like that, it
6 wasn't a shifter, in my definition of even knowing
7 what that was.

8 Q You indicated to Commission counsel on
9 prior occasion that a shifter was more of a house
10 party type thing?

11 A Um-hum, where it was planned, spouses
12 may come, food was brought was my impression.
13 But, again, sir, I have never used that term.

14 Q But you understood the term existed.
15 You gave me a definition when I interviewed you,
16 your understanding of it?

17 A Yes.

18 Q You went to a house that night with a
19 bunch of officers after being in a bar?

20 A Yes.

21 Q And you got intoxicated. We have
22 heard evidence that you ended up, amongst other
23 things, lying down and going to sleep there?

24 A Yes.

25 Q For some time during the middle of the

1 gathering?

2 A That's true, sir.

3 Q You were partying then, were you not?

4 A I wasn't partying, no, sir.

5 Q Let me ask you some questions, sir,
6 just about being at Branigan's?

7 A Um-hum.

8 Q Who did you sit with when you first
9 arrived there?

10 A I'm not sure exactly who I sat with,
11 and that was only after reviewing my previous
12 statement to Professional Standards that I had
13 indicated that I sat with Marnie Nechwediuk.
14 Mr. Commissioner, may I refer back to that?

15 THE COMMISSIONER: Of course, take
16 your time. Go through your statement.

17 BY MR. CLIFFORD:

18 Q What I will do, Constable Harding, it
19 would be efficient if at this point we identify
20 your statement. And what the witness is referring
21 to, Mr. Commissioner, is a statement that he gave
22 to the Winnipeg Professional Standards Unit on
23 March 2nd, 2005. And I'm going to ask that that
24 be provided to the witness. You have a copy?

25 A I do, sir, yes.

1 Q And does your copy have pages on the
2 bottom right-hand side starting at 951?

3 A No, mine start in the 1200s.

4 THE COMMISSIONER: What book is it in?

5 MR. CLIFFORD: It's in book F-1,
6 Mr. Commissioner.

7 THE COMMISSIONER: Thank you.

8 MR. CLIFFORD: And this document is
9 found at F-1.35.g, and it's at page 951. And if
10 you could, Madam clerk, make that the next
11 exhibit.

12 THE CLERK: Exhibit 169.

13 (EXHIBIT 169: F-1.35.g, Transcript
14 Interview of Dave Harding, March 2,
15 2005)

16 BY MR. CLIFFORD:

17 Q Constable Harding, you have Exhibit
18 169 before you, which is a copy of your March 2nd,
19 2005 statement. Did you have an opportunity, sir,
20 to review the statement prior to testifying?

21 A I have, yes.

22 Q And the question that's put to you,
23 sir, is when you got to Branigan's, can you tell
24 me where you were and who you were sitting with?

25 A As I had indicated initially to

1 Professional Standards, I was -- I first
2 arrived -- it seems people were arriving
3 simultaneously. I was first sitting with
4 Christian Guyot, Ted Michalik and Marnie
5 Nechwediuk.

6 Q Yes, sir, and with respect to
7 refreshing your memory on where you are sitting,
8 I'm looking at page 956 of your interview with
9 Professional Standards Unit.

10 A Yes.

11 Q Can you recall telling the
12 Professional Standards Unit, sir, that at the end
13 of the table where you were sitting was Christian
14 Guyot, Marnie?

15 A It's Nechwediuk.

16 Q Nechwediuk, thank you, and Gord
17 Schneider?

18 A Yes.

19 Q And --

20 A More people arrived than I indicated,
21 Ted Michalik, Al Williams and Jules Buors.

22 Q Now, if we could, sir, you have also
23 described further in your interview that there
24 were high tables and low tables in the lounge
25 area?

1 A Yes, sir.

2 Q And can you tell me, sir, where you
3 were sitting? Were you at the high or the low
4 tables?

5 A I was sitting at the high tables.

6 Q And who were you -- at the end of the
7 high tables, do I understand that this is where
8 Christian Guyot was, Marnie Nechwediuk and Gord
9 Schneider?

10 A Yes.

11 Q So that was at the end of the table.
12 How many feet away from you would that have been?

13 A They were -- I believe I'm saying here
14 that this was at the end of the table where I was
15 sitting. I was sitting amongst these people, so
16 they wouldn't have been feet away from me, they
17 would have been --

18 Q I see that. You're indicating, "At my
19 end of the table I was sitting with --

20 A Yes.

21 Q -- Guyot, Nechwediuk and Schneider."
22 Who else was there, sir?

23 A Throughout the evening at the table?

24 Q We're going to stay at that part of
25 the table for a moment.

1 A From my memory, I don't recall anyone
2 else sitting there. I indicate later on that
3 Tracey Fudge, Sammy Haddad, Norbert Bauer, Sean
4 Black, Ken Azaransky, Jack Kapka, Derek
5 Harvey-Zenk, Jim Anderson are all arriving. I
6 can't specifically tell you exactly where everyone
7 was sitting based on my memory. But from my
8 statement, this is what I have indicated, that
9 those are the people that I would have been
10 sitting with.

11 Q So you would have arrived and been
12 there with these individuals prior to the arrival
13 of Derek Harvey-Zenk and the other persons that
14 you indicated arrived later?

15 A I believe so.

16 Q And they would have included Ted
17 Michalik, Al Williams and Jules Buors?

18 A That's correct.

19 Q How long had you been there prior to
20 Derek Harvey-Zenk arriving?

21 A I'm not sure.

22 Q Where did Derek Harvey-Zenk sit?

23 A As I indicated in my statement to
24 Professional Standards, he was sitting further
25 down the high tables from me, kind of at the end

1 of the tables that were put together.

2 Q You indicated in your Professional
3 Standards interview, sir, that he would have been
4 on the end, three or four tables down?

5 A I believe so, yes.

6 Q Do you recall that?

7 A Specifically, no, I don't recall that.
8 That's what I have indicated in my statement which
9 was given a few days after that event.

10 Q Your statement was given on March 2nd,
11 2005?

12 A That's correct.

13 Q Following the 25th of February. And I
14 take it at that point, you had a recollection of
15 who you were sitting with in Branigan's on
16 March 2nd?

17 A Yes, as I had indicated earlier.

18 Q And you had a recollection of seeing
19 Derek Harvey-Zenk at the end of the table?

20 A Yes, sir.

21 Q Three, four tables down?

22 A Yes.

23 Q And how many feet away from you would
24 he have been?

25 A Perhaps to the end of

1 Mr. Commissioner's table, from me to the end of
2 that table I believe.

3 Q What's your approximation then of the
4 distance that you were from Derek Harvey-Zenk?

5 A Twelve feet, 14 feet.

6 Q So were you on one end and he's
7 basically on the other end?

8 A I'm not sure if I was right on the
9 end. I may have been towards the end, but I don't
10 think I was right on the end.

11 Q Do you know whether you were on the
12 end?

13 A No, I don't, sir.

14 Q Any explanation for not knowing where
15 you were sitting in Branigan's?

16 A This occurred a long time ago.

17 Q What were you drinking at Branigan's,
18 Constable?

19 A Beer.

20 Q And how many beers did you have?

21 A Four or five, I believe.

22 Q You say "four or five, I believe."
23 I'm going to ask you to be as accurate as you can
24 with respect to your alcohol consumption there?

25 A Four or five.

1 Q And how tall are you, sir?

2 A Pardon me?

3 Q How tall are you?

4 A Six feet.

5 Q What's your weight?

6 A 230.

7 Q Had you had anything to drink prior to

8 arriving there?

9 A No, sir.

10 Q You had been there in the past

11 drinking beers with friends and fellow officers?

12 A Yes.

13 Q Have you had that many to drink, four

14 or five?

15 A On those occasions?

16 Q Yeah.

17 A I'm not sure.

18 Q Is that heavy consumption for you,

19 sir?

20 A That's a lot, yes.

21 Q What were you drinking?

22 A Beer.

23 Q What type of beer, sir, draft,

24 bottles?

25 A Oh, draft.

1 Q Now, we've heard there were \$2.75
2 pints being made available. And by that I mean
3 pints of beer that were sold at a discount rate of
4 \$2.75. Is that what you were having?

5 A I believe so. I was having pints, I
6 don't recall what the price was.

7 Q You bought those pints for yourself?

8 A Yes, I did.

9 Q Now, I understand that other people
10 were buying you beer?

11 A No, I don't think so. I had indicated
12 that I believed Sergeant Swanson had purchased me
13 a beer.

14 Q Okay. I'm going to refer you to page
15 959 in your Winnipeg interview.

16 A Yes, sir.

17 Q At line 7, Sergeant Girard indicated,
18 or asked the question:

19 "Okay. Now was there anybody in the
20 group that you know of, was there a
21 tab going for anything or..."

22 And you respond:

23 "Not that I know of. I know a few
24 times a beer appeared in front of me
25 that I didn't necessarily order. But

1 I know Lloyd Swanson had bought a few
2 beers, but otherwise I don't know."

3 Now, sir, does that refresh your memory on whether
4 there was more than one time when someone bought a
5 beer for you?

6 A I don't believe anyone else was buying
7 beers, that I remember, that I know of.

8 Q Well, you have indicated here:

9 "I know a few times a beer appeared in
10 front of me that I didn't necessarily
11 order."

12 If you ordered something, you would have paid for
13 it?

14 A Yes, sir.

15 Q So you are saying there's a few times
16 a beer appeared in front of me that you didn't
17 order. These would be people buying you beer,
18 would they not?

19 A Not necessarily, no.

20 Q Where were they coming from?

21 A Perhaps the server had brought them
22 without asking. I don't know.

23 Q So I'm trying to refresh your memory,
24 sir, on whether you could be corrected here on the
25 point of whether somebody bought you one beer or

1 whether there were a few beers that people bought.
2 And I understand your position, sir, is you're
3 holding firm to a recollection of only receiving
4 one free beer, despite the fact that you indicated
5 on March 2nd, 2005, that a few times a beer
6 appeared in front of you?

7 A Um-hum. I'm not sure, though, if that
8 was purchased for me or if I perhaps grabbed
9 someone else's. I don't know, sir.

10 Q I take it if a beer appeared in front
11 of you, you would have consumed it?

12 A Yes.

13 THE COMMISSIONER: Who is Lloyd
14 Swanson?

15 THE WITNESS: He was a shift member at
16 the time.

17 THE COMMISSIONER: I see.

18 THE WITNESS: I'm not sure if he had
19 been promoted recently, or I'm not sure why he had
20 purchased me a beer.

21 THE COMMISSIONER: Page 959, you say:
22 "I know Lloyd Swanson had bought a few
23 beers."

24 THE WITNESS: Um-hum. I don't
25 necessarily mean for me. I believe he may have

1 bought a few beers for a few officers.

2 THE COMMISSIONER: I see. Okay.

3 BY MR. CLIFFORD:

4 Q All right. So can we agree, sir, that
5 you purchased for yourself four or five beers, and
6 that there were a few times when a beer appeared
7 in front of you, whether accidentally, the
8 waitress gave it to you by mistake or somebody
9 else bought it for you?

10 A I believe I had said I consumed five.
11 I'm not sure I had purchased myself those four or
12 five.

13 Q What were the individuals that were
14 sitting around you, sir, at your end of the table,
15 what were they having to drink?

16 A I'm not sure.

17 Q The Commission has received evidence,
18 sir, that these tables are very small in diameter.
19 They are small tables, sir, they are round. What
20 did you see on the tables in front of you?

21 A What did I see?

22 Q Yeah. What alcoholic beverage was on
23 the table in front of you, where you and the
24 officers you were sitting with --

25 A I don't specifically remember seeing

1 what was on those tables, sir.

2 Q No recollection?

3 A I won't say no recollection. I
4 believe there may have been beer on the table, but
5 I don't have a specific recollection of what was
6 on the table.

7 Q When you look in your mind's eye, sir,
8 and take yourself back to February 25th, is it
9 your testimony, sir, that you do not even have a
10 general recollection of alcoholic beverages being
11 on the table in front of you?

12 A No.

13 THE COMMISSIONER: I think he said
14 there was beer on the table but he had no specific
15 recollection of --

16 THE WITNESS: Of who it was in front
17 of, or who it was consuming it, I don't know. And
18 it would be unfair to assume or pretend I even
19 remember that.

20 BY MR. CLIFFORD:

21 Q So I understand your position there's
22 beer on the table, you recall seeing it there, but
23 you cannot indicate who the beverages were in
24 front of, or who, if anybody, consumed them?

25 A That's right.

1 Q Did you see food on the table?

2 A Yes, there is -- we had wings. Again,
3 I don't know who ate which wings, but I know I had
4 wings and there was wings on the table.

5 Q You know how many wings Derek
6 Harvey-Zenk ate, don't you?

7 A I do, yes.

8 Q You were very clear with the Winnipeg
9 Police, you told them -- they asked you:
10 "Do you know how much Derek Harvey
11 Zenk was drinking?"

12 You said:

13 "No idea."

14 And they asked you:

15 "All right. What about food?"

16 You said:

17 "Food, I can tell you he had 40
18 wings."

19 This is at page 959 in your Winnipeg Professional
20 Standards?

21 A I told you the same thing.

22 Q That's right. And how is it, sir,
23 that you can have no recollection at all of
24 anybody taking a drink, either in front of them or
25 taking a drink to their mouth, but you are able to

1 tell the Winnipeg Professional Standards Unit that
2 you can tell them that Derek Harvey-Zenk had 40
3 wings?

4 A I can. I can't tell you what other
5 people ate, but I can tell you that he did eat
6 that.

7 Q How can you tell, how could you have
8 told the Winnipeg Professional Standards Unit that
9 you know he had 40 wings?

10 A In my previous testimony, sir, I had
11 indicated that we had been to Branigan's a few
12 times, and at the times it was sort of an ongoing
13 shift joke that Derek could eat a lot of wings.
14 And it sort of seemed that the few times that we
15 had been there, and towards that date that we
16 would keep a tally of how many wings Harvey-Zenk
17 had eaten. That's the way, that's how I knew that
18 he had eaten 40 that day.

19 Q So you were keeping a tally on how
20 much he ate that night?

21 A Yes.

22 Q So you were interacting with him, I
23 take it, you must have been talking to him about
24 it, how many he was going to order?

25 A No, not -- no, because he was at the

1 other end of the table.

2 Q Would that information just filter
3 down to you that he had the 40 wings?

4 A I believe so, yeah.

5 Q What was he washing his wings down
6 with?

7 A I don't know, sir.

8 Q Are you able to indicate, sir, where
9 anybody else was sitting in the restaurant?
10 You've got your group at one end of the table,
11 you've got Harvey-Zenk at the other. What about
12 any of the other officers in the lounge?

13 A I'm not sure.

14 Q Do you recall at the end of the
15 evening, sir, when it came time for you and the
16 other officers to get up and pay to leave?

17 A Pardon me?

18 Q Do you recall the end of the evening
19 at Branigan's?

20 A Yes.

21 Q Describe the process of getting up to
22 pay your bill?

23 A The server would give us a bill and we
24 would pay it.

25 Q Now, there were over 20 officers there

1 at that point. So what was the situation like?

2 Everybody got up at once and lined up to pay?

3 A I'm not sure. I had indicated, I
4 believe, that if you had to pay debit or if you
5 were using a credit card, that you would line up
6 and pay it at a register, a cash register, a till.
7 I believe I paid cash that night, so I would have
8 either given it directly to the server or left it
9 on the table. I'm not sure.

10 Q Now, what was your level of
11 intoxication at the end of the evening when you
12 were leaving Branigan's?

13 A I wouldn't say I was intoxicated. I
14 had had a few drinks.

15 Q You wouldn't say you were intoxicated?

16 A I don't believe so, no, not at that
17 point.

18 Q Did you think you were okay to drive?

19 A No.

20 Q Were people making comments to you
21 about your behaviour?

22 A At Branigan's?

23 Q Yes?

24 A I don't think so, no.

25 Q Did anybody raise any concerns with

1 you about what you might be doing next?

2 A I'm not sure, no.

3 Q Did anybody talk to you about driving
4 your car?

5 A I -- I must have spoken to Tracey
6 Fudge because I ended up in her car going to
7 Sean's. So I don't believe if anyone addressed it
8 with me or if I had simply asked for a ride, I
9 don't know.

10 Q We'll come to that, sir, that you did
11 go to Officer Black's with Tracey Fudge. But when
12 you were in the lineup and getting ready to leave,
13 or as you were paying your bill and leaving, do
14 you recall comments being made to you or concerns
15 being expressed about whether you in particular
16 should be driving?

17 A I don't specifically remember comments
18 coming towards me. I'm not saying that didn't
19 happen, but I'm saying I don't recall those
20 concerns.

21 Q Do you recall any comments or concerns
22 being raised by anybody with respect to the
23 appropriateness of any other officer driving their
24 vehicle?

25 A No.

1 Q Leaving Branigan's?

2 A No.

3 Q But I take it, sir, you would agree
4 that if somebody did raise it with you, and I
5 understand your evidence to be you don't recall
6 whether it was raised with you or anyone else, but
7 if somebody did raise it with you, I take it you
8 would agree it would be an appropriate concern to
9 raise?

10 A Yes.

11 Q You knew the staff at Branigan's, did
12 you, sir?

13 A Just from going there, yes.

14 Q You knew the server to be a woman
15 named Chelsea?

16 A Yes.

17 Q And you knew --

18 A I don't recall her specifically being
19 the server, but I'm aware of that she was the
20 server, yes.

21 Q And you also knew an individual named
22 Darcey as one of the managers there, did you not?

23 A Again, from going there, yes.

24 Q Sir, you indicated you don't have a
25 specific recollection of Chelsea being your server

1 that evening. How is it that you know that she
2 was your server?

3 A I believe just through this process.

4 THE COMMISSIONER: Through what?

5 THE WITNESS: Through this process.

6 THE COMMISSIONER: Oh.

7 BY MR. CLIFFORD:

8 Q What process are you referring to,
9 sir?

10 A The investigation, the inquiry, the
11 process.

12 Q Okay. The investigation and the
13 inquiry process. Was it through the investigation
14 process, sir?

15 A I'm not sure.

16 Q I'm going to refer the witness,
17 Mr. Commissioner, to his Commission Counsel
18 interview of March 19, 2008.

19 THE COMMISSIONER: What page?

20 MR. CLIFFORD: Page 18,
21 Mr. Commissioner.

22 THE COMMISSIONER: Do you see how it's
23 set up?

24 THE WITNESS: I do, yes, sir. Yes, I
25 indicated that from hearing things I believe it

1 was Chelsea.

2 BY MR. CLIFFORD:

3 Q I'm going to put a sequence to you,
4 sir, and ask you some questions and see if this
5 refreshes your memory. There is a question at
6 line four.

7 "And who was the waiter or the
8 waitress that night that was serving
9 you?

10 A I'm not sure. From hearing
11 things, I believe it was Chelsea but I
12 don't -- I don't have an independent
13 recollection of who the server was."

14 A That's what I said, yes.

15 Q I'll read it to you, Constable, and
16 then we'll go back to the question and answer.

17 "Q And when you say 'from hearing
18 things it was Chelsea,' what did you
19 hear that makes you say that?

20 A Nothing specific, just in
21 speaking.

22 Q To who?

23 A Nobody in particular.

24 Q Do I take it from that that you
25 don't remember who you spoke to that

1 told you the server was Chelsea?

2 A Well, yes, there was never any
3 discussions, we need to have a round
4 table, nothing. We have to talk about
5 what happened that night, there was
6 nothing like that. So it might have
7 been just in passing. I have no
8 independent recollection of who
9 specifically I ever talked to about
10 it."

11 Now, somebody told you that the server
12 was Chelsea?

13 A Yes. I indicated that.

14 Q Okay. And it wasn't the inquiry, it
15 wasn't me. So --

16 A Um-hum.

17 Q -- who told you that the server was --

18 A I don't know.

19 Q But you knew her, apart from the fact
20 that you have no recollection of who told you it
21 was Chelsea?

22 A Yes, I knew who she was.

23 Q You knew her?

24 A Yes.

25 Q And you have no recollection of her

1 serving you that night?

2 A No, not her specifically. I have a
3 memory of being served, but not by her, though.

4 Q What about any dealings with her at
5 the end of the night?

6 A Well, as I just said, I don't remember
7 her being there, so I have had no dealings with
8 her at the end of the night.

9 Q Well, she was here, sir, and she's
10 testified, and I'm sure you know what her
11 testimony is with respect to you, do you not?

12 A I have been told bits and pieces, yes,
13 sir.

14 Q By who?

15 A My family.

16 Q Okay. And her testimony, sir, is you
17 were there, she knew you, you knew her, and you
18 were intoxicated that night. And you were
19 behaving in a particular manner with her, that you
20 were making untoward comments about her body, and
21 she came to the conclusion, sir, that you were
22 intoxicated?

23 A Well, I don't believe that's true. I
24 have no memory of speaking with her and I deny
25 that, I deny acting inappropriately towards her.

1 Q Well, sir, saying something like I
2 don't believe that's true --

3 A I don't. It's not true.

4 Q Are you denying outright, sir --

5 A Yes.

6 Q -- that you made any comments about
7 Chelsea O'Halloran's body or --

8 A Yes, sir. I was raised better than
9 that.

10 Q What about -- do you recall anybody
11 inviting anybody to go to Officer Black's
12 residence?

13 A Inviting anybody?

14 Q Yeah.

15 A Anybody inviting --

16 Q Non police officers?

17 A No.

18 Q You knew Darcey, the manager?

19 A Just from going there, as I said.

20 Q And do you recall him being present
21 throughout the evening?

22 A Not specifically, no.

23 Q Can you recall any staff that was
24 working at Branigan's that night?

25 A No.

1 Q Darcey Gerardy testified, sir, before
2 the Commission and gave evidence that he had a
3 concern about police officers, when it was time
4 for you all to leave, and he raised that concern
5 in a very serious and firm manner about the
6 ability of certain officers to drive. And he also
7 indicates, sir, that a number of the officers that
8 were there said the concern is being addressed
9 because there are designated drivers. That these
10 individuals who are driving will not be taking
11 their vehicles away. Can you recall any exchange
12 like that occurring at the end of the evening?

13 A With Darcey?

14 Q Yeah?

15 A And myself?

16 Q With Darcey and anybody that was
17 there, sir?

18 A No.

19 Q Including yourself?

20 A I did not speak to Darcey, no.

21 Q Who were you with at the end of the
22 evening?

23 A Tracey Fudge.

24 Q I'm referring to when you were
25 actually leaving the restaurant?

1 A I don't know. I was with a bunch of
2 other officers.

3 Q Were you spending time with Ken
4 Azaransky that evening?

5 A I don't believe so, no. He wasn't
6 with my -- where I was sitting, I don't think. I
7 hadn't mentioned him being in the group where I
8 was sitting.

9 Q You mentioned Tracey Fudge's name.
10 Were you spending time with her at Branigan's?

11 A I don't think so, just at the end when
12 I got a ride to Sean's.

13 Q And dealing with the ride to Officer
14 Black's residence, I take it, sir, that you can't
15 tell us any of the circumstances surrounding your
16 getting into her vehicle?

17 A I am not sure I understand your
18 question?

19 Q Can you describe any of the
20 circumstances around your getting into her
21 vehicle, how it was that you ended up going with
22 her?

23 A As I had said earlier, I don't
24 remember if I had asked for a ride or if one was
25 offered to me. I'm not sure. I had indicated

1 that earlier.

2 Q What did you have to drink at
3 Constable Black's house?

4 A I had a few Rye and Cokes.

5 Q And can you quantify that, sir, with
6 any more detail?

7 A Not specifically, no. I know I had
8 more than -- more than one, two or three perhaps.

9 Q Where was the alcohol?

10 A I'm not sure.

11 Q Okay. Where did you get your drinks?

12 A I'm not sure. I just answered that, I
13 think.

14 Q No, what I'm asking you, sir, is did
15 somebody give you a drink?

16 A Oh, no, I poured myself a drink.

17 Q Okay.

18 A It was on the kitchen table or on the
19 counter, I'm not sure.

20 Q That's what I wanted to know. Where
21 was the alcohol at Officer Black's residence?

22 A I don't know.

23 Q It was in the kitchen?

24 A Yes. We could say that, yeah.

25 Q On the counter or on the table?

1 A I just said I don't know that.

2 Q But I'm trying to determine where it
3 was. I'm going from I don't know --

4 A I know what you're trying to
5 determine, but I just said I don't know where it
6 was. It was in the kitchen, yes.

7 Q Well, we know it was in the kitchen
8 from you now. Can you tell me where it was in the
9 kitchen?

10 A No.

11 Q You said the words the counter or the
12 table?

13 A I said I'm not sure whether it was the
14 counter or the table.

15 Q Can we confine it to the counter or
16 the table?

17 A Yes.

18 Q Okay. We're getting somewhere. It
19 was in the kitchen on the counter or the table?

20 A Pardon me?

21 Q It was in the kitchen?

22 A Yes.

23 Q Either on the counter or the table?

24 A Yes.

25 Q You went to either the counter or the

1 table and you mixed yourself your drinks; is that
2 right?

3 A Yes.

4 Q Did anybody, through the course of the
5 evening, make you a drink?

6 A No.

7 Q What did you see in terms of the
8 alcohol that was out?

9 A A bottle of Rye.

10 Q Did you see any other alcohol that was
11 out?

12 A No, sir.

13 Q Did you mix your Rye with anything?

14 A Coke.

15 Q And when you went up to mix your
16 drinks, sir, at any point did you see anybody else
17 mixing themselves a drink?

18 A No.

19 Q What about the consumption of alcohol
20 at Constable Black's residence? Did you have
21 anybody else consuming alcohol there?

22 A I believe there were people consuming
23 alcohol, yes.

24 Q And what do you base that on, sir?

25 A My memory. I also don't want to

1 generalize either, sir. I don't remember
2 specifically who was consuming what.

3 Q I asked you, sir, what you based the
4 testimony that you concluded people were drinking
5 alcohol on, and you said your memory?

6 A That's right.

7 Q Okay. What do you remember? Did you
8 see people walking around with a glass in their
9 hand? Do you see people at any point in the
10 vicinity of the bottles where you got your
11 alcohol?

12 A Not sure, no.

13 Q You do recall other people having
14 drinks there, and that's about as general as it's
15 going to get?

16 A Yes.

17 Q I take it, sir, that you indicated to
18 the Professional Standards Unit in March that you
19 had -- you didn't notice at all what Derek
20 Harvey-Zenk consumed at the Black residence?

21 A Other than knowing what this was
22 about, I couldn't even tell you that he was there
23 that day, that evening.

24 Q And would the explanation for that be,
25 sir, that you became intoxicated at Officer

1 Black's residence?

2 A Part, yes, part just not speaking with
3 Harvey-Zenk that night.

4 Q Other than getting the information
5 about how much food he was eating at Branigan's,
6 that was the only, I take it, form of
7 communication that occurred between you and he?

8 A I didn't communicate with him about
9 his wings.

10 Q Would this be normal for you, sir, to
11 go out with a group of officers and go to a party
12 afterwards at someone's house, and not have a
13 conversation with one of the individuals
14 throughout the entire evening?

15 A Yes.

16 Q Did you get along with Derek
17 Harvey-Zenk?

18 A He was a coworker.

19 Q He was a friend of yours?

20 A He was a coworker.

21 Q I realize that, sir. Would you
22 consider him to be a friend of yours?

23 A We didn't speak outside of work. I
24 wouldn't call him a friend, he was a coworker.

25 Q You never spoke with him outside work?

1 A Rarely.

2 Q Did you socialize with him ever
3 outside work?

4 A Except after, after -- directly after
5 work, that would be the only time.

6 Q Now, the Commission has heard
7 evidence, sir, that your evening at Black's took a
8 turn for the worse with respect to how you were
9 feeling. And can you explain what happened?

10 A Yes. Essentially, I didn't feel well
11 and went downstairs.

12 Q And do you recall whether anybody
13 brought you downstairs, sir?

14 A Yeah, Sean did.

15 Q Anybody else go down?

16 A I don't think so.

17 Q Okay. And what was Sean doing for
18 you?

19 A Just making me comfortable, advised
20 that I could stay the night if need be, there's no
21 problem with that.

22 Q And when you went down to the basement
23 and Sean Black got you settled away, was it your
24 intention to stay for the night there?

25 A Yes.

1 Q Just one moment, please,
2 Mr. Commissioner. I am looking for a reference.
3 Sir, I want to ask you about a comment
4 you made to the Winnipeg Professional Standards
5 Unit on March 2nd, 2005. This is in your PSU
6 statement, page 965, sir. Do you see at line 11
7 there, sir:

8 "Constable Harding: So I had no
9 problem, you know, when I had gone
10 down to the basement to sleep, I had
11 every intention of staying the night.
12 But the group woke me up to give me
13 the option if I did want to go home.

14 Q So Sean actually offered you a
15 place to stay?

16 A Absolutely, he did."

17 The officer says:

18 "Okay. So if I can, Sergeant Pearson
19 asked before, so from what you recall,
20 was there anybody that was obviously
21 intoxicated or loud?"

22 You say:

23 "No, because to be honest, I was
24 probably the most intoxicated there."

25 And I'm wondering about your choice of words

1 there, sir, in that response. You said, "I was
2 probably the most intoxicated there."

3 A Yes.

4 Q You didn't say I was the only one who
5 was intoxicated there. You said "I was the most
6 intoxicated."

7 A Yes.

8 Q And I take it, sir, that that's what
9 you meant, that you were, of the people there, the
10 most intoxicated of the lot?

11 A I think you are putting words in my
12 mouth there. I was stating that I was intoxicated
13 there.

14 THE COMMISSIONER: Excuse me, I don't
15 think that's what you said.

16 THE WITNESS: Um-hum.

17 THE COMMISSIONER: I was probably the
18 most intoxicated.

19 THE WITNESS: Yes.

20 THE COMMISSIONER: Does that mean that
21 others were intoxicated there and that you were
22 the most of the others?

23 THE WITNESS: I don't recall other
24 people being intoxicated. It may have been a slip
25 of words. But I'm very fully admitting that

1 that's, I'm not proud to say it, but I was
2 intoxicated.

3 BY MR. CLIFFORD:

4 Q Even when you are intoxicated, sir,
5 you can recall things that are occurring. You
6 recall Officer Black taking you down. You have
7 indicated that you can recall even a specific
8 comment that he made to you, you recall him
9 speaking to you, and you are telling the
10 Commission that he's offering you a place to stay.
11 You can recall certain things?

12 A Yes.

13 Q So when you said, these are not my
14 words, sir, these are your words, "I was probably
15 the most intoxicated there," you remember things
16 that were happening that night. You remember what
17 Sean Black was doing, taking you down and talking
18 to you, do you not?

19 A Yes.

20 Q So whether you are proud of being
21 intoxicated yourself, you can still remember
22 certain details of that night?

23 A Yes.

24 Q And I'd say that's one of those
25 details, sir, that you were the most intoxicated,

1 and that there were others that were intoxicated
2 but not as bad as you?

3 A I can't answer that.

4 Q You planned on staying there for the
5 entire night. I take it but for the fact that you
6 got woken up, you would have spent the night
7 there; is that the case?

8 A Yeah, I never planned on staying there
9 previous to not feeling well and going downstairs.
10 At that point, when I did go downstairs, I had
11 every intention of staying, yes.

12 Q That's what I understood, sir, that
13 the situation changed, that once you got put down
14 to bed in Sean Black's basement, that you were
15 going to stay the night. And but for the fact
16 that officers come down and woke you up, and
17 indicated that you could go with them, you would
18 have just slept right through?

19 A That's right. I also know I wasn't
20 put to bed.

21 Q I don't mean that in a derogatory
22 sense, Constable. You were -- the Commission has
23 heard evidence, sir, that you were spoken to by
24 Constable Black. There was a concern raised with
25 you and that you were, more or less, brought

1 downstairs and helped, given the situation that
2 you were in. We understand you weren't falling
3 down drunk, but that was the situation, that a
4 fellow officer brought you down, made a bed for
5 you on the couch?

6 A Yes.

7 Q What did the officer say to you, sir,
8 when they came downstairs to get you out of the
9 basement, or I should say when they woke you up
10 and you left with them?

11 A I just believe that essentially it
12 was, are you coming with us or do you want to
13 stay? My Sergeant, who ended up giving me a ride
14 the rest of the way home, lived in my end of the
15 city. So I decided to take him up on his offer
16 and go for -- to get a ride home.

17 Q Okay. So when the constables come
18 down, do you recall who it was that went into the
19 basement?

20 A Not specifically. I think it may have
21 been Jim and Tracey.

22 Q And can you recall any conversation
23 that was taking place as you were leaving?

24 A With them?

25 Q Um-hum?

1 A No.

2 Q Do you recall whether an offer was
3 made to anybody else that if they wanted to go,
4 they could also get a ride back?

5 A With Tracey? I'm not sure. I don't
6 know if I had indicated earlier, but Tracey had
7 driven three of us, and the same people left with
8 Tracey, so I don't know if there was any other
9 invites for other rides. I believe it was just
10 the same group.

11 Q Do you recall whether there was any
12 discussion about designated driver, that people
13 were going to be leaving now, if anybody wanted a
14 drive back, this was an opportunity to take it?

15 A I'm not sure.

16 Q What was your state at that point?

17 A My state?

18 Q Yeah, in terms of level of sobriety.
19 You were still intoxicated, I presume?

20 A Yes.

21 Q Now, you have testified, sir, that the
22 officers came down, woke you up. You determined
23 that you were going to go back. You went back in
24 the same vehicle that you went out in, Tracey
25 Fudge's vehicle?

1 A Yes.

2 Q Where did you go?

3 A To Branigan's, back to the parking
4 lot.

5 Q Okay. And then when you got to the
6 parking lot, you have indicated that Jim Anderson
7 gave you a ride home?

8 A That's right.

9 Q And do you recall mentioning that to
10 the Winnipeg Professional Standards Unit, what had
11 taken place when you got to the parking lot?

12 A Yes.

13 Q I'm referring to page 964, sir, of
14 your interview with the Winnipeg Professional
15 Standards Unit. Page 964, line 12, you indicated
16 to them, sir, this is your response:

17 "No, you didn't. I believe 5:30 would
18 be, 15 before or 15 after, but in
19 around that time frame, we left
20 together, the same group of us."

21 Now, I'll just stop there, sir. Is that
22 refreshing your memory, sir, in terms of the time
23 that you would have left Officer Black's?

24 A Yes.

25 Q Do you agree it was approximately 5:30

1 in the morning?

2 A Yes.

3 Q Carrying on then, sir, at line 15.

4 "Tracey Fudge was driving. Kelly

5 McLure jumped in as well, and Jim

6 Anderson did, because their vehicles,

7 as well as mine, were still at

8 Branigan's. So we jumped in together

9 with Tracey, and we got back to the

10 Branigan's parking lot. Then I jumped

11 in with Jim, he gave me a ride home

12 and we sat in his truck for about an

13 hour just chatting."

14 Now, that's how you described the series of events

15 to you getting home to your residence from Officer

16 Black's?

17 A Yes, as I remember it, yes.

18 Q What happened at the Branigan's

19 parking lot?

20 A I went into Jim's truck. That's what

21 I have indicated here.

22 Q Jim Anderson drove you home?

23 A Yes.

24 Q What happened when you got out of

25 Tracey Fudge's vehicle?

1 A I believe I went with Jim to his
2 truck.

3 Q I take it, sir, that when you were
4 dealing with the Winnipeg Professional Standards
5 Unit, you realized that they wanted all the
6 information that you could possibly give them
7 about the events of the evening?

8 A That's correct.

9 Q Well, sir, the Commission has heard
10 evidence with respect to other things that
11 happened in the Branigan's parking lot. When you
12 got out of Tracey Fudge's truck, what was your
13 intention?

14 A To go home.

15 Q Where was your car?

16 A At Branigan's.

17 Q Okay. What were you going to do with
18 your car?

19 A Leave it there.

20 Q Because the Commission has heard
21 direct evidence, sir, from a fellow officer, that
22 your intention wasn't to leave your car there,
23 your intention was to drive your car home?

24 A I don't believe so.

25 Q So if you stood in direct

1 contradiction with a fellow officer, your position
2 is that you would be right and they would be
3 wrong?

4 A No, I just don't believe -- I don't
5 remember that occurring.

6 Q Well, you don't believe that you said
7 anything to Chelsea O'Halloran and you don't
8 remember it occurring?

9 A No, I didn't say anything to Chelsea
10 O'Halloran.

11 Q Now, you were in the parking lot of
12 Branigan's. We have heard direct evidence, sir,
13 from a fellow officer that this individual had to
14 wrestle you to take your car keys from you?

15 A Wrestle me?

16 Q Those are the witness's words, sir,
17 not mine.

18 A I don't recall that. If that were the
19 case, then I owe someone a thank you, but I don't
20 recall that.

21 Q If that were the case, sir, you would
22 have wanted to drive your motor vehicle while you
23 were intoxicated; right?

24 A I don't remember that, so.

25 Q And you're not denying it happened,

1 though, are you?

2 A I have just said I don't remember that
3 happening, and that if that were the case, then I
4 was stopped and I appreciate that.

5 Q Well, what you did tell the Winnipeg
6 Professional Standards Unit, sir, is that you
7 jumped in together with Tracey, you got back to
8 the Branigan's parking lot, then I jumped with in
9 with Jim and he gave me a ride home. You didn't
10 have a problem telling them, sir, in March of
11 2005, what happened at the parking lot. Where
12 were you getting that information?

13 A From the best of my memory.

14 Q So your memory?

15 A That's what I'm telling you, sir.

16 Q Your memory included getting a ride
17 home, got back to the Branigan's parking lot, then
18 I jumped in with Jim. That's your memory?

19 A Yes.

20 Q Okay. The part that's gone is the
21 part about you getting involved with another
22 officer, and that officer, specifically Tracey
23 Fudge, wrestling with you to take your keys out of
24 your hand. That part was forgotten, I understand?

25 A I guess so, yes. I don't recall that.

1 Q That wouldn't -- agreed, sir,
2 forgotten or not, it would not reflect positively
3 on you, would it?

4 A I'm not sure because I don't recall
5 that occurring and I didn't drive home.

6 Q Okay. Apart from whether you recall
7 or not, you agree, sir, if you were to tell them
8 that, it wouldn't reflect positively on you?

9 A I don't -- I don't have an opinion on
10 that. It's the truth. If that is what occurred,
11 then that's the truth. If that's not what
12 occurred, that's not to my memory. I have nothing
13 to hide from PSU.

14 Q Sir, I'm suggesting to you that that
15 is something that you would want to hide because
16 it does not reflect positively on you?

17 A I absolutely disagree with you on
18 that. If you're suggesting it, I disagree with
19 it.

20 Q Well, I am suggesting it, sir.

21 A I disagree with it.

22 Q Do you recall getting in the truck
23 with -- getting in the vehicle with Jim Anderson?

24 A I don't recall specifically getting
25 into his truck. I know that's how I got home

1 because I remember sitting in my apartment block
2 with him for some time in his truck.

3 Q You said I jumped in with Jim, he gave
4 me a ride home. You talked to him, did you not?
5 On the way home, do you recall the conversation
6 you had with him?

7 A Not specifically on the way home. I
8 remember speaking with him in the parking lot at
9 my apartment.

10 Q What were you speaking to him about?

11 A Just career paths, the service in
12 general, as I was still relatively new. Because
13 he was a Sergeant, I was interested in things, and
14 things to go into after uniform and things like
15 that.

16 Q And how far is it from Branigan's to
17 your house, sir, direct driving, 5:30, quarter to
18 6:00 in the morning, how long would that take to
19 get there?

20 A Perhaps 20 minutes.

21 Q So let's say 20, 25 minutes after
22 someone has wrestled car keys out of your hand,
23 you can sit here and tell, okay, 20, 25 minutes
24 later, I recall having a specific conversation
25 with Jim Anderson about certain issues that

1 were --

2 A Not specific, just about careers,
3 about the service.

4 Q You can remember that, but you can't
5 remember what happened 20, 25 minutes earlier in
6 the parking lot?

7 A That's right.

8 Q You can remember specific details like
9 Sean Black offering you a place to stay, bringing
10 you downstairs?

11 A That was hours previous, yes.

12 Q You recall the officers waking you up?

13 A Specifically, do I remember every word
14 that they said to me, no. I remember I was woken
15 up.

16 Q Do you recall the drive back to
17 Branigan's?

18 A No.

19 Q Did Jim Anderson ever speak to you,
20 sir, about what happened in the parking lot?

21 A No, I don't -- no, I don't think so.

22 Q Did Tracey Fudge ever speak to you
23 afterwards about what happened in the parking lot?

24 A No.

25 Q She never ever come out and said --

1 A This is the first that I have ever
2 heard that that occurred in the parking lot. This
3 is the first time.

4 Q What about Kelly McLure?

5 A No.

6 Q Do you recall her being in the parking
7 lot?

8 A I don't.

9 Q She was in the vehicle. You told the
10 Commission that she was in the vehicle?

11 A Yeah, I mean, I don't remember her
12 being in the parking lot, no. I know she was
13 there but I don't remember her specifically being
14 in the parking lot.

15 Q When did you find out, sir, that the
16 accident had occurred? You went home, Jim
17 Anderson dropped you off, I presume you would have
18 gone to bed. When was it that you heard about the
19 accident?

20 A I believe it was after, after noon
21 that day.

22 Q And who was it that told you?

23 A Ken Azaransky had phoned me to tell
24 me.

25 Q And now was this something that he did

1 often, that he would get in touch with you?

2 A No, no. I don't understand your
3 question?

4 Q Did Ken Azaransky phone you very
5 often?

6 A Oh, sometimes, yes.

7 Q Why? Was it work related or was it
8 personal?

9 A We were friends.

10 Q Okay. So you and he are friends. You
11 have no memory of him at Branigan's, I presume,
12 other than his presence, and at Black's?

13 A Yes.

14 Q But he calls you the next day?

15 A Yes.

16 Q What time does he phone you?

17 A I believe between noon and 1:00 that
18 day.

19 Q And he tells you, does he not, about
20 the fact that there's been a motor vehicle
21 accident, there's been a fatality?

22 A Yes. We had a very brief
23 conversation, from what I remember.

24 Q And you were in your vehicle with
25 Christian Guyot; is that right?

1 A No, not my vehicle.

2 Q I don't mean your personal vehicle,
3 you were with Christian Guyot?

4 A Yes.

5 Q You were at work?

6 A No.

7 Q Were you in a car?

8 A Yes.

9 Q Cruiser?

10 A No.

11 Q One of your two personal vehicles
12 then?

13 A His vehicle, yes.

14 Q All right. Now, he tells you there's
15 been a fatal motor vehicle accident and
16 Harvey-Zenk is involved, and that Harvey-Zenk is
17 at the East St. Paul Police Station?

18 A Yes.

19 Q Do you recall him giving you those
20 details?

21 A Yes.

22 Q And what was your response to
23 receiving that information?

24 A It was, like I had said, it was very
25 brief, and my response essentially was out of

1 frustration, I didn't get a chance really to
2 respond very much. I wanted to know more and Ken
3 didn't have much more to say and left it at that.
4 It was very brief.

5 Q Now, I take it, sir, that one of the
6 things you would have wanted to know about and ask
7 questions about was the issue of alcohol
8 consumption? How much alcohol had Harvey-Zenk
9 consumed? What observations did you make of --

10 A No, no.

11 Q -- Harvey-Zenk?

12 A Not during that conversation, no.
13 Like I had said, it was very brief. When he had
14 said he was at East St. Paul I was more -- I
15 didn't know what he was there for, I didn't -- I
16 didn't have alcohol concerns, because I had no
17 idea about what Derek had had to drink, if at all.
18 I had more concerns, was he there as a witness,
19 was he assisting something, was he under arrest
20 for -- I had no idea. And Ken couldn't answer
21 those questions. He just had moved on quickly.
22 It was brief, like I had said.

23 Q Well, I take it you started to speak
24 with Christian Guyot about what had happened, did
25 you not?

1 A Yes, he was beside me.

2 Q He was your partner at that time,
3 right?

4 A Yes, he was.

5 Q And did you speak with him about
6 issues of Harvey-Zenk and alcohol consumption and
7 try to determine just amongst yourselves --

8 A No.

9 Q -- what the issue was with respect to
10 alcohol consumption and him, how much he might
11 have had?

12 A No. From what I knew from that
13 initial brief conversation, we weren't even at
14 that stage yet in discussion with anything,
15 revolving around alcohol. I wasn't even sure he
16 was under arrest for anything. I didn't know.

17 Q That day, sir, did you have
18 conversations with other officers about the issue
19 of alcohol consumption and Derek Harvey-Zenk?

20 A I don't think so, no. There would
21 have been no one to have a conversation with that
22 I recall. I was at the Academy that day.

23 Q Did you speak with Sergeant Humniski
24 that day?

25 A I don't think so, no.

1 Q It's been suggested, sir, by Sergeant
2 Humniski that you actually were the person who
3 notified him about what happened?

4 A That's possible. I don't -- I don't
5 remember that conversation.

6 Q So if that happened, it's another
7 thing that you don't remember. You wouldn't deny
8 it happened, I take it?

9 A No, I won't deny that. I believed I
10 had spoken to -- to Jim Anderson. I don't recall
11 speaking to Sergeant Humniski.

12 Q Okay. So you recall speaking to Jim
13 Anderson. You recall speaking to Christian Guyot.
14 You don't deny the fact that you might have spoken
15 with Sergeant Humniski?

16 A Yes, but that one, I'm not sure.

17 Q What about other officers that were
18 present that evening?

19 A That day, I don't think so, no.

20 Q And I would suggest to you, sir, that
21 of course what you would have been doing is trying
22 to determine how much alcohol was consumed by
23 Derek Harvey-Zenk. You would have been asking
24 other officers about it?

25 A Again, we weren't -- I wasn't there

1 yet. I didn't know -- I didn't even know what he
2 was there for.

3 Q But as the -- as the day progressed,
4 sir, did you not --

5 A No.

6 Q -- prepare to ask those questions?

7 A I was on a course. I didn't have
8 those opportunities.

9 Q Sir, could you refer to your
10 Commission interview, page 47?

11 A Yes.

12 Q Page 47, line 20 -- line 19. This is
13 me and you, I'm asking you questions and you are
14 giving answers, sir. And I'll read a passage to
15 you and see if we can refresh your memory on this
16 point. Page 47, line 19:

17 "Q Were any officers in the course
18 officers that were at Branigan's or
19 Officer Black's the night before?

20 A I'm not sure. I assume -- I
21 assume there might have been a few
22 because it was an overlap and it was
23 our shift, and sometimes you have the
24 tendency to stick together, if you
25 were going to go on training, you make

1 things together. I don't specifically
2 remember anyone from Sean's being at
3 the course, but there could have been
4 a few. I don't know. I don't know.

5 Q The conversations that you had
6 that day about the accident, did they
7 include the issue of alcohol
8 consumption? Did you talk to the
9 other officers about the fact that
10 look, we were at Branigan's from 11:00
11 till closing?

12 A I don't -- I don't specifically
13 remember. I may have asked. Of
14 course, I would have asked for sure.
15 Because I don't remember seeing Derek
16 when I left, so I had no idea of what
17 state he was in, and if he was in any
18 state, or when he left, what time he
19 left. I mean, I don't know any of
20 those things. I think I was asking, I
21 don't remember specifically getting
22 answers. From what I recall and
23 speaking with, I guess Ken and Sean,
24 there was no indication that anything,
25 they had no indication that there was

1 trouble or there was an issue with
2 Derek leaving, you know. Because, I
3 mean, it was --

4 Q Are you telling me that you had a
5 conversation with Officer Black?

6 A Specifically?

7 Q Yes?

8 A That day? I don't recall that
9 day. Throughout it I'm sure we had
10 discussions, you know."

11 So, sir, on the point of whether you
12 would have asked questions, when you responded "I
13 may have asked, of course I would have asked for
14 sure, because I don't remember seeing Derek when I
15 left," does that refresh your memory, sir, that
16 that is of course something you would have done?

17 A It does, but I don't remember it being
18 specific to that day. I didn't speak with really
19 anybody that day, including any further -- Sean, I
20 don't recall speaking with him that day at all.
21 So perhaps as I was giving my answer here, I let
22 go of the fact that the question was specific to
23 that day, because I don't recall speaking to other
24 people that day about it.

25 Q But you did agree, sir, and I take it

1 you still agree that those would be the most
2 obvious questions in line of curiosity that you
3 would have? And you would have discussed it with
4 the other officers, whether it was that day or
5 not?

6 A Whether it was that day or not, yes,
7 but, I mean, like I said, I didn't -- I wasn't
8 even there yet, I didn't know that much. And the
9 days following, yes, it was a tragic event.

10 Q And you had a briefing, did you not,
11 on the following week when you went back to work?

12 A We have a shift briefing everyday.

13 Q And there was a briefing where this
14 issue was raised?

15 A Yes.

16 Q And you learned, sir, that you were
17 going to be going to the Winnipeg Professional
18 Standards Unit?

19 A I had learned that we had been asked
20 to give information with regards to what we knew
21 from that evening, yes.

22 Q And we have heard about that, sir. In
23 fact, the Chief of Police came and testified
24 before the Commission and told us that one of his
25 objectives there was to encourage you all, to

1 support you, and to tell you to be completely
2 honest and forthright, no matter how embarrassing
3 things were, that you had to get this -- you had
4 to be forthright, completely honest with
5 Professional Standards Unit?

6 A Yes.

7 Q You agree with me, sir, and I
8 understand that you will not concede that it was
9 deliberate, but certainly by omission you did not
10 provide a full picture to the Winnipeg
11 Professional Standards Unit, did you?

12 A I provided the best picture I could.

13 Q And it was not a full one, sir, was
14 it?

15 A It was a full one from my memories,
16 yes.

17 Q And your memory was not serving you
18 well with respect to the events that night, was
19 it?

20 A Partly due to alcohol consumption,
21 yes.

22 Q And sir, you wouldn't therefore be in
23 a position to indicate anything with respect to
24 the amount or lack of alcohol consumption, would
25 you?

1 A In regards to who?

2 Q With regards to people that were
3 present?

4 A I can't speak for other people.

5 Q But when you are drinking, you are
6 able to determine, are you not, sir, if other
7 people are drinking along with you?

8 A Yes.

9 MR. CLIFFORD: Okay. Those are the
10 questions I have, sir. Remain seated. Other
11 counsel will have questions.

12 BY MR. ZAZELENCHUK:

13 Q Just a few points, Officer. Your
14 badge number is 2343?

15 A Yes.

16 Q And we know from exhibits before this
17 court, I can show them if you wish, that Derek
18 Harvey-Zenk's was 2180. So he would have been
19 senior to you?

20 A Yes.

21 Q Yes. Because the higher your badge
22 number, the more junior you are?

23 A That's right.

24 Q Okay. You indicated to us that when
25 you left Branigan's, you felt that you weren't fit

1 to drive?

2 A That's correct.

3 Q Correct?

4 A Yeah.

5 Q Okay. And that's very responsible.

6 I'm curious, I got the impression from your
7 evidence that you weren't exactly sure what you
8 drank at Branigan's, but it would have been four
9 or five pints of beer?

10 A I believe so.

11 Q Yes. Is there any possibility it
12 could have been six?

13 A Yes.

14 Q Seven?

15 A I don't think so.

16 Q Okay. So at most six, at least four?

17 A Yes.

18 Q Okay. Did you drink any hard liquor?

19 A At Branigan's?

20 Q Yes?

21 A No, I don't usually drink hard liquor.

22 Q Okay. You did drink some hard liquor
23 at Sean Black's?

24 A Yes, which probably lead to my demise
25 that evening.

1 Q Okay. Fair enough. Do you recall how
2 much hard liquor you had at Sean Black's?

3 A Two or three I had indicated to
4 Commission Counsel.

5 Q Two or three Rye and Cokes?

6 A Yes.

7 Q About 2-ounces of Rye in each one?

8 A I'm not sure.

9 Q Would it have been more than 2-ounces
10 of Rye in each one?

11 A No.

12 Q Maybe an ounce, ounce and a half?

13 A I'm not sure.

14 Q Could it have been four Rye and Cokes
15 at Sean's?

16 A I don't think so, no.

17 Q So three max?

18 A Yes.

19 Q Okay. You said something that I found
20 a tiny bit curious. When Commission Counsel was
21 asking you about your statement to the
22 Professional Standards Unit, words to the effect
23 that a beer appeared in front of you that you
24 didn't necessarily pay for; correct?

25 A Yes.

1 Q You recall that part of your
2 testimony?

3 A Today?

4 Q Yes.

5 A Yeah.

6 Q And you said it might have been, it
7 might have been some beer that the server had
8 given to you?

9 A Perhaps -- that was an assumption, I
10 don't know.

11 Q Well, did the servers normally put out
12 free beer?

13 A I never indicated that it was free.

14 Q Well, what did you indicate? I mean,
15 do servers bring you beer that you don't order?

16 A Me specifically?

17 Q Anybody?

18 A Sometimes, sure.

19 Q And how does that come about?

20 A I don't know. Seeing that you've had
21 a few, that you probably would like another.

22 Q Okay. One last point. There are
23 records before this court, before this tribunal,
24 and I can show them to you if you wish, but I'm
25 going to ask you to turn your mind back to

1 July 12th of last year, July 12th, '07. Okay?

2 A Okay.

3 Q We have records that Mr. Minuk, the
4 special prosecutor in this case, received a call
5 from a person he describes as an R. Harding, and I
6 suspect that's a typo. I'll ask him when the time
7 comes. Do you recall phoning Prosecutor Minuk?

8 A I recall speaking with Prosecutor
9 Minuk. I don't recall if I had phoned him or if
10 he had phoned me.

11 Q I see. And do you recall
12 approximately when this conversation took place?

13 A No. It would have been in and around
14 the time that I had been subpoenaed for the,
15 whether it was the trial or the Prelim with
16 regards to Harvey-Zenk.

17 Q So it might very well have been on
18 July 12th?

19 A I'm not sure. I don't recall what the
20 dates for Prelim, if -- it would have been in and
21 around that, sir.

22 Q The records show that the Prelim was
23 to start on July 16th, which was a Monday. And
24 Mr. Minuk's records indicate this phone call on
25 July 12th, so that might very well be accurate?

1 A Yes.

2 Q Okay. Do you recall how long the
3 phone call was?

4 A No, not really, not very long.

5 Q And what was the phone call about?

6 A Well, I believe I had spoken to
7 Mr. Minuk twice, and that one I believe he was
8 telling me that I don't -- I wasn't going to be
9 required for court.

10 Q I see. What about at the other one,
11 do you recall what you spoke to him about?

12 A That was about coming in and speaking
13 with him, or an interview before the Prelim.

14 Q And can you give us some idea of the
15 distance and time between the two calls, in days,
16 or weeks, or hours?

17 A It may have been weeks, it wouldn't
18 have been days, it would have been weeks, I
19 believe. But, again, I'm not sure, sir.

20 Q So the first phone call that you
21 had -- and those are the only two contacts you had
22 with Mr. Minuk or were there others?

23 A That I -- no, those are the only two
24 that I remember. I'm pretty sure we only spoke
25 twice. And one was, like I said, regarding an

1 interview. And the second was either making sure
2 we got together for that interview or -- and then
3 in subsequent, that I probably wouldn't be
4 required.

5 Q You are certain that the second phone
6 call was informing you that you wouldn't be
7 required to give evidence?

8 A Well, I believe, and it was initially
9 initiated that it was still trying to get together
10 before the Prelim to speak about it. And then he
11 gave me the indication that I wouldn't be required
12 so it wouldn't be necessary to meet, to have that
13 interview.

14 MR. ZAZELENCHUK: Thank you.

15 THE COMMISSIONER: Did you ever meet
16 Mr. Minuk?

17 THE WITNESS: No, all the
18 conversations were over the phone, sir.

19 THE COMMISSIONER: Were you ever asked
20 to go into his office to give him a statement?

21 THE WITNESS: We were trying to make
22 arrangements with our schedules to get together,
23 yes.

24 THE COMMISSIONER: I see. But before
25 you were able to make that arrangement, he called

1 you and said he wouldn't need you?

2 THE WITNESS: Again, I don't know if I
3 had initiated or if he had phoned me, I'm not
4 sure.

5 THE COMMISSIONER: Whoever spoke,
6 whoever initiated the call, there was a
7 conversation in which he indicated to you that he
8 didn't need you?

9 THE WITNESS: Right, and that's why we
10 weren't going to meet.

11 THE COMMISSIONER: Thank you.

12 MR. McDONALD: No questions,
13 Mr. Commissioner.

14 BY MR. LABOSSIERE:

15 Q Thank you, Mr. Commissioner.

16 Constable Harding, you acknowledged in
17 all of your statements, including your statement
18 today, that on the evening that we're speaking of,
19 you were intoxicated?

20 A Yes.

21 Q And you have described for us, as
22 others have, that as a result of the level of your
23 intoxication, some of the people that were with
24 you took steps to ensure that you weren't driving
25 home, that you got home safely; is that right?

1 A That's correct.

2 Q I take it, sir, you had been
3 intoxicated before this incident?

4 A Yes.

5 Q And on those occasions, has that been
6 in the presence of other police officers from time
7 to time?

8 A Perhaps, yes.

9 Q And on those occasions, did police
10 officers who you were with, off duty, also ensure
11 that you or others who might have been intoxicated
12 got home safely?

13 A Yes.

14 Q Is that something that you have come
15 to learn as a given, that is police officers who
16 share drinks after work or otherwise together,
17 look after each other and make sure that they get
18 home safely?

19 A Yes, as well as my own personal life,
20 my friends are the same as that as well.

21 Q Do you do the same for others?

22 A Absolutely.

23 Q So did it surprise you in any way that
24 the officers in question that evening were taking
25 steps to ensure that, given your condition, you

1 got home safely?

2 A No, no surprise.

3 Q And from your experience in those
4 situations, with these police officers in
5 particular, would it be your expectation that they
6 would have taken the same steps they took with you
7 with anybody else they felt might have been
8 intoxicated?

9 A Absolutely.

10 Q Now, you were asked a number of
11 questions by Commission Counsel in connection with
12 your memory on the evening in question. And as I
13 understand your evidence, sir, you're not in any
14 way intending to suggest that nobody was drinking
15 that evening. Is that right?

16 A That's correct.

17 Q You're simply saying that you can't
18 recall specifically who was drinking what and what
19 quantities?

20 A That's right.

21 Q And in fact, you used the words, as I
22 have noted, that it would be unfair for you to do
23 so?

24 A Um-hum, yes.

25 Q And why would it be unfair for you?

1 A I believe it's unfair, because I'm
2 not -- I'm not a judge, I did not count drinks
3 that night, I don't know who had what. Some
4 drinks that appear to be Coke aren't. I can't
5 tell you what was in, what was in that drink. So
6 it would be unfair of me to assume, and unfair of
7 anyone else to assume exactly what happened,
8 without being there. And you have to ask those
9 officers directly.

10 Q Now, you have acknowledged that you
11 had been intoxicated before. Is it fair to say
12 that when you are intoxicated, your memory as to
13 events while intoxicated is not perfect?

14 A That's true.

15 Q And I take it, sir, that you would
16 agree with me that it's not necessarily that
17 either you have a perfect memory or you have no
18 memory at all, it's usually something in between,
19 is it not?

20 A That's correct.

21 Q That there are things that you can
22 remember, there are others that you can't at all,
23 some are fuzzy, some you aren't sure. Has that
24 been your experience while you had been
25 intoxicated?

1 A Yes.

2 Q Is that essentially the situation that
3 presents itself with you on this occasion, trying
4 to remember back to the events of February 24th?

5 A Absolutely. I have provided every
6 memory and every detail that I can recall.

7 Q Now, when you were asked to speak to
8 Professional Standards Unit shortly after the
9 incident, as I understand it, sir, you were
10 advised that you were being interviewed as a
11 witness?

12 A Yes.

13 Q That is, there was no suggestion by
14 Professional Standards Unit that they felt you had
15 done anything inappropriately; is that right?

16 A That's correct.

17 Q And is it your understanding that in
18 situations where there is an allegation against
19 you personally, you'd be told that you are being
20 interviewed as a suspect?

21 A I had never been interviewed by
22 Professional Standards before, but that was the
23 understanding that I have ever had, that they are
24 very clear as to what your role is and how they
25 are speaking to you with regards to information

1 that they would like.

2 Q And specifically, sir, you would agree
3 that it was your understanding that you were being
4 asked to speak as a witness as to the events that
5 transpired that evening, and in particular, Derek
6 Harvey-Zenk?

7 A Yes. It was made very obvious to me
8 why I was there and what role I was being
9 interviewed under. Sergeant Girard, I believe,
10 who was interviewing me, made that very clear in
11 his opening statement with regards to what my role
12 was.

13 Q And specifically what PSU was
14 attempting to understand was whether or not Derek
15 Harvey-Zenk was impaired?

16 A I don't -- I don't know that. I don't
17 know what they were mandated to do.

18 Q My learned friend, Commission Counsel,
19 spoke to you about your evidence relating to Derek
20 Harvey-Zenk's consumption of chicken wings. And
21 as I understand it, sir, you had been out with
22 Derek Harvey-Zenk previously?

23 A Yes, I indicated that, yes.

24 Q And you had witnessed him previously
25 consuming chicken wings in a large quantity?

1 A Yes.

2 Q And beyond that, it wasn't just an
3 experience you had had, but many people on the
4 shift had spoken previously about the amount of
5 chicken wings that he could eat?

6 A Like I said, at the time it was an
7 ongoing joke that we would keep tabs on that.

8 Q So, is it fair to say that going into
9 the evening at Branigan's, there was some
10 anticipation amongst you and others to see what
11 Derek might be eating that night?

12 A I don't think it was that big of a
13 deal, but -- I wouldn't use anticipation, but,
14 yeah, we looked for it.

15 Q And as a result of that, there was
16 discussion that you can recall about the amount of
17 chicken wings that he had been drinking -- that he
18 had been eating?

19 A Eating that day, yes.

20 Q And word had filtered down to you at
21 some point as to the amount, and given the large
22 amount, you joked about that?

23 A Yes.

24 Q And this was something that was a
25 little bit out of the ordinary, was it not? You

1 were not talking about others, what they were
2 eating?

3 A No, just him.

4 Q And that's because there was no prior
5 experience with others, no running joke with
6 others?

7 A No.

8 Q Is that right?

9 A No.

10 Q And is that why it sticks out in your
11 mind?

12 A That's right.

13 Q Now, following this incident,
14 Constable Harding, you were asked a number of
15 questions from Commission Counsel as to
16 discussions you may have had, as to the night
17 before, or as time went on, whether you discussed
18 with your shift mates what occurred.

19 As I understand it, sir, I understand
20 your evidence, you did not have any discussions as
21 to the details specifically of the events on that
22 night with your shift mates?

23 A No. You learn very early on that you
24 don't discuss those specifics, especially when
25 there's -- we had been notified that there

1 obviously was going to be impending investigation
2 which involves our input as well, so it would be
3 inappropriate to discuss those details. Did we
4 talk about processes? Yes. Did we talk about
5 going to court? Yes. Whether we were being
6 interviewed as civilians, off duty, or we were
7 being interviewed as police members, lots of those
8 process type questions came up. With regard to
9 specific details, no.

10 Q And I'm going to be very blunt,
11 Constable Harding. At any time did you have any
12 discussions with another officer or a group of
13 officers and discuss what you would say to either
14 PSU, Commission Counsel, or this Inquiry, other
15 than to say that you're going to be totally honest
16 and tell the truth?

17 A Absolutely not. There was no other
18 discussions with regards to that.

19 Q Did you ever meet with any officer or
20 groups of officers in any attempt to coordinate
21 your evidence?

22 A No. The only time we were ever in a
23 group like that was when Inspector McCaskill, now
24 Chief, had come to speak to us with regards to
25 that.

1 Q And at any time did you discuss with
2 any officer or groups of officers any suggestion
3 that you would be less than candid with either
4 PSU, Commission Counsel, or the Commissioner, as
5 to your and everybody else's involvement that
6 night?

7 A No, there was no -- no discussions
8 like that. It was clear to my mind, and I know
9 the Chief had addressed this to us, and for me,
10 that was never an issue, that was never an issue
11 of coming forward and telling the truth. I have
12 nothing to hide from that night. I'm not thrilled
13 of having to come on the record and saying I was
14 intoxicated. No, of course not. But that's the
15 truth and that's how I'm presenting it.

16 MR. LABOSSIÈRE: Thank you. Constable
17 Harding, those are my questions.

18 MR. WEINSTEIN: No questions.

19 THE COMMISSIONER: Thank you.

20 MR. PROBER: Good morning,
21 Mr. Commissioner.

22 THE COMMISSIONER: Good morning.

23 BY MR. PROBER:

24 Q Good morning, Constable Harding.

25 A Good morning.

1 Q We heard from Ken Azaransky yesterday
2 that he was at a Super Bowl function at Branigan's
3 with you, and I think Chris Guyot. Do you recall
4 that?

5 A Yes.

6 Q Was Derek Harvey-Zenk there?

7 A No.

8 Q No. And was Chris Guyot's wife
9 noticeably pregnant?

10 A Yes.

11 Q The only other area I wanted to talk
12 to you about was the issue of what Commission
13 Counsel put to you in terms of the evidence we
14 heard yesterday, an in-camera hearing from
15 Constable Fudge, that she had a little wrestling
16 match with you. Although she, when I questioned
17 her about it, it was more like a tussle, over the
18 keys?

19 A Um-hum.

20 Q And you are not -- and she has a clear
21 recollection of that, by the way. You're not
22 saying that didn't happen, right? You're just
23 saying you don't recall?

24 A That's correct.

25 Q Okay. And Commission Counsel

1 suggested to you that perhaps you didn't tell PSU
2 about it because it might reflect unfavorably on
3 you. Well, first of all, you wouldn't know how
4 PSU would regard that, would you?

5 A No.

6 Q No. And secondly, you had already
7 told them that you were intoxicated, so how much
8 worse could it get; right?

9 A Yes.

10 MR. PROBER: Thank you.

11 MR. GREEN: No questions.

12 MR. McFETRIDGE: No questions.

13 MS. HANLIN: Just a couple of
14 questions, Mr. Commissioner.

15 BY MS. HANLIN:

16 Q Constable Harding, the night of, or
17 the early morning hours of February 25th, you
18 basically had two options in regards to getting
19 home or not getting home. Is that correct?

20 A That's correct.

21 Q You could have stayed at Sean Black's
22 place?

23 A Yes.

24 Q Or you could have gotten a ride home?

25 A Right.

1 Q And Sean made it clear to you that you
2 could stay the night?

3 A Yes.

4 Q I'd like to ask you about something in
5 your interview with Commission Counsel, and it's
6 at page 21?

7 A Yes.

8 Q You are asked:

9 "How many beers are out?"

10 You state:

11 "I can't tell you that with certainty.

12 I mean, can I assume? Sure."

13 THE COMMISSIONER: Could you help me a
14 bit by telling me, you said page 21.

15 MS. HANLIN: It's page 21

16 Mr. Commissioner.

17 THE COMMISSIONER: At line?

18 MS. HANLIN: I don't have a line

19 noted.

20 THE COMMISSIONER: Could I?

21 THE WITNESS: It's 19, sir.

22 THE COMMISSIONER: Thank you.

23 BY MS. HANLIN:

24 Q And Constable Harding, you state:

25 "How many beers are out? I can't tell

1 you that with certainty. I mean, can
2 I assume? Sure, anyone can assume,
3 and that's unfortunately what
4 happens."

5 What did you mean by that, Constable Harding?

6 A Essentially, he had put a question to
7 me again about, well thinking back and trying to
8 remember what was on the table. Essentially, I
9 said, I can assume there was beer on the table, I
10 remember some beer on the table. I can't tell you
11 how many and I wouldn't want to assume. And I
12 don't want anyone else to assume because it's
13 unfair. You have to -- you have to ask specific
14 people what their actions were.

15 MS. HANLIN: Thank you.

16 THE COMMISSIONER: Excuse me. Did
17 you -- you said Harvey-Zenk had 40 wings?

18 THE WITNESS: Yes, sir.

19 THE COMMISSIONER: Did you count them?

20 THE WITNESS: No.

21 THE COMMISSIONER: How did you find
22 out he had 40 wings?

23 THE WITNESS: Because that was spoken
24 around the table, watch how many Harvey-Zenk's
25 going to eat tonight.

1 THE COMMISSIONER: Somebody else
2 counted them?

3 THE WITNESS: I -- you don't have to
4 count them specifically. I believe they come in
5 10s or 20s, so it would be a round number.

6 THE COMMISSIONER: Thank you.

7 BY MS. HANLIN:

8 Q And it would only take a couple of
9 orders to reach that number?

10 A That's correct.

11 Q Now, Constable, you would agree as a
12 police officer conducting investigations, in
13 theory at least, you can gather evidence to prove
14 when someone is not telling the truth. Is that
15 correct?

16 A That's generally relatively easy to --
17 to prove.

18 Q However, it can be more difficult to
19 gather evidence to prove when someone is telling
20 the truth, as a police officer?

21 A That can be, yes.

22 THE COMMISSIONER: I'm sorry, you can
23 tell who is telling the truth?

24 THE WITNESS: No, I said at times it's
25 easier to tell when someone is not telling the

1 truth.

2 THE COMMISSIONER: Not telling the
3 truth?

4 THE WITNESS: Yes.

5 THE COMMISSIONER: How do you do that?
6 Maybe you can assist me in that? After 30 years
7 as a judge, I would like to know how you can do
8 it, tell somebody who is telling the truth or
9 isn't telling the truth?

10 THE WITNESS: Well, in my few years of
11 experience now in investigative work, we have
12 tools that we use, interview techniques,
13 polygraphs, things like that.

14 THE COMMISSIONER: I see.

15 THE WITNESS: And also using proof,
16 whether it be other witness statements or
17 evidence.

18 THE COMMISSIONER: Thank you.

19 BY MS. HANLIN:

20 Q And in regards to other witness
21 statements, is it true that one of the things you
22 look for is consistency?

23 A Yes.

24 Q However, if statements were identical,
25 verbatim, that would cause some suspicion in your

1 mind?

2 A If they were identical, yes, that
3 would alert me that there might be something
4 wrong.

5 Q Now, you were asked by Commission
6 Counsel, can you describe the circumstances of
7 getting into Tracey Fudge's vehicle? Do you
8 recall that, him asking you that?

9 A Yes.

10 Q And you couldn't recall the
11 circumstances of getting into Tracey Fudge's
12 vehicle; is that correct?

13 A At Branigan's, initially?

14 Q Yes?

15 A No.

16 Q However, you recall that you got a
17 ride with her from Branigan's to Sean Black's; is
18 that correct?

19 A Yes.

20 Q And that part of the reason for that
21 was that you had been drinking and you shouldn't
22 be driving?

23 A That's correct.

24 Q Now, I would suggest to you that that
25 is the important part, that you got a ride with

1 her from Branigan's, because you shouldn't have
2 been driving?

3 A Um-hum.

4 Q The circumstances of actually getting
5 into her vehicle are not particularly significant,
6 are they?

7 A No. Well, I can't -- I can't give an
8 opinion on that. I don't know if that's
9 significant or not. I don't recall it, but that's
10 how I got there and I believe that's what's
11 important is how I got there.

12 Q If there was something unusual that
13 took place about getting into her vehicle, do you
14 think you would recall it?

15 A Perhaps, yes, if it was unusual.

16 MS. HANLIN: Thank you. Those are my
17 questions.

18 BY MR. CLIFFORD:

19 Q You just told counsel for Winnipeg
20 Police that you think you'd recall something
21 happening if it was unusual. Is it usual for you
22 to be out at 5:30 in the morning, minus 20, in a
23 tussle or a wrestling match with an officer,
24 trying to take a set of keys out of your hands?

25 MR. PROBER: I object.

1 MS. HANLIN: Mr. Commissioner.

2 THE COMMISSIONER: Just --

3 MR. PROBER: We can line up to object.

4 THE COMMISSIONER: Well, line up and
5 one at a time.

6 MR. PROBER: Thank you.

7 THE COMMISSIONER: Thank you.

8 MS. HANLIN: Mr. Commissioner, that's
9 not proper re-examination. That issue was fully
10 canvassed by Mr. Clifford. He had every
11 opportunity to ask about being outside in the
12 temperature.

13 THE COMMISSIONER: Thank you. Next.

14 MR. PROBER: Same objection,
15 Mr. Commissioner. This issue was canvassed. The
16 issue about the getting into the car was canvassed
17 already in examination-in-chief. It's not proper
18 re-examination. Thank you.

19 THE COMMISSIONER: Yes, Mr. Clifford.

20 MR. CLIFFORD: I think the old saying,
21 the door couldn't be more wide open for that
22 question, based on the way that was put to the
23 officer. If he could remember something that was
24 unusual, and it almost, in my submission, begs the
25 question.

1 BY MR. CLIFFORD:

2 Q Sir, when you spoke to Mr. Minuk by
3 telephone, did he attempt to interview with you
4 with respect to any observations you made
5 throughout the evening?

6 THE COMMISSIONER: I think he said
7 that he did, but they never got together?

8 THE WITNESS: That's correct. Do you
9 mean like interviewing on the phone itself?

10 BY MR. CLIFFORD:

11 Q Yes. Like asking you specifically
12 about what observations you made?

13 A I can't recall that.

14 THE COMMISSIONER: You can't recall?

15 THE WITNESS: It was more to set up
16 the interview. He wasn't interviewing me on the
17 phone. Whether he asked me a question or two with
18 regards to that, I don't remember him asking those
19 questions.

20 BY MR. CLIFFORD:

21 Q Mr. Labossiere asked you questions
22 that, in your experience, police officers in the
23 past have been involved, and you have witnessed
24 them taking steps to ensure that you or other
25 police officers were not driving. Have you ever

1 witnessed a police officer taking physical steps,
2 such as having to wrestle or tussle with somebody
3 to take keys out of their hands?

4 A Not that I recall, no.

5 MR. CLIFFORD: Sir, those are the
6 questions I have in re-examination. Thank you.

7 THE COMMISSIONER: Thank you very
8 much. Thank you.

9 THE WITNESS: Thank you, sir.

10 THE COMMISSIONER: You may step down.

11 MR. CLIFFORD: Mr. Commissioner, could
12 I suggest that with the time now at 10:50, that we
13 take the morning recess?

14 THE COMMISSIONER: Yes.

15 MR. CLIFFORD: Thank you.

16 THE COMMISSIONER: Very good
17 suggestion.

18 THE CLERK: All rise. This Commission
19 of Inquiry will take the morning recess.

20 (Proceedings recessed at 10:50 and
21 reconvened at 11:05 a.m.)

22 THE CLERK: All rise. This Commission
23 of Inquiry is now reopen.

24 MR. PACIOCCO: Good morning, Sergeant
25 Anderson.

1 THE WITNESS: Good morning.

2 MR. PACIOCCO: My name is David
3 Paciocco, I am Commission Counsel and I'll be the
4 one asking you questions this morning.

5 THE WITNESS: Thank you.

6 JIM ANDERSON, being first duly sworn,
7 testified as follows:

8 BY MR. PACIOCCO:

9 Q Sergeant, you became a police officer,
10 I understand, on the 13th of November, 1989?

11 A That's correct.

12 Q Was all of your experience as a police
13 officer with the Winnipeg Police Service, sir?

14 A Yes, it was.

15 Q You have been a general patrol
16 officer?

17 A Amongst other duties, yes.

18 Q Yes. You have also been an
19 investigator?

20 A Correct.

21 Q I'm going to ask you, Sergeant, if you
22 can just try and either move the microphone a bit
23 closer to you or you move a bit closer to the
24 microphone, because I am just having a little
25 trouble hearing your responses?

1 A How is that?

2 Q That's better. You have worked in
3 plain clothes?

4 A Correct.

5 Q Your current rank, or your rank rather
6 back in February 2005 was a Patrol Sergeant, sir?

7 A Yes.

8 Q You worked on shift B-1 of Division
9 13?

10 A Correct.

11 Q And, sir, is your current rank still a
12 Patrol Sergeant?

13 A No, it's not.

14 Q What are you now, sir?

15 A Sergeant.

16 Q Congratulations on your promotion,
17 sir.

18 A Thank you.

19 Q You were working third relief duties
20 or evening shift on the occasion in question, sir?

21 A Yes.

22 Q 25th of February, 2005 -- 24th?

23 A Yes.

24 Q Is that a yes, sir?

25 A Yes.

1 Q Yes, thank you. And your shift
2 supervisor, I understand, was Sergeant Humniski?

3 A Correct.

4 Q You had been with shift B-1 for
5 approximately eight months as of the 24th of
6 February, 2005, I understand from our earlier
7 interview, sir?

8 A That's right.

9 Q And of course, a horrible tragedy
10 occurred on the morning hours of the 25th of
11 February, 2005, sir?

12 A Yes, it did.

13 Q And it has had reverberations that I
14 think are still being felt by the Winnipeg Police
15 Service?

16 A Yes.

17 Q Sir, could you describe the nature of
18 the police culture for the Commissioner, if you
19 would, police officers tend to see each other?

20 A I am sorry?

21 Q Could you describe the police culture
22 for the Commissioner, the way police officers tend
23 to see each other and interact, and what their
24 expectations are of one another, sir?

25 A Generally or specifically, one on one?

1 Q Well, let me suggest to you, let me
2 suggest to you, sir, and I don't think you will
3 disagree, that policing is a very difficult job?

4 A It can be.

5 Q It's a very dangerous occupation, sir?

6 A It can be.

7 Q And officers certainly work together?

8 A Sure. Sure.

9 Q And it's expected that they have to?

10 A At times.

11 Q They certainly have to be supportive
12 of one another?

13 A At times.

14 Q They have to be dependent on one
15 another and know that they can count on each
16 other, sir?

17 A Yes, at times.

18 Q And I don't mean this in a sexist way,
19 but there is a something of a fraternity among
20 police officers, a brotherhood?

21 A Any more than any other occupation?

22 Q Yes?

23 A Not sure about that.

24 Q What about a team mentality or sense
25 that you are all members and you're part of the

1 same group?

2 A That can be cultivated at times, yes.

3 Q Isn't it something you want to
4 cultivate, sir?

5 A Ideally, if you're going to be working
6 in a group, ideally everybody is pulling the same
7 general direction.

8 Q And sir, you need to know that you can
9 count on people you are working with as a police
10 officer, even in dangerous situations?

11 A Ideally.

12 Q Yes. And that is something, I think
13 you used the word "cultivate," I would take it
14 that's something that the institution tries to
15 cultivate, comradery, support, bonding?

16 A Team work, yes, not always
17 successfully, but ideally.

18 Q Yes. What were your responsibilities
19 as a Shift Sergeant, sir, or a Patrol Sergeant?

20 A Patrol Sergeant is also known as a
21 street supervisor. So although I would be
22 considered the shift supervisor's, say right-hand
23 man, a large part of my responsibility was to be
24 out on the street, providing direction to other
25 officers, particularly junior officers, or dealing

1 with major incidents and providing direction.

2 Q And your role also includes, sir,
3 ensuring the well-being of the members?

4 A Absolutely.

5 Q Sir, when did you first hear about the
6 horrible tragedy that took the life of Crystal
7 Taman?

8 A That would have been Friday afternoon,
9 the 25th.

10 Q Who did you hear it from, sir?

11 A Dave Harding.

12 Q Could you tell the Commissioner the
13 circumstances surrounding your learning of this?

14 A I received a telephone call from him,
15 I don't know where he had learned that information
16 from, but it was at that time that he advised me.

17 Q And do you recall what it was he said
18 to you, sir?

19 A Not specifically, no.

20 Q How much of it do you recall? And I'm
21 not expecting a verbatim account, but what
22 information did you learn?

23 A He told me that there had been a fatal
24 traffic accident in the early morning hours of
25 that date. Derek Harvey-Zenk had been involved

1 and that he was arrested. I believe he told me he
2 had been arrested at the scene.

3 Q Okay. And were you made aware at that
4 time of the nature of the allegations being made
5 against Derek Harvey-Zenk?

6 A The allegations specifically being?

7 Q Being that this accident was alleged
8 to have involved alcohol, sir, whether it be a
9 refusal to provide a breath sample or an impaired
10 driving charge connected with the fatality?

11 A I don't think we had that information
12 at that time.

13 Q Sir, when did you acquire that
14 information?

15 A That would have been probably later on
16 in the day. I would have checked certainly with
17 my shift supervisor, and I may have spoken later
18 on to Dave Harding, I'm not sure. But I believe I
19 acquired that information from possibly Sergeant
20 Humniski.

21 Q And I take it --

22 THE COMMISSIONER: Who?

23 THE WITNESS: Sergeant Humniski.

24 BY MR. PACIOCCO:

25 Q I take it, sir, that you would have

1 sought to educate yourself about the
2 circumstances, because Harvey-Zenk was one of the
3 individuals on your shift, sir, and you were
4 interested, among other things, in his well-being?

5 A That's correct.

6 Q You were aware immediately, sir, I
7 think from your experience, that there would be a
8 police investigation?

9 A Of course.

10 Q And of course, you expected, sir, that
11 you would be a witness as a result of your
12 involvement, whether directly or peripherally with
13 Mr. Harvey-Zenk in the hours leading up to this
14 tragedy?

15 A I believe that would have been a
16 strong likelihood, yes.

17 Q And you would have understood that
18 everybody at the party could potentially be a
19 witness? And by the party, I'm referring both to
20 the Branigan's get-together and the get-together
21 at Sergeant, now Sergeant Black, then Constable
22 Black's home?

23 A Yes, potentially.

24 Q And so you do have a recollection of a
25 conversation with your shift supervisor, Sergeant

1 Humniski, with respect to these events, sir?

2 A Vaguely, yes, shortly thereafter or
3 sometime during that weekend.

4 Q Okay. And I understand that the two
5 of you, and I don't know who made the decision,
6 but the two of you resolved that you should go and
7 speak to the Professional Standards Unit, or at
8 least to, at the time, Inspector McCaskill?

9 A Yes, independently Sergeant Humniski
10 and I, I believe, we came to the same conclusion.
11 And when we agreed that that should be the course
12 of action, it was clear that that was the
13 direction we would proceed.

14 Q Okay. And you had some conversation
15 with Sergeant Humniski about approaching the
16 Professional Standards Unit, or was it Inspector
17 McCaskill at the time? What was your basic
18 objective when you had a bit of a plan about going
19 forward with this?

20 A It wasn't a bit of a plan. It was a
21 determination that we needed to come forward with
22 this information.

23 Q Okay.

24 A We didn't know if we would be going to
25 Professional Standards till we actually arrived at

1 the Public Safety Building and we were told that
2 that's where we would go. I presumed that we
3 would be dealing with East St. Paul.

4 Q All right. And we'll come back to
5 that, sir. Thank you for that clarification.

6 Someone, either you or Sergeant
7 Humniski, contacted Inspector McCaskill on an
8 occasion prior to the 28th of February, or on the
9 28th of February. Are you able to indicate to the
10 Commissioner how that contact came about?

11 A It was probably on the 28th, if that
12 was the Monday?

13 Q Yes, sir.

14 A It was probably, initial contact was
15 made by Sergeant Humniski, and that was in
16 consultation with him and I and our agreed upon
17 course of action.

18 Q And, sir, I understand that you did
19 end up meeting with Inspector McCaskill on that
20 day?

21 A Yes.

22 Q The 28th?

23 A Yes.

24 Q Do you recall where you met?

25 A The North End police station.

1 Q Sir --

2 A I believe.

3 Q -- originally our information is you
4 met at Tim Hortons doughnut shop?

5 A That's correct, yes.

6 Q And our information is based on notes
7 and testimony provided by now Chief McCaskill,
8 that has been made Exhibit 158 in these
9 proceedings.

10 Sir, you met at the doughnut shop at
11 2:15 or 1415 hours, according to the notations
12 that were taken by Chief McCaskill at the time.
13 Sir, you didn't make any notes of your meeting
14 with Chief McCaskill, did you, sir?

15 A Correct.

16 Q Do you recall what you and/or Sergeant
17 Humniski said to Chief McCaskill?

18 A Specifically, no.

19 Q Can you tell us what your best
20 recollection is of the message that you were
21 trying to provide? And again, I'm not looking for
22 verbatim accounts.

23 A Okay. Then, generally, it would have
24 had to have -- it would have been in regards to,
25 we feel that we need to come forward at this time,

1 we believe that other than the catastrophic
2 mistake on whatever level, by Derek Harvey-Zenk,
3 that this had been a responsible get-together with
4 responsible people. We needed to come forward,
5 tell our story. It was the moral and professional
6 thing to do.

7 Q Okay. And his notes record that there
8 was communication by you that you wanted to talk
9 about the incident involving Harvey-Zenk, and
10 generally indicate that had you wanted to come
11 forth and help the investigation, sir. Would that
12 be an accurate notation, based on your
13 recollection of what the purpose and nature of the
14 meeting was?

15 A Yes.

16 Q And he also records that this was a
17 subdued get-together. Is that information that
18 would have been provided to him, to the best of
19 your recollection, sir?

20 A Probably.

21 Q And do you know whether that term
22 "subdued" was one that was used by you or Sergeant
23 Humniski, or whether that was an interpretation of
24 the event in the conversation by Chief McCaskill?

25 A I don't know.

1 Q Does that sound consistent with your
2 recollection of the event, sir?

3 A Which part?

4 Q Well, that's what I was going to ask
5 you next. All I have here is a notation:

6 "It was a very subdued get-together."
7 Were you discussing both Branigan's and Sergeant
8 Black's house and the atmosphere there, or only
9 one or the other?

10 A I could only guess.

11 Q Sir, is it an educated guess? Because
12 if it's an educated guess, I think it may be
13 helpful, but if it's a pure guess, we are looking
14 for something --

15 A I'd like to be helpful. I would
16 guess, Mr. Commissioner, that it is more
17 specifically geared towards the gathering at
18 Black's residence. The Branigan's
19 characterization would have to stand a little bit
20 differently, just given that there was, I'm
21 reading 24 officers there, probably just as many
22 members of the public. So it would be very
23 difficult for me to capsulize the atmosphere at
24 Branigan's. This is in all likelihood speaking
25 more specifically about Black's residence.

1 Q Okay. Sir, do you have a recollection
2 of members of the public being at Branigan's when
3 the Winnipeg Police Service members were present
4 there?

5 A I don't have a specific recollection
6 that there was 24 officers there, but I can say
7 with certainty I have never been at Branigan's
8 when members of the public were not present.

9 Q Because our information is that there
10 was one couple present in the restaurant at the
11 time of arrival, but that they left soon after.
12 And that Branigan's normally closes at midnight
13 but stayed open until it was legally no longer
14 permitted to serve alcohol in order to facilitate
15 the group of officers. Does that conflict with
16 your recollection, sir, or is it just that you
17 don't know?

18 A I know that I had never been there
19 when members of the public weren't present,
20 whether that was that specific night or any other
21 previous visits --

22 Q Okay.

23 A -- I don't know.

24 Q All right. Sir, you went, after you
25 spoke to McCaskill, Inspector McCaskill at the

1 time, you went directly, I understand, to
2 Superintendent Stannard's office?

3 A Stannard.

4 Q Okay.

5 A Yes.

6 Q And we understand that Inspector
7 McCaskill accompanied you on that meeting?

8 A Correct.

9 Q And that occurred at about 3:30 in the
10 afternoon, about an hour after your initial
11 contact, or 50 minutes after your initial contact
12 with Inspector McCaskill. Does that accord with
13 your recollection, sir?

14 A I don't know the specific times.

15 Q Not being the member of a police
16 force, sir, where does Superintendent Stannard
17 stand in the pecking of the Winnipeg Police
18 Service back in 2005?

19 A He was a Superintendent.

20 Q Yes, but where does that sit relative
21 to the Chief and relative to Inspectors?

22 A That would be one rank below Deputy
23 Chief.

24 Q Okay. So he's certainly a very high
25 ranking individual, sir?

1 A I would say so.

2 Q What was his responsibility as
3 Superintendent? What was his function?

4 A I don't know.

5 Q Do you know how you ended up in his
6 office?

7 A Chain of command.

8 Q Do you know whose suggestion it was
9 that you speak to Inspector Stannard or
10 Superintendent Stannard?

11 A In all likelihood, Inspector McCaskill
12 at that time.

13 Q Okay. So this was not an overture
14 that you had planned on making. It was, you were
15 going to approach your ultimate shift supervisor,
16 Inspector McCaskill, and then it ended up being
17 moved to Stannard's office, probably at his
18 suggestion. Is that fair, sir?

19 A Yes. Inspector McCaskill is a
20 divisional commander.

21 Q Yes, sir?

22 A So he was our boss.

23 Q Yes?

24 A So respecting the chain of command,
25 that's presumably the route we took.

1 Q Now, Staff Sergeant Poole, and this is
2 going to be the second or third hand from you, and
3 I just want to check with you, but his notes
4 record that he learned from Superintendent
5 Stannard that you and Sergeant Humniski were "very
6 upset." Is that a fair description of your
7 emotional state, learning about this terrible news
8 and having to come forward as you did, sir?

9 A Very upset when we met with Staff
10 Sergeant Poole?

11 Q With Stannard? Staff Sergeant Poole
12 is having a conversation with Stannard, and
13 according to his notes is recording that you
14 people, or one of you was very upset. It's not
15 specific, just the term "very upset" appears?

16 A Potentially.

17 Q I'm sorry?

18 A Potentially.

19 Q Were you upset, sir?

20 A Absolutely. I don't know how that was
21 outwardly displayed or not but --

22 Q You --

23 A -- we were not happy with the
24 situation.

25 Q And you were anxious to tell your

1 story, as you have indicated, sir?

2 A Absolutely.

3 Q And I understand that Superintendent
4 Stannard called ahead to the Professional
5 Standards Unit and made arrangements for you to go
6 over, sir?

7 A He did, but I believe that that phone
8 call had been preceded with another phone call
9 possibly to East St. Paul.

10 Q Yes, sir?

11 A And I'm not sure exactly who he spoke
12 to, or if in fact that's who he spoke to, but --

13 Q We do have information that East St.
14 Paul was consulted before the decision was made to
15 have you go over?

16 A Okay.

17 Q All right.

18 A Okay.

19 Q And you go straight to the
20 Professional Standards Unit from Superintendent
21 Stannard's office, sir?

22 A Effectively, yes.

23 Q Our information is that Professional
24 Standards was advised at 1624 hours that you and
25 Sergeant Humniski wanted to speak to them about

1 events prior to the collision, sir. And our
2 information is that you found yourself giving
3 official statements as part of the investigation
4 within minutes of that. The interview of Sergeant
5 Humniski started at 1636, and that your interview
6 started as soon as his ended, sir. Would that
7 accord with your recollection?

8 A More or less, yes.

9 Q Were you aware, sir, that the
10 Professional Standards Unit have just that day
11 resolved to conduct an investigation into this
12 manner?

13 A No.

14 Q Were you aware that they had not even
15 assigned Detective Sergeant Girard until 11:20
16 that very morning, sir?

17 A No.

18 Q So it's within five hours of the
19 assignment of an investigator that you are there
20 and you're going to be interviewed in connection
21 with the investigation?

22 A If that's what you're saying.

23 Q Yes. So I'm just making the
24 observation, sir, that this was really fast out of
25 the gate. You were in there giving your account

1 very early on. This was not something that was
2 delayed, sir?

3 A What was not delayed?

4 Q You coming forward, sir. This was
5 really your first opportunity to make any type of
6 statement in the context of an investigation is
7 what I'm suggesting?

8 A Yes, and that was -- that was for a
9 variety of reasons. We wanted to come forward, we
10 wanted to tell our story. We had nothing to hide.
11 We had done nothing wrong, other than the one
12 obvious exception. We wanted to get out in front
13 of the perceived perception that was already
14 starting to unfold. And we felt it was absolutely
15 the right thing to do. And the sooner that we
16 could make our statement on the record, the
17 better.

18 Q Yes, sir. And given that you both
19 approached, and I'm talking about you and Sergeant
20 Humniski, given that you both approached Inspector
21 McCaskill and ultimately these others together, I
22 take it, sir, this was a concerted or joint
23 decision to come forward, and it was something you
24 were doing together. It was not a coincidence
25 that you were both there at the same time?

1 A Myself and Sergeant Humniski?

2 Q Yes?

3 A Correct.

4 Q I'm going to read to you what Sergeant
5 Humniski provided to Professional Standards as an
6 explanation for going there, and I'm going to ask
7 you to comment on it, sir. This will be found for
8 counsel if they wish to read along at tab
9 F-2.35.s. And Sergeant Humniski will be the next
10 witness and I'll put his document into evidence at
11 that time. But at page 1157, volume F-2.35.s, he
12 says this.

13 "I know the reason Jim and I came out
14 here is we wanted to get away from
15 this interpretation that this is a
16 shift, a big party."

17 A It was what?

18 Q "...that this is a shift, a big
19 party."

20 A Um-hum.

21 Q "It wasn't. It wasn't a planned
22 thing. It is just, I didn't want
23 things to be brought up that weren't
24 there."

25 And Sergeant Pearson says:

1 "You didn't want rumours hatching."

2 And Sergeant Humniski's response:

3 "Yes."

4 Is that a safe or acceptable
5 explanation as to why you came forward, sir? You
6 wanted to clear the air to show that this wasn't a
7 big shift party, that it wasn't a planned thing,
8 and you didn't want rumours hatching about what
9 had taken place?

10 A Certainly the media had already got a
11 hold of this making it sound like it was a big
12 bush party. In fact, it was a small gathering of
13 officers at a fellow colleague's beautiful home,
14 it was respectful and low key.

15 Q Okay. Your intent was to clear up any
16 concerns about, rumours that could damage either
17 the officers involved or even the reputation of
18 the Police Service, sir?

19 A Coming forward wasn't going to dispel
20 necessarily any or all rumours. That became clear
21 even subsequent days and continues to this day.
22 We did our best to come forward. Ironically, it
23 hasn't necessarily worked out that way.

24 Q And I take it, sir, your objective was
25 to effectively reaffirm to the executive of your

1 police force that this was not a drinks party, and
2 that everybody was responsible there, as far as
3 you were aware, sir. Is that fair, sir?

4 A Everybody was responsible, well --

5 Q Don't let me put words in your mouth.
6 You correct me if I'm wrong?

7 A Okay. We took care of each other.
8 Certainly Dave Harding wasn't going to be allowed
9 to drive. Generally speaking, the message was to
10 any and everyone, including our executive, that
11 this wasn't what it was going to be made out to
12 be.

13 Q Did you have any concerns about making
14 this joint approach with Sergeant Humniski, given
15 that both of you were likely to be witnesses in a
16 criminal case, sir?

17 A No, never.

18 Q You understand that it's desirable for
19 material witnesses in criminal cases not to
20 collaborate in any way in connection with matters
21 relevant to their testimony?

22 A We didn't collaborate on any of the
23 evidence.

24 Q I'm not suggesting it in a nefarious
25 way, sir, but you did go there with the joint

1 intent of describing the nature of the
2 get-together at Sergeant Black's place?

3 A Independently, we both experienced the
4 same atmosphere or characterization of the
5 get-together.

6 Q But you had consulted with Sergeant
7 Humniski about what it was that was going to be
8 said, even though it may have come from your joint
9 recollection, and you decided to jointly go
10 forward and jointly present information about the
11 nature of the get-together?

12 A Jointly present the truth of the
13 get-together, yes.

14 Q But after some discussion between the
15 two of you about what that "truth" was, sir?

16 A Specifically, little.

17 Q I'm sorry?

18 A Specifically, very little.

19 Q Okay. You are aware that the whole
20 shift was taking this very, very hard, sir?

21 A When?

22 Q After the news broke as to what had
23 happened to one of their colleagues?

24 A Specifically when?

25 Q Well --

1 A Like we were on days off. There may
2 have been a few phone calls to check on their
3 well-being, but, otherwise, it was -- I had no way
4 of truly gauging it, other than obviously they
5 would be feeling confused, concerned, and so on,
6 taking it hard, as you have said.

7 Q It's just that Detective Sergeant
8 Girard's notes, or Poole's notes suggest that
9 Girard told him that the whole shift was taking it
10 hard, and Girard attributes that to conversations
11 he had during the interviews with you and
12 Humniski, and the conversations that took place
13 before the interviews, sir. And I just wondered
14 where he might have got that information about the
15 shift taking it hard?

16 A I think that would be a fairly
17 presumptive idea.

18 Q So you mean by that that you could
19 imagine that's got to be the case?

20 A Absolutely.

21 Q Did you attend a cake and tea or
22 coffee function for a retiring member on the 25th
23 at the police station, sir?

24 A No.

25 Q A number of members of your staff did

1 on the overlap day, and you weren't there, sir?

2 A No.

3 Q You received this phone call from
4 Constable Harding, advising you --

5 A That it had happened?

6 Q Yes, sir?

7 A Yes.

8 Q And we have heard evidence through the
9 testimony of Constable Fudge, that even though she
10 wasn't at your particular division, there was
11 rumours floating all over the place very, very
12 shortly after that. This would be something that
13 people would talk about obviously, sir?

14 A Sure.

15 Q You agree with that?

16 A Absolutely.

17 Q And members of the shift who knew
18 Derek Harvey-Zenk, even though they weren't at
19 work, you could imagine there would have been a
20 flurry of telephone calls between people, just as
21 Constable Harding called you.

22 Sir, there's certainly been a lot of
23 interchange between officers about this event that
24 you are aware of, a lot of discussions and
25 conversations about it from day one?

1 A Leading up to today?

2 Q Leading up to today.

3 A And that is probably a fair statement
4 from the involved officers to, you're right, not
5 involved officers completely, and members of the
6 public, friends, family.

7 Q Yes, it's been a big event. I take it
8 it's a little hard now for the Commission to get a
9 truly independent recall of witnesses who come
10 forward because of all of that discussion that
11 would have taken place, sir?

12 A As to what was firsthand and what was
13 second, third, or more hand?

14 Q Yes?

15 A That would be fair, yes.

16 Q And I think you even acknowledged in
17 your interview with Mr. Clifford, at one point,
18 you wanted to clarify that you, some of what you
19 were telling him could have been information you
20 heard rather than information you personally know?
21 Do you remember making that --

22 A Yes, I do. And in fact, information
23 was revealed in that interview and subsequently in
24 the media, leading up to today, lots of
25 information that I didn't know about.

1 Q Are you able to sort out what you know
2 about and what you've heard, sir?

3 A Hopefully.

4 Q And sir, because I know at the time of
5 the interview, and I'll take you to the passage
6 just to be fair to you, sir, it's in the interview
7 you have in the yellow document in front of you
8 over on the far right-hand side, sir. It is a
9 transcript at, numbered 6-E, and at page 43 of the
10 transcript -- you will notice there are four pages
11 per page. I'm going to be referring to the
12 numbers on the small pages, sir.

13 A I'm familiar with the exchange.

14 Q Yes, okay. And I'm just going to read
15 it into the record so the public is also familiar
16 with the exchange, sir. It begins at line 21.

17 "I think I can probably assist you
18 with this,"

19 says Mr. Clifford.

20 "Are you having a concern that some of
21 the answers you are giving me is
22 information that's been provided to
23 you through other sources?"

24 A Three and a half years almost has
25 elapsed.

1 Q Yes.

2 A Certainly there's been a great
3 deal of conversation in leading up to,
4 long prior to the announcement of the
5 inquiry.

6 Q Indeed.

7 A I just want to clarify that some
8 of this may have come from my
9 recollection during those
10 conversations. That's all."

11 And that's what you recalled saying to him, sir?

12 A Yeah.

13 Q So I know you've undertaken to try
14 your best to sort out what you know and what
15 you've heard, sir. But even at the time of the
16 interview back in March, you recognize that you
17 might not succeed in doing that?

18 A Exactly, and what those sources were,
19 they could have been involved, they could have
20 been non involved members, they could have been
21 the media, I really don't know.

22 Q Fair enough. Sir, I understand that
23 on the 24th, you didn't show up at Branigan's
24 technically the Thursday, you didn't get there
25 until it was already Friday, about 12:15?

1 A Or I left work at 12:15.

2 Q Fair enough. But your involvement in
3 this begins really some hours after the other
4 members may have started to show up at Branigan's,
5 sir, maybe an hour, a bit more than an hour after?

6 A Yeah, could be, I don't know.

7 Q And sir, you have given a list in your
8 interviews to the individuals you remember being
9 there. And just for the sake of economy, rather
10 than forcing you to try and remember back yet
11 again, I'm going to indicate to you that the
12 people you listed as being present at Branigan's,
13 through your recollection were Constable Sean
14 Black, Sergeant Humniski, Constable Dave Harding,
15 Constable T.J. Spruyt, Constable Jay Nolet,
16 Constable Kelly McLure, Constable Ken Azaransky,
17 Constable Tracey Fudge, Constable A. Williams,
18 Constable J. Kapka and Constable Norman Bauer. Is
19 there anything in that list that causes you any
20 concern today, sir?

21 A No.

22 Q Sir, where did you go when you arrived
23 at Branigan's?

24 A To the lounge area. I have never been
25 in the restaurant area.

1 Q Fair enough. And sir, where did you
2 go to in the lounge area?

3 A To where my shift mates would have
4 been.

5 Q Sir, do you recall where you sat?

6 A No, I don't even know if I sat. I may
7 have stood. There were generally tall tables, so
8 they have the high bar stools. So whether I sat
9 or stood, I'm not sure.

10 Q Do you remember any low tables, sir?

11 A Yeah.

12 Q Do you remember low tables there that
13 evening?

14 A Along one wall I recall there always
15 being booths, low lying booths.

16 Q And would those booths have had
17 love-seat type couches rather than permanent
18 booths as you might see in a 50's style diner?

19 A Now that you mentioned that, I believe
20 so, yes.

21 Q And sir, you indicate that your
22 recollection is you gravitated towards the high
23 tables rather than to those lower tables, sir?

24 A Generally, that's where we tended to
25 go, yes.

1 Q When you say we tended to go, are you
2 basing your recollection of what happened that
3 night on your practices on other occasions at
4 Branigan's?

5 A Yes.

6 Q And so you are having difficulty with
7 independent recall of where you went on this
8 evening, and you're predicating it on your other
9 experiences; is that fair?

10 A Yes.

11 Q Are you able to tell us who you were
12 sitting with or standing near?

13 A No.

14 Q Sir, I note that you weren't asked
15 that question when you gave your interview to the
16 Professional Standards unit approximately three
17 days after the incident. Do you agree that that
18 was not a question asked, or do you remember?

19 A I'd have to check the transcript.

20 Q I think you can take my word for it.

21 A Okay.

22 Q If I'm wrong, I'm sure that the
23 counsel for the Winnipeg Police Service will bring
24 it up. I take it your memory would have been much
25 fresher back then, sir?

1 A Than today, yes.

2 Q Yes. And you probably would have been
3 able to answer that question back then, sir?

4 A As uneventful and innocuous the night
5 was, probably.

6 Q Yes. And those people that I listed
7 through your earlier recollection, sir, are you
8 able to tell us where they were sitting?

9 A No.

10 Q You don't have any recall of where
11 anybody was sitting, sir?

12 A No.

13 Q Did you see Derek Harvey-Zenk at
14 Branigan's?

15 A I don't think it's a coincidence that
16 the people that I listed at Branigan's were the
17 same people at Sean Black's residence later on.
18 That is the connection that makes me remember
19 that, or believe that the same people were also at
20 Branigan's, with the exception of Williams and
21 Kapka, who were also on my shift, and I know that
22 they had been at Branigan's but not at Black's.

23 Q And sir, I noticed that the list you
24 provided didn't, in my recollection, include Derek
25 Harvey-Zenk. Do you recall seeing him at

1 Branigan's, sir?

2 A Your list that what?

3 Q The list that I gave you, my
4 recollection is that you didn't mention seeing
5 Derek Harvey-Zenk at Branigan's, sir?

6 A Specifically?

7 Q Yes.

8 A He would have been there.

9 Q Yes, I know, sir. But rather than
10 inferring based on subsequent action that he must
11 have been there, what I need to know from you is,
12 do you have any recollection?

13 A No.

14 Q And I understand, sir, that based on
15 my reading at least of the Professional Standards
16 Unit interview of you, you were not asked whether
17 you saw Derek Harvey-Zenk at Branigan's, sir?

18 A Again, if you want me to look at the
19 transcript?

20 Q No, I think again counsel will correct
21 me if that happens to be right.

22 A Okay.

23 Q So you probably would have had a
24 better recollection of whether you saw him, had
25 you been asked three days later?

1 A Probably.

2 Q Sir, you would agree with me that the
3 Branigan's lounge area is a confined space? It's
4 a pretty small area? I know that's a relative
5 term, sir.

6 A Yeah.

7 Q Feel free to disagree with me, but is
8 that your sense?

9 A I wouldn't say it's cozy, but it's
10 smallish, I guess.

11 Q Yes, because our information is that
12 the south wall that faces onto Leila is 14 feet
13 across?

14 A Okay.

15 Q And the distance from that south wall
16 to the fireplace, on what would be the west side,
17 is about 12 feet 6 inches, and that even the wall
18 on the east side, running out through the area
19 where the lounge becomes open, is about 23 feet.
20 So it's not a big room to house an entire shift of
21 officers plus some, is it, sir? I mean, our
22 information is there were about 24 officers in
23 there?

24 A Why stop at the fireplace?

25 Q Sir, the room opens up past the

1 fireplace, does it not?

2 A So did the tables continue on.

3 Q Yeah. And how far past the fireplace
4 do they continue, sir?

5 A Feet?

6 Q Any idea how many feet, sir?

7 A Maybe to the end of the -- as I
8 recall, maybe to the end of the dais here, the
9 balcony.

10 Q Okay. At the very end of the balcony,
11 so what would you make that, sir, about 16 feet?

12 A Perhaps.

13 Q And that wouldn't be too far wrong if
14 the east wall is the proper measurement for the
15 length of the room, it may be 26 feet?

16 A Yeah, and then it opens up into a
17 bigger area, again, as I recall. It's been a long
18 time.

19 Q But certainly the officers, we are
20 advised, were all wanting to sit together and the
21 tables were all pushed together, sir?

22 A That's generally what we did, yes.

23 Q You were pretty well all together in a
24 space that was 14 feet wide, although at various
25 distances from the south wall?

1 A Okay. You are providing me with
2 information that I don't know about.

3 Q Do you feel comfortable with that
4 information, sir, in terms of the dimensions?

5 A They sound accurate. I have no reason
6 to doubt the dimensions. I had no idea that there
7 was 24 officers there. And again, how do you
8 differentiate who are the officers versus who are
9 the members of the public?

10 Q Here is the point of the observation
11 about the size, sir. You were in that space with
12 these officers for approximately two hours. Our
13 information is that everybody left -- it took
14 between 2:00 and 2:30 in the morning before you
15 were able to clear out of there?

16 A Probably an hour and a half before we
17 made our way to the cash register.

18 Q Yes. Sir, you learned shortly after
19 that you had attended there that Derek Harvey-Zenk
20 was implicated in criminal allegations relating to
21 his driving, sir; correct?

22 A Yeah.

23 Q And you learned very quickly that they
24 included alcohol allegations; correct?

25 A Correct.

1 Q And you are, of course, concerned
2 about the welfare of your members, and you would
3 have been concerned about Derek's welfare as well,
4 would you agree, sir?

5 A Yes.

6 Q And I'm suggesting that the first
7 thing you would have done, upon hearing that
8 information, is you would have tried to cast your
9 mind back to the event only a couple of days or
10 hours before, and try to replay it in your mind to
11 see if you could provide relevant information that
12 might either assist the investigation or perhaps
13 even assist Derek Harvey-Zenk. Would it be fair
14 to say you would have done that, sir? You would
15 have tried to replay the events in your mind to
16 try and recapture what had occurred that evening?

17 A Probably.

18 Q And you would have realized the
19 importance of any memories that you could have
20 captured, given that there was a police
21 investigation that you know that you were a likely
22 witness, sir?

23 A Yes.

24 Q And did you do anything to try and
25 secure any of the things that you would have

1 remembered? Did you take notes or write anything
2 down to try and --

3 A No, no. We were going to provide a
4 statement, that would have been us creating a
5 record.

6 Q Yes, sir. But the record we have
7 looked at, I think you'll see if you were to look
8 at it, doesn't question you about what took place
9 at Branigan's. And therefore, here we are three
10 and a half years later, and you haven't captured
11 those recollections that you might have captured
12 when you reflected back on that evening, sir?

13 A Fair enough.

14 Q What did you drink?

15 A Where?

16 Q At Branigan's?

17 A Beer and water.

18 Q How many beer did you drink, sir?

19 THE WITNESS: Mr. Commissioner, may I
20 just review my earlier transcript?

21 THE COMMISSIONER: Of course.

22 THE WITNESS: Thank you, sir.

23 BY MR. PACIOCCO:

24 Q If you can take a look at page 1130 at
25 PSU interview found at tab F-2.35.s? And this may

1 be an opportune time to make that an exhibit, sir.

2 THE CLERK: Exhibit 170.

3 (EXHIBIT 170: F-2.35.r, Transcript of
4 Interview of Jim Anderson)

5 MR. PACIOCCO: Exhibit 170 will be the
6 PSU interview of Sergeant Anderson. And again, it
7 can be found at F-2.35.s.

8 THE CLERK: I think it's r.

9 MR. PACIOCCO: I've been corrected,
10 it's r, I apologize.

11 THE WITNESS: We're looking at the
12 same document.

13 BY MR. PACIOCCO:

14 Q And I think if you look at page
15 1130 --

16 A Yes, okay, I have it.

17 Q -- you'll see a recollection at that
18 time of your consumption, sir?

19 A Yes.

20 Q And are you now, having refreshed your
21 memory, able to answer the question of what it was
22 you consumed that evening?

23 A Yes.

24 Q And what is the answer, sir?

25 A I believe it was three, it may have

1 been two but probably three beer, interspersed
2 each one with a glass of water.

3 Q Okay. And that was your best estimate
4 within a couple of days of the event, sir, that's
5 what you had to consume?

6 A Yes.

7 Q You didn't have a precise recall
8 because, of course, you throw in the word
9 "probably" there, and you allow for the
10 possibility that it may not have been three?

11 A Yeah, yeah.

12 Q Sir, were you ever asked how you paid
13 for your alcohol that evening? I didn't see any
14 reference to that in the interview, sir?

15 A Sorry, ask the question again?

16 Q Were you ever asked by the PSU
17 investigators how you paid for your alcohol that
18 evening, and any food you may have had? Because I
19 didn't see any reference to it in there, sir. Do
20 you recall how you paid for your drinks, sir?

21 A I always pay cash, at a bar or a
22 lounge or often in a restaurant.

23 Q And when you pay cash, sir, they offer
24 you a receipt for having purchased the goods?

25 A Generally not.

1 Q So you don't know yet, you don't know
2 whether you had a receipt or not on this occasion,
3 sir, but you are assuming, based on typical
4 practice, that you probably didn't?

5 A I would never get a receipt for cash
6 at a lounge or a bar, even a restaurant, if I am
7 paying cash.

8 Q Okay. And you weren't asked about
9 that by the Professional Standards Unit, sir?

10 A Likely not, if --

11 Q Sir, are you able to tell the
12 Commissioner what others at the table where you
13 were sitting or standing were drinking?

14 A No.

15 Q Are you able to tell him whether they
16 were drinking alcohol?

17 A Yes.

18 Q And you base that on what, sir?

19 A Reality, life experience.

20 Q Okay. You're claiming, I take it,
21 that you don't have a specific recall, but it's
22 pretty obvious to you that that's what would have
23 been taking place?

24 A Of course.

25 Q Are you able to indicate what kind of

1 alcohol would have been consumed at the table you
2 were standing or sitting at, sir?

3 A No. Most people drink beer, but
4 there's a number that don't, so --

5 Q And no one expects anybody in this
6 case to come forward with an abacus and count off
7 the beers that are being consumed at their table,
8 sir. But are you able to tell us whether the
9 drinking at the table was light, moderate, heavy,
10 how frequently the server came?

11 A When you say the table, it's not even
12 definitive whether I was planted in one spot.
13 It's entirely possible that I moved throughout the
14 area.

15 Q And so you're going to be unable to
16 give us any assistance with the quantity of
17 alcohol being consumed by others at that event,
18 sir?

19 A That's unrealistic.

20 Q Did you notice any change in the
21 atmosphere at Branigan's from the time of your
22 arrival until the time of your departure, sir?

23 A No, not that I recall.

24 Q What was the atmosphere like?

25 A Jovial, friendly, chatty.

1 Q Was it --

2 A Because it's always like that.

3 Q Okay. Was it a loud atmosphere, sir?

4 A If you're telling me there was 24
5 people, plus members of the public, it was
6 probably fairly loud. I don't know, again,
7 relative term.

8 Q Could you accept a party atmosphere as
9 a description of what the room would have been
10 like, sir?

11 A Define that?

12 Q Joking, laughing, people maybe
13 hollering across to each other?

14 A That would be fair, yeah.

15 Q Sir, you had, I understand, a fairly
16 lengthy wait to get out of Branigan's when it came
17 time to leave?

18 A Yes.

19 Q I think you described it as taking an
20 inordinate amount of time at one of your earlier
21 interviews?

22 A Yes.

23 Q And you indicated that it would have
24 been 3:00 o'clock or so before you got to
25 Constable Black's?

1 A Yes.

2 Q That's your estimate?

3 A Yeah.

4 Q And I think we have certainly heard
5 evidence, and I don't recall whether it was from
6 you in your earlier interviews, that people were
7 actually lined up and standing around an area
8 waiting to basically pay and get out, sir?

9 A Yes.

10 Q So there was lots of time for
11 interaction at that point between the officers,
12 while they were clustered around waiting to finish
13 off their tabs and leave, sir?

14 A Perhaps. Clustered, I mean, there
15 could have been people in line, there could have
16 been people still sitting in the lounge waiting
17 for the line to dissipate. People could have left
18 and gone outside at that point.

19 Q So it is just an opportunity to
20 continue to socialize as it turns out, it may be
21 not one anybody desired, but an opportunity to
22 continue to socialize?

23 A Yes.

24 Q Did you see Derek Harvey-Zenk while
25 you were somehow waiting to pay, whether you stood

1 there or whether you sat back and waited for the
2 line to dissipate, did you see him at all?

3 A I don't recall specifically seeing
4 anyone in particular.

5 Q All right, sir. So the bar is closing
6 and you receive an invitation at some point to
7 attend at Sean Black's residence, correct?

8 A Yes.

9 Q Do you know when you got that
10 invitation?

11 A Either in line or outside in the
12 parking lot.

13 Q Okay. And so you are fairly confident
14 that this was like a last minute thing, sir?

15 A For me it was.

16 Q Yes?

17 A I don't know about anyone else.

18 Q So the bar was closing and the idea
19 was, let's go to a friend's house for a few more
20 drinks? Is that a fair description of what took
21 place?

22 A Yeah.

23 Q And I understand you were not very
24 keen to go, from your earlier interviews?

25 A That's correct.

1 Q And can you elaborate on that and tell
2 us what was going through your head and what your
3 mind-set was at the time you were about to depart?

4 A Mostly distance, it was the opposite
5 end of town from where I live. The south end, as
6 it is from this particular Branigan's, is a bit of
7 a drive, so I didn't really see much point in
8 driving north even further out at that time.

9 Q Where did you live in the south end,
10 sir, or did I misunderstand your reference to the
11 south end?

12 A No, I live in the south end of the
13 city, yes.

14 Q And how far do you live from
15 Branigan's?

16 A Not far from the perimeter in the
17 south end, I guess.

18 Q I'm not from here, sir, I know most
19 people are --

20 A What do you want, mileage?

21 Q I want mileage or time, especially
22 time at 3:00 o'clock, 2:30 in the morning?

23 A Probably 20 minutes, maybe 15 at that
24 hour, or I would say closer to 20.

25 Q Fifteen to 20 minutes, sir?

1 A Yeah, closer to 20.

2 Q And you have a conversation with
3 Tracey Fudge, I understand?

4 A Yes.

5 Q Can you tell us about that, sir?
6 Certainly nothing wrong with you using your
7 documents to assist your memory, sir, but the
8 record should reflect that, so I have mentioned
9 it.

10 A Okay. Okay. I don't say specifically
11 who extended the invitation.

12 Q Yes?

13 A In all likelihood, it would have
14 probably come from Tracey Fudge. Certainly, as
15 you know, that was the vehicle that I attended in.
16 But, again, it was a situation where if we could
17 carpool it and we didn't have to drive ourselves,
18 we'd go for a short period of time. And that was
19 the -- that was the belief at the onset, that it
20 wouldn't be an extended visit.

21 Q All right. Did you have that worked
22 out with Tracey Fudge, that it wasn't going to be
23 an extended visit?

24 A Yes, she assured me.

25 Q You ended up there two and a half

1 hours, sir, until 5:30 in the morning. Is that a
2 surprise to you?

3 A Not necessarily two and a half hours,
4 it might have been 2:15, maybe even closer to
5 2:00, I'm not exactly sure when we left.

6 Q Okay.

7 A No, it wasn't a surprise to me. That
8 was a reasonable amount of time. Time flies, we
9 were just standing around chatting, having a
10 couple drinks.

11 Q I just want to understand this. You
12 weren't really that committed to going for a long
13 period of time?

14 A Um-hum.

15 Q Why do you get in her car, why not
16 take your own car, sir? Wouldn't it make sense
17 that if you don't want to be there in a long time,
18 you are not going to put yourself in a position
19 where you're dependent on others to get away?

20 A I can trust Tracey. She assured me
21 that it would be a short visit, and this way we
22 could just continue socializing instead of four of
23 us driving four vehicles, we can basically just
24 hop in one and go as a small group, come back to
25 Branigan's and depart from there.

1 Q Okay. This may put a gloss on your
2 answer or it may not, but I do want to refer to
3 your transcript response, or actually your
4 response during the interview with the PSU. This
5 is at page 1131, and here is what you say, at 1131
6 at line two.

7 "Some of us initially didn't really
8 want to go, given where the officer
9 lived, but decided that if we didn't
10 have to drive ourselves and we were
11 assured that we wouldn't be there
12 long."

13 Do you recall giving that response, sir, does it
14 accord with your position today?

15 A Yeah.

16 Q Sir, what's this about we decided that
17 if we didn't have to drive ourselves? Why was
18 there concern about you having to drive
19 yourselves, sir?

20 A Because if I had to drive myself, I
21 would have just gone home.

22 Q What is it about this drive? How far
23 is it to Black's house from Branigan's, sir?
24 We've heard 15 minutes, maybe 20, but 15 seemed to
25 be the number?

1 A Yeah, I don't know. I don't know -- I
2 don't even know, I couldn't even get back to his
3 house if I wanted to right now. That was
4 basically is it. It was just to continue
5 socializing. It's been my life experience that if
6 people get in a car and say they are going to go
7 somewhere, if you basically don't bring them along
8 with you, that they are just going to go their own
9 separate direction. So I think that's probably
10 what happened in this case.

11 Q So, do I understand you that this was
12 a way of getting a captive audience over to
13 Sergeant Black's, that you thought if you got in
14 the car you'd all make it there?

15 A I don't understand it.

16 Q Maybe I didn't understand your answer,
17 but I thought you basically said it's been your
18 life experience that if people don't get in the
19 car, they just kind of go their own ways?

20 A Yeah, if we're going to go somewhere
21 else and if people have other things in mind, then
22 they are just going to proceed home. So in my
23 case, I figured we may as well carpool, we all may
24 as well go together. Very, very innocuous.

25 Q Sir, it does sound like your

1 explanation was, if we all got in a car, we know
2 we'd end up there, otherwise we might not. Is
3 that not what you are saying?

4 A I said it at the time, some of us
5 initially didn't really want to go, given that he
6 lived in East St. Paul. That's completely the
7 opposite direction. But if I could hop in and not
8 have to drive, I don't generally like driving, I
9 do more than my fair share.

10 Q That's what I was looking at, sir, why
11 you didn't want to drive. That's really what I
12 wanted to focus on because that's the answer you
13 gave, sir.

14 A Yes.

15 Q Your testimony is you really don't
16 like driving, you did more than your fair share.
17 You're prepared to go if you are a passenger, but
18 not if you're a driver, sir, because of the
19 distance. Is that your evidence, sir?

20 A That's accurate.

21 Q You left your vehicle at the bar?

22 A At Branigan's.

23 Q And so you got in the vehicle with
24 Tracey Fudge. Who else was there, sir?

25 A Dave Harding, Kelly McLure.

1 Q Did you notice anyone at Branigan's
2 who should not be driving, sir?

3 A No.

4 Q You felt that Dave Harding was fit to
5 drive when you left Branigan's?

6 A I wasn't looking to make that
7 assessment at that time. I had very limited
8 contact with him, certainly no specific recall
9 till we actually got in the vehicle.

10 Q All right. Sir, and when he got in
11 vehicle, were you able to make an assessment of
12 whether he was fit to drive?

13 A I didn't make any assessment at that
14 time.

15 Q Sir, do you know the assistant manager
16 at Branigan's, Darcey Gerardy?

17 A No.

18 Q Darcey Gerardy testified before the
19 Commission that that night there were a few
20 officers who had enough to drink that he was
21 thinking that they should have been cut off, and
22 he was concerned enough, when everybody was
23 leaving Branigan's, that he approached and he very
24 forcefully insisted that these officers not be
25 allowed to drive. Do you have any recollection of

1 that happening, sir?

2 A No. I learn something new everyday.

3 Q And sir, he also indicated that a few
4 officers at that point told him, don't worry,
5 these people aren't driving, we got rides for
6 them, or something to that effect? Sir, I take it
7 that you are not one of the officers who had that
8 conversation with him?

9 A No, certainly not.

10 Q And judging from your reaction, sir,
11 and again correct me if I'm wrong, I get the sense
12 that you didn't observe that interchange at all?

13 A Absolutely not.

14 Q And is that something that you are
15 suggesting did not or would not have happened, or
16 is it something you just didn't observe?

17 A That's the first I have heard of it.
18 So, again, I go back to how is he differentiating
19 between a police officer versus a member of the
20 public, unless he personally knows certain
21 members? I don't know. This is all news to me.

22 Q Again. I'm asking you, let's assume
23 for the sake of the question that he was very
24 clear, having dealt with this shift before,
25 knowing some of the people on the shift, that it

1 was all police officers at the time, according to
2 the evidence that's been provided, and that this
3 exchange took place, sir. Again, I need to know
4 from you --

5 A Um-hum.

6 Q -- I know that you're clear that you,
7 your testimony is you didn't overhear that. I
8 need to know from you whether your testimony is it
9 didn't happen, or if it happened, I missed it?

10 A The second one.

11 Q Sir, would it surprise you to learn,
12 based on your observations of people that night,
13 that the manager of Branigan's would have had such
14 foundational concerns about the fitness of the
15 police officers to drive, that he would feel the
16 need to intervene in this way?

17 A Yeah, that's -- I don't know anything
18 about that situation. I don't even know what to
19 say.

20 Q Sir, based on your observations of
21 people that evening --

22 A Yeah.

23 Q -- were you observing individuals
24 closely enough that that information comes as a
25 surprise to you about their condition, sir?

1 A Complete, completely surprised,
2 especially that we weren't even there that long, I
3 don't even know how somebody could draw that
4 inference, or how could they --

5 Q Sir, we have heard evidence that some
6 people arrived shortly after 11:00 o'clock, and it
7 was now 2:30 in the morning. It's a fair amount
8 of time, don't you agree?

9 A If they got there at 11:00, yeah, and
10 if they are there at 2:30. But, again, I don't
11 even know who this person is.

12 Q Yeah, and I'm not disputing that in
13 any way, sir. I'm just trying to find out whether
14 you are in a position to say, look, people were
15 not that influenced by alcohol that that would
16 have happened, or whether you are just saying, I
17 didn't see enough of everybody to be able to make
18 that judgment, so I'm not going to dispute what
19 you're telling me?

20 A I didn't see enough, but if I had,
21 once again, there would have been some
22 intervention on our part as well.

23 Q Yes. And the waitress, Chelsea
24 O'Halloran, has testified here that there were a
25 greater number of officers that evening who she

1 described as drunk. That, again, doesn't accord
2 with your recollection, sir, or are you unable to
3 confirm or deny her position?

4 A I don't even know who she specifically
5 is referring to or --

6 Q Again, sir, it would have been
7 officers in that little 14-foot?

8 A Again, officers, I don't recall
9 anybody displaying any symptoms of that nature.

10 Q She testified that the officers
11 arrived, they were ready to party. And as the
12 evening progressed, it got -- it got louder and
13 louder, sir. Does that accord with your
14 recollection, sir?

15 A What was your definition of party,
16 earlier?

17 Q Well, sir, I think a party essentially
18 would be a place where people are prepared to
19 laugh, joke, and mingle, drink, and as the alcohol
20 comes on, you're yelling across the room and
21 you're having this type of interchange. It's not
22 your private lounge where you're each at your
23 table having your own conversation. It's a
24 get-together?

25 A It is a lounge, people were laughing,

1 talking, drinking. There's a lot of loud people
2 there, you know, stone cold sober. So I don't
3 know how much of a factor alcohol would play in
4 noise volume. And what she perceived to be a
5 characterization when officers arrived, I have no
6 idea how she arrived --

7 Q It's certainly her opinion, sir, in
8 terms of how she characterized it.

9 A I understand.

10 Q You spoke earlier about your life
11 experience, allowing you to conclude that people
12 were drinking?

13 A Yeah.

14 Q Isn't it your life experience that the
15 more people drink, the more boisterous and
16 uninhibited and loud they become?

17 A Generally.

18 Q And no one would be in a position, and
19 I sense from your earlier answer that you agree
20 with this, no one would be in a position to say
21 this was a very subdued event?

22 A No.

23 Q And so when you went to visit with
24 Inspector McCaskill, you were not there to talk
25 about what happened at Branigan's, sir, you were

1 there to talk about Constable Black's?

2 A Yes. And, again, subdued wasn't my
3 word.

4 Q Okay. Would you describe Constable
5 Black's as subdued?

6 A I don't know if I would say subdued, I
7 would say responsible.

8 Q What about atmospherics?

9 A What about them?

10 Q Well, I know that you can be
11 responsible and loud, but you can also be
12 responsible and stone quiet. What was the
13 atmosphere like there?

14 A Well, it wasn't silence, it wasn't
15 everybody just sitting around chatting. There
16 was, sure there was laughter and discussion and
17 loud voices but nothing --

18 Q Teasing?

19 A Teasing, sure.

20 Q Arm wrestling?

21 A I heard that one. I have no idea if
22 that's true or not.

23 Q So I take it you didn't declare
24 yourself the champion and jump in?

25 A No, not this time.

1 Q So you have no recollection of that
2 event, sir, the arm wrestling?

3 A No.

4 Q You did travel with Tracey Fudge to
5 and from?

6 A Yes.

7 Q And so if her description was it took
8 place, you wouldn't dispute it, it's just not
9 something you noticed?

10 A Repeat the question?

11 Q If Tracey Fudge's observation was that
12 took place, you wouldn't dispute it?

13 A No.

14 Q You're just saying it's something you
15 didn't notice?

16 A Correct.

17 Q But it would certainly contribute to a
18 party type atmosphere in that room, sir, at
19 Black's?

20 A Arm wrestling?

21 Q Sure, it's not something that usually
22 breaks out in an office, sir?

23 A No, I guess so.

24 Q Sir, I understand that the vehicles
25 went in a convoy from -- a loosely used term, a

1 convoy --

2 A Um-hum.

3 Q -- from Black's, from Branigan's to
4 Black's, sir? And do you recall a stop along the
5 way?

6 A Yes.

7 Q Where was that?

8 A 7-11.

9 Q And do you know what that stop was
10 for, sir?

11 A No, I don't.

12 Q Did you get out of your vehicle?

13 A No.

14 Q Do you recall that?

15 A Yeah. I have it in my statement.

16 Q Yes. Sir, there are, at this house
17 you arrive at, Black's house, there are you four,
18 of course. There is going to be Tracey McLure,
19 there's going to be --

20 A Fudge.

21 Q Kelly Fudge, there's going to be
22 yourself, there's going to be Dave Harding. I
23 hate to put you through the memory test, sir, but
24 I can either tell you who we understand was there
25 or you can tell me who you think was there.

1 What's your recollection? Who else was there,
2 apart from the four of you, and of course,
3 Constable Black, who was the host?

4 A Yeah, we all would have arrived at
5 basically the same time. There was nobody else
6 home other than Black.

7 Q Yes?

8 A The other people there,
9 Mr. Commissioner, if I may just refer to my
10 transcript? Ken Azaransky, Chris Humniski,
11 Norbert Bauer, Jay Nolet, Derek Harvey-Zenk, T.J.,
12 and in my PSU transcript I couldn't remember his
13 last name, it's Spruyt.

14 Q Yes. And so there were 10 guests and
15 the host?

16 A Yes, I have 11 people written down
17 here, and there may have been one or two more at
18 the most, but these are the ones that I am
19 familiar with.

20 Q At the residence, where was the
21 socializing occurring?

22 A The kitchen mostly, or exclusively.

23 Q Okay. The kitchen mostly or
24 exclusively?

25 A Yes.

1 Q And would you agree that 11 people in
2 a kitchen area is a small confine?

3 A Depends how big the kitchen is.

4 Q What about this one?

5 A I have only been there those two, two
6 and a half hours, I recall it being a large
7 kitchen.

8 Q Would you dispute that it's a small
9 confine, sir?

10 A Yes, I believe so. And again, if
11 you -- I don't know what we're calling a kitchen,
12 but perhaps there's an extension, I don't know
13 again, vaguely, if there's a nook or something,
14 but I remember it being fairly elongated and sort
15 of narrow. I don't know if that's an accurate
16 recollection or not.

17 Q Yes. And I don't mean to berate or
18 beat you up over one term?

19 A That's fine.

20 Q But I got it from your interview with
21 the Professional Standards unit, the term small
22 confine, sir?

23 A Yes.

24 Q You'll find it on page 1135.

25 A Yeah.

1 Q Sergeant Girard asks you:
2 "Okay. How would you characterize the
3 gathering?
4 Sergeant Anderson: Quiet-ish, for
5 that many people in a little small
6 confine. There was a lot of laughter,
7 it was well-behaved, certainly no one
8 acting up. There was, it was friendly
9 and it truly was responsible."

10 Correct?

11 A Um-hum.

12 Q So I think the term small confine, a
13 little small confine, you would agree with me
14 that's a fair way to describe the area?

15 A Yes.

16 Q It's pretty easy in that area to see
17 what other people are doing?

18 A If you're focusing in on someone.

19 Q Sure. But there are no secrets in
20 that group, sir?

21 A Secrets?

22 Q I mean, people, their behaviour is
23 there to be seen by everybody, right?

24 A Sure.

25 Q And you would agree with me that you

1 don't have to stare at one individual to see
2 what's happening in a fairly broad range. I mean
3 I'm looking at you and I can see the Commissioner,
4 I can see the reporter. You don't really have to
5 focus on somebody to see the activities that's
6 going on in the area. Do you agree with that,
7 sir?

8 A Not necessarily.

9 Q So what happens in the kitchen in
10 terms of your own socializing, sir?

11 A For the most part, I was away from
12 what I believe I'd classify as the majority of the
13 group, sort of at one end of the kitchen or nook
14 area, I don't know. And I recall most of the
15 others sort of towards the opposite end.

16 Q All right. Sir, so you basically got
17 yourself away from the larger group?

18 A Um-hum.

19 Q In a smaller group?

20 A Yeah.

21 Q Who does your smaller group consist
22 of, sir?

23 A For the most part, it was Kelly
24 McLure. I remember specifically Tracey Fudge
25 being part of that smaller group, and

1 intermittently others sort of coming and going
2 within our conversation, but primarily it was with
3 McLure.

4 Q So I get the sense that you clustered
5 off into a little hub of people, and you weren't
6 part of the larger group. Is that your
7 recollection, sir?

8 A Yeah, I tend to do that.

9 Q And I know people have different
10 degrees of recollection of the events, but
11 Constable Fudge described being with Constable
12 McLure and didn't include you in her whereabouts
13 or her gathering for that evening, sir. Are you
14 sure that it was her that you were with, sir?

15 A Mostly McLure, at times Fudge. I
16 believe at all times almost McLure, other than
17 when I would have migrated elsewhere in the
18 residence.

19 Q All right, sir. What was the
20 atmosphere like there? Let me get you to do it in
21 your own words, what was the atmosphere like
22 there?

23 A Where?

24 Q At Black's house?

25 A Like in general or my particular --

1 Q Yeah, yeah, in general.

2 A We have done this before.

3 Q Yeah, but I want you to do it in your
4 words. I don't want to be putting words in your
5 mouth.

6 A All right. It was, there was
7 laughter, there was joking, there was talking. At
8 times I would imagine that there's different
9 pockets of people. It wasn't always just, even
10 that majority group, it wasn't always just an open
11 discussion. I'm sure at various times people
12 would pull away and speak to individuals. But
13 again, I don't specifically recall that. I just
14 believe that that would normally be occurring.
15 Again, we're in a fellow colleague's beautiful
16 home. I mean, it was -- it was, all things
17 considered, fairly low key.

18 Q Would you use the word quiet-ish to
19 describe it?

20 A Certainly my end of it was quiet-ish.
21 I guess, obviously, if you compound the number of
22 voices and laughter and discussions by, you know,
23 five as you move further to the other end of the
24 kitchen, obviously it would get louder.

25 Q So if someone --

1 A More boisterous.

2 Q So if someone was to ask about how
3 would you characterize the gathering, you don't
4 think quiet-ish is a good word to describe it,
5 sir?

6 A Being a relative term, it's probably
7 not the most accurate, but it's, again --

8 Q I notice you looking over at your
9 statement?

10 A I know I said that.

11 Q Do you regret using it, sir?

12 A I don't know if I regret using it. I
13 mean, I've had lots of time to digest the contents
14 of that. I mean, this was made just three plus
15 days after the event itself, on the spur of the
16 moment, that's sort of what came out. It's not
17 far from the truth, far from accurate, it's just
18 perhaps there could be a better word.

19 Q You want to be as precise as possible
20 when you're giving a police interview, sir, in
21 connection with an important matter?

22 A I don't think one word means that my
23 statement is not precise.

24 Q Sir, you'd agree with me that you went
25 to see Inspector McCaskill because you wanted to

1 make it clear that this was a low key affair?

2 A It was.

3 Q And when you go to describe it, sir,
4 you are doing it in a way that includes an
5 adjective that may play down the atmosphere at
6 that location. And perhaps, sir, that serves as
7 your objective in trying to communicate that this
8 was not a drinking party. Is that unfair, and if
9 it is, please tell me?

10 A It was a gathering, there was
11 drinking. The fact that I used the word
12 quiet-ish, you know, like I said, is there a more
13 accurate term? Perhaps, but it's not far from,
14 not far from accurate, being again a relative
15 statement.

16 Q Okay. I hear you. Sir, you say it
17 was well-behaved?

18 A Yeah, it certainly was.

19 Q No one acting up?

20 A None of that happened while I was
21 there.

22 Q And how about David Harding?

23 A How about him?

24 Q Would you include him in the
25 description of well-behaved?

1 A Yes. He had had too much to drink,
2 but he wasn't damaging anything, he wasn't picking
3 fights, he wasn't being obnoxious. He was just
4 being a regular guy who had a few too many drinks.

5 Q Fair enough. So your description of
6 well-behaved can include intoxicated people, sir?

7 A It can. It doesn't necessarily have
8 to.

9 Q No. We even know that some people are
10 quiet drunks rather than obnoxious drunks?

11 A Sure, violent drunks, depressed.

12 Q Sir, you indicated that you were there
13 at the same time as Tracey Fudge?

14 A Where?

15 Q At Mr. Black's?

16 A At the residence, yes.

17 Q I'm just going to share with you what
18 her testimony was with the Commission before your
19 comment, speaking of David Harding?

20 THE COMMISSIONER: Page?

21 MR. PACIOCCO: This is at page 37 of
22 the testimony that was filed this morning, as
23 Exhibit 168 in these proceedings.

24 MS. HANLIN: Mr. Commissioner, I
25 wonder if we might have a copy of that statement?

1 MR. PACIOCCO: I put it on your desk.

2 THE COMMISSIONER: Did everyone get a
3 copy? Everyone seems to have a copy but you,
4 Ms. Hanlin. Do you want to take a few minutes to
5 look for one? Mr. Prober is going to be the
6 gentleman and offer you his.

7 MS. HANLIN: I don't think we did get
8 a copy, we noticed this morning --

9 THE COMMISSIONER: Well, now you do,
10 thanks to Mr. Prober.

11 BY MR. PACIOCCO:

12 Q Reading from page 37, the testimony
13 furnished to the Commission by Tracey Fudge, and
14 I'm reading from line five -- line six, and this
15 is referring to David Harding.

16 "Q What was his behaviour like when
17 you got to Officer Black's residence?

18 A The same thing. He was loud and
19 not the Dave that I know, obnoxious,
20 unsteady, kind of knocking things
21 over."

22 Sir, I take it that if you were to observe that,
23 you wouldn't use the term well-behaved to describe
24 this officer, sir?

25 A Yeah, I don't recall his behaviour

1 being like that but --

2 Q But what, sir?

3 A I guess it's possible. That's not my
4 recollection.

5 Q So when you gave your evidence to the
6 Professional Standards Unit about no one acting
7 up, about it was well-behaved, you might have
8 failed to observe behaviour that really doesn't
9 fit that description, sir?

10 A No. My recollection is that Dave just
11 simply consumed too much. I don't remember him
12 being not well-behaved, nor acting up.

13 Q So you don't agree with the
14 characterization of obnoxious or knocking things
15 over that was furnished by Constable Fudge?

16 A Again, you know, what she
17 characterizes as obnoxious and what I do, you
18 know, maybe thick or thinner skin, I don't know
19 how to explain that.

20 Q Okay, sir. What did you drink at
21 Black's place?

22 A I believe it was Rye.

23 Q Do you know how much you drank?

24 A Not exactly, a couple. I said, I
25 believe in my statement to Commission Counsel,

1 actually, I believe it might have been my
2 statement to PSU.

3 Q Yes, to PSU.

4 A I had a couple of drinks, two or so,
5 so --

6 Q So even a couple of days after the
7 event, you weren't sure how much you had to drink,
8 sir?

9 A I wasn't counting. I know I had a
10 couple of drinks, probably with water. Again, I
11 don't mention that, but that's typically what I
12 do.

13 Q When you drink with water, is that a
14 different glass, or do you mix the drink with
15 water?

16 A If I have Rye, it's with water, and
17 often I'll intersperse it with a glass of water.

18 Q So your Rye would have been
19 transparent in the glass, you could see the colour
20 of the drink that you would have had, sir?

21 A I don't know what colour my glass was,
22 if it was opaque or clear, I don't know.

23 Q Okay. I take it that it wasn't a
24 Tupperware tumbler or anything like that, sir?

25 A Probably not, but I don't know what it

1 was.

2 Q And again, sir, you weren't asked by
3 the Professional Standards Unit about this?

4 A About what?

5 Q About the type of alcohol that you had
6 consumed?

7 A No.

8 Q Sir, you had been drinking beer at
9 Branigan's?

10 A Okay, yes.

11 Q Did you not want to keep drinking beer
12 when you got to Constable Black's?

13 A Why?

14 Q Well, I'm just thinking, you know
15 switching from one type of drink to another, is it
16 not --

17 A No, no. At some point, I just have my
18 fill of beer, and often it's earlier than later.
19 It would just -- it would have been just as nice
20 to have something a little bit different.

21 Q What kind of alcohol was out at
22 Constable Black's house?

23 A Rye.

24 Q Anything else that you recall, sir?

25 A No, I don't.

1 Q Do you recall a bottle of Bailey's
2 being out?

3 A No.

4 Q How did you get your Rye?

5 A From the counter.

6 Q You recall going up and getting it
7 from the counter?

8 A No, not specifically, but I know -- I
9 believe that the bottle had been placed on the
10 counter. I'm in the habit of pouring my own and I
11 see no reason why I would have deviated.

12 Q Fair enough. So it's on the counter,
13 it's in the common area where people can go and
14 get their drinks?

15 A I believe so.

16 Q Were others drinking, sir, alcohol?

17 A Certainly.

18 Q What were others drinking, sir?

19 A Presumably the Rye. Again, I have no
20 specific memory of that, but it would just make
21 sense.

22 Q Did you get anyone else a drink?

23 A I don't know.

24 Q Anybody offer you a drink?

25 A I had one.

1 Q I mean, anybody offer to go get you a
2 refresher or anything like that?

3 A I don't -- I don't think so, possibly.
4 But, again, I usually like to pour my own.

5 Q Did you see Constable Black with a
6 drink?

7 A May have.

8 Q Did you see him drinking alcohol?

9 A I see no reason why he wouldn't have
10 been.

11 Q But you don't recall him doing that,
12 sir?

13 A No.

14 Q You're not able to tell us how many
15 drinks he had or anything like that?

16 A Black?

17 Q Yeah?

18 A No.

19 Q Or how heavy he was drinking or
20 anything like that?

21 A No.

22 Q I take it the same answer for
23 Azaransky?

24 A Yes.

25 Q Same for Humniski?

1 A Yes.

2 Q Norbert Bauer?

3 A Sure.

4 Q Jay Nolet?

5 A These are all the same questions about
6 all the different individuals?

7 Q Yeah, same answer for all of them,
8 isn't it, sir?

9 A Absolutely.

10 Q Okay. What about Derek Harvey-Zenk?

11 A Same answer.

12 Q And your answer is?

13 A Same answer.

14 Q And so even after you learned about
15 the charges he was facing, you would have gone, as
16 you indicated, back and tried to recapture the
17 event in your mind. When you got to the
18 Professional Standards Unit meeting within three
19 days of the event --

20 A Right.

21 Q -- you were still unable to offer any
22 evidence about Derek Harvey-Zenk's alcohol
23 consumption. Is that fair or unfair, sir?

24 A That's fair.

25 MR. PACIOCCO: Mr. Commissioner, it's

1 12:29.

2 THE COMMISSIONER: Yes.

3 MR. PACIOCCO: It's a good time for me
4 to take a break, and I hope it suits the
5 Commission and other counsel present.

6 THE COMMISSIONER: Just give me a
7 moment here. Yes, an hour and 15 minutes.

8 MR. PACIOCCO: That would be very
9 good.

10 THE COMMISSIONER: That will take us
11 to quarter to 2:00. Have I got that correct?

12 MR. PACIOCCO: Yes, thank you.

13 THE CLERK: All rise. This Commission
14 of Inquiry will take the luncheon recess.

15 (Proceedings recessed at 12:30 p.m.
16 and reconvened at 1:45 p.m.)

17 THE CLERK: All rise. This Commission
18 of Inquiry is now reopened.

19 BY MR. PACIOCCO:

20 Q Good afternoon, Sergeant Anderson.

21 A Hello.

22 Q Sir, you indicated in your interview
23 with Mr. Clifford that you had concern about the
24 condition of David Harding?

25 A Yes.

1 Q When did that concern arise?

2 A Sometime while at Black's residence.

3 Q And when you expressed that concern to
4 him, sir, in fact when you expressed it to the
5 PSU, this is what you said. You can turn to page
6 1131, and I'm going to take you to the last line
7 on page 1131, which would be line 25.

8 "It was fairly apparent to me that
9 Constable Dave Harding may have had
10 too much to drink to drive."

11 And then you go on and talk about the keys that we
12 will get to in a moment.

13 Sir, could you describe what Dave
14 Harding appeared like to you?

15 A It would have just been in his general
16 demeanor, there was nothing necessarily specific
17 that stood out. It was just my overall impression
18 of his condition and his state of sobriety.

19 Q Sir, you couched this, and it may just
20 be different people express things differently --

21 A I what?

22 Q You couched this in a way where you
23 say, it was fairly apparent --

24 A Um-hum.

25 Q -- that he may have had too much to

1 drink. And I use the term couch, because there is
2 a difference for some in saying it was fairly
3 apparent, and it was obvious that this man
4 shouldn't be driving. And I want to know whether
5 you were of the view that it was obvious that he
6 shouldn't be driving or whether you had a more
7 tentative view of things?

8 A I said fairly apparent then. I erred
9 on the side of caution. As soon as there was
10 doubt in my mind about his ability to operate a
11 vehicle because of the alcohol, myself and others
12 obviously took action to prevent him from doing
13 so.

14 Q So your sense and your recollection is
15 that you weren't entirely sure that he shouldn't
16 be driving, but you decided to err on the side of
17 caution, is that what I understand from your
18 evidence, sir?

19 A I was pretty sure. I formed that
20 opinion, if you will, even second hand when I
21 recall him being lead downstairs into the basement
22 of the residence, you know, that was probably the
23 first sign. Again, him and I weren't necessarily
24 one on one. And later on I retrieved him from
25 that basement area. That probably let in more

1 grounds, if you will, to lead me to believe that
2 he had had too much. And then the parking lot and
3 the drive back to Branigan's.

4 Q All right, sir. But with respect to
5 the observations at Black's house alone, I just
6 want to pursue this a little more, because the
7 information from others -- Constable Black, talked
8 about how he really started showing signs at the
9 house. And the way Constable Fudge puts it, there
10 were obvious signs. And I just want to know
11 whether you would join them in obviousness of his
12 intoxication, or whether this description to the
13 Professional Standards Unit is really your fairest
14 description of what you observed, that it was
15 fairly apparent that he may have had too much to
16 drink?

17 A So the question is?

18 Q The question is, there is a difference
19 some may perceive between saying the guy was
20 obviously impaired, he was showing obvious signs
21 of intoxication, and the way you have couched it
22 in your interview to the Professional Standards
23 Unit, as it was fairly apparent?

24 A I know. So the question is --

25 Q The question is, is that language that

1 you provided to the Professional Standards Unit
2 language that you stand by, that it was only
3 fairly apparent, he may have had too much to
4 drink, or is it also your view, as it is of some
5 others, that the signs of impairment were obvious?

6 A It was apparent to me. There was --
7 he was not going to be allowed to drive. You
8 know, if -- you know, if we are in another
9 setting, if it is somebody that I don't know, this
10 was somebody that was part of our group. I made
11 that determination early on at the residence.
12 There was nothing in their dealings with him, to
13 the time that we left Branigan's, that made me
14 change that impression.

15 Q Do you not agree with me, sir, that
16 the way you described it to the Professional
17 Standards Unit was a couching of the description
18 that might minimize the sense they would get as to
19 how impaired he was?

20 A I would have no ulterior motive to
21 downplay Dave Harding's sobriety, or enhance it.
22 I don't see why I would do that. The fact is that
23 it was apparent to me, fairly apparent to me, he
24 had had too much to drink. He wasn't going to
25 drive.

1 Q Thank you. You indicated to
2 Mr. Clifford when he asked you whether you asked
3 Officer McLure, are you okay to drive, and when he
4 asked you, did anybody ask you, Jim, are you all
5 right to drive, do you remember what your response
6 was when he asked you that question? You can find
7 it in the transcript, sir, if you feel more
8 comfortable that way, it is at page 49.

9 A 49.

10 Q 49, sir, it is the small pages.

11 A Okay, yes.

12 Q I'm looking at line five.

13 "Q Was there any conversation about
14 people driving apart from Dave
15 Harding? For instance, did you ask
16 Officer McLure, are you okay to drive,
17 or did anybody ask you, Jim, are you
18 all right to drive?"

19 And your answer was:

20 "They may have, or I may have, but I
21 don't recall specifically."

22 Do you see that response, sir?

23 A Yes.

24 Q And I take it the reason why you would
25 have allowed for the possibility that that

1 conversation, or either of those conversations
2 could have taken place, even though you didn't
3 recall it, was that there had been drinking going
4 on at Branigan's and then again at Black's, and it
5 was entirely something that should be concerning
6 as to whether anybody should have got behind the
7 wheel of a motor vehicle. Is that a fair
8 extrapolation from why you left open the
9 possibility that there would have been that kind
10 of conversation?

11 A No.

12 Q What is your position on whether that
13 conversation took place, sir?

14 A Because it legitimately may have
15 actually taken place.

16 Q And what would the purport of that
17 conversation have been, sir, if you were to ask
18 Kelly McLure, are you okay to drive?

19 A Yeah.

20 Q Or if she was to ask you, are you okay
21 to drive, why would those questions be posed?

22 A Because we had consumed some alcohol.

23 Q Did you have any concern about Derek
24 Harvey-Zenk?

25 A When?

1 Q At Black's?

2 A No.

3 Q How much interaction did you have with
4 him?

5 A Probably minimal.

6 Q Sir, do you recall your answer to
7 Mr. Clifford's question about interaction with
8 him?

9 A Not specifically.

10 Q Page 39, sir, and at line 4:

11 "So do I understand that you do not
12 recall having any conversation or
13 interaction with Derek Harvey-Zenk at
14 all in the entire time you were at
15 Officer Black's residence?

16 A Other than maybe at some point
17 moving into that other area
18 briefly..."

19 Remember you talked about being in two separate
20 areas in the kitchen, or two clusters?

21 A Um-hum.

22 Q "...Maybe going to another part of the
23 house and then returning to where I
24 was situated for the most part, I
25 wasn't necessarily anchored on one

1 spot, but that's where I spent the
2 majority of my time.

3 Q But no recollection of any
4 interaction with him over that entire
5 period?

6 A One on one?

7 Q Well, one on one or being in the
8 same group with him?

9 A Again, I mean certainly I would
10 have at some point been in the area
11 where the others were and had some
12 conversation with them."

13 You ultimately take the view that you
14 have no specific recall of conversations or
15 communications or interaction with Derek
16 Harvey-Zenk. Is that your evidence today, sir?

17 A Yes, like I said, probably minimal.

18 Q Again, sir, I'm going to ask you
19 whether you cast your mind back, when you learned
20 about this horrific accident, to try to
21 reconstruct what your contact was with the man and
22 what your interactions were with him? Did you do
23 that, sir?

24 A Yes.

25 Q And you came up empty?

1 A Yes.

2 Q When you were speaking to Inspector
3 McCaskill and Superintendent Stannard, did you
4 mention the condition that David Harding was in?

5 A I don't know.

6 Q If you did, sir, I can advise you it
7 is not something that was noted by either of them.
8 Let me ask you this --

9 A I don't see why it would be.

10 Q Sir, you went there for the purpose of
11 describing the nature of the event and the
12 responsibility of the individuals there; correct?

13 A Right.

14 Q And you were there to do that in the
15 context of concerns about whether one of the
16 members of your shift had caused an accident that
17 caused the death of a woman as a result of alcohol
18 consumption; is that fair, sir?

19 A Or some other attributing factors.

20 Q Yes. And certainly the amount or
21 level of consumption at that party was something
22 that you were trying to communicate?

23 A So one person out of a dozen -- didn't
24 seem, it wasn't the subject of the investigation.
25 And we may have, I really don't know.

1 Q Sir, wouldn't that be something that
2 you would feel responsible to communicate, if you
3 are really trying to give an accurate portrayal of
4 what took place, you would make sure that the
5 executive understood that there was enough alcohol
6 consumption going on that one member was certainly
7 not fit to drive?

8 A No. I would pass that information on
9 to the investigators alone. The executive could
10 access those reports if they needed to.

11 Q Why would you not pass that on to the
12 executive, sir?

13 A They are not investigating the
14 offence, or anything to do with it.

15 Q But, sir, you went there to clear the
16 air, you went there to make sure they had an
17 accurate picture of the evening. Don't you think
18 that's an important part of the picture, to give
19 an idea of the nature of the get-together?

20 A No. For the most part we were there
21 to see if they could lend some guidance as far as
22 how do we proceed from here? This is what we want
23 to do. We have a story to tell. How do we go
24 about telling that story most accurately and most
25 fairly.

1 Q Sir, there is no record in their notes
2 of either of them indicating any reference to
3 Derek Harvey-Zenk being fit to drive, sir. That's
4 not something that you told them?

5 A I wouldn't have known.

6 Q There were, however, references to
7 "precautions in place to stay over or get a ride
8 home." Does that ring a bell, sir?

9 A Yes. I know that there was an offer,
10 I don't know if that was conveyed to them at all.

11 Q To who, sir?

12 A To Inspector McCaskill or
13 Superintendent Stannard.

14 Q Well, I can indicate to you --

15 A I don't have notes on that.

16 Q -- McCaskill's notes say this.

17 "There were precautions in place to
18 stay over or get a ride home."

19 A Um-hum, that's fair. I just don't
20 recall.

21 Q And subsequently, when he attended the
22 meeting with Stannard, his notes indicate that
23 there were precautions in place; correct?

24 A I was part of one of those
25 precautions.

1 Q You were part of one of those
2 precautions?

3 A I ensured that a fellow colleague was
4 provided with a ride home safely.

5 Q You also, when you were with Stannard,
6 according to his notes, he records.

7 "Had no issues..."
8 referring to you and/or Sergeant Humniski.

9 "...wanted to start process, speed it
10 up for the sake of everybody, nothing
11 to hide, was safety measures in
12 place."

13 Does that ring a bell, sir?

14 A It is probably accurate.

15 Q And it makes it sound like they are
16 organized safety measures in place, does it not,
17 sir?

18 A Organized in what sense?

19 Q The sense that you had planned for
20 this, that these were safety measures, that there
21 were precautions in place to deal with this
22 situation that Harding found himself in?

23 A No, that would be the same every day
24 before that, and would be the same subsequently.

25 Q Sir --

1 A Not going to let other people --

2 Q When do you need to have those kinds
3 of precautions in place, sir?

4 A At any time that you go out, you know,
5 any time a group of colleagues get together,
6 whether it be judges or lawyers, or doctors or
7 nurses, or bankers, any time you go out like that,
8 if somebody seemingly has too much, you should be
9 taking care of them.

10 Q And when you use the term "like that,"
11 I take it you mean going to a bar late in the
12 evening and closing it, and then going off to a
13 house party afterwards where alcohol is being
14 served, sir?

15 A Or any situation where you wrap up
16 your week of work and you go to any kind of bar,
17 lounge, restaurant, establishment such as that.

18 Q At the time you first heard of the
19 accident, you were aware that this individual was
20 at the East St. Paul Police Station; correct?

21 A Harvey-Zenk?

22 Q Yes?

23 A Yes. I don't know where -- I presume
24 that that would be where he was, that East St.
25 Paul was investigating it. His exact whereabouts,

1 I don't know.

2 Q Yet when you went to get things
3 rolling, you didn't go to the East St. Paul Police
4 with your statement about what took place that
5 night, you went to the Winnipeg executive
6 officers, sir; is that accurate?

7 A Yes, we followed the chain of command.

8 Q Did you feel that you couldn't make a
9 statement to the East St. Paul Police without
10 first clearing it through your chain of command?

11 A No. We were going to make a statement
12 to anyone that was willing to listen and take our
13 information.

14 Q But your priority was in getting to
15 the executive to deal with the potential
16 misinformation that was coming up to your
17 superiors, sir?

18 A That may have been a byproduct of our
19 intentions, but primarily we approached our
20 commander and said, again, over here, we have a
21 story to tell, we want to get it out and we want
22 to get this thing moving.

23 Q And Superintendent Stannard told you
24 that you should go directly to the PSU and East
25 St. Paul Police. Do you recall that?

1 A And East St. Paul?

2 Q Yes, sir. They are the people you
3 should be speaking to rather than him?

4 THE COMMISSIONER: Sorry?

5 MS. HANLIN: I don't see that
6 reference at all. I don't see that as "and," East
7 St. Paul Police and the PSU.

8 BY MR. PACIOCCO:

9 Q Officer, what the note says is:
10 "Talk directly to East St. Paul -
11 PSU."

12 Do you know whether East St. Paul has a
13 Professional Standards Unit, sir?

14 A I don't think they do.

15 Q No, they don't, sir. Now --

16 A I wouldn't have known. I believe he
17 contacted East St. Paul. Again, we weren't sure
18 where to go. And subsequent to that he, I
19 believe, contacted PSU and those arrangements were
20 made for us to go over there.

21 Q I guess the question I have is, why
22 didn't you then leave there and go directly to
23 East St. Paul to assist the criminal
24 investigation, having dealt with the internal
25 issues that might arise from this event?

1 A When?

2 Q After you finished with the PSU
3 investigators, after you gave your statement to
4 them?

5 A If I'm not mistaken, that offer was
6 put out to them. The reply from East St. Paul
7 were words to the effect, Mr. Commissioner, that
8 we don't have the resources and/or we are ready
9 for them to come forward at this time.

10 Q Sir, where did you learn that from?

11 A Again, I may be mistaken, but I
12 believe that was occurring in those phone calls
13 when East St. Paul was notified.

14 Q Because our information is, and I'm
15 not going to suggest that wasn't part of the
16 conversation that took place when Stannard called
17 East St. Paul in your presence, but our
18 information is that it wasn't until around
19 4:00 o'clock the next day when East St. Paul
20 turned over the criminal investigation to the
21 Winnipeg Police. And I'm just wondering, sir, if
22 your intent was to get the investigation off on
23 the right foot --

24 A Um-hum.

25 Q -- why you didn't make a point of

1 getting to the criminal side of things and why you
2 just dealt with the internal issues by going to
3 your own executive?

4 A I believe that offer was put forward
5 and they declined.

6 Q Was it put forward by you, sir?

7 A No, by Superintendent Stannard.
8 That's my impression of the way the conversation
9 progressed.

10 Q All right.

11 A And at that point I was under the
12 impression that we were part of the criminal
13 investigation. I was never under any illusion
14 that this was strictly regulatory. I fully
15 believed, and I believe if you go through the PSU
16 preamble, it certainly exposes the possibility
17 that this statement could be used in criminal or
18 civil proceedings.

19 Q Yes, sir. And I think we will find
20 more about that when we have Inspector Girard on
21 the stand. So I don't want to try to tell you
22 what my interpretation of it is, but I hear your
23 response, sir. Thank you.

24 Let's return to the departure.

25 A Of?

1 Q Of your group from Black's house.

2 A Okay.

3 Q Now, you said you remembered going
4 down and getting Constable Harding in the
5 basement, sir? Went downstairs and woke him up, I
6 think you said?

7 A I don't think he was sleeping.

8 Q Okay. You did correct yourself, sir.
9 If I can take your attention to page 47 of the
10 transcript, line 10:

11 "So what did you do with him?
12 Woke him up, or pardon me, talked to
13 him, made a determination that he
14 shouldn't be driving, but rather than
15 leave him there, he could come with us
16 to Branigan's and then I would provide
17 him with a lift home."

18 A Yes.

19 Q So you had corrected it there, sir.

20 A Yes.

21 Q Do you remember who went down to speak
22 to David Harding?

23 A At what point?

24 Q To let him know that there was a ride
25 home for him?

1 A Who did?

2 Q Yes?

3 A I believe that was me. Unless there
4 was someone else in addition to me, but,
5 basically, as I say earlier, I don't believe he
6 was sleeping. And if he was sleeping, I wouldn't
7 have been able to make that determination until he
8 was awake, I don't think I needed to wake him up.

9 Q Yes?

10 A I talked to him, made a determination
11 that he shouldn't be driving. And you read this
12 particular quote. So at that point I was more or
13 less offering, I knew that we lived in the same
14 end of town, very close, so he may as well come
15 with me.

16 Q Okay. I understood from Constable
17 Fudge that she had gone down and woke him up,
18 but --

19 A She may have as well. And whether
20 that was prior or just after me, but I know that I
21 did go down as well.

22 Q You, I take it, went straight back to
23 Branigan's from Black's place?

24 A Yes.

25 Q And Constable Fudge was driving at

1 that time?

2 A Yes.

3 Q I want you to tell the Commissioner,
4 in as much detail as you can remember today, what
5 took place when you got back to Branigan's?

6 A By then, Mr. Commissioner, all three
7 other occupants of the vehicle, I'm sure, in
8 speaking for them, had formed the idea that Dave
9 Harding should not be driving. I know that he was
10 still in possession of his car keys and house
11 keys, he hadn't turned them over, we hadn't taken
12 them from him at that point. I say to PSU that I
13 insisted he turn his keys over to me, and I
14 remember it being very cold out. I don't remember
15 the exact arrangement of the vehicles, but there
16 was space. I mean, when we arrived, there was a
17 lot of cars in the lot. When we returned, we were
18 probably the only four vehicles remaining. So I
19 remember I went and started my older truck, and I
20 remember there being a bit of a scrum with Tracey
21 Fudge and Kelly McLure and Dave Harding. I don't
22 know if it was in fun or if it was serious or
23 what, but in basically seizing his car keys from
24 him. I figured I would let them go deal with
25 that, and if they weren't successful, then I would

1 certainly get involved. But they had the first
2 opportunity, and they turned the keys over to me.
3 I don't know who exactly gave them to me, whether
4 it was Fudge or McLure. And Dave got in my
5 vehicle and we left.

6 Q So, I take it, sir, it wasn't just a
7 case of saying to David Harding, David, you
8 shouldn't be driving, I will drive you home?

9 A That was probably said too.

10 Q But it wasn't enough, was it, sir?

11 A I don't know if he was just fooling
12 around or what. I don't know. All I know is that
13 was my initial contact -- confrontation with him,
14 if you will. And then he sort of, I walked over
15 to my vehicle and away from the three of them. So
16 exactly what took place, I'm not sure. I remember
17 there sort of being sort of jostling or moving
18 around or whatever. I don't know if he was just
19 toying with them or what. But eventually -- I
20 mean, he is a big guy, if he didn't want to give
21 the keys to them, he wouldn't have.

22 Q Sir, could it have been a wrestle for
23 the keys?

24 A There was no head locks and driving
25 him to the ground or anything like that, it was

1 just, like I say, they were, you know, jostling.

2 Q It would have been a resisting
3 confrontation over the keys?

4 A I don't think so. Dave is not like
5 that, he is not a -- he is a pussy cat. I went to
6 my vehicle, started it up. By the time I turned
7 around, they were walking the keys over to me.

8 Q So, even though you were sensing that
9 it might just be in fun and you weren't sure, you
10 nonetheless turned and walked away from it, sir?

11 A Oh, his car was a good distance from
12 mine -- or pardon me, from where they were. I
13 walked to my car, started it up, leaned in,
14 started it up, and turned around and started
15 walking back to them. They were still in close
16 proximity of where they had parked their vehicle,
17 and then we just sort of met.

18 Q I just want to be fair to you, sir.
19 The point of the question is, if you didn't know
20 exactly what the nature of the dispute over the
21 keys was, whether it was a true wrestle for the
22 keys or whether it was a joke, why would you walk
23 away from it and not stay there to make sure that
24 it didn't get out of hand, or if somebody did need
25 help, you would be there to help?

1 A Because he would have had to gone past
2 me to get to his car, and that wasn't going to
3 happen.

4 Q Sir, I'm going to read to you the
5 description that was provided by Constable Fudge
6 of this event, and I'm going to ask whether it
7 accords with your recollection. This begins at
8 page 40 of the transcript that's been put into
9 evidence. And it should be in front of you --
10 actually, sir, it has been filed as exhibit 168.
11 And just so that you can feel comfortable with the
12 reading -- it is coming your way, sir. I'm at
13 page 40, sir, and I'm going to begin at line 17.

14 "Were you still concerned about the
15 state of Dave Harding and his ability
16 to operate a vehicle when you got back
17 to Branigan's in the morning?"

18 A Yes, I was.

19 Q Did you talk to anybody about
20 that?

21 A Jim Anderson and I arranged that
22 I would drive Dave back to Branigan's
23 and from there he would drive Dave
24 home. When he got to Branigan's, Dave
25 was intoxicated, showing obvious signs

1 of intoxication, and he wanted to
2 drive. And he got into -- we got into
3 a wrestling match over his keys and
4 didn't let him drive.

5 Q So you got into a wrestling match
6 at Branigan's parking lot with Dave
7 Harding?

8 A Yes.

9 Q And how many people were involved
10 in the wrestling match?

11 A It was just me and Dave fighting
12 over his keys. Jim was waiting for
13 him to come to his truck and Kelly was
14 kind of standing near the car with me.

15 Q And how long did this wrestling
16 match last?

17 A It didn't take very long. I
18 mean, initially he didn't want to
19 release his keys and tried to sit down
20 in his car. I think after a short
21 time he thought the better of it, and
22 I took his keys.

23 Q This is the first time that I have
24 ever heard about you and Dave Harding
25 having a wrestling match on the

1 evening or the morning of the 25th,
2 and have you told this to anyone prior
3 to today?

4 A Not really. I mean, Kelly McLure
5 was there and Jim Anderson and Dave.

6 Q You didn't bring it up? You
7 didn't think it was relevant to bring
8 it up with the Professional Standards
9 Unit when you met with them?

10 A No, because he didn't drive.

11 Q Okay. His intent was to drive,
12 presumably, based on the fact that you
13 had to wrestle with him to prevent
14 that from happening?

15 A Well, I grabbed the keys from his
16 hands so he wouldn't have them."

17 Sir, does that accord with your
18 recollection of what took place?

19 A Most of it.

20 Q What doesn't?

21 A I don't remember him sitting in his
22 vehicle. I don't recall him sitting in his
23 vehicle. But Dave was in agreement, he wasn't
24 going to drive. I really don't believe that.

25 Q So you would take a different opinion?

1 A No, I would say that Dave really had
2 no intention of driving. He would respect us too
3 much to do something like that.

4 Q All right. Sir, I'm going to ask you
5 a question about the observation you made earlier
6 that you were probably the only four vehicles left
7 in the lot, sir?

8 A Yeah, I mean, I'm going back a little
9 ways now.

10 Q You are guessing, sir?

11 A At 5:30 in the morning, I don't know
12 who else would be there.

13 Q Sir, we have information that there
14 were a number of vehicles still remaining after
15 you left that location, sir?

16 A Okay. Good.

17 Q Sir, your evidence was that you then
18 drove Constable Harding home?

19 A Yes.

20 Q And what happened then, sir?

21 A We sat in the parking lot of his
22 townhouse, chatted for a while. He went to his
23 residence. I drove the short distance back to
24 mine. And for all intents and purposes, that was
25 the end of the evening.

1 Q Okay, sir. Now, you talked earlier
2 about the communication you had with Sergeant
3 Humniski that ultimately lead you to attend at the
4 station with some of the executive members of your
5 police force, sir. Did you contact, or did
6 Sergeant Humniski contact anyone else in
7 preparation for that meeting?

8 A In preparation for which meeting?

9 Q The meeting that you were going to
10 have where you went in to basically unfold what
11 had taken place, did you talk to others to try and
12 get a more complete picture of events?

13 A Not to get a more complete picture of
14 events. I knew all that I needed to know at that
15 point.

16 Q All right, sir. Did you talk to
17 others about the fact that you were going to go to
18 see the executive?

19 A I believe so.

20 Q Who did you talk to?

21 A One of the people would have been
22 Black.

23 Q Yes, sir?

24 A I don't know if that was myself or
25 Sergeant Humniski. I tend to believe that it was

1 myself that would have made that phone call, and
2 basically advise him, this is what we've come up
3 with, this is what we need to do.

4 Q Why would you have to call Constable
5 Black to tell him, this is what we've come up
6 with?

7 A Out of courtesy, first of all. It was
8 his residence. I wanted to make sure that he was
9 doing all right. Obviously, he would be greatly
10 shaken up over this. I wanted to reach out to
11 him. I advised him that this, you know, the
12 investigation is going to proceed anyways. I told
13 him the reasons why I thought that it was better
14 that we come forward right now, at the front end,
15 as opposed to letting the situation languish.

16 Q And how did he react to that?

17 A He was apprehensive, he was disturbed
18 about the whole thing, and now I'm calling him and
19 telling him that, you know, I think reality sort
20 of struck home with him again, if it hadn't
21 already, that now we are going to be the subject
22 of an investigation, and we are going to have to
23 come forward and tell our side.

24 Q What kind of apprehension did he have?

25 A Certainly he had his own concerns, I

1 don't know exactly what they were, whether they
2 were criminal, civil, professional under the rules
3 and regulations. I don't know what concerns he
4 would have had. But it was completely
5 understandable to me that he would have, you know,
6 that early on in the onset of this, that I would
7 be calling him, not only to check on his
8 well-being, but also that, Sean, this is the right
9 thing to do, we need to do this right now.

10 Q Sir, you described yourself as
11 reaching out to him. Are you saying that you
12 didn't, when reaching out to him, go into some
13 discussion about what his concerns were so that
14 you could comment on whether they were real or
15 unreal?

16 A Comments with concerns in regards to
17 what?

18 Q Sir, you said that you didn't know
19 what his concerns were, whether they were civil or
20 criminal or professional, you knew he was
21 concerned. What I'm putting to you, sir, is you
22 described yourself as reaching out to him, and I'm
23 just wondering whether you, or if you did not, why
24 you didn't, ask him about, well, look, what is it
25 that's got you concerned, Sean? What are your

1 concerns? What are your worries?

2 A I did not want, as a witness and as
3 him being obviously a witness, I didn't want to
4 get into too much, or any discussion as far as the
5 specifics of what happened there after I left. I
6 didn't want to know. I've learned more since
7 March 25th, when I met with Commission Counsel,
8 than I knew in the previous three years about what
9 happened after I left.

10 Q Sir, I'm not asking you about what
11 happened, I'm asking you about the observation you
12 made that he was apprehensive, and that you don't
13 know whether his concerns were criminal, civil or
14 professional. And I'm asking you, sir, why, if
15 you were reaching out to him, you wouldn't have
16 canvassed those with him to see if perhaps you
17 could give him any support or information that
18 might make him feel better?

19 A I don't know exactly what I said to
20 him. I mean, I didn't document that conversation.
21 Certainly, my priority was the criminal aspect of
22 the entire incident. We spoke in generalities of
23 civil, you know, whether it be case law with a bar
24 out east or whether it was a -- what stance the
25 service would take. That's possible, but I don't

1 have any specific recollection of discussing that
2 three and a half years later.

3 Q Well, that reference to what happened
4 in a bar out east, that's pretty specific, sir.
5 How are you tying that into this conversation?
6 Did that not take place?

7 A It is just fear, it is just, you know,
8 something tragic like that happens. This is his
9 residence, that's why I called him. I wanted to
10 give him the courtesy of letting him know that we
11 needed to do the right thing, we need to come
12 forward right now.

13 Q Sir, you indicated that -- let me ask
14 you this. You assisted as Patrol Sergeant in the
15 arrangement of interviews with members from your
16 platoon by helping to organize their attendance at
17 the Professional Standards Unit, did you not, sir?

18 A Yes, more or less. I was sort of a
19 liaison, so that they didn't have to track down
20 individuals. I don't know exactly how it
21 unfolded, but I believe that they had a schedule,
22 and then it was also based on people's
23 availability. And as long as I saw progress, I
24 was satisfied with that.

25 Q Do you remember what happened on March

1 the 3rd of 2005, sir, when the original attempt
2 was made to interview Constables Black and
3 Azaransky?

4 A No.

5 Q Sir, the information that we have from
6 Detective Sergeant Girard's notes is that there
7 was a phone call that Constable McLure was on her
8 way over with those two. And a short time later,
9 the note from Girard attributes you calling over
10 to the Professional Standards Unit and advising
11 Girard that they are not coming. Does that ring a
12 bell for you, sir?

13 A Are you saying they were on their way
14 and then they are not coming?

15 Q On their way might be a bit of
16 literary licence. They were meant to go, they
17 were expected.

18 I'm going to read to you Sergeant
19 Girard's notes, and these will be found in a
20 document that's exhibited in this case. These
21 notes are found at tab Q-1.89.b.3. Perhaps they
22 have not yet been entered, Madam Clerk. They
23 should have been on the list I furnished you this
24 morning?

25 THE CLERK: Yes, sorry.

1 MR. PACIOCCO: If those could be made
2 exhibit 171?

3 THE CLERK: Exhibit 171.

4 (EXHIBIT 171: Q-1.89.b.3 Detective
5 Sergeant R. Girard notes)

6 BY MR. PACIOCCO:

7 Q Sir, I'm going to read from page 2281
8 of our book, it is page 67 of the notes, and I
9 know it is in someone else's handwriting, but
10 fortunately it is pretty good.

11 THE COMMISSIONER: What page was that?

12 MR. PACIOCCO: Page 67 of the notes,
13 page 2281 of the materials.

14 THE COMMISSIONER: Thank you.

15 BY MR. PACIOCCO:

16 Q "A call from Police Sergeant Anderson.
17 He said that Constable Black and
18 Constable Azaransky would like to
19 postpone their interviews in order to
20 consult further with the WPA.
21 They are concerned re future impact
22 statements may have on civil
23 litigation and/or WPA regulation
24 matters in this incident "
25 Sir, does that ring a bell?

1 A Vaguely. It is entirely possible, I
2 don't dispute that.

3 Q All right, sir. So if it did happen,
4 you would have had some conversation with
5 Constable Black and Azaransky about their
6 apprehension about potential civil and
7 professional liability; correct?

8 A Yes, and that was fine with me. I was
9 just coordinating the appointment schedule here
10 I'm their Patrol Sergeant, I'm not their mother.
11 If they wanted to consult with lawyers or friends
12 or relatives, or a priest, I mean, I can't control
13 that. As long as I saw this investigation moving
14 forward, that's what I needed to happen for my
15 shifts.

16 Q Sir, you talked about calling Sergeant
17 Black to reach out to him because you knew this
18 would be a very difficult thing for him, sir?

19 A Yes.

20 Q As a platoon Sergeant of Derek
21 Harvey-Zenk, did you call him as well?

22 A Yes, at some point, a number of months
23 later. And again, just to touch base with him,
24 see how he was doing.

25 Q Sir, why did you wait a number of

1 months and not get to a man who was obviously
2 going to be going through something tremendously
3 difficult?

4 A You know, now that I say a couple of
5 months, I don't know what the time frame was, I
6 really don't. I know I had one for sure, maybe
7 two conversations with him by telephone. And
8 that, obviously, as you know from my discussion
9 with Mr. Clifford, that would have been preceding
10 Christmas time.

11 Q Could you tell us about the
12 conversations that you had with Derek Harvey-Zenk,
13 please, what was said?

14 A Not verbatim of course.

15 Q Yes, not verbatim.

16 A It would have been just me expressing
17 my empathy for the situation. Obviously, it was
18 an extreme tragedy for the victim and the victim's
19 family. Certainly, Harvey-Zenk would have been
20 going through a lot. He had a wife, a good job, I
21 was concerned about his well-being, his mental
22 state and so on. I presume he had support systems
23 in place. I just wanted him to know that we
24 hadn't forgot about him at that point.

25 Q Sir, did you indicate that -- did you

1 have any discussion about what had taken place,
2 sir?

3 A No.

4 Q And did you remember anything that he
5 told you?

6 A No, he wouldn't have -- he wouldn't
7 have disclosed, he wasn't volunteering, I wasn't
8 asking.

9 Q Sir, did you ever meet with the
10 special prosecutor before this matter was finally
11 settled, and by this matter, of course, I mean the
12 criminal charges?

13 A I don't believe so.

14 Q According to his docket, sir, he had
15 what appears to be, and he will have to interpret
16 his own dockets, but it appears to be a phone
17 conversation with you on the 11th of July, 2007,
18 just on the eve before matters were settled. Do
19 you recall that, sir?

20 A I remember phone calls. I didn't meet
21 with him.

22 Q Do you know whether Constable Black
23 would have been present at the time that that
24 phone call was made from Mr. Minuk's office?

25 A Say that again?

1 Q I was asking whether you know whether
2 Constable Black was present with Mr. Minuk when
3 the contact took place, because the docket that we
4 have from the lawyer showing what he was doing at
5 that time combines reference to both a meeting
6 with Sean Black by Mr. Minuk, and a phone call
7 with you. And it is not clear as to whether these
8 were sequential or whether they happened at the
9 same time. And I was wondering whether you could
10 help us out on that?

11 A I'm sorry, I don't know anything about
12 that.

13 Q What took place during the
14 conversation that you had with Mr. Minuk?

15 A In addition to -- I will get back to
16 this matter -- I had another ongoing matter with
17 Mr. Minuk. I don't know if there was any
18 specific, or pardon me, sole discussions about
19 this matter. As I recall, any time I spoke to
20 him, we discussed both ongoing matters, as I
21 recall. And then specifically in regards to this
22 particular investigation, it would have been a
23 very, very general discussion as to where he felt
24 this investigation was headed. I was, once again,
25 taking it upon myself to, if not liaise or

1 represent, just to try to get a sense of where he
2 was headed as far as the WPS members would be
3 concerned, how many members he would be asking to
4 appear, what sort of evidence he was looking for
5 and if he could attain that, the order of
6 witnesses, that sort thing. I had known at that
7 point that there was, whether through media or
8 secondary sources, that the investigation, for
9 lack of a better word, was in trouble.

10 Q Do you recall speaking to him about
11 whether the investigation was in trouble?

12 A I had a sense of that from him, yes.
13 I also -- part of what I was trying to avoid was
14 a -- knowing that the investigation and subsequent
15 convictions may be a prospect at that point, I was
16 hoping to avoid a parade of officers that would
17 essentially be telling the same story over and
18 over, if that was the case. I volunteered for him
19 to pick your core officers. I had no problem
20 appearing at trial, I volunteered. I said I would
21 like to be one of the people, if you see fit, but
22 if we could just sort of keep it to a handful, if
23 that is going to give you your case, or help your
24 case, as opposed to 12 or 24 that were at
25 Branigan's, given the perception, the perception

1 and the negative connotations that were going to
2 come out regardless of how this was presented.

3 Q Sir, how did you know that your
4 officers were going to tell the same story?

5 A I said if they are going to tell the
6 same story as far as what they did or did not
7 know. What I didn't want to see was them coming
8 up -- and again, as you know, a criminal trial is
9 going to be far more focused on the actions of the
10 accused. So if there is less people that are
11 going to be able to speak to that accused and his
12 actions preceding the accident, that's what I
13 would have liked to have seen him focus on.

14 Q So your evidence, sir, is that you
15 sensed that the officers would be telling the same
16 story and so you wanted --

17 A I had no idea what story they were
18 going to tell. All I wanted them to do was, if
19 there were similarities in their stories, instead
20 of putting three people telling a similar version,
21 and three more people telling their version, if we
22 could just sort of narrow it down a little bit and
23 focus on the events of Harvey-Zenk, with the
24 belief that this thing was probably going to cave
25 in on itself anyways.

1 Q So your evidence is that you had that
2 kind of conversation without knowing what your
3 officers were going to say?

4 A Yes. If we could stick to the facts
5 and not get sidetracked.

6 Q Let me ask you this, sir; you knew
7 that you were a witness in this case?

8 A Um-hum.

9 Q Did you not feel it wasn't the best
10 position for you to be the one to participate in
11 the administration of the testimony for the
12 criminal case?

13 A Oh, it was not the administration. He
14 could do whatever he wants, he could have told me
15 to shut up and just mind my own business. I was
16 just trying to express, from a shift supervisor
17 leadership perspective, concerned about the media
18 reports, about what happened and so on, if we
19 could keep the numbers reasonable. As opposed to
20 24 officers going and telling their version, that
21 really, you know, at some point they are not going
22 to have information relating to Harvey-Zenk.
23 That's what I was asking, can we keep the numbers
24 reasonable.

25 Q Again, I'm not asking you about

1 whether he could have told you that he is not
2 going to give effect to your requests. I'm asking
3 you whether you felt it was appropriate, given
4 that you were a witness, to be playing this role,
5 encouraging a prosecutor to prune witnesses or to
6 have input into who gets called?

7 A As long as it had to do with
8 Harvey-Zenk, I had no wishes at all. And I
9 wouldn't, and I would be in no position to do so.
10 That was just part of the general conversation
11 that Mr. Minuk and I had with my concern about the
12 negative perception, knowing that it would
13 ultimately not enhance the case. If he had any
14 information, and he was the only one who knew that
15 because nobody else did, he can take that
16 information and use the ones that would enhance
17 his case.

18 Q What negative perception are you
19 concerned about?

20 A The baseless allegations that, number
21 one, that it was a party out of control. It
22 couldn't be further from the truth. That there
23 was any sort of collusion taking place amongst us,
24 totally without foundation and, again, baseless.
25 The idea that we can somehow build a giant

1 conspiracy theory with 24 people, plus civilians,
2 plus bar staff at Branigan's, and then take that
3 to another level back at a fellow officer's house,
4 not really knowing these people and not knowing
5 that there could be 1001 leaks, nobody would put
6 themselves in that position. I would not put
7 myself in the position and I would not expose my
8 officers to the same thing.

9 Q You are telling this to the
10 prosecutor, sir?

11 A No, I'm telling this to you. You
12 asked.

13 Q Yes, I did, sir, and I am asking about
14 the negative perceptions. I am just wondering how
15 pruning your witness list could somehow help avoid
16 the negative perceptions?

17 A If they couldn't lend evidence to
18 Harvey-Zenk's actions prior to the accident, what
19 would be the purpose of parading 24 people in
20 front of a criminal trial? That's what I was
21 asking. I had never -- let me clarify if I
22 haven't done this a couple of times already. The
23 idea that I would tell a prosecutor, as you put
24 it, to prune witnesses, that's not at all. You
25 have totally misconstrued what I'm saying here.

1 Q Sir, did you not say that you were
2 encouraging him, if there were witnesses who were
3 going to come in and say the same thing, just to
4 call some?

5 A To speak -- if they had nothing to add
6 as far as Harvey-Zenk and the criminal
7 investigation. Obviously, you know, here you have
8 far more latitude than a criminal trial. If he
9 was reading officers' statements and found that
10 there was some validity or information that would
11 add to his case, I would fully expect them to be
12 subpoenaed. And as it was, many of them were.

13 Q You were mentioning this to him?

14 A General terms, all I asked him was, is
15 it possible to keep the numbers down to avoid the
16 negative perception.

17 Q Of?

18 A And the false perception of it being a
19 wild party and/or a giant conspiracy theory,
20 because neither of those insinuations are even
21 close to factual.

22 Q All right, sir.

23 A That was my concern --

24 Q I'm going to leave this topic --

25 A -- and only that.

1 Q -- but I have to ask you two more
2 questions, and they are very specific. Did you
3 tell Mr. Minuk that some of the officers
4 themselves were too impaired to recall whether
5 Harvey-Zenk had been drinking?

6 A No.

7 Q Did you tell Mr. Minuk that more
8 senior officers would not have noticed Mr. Zenk
9 because they tend not to socialize with lower rank
10 officers?

11 A No, definitely not.

12 Q You met with Mr. Minuk when you
13 attended court on July 17th, sir?

14 A I don't know the date -- was this with
15 the plea agreement?

16 Q Yes, sir.

17 A All right.

18 Q And what kind of conversation did you
19 have with him that day, sir?

20 A I believe we had a conversation
21 regarding a very recent case law sentencing.

22 Q Yes, sir.

23 A For the conviction of that particular
24 offence.

25 Q Yes, sir.

1 A We would have obviously expanded on
2 that.

3 Q You also discussed the potential for
4 conviction?

5 A Ultimately convicting on some of the
6 other numerous charges that he was facing, yes.

7 Q So you were talking to Mr. Minuk, the
8 special prosecutor, about the probable outcomes
9 for your officer, Harvey-Zenk, sir?

10 A As far as the plea agreement goes?

11 Q Yes, sir.

12 A That, order of witnesses, likelihood
13 of having to testify, that sort of thing.

14 Q Do you remember what was said about
15 the case law, sir?

16 A Not specifically, other than
17 guidelines for sentencing.

18 Q Did it have to do with conditional
19 sentences?

20 A Yes, recent conditional sentences for
21 that offence.

22 Q Do you remember what was said about
23 conditional sentences?

24 A Not specifically, no.

25 Q Were you left with an impression about

1 the application of conditional sentence in this
2 case as a result of that conversation?

3 A Repeat the question?

4 Q Were you left with an impression about
5 the possible application of conditional sentences
6 in this case as a result of that conversation?

7 A Probably. Otherwise, I don't think we
8 would have prefaced it with that discussion.
9 That's why I think that that -- there is a chance
10 that --

11 Q I'm going to cut to the chase and you
12 tell me if I'm wrong.

13 A Okay.

14 Q The indication was that this was the
15 likely outcome of the case, was a conditional
16 sentence for Mr. Harvey-Zenk?

17 A This was the likely outcome?

18 Q Yes?

19 A That day in court?

20 Q That at the end of the day, that's the
21 likely outcome for Derek Harvey-Zenk, a
22 conditional sentence?

23 A So what is your question?

24 Q The question is, is that what was
25 being said to you by Mr. Minuk?

1 A Yes. He certainly had concerns. He
2 felt that he was taking the best deal that he
3 could under the circumstances.

4 Q Okay. All right, sir, the last group
5 of questions I want to ask you have to do with the
6 possibility of Derek Harvey-Zenk working overtime.
7 And I'm going to ask that you be provided with the
8 documents at tab F-1.33.c? If those documents,
9 which I will get the witness to describe for us in
10 a moment, could be the next exhibit, please?

11 THE CLERK: Exhibit 172.

12 (EXHIBIT 172: F-1.33.c Winnipeg
13 Police Service overtime exception)

14 BY MR. PACIOCCO:

15 Q Take a look at the first document in
16 that batch, sir, you will see Winnipeg Police
17 service over time/time exception document?

18 A Yes.

19 Q Can you describe for the Commissioner
20 what those documents are, please?

21 A Mr. Commissioner, they are commonly
22 known as blue slips, in the colour that they are.
23 They have a formal requisition number of P221,
24 where it is updated, and this is a P277. What
25 this form is used for is for anybody that earns

1 time to be placed in their time bank, to be used
2 at a later date, or it is for pay overtime, or if
3 it is someone that wants to take time off, whether
4 that be a block on annual leave, or a day, or a
5 few hours within a day.

6 Q Sir, and I understand that one of your
7 functions as Patrol Sergeant is to receive and
8 fill out such slips for your staff, for your
9 patrollers?

10 A Rarely, as a Patrol Sergeant, rarely.

11 Q All right.

12 A For the most part that's left up to
13 the shift supervisor who is at the desk.

14 Q Okay. It is just that I seem to
15 recall some discussion about before you went to
16 Branigan's, you were dealing with some payroll or
17 overtime issues, and I may be mistaken on that, so
18 I do apologize if I am. But essentially you are
19 in a position to recognize what these documents
20 are, sir. We have been provided with disclosure
21 relating to what I understand to be the shift
22 during that week for your platoon, sir. And there
23 are a couple that I found relating to Derek
24 Harvey-Zenk. If you could turn, please, to the
25 last page of those documents? And if yours

1 correlate with mine, you have a very dark
2 photocopy that appears to have S649 down in the
3 lower right-hand corner?

4 A Yes.

5 Q And that one is Derek Harvey-Zenk, it
6 has a service number, the division and platoon
7 information on top. It indicates regular hours of
8 duty in box number 3 on the left-hand side, sir?

9 A Yes.

10 Q And as I read this document, it is for
11 the 22nd of February, 2005, showing a shift start
12 time of 1630, sir?

13 A Yes.

14 Q And a shift end date of the 23rd at
15 2:30 in the morning, sir?

16 A Yes. So that would have been Tuesday
17 into Wednesday.

18 Q Yes, sir. And this particular
19 document, and that's the typical time for the
20 start of this shift that was being worked on that
21 occasion, sir?

22 A Yes, 4:30 in the afternoon.

23 Q To 2:30, that's the regular shift?

24 A Yes.

25 Q It shows that on Tuesday of that week,

1 Derek Harvey-Zenk worked overtime, according to my
2 reading at least of this document, and you correct
3 me if I'm wrong. He worked from 2:30 in the
4 morning, and it says February 22nd there, but I
5 think that should probably be the 23rd, on to 5:00
6 for a total of 2.5 hours of overtime on the
7 Tuesday; correct, sir?

8 A Yes.

9 Q The other document that pertains to
10 Mr. Harvey-Zenk in here, that I was able to find,
11 is at page 839, sir. And although the dates
12 appear to be written over, it looks like the
13 February 24th into February 25th, showing a start
14 time of 1430 and an end time of 0030 for a total
15 of 10 hours, sir. And then it shows time off from
16 2230 to 30 hours after midnight; is that correct,
17 sir?

18 A Yes.

19 Q For two hours. So if I'm reading that
20 correctly --

21 A He took two hours off.

22 Q He effectively worked eight hours in
23 total instead of ten?

24 A Correct.

25 Q So this was not an overtime shift, it

1 was actually, if we could use the term, an
2 under-time shift?

3 A Yes.

4 Q Those have are the only documents that
5 have been disclosed to us that would record
6 overtime or under time?

7 A Okay.

8 Q And if those are the only documents
9 that apply to the particular shift that Derek
10 Harvey-Zenk was working, he worked an accumulative
11 overtime of .5 of an hour over the course of that
12 week, based on those two slips, sir; would that be
13 fair, 2.5 hours of overtime?

14 A Based on these slips, yes.

15 Q And minus two at the end of the week,
16 sir?

17 A I don't know if there was any others
18 that --

19 Q No, we have to depend on the
20 disclosure that we are provided with, sir. Based
21 on the record that we have, that's the picture
22 that gets painted.

23 I don't have any further questions for
24 you at this point, sir. There will be other
25 lawyers, so please just remain there.

1 THE WITNESS: Thank you.

2 BY MR. ZAZELENCHUK:

3 Q Sir, when you were giving your
4 evidence earlier this morning, you indicated to
5 us, and you were quite precise, that on February
6 the 24th, actually the 25th of 2005, you left work
7 at 12:15, quarter after 12:00 midnight?

8 A That sounds right.

9 Q Yes. So you would have arrived at
10 Branigan's when?

11 A 12:30.

12 Q Okay. And do you have any idea what
13 time it was when you left Sean Black's home?

14 A It was probably 5:15'ish, I say in my
15 statement, I don't think it was 5:00, it would be
16 5:30, maybe a bit later, I'm really not sure, it
17 would be 5:15 or 5:30.

18 Q How long did it take Officer Fudge to
19 drive from Sean Black's residence to the parking
20 lot of Branigan's?

21 A I don't know. Earlier I heard 15, 20
22 minutes.

23 Q Were you paying attention to how long
24 it took? I notice you wear a watch?

25 A No.

1 Q Are you comfortable with 15 minutes?

2 A That would probably be pretty close.

3 Q Okay. How long did -- how long
4 elapsed from the time that you got out of Officer
5 Fudge's car at the Branigan's parking lot to the
6 time that you started your own vehicle?

7 A Minutes.

8 Q Five?

9 A Probably less --

10 Q Okay.

11 A -- I would guess.

12 Q Now, you mentioned to us that you got
13 to Branigan's and you had two or three beer,
14 probably three; correct?

15 A I believe I said that, yes.

16 Q And were you drinking --

17 A Mixed with water.

18 Q Sure. And that's so that you don't
19 dehydrate?

20 A Sure.

21 Q Yeah, water has nothing to do with
22 alcohol consumption other than it doesn't
23 dehydrate you?

24 A Well, I like it, yes.

25 Q Yeah. Saves a headache in the

1 morning, right?

2 A If you say so.

3 Q Okay. You were drinking beer. Do you
4 recall what kind of beer, was it bottled or --

5 A Probably in a glass.

6 Q I see. Were you ordering pints?

7 A Versus a glass?

8 Q Versus tumblers, I mean, what kind of
9 a glass was it? There is all sorts of glasses.

10 A I don't know. I have been there on a
11 few occasions. One visit would blur into the
12 other, I can't fairly say what size of glasses I
13 had.

14 Q But the beer wasn't coming in bottles,
15 it was coming in glasses?

16 A I don't think I have ever had bottled
17 beer there, that's why I say it was probably in a
18 glass.

19 Q We have heard considerable evidence
20 that there are special prices on pints available
21 when police officers come in large groups. Are
22 you aware of that?

23 A No.

24 Q You are not aware of that?

25 A No.

1 Q You are not aware of the \$2.75 pint
2 special?

3 A I just go there, they provide me with
4 a bill at the end night and that's what I pay.

5 Q All right.

6 A I don't know what the regular price
7 is.

8 Q You told us that at Officer Black's
9 house you had two or three drinks?

10 A I think I said a couple, so, yeah,
11 let's go two or three.

12 Q More than one?

13 A Probably, yes.

14 Q Less than four?

15 A Yes.

16 Q You poured the drinks yourself. You
17 told us that this morning?

18 A I normally do. I don't see why I
19 would have deviated.

20 Q Sure. And that's in fact what you
21 told us this morning?

22 A Okay.

23 Q And you were drinking rye and water
24 with water in between? Yes?

25 A Yes.

1 Q How much rye would you pour in terms
2 of ounces, two ounces, three?

3 A I don't like strong drinks, so they
4 are pretty weak.

5 Q Well, the strength or the weakness of
6 a drink doesn't depend --

7 A I wasn't using a shot glass, if that's
8 what you are asking.

9 Q I understand that, sir. But you had
10 just told us that you like to pour your own
11 drinks?

12 A Yes.

13 Q And I understand that, that's a
14 prudent, careful thing to do.

15 A Right.

16 Q Because then you can measure the
17 amount of alcohol that you've got coming into you,
18 correct?

19 A Yes, that's one advantage.

20 Q And I'm asking you whether you were
21 pouring yourself two ounces, or two and a half
22 ounces, or one and a half ounces, approximately?

23 A I can't speculate. I don't know if
24 they were smaller glasses or larger glasses or
25 what. I would only be guessing and I am not going

1 to guess.

2 Q So you can't tell us the size of your
3 glass, you can't tell us how much alcohol you
4 poured into it?

5 A It is not that I can't. I just don't
6 remember. If I knew, I would tell you.

7 Q Okay. It is not that you can't, it is
8 that you don't remember?

9 A Yeah.

10 Q All right. We can move on. You said
11 two things this morning which struck me as
12 something that I was curious about. Firstly, you
13 said, you referred to the catastrophic mistake
14 made by Derek Harvey-Zenk. Do you recall using
15 that phrase?

16 A Yes, I believe so.

17 Q Okay. And you will agree with me that
18 mistake has an implication of almost wrongdoing,
19 isn't that correct? A mistake doesn't imply
20 correctness?

21 A Right, nor intent.

22 Q The next, a few minutes later, it
23 might have been several minutes later, it was
24 around 11:27 this morning, you said we had done
25 nothing wrong other than one obvious exception.

1 Do you recall telling us that, sir?

2 A Yes.

3 Q We all know who the obvious exception
4 was, right?

5 A Yes.

6 Q Sure. And what did he do wrong?

7 A I don't know. He did something
8 horribly wrong, whether it was alcohol, or
9 fatigue, or a medical condition, or drinking when
10 he was on medication. I have no idea what he did
11 wrong, but --

12 Q But you were content to refer to it as
13 something wrong?

14 A Sure, it is wrong.

15 Q Sure.

16 A Of course.

17 Q And then lastly you were questioned
18 about your discussions with the special
19 prosecutor, Mr. Minuk. Do you recall that just a
20 few moments ago?

21 A Yes. Yes.

22 Q And you made the following statement
23 when you were describing how were you suggesting
24 that the witness list could be pruned to prevent
25 repetition. You said, "with the belief that this

1 thing would cave in on itself anyway." Do you
2 recall telling us that?

3 A Yes.

4 Q What does that mean?

5 A There was all kinds of rumours,
6 statements in the media, people that had no
7 involvement in this matter were all coming
8 forward, I heard it from many sources and varied
9 sources that there was all sorts of issues with
10 the investigation.

11 Q So, you heard rumours that there were
12 all sorts of issues with the investigation, and
13 you are telling us you read about that in the
14 media as well?

15 A From that one source, yes.

16 Q Okay.

17 A There was multiple sources. Everybody
18 was -- and when I say everybody, I mean from
19 varied --

20 Q And so what did you mean with the
21 belief that this thing would cave in on itself?

22 A As I understood it, at that point, it
23 was going to be very difficult to acquire a
24 conviction on all charges.

25 Q And the source of your understanding,

1 once again, please?

2 A Many and varied, from people that have
3 no -- from civilians, if you will, to uninvolved
4 officers, to the media.

5 Q How would the opinion of uninvolved
6 officers be of any relevance to your belief?

7 A That was what I was trying to get
8 across to Mr. Minuk. Always, always, it was
9 proceeded by "if," if you are not going to be able
10 to proceed in a strong manner, all I'm asking is,
11 can we keep the numeric total of the officers
12 appearing in front to a reasonable amount.

13 Q Well, that's a very nice statement,
14 sir, but it didn't answer my question. My
15 question was, how would the statements of
16 uninvolved officers --

17 A And the media and civilians.

18 Q Let's just deal with the uninvolved
19 officers, okay. If the officer is uninvolved,
20 they have no first-hand knowledge of it, correct?

21 A Second-hand knowledge can certainly be
22 accurate.

23 Q If the officers are uninvolved, they
24 have no first-hand knowledge of it, correct?

25 A It was the totality of the information

1 that I was receiving from all of these different
2 sources.

3 Q Do you have a problem answering my
4 questions, sir?

5 A No. But you are trying to make it
6 sound like it was from a sole source that I made
7 my determination, or my inquiry --

8 Q No.

9 A -- of Mr. Minuk. And it wasn't made
10 in a vacuum. It was in totality.

11 Q No, I'm not trying to do that, sir.
12 You said a variety of sources, and I'm going to go
13 through the sources one by one, okay.

14 Now, if an officer is uninvolved, he
15 has no first-hand knowledge, correct?

16 A I don't know. That's not necessarily
17 true.

18 Q So somebody who is uninvolved with the
19 incident could have first-hand knowledge?

20 A Of the investigation, absolutely.
21 Somehow he comes to acquire some sort of
22 information.

23 Q I think we will end it there. I have
24 what I need.

25 THE COMMISSIONER: Thank you.

1 Mr. McDonald.

2 MR. McDONALD: I have no questions.

3 THE COMMISSIONER: Thank you.

4 MR. LABOSSIERE: Thank you,

5 Mr. Commissioner.

6 BY MR. LABOSSIERE:

7 Q Sergeant Anderson, as I understand it,
8 you have been a police officer for almost 20
9 years; is that right?

10 A It will be 19 years this fall.

11 Q And as I understand it, throughout
12 those almost 19 years, you've worked in general
13 patrol, you have worked in investigative
14 divisions, you have worked as a constable,
15 promoted to Patrol Sergeant, and now hold the rank
16 of Sergeant?

17 A That's correct.

18 Q And throughout the course of those
19 almost 19 years, I take it you have often taken
20 notes in connection with your duties; is that
21 fair?

22 A Yes.

23 Q And why is it that you take notes,
24 sir?

25 A To help recall a specific incident.

1 Q And I take it you are familiar with
2 when it is appropriate to take notes and when it
3 isn't. What is the general rule with respect to
4 notes, that you are aware of?

5 A That they may be, that they be made at
6 the time or shortly thereafter in regards to that
7 specific incident or investigation.

8 Q And if you are investigating an
9 incident, for example, on a Monday, and you deal
10 with the incident, you go home for the evening,
11 you come back on the Tuesday, I take it you would
12 agree with me that it would not be appropriate for
13 you to start making notes as to what had occurred
14 the day before?

15 A No, you should make them before you
16 conclude that tour of duty, that particular shift.
17 In fact, not only is that policy, that is
18 encouraged by myself to any of my shift members
19 working under me.

20 THE COMMISSIONER: Are you suggesting
21 that if you don't take notes the first day, you
22 don't take them the second?

23 THE WITNESS: If one day leads into a
24 second, often you will work more than -- you will
25 work a 24 hour shift or an extensive shift, it is

1 important that you at least make your notes at
2 that point. The reports don't need to be done,
3 but our policy says you make your notes before you
4 go home.

5 THE COMMISSIONER: You are saying that
6 if you don't make your notes at the time, or
7 shortly thereafter, you don't make them at all?

8 THE WITNESS: No, you would just make
9 them at the time or shortly thereafter.

10 THE COMMISSIONER: Let me repeat the
11 question again. Are you saying that if you don't
12 make your notes at the time or shortly thereafter,
13 you don't make them at all?

14 THE WITNESS: I suppose there are some
15 people that could. I can't feasibly monitor
16 everyone else's --

17 THE COMMISSIONER: I'm not asking
18 about anybody else, about yourself, let's restrict
19 yourself to the question. If you don't make them
20 at the time, or shortly thereafter, you don't make
21 notes, is that what you are saying --

22 THE WITNESS: Again, Mr. Commissioner,
23 I don't know why I wouldn't make notes at the
24 time. If the very next day something else
25 transpires, now those notes get completely

1 forgotten about. It is very difficult to go back
2 and start -- have a backlog of notes.

3 THE COMMISSIONER: Now, can you
4 explain to me --

5 THE WITNESS: One day can lead into
6 another day.

7 THE COMMISSIONER: I understand if you
8 don't make notes at the time or shortly
9 thereafter, you do not make notes, even if it is
10 the next day or the day after.

11 THE WITNESS: I suppose under
12 extenuating circumstances you could.

13 THE COMMISSIONER: Now, where did you
14 learn this? Is this some sort of regulation? Is
15 it some sort of training that you get?

16 THE WITNESS: Yes, it is important,
17 and we are told now that those notes need to be
18 done. And if it has involved an arrest, it needs
19 to be scanned in to the report.

20 THE COMMISSIONER: So the result may
21 be that if you don't make notes at the time or
22 shortly thereafter, and you are called upon to
23 give testimony, a month, six months later, you
24 have no notes to stimulate recall; is that what
25 you are saying?

1 THE WITNESS: Under exceptional
2 circumstances, it is conceivable that there are
3 people who will do their notes the next day. If,
4 for example, and the only one I can think of would
5 be if they worked such an excessive amount of
6 hours straight and continuing overtime, that at
7 that point they are not able to function in a way
8 to make proper documentation. They can go home,
9 sleep for a little while, come back and resume at
10 that point their note-taking.

11 THE COMMISSIONER: I'm not saying, or
12 asking you these questions to be critical of you.
13 I'm just surprised that you go through the
14 training, or you train people that if they do not
15 make notes shortly after the event, at the latest,
16 they are not to make notes at all.

17 THE WITNESS: Before the end of their
18 shift.

19 THE COMMISSIONER: Shift, whether it
20 is the end of their shift or next day, you tell
21 them they should not make notes?

22 THE WITNESS: No, I do not tell them
23 they should not make notes. Mr. Commissioner,
24 what I'm trying to explain is, you can not afford,
25 in this day and age, with the heavy workloads, to

1 fall behind in your notes. If you don't make
2 those notes on that day, and you come in, and now
3 you are into another investigation or another
4 incident, and another investigation and another
5 incident, pretty soon there would be no way to
6 make a proper record of what occurred on that very
7 first day and that first incident.

8 THE COMMISSIONER: Okay.

9 THE WITNESS: It is overwhelming, the
10 workload, and you need to stay on top of it.
11 That's what I'm trying to express,
12 Mr. Commissioner.

13

14 BY MR. LABOSSIERE:

15 Q Let me follow up in a different way.
16 You have had occasion on a number of occasions,
17 Sergeant Anderson, have you not, to give evidence
18 in Court in Manitoba, Court of Queen's Bench
19 Provincial Court, have you not?

20 A Yes.

21 Q And on most, if not all of those
22 occasions, I assume you will have brought with you
23 a notebook?

24 A That's correct.

25 Q And I assume that most, if not all of

1 those occasions, you have asked permission of the
2 judge to review those notes?

3 A That's right.

4 Q And in almost all of those occasions,
5 I suggest to you, that the judge will ask you
6 whether you made those notes at the time of the
7 incident or shortly thereafter; isn't that right?

8 A Or I will volunteer that information.

9 Q And I also suggest to you, sir, that
10 certainly in Manitoba, that if your answer was
11 that, no, they were not made at the time or
12 shortly thereafter, you were not be allowed to use
13 those notes to refresh your memory. Is that your
14 understanding of the law in Manitoba?

15 A That's my understanding.

16 THE COMMISSIONER: Thank you,
17 Mr. Labossiere. I'm learning quite a bit. I
18 never thought that was the law anywhere. But if
19 it is the law in Manitoba, I guess you will show
20 me the authorities later in support of that
21 proposition. Because there are case law that goes
22 to the Supreme Court of Canada that says you can
23 refresh your memory from any note made at any
24 time. The weight, the weight of the note depends
25 upon when it was made.

1 MR. LABOSSIERE: Yes.

2 THE COMMISSIONER: Go ahead.

3 MR. LABOSSIERE: Thank you.

4 BY MR. LABOSSIERE:

5 Q So on this particular occasion, sir,
6 as I understand it, sir, shortly after the
7 incident, you approached Inspector McCaskill; is
8 that right?

9 A Yes.

10 Q And you made arrangements to go speak
11 with and document your recollections with PSU; is
12 that correct?

13 A Yes.

14 Q Is that why you didn't sit down and
15 take notes on your own, separate and apart from
16 that?

17 A That's correct.

18 Q Now, you were also asked a series of
19 questions in connection with police culture, it is
20 the word that Commission Counsel used. And he
21 suggested to you and you agreed that police
22 officers need to be able to count on each other,
23 and they need to be able to work together and
24 support each other, they need to be able to
25 establish team work and pull in the same

1 direction. Do you recall that?

2 A I recall the question, yes.

3 Q And you agree with those comments, do
4 you not?

5 A Ideally, yes. It is a unique
6 organization.

7 Q And you are talking about doing all of
8 those things on the street, are you not,
9 investigating crimes?

10 A Yes.

11 Q I'm going to suggest to you, sir, and
12 I'm sure you will agree, that that does not extend
13 to supporting police officers who have broken the
14 law?

15 A That is correct.

16 Q You would not expect, or count on each
17 other, to cover up for a fellow officer who has
18 broken the law?

19 A Absolutely not.

20 Q You wouldn't count on officers to pull
21 in the same direction if it meant subverting
22 justice?

23 A No.

24 Q You wouldn't work together and support
25 each other in aid of someone who has broken the

1 law, whether police officer or otherwise, isn't
2 that right?

3 A That's correct.

4 Q Now, I asked Chief McCaskill, and he
5 agreed with me, whether he agrees that the only
6 thing that a police officer hates more than a
7 criminal is a police officer that's a criminal.
8 Do you agree with that statement?

9 A That's accurate, yes.

10 Q Now, in this case, sir, as I
11 understand it, not only were you not hiding your
12 involvement, you were anxious to come forward and
13 tell your story as to what happened that night.
14 Is that right?

15 A That's right.

16 Q And you took the initiative, and I
17 noted the words that you used, that you felt it
18 was not just your professional obligation, but
19 your moral obligation?

20 A That's correct.

21 Q And that was to tell the truth?

22 A Yes.

23 Q To be as forthcoming, honest and
24 candid as possible; is that right?

25 A I tried to do that then and today.

1 Q And that is exactly what you have
2 done.

3 Now, at any time, sir, did you discuss
4 the evidence that you would give either to PSU, to
5 Commission Counsel, or to this Commission of
6 Inquiry, with other fellows officers who are
7 involved?

8 A No.

9 Q Did you at any time discuss or suggest
10 that people ought to shade the truth, be less than
11 forthcoming, keep certain details quite, diminish
12 what occurred in any way? Did you have any of
13 those discussions with officers?

14 A No.

15 Q Or with anyone?

16 A Absolutely not.

17 Q Now, when you went into Professional
18 Standards Unit, my learned friend asked you some
19 questions as to whether or not your understanding
20 was this was in connection with an internal
21 proceeding, disciplinary proceedings, or criminal.
22 I point out for you, sir, and I think you made
23 reference to it, but for the sake of the
24 Commissioner, he can make the note that in exhibit
25 170, at page 1128, beginning at line 19, this is

1 an excerpt from your interview with Professional
2 Standards Unit at the time. Sergeant Girard tells
3 you:

4 "Okay. It is our practice to ensure
5 that members understand their status
6 when being interviewed. I remind you
7 that you are being interviewed as a
8 witness in this matter. This
9 statement may be used in any criminal,
10 civil or service proceeding."

11 Was that your understanding?

12 A Yes.

13 Q What information you were providing
14 for PSU would be used in a criminal investigation
15 of Derek Harvey-Zenk?

16 A Absolutely.

17 Q Now, is it your experience, sir, that
18 police agencies from other jurisdictions
19 frequently cooperate in conducting investigative
20 inquiries on behalf of someone else?

21 A Yes.

22 Q And as an investigator yourself, would
23 you have faith in the information that's being
24 forwarded to you by that outside police agency?

25 A Yes.

1 Q My learned friend also asked you in
2 connection with any discussions you might have had
3 with other officers who were there that evening,
4 and you understood, sir, that you were going to be
5 a witness?

6 A I presumed I would be, yes.

7 Q And, in fact, you were a witness?

8 A Yes.

9 Q And you also understood that your
10 fellows officers who were there that evening were
11 going to be witnesses?

12 A That's correct.

13 Q Is it normal practice, sir, to allow
14 one witness to an event to interview another
15 witness?

16 A No.

17 Q In fact, as an investigator, don't you
18 discourage that?

19 A Absolutely.

20 Q And that's why you didn't discuss the
21 details of your evidence with your fellow
22 officers; isn't that right?

23 A That's correct.

24 Q Now, you spoke of the precautions that
25 you took with respect to Constable Harding, once

1 you believed that he may have had too much to
2 drink. And I'm going to ask you something, sir;
3 is there any possibility, is there any
4 possibility, that if you thought anyone else was
5 impaired on that evening, you would have allowed
6 them to leave and drive on their own, alone?

7 A No.

8 MR. LABOSSIERE: Thank you, sir, those
9 are my questions.

10 THE COMMISSIONER: Thank you.

11 Mr. Weinstein left at an inopportune
12 time, because I wanted to ask him and Mr. Prober,
13 who are senior defence counsel in this community,
14 is that -- am I correct, in all fairness to this
15 witness, is it the law in Manitoba that Provincial
16 Court judges do not let you refresh your memory
17 unless you make the notes at the time or
18 immediately thereafter, or shortly thereafter?

19 MR. PROBER: Can I be sworn?

20 THE COMMISSIONER: You of all people
21 don't have to be sworn. Just tell me what the
22 law -- tell me if that's the practice?

23 MR. PROBER: I have to say that I have
24 never heard a police officer testify other than to
25 the effect that the notes were made at the time or

1 shortly thereafter. I have yet to catch one who
2 says that they were made sometime after. I was
3 going to ask this witness about that, or leave it
4 to Ms. Hanlin, but I think there may have been a
5 little misunderstanding there. My sense of what
6 the witness meant was that unless you can make an
7 accurate note of what had happened, then you
8 shouldn't make a note of it. I think that's what
9 he was trying to say. And if time goes by where
10 you get involved in arrest, after arrest, after
11 arrest, or investigation after investigation, and
12 you can't make an accurate note, it is dangerous
13 to make an inaccurate note. Is that fair,
14 officer?

15 THE WITNESS: That's the reality, yes,
16 you can't afford to do that.

17 MR. PROBER: And again, I wish
18 Mr. Weinstein were here, but he may have perceived
19 that the question was going to be forthcoming. I
20 don't know whether you want to have a recess now,
21 Mr. Commissioner?

22 THE COMMISSIONER: I will just ask the
23 witness a couple more questions and we will have a
24 recess.

25 Do you not have time at home to make

1 notes, after your shift, or do you only make notes
2 while you are working?

3 THE WITNESS: Working, sir.

4 THE COMMISSIONER: Sorry?

5 THE WITNESS: Working.

6 THE COMMISSIONER: Only while you are
7 working?

8 THE WITNESS: Yes.

9 MR. PACIOCCO: Mr. Commissioner, just
10 a point of information. The two leading cases in
11 Canada on present recollection revived are from
12 Manitoba Court of Appeal.

13 THE COMMISSIONER: Yes, I'm certainly
14 not being critical of this officer, but if that is
15 the way they are instructing them in police
16 college, or the kind of instructions they are
17 getting, I'm a little concerned. We will rise.
18 15 minutes, thank you.

19 THE CLERK: All rise. This Commission
20 of Inquiry will take a 15 minute recess.

21 (Proceedings recessed at 3:19 p.m. and
22 reconvened at 3:35 p.m.)

23 THE CLERK: All rise. This Commission
24 of Inquiry is now reopened.

25 THE COMMISSIONER: Your co-counsel at

1 the end, does he agree with you, Mr. Prober?

2 MR. PROBER: I don't know that he
3 heard what I said, but I will let him speak for
4 himself. He has no problem doing that.

5 THE COMMISSIONER: It has been
6 suggested to me, in all fairness to Sergeant
7 Anderson, that Provincial Court judges in Manitoba
8 do not permit a witness.

9 MR. WEINSTEIN: I heard that part,
10 Mr. Commissioner, and it is --

11 THE COMMISSIONER: And is that the law
12 here or --

13 MR. WEINSTEIN: Let me just preface my
14 remarks by saying, Mr. Commissioner, it is wise of
15 you to get another opinion other than
16 Mr. Prober's. So, I know you are very intelligent
17 and you are showing it.

18 First of all, I have never heard of
19 that. I have never heard of a judge rejecting a
20 police officer, not being able to refer to his
21 notes, even if, and this is hypothetical, even if
22 a police officer says, I made them a week later.
23 Because as we all know, police officers say I made
24 the notes at the time or shortly thereafter. And
25 judges, at least in this jurisdiction, never ask

1 what does shortly thereafter mean.

2 Mr. Commissioner, as you indicated, if
3 there is an issue, the fact that they were made
4 make a week later, naturally defence counsel is
5 going to go after the officer saying, well, surely
6 your recollection wouldn't be as good, it would
7 have been better had you made the notes right at
8 the time. And as you said, it is a question of
9 weight to be attached in that circumstance.

10 THE COMMISSIONER: I guess my concern
11 is that what Sergeant Anderson says, officers
12 don't make notes at home, they only make them when
13 they are working, and if they get caught up in
14 other work, if they get caught up in other work
15 and the day goes by, they don't make any notes.
16 And if that is the practice, I'm concerned about
17 it.

18 MR. WEINSTEIN: My experience, both as
19 a Crown and defence, in questioning police
20 officers, many of them are candid and say, no, I
21 didn't make them at the time, I made them later
22 that evening or next day.

23 THE COMMISSIONER: Okay. Thank you.
24 Mr. Prober -- do you have any questions of this
25 witness? No, not you, Mr. Prober. Do you have

1 any questions?

2 MR. WEINSTEIN: No.

3 THE COMMISSIONER: I guess you are not
4 here to criticize, Mr. Weinstein.

5 MR. PROBER: No, other than to point
6 out that I suppose the length of an opinion is
7 based on a person's height, was much longer than
8 mine. Maybe Mr. Weinstein expects to get paid
9 extra for it, I don't know.

10 BY MR. PROBER:

11 Q In any event, I just have a couple of
12 questions about my client, Derek Harvey-Zenk. You
13 got to know him, Sergeant Anderson, in District 3?

14 A In the eight months that we were
15 working together yes.

16 Q Right. And he was a quiet guy?

17 A Yes, I would characterize him as a
18 pretty quiet guy.

19 Q Well behaved?

20 A Yes.

21 Q Respectful?

22 A Yes.

23 Q Never cause for any concern on the
24 job?

25 A No.

1 Q And a great addition, I think you put
2 it at one point, to the shift; correct?

3 A Yes, he was.

4 MR. PROBER: Thank you. Those are my
5 questions.

6 BY MS. DIXON:

7 Q I just have a couple of questions,
8 sir. Mr. Paciocco asked you earlier this morning
9 for your observations about how much your fellow
10 officers, including Mr. Harvey-Zenk, had to drink
11 on the night in question. Do you recall that?

12 A Several times, yes.

13 Q And you said that, as I wrote down
14 your evidence, that as soon as you learned that he
15 had been charged that you would have cast your
16 mind back; right?

17 A Yes.

18 Q And that you were unable to offer any
19 evidence about Mr. Harvey-Zenk's alcohol
20 consumption, at least up until the time you left
21 at 5:00'ish in the morning; right?

22 A Yes.

23 Q So regardless of who may have
24 interviewed you, or what questions you might have
25 been asked, you were not able to give any evidence

1 to assist in the prosecution of Mr. Harvey-Zenk;
2 right?

3 A I gave my evidence in my statement.

4 Q Right. But my question is, you
5 weren't able to give any evidence that would
6 assist in prosecuting him for impaired driving;
7 correct?

8 A Open to interpretation.

9 Q As to his state of sobriety?

10 A Probably not, no.

11 Q Right? You weren't able to give any
12 evidence in terms of what he consumed in terms of
13 alcohol?

14 A Right.

15 Q Or any evidence on the charge of
16 impaired driving?

17 A Right.

18 MS. DIXON: Those are my questions.

19 MR. McFETRIDGE: No questions.

20 BY MS. HANLIN:

21 Q Mr. Commissioner, I have a few
22 questions. If we can turn to the note issue,
23 first of all. Sergeant Anderson, when do you make
24 your notes?

25 A When?

1 Q Um-hum?

2 A At the time or shortly thereafter.

3 Q And is that your understanding?

4 THE COMMISSIONER: Excuse me, are
5 there any notes, have we been referred to any
6 notes?

7 MS. HANLIN: No, this is in general.

8 THE COMMISSIONER: Okay, thank you. I
9 just thought that maybe they had been made an
10 exhibit and I don't recall them being made an
11 exhibit.

12 MS. HANLIN: No.

13 BY MS. HANLIN:

14 Q And is it your understanding that
15 Winnipeg Police Service policy reflects that?

16 A That's my understanding, yes.

17 Q And that nowhere in that policy does
18 it say that if you don't make your notes shortly
19 thereafter, they should not be made?

20 A That's correct. Under exceptional
21 circumstances you may not want to make them.
22 Again, I use the example of extreme fatigue level
23 for an ongoing investigation. If it is not
24 practical that you can make those notes right then
25 and there, perhaps they would be made best the

1 next day, as long as your recollection is clear,
2 as long as there is no tainting of that
3 recollection.

4 Q And that would be a matter of
5 exception, not necessarily a matter of policy?

6 A That's correct.

7 THE COMMISSIONER: Excuse me. In your
8 experience, how long does it take to get a usual
9 criminal matter heard in court in Manitoba, or
10 shall we say Winnipeg?

11 THE WITNESS: Prelims are probably
12 running -- maybe a little help here -- but maybe a
13 year.

14 THE COMMISSIONER: And if an officer
15 has to wait a year to give evidence and makes no
16 notes, what value is he to the case? How can he
17 recall something that happened a year earlier?

18 THE WITNESS: Why would he not have
19 made notes, I'm sorry?

20 THE COMMISSIONER: No, no. If he did
21 not make notes, as you say, shortly after the
22 event at the latest, and those are the -- at least
23 that's the training that he gets, then he makes no
24 notes at all, what value is he, a year later, if
25 it takes that long to get a trial?

1 THE WITNESS: I don't believe that I
2 have ever stated that you wouldn't make notes.
3 Only in exceptional cases might you make notes
4 essentially not at the time. The shortly
5 thereafter, that time frame may be extended into
6 the next day, just because you would be able to
7 portray a more accurate reflection on the details
8 of that investigation or arrest. I've never said
9 that just because you can't do them that day, you
10 wouldn't do them subsequent to that.

11 THE COMMISSIONER: Or at home, you
12 said they don't do them at home?

13 THE WITNESS: You would go home, you
14 would sleep for a little while, and then come back
15 and do your notes. It is possible others may
16 have, but I have never heard of that. As long as
17 you are not tainted by media reports of your own
18 investigation and so on, then you might want to
19 make another notation of that.

20 MS. HANLIN: Mr. Commissioner, if this
21 is a matter of concern, I can provide the Winnipeg
22 Police Service policy in regard to note-taking, as
23 well as training in regard to note-taking. I
24 think there is some confusion that has arisen
25 here.

1 THE COMMISSIONER: I am sorry, I'm
2 having trouble. Have you pressed the button,
3 because I can't hear you? Try it again.

4 MS. HANLIN: If this is a matter of
5 confusion regarding the note-taking, I can provide
6 Winnipeg Police Service policy in regard to
7 note-taking, as well as training that is provided
8 in regards to note-taking. It does sound to me
9 like there has been some confusion that's arisen.

10 THE COMMISSIONER: You can do that at
11 the end, in the submissions. Go ahead.

12 BY MS. HANLIN:

13 Q Sergeant Anderson, you and Sergeant
14 Humniski made the decision to come forward to
15 Inspector McCaskill on February 28th; is that
16 correct?

17 A We made the decision earlier than
18 that, but we did come forward on the 28th.

19 Q And I understand from reading, you
20 wouldn't be aware of this, but I understand from
21 reading Inspector McCaskill's notes, he has a
22 notation regarding the conversations that you had
23 with him, and he states:

24 "Both wanted the investigation to have
25 the benefit of their knowledge of what

1 happened."

2 A That would be accurate.

3 Q He also states:

4 "Both left earlier in the evening,
5 they don't know what transpired later,
6 but everything was very subdued."

7 Would that also accord with your recollection of
8 your conversation with Inspector McCaskill?

9 A Yes, other than the word "subdued,"
10 which we have talked about, but, yes, otherwise
11 that's very accurate.

12 Q But the coming forward without knowing
13 what transpired after you had left?

14 A Yes.

15 Q Had you ever initiated a statement in
16 this manner, in coming forward to the executive to
17 share something that you thought might be of
18 concern?

19 A Pardon me?

20 Q Had you ever initiated bringing
21 information forward to the executive before in
22 this manner?

23 A In this particular matter, or prior
24 to?

25 Q In a manner similar to what happened

1 in this case?

2 A No, this was all new to me, if that's
3 what you are asking.

4 Q Was this an unusual circumstance?

5 A Yes.

6 Q Now, I understand from reading your
7 interview with Professional Standards Unit that
8 you gave them a list of who was at the gathering
9 at Sean Black's place. If you wish to refer to
10 it, it is at page 8.

11 A Okay.

12 Q And that was on February 28th, 2005;
13 is that correct?

14 A Yes.

15 Q And I understand that the shift
16 briefing that you attended with members, some of
17 the members who were at Sean Black's place and at
18 Branigan's, was on March the 1st; is that correct?

19 A The Wednesday?

20 Q It would have been, I believe it was
21 the evening of March the 1st?

22 A Okay. So then Tuesday night, yes,
23 that would have been our first day back.

24 Q So that was following you coming
25 forward to Professional Standards Unit and

1 providing them a list of names of who was there?

2 A Yes.

3 Q Would you describe the shift briefing
4 as a consultation with members or more as a
5 direction that was being provided?

6 A As far as the direction, we wanted to
7 see the investigation proceed as far as coming
8 forward?

9 Q That's correct?

10 A Direction.

11 Q Something that you told them that this
12 has been determined and that you will be coming
13 forward to Professional Standards Unit?

14 A I had already, yes.

15 Q When Mr. Paciocco was asking you
16 questions, he noted that you did not mention that
17 Harvey-Zenk was at Branigan's in your statement to
18 Professional Standards Unit. However, page 8 of
19 your statement to Professional Standards Unit, you
20 do note that Harvey-Zenk is at Sean Black's place?

21 A Right.

22 Q Do you see that there?

23 A Yes.

24 Q Would there be any reason whatsoever
25 that you would not mention Harvey-Zenk was at

1 Branigan's, but you would mention he was at Sean
2 Black's?

3 A My statement doesn't give the list of
4 all officers that were at Branigan's. If I missed
5 that in the question, you know, then that's my
6 fault. Of course, Derek Harvey-Zenk was at
7 Branigan's. There would be no one from the group
8 that was at Black's that wasn't at Branigan's.
9 That's just my common knowledge.

10 Q Okay. Regarding Dave Harding, you
11 were of the view that he had had too much to drink
12 to drive; is that correct?

13 A Yes.

14 Q And you insured that he wasn't going
15 to drive, and rather than leave him there, you
16 would look after him; is that correct?

17 A Yes.

18 Q And you would have done the same for
19 anyone else that appeared not to be in the
20 condition to drive?

21 A Absolutely.

22 Q When you were at Sean Black's, I
23 understand that you went on a tour of his house by
24 yourself?

25 A Yes, when I arrived, yes. Nice home.

1 Q So there was a period of time when you
2 weren't socializing with everyone?

3 A Yes, for a short time.

4 Q Now, when you came forward with
5 Inspector McCaskill to Superintendent Stannard's
6 office, do you recall that?

7 A Yes, vaguely.

8 Q Now, you were asked by Mr. Paciocco
9 whether or not you provided Superintendent
10 Stannard with information as to whether or not
11 Dave Harding had had too much to drink, or whether
12 or not Derek Harvey-Zenk, what his condition was.
13 Do you recall that question?

14 A Yes.

15 Q And your recollection of that was
16 vague, I understand?

17 A Yes, I don't remember specifically
18 what was discussed verbatim.

19 Q Now, in Superintendent Stannard's
20 notes, and for the benefit of the Commissioner
21 that's at volume Q-1.89.b.12, and it is page 2994.
22 The third paragraph from the bottom states:

23 "Anderson - spoke briefly, was willing
24 to provide details. Stopped him.
25 Explained that the best course of

1 action was to avoid the middle person,
2 talk directly to East St. Paul - PSU."
3 Does that accord with your
4 recollection?

5 A That's entirely possible.

6 Q That Superintendent Stannard might
7 have prevented you from providing any details of
8 anyone's condition?

9 A Yes, if I was to go that way, yes.

10 Q Now, you were also of the
11 recollection, although vague, that East St.
12 Paul -- during this meeting you had with
13 Superintendent Stannard and yourself and Sergeant
14 Humniski, that East St. Paul had been contacted?

15 A Yes.

16 Q Okay. Now, if we can turn to the next
17 page, that's page 2995, Mr. Commissioner, and it
18 is in the middle of the large paragraph, it says:

19 "Instruct to call East St. Paul to
20 inform them of this issue. Option to
21 take over interview. Superintendent
22 Scott - made call to H. Bakema, East
23 St. Paul, asked us to take statement.
24 No resources to do."

25 Do you have any recollection of that?

1 A Yes.

2 Q But this is something, the issue with
3 East St. Paul, this is something that you wouldn't
4 necessarily have had any input or knowledge of?
5 Your view of it was simply to come forward and
6 provide statements and to follow up on whatever
7 direction you received from your superiors?

8 A That's correct.

9 MS. HANLIN: Thank you. Those are my
10 questions.

11 THE COMMISSIONER: Re-examination.

12 BY MR. PACIOCCO:

13 Q Officer, Mr. Labossiere put to you
14 that the reason you didn't take notes in
15 connection with the events that took place at
16 Constable Black's and Branigan's, if I understood
17 his question correctly, was because you knew you
18 were going to be giving a statement to the
19 Professional Standards, or to Inspector McCaskill,
20 and you responded yes. Did I understand that
21 correctly?

22 A Yes. On the weekend I made a
23 determination that we were going to come forward
24 and provide our information through that vehicle.

25 Q I'm suggesting to you, sir, that

1 that's not why you didn't take notes of any
2 observations you may have made at Constable
3 Black's or at Branigan's, because you were going
4 to come forward and make a statement, was it? Is
5 that why you didn't take notes?

6 A That would be one of them.

7 Q That actually went through your head,
8 I'm not going to make notes because I'm going to
9 be interviewed anyway?

10 A That would be certainly one of the
11 reasons. The other reason was that I didn't make
12 any direct observations of Harvey-Zenk's
13 impairment, fatigue, or any other physical
14 characteristics.

15 Q So your determination not to make
16 notes was because you felt you didn't have
17 anything relevant in terms of observations, as
18 opposed to, I'm going to be talking to somebody
19 about this anyway?

20 A It is a two-prong reason.

21 Q You will agree, sir, there is a
22 difference between being interviewed about
23 something and taking notes? The difference is,
24 when you are taking notes, you decide what is put
25 in them, and when you are being interviewed, you

1 are responding to questions that somebody else is
2 posing? Is that not fair, sir?

3 A Which arguably would even create a
4 more unbiased record.

5 Q Sir, surely, you are not suggesting
6 that officers shouldn't take notes because they
7 are going to be questioned about something down
8 the road and it will be a more unbiased record?

9 A No. We were part of this
10 investigation, it was an unusual situation where
11 we are right in the middle of it. We made a
12 determination early on to come forward and get our
13 story on the record, get our version of what we
14 had witnessed.

15 Q And, sir, your testimony is that's why
16 you didn't take notes?

17 A Again, that would just be one reason.

18 Q Sir, you were asked by Mr. Labossiere
19 whether it is not true that the only thing police
20 officers hate more than criminals are police
21 officers who are criminals, and you responded yes?

22 A That would be a fair statement.

23 Q And you agree with me that
24 Mr. Harvey-Zenk ultimately was convicted of a
25 crime?

1 A Yes.

2 Q Has a criminal record. You don't hate
3 him, sir, you actually feel sorry for the
4 situation he is in, do you not, sir?

5 A I think you can draw a difference
6 between intent and lack of intent.

7 Q Sir, when you were being interviewed
8 by the Professional Standards Unit, they never
9 told that you that this was part of their
10 investigation of the criminal case on behalf the
11 East St. Paul Police, did they?

12 A Specifically using those words?

13 Q Yes, sir?

14 A I don't know.

15 Q The preamble that you were read by my
16 friend is a standard preamble given in all
17 Professional Standards Unit interviews, even into
18 internal investigations, is it not, sir?

19 A I went there with the 100 per cent
20 belief that this interview was in relation to at
21 least a criminal matter, if not beyond that.

22 Q And you were speaking to criminal
23 investigators in connection with the potential
24 charges against Harvey-Zenk, was that your
25 understanding?

1 A My understanding was that they were
2 acting in partnership with East St. Paul in
3 regards to this investigation.

4 Q At that time?

5 A I had no belief that this was strictly
6 a statement in regards to rules and regs.

7 Q Okay. Thank you sir.

8 THE COMMISSIONER: Thank you very
9 much. You have been very helpful in understanding
10 the practice here in Manitoba. You can step down,
11 sir.

12 THE WITNESS: Thank you,
13 Mr. Commissioner.

14 MR. CLIFFORD: The next witness is
15 Constable Kelly McLure.

16 KELLY MCLURE, having first been duly
17 sworn, testified as follows:

18 THE COMMISSIONER: Good afternoon.
19 You make sure to use that microphone.

20 THE WITNESS: Okay.

21 BY MR. CLIFFORD:

22 Q Good afternoon, Constable McLure.

23 A Good afternoon.

24 Q You are going to have to get a little
25 bit closer to that microphone, and maybe you could

1 even pull it closer towards you if it is more
2 comfortable.

3 For the benefit of counsel, the
4 statement that I will refer to is at F-1.35.i at
5 page 938.

6 Constable McLure, did you have an
7 opportunity to review the statement that you gave
8 to Winnipeg Police Professional Standards Unit
9 prior to arriving today?

10 A Yes, I have it here.

11 Q And once our clerk finds a copy, we
12 will give you another copy that will be marked as
13 an exhibit.

14 Do you have that now, Madam clerk?

15 THE CLERK: Yes, I do. Exhibit 173.

16 (EXHIBIT 173: F-1.35.i Transcript
17 interview of Constable Kelly McLure,
18 March 3, 2005)

19 BY MR. CLIFFORD:

20 Q Constable McLure, we will give you a
21 copy to refer to. There are pages on the bottom
22 of it that I will be referring to, so the page
23 numbers will correspond with you and I, in the
24 event that we refer to it. All right?

25 A Okay.

1 Q Now, as of February 25th, 2005, we
2 understand that you were a Winnipeg Police Officer
3 holding the rank of constable?

4 A Correct.

5 Q And what was your experience level as
6 of February of 2005?

7 A I would have had, I guess, five years
8 on, because I started January 2000, and I was a
9 constable in the North End.

10 Q And where was all of your five years
11 experience?

12 A The majority of it was in District 3,
13 other than some field training that I did in
14 District 4.

15 Q Okay. So the majority of your
16 policing experience came from District 3, years
17 2000 and onward. And where did you meet Derek
18 Harvey-Zenk?

19 A It would have been on the shift, when
20 he came to our shift, because he was a class after
21 me. So I think that was about a year, year and a
22 half.

23 Q So you didn't know him beforehand?

24 A No.

25 Q Now, we have learned through

1 documentation we have and your interview that, in
2 fact, you were not working during that week?

3 A I was off that week, but on that day I
4 was working CAD training, computer, because we had
5 a new computer system, so I had training that day.

6 Q And you went to training from
7 3:00 o'clock to 11:00 o'clock p.m. on the 24th; is
8 that right?

9 A Yes, 3:00 to 11:00 is what I was
10 scheduled for.

11 Q And I understand that you actually
12 went to your residence after finishing the
13 computer training?

14 A Correct.

15 Q And you got a call there, did you not,
16 about the fact that the shift was getting together
17 at Branigan's?

18 A Yes. And that's what I said in my
19 statement, I don't specifically remember the phone
20 call, but now I don't specifically remember the
21 phone call.

22 Q What I'm interested in knowing is who
23 called you at home to tell you that your shift was
24 meeting at Branigan's?

25 A I don't recall now. I could only

1 guess.

2 Q Now, the issue with taking a guess, of
3 course, it is not something I take it you
4 typically would do testifying, but is this a guess
5 that you would make on the basis of somebody
6 having called you before at the end of the day to
7 let you know that the shift was going out,
8 something that would be based on past experience
9 or --

10 A It would probably be just of -- it
11 would just -- I would say, if I were to guess, it
12 would maybe be someone who I was working with
13 because that's who I would have a lot of -- like I
14 would have more conversations with.

15 Q Who was your partner at the time?

16 A I believe I was field training T.J.
17 Spruyt.

18 Q And we understand as well that he was
19 brand new to the shift at that point?

20 A He was field training, so he would
21 have been new, I don't know how long -- like, I
22 don't know how long.

23 Q It is not likely that he called you
24 then, is it?

25 A It is possible.

1 Q All right. Who were you closest to on
2 the shift?

3 A Well, I guess I would probably spend
4 time talking with, probably, like mostly the
5 females on the shift, so that would have been
6 Marnie. I don't know who I would say I was the
7 closest to. I know that I'm fairly close with my
8 partner back then, T.J. Spruyt. I don't know --
9 I'm not sure at what point back in February how
10 long he had been on the shift, so I don't know at
11 what point we became close. But Harding,
12 everybody, like it was a friendly shift.

13 Q A tight group?

14 A Pardon?

15 Q Was it a tight group?

16 A I think it would be pretty much like
17 every shift I have been on, sort of similar to
18 that, where you get along with one another,
19 friendly.

20 Q And how long were you on the shift?

21 A How long was I on that shift? That's
22 the only shift I have been on in 3, other than
23 when I went to the back office.

24 Q So that would comprise the bulk of
25 your policing experience, would it not?

1 A Yeah, I would say so.

2 Q So it was a tight group, and we
3 understand it was a young group as well?

4 A I guess it depends, yeah, on what is
5 young. Like, back then, three years ago, I think
6 I was probably one of the younger ones. But the
7 shift changes too. Like when I first started on
8 B-1, after I field trained, it was a totally
9 different shift. And it just gradually, like it
10 changes over time.

11 Q Had Dave Harding called you on
12 previous occasions to get together with the shift
13 to go out, either at work or at home?

14 A I don't recall. I know that me and
15 Dave had spoken on the phone, but I don't know if
16 it was specifically to get together, because if we
17 were getting together usually it was right after
18 work, so there wouldn't have been a need for him
19 to call me.

20 Q So on the evidence of who called you
21 to get you to partake at Branigan's is that you
22 didn't recall that on March 3rd, 2005, and you
23 don't recall it today?

24 A I don't recall who specifically called
25 me.

1 Q All right. What time did you get to
2 the restaurant?

3 A Back in my statement I said around
4 11:00 o'clock'ish, so around 11:00'ish.

5 Q And we understood from your interview
6 with Professional Standards Unit that you went in
7 and, in fact, if I'm correct, you sat on the
8 higher chairs?

9 A Right. Yeah, going back to here, like
10 I think at the time, when I spoke to PSU, I
11 actually used my hands to describe it. But now I
12 don't -- I'm not sure exactly where I was sitting,
13 and I wouldn't even remember now that I was
14 sitting beside Lloyd Swanson and T.J. Spruyt, but
15 once I read that, it refreshed my memory that I
16 was sitting beside them.

17 Q Okay. Well, what we will do is we
18 will go step-by-step through that part, and if I
19 can refresh your memory, I will. And if it
20 doesn't assist your memory, let me know.

21 A Okay.

22 Q First step is, when you went in, did
23 you note that there were high tables, higher
24 tables and lower tables; do you recall that?

25 A I'm not sure if I noted it at that

1 time. But I'm a little familiar with the setup of
2 Branigan's, so I know that there was high chairs,
3 I know there is high chairs and low chairs, or
4 there was.

5 Q And some of the tables were higher and
6 they would have a chair more like a bar stool
7 around them?

8 A Correct.

9 Q You are nodding your head in the
10 affirmative?

11 A Yes.

12 Q And the other chairs were lower?

13 A Yes.

14 Q And they would have a sofa or lower
15 chairs around them?

16 A Yes, I do recall there was sofas.

17 Q And, in fact, I understand from your
18 interview with Professional Standards that you sat
19 at the high chairs for a while and then you moved
20 down to the sofas. Do you recall that taking
21 place?

22 A Yes.

23 Q So when you first arrived at
24 Branigan's, when you went in, I understood that
25 you went to the higher tables?

1 A Right.

2 Q And you recall that they were together
3 in a certain configuration, and you just referred
4 to using your hands with Professional Services and
5 making a T shape?

6 A Yes.

7 Q What do you recall about the
8 configuration of the high-top tables?

9 A The way that I picture remembering it
10 is we were against the -- I guess that's the south
11 portion of the -- I guess it would be the
12 southeast portion of the restaurant. And I
13 believe that the -- I believe along the back south
14 wall was the long part. And then the T was
15 jutting out to the north, that's --

16 Q And the long part of the table that
17 was built up by having a number of these high-top
18 round tables put next to one another?

19 A I believe the tables were, and I think
20 I said it in here, like there is one table, one
21 table and then one table.

22 Q How many tables do you recall being
23 together when you first arrived?

24 A I don't know. I don't recall.

25 Q Okay. Now, when you went and you sat

1 at the high table, who did you sit with?

2 A In my statement here I know that I had
3 said too that I sat beside T.J. Spruyt, I guess in
4 between T.J. Spruyt and Lloyd Swanson, and my
5 husband was there too. And I'm sure he would have
6 sat right in my near vicinity, I would assume.

7 Q That will change. Who was your
8 husband?

9 A Sammi Haddad.

10 Q You and he were married. Now, in
11 terms of the high-top table, you had an
12 opportunity to look at your statement prior to
13 coming in and you refreshed your memory that you
14 had T.J., and I may get the name wrong, Spruyt --

15 A Correct.

16 Q -- and Lloyd Swanson on either side,
17 and you take it that your husband would have been
18 beside you as well, or in the vicinity?

19 A Right, he would have been right --

20 Q Now, what about other people that were
21 sitting up at the high-top tables at that point?

22 A I don't recall. I believe, if I can
23 refer to this statement?

24 Q If you want to look at page 995,
25 that's a portion of your statement that refers to

1 you being at the left-hand side of the T, that's
2 how you refer to the table.

3 A Okay.

4 Q So page 995, and the page is on the
5 lower right-hand side, and if you can look at line
6 11?

7 A Right. So Derek Harvey-Zenk would
8 have been in the T, and I see that I kind of
9 described it back then, but I'm not sure where he
10 would have been sitting. I wouldn't be able to
11 tell you specifically, other than he was in the
12 upper chairs.

13 Q Well, you are sitting at the upper
14 chairs with him. There is -- you have a
15 recollection of some tables being together, but
16 you can't tell me how many were together?

17 A No.

18 Q But you do recall individuals,
19 yourself, Lloyd Swanson, T.J. Spruyt, your
20 husband, and Derek Harvey-Zenk?

21 A Yes.

22 Q You would have been able to see Derek
23 Harvey-Zenk clearly, I take it?

24 A In here it says that I was ten feet
25 away from him and his back was a little bit to me.

1 Q And how would his back have been
2 towards you?

3 A Like I said, I can't remember, I don't
4 remember exactly where he was sitting. I can,
5 like I wish I -- because I know, and I know I
6 explained it when I was at PSU, but I can only
7 assume that he was at a jut out, and if I was on
8 the left-hand side maybe he -- like, it is just
9 assumptions, like.

10 Q So, the assumption is that the table
11 is shaped like a T, and as a result of that, his
12 back is kind of towards you, as opposed to you
13 having a clear view of his face or the front of
14 his body; is that right?

15 A Correct, that's what I said here.

16 Q Now, did you have any alcohol at
17 Branigan's?

18 A I did.

19 Q And what did you have?

20 A I don't recall, but I would assume it
21 would have been beer, because that's generally
22 what I would drink.

23 Q And you say you don't recall, it is
24 generally what you would drink. What about
25 quantity, do you have any recollection of the

1 quantity of alcohol you consumed at Branigan's?

2 A I know my statement here I said a beer
3 and a half, so that would be accurate, and I know
4 I didn't drink very much that evening.

5 Q Now, could I refer you to page 994 of
6 your statement?

7 A Sure.

8 Q And if you look at 994, line 11,
9 Constable McLure, I'm going to read a statement to
10 you here. You stated, during the course of your
11 interview:

12 "We had the table in the back. There
13 was Lloyd Swanson, who was near me,
14 and T.J. Spruyt. I know Derek
15 Harvey-Zenk was there, Marnie
16 Nechwediuk was there, Tracey Fudge was
17 there. She came after work with her
18 husband, Sammi Haddad. He stopped by
19 for a short while. Mostly everyone
20 from our shift, Gord Schneider was
21 there, Ken Azaransky, Sean Black,
22 Humniski, Anderson, Michalik. That's
23 all I can pull off the top of my
24 head."

25 Now, you stated in that response that Tracey Fudge

1 was there. Was she at the high-top table with
2 you?

3 A I don't recall. I'm not sure.

4 Q And it says she came in, she came
5 after work with her husband, Sammi Haddad.

6 A That would be I came after work with
7 my husband, Sammi Haddad.

8 Q So that doesn't assist your
9 recollection in terms of whether Tracey Fudge was
10 up at the high-top table with you?

11 A No. The only thing I know is later on
12 I was sitting in the lower section with her and
13 Marnie, but I don't know where she was seated.

14 Q Okay. At one point you recall, do you
15 not, that you and Marnie and Tracey Fudge, the
16 three female officers went down and sat on the
17 sofa?

18 A I said that in here, and I do, yes, I
19 do have recollection of a time when the three of
20 us were sitting in the lower chairs.

21 Q Well, you were moving around, right?
22 You started off the evening at the high-top
23 tables; correct?

24 A Yes.

25 Q You would have been moving around and

1 socializing with people?

2 A I don't know how much I was moving
3 around. I know that I was sitting at the high-top
4 chairs. I know at one point, probably, I was
5 sitting in the, with Marnie and Tracey Fudge, and
6 then I think at another point I was standing,
7 so...

8 Q So you are at the high-top tables, you
9 think at one point you are sitting with Marnie and
10 Tracey Fudge there?

11 A On the low top.

12 Q Okay. Do you recall the three of you
13 going down and sitting on the lower couches
14 together?

15 A I don't remember.

16 Q Okay. If you look at page 996 of your
17 statement to the Professional Standards Unit, line
18 11, actually we will go line nine. Sergeant
19 Girard asks you the question:

20 "Okay. So what was going on at
21 Branigan's then?"

22 You responded:

23 "Just visiting, wings, just a
24 get-together. And then after we -- I
25 remember me and Tracey Fudge and

1 Marnie went and sat down on the lower
2 couches, and the three of us just
3 chatted pretty much almost up 'til it
4 was time for us to -- before we were
5 leaving to pay our bills and stuff."

6 Having that statement read to you,
7 does that refresh your memory on you, Tracey Fudge
8 and Marnie going and sitting down at the lower
9 couches together?

10 A I don't recall getting up and going
11 down to sit at the chairs. I just know we were
12 there at one point. Like I don't specifically
13 envision myself walking down to those chairs.

14 Q Well, that's what you've indicated to
15 PSU. Would you not agree with that?

16 A Right. I probably remembered that at
17 the time, but now I don't.

18 Q So the issue that we are having here
19 is that you don't recall this now, as we speak
20 today?

21 A I don't recall walking from the chairs
22 to the lower chairs.

23 Q Well, would you agree that this is
24 certainly the suggestion that you are making to
25 the Professional Standards Unit, that you, Tracey

1 Fudge and Marnie Nechwediuk went and you sat down
2 together on the lower couches?

3 A I don't -- they could have been there
4 already before me and I could have just joined
5 them. I'm not sure. I don't know when they got
6 there. I don't know if -- I don't know where they
7 were sitting for the night until at one point the
8 three of us were sitting in those couches
9 together.

10 Q Who else was sitting in that area,
11 once you are sitting at the lower couches, who
12 else is in that area?

13 A The three of us were sitting together.
14 I'm not sure where other people were standing or
15 sitting.

16 Q Do you recall any male officers being
17 in that vicinity?

18 A No.

19 Q Do you recall how many officers were
20 at Branigan's?

21 A I remember the people who I mentioned
22 here who were there.

23 Q And you haven't mentioned -- you have
24 mentioned yourself, Nechwediuk, Fudge, Swanson?

25 A T.J.

1 Q T.J. Spruyt and Derek Harvey-Zenk?

2 A My husband.

3 Q Your husband?

4 A Jay Nolet.

5 Q All right.

6 A Sean Black, Ken Azaransky, Ted

7 Michalik, Gord Schneider.

8 Q And where are the other individuals?

9 A In relation to me? I'm not sure.

10 Q And when you got up and moved around
11 through the evening, did you go up and speak to
12 Derek Harvey-Zenk?

13 A I don't recall. I know that we did
14 have one conversation at one point. I believe
15 that's when I was sitting up in the higher chairs.

16 Q You indicated to Professional
17 Standards Unit that when you first arrived, or
18 close to your arrival time, I understood that it
19 was within the first hour of your arriving, you
20 had a conversation with him about computer
21 systems?

22 A Correct.

23 Q And it was somewhat of a heated topic?

24 A Um-hum.

25 Q And Jay Nolet participated in the

1 conversation with you?

2 A I thought it was Christian Guyot.

3 Q Christian Guyot, pardon me, I stand
4 corrected. You indicated in your interview that
5 it was Officer Guyot. Am I right about that?

6 A Yes.

7 Q All right. So you had a conversation
8 with him when you first arrived, which was
9 approximately 11:00 o'clock. It was a heated
10 conversation about the computer system. And was
11 he still at the table, the T table where you
12 had -- where he was --

13 A I don't know where we were standing or
14 how we were sitting. Like, I just remember having
15 the heated discussion.

16 Q Well, when you arrived there, you
17 started off at a high-top table?

18 A Right.

19 Q And he was at the high-top table as
20 well?

21 A Yes.

22 Q And you said his back was to you, but
23 at some point you are face-to-face with him, are
24 you not, having this heated conversation about
25 computer systems?

1 A If we were talking, we would have
2 turned to face each other.

3 Q When you turned to face him, what did
4 he have on the table in front of him?

5 A I don't know.

6 Q Did he have a drink in front of him?

7 THE COMMISSIONER: I am sorry, what
8 was this heated conversation about a computer?

9 THE WITNESS: We had new computers
10 around that time, and there was difficulties with
11 the computers, and I was just taking that day, I
12 was on training for the computers. So I'm sure
13 back then no one was a fan of the new computer
14 system. So I would imagine that we were probably
15 just frustrated with the new computers.

16 THE COMMISSIONER: So you have a
17 distinct recollection of that discussion with him?

18 THE WITNESS: Yes.

19 THE COMMISSIONER: You are sitting at
20 the high table?

21 THE WITNESS: Yes.

22 BY MR. CLIFFORD:

23 Q You are face-to-face and you are
24 having this heated discussion with him about this
25 new issue?

1 A He would have faced me, yeah.

2 Q And I understand your testimony to be
3 that you do not recall whether he had any
4 alcoholic beverage in front of him?

5 A No.

6 Q And how long did the conversation
7 last?

8 A I couldn't say. A few minutes
9 definitely, but I can't say how long it lasted
10 for.

11 Q Now, I won't belabour this point.
12 Your position with the Winnipeg Professional
13 Standards Unit and your testimony today will be
14 that you do not know how much or what Derek
15 Harvey-Zenk consumed at Branigan's by way of
16 alcohol?

17 A I don't know.

18 Q That sums it up? You are nodding your
19 head in the affirmative?

20 A Yes. I wasn't paying attention to
21 what he was drinking, just like I don't even know
22 if my husband -- I don't even recall if my husband
23 was drinking and what he drank.

24 Q Do you know if Derek Harvey-Zenk was
25 eating?

1 A I believe that he was having wings,
2 and now I don't specifically remember that, but I
3 just know that Derek Harvey-Zenk usually had
4 wings, from the times that I had been out with him
5 before. So I don't specifically remember him
6 having wings right now, but I believe I said it in
7 my statement, so --

8 Q You told the Professional Standards
9 Unit that you were pretty sure you saw him having
10 wings?

11 A Okay.

12 Q This was not something that you based
13 on prior experience, or innuendo, or rumors about
14 him being a wing eater. You told Professional
15 Standards Unit, did you not, that you actually
16 observed him eating food?

17 A You said that I said I was pretty sure
18 he had wings, so...

19 Q "I'm pretty sure I saw him having
20 wings."

21 That's what you told the Professional Standards
22 Unit?

23 A Right. And the reason, I'm not sure
24 too, like I know that that is something he -- I
25 know just in the past, I'm not sure when, that he

1 eats a lot -- he has eaten a lot of wings and he
2 is known for eating a lot of wings.

3 Q Have you been with him in the past
4 when he has been eating a lot of wings?

5 A Yes.

6 Q And what does he wash them down with?

7 A It would only be assumptions, I can't
8 specifically say.

9 Q Now, when you were at Branigan's, did
10 you come -- did you make any observations with
11 respect to anybody becoming impaired by alcohol or
12 intoxicated?

13 A At Branigan's? No.

14 Q Did you feel as though everybody was
15 fit to be driving when leaving Branigan's?

16 A I don't recall now what I was thinking
17 back then, but if I would have thought that
18 someone shouldn't be driving, I would remember
19 that. Just like when we were leaving after the
20 night was over, Harding, who had quite a bit to
21 drink, it was just he was going to go with a sober
22 driver and that was that.

23 Q This was when you were leaving Officer
24 Black's?

25 A When we were leaving afterwards, yes.

1 Q We are going to come to that and I
2 will ask you some questions about it. But when
3 you were leaving Branigan's, you made no
4 observations at all with respect to -- that lead
5 you to have any concern about anybody's ability to
6 drive?

7 A I had no concerns, no.

8 Q And were you party, or hear any
9 conversation about any concern that anybody might
10 have had about one of the police officers, or more
11 of the police officers' ability to operate a motor
12 vehicle?

13 A No.

14 Q And where were you when it came time
15 to leave? Did you get in a lineup to pay your
16 bill with all of the other officers?

17 A I'm not sure how I paid. I don't know
18 if my husband paid before he left. Because that's
19 also a possibility, since he was there.

20 Q Do you recall the officers lining up
21 to pay their bills?

22 A No.

23 Q Do you recall anything about the
24 process of settling up the accounts and leaving?

25 A No.

1 Q You told the Professional Standards
2 Unit as well at page 997, line 6:

3 "Yeah, like, well, when I ordered my
4 drinks it was just, like I ordered
5 from the same waitress and at the end
6 of the night I just paid my bill."

7 A Okay.

8 Q Now, does that refresh your memory on
9 whether you or your husband paid the bill?

10 A No. If I said it here, probably then
11 I would have -- then I would have remembered, but
12 I don't remember.

13 Q You are prepared to accept then, if
14 you said it in 2005 at PSU, then that's the case?

15 A Yeah.

16 THE COMMISSIONER: Who is your
17 husband?

18 THE WITNESS: Sammi Haddad.

19 BY MR. CLIFFORD:

20 Q Now, your took your own vehicle to
21 Branigan's?

22 A (Witness nodding)

23 Q At some point, did you get an
24 invitation to go somewhere after Branigan's?

25 A Yes, we were going to Sean Black's

1 after. Who invited me, I don't know who
2 specifically said, I'm not sure how it was known
3 that we were going there.

4 Q Do you recall at what point during
5 that day you found out that you had the
6 opportunity to go to Officer Black's residence?

7 A It would have been at Branigan's.

8 Q Okay. I understand that you don't
9 recall who gave you that information, but you
10 don't take your own car to Black's?

11 A No.

12 Q And why is that?

13 A Because it is a distance away, and it
14 just made sense for four people to go in one
15 vehicle instead of taking separate vehicles.

16 Q So, in that vehicle there, Tracey
17 Fudge was your driver, there was yourself, there
18 was Jim Anderson and there was Dave Harding?

19 A Correct.

20 Q And do I understand your testimony to
21 be that all four of those occupants, well, the
22 three passengers, I should say, went with Tracey
23 Fudge because it would be a more convenient thing
24 to do as opposed to driving their own cars?

25 A Yeah. No sense in us all driving to

1 the same place and coming back to the same place.

2 Q And the drive was -- do you recall how
3 long it was to get to Officer Black's?

4 A I don't recall how long it took us,
5 and I'm kind of guessing it would probably take
6 anywhere, about 20 minutes, because it is out
7 in -- his place, I think it is considered Birds
8 Hill, but I'm not sure.

9 Q And who did you sit beside in the car?

10 A I don't recall.

11 Q Now, what about Dave Harding, did you
12 make any observation of Dave Harding when you were
13 in the vehicle traveling those 20 minutes or so
14 out to Officer Black's?

15 A No.

16 Q Did you have any concern at all that
17 was formulating when you are in the vehicle with
18 him that it is a good thing he is in this car
19 getting a ride because he shouldn't be driving?

20 A I don't recall having those opinions,
21 so, no.

22 Q You didn't notice anything about him
23 that would lead you to the conclusion that he
24 ought not to be driving?

25 A Yeah, I didn't think -- I wouldn't

1 have thought about it at that point, no.

2 Q I want to clarify your response. You
3 wouldn't have thought about that --

4 A I don't know what state he would have
5 been there. The only thing that I can -- the only
6 thing that I can refer to that is, at the end of
7 the night when we were -- at the end of the night
8 when it was kind of just, he is going with Jammy,
9 at that point, if he would have -- it wouldn't
10 have been okay for him to get into his vehicle, he
11 had to go with Anderson and that wasn't a
12 discussion, that's what was going to happen.

13 Q You concluded that at the end of the
14 night?

15 A Yes. But at the point from Branigan's
16 to Sean Black's, I don't know how much he
17 consumed, I don't know what his -- I don't know
18 what, if anything, at that point he consumed. I
19 couldn't say.

20 Q Well, the Commissioner has heard
21 evidence with respect to, directly from David
22 Harding with respect to whether it would be
23 appropriate for him to drive or not. And if it
24 was suggested that it would have been
25 inappropriate for him to drive, I take it you

1 wouldn't disagree with that, would you?

2 A I couldn't say.

3 Q You just simply are not in a position
4 to say anything about whether he was fit to drive
5 or not?

6 A Yeah, I can't say. I'm not sure where
7 he was at, at that point.

8 Q Now, you talked about the convenience
9 for the passengers to take a ride. You are
10 leaving a drinking establishment at what,
11 approximately 2:30 or later in the morning?

12 A I don't remember now what time it was,
13 but according to my statement, I believe I said
14 2:30, so, yeah, we would have been leaving there
15 at 2:30.

16 Q And then you are going to another
17 person's residence?

18 A Right.

19 Q And when I think of convenience, I
20 think of issues like being able to leave when you
21 want to leave, having the freedom to get in your
22 car and go home when you feel as though you have
23 visited enough. This option wasn't available to
24 you or the other passengers, presumably, that you
25 were going to be staying there until such time as

1 the driver decided to leave?

2 A It wouldn't have been worth it for me
3 to drive all the way there by myself and come
4 back. Like that would be a long drive, that's
5 what would have been in my thoughts, that would be
6 a long drive to go by myself or come back by
7 myself.

8 Q You were going to be making the drive
9 whether you did it by yourself or whether you did
10 it with someone else, the amount of time and the
11 distance was going to get covered?

12 A Right, yeah. But I wouldn't have
13 taken my own car. Just from past experience, like
14 if it is a long drive at that time of night to go
15 all the way out there, so to go with other people
16 it just seemed like less hassle. I don't know if
17 I'm making sense.

18 Q Now, did you make any stops on the way
19 to Officer Black's house?

20 A No, not that I recall, no.

21 Q Okay. And not that you recall and
22 "no" are, for our purposes, two different things.
23 So which is of those do we go with?

24 A No, we didn't.

25 Q You did not, your evidence is you

1 definitively did not stop on the way there?

2 A We didn't stop anywhere.

3 Q And you were in the car with Anderson?

4 A Correct.

5 Q Now, he testified as well and his
6 observation was that you did stop, the vehicle you
7 were in did stop along the way?

8 A I do not recall stopping.

9 Q Okay. So this is a point that you are
10 indicating that you are definitive on, not that
11 you simply don't recall it, you are definitive on
12 it. Another officer has testified in direct
13 contradiction to you. And I take it you would be
14 prepared to stand corrected on that point?

15 A Like, I don't recall stopping.

16 Q Okay. So when you said you were
17 definitive on it, the reality is you are not
18 definitive on it; right?

19 A I don't recall stopping.

20 Q What did you have to drink at Officer
21 Black's residence?

22 A Bailey's with some milk.

23 Q Okay. And how much Bailey's did you
24 have?

25 A I know it wasn't very much. I recall

1 that because I didn't want to drink very much
2 because I had to get up early the next morning, so
3 I do remember, I specifically remember the
4 Bailey's and I know there was a little bit of
5 Bailey's with milk.

6 Q There was Bailey's with milk in the
7 drink that you mixed?

8 A There is Bailey's, yeah.

9 Q How much?

10 A Bailey's, probably about an ounce or
11 less.

12 Q And where did the Bailey's come from?
13 Where was it located in his residence?

14 A I don't know where it came from, but I
15 do recall at one point it was on the counter, but
16 I don't know where it came from.

17 Q And did you go up and mix yourself
18 that drink?

19 A I don't remember.

20 Q Do you recall any other alcoholic
21 beverages being out, other than the Bailey's that
22 you had?

23 A I don't remember. There could have
24 been, there could not have been, I don't remember.
25 I'm sure there would have been, but --

1 Q Were you the only person consuming
2 alcohol there?

3 A Probably not.

4 Q Okay. And can you elaborate on that?
5 Did you see anybody else consuming anything?

6 A I don't remember if people had drinks
7 in their hand. I know Harding, he became drinking
8 more, but I don't specifically remember him having
9 a drink in his hand.

10 Q Now, you were there from what,
11 approximately 3:00 o'clock to 5:30 in the morning?

12 A I think that we would have -- probably
13 around those times.

14 Q Okay. So about two and a half hours,
15 give or take. And your evidence is that you do
16 not recall a single person having a drink of
17 alcohol during that time frame?

18 A I'm not saying it didn't happen, but I
19 don't specifically remember anyone holding a
20 drink, other than myself having the Bailey's with
21 milk.

22 Q Who were you sitting with when you
23 were having your Bailey's and milk?

24 A I'm not sure who I was sitting with
25 when I was having the Bailey's and milk. I just

1 remember a period of time when I was sitting
2 talking with Jim Anderson and T.J. Spruyt, but I
3 don't know if that's when I had the Bailey's and
4 milk in my hand.

5 Q You were with Officer Spruyt when you
6 had your Bailey's and milk?

7 A I don't know -- at one point I was
8 talking with T.J. Spruyt and with Jim Anderson.
9 That I specifically remember. But I don't know if
10 I had my Bailey's and milk in my hand at that
11 time.

12 Q Was there any person that you spent
13 the majority of the evening with at Constable
14 Black's?

15 A I know I spent some time talking with
16 Jim Anderson and T.J. Spruyt, and I know I spent
17 some time talking with Tracey Fudge. And I know
18 that I, at one point, was waking up Dave to leave,
19 so I know I was downstairs at one point.

20 Q So you remembered talking to Jim
21 Anderson. You went there and you left with him?

22 A Um-hum.

23 Q Tracey Fudge, you went there and you
24 left with her. Dave Harding, you went there and
25 you left with him.

1 A Correct.

2 Q And your partner, T.J. Spruyt?

3 A Correct.

4 Q Who else did you talk to there?

5 A I know the majority of the time, like
6 I said, those are the people I was talking to.
7 I'm not sure if I had any -- I don't know, I don't
8 recall, like I said, I think then too, I don't
9 remember talking to Jay Nolet, I don't remember
10 talking to Chris Humniski, but I'm not saying that
11 I didn't have brief small talk with them, but I
12 just -- I don't remember.

13 Q Did you spend most of your time
14 interacting and talking with Officer McLure?

15 A Pardon me?

16 Q Did you spend most of the time there
17 interacting and talking with Tracey Fudge?

18 A I spent -- I spent time speaking with
19 her.

20 Q Okay. You spent time with her and the
21 others, but did you spend most of your time
22 talking with her?

23 A I'm not sure who I spent most of my
24 time talking with.

25 Q Tracey Fudge provided evidence to the

1 Commission just yesterday, and she agreed with the
2 suggestion that she was with you, spending most of
3 the time interacting and engaging with you?

4 A It is possible. I remember speaking
5 with her there. I'm just not sure on the length
6 of time.

7 Q And where were you two sitting
8 together when you were you talking?

9 A I'm not sure.

10 Q And was she consuming any beverage?

11 A I'm not sure.

12 Q When you picture this Bailey's bottle,
13 can you picture it when you go up to mix yourself
14 a drink?

15 A No.

16 Q What about the milk?

17 A No. I think the reason why Bailey's
18 and milk stands out to me is because that's not a
19 common drink for me to have, so...

20 Q Now, what about your partner, T.J.,
21 what was he having?

22 A I'm -- I don't remember.

23 Q Well, it is interesting because you
24 told the Professional Standards Unit that he had a
25 Coke, Coca Cola, page 101, line 23.

1 A I don't -- like right now I don't
2 think back and remember him having a Coke in his
3 hand. But if I said that then, then I would think
4 that would be --

5 Q So the sum total of your evidence on
6 consumption of beverages that night is you had
7 Bailey's and milk and T.J. Spruyt had Coca Cola.
8 As for anybody else, you don't know what they had
9 in their glasses?

10 A I don't know.

11 Q Where were most of the people located
12 in the kitchen?

13 A I'm not sure exactly. I remember
14 where I was at the base of -- at the island. I
15 know I was talking to Jim Anderson and I believe
16 he was across from me. I believe T.J. was beside
17 me. And where other people are standing, I'm not
18 sure. And I just -- that's -- I remember that
19 from a tidbit -- like, I'm not even sure where I
20 was when I was talking with Tracey Fudge, but I
21 know I had conversation with her.

22 Q Was Jim Anderson standing across from
23 you for most of the time that you were in the
24 kitchen?

25 A I'm not sure, I just remember he was

1 standing there talking to me at one point.

2 Q At page 1004, at line 22, you've
3 indicated in the interview with Professional
4 Standards Unit:

5 "From what I recall, he would have
6 been over at the other -- somewhere
7 over in the other end -- it seemed to
8 me, like I know I was standing there,
9 and I know Jim Anderson was standing
10 across from me for most of the time."

11 A Okay.

12 Q So what you were responding to there,
13 you were telling PSU that Derek Harvey-Zenk was
14 somewhere at the other end of the kitchen, but you
15 had Jim Anderson standing across from you most of
16 time that you were there?

17 A Okay.

18 Q Is that what you recall being the
19 situation?

20 A I recall Jim Anderson standing across
21 the island from me. I don't know how long. I
22 don't know if that's the majority of time.

23 Q What were the guys doing on the other
24 end of the kitchen?

25 A I know at one point I said that there

1 was some arm wrestling. I'm not even sure, I
2 would assume when that happened that would have
3 been at the kitchen table, but I'm just assuming
4 that. I don't specifically remember where.

5 Q Did you actually witness arm wrestling
6 taking place there?

7 A I know there was some arm wrestling.

8 Q You can know something as a result of
9 witnessing it, or somebody telling it to you after
10 the fact?

11 A Now, I don't specifically remember the
12 arm wrestling. I just know there was some arm
13 wrestling going on.

14 Q What did you talk to Jim Anderson
15 about? Are you able to recall that?

16 A I don't recall what our conversation
17 was, but we generally have had some of the same
18 conversations, so that's the only thing that I can
19 think of. I know we've had conversations in
20 social settings before, so I just -- I would
21 assume that we generally talk about the same
22 thing, so I would assume that's what we were
23 talking about, but I don't specifically remember
24 the context of our conversation that night.

25 Q It was a friendly gathering there,

1 everybody was getting along and talking to one
2 another?

3 A Um-hum.

4 Q With the exception of -- I understand
5 that you didn't talk to Derek Harvey-Zenk at all
6 there?

7 A I don't recall talking to Derek
8 Harvey-Zenk there.

9 Q You told Professional Standards Unit
10 in March that you didn't have conversations with
11 Derek Harvey-Zenk?

12 A Okay.

13 Q Do you recall telling them that?

14 A I don't specifically recall. Again, I
15 don't recall saying that, but I believe it to be
16 true because I have no recollection of talking to
17 him there.

18 Q So it was a friendly gathering,
19 everybody is getting along, but you don't talk to
20 either Derek Harvey-Zenk, and you indicated to
21 Professional Standards Unit that you didn't talk
22 to Sergeant Humniski?

23 A Right, that I remembered, yeah. I
24 don't -- yeah.

25 Q You spoke earlier about Dave Harding's

1 sobriety at the end of the evening, and I want to
2 follow up with you now on that.

3 A Okay.

4 Q I take it your observation of him at
5 Officer Black's was that he did become
6 intoxicated?

7 A Correct.

8 Q We have heard a great deal of evidence
9 on that. And what was it that lead you to the
10 conclusion that he was intoxicated?

11 A I don't remember now but -- like I
12 just know that he had had quite a bit to drink,
13 and the reason that I remember that was because at
14 the end of the night, when we got back to
15 Branigan's in the vehicle, I remember in my head
16 thinking, Dave is not driving, he is going to get
17 a ride with somebody else. So --

18 Q Okay. Was there anything that you
19 observed at Sean Black's residence that lead you
20 to the conclusion that he was impaired by alcohol?

21 A I believe he was -- I think at one
22 point in here I said he was on the couch sleeping.
23 I don't specifically remember what his signs of
24 impairment would have been there, other than I
25 know that he had quite a bit to drink. I don't

1 specifically remember if he was slurring his words
2 or falling.

3 Q Do you allow for that possibility,
4 that he could have been slurring his words, that
5 his behaviour could have been quite different than
6 what you would normally expect from him, he would
7 have been unsteady on his feet, and you wouldn't
8 have noticed any of these things at Officer
9 Black's?

10 A I drew the conclusion that Harding had
11 too much to drink, so there would have been some
12 signs that I would have drawn that conclusion
13 from.

14 Q What I understand from your testimony
15 is that you are telling the Commission that you
16 drew that conclusion at the parking lot at
17 Branigan's?

18 A Correct.

19 Q But I'm interested in what conclusions
20 you drew at Officer Black's, before you got to the
21 parking lot?

22 A I believe I thought that, at the time,
23 at Sean Black's house, that's where Dave would
24 have done his drinking, so that's where I would
25 have believed that he had too much to drink.

1 Q That's where he would have consumed
2 the alcohol that lead you --

3 A Or Branigan's, between Branigan's and
4 Sean Black's, I'm not sure.

5 Q You would have concluded that he
6 consumed the alcohol at Branigan's and Black's,
7 and it is a pretty safe assumption you were
8 making, and then you noticed the signs at the
9 parking lot?

10 A I definitely saw the signs at the
11 parking lot.

12 Q So if there was evidence before the
13 Commission that he was obnoxious at Officer
14 Black's, that he was unsteady, and he was kind of
15 knocking thing over, this would be something that
16 you would not have observed at Officer Black's?

17 A I don't -- like I said, I don't know
18 what his signs of impairment -- I can't
19 specifically say what his signs of impairment are.
20 Even at the car, when he was getting in with Jim
21 Anderson, I don't recall right now what his signs
22 of impairment were, I just knew at that point it
23 was an issue, because he wasn't going to get in
24 his vehicle and drive.

25 Q But you are not disputing that

1 evidence, are you, the suggestion that he was
2 obnoxious there, that he could have been unsteady,
3 that he could have been knocking things over, and
4 you just simply wouldn't have noticed it?

5 A I'm not sure if I'm quite
6 understanding what you are asking me.

7 Q Those things could have happened with
8 Dave Harding and you might not have noticed them
9 at Officer Black's house?

10 A I might have noticed them at the time
11 and now I don't recall.

12 Q Well, you didn't say in March 2005,
13 that you noticed them, if that assists you. I
14 take it, if you had noticed them, you would have
15 told the police in 2005, on March 3rd?

16 A I'm not sure because they didn't -- it
17 wasn't asked of me, like it would have been nice
18 then if they would have asked me. Like it would
19 have been nice if I had been asked that question
20 so that I could answer your question right now.

21 Q Does it seem to you that it would be
22 something that you would tell them without having
23 to be asked about it?

24 A Not necessarily.

25 Q Let me ask you then about the parking

1 lot. What took place when you arrived back at
2 Branigan's to pick up your vehicle?

3 MR. PROBER: Since my friend is
4 starting on a new area, Mr. Weinstein and I are
5 wondering if it would be appropriate to adjourn at
6 this time.

7 MR. CLIFFORD: Mr. Commissioner, and I
8 can tell you, and Mr. Prober I do apologize for
9 butting in here, but I understood from counsel
10 with Winnipeg Police Service that this witness has
11 recently brought a new person into the world and
12 has commitments in that regard. And we actually
13 flipped the order of the witnesses. I'm not going
14 to be much longer, and by that I think I can wrap
15 up certainly within ten minutes. And so I put
16 that comment out there. I don't know what the
17 preference of the witness would be. I'm happy to
18 finish it tomorrow or try to finish it in the next
19 ten minutes, and that is a consideration for the
20 witness.

21 THE COMMISSIONER: What is your
22 response?

23 THE WITNESS: I would like to finish
24 if I could right now, just because I'm like, yeah,
25 it is tough with my baby, because she is breast

1 fed. I have been here since 12:30, so she has
2 gone -- she doesn't drink from a bottle. So if I
3 could finish, child care issues are just a bit of
4 an issue.

5 THE COMMISSIONER: Would you prefer to
6 finish today?

7 THE WITNESS: I would.

8 THE COMMISSIONER: Or possibly go and
9 feed her and then come back tomorrow?

10 THE WITNESS: I would prefer to finish
11 today.

12 THE COMMISSIONER: All right. Are
13 counsel prepared to accommodate? I realize that
14 it is going to be a great strain on all of you.

15 MR. PROBER: But no one can say no to
16 a new mother, I don't think.

17 THE COMMISSIONER: We are all for
18 motherhood, aren't we?

19 MR. WEINSTEIN: And I'm assuming
20 because -- and I'm not objecting to this and how
21 can you, my wife would kill me. But, you know, in
22 the future -- in the future, with respect,
23 Mr. Commissioner, we have extended the time that
24 we are starting, and we are supposed to finish at
25 12:30. We make -- those of us who have a practice

1 still left have made commitments with other
2 clients to call them or see them, and that applies
3 also at 4:45. So this should be the exception to
4 stay late.

5 THE COMMISSIONER: I don't think we
6 have any more witnesses who are feeding a child.

7 MR. WEINSTEIN: Who knows who is
8 coming. So I assume, if we are staying late, we
9 will start at 9:30 tomorrow instead of 9:00.

10 THE COMMISSIONER: I have looked at
11 Commission Counsel. One has nodded his head, the
12 other has exercised his right to remain silent, so
13 we will start at 9:30.

14 MR. WEINSTEIN: Thank you,
15 Mr. Commissioner.

16 THE COMMISSIONER: Let's finish this
17 witness today.

18 BY MR. CLIFFORD:

19 Q Constable, the question was, if you
20 can tell the Commission what occurred when you got
21 to the Branigan's parking lot when you were
22 getting a ride back with Tracey Fudge, Jim
23 Anderson and Dave Harding?

24 A Okay. When we got back to the parking
25 lot -- now I'm not sure, but it is in my mind, and

1 I'm not sure -- it is in my mind because it was
2 just, like I just remember thinking, Dave is going
3 with Jim Anderson, he is not, he is not driving
4 home. That's what -- that's what was in my head.
5 Like there was no way we were going to let Dave
6 Harding drive home from Branigan's. He was going
7 to go with Jim Anderson, and that would be because
8 I would have thought that he had quite a bit to
9 drink.

10 Q All right. But what happened that --

11 A So we got to Branigan's, and I just
12 know that I went into my vehicle, Tracey Fudge
13 went in her vehicle, and Dave Harding went home
14 with Jim Anderson.

15 Q Well, we have heard evidence from
16 Tracey Fudge that something else happened, other
17 than people getting out of her vehicle and getting
18 into their own and leaving?

19 A Okay. And I'm just saying that I
20 know, I know that when we got out of her vehicle,
21 there is something in my mind that sticks out that
22 Dave was not -- I don't know, I can't remember,
23 I'm not sure exactly how it was, but it was just,
24 Dave, you are going with Jim Anderson.

25 Q Do you recall there being any exchange

1 between yourself and Dave Harding?

2 A At one point I believe that I said,
3 Dave, you are going with Jim Anderson.

4 Q Do you recall anything else taking
5 place between you and Harding?

6 A I don't recall specifically.

7 Q I take it that Tracey Fudge was
8 present as well? She was there?

9 A I believe so.

10 Q Tracey Fudge testified, provided
11 evidence to the Commission that when you got back
12 to the Branigan's parking lot, Dave Harding was
13 intoxicated, showing obvious signs of intoxication
14 and he wanted to drive his car. Do you recall
15 that taking place?

16 A I just, like I said, I know it was
17 like, Dave, you are going with Jim Anderson. It
18 was said to him like -- and I know I said to him
19 strictly, you are going with Jim Anderson.

20 Q But do you recall him wanting to drive
21 his vehicle?

22 A I don't remember specifically what he
23 said or his actions, but I know that it was told
24 to him very bluntly that he was not driving. So
25 I'm not sure if he said, I want to drive home, or

1 if he was making -- like I don't recall if he was
2 making the motion to drive, I'm not sure. I just
3 know that it was said bluntly to him that he was
4 not driving.

5 Q And Tracey Fudge also provided
6 evidence to the Commission that she and Dave
7 Harding got into a wrestling match over his keys?

8 A I don't specifically remember a
9 wrestling match, like if they were on the ground,
10 like I don't specifically remember that.

11 Q She also testified that "it was just
12 me and Dave fighting over his keys?"

13 A Okay.

14 THE COMMISSIONER: Do you recall
15 anything like that?

16 THE WITNESS: I don't remember them
17 having a -- like I don't recall them having a
18 fight over the keys. I'm not saying it didn't
19 happen. I just remember it being pretty like
20 blunt, straight forward, like, Dave, you are not
21 driving home. I just -- I know it was -- like I
22 know it was a bit of an issue because I remember,
23 I remember going to Branigan's parking lot and I
24 remember it being like, Dave, you are not getting
25 in your car, you are going home with Jim Anderson.

1 BY MR. CLIFFORD:

2 Q What you are talking about is a verbal
3 exchange --

4 A Right.

5 Q -- that you recall?

6 A I do recall that, yes.

7 Q What Tracey Fudge indicated to the
8 Commission is there was a physical exchange where
9 she had to have physical contact with him in order
10 to remove the keys from his hands. And she also
11 testified, just so you know, and a direct
12 question, that her opinion was that this occurred
13 in the proximity of both you and Officer Anderson,
14 and that she was under the impression that you
15 would have seen what was taking place, that you
16 were close enough to see what was happening?

17 A Okay.

18 Q Do you recall that happening?

19 A I'm not saying it didn't happen, but I
20 don't specifically recall.

21 Q Okay.

22 A I just know there was an issue about
23 him getting into his vehicle.

24 Q So you are not disputing that
25 something as significant as a physical

1 intervention occurred to take keys away from Dave
2 Harding and you wouldn't have noticed it?

3 A Right. Like they wouldn't have been
4 wrestling on the ground. I would recall that.

5 Q Well, she didn't recall whether they
6 were wrestling on the ground herself.

7 A I would think that if two people were
8 wrestling on the ground, I would remember that.

9 Q I would think if two people got in a
10 physical altercation over taking keys from someone
11 who was intoxicated, you would remember it?

12 A I know there was an issue about Dave
13 getting into his vehicle, but it was made to him
14 that he wasn't getting in his vehicle and driving.

15 Q Now, your interview took place on
16 March 3rd of 2005. And this is the last area that
17 I'm going to ask you questions about. Do you
18 recall the night that you went over for your
19 interview?

20 A I recall going for the interview.

21 Q I'm going to refer to a note that we
22 have, it is found at volume Q-1.89.b.3, and these
23 have been made an exhibit, exhibit 171. And if
24 you flip to page 2881, do you see page numbers on
25 the lower right hand side corner?

1 A Yes, 2881.

2 Q Okay. You see there is a time note
3 there. This is a note from the Winnipeg
4 Professional Standards Unit that has been entered
5 into evidence:

6 "2219 Constable McLure called.

7 She..."

8 this is March 3rd,

9 "she, Constable Black and Constable
10 Azaransky are coming to our office.

11 They will call when they arrive."

12 Do you recall being together with Officers Black
13 and Azaransky at approximately 20 after 10:00 on
14 March 3rd, making arrangements for the three of
15 you to go over to give your interviews to
16 Professional Standards?

17 A I don't specifically remember it, but
18 I remember that I went there, and I believe that
19 Black and Azaransky came with me, or were there at
20 the same time, I believe, but I don't even
21 specifically remember calling PSU.

22 Q Okay. I take it you don't doubt at
23 all the fact that you would have called PSU?

24 A I believe that I did.

25 Q And you don't doubt that you were

1 together with Black and Azaransky and, indeed,
2 your recollection is that you went over there with
3 them?

4 A I believe that's true. I don't
5 specifically remember. I don't remember driving
6 over there, I don't -- yeah.

7 Q What I want to ask you about is this
8 fact; the Commission has learned that they did not
9 in fact go with you --

10 A Okay.

11 Q -- that day. That at 11:00 o'clock,
12 Patrol Sergeant Anderson called and indicated that
13 Constable Black and Azaransky wanted to postpone
14 their interviews in order to consult further with
15 the Winnipeg Police Association. And they had a
16 concern about the future impact their statements
17 might have on civil litigation and Winnipeg Police
18 Association regulation issues.

19 Did you engage in conversations with
20 them about similar concerns, or what concerns they
21 had?

22 A I don't recall.

23 MR. CLIFFORD: Those are the questions
24 I have for you. Please remain seated and other
25 counsel will have questions.

1 BY MR. ZAZELENCHUK:

2 Q Officer, your badge number is 2843?

3 A 2143.

4 Q 2143, I see. So that's 37 digits
5 before what we know Derek Harvey-Zenk's badge
6 number is. Were you in the same class?

7 A No. No, he was a class after me,
8 probably a year, year and a half after me.

9 Q Okay. Now, with respect to your
10 statement that you gave to the Professional
11 Standards Unit, I wonder if you could go to page
12 994 at the bottom?

13 A Okay.

14 Q At line 15, and this was touched on
15 briefly by Mr. Clifford, at line 15 you are
16 referring to Tracey Fudge and you say:

17 "She came after work with her husband,
18 Sammi Haddad."

19 A That's my husband. So it would have
20 been, I would have said -- I'm not sure why that's
21 in there, but it would have been, I came after
22 work -- but I don't think I even came there with
23 Sammi, I think he met us there.

24 Q See, that's something that bothered
25 me, because no interpretation made any sense. I

1 mean, you have explained to me that it should be
2 my husband, Sammi Haddad, because that's who you
3 are married to and that's who you were married to
4 three years ago; correct?

5 A Yes.

6 Q Okay. But you came in your own car?

7 A Right.

8 Q Because you drove home in your own car
9 at 5:00 o'clock in the morning, or 6:00 o'clock in
10 the morning; correct?

11 A Right.

12 Q And Tracey came in a car, because
13 that's the car you used to go to Sean Black's and
14 to come back?

15 A Right.

16 Q And your husband must have come in a
17 car, because how else did he go home at 2:00 in
18 the morning?

19 A Right. And at that time, we did live
20 about a five minute walk from Branigan's. But I
21 believe -- like now I don't specifically remember
22 what he was working, but back then we both worked
23 the same shift. He is also a police officer, he
24 worked B-1, I worked B-1. So he would have been
25 coming from -- he was working downtown then, so he

1 would have been coming from downtown in his
2 vehicle. And obviously I would have, like I said,
3 been coming from home.

4 Q Sure. But your evidence today is that
5 your husband would have come from downtown in his
6 vehicle to Branigan's; correct?

7 A That's what I believe, yeah.

8 Q Sure. And Tracey came there in a
9 vehicle?

10 A Right.

11 Q And you came there in a vehicle?

12 A Right.

13 MR. ZAZELENCHUK: Thank you.

14 MR. McDONALD: No questions.

15 THE COMMISSIONER: Thank you.

16 MR. LABOSSIÈRE: I also have no
17 questions.

18 MR. WEINSTEIN: No questions.

19 THE COMMISSIONER: You always ruin it,
20 Mr. Prober.

21 MR. PROBER: That's what my wife says.

22 BY MR. PROBER:

23 Q First of all about the conversation
24 you had with my client, Derek Harvey-Zenk, at
25 Branigan's. I think Commission Counsel suggested

1 to you that it was at 11:00. You arrived at
2 11:00, and I believe you told PSU that it would
3 have been into the first hour or so around
4 midnight, and you agreed with that. Do you recall
5 that?

6 A Yes.

7 Q So it was more likely around midnight,
8 but I think you described it as an intelligent
9 conversation; right?

10 A Yes.

11 Q Was it an animated conversation?

12 A Animated?

13 Q Well, it was heated?

14 A It was a bit heated because, yeah, we
15 weren't happy with the computer systems, so we
16 would have been probably venting our frustrations.

17 Q Fair enough. Okay. You knew Derek
18 Harvey-Zenk as a police officer for a number of
19 years then; is that correct?

20 A Correct.

21 Q Were you ever partnered with him?

22 A I think me and Derek Harvey-Zenk -- I
23 believe we worked together once, maybe a couple of
24 times, but, it was, yeah, we didn't work together.

25 Q And you said, I think, to Commission

1 Counsel, correct me if I'm wrong, but I thought
2 you said you had gone out with him on other
3 occasions to eat chicken wings and socialize a
4 little bit, with other members of the shift?

5 A Right.

6 Q Is that correct?

7 A Yes.

8 Q And if I were to suggest to you that
9 he always behaved responsibly, is that accurate?

10 A Yes.

11 Q Yes. And as a police officer, he was
12 a good police officer, as far as you knew?

13 A Yes.

14 Q He did his work carefully?

15 A Yes.

16 Q He did his work diligently?

17 A Yes.

18 Q And he was thorough?

19 A Yes.

20 Q And in addition to that, he was a
21 pleasant individual?

22 A Yes.

23 MR. PROBER: Thank you. Those are my
24 questions.

25 MS. DIXON: No questions.

1 THE COMMISSIONER: Thank you.

2 BY MS. HANLIN:

3 Q Mr. Commissioner. Constable McLure,
4 your interview with Professional Standards Unit
5 was given on March the 3rd, 2005, is that correct?

6 A Yes.

7 Q And that was very shortly after the
8 incident in question?

9 A Right.

10 Q And I understand from your interview
11 with Professional Standards Unit that you didn't
12 receive a memorandum advising you of the
13 interview?

14 A Yes. If I said that here, yes.

15 Q So you must have made the decision to
16 come forward, irrespective of whether or not you
17 received a memorandum?

18 A Correct.

19 Q And you understood the investigation,
20 the interview with Professional Standards Unit to
21 be regarding the activities of Harvey-Zenk before
22 the accident that he was involved in?

23 A Correct.

24 Q And you understood that to involve
25 allegations of involving alcohol consumption?

1 A Correct.

2 Q And you related to Professional
3 Standards Unit that early in the evening you had a
4 conversation with Harvey-Zenk; is that correct?

5 A Correct.

6 Q And that at that point he appeared
7 fine to you, is that correct?

8 A Yes, just like any other conversation
9 at work.

10 Q And later in the evening, you related
11 to Professional Standards Unit that you noticed
12 that Dave Harding had too much to drink?

13 A Correct.

14 Q If you had noticed if anyone else had
15 had too much to drink, or had overindulged, such
16 as Derek Harvey-Zenk or any other individual who
17 was there, would you have had any hesitation in
18 telling that to Professional Standards Unit?

19 A No.

20 Q And you were quite firm that Constable
21 Harding was not to be driving?

22 A Right.

23 Q Would you have displayed that same
24 firmness with anyone else who wanted to drive and
25 shouldn't have been?

1 A Yes. If anyone else who -- if anyone
2 else was like Harding, I would have been the same
3 way with them.

4 Q Now, I understand since March 3rd of
5 2005, you have been off work one time for
6 maternity leave?

7 A Yes.

8 Q Just one time?

9 A This is my first baby.

10 Q Has that interfered with your
11 recollection of these events of the evening at
12 all?

13 A I don't think so. I'm not at work,
14 I'm -- I think that even if I was working right
15 now, my recollection would be the same.

16 Q Okay. You were asked by Mr. Clifford,
17 just a little while ago, if you remembered what
18 T.J. had to drink, and you responded that you
19 don't recall?

20 A Right.

21 Q But you remember that exchange with
22 Mr. Clifford?

23 A Yes.

24 Q And Mr. Clifford replied to you,
25 interesting, because you told PSU that he had a

1 Coke in his hand. Do you recall that exchange?

2 A Yes.

3 Q And that is in your statement that you
4 told PSU that he had a Coke in his hand, do you
5 agree with that?

6 A I agree, yes.

7 Q Is there any reason that you would
8 have mislead the Commission about T.J. having a
9 Coke in his hand?

10 A No.

11 Q Would it the case that at the time
12 that you gave the interview to Professional
13 Standards Unit, that you remembered T.J. having a
14 Coke in his hand?

15 A Yes.

16 Q And that now you don't recall him
17 having a Coke in his hand?

18 A Correct.

19 MS. HANLIN: Thank you. Those are my
20 questions.

21 MR. CLIFFORD: Mr. Commissioner, there
22 is no re-direct for this witness.

23 THE COMMISSIONER: Thank you very
24 much, you can go home now.

25 THE WITNESS: I appreciate that.

1 MR. CLIFFORD: Mr. Commissioner --

2 THE COMMISSIONER: You should express
3 your appreciation to counsel.

4 THE WITNESS: I appreciate that
5 counsel, very much, and my baby does.

6 MR. CLIFFORD: Mr. Commissioner, I
7 would like to thank you and all of counsel as well
8 for staying. I think this is probably close to
9 the latest, if not the latest that we have stayed,
10 and we really do appreciate it. We wanted to get
11 the witness done. We flipped the order in order
12 to do it, and I think it worked out well. I don't
13 know how Mr. Paciocco feels, but I think the 9:30
14 tomorrow might be a fair compromise. Thank you,
15 sir.

16 THE COMMISSIONER: Before we rise, how
17 many witnesses do you have tomorrow, or plan to
18 have tomorrow? I want to make sure they are here.
19 If we are going to start at 9:30, I want to make
20 sure they are here so we don't wait.

21 MR. CLIFFORD: We are going to call --

22 THE COMMISSIONER: More police
23 officers?

24 MR. CLIFFORD: More police officers,
25 but we are going to have them going pretty quickly

1 tomorrow with respect to the constables. And we
2 would be looking at Officer Humniski, Officer
3 Michalik, and Nolet and Spruyt. And that's a
4 pretty aggressive agenda but we are hoping we can
5 get it done.

6 THE COMMISSIONER: Get through them
7 tomorrow, all right. You will have them here,
8 Ms. Hanlin?

9 MS. HANLIN: I will, Mr. Commissioner.

10 THE COMMISSIONER: Mr. Jack, make sure
11 they are here, waiting in the wings.

12 THE CLERK: All rise. This hearing is
13 adjourned until tomorrow morning at 9:30 a.m.

14 (Proceedings adjourned at 5:11 p.m.)
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COURT REPORTERS' CERTIFICATE

Debra Kot and Cecelia Reid, court reporters in the Province of Manitoba, do hereby certify the foregoing pages are a true and correct transcript of our Stenotype notes as taken by us at the time and place hereinbefore stated.

Cecelia Reid

Debra Kot

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